A

Digest of Law:

In a series of Lectures, delivered at Ditcheffeld, Cor.
By Hon. Sappington, Bove. James Gould, Esq.
And taken, stenographically.
By Josiah Houghton

In III Volumes.
Volume I.

Containing twelve chapters under the following titles.

Partnership, Sheriff & Sheriffs,
Statute of Limitations, Covenant Broken,
Bailment, Inns & Inn-Keeper's,
Executors &c. &c. &c., Evidence.
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Catalogue
Of the Officers & Students of the Litchfield Institution
Litchfield Co.
From Oct. 13th, 1817 to Oct. 13th, 1818. The period of which these returns were delivered.

Hos. Thapping Peace, late 1st Mag. of Chart.
Hos. James Gould, 2nd Mag. of Chart. 3rd October.

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Brutamagic Paley & Hume.


Private acts. Kings grant, fine & recovery, and alienation by customs.


Saunders' Reports by Williams.

Sept. 1, 1829.
I. Partnership.

As to what amounts to a Partnership, etc.

He who agrees to share in the profits of the business makes himself liable to third persons for the losses, etc.

Partners are possessed of Partnership's property, etc.

The property of a deceased partner vests in his executors, but the surviving partner has the right of suing to collect such of the joint property as is debited to him.

The successor of the co-partner cannot join. In re: 145, 223, 1445. He has the right, however, under the liability to account with the co-partner of the deceased partner, 147, 149, 244, 247.

A surviving partner may join in a decree, etc.
This opinion has been formally the extrajudicially described to the Bar by the Supreme Court in Fairfield Co. Ct. Case No. 21. The surviving partner is considered as sole owner of all the assets of the firm. The demand may be included in the continuance from the other partner. 62 Ch. 532.

It has been said that a surviving partner has the absolute control of the joint property. Wis. 273-32. With 45. 1841. This idea is based on the consideration that it is a complete ownership. 91 W. 370-4. 274-5. 1444. 449.

The true rule seems to be as settled in our courts that the property vests in the co-heirs in reason of the inconvenience of joining the survivor & the in one action, and the case could not come into the action right, if the other in his lifetime the one would be liable to the arrest of the other would not if the former was vested with the right to collect so much of the joint property as is in action. 63 St. 414. 174. 9, 167-9.

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A 13. Transact business, even in separate names, under an agreement to share in each other profits, each is liable to the extent of 3/4 of third person so the other knows that there is an express agreement between them to the contrary. 99 371. 2. 174. 185. 91. 176. 173. But this rule does not extend to speculations in lands. 41 W. 224.

If one of two partners obtains an undischarged incumbrance by reason of arrest of partner, a bad estate of the other partner are still liable for the company debts. 526. 58.

Partners are joint tenants, not only of the original stock, but of all the property acquired, whatever changes may take place in the course of trade. 162 W. 175. 116. 21. 144. 1444. 3449.
Partnership is formed on Contract; it is not suf. to constitute a practical Partnership, that two or more persons holding any thing in common as legitimate, purchased one of the same thing. Wills. 19-100. 35-55. 54. Co. Litt. 2, 16. 100. 8.

Partnership is a voluntary contract between two or more for joining together their money, goods or labor, on an agreement, that the Gain or Loss shall be divided between them proportionally. Wills. 17 Day 356-871-29. 11. 402. Wills. 27.

The Gain or Loss is the same in proportion to the share in which the respective Partners contribute. Wills. 21.

If one advance money to a trader, he may make himself a secret partner. The question is this: if the profit or premium have risen from the money advanced, the extent of the profit to be divided is to be decided. If casual or indefinite, depending on the casualties of trade, he is deemed a Partner. Wills. 27. D. 31. 445. 2 Bk. 2. 994. 47. 1 Bam. C. 293.

II. Executory Partnership agreements are specifically decided in Chancery. Wills. 27. 94. 445. 3 Bk. 2. 327. 4. 2 Wesc. 23. Partnership concerns are regulated by The Great Merchant. Wills 40. 55. 4 Klem. 389.

If an express agreement is made to the contrary, the gain and loss are the share equally alike between them. And if they make an express agreement as to the profit only, their share in the loss shall be the same as stipulated for the profit x 1. converse Watson 34.
A person may make himself liable as a part
ner without entering into a contract of a partnership,
by permitting another to use his name & credit

To subject persons on the ground of their sharing
profits of the goods, they must be jointly interested not only in
the purchase, but in the future sale of the property.
If they, A, B, & C, agree that A shall purchase a Cargo
in which each owns a share, that B & C shall each share $1/3
of the purchase at the price which A shall give for it, B &
C are not partners in the contract, which, appears
Their agreement is a Sub-contract only. Wins 45, 3-
1 543, 27.

The case of deceased partners cannot be joined
in an action with the surviving partner on debt
of decedent. Watts 63. Crown 174. In one is charged de
honis testator & the other de honis proprie. Watts 49.
Lachter 170, 1. 2 & Co. 221, 2. 220. 790. 792. 793.

It has been held, that the case of one must join
as plaintiff with the survivor. Watts 301. But this is not
the case. Exch. 18, 1. 444. 79. 194. 7189. Watts 4, 1.

The act of one partner, dealing for the part-
nership, binds all, if it concerns the partnership. Watts
Cooper 74, 7. 128. 57. Dall 75, 5. 390. 6. 39, 2.
36. Doug. 629. Watts 60, 1. 104, 5. 29, 52. 79. 52
1 493. 26.

Payment to one is payment to all. Watts 62, 100, 12.
Mod. 44. And one alone may discharge. Watts 110.
1. A bill drawn by two, payable to us or order, makes the payees so far partners, and an endorsement by one to the other makes the instrument valid. Doug. 653 – Mat. 233.

2. A member of an incorporated company can by his own act bind the company. Will. 49 – 2 P. 306 611-0 

Matt. 306, 12, 6 245 – St. Ray. 175 – Wills 153 – Hard. 1485 – 1 

Parr. 19 – Seth 196.

The shares of stock, put into partnerships, become common to all the partners, as soon as the agreement is executed, and they should remain in the safe, or sole, possession of the original owner, or each partner for the other, which is in his custody. Will. 53.

3. The members of a corporation are not liable like partners in their private capacity for the debts of the company, nor is their private property liable. Will. 53 – 


III. Partnerships are either Special or General. The former are established for a particular concern; the latter for the ordinary concerns of trade. Will. 53-7 – 73-4.

Partnerships as contemplated by the English Statutes, respect personal property only. Will. 38.

Partnership concerns as incident to accounts are cognizable in Equity. Phil. 437 – 2 How 277 – 90 – Will. 59-60 – 16 Nov. 2743.

One partner may discharge himself from future contracts also made by the other, by a public disclaimer.
A Partner by giving notice that he will not be bound to abide by the particular persons with whom the subsequent engagements or acts are made, or that he disclaims the Partnership, will discharge his part, Vide VI. Laws 611, Tit. 241. But in such case an advertisement in the Gazette announcing dissolution of partnership in the usual form will discharge the partners from their liability.

If one of two partners keep a Bankrupt's account to the other's profit, he is a partner in his sense, and the assignees for the purchase the assignees are his partners, Vide 115, at least 363. 5. Eliz 4. 2. Mod. 447.

If one of two partners leaves the other a Partner, the former may be charged in like manner by assignees generally without any mention of the Partnership, Vide 23. 8. Com. 363. 5. Eliz 4. 2. Mod. 447.

When there are several part owners of a Ship, the major part thereof (in interest or presence) may let the Ship or send her on a voyage agst. the will of the minor without its consent, 2. Bl. 255—Mat. 75. But the major part must give security in the Court of Chancery, Vide 75, 7, & 255.

IV. Shipowners are Tenants in Common, Mat. 75. And if the Ship be connived by a stranger, the owner will be just as much a Share, 2. Bl. 34—Mat. 75, 7, 2. Bl. 329. So by the Maritaine Laws. 5. Eliz 261. 2. Eliz 640. But this is contrary to the general rule of the Law. 5. Eliz 264. 3. S. 42.

But one part owner of a Ship cannot maintain against his partners, 16. 16. 179. Mat. 75, 6. 2. Eliz 313—3. S. 279. 1. Feb. 70. 2. S. 119. 2. 20. 2. 179. 2. 276. 4. Eliz 290. Spec. if the latter destitute the ship, Mat. 70, 23.
But if part owners of a ship may surrender the part
ownership by the English law, whenever they please, by selling
their respective shares, Why not
But by the Marchime law this cannot be done
without the consent of all the part owners is made.
Nash. 4th. 311.

If one of several part owners object to a way
age, proposed by the others, he may arrest the ship, and
sell the others for sure security for her safe return. This is
he may do by process of the Admiralty Court. Why
Rev. And on this security a suit may be maintained in

In this last case the part owners who disagree
to the wayage are not entitled to the amount of the profit.

But one of two partners in trade may dispose of
the whole property of the partnership. Why. 70. 145. Co.
445. And if one become Bankrupt every thing is
sale of the other, and knowing of the act of Bankruptcy is

If one partner instead of advancing money, pays
over to the other for his share of which become Bankrupt, his
assignees are entitled to half the stock & profit, tho
the other has voluntarily discharged the note. Co. 71. 482.

The Captain of a Ship is not as such a Partner.
Why. 71. He is chosen by a majority of the owners in
Whit. 144. Sec. 146. But he may maintain charges against
Stranger for taking among the Ship. Shot. 10. Why. 74.
Partnership being founded on Contract. Thus it is clear that the whole contract is divided among all the partners, and, in accordance with the provisions of the Articles of Partnership, on the death of one partner, his property is to pass to his executors, unless it is provided in the Partnership that he shall be paid. With 243, 4, 14, 23. 2. Is he not liable in common with them? 1 Pet 30, 29. 2. I think so.

The assignee of one partner, the assignee, is liable. With 244, 4, 14, 23. 2. But they are liable in common with the others. 1 Pet 30, 29.

When the respective partners contribute equally in money, labor, or goods, the profits are divided equally. With 104. Be sure to contribute, etc. As to the different modes of dividing the profits, see the Partnership. With 107, 4.

Partners are bound to use the same care in Partnership's property that they are in their own private concerns. If any loss happens by any omission of the degree of care in either of them, he is accountable for it. With 113, 14, 15.

Each partner may regularly sign for the company in the name of the Co. - but he should do it for himself or in the name of the firm. Ch. 30, 56, 55, 126, 14, 54, 179. But his privileged may be altered or transferred to one or more of them. 1 Pet 30, 29. Ch. 27, 8. 240. - 126, 4, 123, 217, 127, 72, 113, 207, 8, 180.
How far evidence of custom is admissible on this point, see Pink, 203. - Burr 1246-21 - Mass. Pa. 295.

If a partner except his authority in any fraud, action, which occasions a loss, he must bear in - Burr in gen. the partners of each partner is general, in carrying on trade. N. Y. 175.

After a dissolution, as well as before, the partner who is in advance, has a specific lien on the common stock for a balance due to him from the others on the partnership's account, and of that he cannot be deprived of by the private debts of the other partner. N. Y. 25-6-1822 374 47-242 - D. Ray 897 - N. Y. 1822 - and pt. 19, 6 N. C. 242. (and pt. 19.)

The creditors of any one of the partners cannot affect the common stock, any further than the ind Ubis, partner (112) 242. - Pack. 447 - Mass. 125-9-125.

The bankruptcy of one partner dissolves the partnership. N. Y. 2174 - Pack. 445 - Mass. 140-5-6-131.

The dissolution of partnership does not sever the joint interest of the partnership itself, but the rule holds as whether the dissolution is by agreement or otherwise. In case of dissolution, one partner has no other right with the other, than an account & the balance due him. Pack. 449 - Mass. 140-5-6.

If then, a dissolution happen by the death of any one of the partners, his estate or assignees hold (with the survivor) as the testator to the estate for bankrupt did, i.e., the interest, in Commod...
joint tenant, and subject to the same rights in the
survivor by which it was before subject Vict. 140. c. 194 s. 3. Cap. 410.
But the End. is not partner with the survivor,
even if the partnership contract provides that he shall
be so.

Hence also after the dissolution of a joint
contract cannot maintain an action at law, the other as a
majority of the Company affects Vict. 140. c. 194. for
the consequences or representative of the former. Wills 313.

If one Partner takes more than his proportion
of the stock, the other may come upon his separate
estate pro tanto. Vict. 140. c. 194. Wills. 111.

As to the allowance made to Bankrupt Partner

If money due to a Partnership is paid after
the death of one of the partners by a third person, the
surviving partners may have Indebtedness paid for
it in his own right, and not as survivor. 2 Wills 476.
C. Dile. 198. Wills. 152.

Several partners cannot maintain an action
on an illegal contract made by one of them. That it
was made without the knowledge of the others. 3 Wills 48.
Wills. 152.

If two persons incur losses in an illegal transac-
tion & one of them pays the losses with the consent of
the other at his request, the former may recover a
maine of the latter in Indebtedness. 3 Wills 476. 198.
If two parties are concerned in an illegal transaction which incurs a penalty, they are both liable, tho their shares can be fixed and separately recovered, from 616—Witt. 101-2—Gibb. 171.

If it is said, if one of the partners is concerned in such a transaction, on account of the partnership, Wigt. 101. 273—Gibb. 617-20. But the rule seems to impose the same penalties on the transaction, Wigt. 101-2—Gibb. 679-205.

A contract which is immoral, being a violation of honor, will not create a partnership, the Wigt. 101 in the form of a Partnership Contract, Wigt. 195. 291—Ed. 4. A bond or any other document which any person may deliver to the money, in a trade, gives a bond for the money, lawful interest and accommodation at the same time; that the lender shall have a part of the profit of the trade. The borrower and lender in this case are not partners. The contract is unavailing. Lord Coke, 1793-4 17. 353.

For the avoidance of a suit for 20 years, and a joint merchant (their dealings being for more than that time), a bill for a bill for an account in Equity Wigt. 101-12-2 Ford. 276—Gibb. 12. 224.

V. As to how far Stat. of Limitations affect the accounts of joint merchants, wigt. 214-12 Exh. 123. 1844. 1071. 305—2 st. 120 14th. 220—Abl. 1693—Gibb. 107.

Two partners agreed to advance money; one of them gave his sale bond, the other witnessed it.
both became Bankrupts. The (Debtors) was allowed in Chancery before he left £200. The Company, 18th 225 - case cited in Wal. 229.

If two partners agree they may disapply part of their shared private cash; they must be joined jointly as to their agreement. 1 Will. 256 - Wal. 229.

In addition to an ap. Co-partners, they must all be made parties. Wal. 239 - Black 171. In one suit alone on the same contract, advantage may be taken of it in each, under the same issue. 1 Bl. 292 - Ball. 132.

If a Tenant, it is pleadable in a separate suit. 2 Bl. 390 - 229.

If one is sued alone on a joint contract, it is pleadable in a separate suit, only 1 Bl. 597 - Wal. 440 - 235 - 440 - 534 - 235 - 534 - 539 - 235 - 539.

Even a written joint contract 2 Bl. 697 - 539 - 539 - 539 - 539.

For 2 Bl. 283 one partner may be sued alone. 5 Bl. 281. But after处分 one may sue alone on a contract originally joint. 18th 233 - 233 - 233 - 233.

If two Partners are sued and only one appears, the whole debt may be adjudged, for the whole debt against the latter is for default against the former. 1 Bl. 510 - Wal. 510 - Wal. 510.

If one of the partners will not join in an action, he may be summoned and served if he will not then pay his debt, 2 Bl. 246 - Wal. 246 - 246 - 246 - 246 - 246.
The discharge of a Bankrupt, under the Act of 4 & 5 Geo. III. does not discharge the Partner, the other 3 men being liable. 25th. 24th.

In Bond, creditor, 3 how partners are jointly bound generally, may on a commission of bankruptcy against them, make his election to come against the joint or separate estate, but not against both for the deficiency, if after the other creditor are paid. 11th. B. 227. 24th. 24th.

If one partner being an executor or trustee lends a trust fund to the trade, with the knowledge of the other, it becomes a debt in favour of the creditor, trust against the joint estate. 3 H. 227. 22 H. 254. Coomb. B. G. 253. Note. 280-1.

If on the dissolution of a partnership between A. B., it is agreed that A. pay all the debts of B. A creditor knowing the agreement, delays the collection for a great length of time, he is still not deprived of his remedy against B. This case in Equity. 3 H. 227. 10 H. 663-2. 2 B. 252. 2 B. 252. 27 H. 252. 27 H. 252. 25 H. 252. 25 H. 252. 25 H. 252. 25 H. 252. 25 H. 252. 25 H. 252. 25 H. 252.

And subsequent to the time of delivering goods on a contract, it may be proved after, that they were delivered on a partnership account. But if there was no partnership at the time of the contract, no subsequent act of any person, who may afterwards, become a partner, will make him liable on the contract. 14 P. 227. 25 H. 227. 25 H. 227.
A Partnership is not liable for the debt which one partner may incur in furnishing himself with his part of the original stock: *Sh. Th. & Co.* Met. 259. 679-712.

VI. Partnership may be dissolved at any time by the consent of all the partners; and any one may dissolve it without the consent of the others within the time limited for its duration by the original contract. Where no time is limited any one may dissolve it by withdrawing himself: provided it is not done with any sinister views to the prejudice of the others, or at an unreasonable time, as when a particular business is begun. *W. Th. S. 273-5.*

Disolution may take place several ways: as 1st. By indisposition of time, i.e. by lapse of the time for which the partnership was created: *W. Th. S. 275.*

2nd. By dividend of all the Co. property after a complete liquidation of all the Co. accounts: *Th. S.*

3rd. Partnership contracted for a single dealing is dissolved by its completion or closel: *Th. S.*

4th. By Arbitration. If the partners by their submission authorize their arbitrator to dissolve.* Th. S.*


6th. By the death of one of the partners: *W. Th. 294.*
The death of one dissolves the partnership, as between the survivors, how numerous soever they may be; unless the partnership agree to the contrary. Mart. 294.

But a temporary lunacy in one, or derangement of mind (there being a prospect of recovery) does not dissolve a partnership & Mart. 295.

Partnerships by Farmers taking Leases are not in Equity completely dissolved by the death of one Partner. Mart. 298.

The partners are joint Tenants, yet for the advancement & continuance of commerce, there is no survivorship between them. The death of the deceased becomes Tenancy in common with the survivor. 1 Bost. 363; &c. no survivorship in interest but the remainder in which interest is the secured of their rights enforced to survive. Mart. 149-140-6-297-44-5.

The Rule that there is no survivorship is found on the Laws of Merchants Mart. 299-10 Ed. 182.

If on the death of one partner, the other continues the trade with partnership (which I suppose) the letter must account with the Representative of the former for the profits made by continuing it. 1 Bost. 141-10 Ed. 30-2 Edg. Cas. Aug. 55-72-2 Mart. 201-2.
Both partners being dead on a Bill for an account of Partnership a Receiver is appointed in England. 3 B. & C. 872.

If one of his partners signs a note in his name only in a Court of Chancery, both are bound in Equity. 2 Vern. 177-90.

If on an election, a pt. one of two partners, partnership goods are taken & sold, the other partner is entitled to a share of the accords, proportionate to his share in the goods. 1 Decr. 627, 50 - 2 Litt. 372 - 1 Shaw. 179, post 10.

One Partner may maintain Indebtedness & against the other for money paid on a partnership debt after the dissolution. 2 T.A. 470. 1 East 200. And if there are three partners & he sues, but one of he does not plead in abatement, he may recover the whole proportion of the two others from the one sued. 1 East 90.

An Obligation pays A. & B. & C. partners all the sums which they shall advance to B. if B. does not lie & the obligor pays what is advanced to B. by A. & C. after B's death. 2 East 334.

If one partner is charged beyond his proportion, Equity gives him a lien on the partnership effects [1 Decr 367 - 74 - 268. 1 Ch. 9. Cas. & 1 Decr 368].
A contract with A, B, & C, partners even not be enforced by A alone; the trust cannot be with Part. it after C withdraws from the partnership. Th. 234 3 Will. 537 12 N. 971

Where parties in trade become Bank- rupts, the mode of settling the estate is to apply the joint property to the payment of the Co-debts. Coxs. R. 289 3 Bro. Ch. 457 and the private estate of the partners (in the first instance) to the payment of their respective debts. 5 Dubr. 601 8 Th. 147 Mat. 122 3 4 36 7 9 54 2 153 215 16 10 44.

If there is a surplus of private property, it is all liable for the debts (for the debts) of the Company. 3 Bro. Ch. 119 Mat. 157 2 3 207 410.

If there is a surplus of the joint property, and a deficiency of private, so much of the former as belongs to any of the parties may be applied to the payment of the private debts of any of the other partners. 1 N. 242 52 Mat. 125 9 10 Coxs. 489 not can

One partner cannot recover his Indeb. As a summt a sum of money rece; by the others on the partners' account, unless there be a balance de strucd. 396 9 7 Mat. 227 Otherwise if the money rece; be not partnership property Mat. 153.

After the dissolution of the partnership, the partners authorized to receive and pay the debts etc. cannot bind the others by giving a security in the name of
The firm. 1THB 135. 2 T. 120. Wats 270. Nor can either of them be held the other by new contract. Wats. 270. Chitty 30. But in this case notice is necessary as to 3rd persons. Chitty 30. Vid ante 6.

One partner cannot bind his Co partner by Deed, without a power for that purpose by Deed. 752. 217-4 Tit. 213. 3 Bac 460. Chitty 20. 1 Conv. 6. 323.

Before the partners become bankrupt, the property of each, both joint & private, is liable indiscriminately for any debt, whether joint or private.

If one of the partners is indebted in his private capacity, no more than his share of the joint property can be sold & appropriated to the payment of his debts. If more than his part be taken away, it cannot be sold as the Creditor. Comp. 409. 18 East 364. Wats. 121-3. 46. 34. 11 Bac 460. 6 Dec. 392. Doug 604. 30. vid page 19, attachment & ante 16.

A sale of his part under this view makes the purchaser innocent in common with the other partner, Comp. 449. 2 DeCay 271. Lath. 392. 413 ace 460. 3 Per. 25. 10. 1846. 1866.

If one or several partners contracts as for himself, ie, without disclosing the Partnership, still if the contract is in joint name for the partnership, proof of that fact (the it was unknown at the time of the contract to the 3rd person with whom the contract was made) will render all the partners liable Comp. 336. 314. Wab 42-7. 63. 227. 40. 1813. 850. Doug 357. 71.
A Contract by one of several partners relating to the Partnership business bind the whole, Phil. 23-29. Phil. 3656.

And even after the partnership is dissolved - a contract thus made will bind all, unless public notice of the dissolution be previously given. Camp. 347-350. B. & B. 217-218. 998. Phil. 3656.

Thus much of Partnership.

A sheriff may maintain an action against a p'r. in a former action for service of the writ & storage of the property attached under process & for interest on said expended for that purpose.

A sheriff who knowingly takes insufficient bail is liable for the amount of the p'r's judgment against the bail after deducting the value of that & the other judgment on principal.
II. Sheriffs & Gaolers.

I am now to consider the Rights, Duties of Sheriffs & their under officers & also other officers which are difficult to be clasped under other Titles.

The word Sheriff in its Saxon etymology import the Governor of the Shire or Reeve, a County or Shire, the being the first executive or ministerial officer with Counties 1133. 349-43. For the manner of his appointment in England vide 4 Bae 132-2 4-5. 1 Bae 240-1. He is bound to State Treasurer's of benefit. In Chasse, may suffer him. &c. is only found in 4 Bae 4 Bae 132-2

Query Sheriff must reside in the County for which he is appointed & being a County officer he has regularly no jurisdiction out of his own County. This however is not universally true. For if it be necessary for the purpose of completing an official Act, begin in his own County, but let him go out of it. It is in his power so to do. Then if the Debtor, or owner of Goods attached, will show it is necessary to leave a Copy of Process, live out of the County, or if he is ordered to bring a prisoner from his own County to the Court in another, he can do it. Corp; his authority does not determine when he reaches the Co. line 4 Bae 435.

And if a person escapes from the Sheriff fly from one Co. to another, the Sheriff may pursue & arrest him in the other Co. The prisoner is here Retaken upon the same principle, for the Retaking is only a continuance & furtherance of his local authority in the original arrest. 4 Bae 435. vide post 277. 4 546.

And upon analogous principles he may do a rather complete official Acts, after the termination of his office. So while he has desired good is remand
before the sale, he not only may, but must go on with the sale of those acts he is directed of his office for the 50. is one entire act. the maxim being, that the process is indivisible, is that one cannot begin it another complete, it being an act of law an individual act. 328. 3. 598. 4. 599. 4.

And the same rules as to local authority & completion of Process extend equally well to com. stable.

A Sheriff may, at his appoint Deputy or Under Sheriff, who as his Representative or Servant may execute all the ordinary or ministerial duties of this Office. I say "ministerial", because he has other duties, which none can perform but himself. 13-4. B. 437. H. 240.

Every Deputy Sheriff is removable at the pleasure of the Sheriff, for he acts as the Representative or Servant of the Sheriff. But by the authority which he has conferred upon him. But while the Deputy remains in office his general Power as Deputy cannot be abridged by any Act of the Sheriff. The latter cannot say that he shall be Deputy but hence all the power necessary for the execution of his Office—It would be to harrass the action of the Power. 44. 13-4. B. 437. 40. 2. Brown. 281.

In England the Deputy act officially in the name of the Sheriff, only as the Deputy is most known as regarded by the Law as an acknowledged Public Officer, but merely as the Servant or Official Agent of the Sheriff. And for the same reason at O. S. visits in all cases made directed to the Sheriff, & never to his Deputy—and thus the Deputy may execute, yet he cannot return it in his own name, i.e. the endorser of service must be in
But the law is strict in Cb. the Deputy being regarded as a Public Officer, may return writ in his own name, & it has been determined in Cb. that a writ directed to the Shf. only may be executed by the Deputy in his own name, whether it be general or special. [Rib. 237]

I have already observed, that while the Deputy remains in Office the Shf. cannot abridge his powers, hence a Covenant entered into not to execute process of a certain description is void, as the the Shf. would thus monopolise to himself the most profitable part of the Business; for it is the duty of a Deputy to every Officer to execute every legal process, that may be offered to him. [Rib. 14-4 Ber. 1438-9]

A Deputy Shf. however cannot delegate his authority, for his own authority itself is delegated; and it is a kind of elementary principle in jurisprudence, as well as in Politics, that a mere representative a subject, who acts by delegated authority, cannot delegate his authority, unless specially authorized, a Deputy may however entrust his virtue of his own right may do this. As in the English Parliament, one may vote by proxies, but an estate cannot substitute without an express provision for that purpose in the power, as it often the case, and all upon the same principle, that a derivative power cannot be delegated. [Sel. 96, 2d. Privilege of Lords voting by proxy a privilege not extended to House of Commons, 17th. 1609.]

A Deputy however may order others to assist him in the performance of his duties, as to order an assistant to make an arrest in his presence, but there is no delegation of authority or assent. If Power
There is a clear hand written on this subject, which requires a specification. It is said that an earnest in the dispatch to a Dep't Shf. is not good. This must refer to corrects made when the Dep't Shf. is not himself present in person of the same object to read, 2d. and post 41.

If the Sht. directs a warrant to two or more persons, either of them may execute it. So when an authority is given to two or more persons, if a public nature, it is general as well as joint, but if it be of a private nature it is joint & not several 1 Doy. 131. Stra. 147. 41 Bac. 409. 42.

If the Dep't Shf. is guilty of any neglect of duty as by suffering an escape, the Shf. may have an action in the case immediately against him for he is himself liable even to the party injured. Besides it is a violation of the Dep't's implied agreement to do his duty faithfully, which the appointment & acceptance places him under. Indeed every office enters into this implied agreement where he undertakes the discharge of his duties; this is to the Public's rent the agreement of the Dep't Shf. is with Shf. for he is personally liable. 1 Holt 90. 4 Bac. 442.

The Gaolers in the several Counties are the servants of the Shf. appointed & removed by him; for the Shf. is ex officio the Keeper of the Gaol in his own County. 1 Co. 34. 936. 19. St. 21. 222. The Shf. as Jailer has no right to confine any person in any other place than the Common Gaol.
that being the place appointed by law for their confinement. A party may have a wrong and false imprisonment if the Governor does not have the same on his warrant. The Governor may have the same on his warrant.

The rule is universal that he acts without authority of law. Rob. 102. Dall. 16. 1 Sm. 210. Sale. 469. 5 Bac. 171.

The Sheriff being an officer Keeper of the jail, it follows that he cannot be imprisoned in his own county. He cannot be acted upon by a writ of habeas corpus for an arrest is made preparatory to an imprisonment if it has been determined in Gl. that if a Sheriff has been thereby arrested, the suit will be a bate. 140. 2 Bae. 239. Gl. 145. The Gl. decision is doubtless. Could think the suit would not abate. Do? If indeed there is a special Prison for common prisoners in the Co. as there is in England by which the Sheriff is not the Keeper. In that case the party may be arrested without committing to it like any other person, but he cannot be made his own Keeper. See Bae. 240. Do not provide for Criminal Cases. I presume however that from necessity the Sheriff might be arrested & imprisoned in an adjoining county. This appears to be the opinion of the profession & Court at an incidental decision of the subject.

We had a case in a Middlesex Co., where a Marshal was confined he called for the keys & let himself out. The officer however suffered severely in an escape, for the Court alluded the case. The rule of the Court is that does not constitute the Marshal Prison Keeper.

As the Under Sheriff is not a Representative or Servant of the Sheriff, it follows that the Sheriff is
generally liable civilly for the official act or default of his deputy, agreeable to the usual practice in courts.

You will observe that civilly is the emphatic word in that Rule. G. 94. Sec. 153 - Dec. 1873 - Nov. 1874 - 2 Sec. 152 - 2 Sec. 146.

You will perceive that the liability of the Sheriff in this case is similar to that of a master for the act of his agent. In consequence of this liability, the Sheriff is allowed to take security of his deputies for the faithful discharge of their duties, for such bond taken by a stranger would be void. Id. 1871 - 441.

On this subject of Sheriff's liability, the good Rule of law is, that the acts of the Sheriff to all civil persons are the acts of the Sheriff, so that he is liable civilly for them, but not criminally, for to subject any person criminally, he must have been personally guilty. C. 2 Sec. 1874 - Dec. 1872 - 2 Sec. 1874 - 2 Dec. 1877.

But, the liability of the Sheriff is limited to the official acts of his deputy, for private acts committed by him in his individual capacity, the Sheriff is not liable, as if he should commit a grand larceny. G. 94. Sec. 152 - 1 Dec. 1874.

It has therefore been doubted whether if a deputy levies an arrest, as is done in this case, on the person of B. The Sheriff would be liable, because on the one hand, it is said, he does not act in pursuance of his authority, so that he cannot be considered in law as the agent of the Sheriff. But, I take the Rule to be well settled that the Sheriff is liable for the deputy's official acts. The Rule which subjects the Sheriff does not contemplate those acts which are conn
mandated. True, you neglect to serve process. The officer is liable. If he is not subject to command or omission of duty, so that the person alleged would certainly prevent the officer's liability in any case. 11 B. & C. 442. 2 11th. 532. 3 11th. 384.

And where the offence committed by the officer is with force. The officer is liable in trespass. So that the order of the remedy is shift from that which obtains in the case of the master for the acts of his servant, who would be liable in case only. The reason assigned for the distinction is that the officer is an officer of the law, but not an officer. This I confess does not appear entirely satisfactory to me. 2 11th. 532. 2 11th. 532. 63. 4 11th. 442. It is well established that of the officer is liable in trespass as if armed in the case above. 1 11th. 421. 7 11th. 12.

For an omission of duty on the part of the officer. The officer only is liable. If not the officer is the officer. Has his remedy over aga the officer. So if he omit to execute process or suffers a neglect in execution; an action would not lie. The officer is the officer. A 11th. For he is not considered as a known public officer. Suppose, the offense were not, apt him for neglecting to execute process, the process must be given in evidence, and as it appears to be directed to the officer only, it will not support the action. 1 11th. 403. 6. 1 11th. 160. 5 11th. 39. 2 11th. 240. 1 11th. 604. 1 11th. 604.

But for positive acts committed by a deputy in the discharge of his office, both are liable. The deputy as well as the officer. For the party injured may consider the party acting in his own tort, not seeing if not what authority he acts in, where he takes the goods of the officer and B. and is the representative of the officer. Who is made liable;
The person injured is not bound to ask by what means or without he acts; for that would be perfect inflexibility, and nugatory as to the party injured. 2 Mal. 326.

On the other hand, the officer is by commission, the authority by which he is bound to act must appear, that being the ground of the act. 1 Co. 10, 1 Bro. 393, 4 Lev. 298, 1 Co. 116, 1 bro. 393.

To illustrate this is a case of a voluntary act is the officer liable, for it is a positive loss of compliance; his authority is no justification. As it would be as a robber, would the will is a voluntary breach of the law, therefore he may be subject personally, or ground already specified & explained.

The Slf. is not liable for the acts of the deputy of a special Deputy, appointed by the request of the Slf. in the action of the deputy's nomination, as if he was a deputy in not executing the acts, for the act done, or made at the request of the Slf., at his request. But if the special Deputy shall the Slf. goods or wrong or injurious acts to third persons, &c. to the Slf., the Slf. is liable, so that his liability in this case is only restricted to the Slf. who made the deputy appointed. 4 T. 120, 9 Sept. D. 60.

In Ct. a deputy Slf. is considered as a known public officer & is liable as well for default as for acts of commission, as for consequences as his acts, for he acts in his own name both in fact & in form. The endorsement of service is in his own name, & he is liable precisely as extensively for his acts as the Slf. at the Ct., & in the Ct. The Slf.'s liability in Ct. is the same as at Ct. These rules relating to the liability of Slf. for the acts & default of his deputy, apply equally well to the acts of his Gaoler, &c. as to this par.
After the death of Sheriff, or before another is appointed, if a Person escape, no one isiable at Law, for the death of the sheriff is in fact a vacation of the Jailer's authority. Indeed all delegated authority ceases on the death of the principal, except Testamentary authority which in strictness cannot be said to be an exception. The only remedy then at Law, in such cases is a new appointment, as soon as possible. The representation made not the responsibility of the Sheriff and the Jailer's authority it determined immediately 4 B. & Q. 445 - 3 Co. 72 - Oct. 5, 366.

The only remedy then is to have a successor appointed as soon as possible & have him retake the prisoners. There is however so inconvenience to be apprehended in this case, for the Jailer would continue his authority departs & rely on the Legislature for an indemnity. 1 Cl. 114 - 4 B. & Q. 445.

I have thus far spoken of the Character of Sheriff, his Relation to, & Liability on account of his Defects - I am now to speak of the Authority & Duties of the Sheriff.

The Authority & Duties of the Sheriff.

is a Judicial as well as an Executive & Ministerial Officer. But in New England, he has no Judicial authority, whatever. I shall therefore treat of him as an Executive Officer & a Conservator of the Peace, in which latter character he is strictly an Executive Officer. According to my understanding of the term, a Ministerial Officer is one who executes the Peace in obedience of some Superior's command or by the command of some Superior Officer. Thus the Sheriff...
acts in executing a. The on Warrant, they are subjects. The ministerial Executive Officer; on the one hand is one who speaks or executes the laws, with the Head of Department, acting in obedience to the law, only, are executive officers. But their subordinate officers, who act in obedience to their commands in executing the laws are executive officers. These then, are the two great departments of the civil power, as understood by our law. As executive officers, he is the Conservator of the peace of the county & the first Executive Officer in the Co. or it might be properly said of the Co. or the highest Executive Officer, 1131 345. 1131 237. Stat. 61, 300.

As a Conservator of the Peace the Shf at Co. may 1 must apprehend & commit to prison all persons, who break or attempt to break the peace, & may bind them to keep the peace; this binding over he must by a Judicial Act, which a Shf, in Co. is not authorized to do. He is also bound of officers to arrest or apprehend generally all offenders under the laws; as Traitors, Murderers & all Tolls & commit them to safe custody. To defend the Co. appt not only Civil, but also, but all offenses foreign or Domestic, and this is one of his leading duties. And for this purpose he may command the peace constables, or power of the Co. which is Co. consist of all Male persons over the age of 15, except Peers.

1131 160. 1131 430. 55. 1131 145. 4 122. 147.

As Co., a similar power is given to the Co. 4 to Constables within their respective Towns. Stat. 61, 386.

As a ministerial Officer, the Shf, is bound to execute all legal process, regularly directed to him. & on refusal or neglect, he is subject to a Fine.
Imprisonment is to a civil suit on the case by the party injured by such neglect or default. 4054, 2 Dyer 60, 136, 244, Stat. 3d, 235. But a civil process legal fees must be paid to the sheriff. A. 2d, 245, 3d, 246. In a civil suit for neglect of duty (for which he is not at C.) as for neglecting to return a verdict in C., an action on the case, he is liable to a civil suit for neglect of duty (for which he is not at C.), as for neglecting to return a verdict in C., an action on the case, for this. Indeed, the sheriff is liable for not returning a verdict as well as for not serving by the sheriff. But the process is a summary one, viz., by making a rule requiring him to return it & if he does not, he is subjected to an attachment for contempt with fine then inflicted. Remedies for the party injured, 1046. 2 Dyer 233, 113, 52, 204, 2 Mc1, 662, 241. 246 & 616, 3d, 3d, 601. Costs must be tendered if the sheriff fails to compel service on civil suit. 2d, 3d, 602.

The one provision that I shall mention and the provision is that to arrest a man to keep the peace, he no less than 3d, 603, & at the same time, when no delay on the part of the party injured in the execution of process & every person is bound & liable therefor to assist 2 d, 193, 453, 4 Dec 453, 122, 147.

We have a further provision not to leave the sheriff the task of enforcing the law. If a party is suspected of neglect of duty, he is to be arrested by a justice or a justice deputized, or if he refuses, the whole body of the militia of the sheriff to assist him, in those military capacities organized under their own officers & commanding himself. General Issac Starke, for the statute that authorized shall presume that he cannot execute the process 4th, 4th 34.

There is a great importance that relates to a peaceable or a trespass to the privileges of a field, a hemp, or a field that is enclosed. Where a party is justified in breaking on a wicket, door, or window, or in which he has for which I refer you to the title trespass, 1 Carn. 73.
I would observe however if a person is illegally arrested by the breaking of lattice doors or windows & it charges while under these restrictions another person the latter is good, provided there were no collusion, between the parties for the action or between the officers but such collusion if now realizes the whole 2 Bl. 232 - 3 Bl. 205.

Bak. Ch. 124 - 125 - 126 - 127 - 128 - 129 - 130 - 131 - 132

By a Stat. 20. Car. 2. 14 similar one of our own, no Civil process can be served on Sunday, & service on that day will be void at the suit of the imprisonment. This can only be allowed by a rule of ease, but by Stat. 4 Bae. 436 - 466 - Stat. 507 - 1290 - id. 244 11. This statute however relates only to original process, for if a person escapes on Sunday he may be pursued & retaken on that day. & even if he escape on another day he may be retaken on that, precisely as it was. For the effect of retaking is no more than the means of continuing the unlawful arrest in custody, for the judge stands upon the same principle as this that the suit may on Sunday plead the prison door, or resist any attempt made to escape on that day. 2 Bae. 445 - 2 Bae. 450 - id. 422 - 576 25 - 96765

In case of an illegal arrest on Sunday, the Court will order the prisoner to be discharged on a habeas corpus. & it has been decided that service was prohibited only during time of light and the night.

The duties of a sheriff were as follows:

1. To arrest the trespasser
2. To arrest the trespasser's neighbors
3. To arrest the trespasser's family
4. To arrest the trespasser's friends
5. To arrest the trespasser's creditors

This is sometimes placed under the letter of his care.
on the case, but it comes as appropriately in this
place.

Of ESCAPE.

When a person who
is under lawful arrest & restrained of his liberty, either
publicly or privately under that restraint or disposa
sion at large, before he is discharged by due course
of law, he is said to escape or to guilty of an escape.
An escape, then, is the removal of lawful custody or
restraint. 2 Bae. 233.

Of course it is essential to constitute an
escape, that there should have been a previous legal
arrest, for the creation of an illegal arrest is at
law, according to the definition given, no escape. 2 Bae. 607-89 Cal. 1st. 365.

To introductory to the law of escape, we
consider firstly that of arrest.

The arrest must have been made in purs-
ance of lawful authority. Indeed, an arrest made
not in pursuance of lawful authority is void in itself
and unlawful. 2 Bae. 502. But I do not mean, that the ar-
rest must in all cases, have been made in pursuance
of a lawful warrant. For a legal arrest may
be made without a warrant; as in the num-
berous class of cases in which it is made the duty of
the Sheriff to arrest offenders & he may arrest without
warrant. 4 Bae. 455.

Where the arrest is made by vir-
tue of a warrant or warrant, the general rule by &
to determine whether the arrest was lawful
that, if the court or one where authority the libel is,
this has jurisdiction of the subject matter of it,
the arrest is lawful, i.e., the warrant is lawful, and the arrest made lawful, and from the manner of the execution, as by breaking an outer door, window, or door, by circumventing the process being erroneous. It is no objection to the arrest, for when issued by due authority, the arrest continues good and effectual to every person, and the arrest is good and effectual by due course of law, whereas a void arrest is bad at first. 2 Bac. 234 - 6. 1 Will. 3 D. 4. 8 Co. 140. 6 Co. 54. Thia. 864.

But on the contrary of the court by whose authority the warrant is issued, has no jurisdiction of the subject matter, the arrest is unlawful. For the void or unlawful arrest, the arrest must be. In such case therefore there can be no escape of the party committing such an arrest, he ought to release the prisoner as soon as he finds his mistake. 2 Bac. 234 - 6. 1 Will. 3 D. 335 - 91. 607 - 39. 14 Will. 384.

To illustrate the rules, The 1st. Court. Rule is this: if the Court has no jurisdiction on the arrest is lawful. Thus suppose in an action of debt a warrant issued from the Court of Ch. in England, it is regular, arrested under it, the arrest is lawful. But on the contrary, suppose an arrest made under a Criminal Process, issued under a civil Court, it is void, for that Court has no jurisdiction in Criminal matters. Suppose, under our own laws, a magistrate has no jurisdiction in cases where no more than $15.00 is demanded. Suppose an action of trespass demanding $15.00 on an arrest made under
The Majesty's warrant is lawful. But if the writ contain a demand of £75.00 the arrest is void to the officer guilty of false imprisonment.

But the first branch of this Rule of decision was not universal, though it is true as laid down generally. The last branch, that if the Court have no jurisdiction, the arrest is void, is universal, if within the writ or warrant might have issued from proper authority. The arrest might have been void from the irregularity or insufficiency of the warrant. Thus suppose a writ issued today & returnable in 20 years hence, or indeed any other term, than the next succeeding term of the Court, an arrest under it is void, for if only voidable it could only be avoided by the Raddings when the cause came on; and if not void, one person might oppress another beyond measure for the theft, or be imprisoned during the whole time, as found, which would be extremely difficult to secure appearance 20 yrs. hence.

Here then at the jurisdiction is complete, the arrest is void. Of course in such case there can be no escape. 3 H. 2. 341. 5 El. 2. 323-9. 6 El. 3. 6. 279-6. 4 Ed. 1. 148. 4 Ed. 1. 100-1. 315.

In all suit of mesne process does not usually issue from the Court applied to for redress, tho' it does sometimes; the Gen. Rule therefore is not sufficiently broad to reach all arrests made under Mesne process in our Jurispric.

As to cases of mesne process then, not covered by the Gen. C. 8. Rule, the Rule in Ch. must be this, 'if the Process is issued by Competent authority & returnable to a Court having jurisd.
tion of the subject enacted an arrest made under it is lawful if the mode of arrest is proper; for, if a prisoner be at large and be caught, it is not grounds for return of it. A deed of service without competent authority or returnable to a court having no jurisdiction. E.g., in an action for $100 before a single magistrate or by an individual. Singularly renders the process void as in England.

At A. an Officer having made an arrest, a Chief Justice cannot direct the arrest, but the lawfulness of the arrest, in his absence. (Bail. 27.) At A, not once for a moment & if the prisoner or the person whose service is being claimed, the officer is guilty of an offence. The officer in the absence from the Court. He has not held a warrant nor power to proceed. The practice, but the practice of law, in England is well established.

III. If an arrest must have been actually lawful and made or there can be no release. 4. Bac. 306. 2b. 1684.

" Bare words will not cause an arrest, then must be an actual touching of the body or what is tantamount to a power of immediate power of the person and submission. At Ex. p. 604. 2. Bac. 236. Sal. 79. If the officer says merely, 'I arrest you,' if the party runs away, there is no arrest & of course no escape. If, however, the party submits, goes with the officer, the arrest is good, without actual touching. Sal. 27. 589. 2. Bell. 67. But if one be arrested & afterwards escape into the houses of the Judge, may be taken out. 169. 306. As where one opened his casement & Shy's took him by the hand. 13 Bac. 296.
If one is arrested on the civil side, he is held in custody in the second court; whereas, if he is delivered to the officer at the first, the officer by construction of law is justify in the custody of the second court also. If, of course, if he is served to go at large, the officer is guilty of an escape on both 21 Bac 236 - 3 Cos. 1st - 27 J. 23.

I cannot say to what extent this rule would hold in Ch., but I suppose the defendant in custody the second court, when the has no personal property to restrain the claim & when the suit has directed the officer to take the person. But the officer need not require without these provisions, in England process arrest is process of arrest merely, therefore the rule is well established there - but here the attachment goes to the person as well as the property.

The debt is to be understood to be not, because he has been committed in executing in a way on same debt & brought before the court, the arrest must be regular, i.e., legally made, or generally speaking there can be no escape. Thus in all civil cases, the arrest must be made by virtue of a legal order or warrant, unless there can be no escape 28 J. 604 - 21 Bac 236 - Conv. 64.

The arrest must be made by the officer to whom the order or warrant was directed, i.e., the officer must be in company with the person actually arresting. But the arrest may be made by the hand of a follower; and it is not that he is near it in pursuance or the same object Conv. 65 - 66. 297. 604. Vid. ante 127 D.

An arrest on the Sabbath being void, an officer is not chargeable with an escape, if he let the prisoner go at large, for all arrests in England & 21st (except for treason, felony or breach of the peace) on that day are void. 297. 604. Vid. ante 136.
So if an arrest is made by breaking in, at the door or window of the debtor's dwelling house, there can regularly he no theft, sec. 2 B. 604. 5. Coct. 9. As 1 what is on Butler Door 4th. M. Haw. 163. 4. 3 Bl. 288. n. 3.

If the officer, having one opportunity to take the debt, refused to arrest him & the latter eventually evade the arrest, the officer is liable to retain on the case for neglect of his duty; but there being no escape, he is not liable, sec. 1. 2 B. 236 note. 2 B. 106. 23-4. A. 41. 331. 1 N. Y. 254. 5. If the attached goods &c. on a warrant, in an act. of as. if, not being therein described, may belong to a stranger. 10 T. R. 381.

The officer exercising a general authority, or if, in a general, a debt of a constable is not bound to show his writ or warrant before he makes the arrest or evades the goods, except where the debt demanded; but on making the arrest, he is bound to show his authority & the contents of the warrant. 9 Co. 69. 1 C. 465. 8 T. R. 187. 12 C. 416. 444.

The reason of this rule is that every person is supposed to know the character of an officer in general. But on the contrary, a special debt or bailiff is bound to show his writ or warrant before the arrest, otherwise the debt may resist him in justice, for he is not a known public officer. In such case he's not bound to submit to an unknown authority; for if he were any ruffian might seize him under pretence of an arrest. So if the debt does they arrest him, he does it, at his peril. 9 Co. 69. 4 B. 415. 454.

Escapes are of two kinds, Voluntary & Neglectful.

A Voluntary escape is one that takes place with the consent of the officer, holding the party in custody.

A Neglectful escape is one which takes place with
out his consent. 3 Bl. 418 - 3 Co. 57. 1 St. 330 - 2 Bl. 239.

I would here premise, that every person committed to prison should be kept in safe & close custody "sine exploiting custodio". If the self, suffer the prisoner committed to leave the prison but for a moment, he is as guilty of an escape, as if he had permitted him to escape for years, for the law does not distinguish between a reasonable & an unreasonable time. 3 Co. 44 - Plow. 36. 1 Roll 576 - 3 Bl. 415.

Ist. Of Voluntary Escapes.

If a prisoner admits bail, & is not bail given, he is guilty of a voluntary escape; but if he consent to the person's going at large for a moment, or beyond the limit of the prison, even with a keeper, 2 Bl. 237 & 9 St. at 149, 57.

The rule is the same if the arrest is not in form. If not committed there is no difference between escapes after arrest & one after commitment. 2 Bl. 176 - 138 & 17-26.

Prisoners arrested on Criminal Process, should regularly be kept within the walls of the prison. Those committed on Civil Process are sometimes admitted to the liberties of the prison yard, on giving security to save self & harmless. These liberties are however a part of the prison, for it is not meant by subera et aere custodia, that the prisoner should be kept within the walls of the prison, when he has been committed on Criminal Process only. In case of Criminal Process, the prisoner is not considered as extending over the liberties. 2 Bl. 126. 131.
It has been decided in England that if a person, committed on 
Asson, is kept up by the jailer, because of his 
unlawful escape, 1 2 Bae 309, 12, 3, 12.
But this does not seem to be the law, for the 1st act, 
in obedience to an order of court, to secure himself from 
finer or imprisonment, 1 Ball 12, 1 Stoot 12, 48, 177.

But if the person, who is kept out of prison on 
a writ of habeas corpus, is permitted to take unnecessary 
reasonable liberties, it is a voluntary escape of the officer liable. 
Thus taking him 60 miles out of the direct road to give him an 
easier way. In he is bound to bring him to court in a 
convenient time, or in the nearest most convenient way. 
2 Bae 209, 4, 308, 5, Stoot 241-3, 7, 80, 4, 48, 177.

Charles 14.

Do an officer having made an arrest 
or issue process, must commit in a reasonable time, 
to prison, or he is guilty of a voluntary escape. So if he 
permits the prisoner to go about with his officer, 
that is, direct being preparatory to imprisonment— 
which must he in the Common Law. 118 T. R. 24, 4, 3, 17.

The Shf. has no right to discharge a person 
or committed on Asson, unless payment to himself of the 
contents of the case. He is liable for a voluntary escape 
if the charge: 2 Bae 209, 4, 249, 48, 404, 11, Mod. 494, 8, 
9, 225, 366. This is not law in St. 1.

The Shf. is not to pay's duty to have the right to receive 
the money, not law in St. 17.

If a Shf. marries a woman committed 
on Asson, he is guilty of a voluntary escape, for a man can 
never be a fater to his wife. 2 Bae 234, 1, 12, 3, 17.
If he appoints one of his prisoners to run away, he is guilty of an escape, for by the act he removes the custody of the prisoner. 2 Bl. 608 - Hard. 311.

If a prisoner leaves the liberty of the Gaol-yard with a direction to escape, as by transgressing the limits; it is the duty of the jailor or officer of the gaol to recommence the chase to the walls, otherwise, a subsequent escape is voluntary. 2 Dr. 131. But if he escape before showing such direction, or before it is known to the jailor, it is negligent; the Gaoler not being priuys to it. 1 Rob. 106, 27 & 2 J.H. 131.

In other words, the admission of the prisoner to the liberties of the Gaol-yard does not render his subsequent escape voluntary.

The Sheriff is not bound to grant the liberties of the Gaol-yard, when a Bond of indemnity is not given. It is a matter of discretion & indulgence; he may, however, lawfully do it, if the Bond is of course legal. But he may recommence to the walls at pleasure. 2 H. 121, & in authority of P.C. P. to fix the limits of Gaol-yard, 2 H. 146, 36. 2 L. 42. Passmore, p. 141. 364.

III. Negligent escape.

Such escapes happen without the officer’s consent. 3 Bl. 415. Thus if the prisoner arrested makes his escape by fleeing from the officer, or by violence or the escape is negligent, do if one escapes by breaking the prison, or by any other way to which the keeper is not consenting, as by rescue. 2 Bl. 416 - 2 H. 419.

So in an action for an escape, as to an officer, his endorsement of non est inventus is good evidence, that the Writ was delivered. Cath. 63, 3. Vide part 37.
Difference between Escapees on Process & Final Process.

If a person is arrested on final process, though committed, is permitted to go large for a moment, the officer is liable for an escape, unless the enlarged security given, that he shall be surrendered into the hands of the officer for the bond being illegal, is void. U.S. 605-6. 2 T.R. 172 - 3 B.R. 145, vide, 11 W.C. St. 130.

But at C.S., a person arrested on enume process & not committed, may be permitted to go large at the officer’s discretion, as he is forthcoming at the return of the warrant, and in C.S. he may let him go at large during the life of the warrant. That may be obtained against him for C.S., Rule 11. U.S. 1049. 2 T.R. 172 - 3 B.R. 415 - 5 T.N. 37. St. 1408 - 2 Inc. 295. 9 per C.S. law see, Stat. Ch. 29, 2 Inc. 174 - Inc. 204 - 382 - 434.

The reason of this diversity v. 113, is that where he was not at an escape (in case of a person arrested on final process, or as an escape in case of one arrested on general process in this state), that the officer, under a final process as a coercive measure of obtaining return, or it is a species of punishment, this not so in fact & holds the prisoner till he pays. In this case there is no discretion in the officer to mitigate this kind of punishment, therefore he cannot release him, that is, after arrested, even for a moment, without being guilty of an escape. But the object of arrest on process is not coercive, nor to punish, but merely to secure the person, that he may respond to any indictment that may be obtained against him. The object of the fine is obtained in England, where
... the return of the level, but as we can obtain the... here without personal appearance of... any default, it is thinkable if the... forthcoming during the... period, and he... not liable if he be (not) forthcoming before that... 

And this present case, in which the of... place is made liable for an escape by matter of fault, or it be another, that which was not an escape, originally... made so by matter of fault. The escape... even if negligent, not voluntary. 2 Bac. 240. 2 Roll. 97-807. 607. 625. 52-865. 2 Mil. 974. 607. 609.

But if a person arrested an escape process... committed, the jailer by permitting him to go at large... even for a moment, subject himself for an escape; for... commitment every person should be kept alive... of custodia", is a return of the prisoner does not bear the section, for by a voluntary escape the jailer... the right of custody. 2 Mil. 974. 1 Roll 807. 605. 610. 625.
And in this latter case, the Debtor proved to take credit upon the original Draft which had been permitted to escape. The proceeding does not amount to a breach of the coveyance upon the Quaker or Debtor, but he may sue the Officer for damages immediately at that time, he must be responsible for all costs. 2 McII, 274 - 2 Ch D, 641.

But by the S. of 23, Nov. 5, a similar case is a paper committed on a process issued by the Debtor on the Bail bond. 1 Mace 275 - 1814, 474 - A Ch, Tit. Bail.

For the escape of one taken on process only, the remedy is the Debtor, in an action of trespass on the case. And then the damages are presumed to be the claim of the Debtor against the original Debtor, who has not yet been liquidated and the Debtor cannot support any claim or action against the Debtor, unless he prove a legal claim against the party escaping; and unless he show such claim, it is "injuring none demand," he is entitled to no damages. The Debtor may therefore in this case sue the original Debtor, 6 McII, 274 before the action is brought against the Debtor. 2 McII, 295 - 9 Th 127 - 4 Th 161 - 2 McII, 879 (Nov 21, 1779).

And here observe, that it is a Rule of evidence, that any acknowledgment of the original Debtor may be admitted as proof in the action against the Debtor. It may happen that it is the only remedy. This acknowledgment of the third party, an acknowledgment in proof, is an exception to the general Rule of evidence. It is grounded in this, that if the Debtor were not entitled to the acknowledgment in the other action, he may have it against the Debtor, who stands in his stead in a great measure in ours this liability. 3 McII.
For an escape on final process the Oronoque case at 2 D. 2 or by the St. Rest 2d or 1 Trin. Ch. 14, an action of debt, because the claim agt. the original deft. is liquidated or settled in certain tit. of law, to secure what he pays for in numbers, is not certain, &c. You will observe that debt will not be found to escape on esseque process, as the claim is not liquidated, but in final process it is in that state transferred to the deft. & devolves on him by operation of law 2 Trib. 127 - 133 1. 2d - Tit. 153 - 2 Bov. 2d Bov. 170 - 173 - 2 & 13. 110. 13.

These rules extend as well to escapes after arrest on final process as before, as after commitment for by the terms of the St. there is no difference. The debt is liquidated & therefore both actions may be supported, & there is an essential difference between the operating effect of an action of trespass or the case of an action of debt. In an action of trespass, which may be had for an escape either on final or esseque process, the deft. recovers damages for the tort or loss of the benefit of his action, which damages are uncertain & which tort is consequential. Whereas in debt (which action can only be had for an escape on final process) the dmy are bound down to a specific sum of money to be given by their verdict, which the deft. pays for numbers & not in damages. The sum demanded is liquidated & certain, & the debt immediate - 2 Trib. 129 - 170 - 13.

Therefore the recovery of damages agt. the deft. in an action on the case, does not discharge the original debt. For the two equations agt. the deft. are diverse matters, The active agt. the deft. is for damages allowed by the law or delay of the original action: 
That debt, when a debt not liquidated was ascertained. Hence the jury are not bound to give all the damages to the original demand, yet they may give nearly what they think to be right to the debtor. See 3 Jac. 1. 1723. 3 Jac. 1. 1723. 11 Hen. IV. 21 Reg. 12. 

And hence also the original debt is not discharged upon recovering upon the debt. It is a rule of law, that the party escaping is a complete witness against the debt. So he is not interested in the debt. This appears from this sentence, too. Any action for such a thing might be an action against the party escaping, as authority to the Rule of Evidence.

On the other hand, if special damages are given at the debt, the defending party may recover against the original debtor. 2 Pemb. 729. 2 Will. 495.

But if the plaintiff brings an action of debt against the debt, as he may do an escape or final process thereupon, he is not liable if the debt be found guilty, give the whole sum or value of the person to the court of the original action: and such a recovery is a complete bar to the plaintiff's claim against the original debtor. 21 Eliz. 2. 1040. 21 Eliz. 2. 1040. 20 Hen. 4. 9. 32. (vid ante 49.)

The principal on which the Rule of damages here prescribed is founded is this, that when the debt is not paid, the defendant is considered as the debtor, and the debt is transferred to him. (vid ante 49.)

Our debt seems to require that in case of voluntary escape from prison, whether or not it be a final process, of whatever form of action it may be, the plaintiff shall recover of the debt. the whole of the original debt or damages. 20 Eliz. 2. 336. 20 Eliz. 2. 336. 3 Hen. IV. 4. 670. 3 Hen. IV. 4. 670. If by any one act or other thing it may appear the amount of debt is founded, (vid 49.) then if this be the true construction gives the same Rule of damages in all
cases of voluntary escapes from prison and those in beg
rands, only in the action of det. for escape or final process.

If a person arrested on mesne process, but not
committed for resisted, the officer is executed. Since, if
arrested on final process, for that case he ought to have
sought the rehuse comitatus. This reason does not ap.
ply to justify the distinction, neither does the one given by the
private, that in the former case the off. is supposed to have
time to guard up to the rescue. The rule however is well
established. 4 Bde. 240. 3 Bld. 416. 3 Co. 419. 9 Co. 872. 8th
610.

But after the off. is arrested on mesne process
& committed, rescue is no excuse for the def. unless made
by Public Enemies or by Act of God. So that res
ure by Robbers, Traitors or Eurs, it is no excuse.
No person except that of Public Enemies or the act
God, being admitted to overcome the def. with the force
Pres. 610. 1 Roll. 300. 3d. 182. 1 Co. 84. 2. 3 Co. 113. 1 Selio. 655. n. 110.

The same rule holds where one is arrested on
final process, whether committed or not.

In cases of rescue where the def. is unable
to offer arrest on final process, the off. may sue
either the def. or the rescuers, at his election. But
if the action is agst. the latter. The def. is discharged
according to the rule, whose election is not always
good. In this hone one he appears to one the right
for be a suit agst. the rescuers. The def. is held into se
curity & is found by an action where unprepared either for
it or for an indemnification from the rescuers. 24 Bde. 610
457. 9. 6 Co. 111. 8th. 9th. 14 Bde. 399. 9 Co. 147. 169.

It is said that the action agst. the rescuers
may be either trespass or case. Yet I think it
not law for these two actions to lie for the same sum. I apprehend the basis on the case would be the only proper action; for the injury is plainly consequent on the def. he has met with a direct injury, he may have a suit at law, & Battery; the rule is well settled however that both actions will lie. Act 108- GeoJ. 106- 21 Bac 399.

And the original plf. may maintain an action a st. the rescuer, whether the arrest were on final or mesne process. If the arrest were on final process, he has a twofold remedy; if on mesne process, his action is ag. the rescuer only. Act 106- 218- 109- Act 109.

In one action ag. the rescuer, the jury may give either the whole or a part of the plf. original demand ag. the party rescued. If only part, the plf. may still proceed ag. the original debtor or party rescued to enforce his claim ag. him. Bellad 211- Ch 3- 99- 99.

In proceeding on the subject of Rescue I would observe further, that in an action ag. the plf. for an escape on mesne process, if he return a verdict of the process, it is conclusive evidence in his own favor, & if the return in fact was false, for the plf. to defeat. But is however entitled to an action ag. the plf. for the false return & then if the plf. pleads a rescue, it may be rebutted by contrary proof, so that he may then recover his original claim. Act 106- 70- Com. 195- 1 Ven 2 21- 2 Id 175.

This rule is apparently inconsistent to the reason of it at first not very obvious, yet it is sound. In principle, which official acts should not be falsified, when they arise incidentally in a suit com
I have before observed, that the Rescuers are liable to the Pf. in the Process. The Pf. may also maintain an action on the case after the rescuers. But I trust, he can have this action only, where he is himself liable to the Pf. The object of the action ought to be to indemnify him, as if the rescue were on a Mesne Process before commitment, he ought not have any action, because he is not liable to the Pf. But if the rescue were made on final Process, or Mesne Process after commitment, his own liability should certainly entitle him to an action. The Proposition is laid down in the Books, for general: Wheat. 90. Cobb. 77. 109. Hob. 100.

But if the Pf. brings up a prisoner on an Expy. Corp. rescue is no excuse for him. The same reason is here more palpable, for he had time to prepare the passe comitatus & better command of it, in the vicinity of the Court & prison. St. 1402. Bsf. 610.

After a person arrested is actually committed, even on Mesne Process, nothing but the acts of God & Public enemies will escape the Pf. in case of an escape. Thus in the case of Dr. George Gordon's riot, where a e 1160 of 20,000 people, opened the prison. London: Parliament found it necessary to pass an act of indemnification to the Pf., who would otherwise have been liable to every Pf., for the escape of their respective Prisoners. A similar case occurred at the great fire in 1666, about the time of the restoration; so that the conflagration of prisons occasions
There are some principles to be observed between the consequences of voluntary & involuntary escapes.

It was formerly held that in cases of voluntary escape the PSI lost all claim on the party escaping, who was absolutely discharged & his liability transferred entirely to the Sure.... This rule is vindicated in its effects when the PSI has been prevented by modern necessities. It was not a good law; for by it the PSI was compelled to sue the Sure only, thereby forcing the election to sue the original debtor or was completely inhibited from his action. Rob. 192. 1 Dec. 192.

But it is now settled that the PSI may accord to circumstances have a new action of debt against the original debtor or by a Sure. a new action on the original judgment. And now by Stat. 809 26. 3 H. 3. he may obtain a new action on the original judgment without a Sure. He may then reduce the party escaping on the original judgment or at PSI, so that he has a new remedy. 1 Dec. 196 Rob. 191. 1 Dec. 330. 2 196. 196. Wru. 11. 269. 3 186. 117. 111. Bull. 69. By Stat. 809 26. 3. PSI may recover the unsatisfied part of the escape.

And where there is a voluntary escape of one committed on process, the original debtor or party escaping may be taken by the PSI, with what is called an escape warrant, even though he be in another state or part of the country. The warrant alleges the escape of there or his apprehension or return to prison. It is the only remedy in this case. 3 Co. 29. 2 185. 26. 611. Vid Stat. 809 26.
But the Officer suffering a voluntary escape can never retake the party escaping, nor maintain any action against him for escaping, he himself being particeps criminis. The remedy in this case, as before mentioned, lies only for the Offr. Not for the Officer. 31 B. 4. 4. 5. 3a. 52. 2 12. 76. 1 18. 330. vid. Chart. 1 Stat. c. 176. 157.

And if an Officer, after having permitted a voluntary escape, should pursue & retake the party escaping, he is guilty of false imprisonment, for his authority over the party must be quite negatived. 11 B. 249. Carter 212. 2 18. 176. But if he does so, only to procure a prisoner, that he retakes him without meaning to have him as a prisoner, it is no escape, but if the whole prisoner is 32 B. 4. 7. 57. 4. 62.

And a Bond to cause a Thf. harmless for a voluntary escape is void, as against laws, and would probably cause pollution between the party & the prisoner escaped: the Bond is void on the same principle, that one to indemnify a morderer would be 1 18. 146. 7. 2 2. Bul. 213. 16 10. Co. 106.

But the Offr. in the process may retake the party escaping, even though he has pursued the Officer to death & recovered part of his original demand, provided he has not recovered the whole from the Officer. Bul. 269. Ges. 2. D. 611.

But when the escape is negligent, the officer may retake or have an action against the party escaping & they immediately, i.e. before he has been subjected himself, or sued for, the escape, for he is himself liable in tort. It indeed might otherwise lose his remedy by delay. 1 18. 254. 53. 3. Co. 52. 1 18. 156. Ges. 2. 612. 13. Post 140.

And if a Bond had been taken to indemnify the Offr. for a negligent escape, he may take his remedy on this Bond, as it is lawful & he is not particeps criminis. Post 157.
The Shf. Bailiff cannot as of by law acquire

not as to the party escaping, the the said act himself.

not to the Shf. for he is not liable to the Shf. in the pro-

cess at all. Not being a known public officer this

contract with the Shf. not being assignted as evi-

dence as to the party escaping and of no avail to him.

The Condition of the Bailiff is this: in theory

a hard one but not so in practice for the duke as

here see the escaper in the name of the Shf. of the

Coun. of the Shf. would compel the Shf. to permit it. On

security given for it to be used the name — Act 349

chap. 2. 5713

And in Ct. of New York it has been deter-

mined that the party escaping may be retaken, by virtue

of an escape pursuant to another State 1 3d of 1774

John. And in Ct. it has been determined that

that may be then retaken. In 2 Ct. 3 Rep. 5

If a person is arrested on Criminal process

and escapes, he is punishable with fine or imprisonment

if he committed prison breach, he is guilty of felony

but at 2 Ct. 44. This is decided here by consent th

do not recollect new prosecution for prison breach —

the English side is not that in Ct. 2 1st. 129—30 2 Marsh 129—8.

13th 41st 150.

If a Shf. having arrested a felon suf-

fers such as a negligent escape, he is guilty of to

the demerit & is punishable by fine. But for a volun-

tary escape, he is guilty of felony or punishable as

necessary after the act 1 3d of 1774. 1 3d of 1750

2 Chanc. 134. 1 3d of 1750.

And this whether the offender was not

ally committed or under a false arrest that the of-

cfice is not punishable. The sentence is passed up.
the original delinquent; but before conviction of the principal offender, the officer may be fined or impec- 
ified, as for a villein or serf. (Bl. 131; 1 De. 938.)

When a Shf. has been compelled to pay debt or damages to the Pff. for a negligent escape, he may re- 
cover ait. The escaper by debt's amends, so for 
money paid luiet and expended for his use: and 
it is a General rule that if one pays money for another, 
he may have his action. Indeed it has been decided 
in England in one or two cases at nisi prius. That 
where the Shf. had been subjected by a voluntary 
escape he might have Indictment agt. the escaper. Lord Ken- 
yon has decided differently (see Nisi Prius.). since - 
Cap. D. 672; 1 Pea. C. 116; 15 Hc. 10; 2 Pe. 154-6.

In case of a negligent escape when the 
Shf. retakes the escaper, on fresh suit the same action 
is never apt. himself, for his own liability is discharged. 
The words "fresh suit" here, the always used, indi-
ticate the negligence, for if the recapture he at 
yany distance of time or place, before action brought 
himself, it is a "fresh suit." Cap. 672. 1 Pea. 247; Tit. 
900-3 Co. 144-52. 2 Pe. 126. 1 Luke 211-17. 1 Boot 135- 
(Or must however he applied in England.) Cap. 672. 
2 Pe. 126. 1 Solv. 1256.

But if the action is not apt. the Shf. for 
an escape, before recapture, a subsequent recapture 
does not discharge him; for the Pff. by commencing 
an action agt. the Shf. (where the action is well from 
Deb.) has attached in himself a Right of Recovery & it is 
a good Rule, that he cannot be defeated by any act 
44-52 - 1 Del. 800.
Induced it were immaterial in what way the party escaping is restored to custody before the action is lost: for if the sheriff, for it is the same as the jailer, is discharged: it has been determined that the voluntary return of the prisoner before the action was lost, but not being equivalent to a resumption or fresh suit. Com R. 524 - TV. 126 - V. 10. 413.

In case of voluntary escape on the other hand, recaptition is no excuse, for the sheriff has no right to recapture; that right being vested solely in the sheriff alone: no act can annul the sheriff's power to apprehend and hold the prisoner, without incurring false imprisonment. So it is, in fact, considered a part of his remuneration. 3 Co. 53 - N. 18. 611. 12.

Besides, another principle present recaptition: a pledge or right of custody once voluntarily relinquished or suspended is abandoned forever; like a lien on chattels, if once lost it is so, forever. Nor in this case will the voluntary return of the party escaped avail the sheriff, he is liable for the moment of the voluntary escape of the party's right of action as well as complete. 2 N. 94 - N. 54. 241 - N. 612.

Nor will a subsequent assent of the sheriff in the action pursue a voluntary escape. He may still see the sheriff or recapture the party. Barth. 612. Barth. 674. But if the escape is negligent the sheriff may for his own security recapture, even after action is lost against him.

I have observed, that after a negligent escape the sheriff or gaoler may recapture the party; but if after this the prisoner is dis-
charged by the Off. post to the Deb. or Sec. off. by the Off. in that
or moved at his hire for his own gain, he so much
more retakes him before the discharge. The Off. neglecting
or hire is lost, by the hire of the person by his hire fault.
He must lay his concert. His fault is a mere tac. the
not mere real crime & accordingly is punishable only
as such by these means. Tit. 905. Chap. 2. 611

When a Prisoner having the liberty of the
Bail yard escapes, or retakes on a fresh suit or Vol-
untary return for the part escaping, before the action
is brought. The Off. discharges the Off. In such case
if the Off. has a Bond of indemnity from the person,
he may recover on it, even tho' he is not liable to the
Off. However as he suffers nothing from the Off. he
will recover nothing but nominal Damages. Poot
106. 7. 127. As to Off. liability for taking in suit. Bail
according as decided in the United States. and page 119.
The Off. in such case may insist on a sub-
stantial remedy being taken after the Bondman i.e. Debt
& Damages. This he may do by requiring to take him of
his return, but in that case he is liable even to the Off.
for the whole. Poot 128.

And when the Off.'s liability is barred
by the Stat. of Limitations, he cannot recover full dam-
ages, but only the original debt or the Bond of indemnity.
The law it is true recovers Nominal Damages, bar-
by the Stat. He is not himself fairly liable, he ought not
fully to recove. [Poot 128. 151]

And if at all is recovered apt. the Bond-
man before Reparation, accedit [Quaera] lib. [Poot 15].
For this object of the Bond is to indemnify the Off. after
the claims of the original Off. if in the case supposed that
claim is barred.
In suing a bill for an escape, it is a settled

rule, that if under a Court for a voluntary escape

the Shf. may give in evidence a negligent one. So he

will do. The same reason, he may plead in the Court

for a voluntary escape, it being on a great pursuit. If he

may plead without prejudice the Government, that

the escape was voluntary, for it was importinent in the Shf. to

allege it, it is always necessary to his action. The Shf.'s

decree is prima facie good, if he avails it will go

for the Shf. The Shf. is here to avail himself of the

distinction between voluntary & negligent escapes, by

making a close assisment, as replication & taking a

true story, & any defence that may be made after a negli-

gent escape. It is by the way extremely unlawful like
to set for the voluntary or negligent escape in the Court

for the Shf. you have nothing to do with any dis-
tinction between voluntary or negligent escapes. Mr.

No. 17-2 June 24, 1802. 2 Feb., 1806.

I have observed already, that in a volun-
tary escape, the Under-Off. Def't. or Guardian who per-
mits it is liable as well as the Shf. If then the Shf. goes

the Under-Off. The Shf. (it seems) is discharged. This

rule is equitable, laid down on his own authority only,

though doubtful to come from that circumstance, yet

it is correct on principle. Resk D, 612.

If after an action bust, or the Shf.

for an escape & before plea pleaded, the Shf. on the

original action is reversed, the Shf. may plead

with the record of the suit & thereby defeat the action as it is

set. For the Shf. on which the action was, the Shf. was

found & is annulled by a subsequent one. But

if the Shf. recovers after the Shf. shall have, after
The original Jedf. is reversed, yet the Def. for the case remains good & cannot be impeached for its other omission, nor void. The remedy for the Def. then is a Motion of Indict. & Verela, by which he shows, that for this matter at least, viz., the reversal of the Jedf. the Error is unjust. 8 Co. 142 3d. 239 213. 240 33d. 325.

A voluntary escape occasions no forfeiture of the Dep. & Office, if the servant is it. The tenant or master does not. And the reason is that the former is a crime, the latter a mere Civil misdemeanor. 3 Co. 204 2 Mo. 81 2 Rob. 146. 3 Ves. 470 2 Rand. 156.

False Returns & certain Miscellaneous Rules.

If a sheriff make a false return & a process, he is liable to an action on the Case in favour of the party injured; as where he makes return of service on Def. where there was none. Def. may sue him & recover all damages. 2 St. 15 4 Will 336.

In Ch. when a false return is made, the party in the action is as libell to satisfy the return by a plea in abatement & there lose the action. - In England this could not be done by Ch. for the official return can there be satisfied only by an action instituted & that in Ch. And it follows in Ch. that if the Pff. in this event, desires he may maintain an action for the loss of the action. But by Ch. as well at own, if the Def. make a return immediately disadvantageous to the Pff., he may in all cases have an action, & if the Def. as in case of false return, & more so in a matter, which is injurious only to the Pff.: False Returns are generally considered at Ch. as injurious to Def. 2 Ch. 729 1 St. 654 20th. 616.
With regard to the Stipendiary of Gaols and
Police, the Co. make it the duty of the Sheriff to
provide them: when therefore an escape has ensued the
indeficiency of the Gaol, the Sheriff is liable for it in his
duty to provide & keep in repair the prisons & to reimburse
himself out of the County. 1 Co. 54. 107. 308.

In Co. on the contrary, Gaols are built and
repaired by the County; and it is the duty of the Magistrates
or the Executive Officers of the Co. to build, keep in repair
the Gaol & raise money by a tax to defray the expenses
and a reasonable issue, if necessary, to compel them
to do it. If then an escape ensues, that the in-sufficiency
of the prison, the Co. is not the S. F. is liable, unless the es-
cape is made by the misconduct of the
Sheriff or Gaoler. Stat. Co. 158-5. 107-450. The law is the same
in N.Y. The Sheriff is liable on the first sustenance. 20 N.Y. 346.

The remedy under one S. F. apt. the Co.
is by Memorial or Petition to the Co. Court—In action
would not lie. Bond as the Court is supposed interest.

But, the party has in all cases a right to appeal to the Su-
preme Court. Stat. Co. 347-5. 107-155-8-275-8-351-
450-505-246. 30. In an action hired by S. F. apt. the Co. 246. 506

But by a course of decisions the liability
of the Co. is in most cases nominal. The decision may
be properly questioned. Thus it has been determined that of the
party is able to pay, the S. F. must resort to him; and if
he is not able, the S. F. has really suffered no damages, and
the Co. is merely liable for Special Damages. Stat. 310-1
 distress 126-55-270-357-315.

Now I do not see the principle on which
these decisions are made. The original liability of the S. F.
or Co., is transferred to the Co. & it would seem that the
same Rule ought to apply in both cases. However if the
Said p. 135.

If a creditor voluntarily discharges from custody a debtor taken on a debt, he can recover afterwards, whether he was actually committed or not, for these artificial reasons, the possession of the body is deemed satisfaction for the time being, so the creditor having placed what is deemed his best remedy must abide by it, and if he voluntarily relinquishes the debt, the debt is distinguished forever. 3 Burr 2481 - 7 T. 420 - 6 Star 629 - 6 Sm. 357 - 6 T. 325 - 8 T. 428.

And if the Pf. in question were to discharge the debt or cause a new promise to pay the debt, the debt is not discharged. The Pf. cannot retract it, and no action can be maintained on the debt. The reason is, the time was a good time, the debt was a good debt, the Pf. had a right to discharge, and so it would be sufficient in the Pf. to do it. 2 Burr 2482 - 1 T. 657 - 6 T. 425 - 12 Ten 420 - 2 U. S. 413 - 5 Johns. 364.

But the Pf. will remain discharged in such case, even tho' the new agreement should be defended afterwards for informality & in this case the Pf. is remediless. 1 T. 571 - 6 T. 525.
And on a Bond conditioned for rendering again in Court the person once taken & discharged by P.'s this bond is not void, "If the Bond be false imprisonment, the case is the same, as if the Deff. had taken the Bond; the Deff. is charged with false imprisonment." P. (Deff.) is abandoned. (It had improperly been determined otherwise in Connecticut 9 Bl. 143) 1 B. & C. 422 - 2 East 243.

"The joint & several are to be in equal parts as one is discharged by one endorser. Such discharge clears the whole debt first, and the other must be discharged by a joint bond. In the principle that the release of a prisoner is discharge of his debt in abolition according to the former rule "That as he is bound to pay the whole debt it is an extinction of the whole debt." 1 Bell 574 - Sel. 1 Bl. 694, 1 Chrm. 551 - 1 St. Tr. 98, 3 John 364.

But under the true Merchant the holder of a Bill for Sale having taken our Instance discharged him from Custody without actual satisfaction, may give another in a manner or manner where one free from & discharge them successively, so they are not joint, nor joint, nor several debtors, each one being charged distinctly, generally independently, according to law. 3 B. & C. 1335 - 4 St. Tr. 825 - White, 60c. 715-24. 2 Eliz. 401.

It was formerly decided in England that if a Selle Debt is rendered on & before the debt is on the debt was forever discharged. This was partly on the ground that the debtor having elected the highest remedy must abide by it, & partly on a quaint application of some Scripture Doctrines. 2 B. & C. 351 - 10 B. & C. 52 - 3 B. & C. 550 - 1 Chrm. 136-43.
And now by the Stat of 29. Sec. 1. which appears
from its phraseology to be declaratory, the language of it being
"it is declared, explained & enacted," the where a said debt
was imprisoned, the debt is not discharged, but the
Sure. may sue out a new acton at the estate, as if there
had been no prior Bond. So that the as decision of the
courts seems to be overruled by the Legislature: hope
Legislative exposition of the Ch. 2 Bac. 351.

A Penal Bond to the Sh. condition
that the obligor (the prisoner) shall remain a true prisoner
until the debt, fees & expenses of Bond are paid, or
wholly paid as after the Stat of 23. Nov, 6. "called the
Stat. of Base & Shame." which Stat. provides that a pun-
ishment Bond to the Sh. by the prisoner, for any other
or purpose than to remain a true prisoner, is not
to prevent extortions by the Sh. On the ground
that a recovery on such Bond must be of the whole
penalty, which is commonly double the same due.
In Ch. such a Bond has been held void in part. 1 R. 155-
60. 2. 387. 10. 114. 1. Bac. 461. 10. 15. 12. 633.

By the way, I doubt much whether
it would not be good policy to conclude the Bond in
this State & in each other where the person can
be charged-- The St. made in consequence of the then
existing rule of Recovery of the whole, 2 dict in Ch.
a Penal Bond is precisely the same as a Single Bill
that would be good even in the plaints for debt, see se-- So that the
principle of policy would not prejudice it hold here-- Through many oppressors.
In the conclusion of the latter part, I would consider some ideas that regulations of it which are unknown to the English regarding Prisons & Gaols.

I would premise however that if all persons committed to prises are bound to support themselves, except Englishmen, who are deemed incapable of doing it, all their property being forfeited, indeed it would be inhuman to extend the rule to them.

By our law a person committed for any offence is liable to his own expenses up to support of able bodied persons subject to the estate of the assignee if he has no estate, but may be assigned in service. But in Criminal Cases the estate for the offence is first paid by the Crown or State, and the Crown or State may then have an action agst the estate for the debt, so as to recover the expenses. Stat. 11 & 12 Geo. 4, 323-325. The prisoner for crimes against the State are adjudged on Stat. 8 & 9 Geo. 1, 323-325.

The taking of more than lawful fees from the prisoner is subject to a triple damages at the suit of the party. It is a fine at the discretion of the Court. Stat. 11 & 12 Geo. 4, 325. Declaration agst. for taking illegal fees. Stat. 16 Geo. 2, 1497.

On a civil suit a person committed for violation is liable to support himself as he can. Yet in England, there is a statute called the Boden act & a similar in St. By which it is provided, that the prisoner committed on Civil Process is to support himself unless he is admitted to the poor Prisoner's oath, this being the only legal evidence of his inability. The amount of the oath is that he has no estate of over $176, nor property in value, nor property left. So any the debt on which he is imprisoned, if less than $176, or except property,
operated from hence, and that the court had not continued it any further to defend creditors. He at the same time, made a distinct statement of the sum furnished a weekly maintenance to the boys, with the creditor, the amount of which is fixed by the Co. Court, &c., 305-1000 117.

But a person admitted to bail on the support of a creditor is liable afterwards to pay his debt, if he find estate at the time or acquire any afterwards & an order to take or a Deere Faced may be issued to compel it, 1000 58.

But when once discharged his body is not liable to arrest for the same debt, to wit: necessary to give to the creditor, &c. If on the hearing no cause is shown for continuance in prison, the Oath may be administered to any Magistrate of the County. &c., 305-6. If he in this case by, &c., 305-6.

If the prisoner's application is successful, he cannot make a second application to a single Magistrate, but he may obtain a review of the decision by application to the Chief Justice of the Co. Court or a Justice of the Peace, or by the two justices of the Quorum. And if on the contrary he is discharged on the first application, the creditor may apply to the same two Magistrates, who may order the maintenance to cease which ends the matter. &c., 305 6.

On this being administered the charge of the prisoner's subsistence lies on the creditor, but it is eventually charged on the prisoner, &c., if the creditor perseveres, the prisoner can never be discharged to end of time, except on payment of the original debt & expenses of support &c. etc.
Our Act further provided, that Debtors and Felons are not to be lodged in the same room. When any County is destitute of a Jail, any person liable to imprisonment may be confined in the next adjoining County Jail. Stat. Ch. 368. And this is according to the Act, that Debtors and Felons shall not be lodged together.

Our respective Co. Court have authority to order the Mill so persons committed on Debt, or Debt, Damage, fine or Cost, except where the Exectution issued by the Superior Court is then the Supe Court, has the same authority.

The Act is bound to keep this order when given. The fines knew an instance if he does not, he is also subject to guilty of an escape voluntarily. Thus liable, whether the prisoner be not an actual escaper. This rule however does not extend to cases where the debt does not exceed $17.00. Stat. Ch. 365.
Bail

An action lies against the Sheriff for takingholders.

Bail; of it is unnecessary in such action to show
that the bail knew bail insuff; Proceeding of the bills as the
bail is no warranty of his action. It is in Mr. C. 2. 32. vid.
Declaration 2. and 34. contra. Mar. 2. 1. t. 7. 5. 3. 2.
and note, 6. 1. Mil. 2. 3. 4. 5. 2. Tinf. 2. 3. 2. In analyses
vid. 2. 6. 7. 8. Med. 2. 3. 2. 3. 2. And the reason given for this
decision is, that Ministerial Officers are in good for
licence or wilful abuse of their office or duty liable to the
party injured. Bill 64. 9. It will readily be received that
this decision is right, almost every authority in the English
Books. The process of proceedings in Eng. being wholly diff.
from the U.S. warrant must, manfully the doctrine of above.
2. Mr. C. 4. 4. 4. 4. 4. 4. 4. And Draygo go to show
the manner of taking Bail. To bail is Holden on
death of principal, and where not—what shall excuse
bail. And to liability of Sher for taking insuff. Bail vid.
also 9. Mr. 2. 479. 11. 12. 12. 13. 13. 18.
A being committed on 25 Oct., at the suit of
B., goes beyond the limits of the prison yard, where B. ar.
rests him on a suit & detains him ag. this will out of the
limits for the purpose of serving process on B. the Supt. be-
fore e. return - process is denied on e. & then B.
permits e. to return within the limits, where he remains.
Q. Will this action be ag. Supt. the escape being neg.
ligent? Judge could say no for no one shall be su-
faced to take advantage of his own wrongful act contra-
if driven beyond limits & detained by person not C.2#S. 10b. 16b. 20b.
III. Statute of Limitations.

By the effect of the Statute of Limitations, upon Contracts, it is acknowledged by all that many cases have arisen, on which if nothing were taken into account but the mere length of time, since which a right of action had accrued, no recovery could be had by reason of the Statute of Limitations. Yet many cases have been decided as not being within those Statutes. We often find in the books this figurative language, that such a case is not within the statute or that the St. has not run upon it, or that something has taken the case out of the St. What has, or what has not produced this effect, so that a recovery may be had in a case by the St.? When no recovery could be had, if length of time since the right of action accrued, was the only thing which governed in the decision, will be the subject of this Chapter. And also to discover the principles which govern in those cases, which are thinner circumstances as to length of time, yet have been held not to be within the operation of the Statute.

Different opinions, as to the governing principle, will produce a different result in the final determination of a case, which has been exemplified in various cases where the question has been, whether the case was, or was not within the Statute. I believe, that it is generally admitted, that the Statute of Limitations is enacted not with respect to individual justice in so much as to general justice. And that they are that which have their foundation in policy, calculated to prevent those miscarriages, which are apt to arise by a long delay in the settlement of their concerns, which increases litigation & that at a period, so far distant from the time of
transaction that the testimony which was to have rendered everything plain, is lost by the death of the witness, the persons by them or living, if thus opens a door for an unjust claim, which never would have been that of the person had it been settled at an early period of the existence of the claimants. Sound policy requires that new claims should be barred if their existence within a certain limited period, enabled them to assert their legal right to it within that period, in behavior of such establishing their claim, either at Boston or by petition.

There is an English Stat. the substance of which has been enacted by most the States of the Union, on which it is there has been a variety of cases brought to light. I have that a statement of this St. of the variety of questions decided upon it will serve to show you the governing principle, which takes cases out of the Stat. If by this means we find there can be no future discordant cases, for every decision be conformable to that principle the law on that subject will be uniform. "The substance of that Stat. is "that all actions grounded on Simple Con- tracts shall be kept within six years after the time of the cause of action has accrued, not afterward."

The Points settled are those

1. A promise by

the grantee, to pay debt after a lapse of six years will constitute a real estate. 2. The notice is not lost unless the loss, but upon the original promise. 3. If the promis- see be conditional, as "If you can prove your debt, I will pay you." This entitles the self. As a recasure, if he can produce it satisfactorily to the trials, I ask for the payment of said debt after six years to the cause out of the Stat. 5. If the be a joint contract, it once thus-

Dec. 1840.

Dr. 657.

Said, after six years, without any thing more said, than out of St.
If a debtor who owes £200, and at the same time promise his creditor, should after the suit had run upon it, acknowledge that he owed the 20s. at the same time that he promised his creditor, he would pay 8s. 10s. no more. The creditor can recover all by the 2. 8s. 11. When a man directs in his will that his debts shall be paid, these barred by the Stat. of Limitations, § 14, 23. must be paid as well as others. Pre. Ch. 38. 9. If an insolvent debtor, who has been released by the Stat. of Limitations, having been hitherto in business, or a man of honor, should advertise that he will pay his debts, he is as much bound, if they be then barred, by the Stat. as any others. Pre. Ch. 38. § 14. If a creditor whose debts are barred, finds an agent, his debtor, make no objection of the petitioner's claim for the commission issues, it is an acknowledged that take it out of that claim, vid. 23.

It has been contended by some, that the principle in which cases are taken out of the Stat. is this, That at 6., when a great length of time has elapsed, from the time of entering into a contract, no demand made on that contract by such a presumption arises from there having been no claim made on the contract, for elongation. That it has been satisfied in some cases not now known, that in all such cases everything that could remove this presumption might be given. As if it were in debt B. on a Bond at a rate of 3% per annum, B. is able to make a suit on the Bond. A. insists that the bond has been paid. B. replies on the presumption arising from the length of time. A. proves his plan of payment (it may be done 2. 7. 2. 7. in A. prem. if nothing more should happen in the case) but B. was able to show, that A. soon after entering into the contract became insolvent. If the bond had been paid, there was no reason to suppose that any
money could be realized from it; but he had lately become a man of large fortune, and it being equitable, that he should pay, as he was able, that was incurring to collect his just debt. It is also able to show that such proof removed the presumption of payment. They urge that the Statute has defined the time when this presumption shall arise, that was in some degree necessary. Then, viz: the length of time safe to create such a presumption, as that the contract was fulfilled is made absolutely certain. The Statute, i.e., the length of time mentioned in the Statute, is evidence of the fulfilling the contract. But it is only presumptive evidence of a fact, that may be removed out of the way. If then the presumption can arise, when the Statute of Limitations is expired, upon that other facts have existed, that remove the presumption, this is no way to make the Statute is prevented from running on the contract. The foregoing hypothesis is not reconcilable with all the authorities. The numerous cases where a man makes a will, and directs all his debts to be paid, by his executors, cannot be found. There are not found in all those cases, Chancery directs, that the debt of the testator, which was barred by the Statute of Limitations, he paid. Then Chancery cannot not do it. The presumption was that they were already paid, there being nothing to remove the presumption, out of the way, for surely the testator did not direct that debts already paid shall be paid again. And in such cases, there is nothing from which the Chancellor is warranted to infer that those are existing debts, which the laws presume paid. The testator's contemplated debts are such debts as are barred by the Statute, were no longer existing debts, of course, not directed to be paid. The Chancellor must render this hypothesis, proceed on the ground, that those were existing debts, which the laws presumed,
did not exist. But this cannot be supplied. If indeed in the Will, the testator had directed his debt of $100 due to A. be paid, this was barred by the Statute, here. The
presumption which the law is supposed I have raised, is not the sole principle and of the way, for the Statute specifies the debt as one not paid. But nothing of this kind
there, there is no presumption of anything other than
that the debt, barred, were due yet, but directly, the
contrary, viz: that they were not due. 1 Sam. 15: 26-27. 37.
Cor. 5:10. Vesp. 141.

Upon the same ground it is, that when a man
having become insolvent, afterwards acquires property,
notwithstanding he will pay his debt, is bound to pay such an
is barred by the Statute, as much as those which are not
of the length of time mentioned in the Statute, create a
presumption that they were paid. Where being nothing more
than that presumption, it would be impossible for such
creditors to recover - yet, he may recover if of course, the
hypothesis of a presumption that the debt was paid frag.

Thus have I supposed in all cases, if the fact
can be established, "that a debt exists, the law will raise
a presumption" where a promise to pay a debt which he
acknowledges he owes to B. In this case it is certain that
it exists in the debt. This hypothesis will not accord with
all the cases in the Book.

If this was the correct principle on which contra
cases are taken out of the Statute, it would follow if A. should acknowledge B. that he owed him a sum of
money, say $50, but that since it was barred by the
Statute of Limitations, he never would pay any part of it; here is the most conclusive case. If the debt
due to B. is not paid to me, as promise there can be
no recovery. So too, when A was indebted to B, &c. &c. he acknowledged a promise to B, that he would pay the debt & nothing more. B having obtained the most conclusive evidence that the debt was not paid the court ordered A to sue him for the debt. But the court observed that had B, sued for the $25 only he would have recovered that. If that hypothesis were correct, no action could ever be maintained on the original cause of action, before the suit of the debt existed. Yet it is clear that the action was maintainable upon a promise of a promise to pay the debt if it were recovered. Here the action must have been brought on the original cause & not on the new promise, for at the time of bringing the suit, the promise was not existent. 2 Barr. 1699.

Judge Reeve apprehended, that the principle that governs in all the cases is, that whenever we find that the debt has received the benefit of the suit, he shall not avail himself of it, if this may be learnt, not only from express decree, but that purpose, but by language & acts, from which it is fairly inferable, that he availed itself. If we examine the various decisions at law & in equity, we shall find that they are all, be regarded for on this ground of waiver. Thus if a debtor makes payment on a contract, say on a bond or note, after the suit was sued upon it, it is most apparent, that he availed the suit. In their, I admit, it might be said, that there was a promise implied from the transaction, that he would pay the sum due on the bond &c. but it also demonstrated, that he availed his claim to the benefit of the suit. It also too, if a debtor acknowledges that he owed the debt & makes no objection to the payment of it, the inference from it is a just one, that he avails the benefit of the suit. I also I admit, that the promise of payment, for the presumption is, that all men are just & honest & will
so that which is right, unless the contrary appears, but that at this time he had acknowledged the debt, but declared he would not pay it, as the law had not been upon it, there could be no recovery. Notwithstanding the most conclusive proofs that he was indebted to his own confession, for the preservation of credit, which arose from the acknowledgment of the debt, it utterly removed by the law, if the debtor that he does not receive the benefit of the state. The principle is also exhibited in the principle of the L. g. where debtor said he would pay 5 but no more. This law, he made to the creditor, etc. there is evi. that a debt of 5 existed, yet there could not be a recovery of 5, but it seems there might have been of 5. In this case no debt, the existence of the debt of 5, was itself, cause, on which relied a suit for the recovery of the 5. Now nothing can be more apparent, that debtor by his promise did not receive the benefit of the state, to the to the 5. Therefore there could be no recovery of the 5, so it was as clear that he did receive the benefit of the state, as to the 5, therefore for that sum the court recovered.

On this principle likewise we can account for the decree in Chancery, where a man in his will directs that his debt without specifying any particular one, shall be paid. The Chancellor decreed that the debt shall pay debts barred by the Statute Limitation, proceeding from the ground that there are as much debts, as many debts are, respecting the idea of a presumption from the length of time mentioned in the Statute. Chancery decrees such debts, as existing debts from which the State has taken away the remedy by which they might have been recovered of which State the debtor might avail himself, or not, at his pleasure. Therefore when in his will the debtor directs those debts paid, he has received all benefit of the State. *Sec. Ch. 505. 6. vid. ante 53.
So where a man has been an insolvent debtor when discharged, from his debt, advertises that he will pay his debts, he stands upon the same ground, viz., he must pay those barred by the State. Both Courts of Law and equity consider debt barred, as much debts as there not barred. The State has taken away the remedy to forece the former, but in this case the debtor has availed the benefit of the State. 1 B.C. 205, vide ante 83.

So too, this principle manifestly grounded in a case in 5 B. & C. 2630, in which case, the ground on which it proceeded, it made very clear by Lord Mansfield. It was, in failing circumstances, 13, who held a claim, barred by the Statute, was a petitioning creditor, that a Commissioner of Bankruptcy should issue act of 13. I did not approve the petition of the commission issued. It was contended that the commission was void for that the claim of 13, being barred by the Statute, no longer existed, so that no creditor had petitioned, as the law directed. But the Court held it valid, for the debtor, by not opposing the petition, had received all benefit of the Statute, that indeed every remedy was taken away, hence the creditor, but that the debt remained a debt, 14 that the debtor might, as held in this case, receive all benefit of the Statute. It is not to be the month of third persons. Object to 5. 5 B. & C. 2630. 2 Sir. 716. 1 T. & C. 407. 2 T. & C. 702.

So a partial payment on a contract, wherein the Statute is involved, takes it out of the Statute, for in such case the debtor wavers the benefit of the Statute. When such contract is joint, as when executed by A. B. & C. after the Statute has been upon it, without the prior consent of the makes a partial payment upon such contract it has been questioned, whether it is the Statute that contract out of the Statute or not. I conceive it does not take it out 5. 5 B. & C. 407, effectually, that it will be made liable who never received the benefit of the Statute, for if A. is not liable, there cannot be a recovery of 13, alone, or that contract, notwithstanding he has availed the benefit of the Statute. As a joint contract
the law must be jotted down. As in Douglas, it
wants and the contract agrees. It is difficult to recon-
cile this doctrine, as an established principle. I write not
he pretended. I apprehend, that there is an implied contract
between joint debtors, that whatever one does respecting the
contract is binding on the other; for in other cases where there
no legal obligation to pay a debt (one does it without the prior
or consent of the other, the payee can never compel the joint
debtor to pay him, his prosecution of the debt but if he had con-
ented to the payment, he must have been bound. I believe
there is no prescription in case of a payment by one debt
or, that he was authorized by the other to do it. Neither is the
case in Webster's 1711, reconciled with the one in Douglas
for it was held in Webster, that payments before, are not
recognizable. Payments before is doubtless payment by the other joint
debtor, but a bearer of the debt if limitations be one,
is not a bearer by the other, since no recovery can be
had before such joint contract, after one, after he has wa-
red the debt; benefit arising from the nature of the contract
on which there must be a joint debt, in all, if there can-
not be a joint debt, in all, for all, hence not waived
the benefit of the debt. Now then, is the law the best
entire, which subject, the debtor, who has waived the stat
of limitations? The true point of light in which to view
the subject, Judge Reeve apprehended, and followed. The
partial point, implies in it a waiver of the debt, or a
promise to pay the residue, the debt notwithstanding, but
this is the receiver of the residue of the payee only, and further
it is true, that in ordinary cases, the action is the debt
on the original cause of debt, there is nothing to prevent
bringing it upon the promise so made, if there was a suit.
Consider, it is in this case the original debt, being still an
existing debt if a moral obligation resting on the debtor
promised, it is an abundant case. A tender what the new
promise a suit therefore may be best maintained upon

the new promise, setting up the original contract as a
consideration that prevents— and that perfectly accords with the
opinion of Judge Fredell on the circuit.

A suit had been brought (in Ct.) upon a Bond
under the Statute had run; a partial payment after the debt was bar-
red was offered in evi. To take the case out of the Stat. The
Court Consisting of Judges Day, Cushing & Fredell, the district
dodge were of opinion, that the words of our Stat. were
so strong & admit of any evi. to take the case out of the
Stat. (Cushing dissenting.) After this decision an action
voided being provided for the payment of the
Bond set up as a suit. Cons. this action was sus-
tained by Judges Fredell & Day; Fredell at the same
time declaring that he was of opinion that the suit on the
Bond might have been maintained at the partial pay-
ment given in evi. He also supposed the suit might
have been maintained when the new promise & the bond
set up as a condition precedent to the decision an ac-
tion was lost upon a Bond on which the Stat. had run or a
partial payment on the Bond, admitted as evi. To take it
out of the Stat. The Court considered the payment as a bar-
ner of the Stat., vid. infra. 3 Col. 307. 4. 11.

Upon the same ground it is, that the Statute of
しかしある手続件は故に、後の一般
issue to show that there is no right of recovery, but if
relied on, it must be pleaded; & if it be not plead-
it is a waiver of the Stat. & the Court will not grant a
new trial to set the case in the Stat. As for a recovery
for the debt, had waived it, & Nelson observed that when
the debt had once waived the benefit of the Stat., he never
could in any way use it as a defense. Cap. 146, 17. 182
163. 4. 185 - Cabi 147. 147. 1725.
in.this.State.or.several.of.the.other.States,.as.a.plea.in.his
appeal,.it.is.incorrect. It.is.in.the.nature.of.a.plea
in.Altrement,.i.affirm.t.his.need.to.be.associated.in.
these.States,.where.each.has.its.own.Stat.Offi-
mitations:.).In.one.State,.there.may.be.a.Stat.-Of-
mitations,.at.the.once.kind.of.Contract.in.no.Stat.in.another.
State,.and.it.precisely.that.contract.As.in.Ct,.no.suit
can.be.maintained.on.Bond.after.a.lapse.of.17.years.
whilst.there.is.no.Stat.-Ofimitations,.as.a.Bond.in
N.Y.(or).So.to.the.Stat.of.one.State.may.require.a.
good.time.before.recovery.is.brought.on.a.particular.contract.
that.is.allowed.in.another.State. As.in.Ct.17.years.must.lapse
before.there.is.a.right.to.a.recovery.on.a.contract.of.assurance.
which.in.N.Y.,.it.is.void.in.6.years. To.admit.the.Stat.to
have эффект.a.plea.in.Ct.made.in many cases.pro-
duce.manifest.injustice. Thus,.in.Ct.given.
in.Ct.,.a.Bond.to.B.for.200,.more.than.17.years.later
i.instituted.a.suit.when.the.Bond.in.Ct,.where.no.suit
can.be.maintained.on.the.Bond,.i.in.Ct. The.suit.must
be.brought.foremore.of.his.laws,.the.accuracy.going.to.bond.
where.a.recovery.would.be.had.upon.the.Bond,.this.depart.
more.certain,.than.that.of.it.had.been.laid.in.Ct.,.there
must.have.been.a.recovery.for.the.defence.of.the.Stat.
Ofimitations.could.not.have.been.used.there,.the.defence.to
the.Bond,.the.result.of.the.case.must.now.be.con-
sidered,.I.need. The.Bond.of.Bow. he.owned. it. will
be.in.Ct. &. is.absurd. The.whole.defence.will.be.
within.the.limits.of.Ct. no.suit.could.be.brought.on.such.
B. B. In. the.then,.it.was.of.bond. Of.recovery,.nothing.
more.on.felt.the.impact.of.such.a.Bond.fr. than.that.in.Ct.
no.suit.can.be.maintained,. if.after.the.trial.in.Ct.
A.should.go.to.B. If. there.be.sued.on.the.Bond,. can't.the.thing
in.Ct. be.a. Bond &. be. recovered? It.wants.to.beстрого. of
should have that effect upon a Bond given in E. If, in
full force there was on which a suit might be but there
it is, which a recovery might be had there, merely be
cause no suit could be maintained upon such bond. But
of the merit of the case had been tried in Ct. as whether the
bond had been executed in Ct. by A. or of executors. Whether
it was illegal or had been obtained by duress. In those
cases a debt, in favour of A. would be effectual, as a lost
recov B. And the trial held on the same question had been
in E. If there determined in favour of A. So too if a note
is executed in Ct. but paid in N. If, after a lapse of more than
day years, the plea cannot recede, but the merits of the
case have not been tried, as no that, in Ct. if there
is given bears a recovery until a lapse of 17 years.
Therefore the note in such case would be valid in Ct.
for after a lapse of 17 years. If we view the plea, as a plea in
Abatement only, then the law preserved entire. The suit-
ates, because in the Territory where it is bad. No suit
can be maintained therefore. If justice is done — as it
respect, the contract on which by the law of one State
no suit can be maintained on such contract.) But which
is in full force in an other State, i.e., on which a recov-
ery must be had there at any times. It is justice.

It is manifest that the State of Limitations, which
preserves a recovery, must be necessarily be considered a
plea of Abatement, as no more in whatsoever from it may
appear. It must either be viewed in this point of
light, or the other course must be adopted viz., that had
bond so given in E. If, was not effected by any State, but
that a recovery must be had in and Court in E.

So two where a suit is bad in E. If upon a note
given in E. — after a lapse of six years. Before a lapse
of 17 years. Must be given for the plea. Disregarding
But I apprehend an incorrect idea for everything that respects the form of proceedings; in short, whatever may or whatever may not be proved or to there limited is governed by the law here, where the suit is brought, see 1 Burr. 199 - 3 Leg. 29 - 4 Brod. 170. 7 Cum. 105. 3 Phil. 145. 4 Tall. 471. 2 4 St. 405. 2 4 St. 137. 11 41. 171. 5 4 Mod. 426.

But a contrary decision has been given in Mass. There it was expressly decided, that the Statutes of the State of New York cannot be pleaded in bar of an action commenced in Mass. by an inhabitant of N.Y. upon a promissory note, executed there by the citizens of Mass. 2 4 St. 404. See also 1 41. 133. 2 41. 1.
IV. Covenant Broken.

By Judge Griswold.

This action is founded on a Covenant and claims a remedy for a breach of it. Hence it is called Covenant Broken.

In common language the words Covenant, Contract, & Agreement are often used as synonyms. It is a little remarkable that Powell should have so used them. Provo C. 244-5. A simple covenant is in legal language a solicitation.

A Covenant then is an agreement written made, subject must always be the Rob of the action, or it is equally whether he be Indenture or by Deed poll. Acts 59. 11. Rev. C. 341. 2 Esdr. 11. 26.

If the agreement is by Indenture or Deed poll, it is sufficient to maintain this action against the Covenantor that he alone had sealed it & delivered it to the Covenantee. As the Covenantor himself never signed it. Acts 212. 28. 26.

The usual remedy to enforce a Covenant is an action at law for damages, & this is the action I have speak of. Debt will lie in certain cases, as where the Covenant is to pay a certain sum, or a sum, which the doubtful, may be made certain by a reference to some common standard or measure of value or quantity. Thus of Covenant to give 12. two dollars per bushel for all the wheat which he shall have delivered by the 1st of January; if this be Debt will lie as well as Covenant Broken, for the proportion is given, & it is only necessary to ascertain the quantity delivered & render
the sum certain. So too if the Covenants were to say, Common is an article of worth in market, “I'd certain col. pline cern-

tine redem protest.”

But if one Covenant to deliver so many hacts of
wood, or wheat &c., Debt will not lie. To recover damages, co-

 nomine——here is no reference to a common standard. Co-

 venant Broken will however always lie in St. 189 Bull.
 1797—2 Doo. 1401.

But when the Covenant is to do some specific act or

 something in Specific, distinct from the subject, it means the

 most usual & effectual remedy, is by Bill in Chancery for a

 specific performance, as when one Covenant to convey

 land &c., vid. tit. “Powers of Sale,” 1 Tolb. 27—189. 156-156

 and 27.

But as a gen. Rule, when the compensation for a

 breach of a Covenant lies in damages only, or in other words,

 when damages will be an adequate compensation, a bill in

 Equity will not lie to enforce the Covenant, for in the first

 place, when this is the case, policy may be laid at Law as well

 as in Equity & it is a rule both in England and in our Country

 that when an adequate remedy can be obtained at Law, a Bill

 in Equity will not lie. And again, as a real rule, a Court of

 Equity cannot assert damages, but the reasons appear to

 confine such a case to the jurisdiction of a Court of Law, 1897.
 570—3 Phil. 341. 1 Tolb. 27—156.

This rule however is not universal, for where the dam-

 ages are the adequate, & neither they are the only remedy, yet if

 the remedy sought is merely consequential or collateral to a

 ground of relief properly acquireable in a Court of Equity, the

 Covenant may be thus enforced. Thus when in the language

 of the rule, matter of fraud is mixed with the damages, or

 when a question of fraud is introduced with the damages, the

 Court may be enforced in equity, this nothing can be recov-

 ered, but damages in such a case. 21. 2. sec. 36, in Cook.
 broken at law. If fails a Bill in Chancery alleging that the cost
was obtained by fraud & prayers an injunction, I may then file a
Cross Bill &g. praying the fraud being proved, & praying relief. Here, if the fraud
is not proved, the Bill will be dismissed. In 13. 7 B. R. has been
concluded by B. to stay his proceedings in a court of Equity & the
petition (p. 47) if it is not reasonable & equitable, that the business
be then suspended & debts shall not be enforced, this to turn the
Bill "around", before he can be relieved. So in this case laws.

Of the different kinds of Covenants that have created.

It is the second, that, under this head, there are several coöper-
ate divisions, and yet all Covenants are divisible in
Two kinds, viz. Covenants in Seiz & Covenants in
Lease. A Caut in Seiz is expressly mentioned & in-
tended in the Seiz or Instrument itself, between the parties. I would,
I think, be more proper to call this an express Caut. 4. 10.
C. 81. C. v. Dig 286.

A Caut in Leas is one that is raised or inc-
quired by law, & for this reason it is implied in fact &
called a Caut in Leas. This may be called as it properly
often in an implied Caut as contra distinguished
from an express Caut. Thir 1. (p. 26) states & B. for a term
of years & from the very fact of the lease, being made, the
less implies a Caut on the part of A. that B. shall quit-
tly enjoy during the term, if it being supposed that there
is nothing expressed in the Seiz, limiting A. & respons-
bility. 1. 10. 324. 28. p. 266.

The specific difference between a Caut in Seiz &
A Caut in Leas is this: a Caut in Seiz is founded
when the words used in the instrument, as amounting to an express COAT, either the words used may not be the most express, or explicit.

Thus: I devise to J.S., reposing Real, or Tangible, yielding, & Reserving Rent. Those words, covering them, amount to an express COAT, on the part of J.S. to pay Rent. Those words are not the best adapted to express such a COAT. Still the COAT plainly arises out of the language of the parties.

But on the other hand, a COAT in Dower or implied COAT, is not all raised from the language or phrasing of the instrument, but from the nature of the Contract or agreement, which is expressed as in the case just mentioned. At leases with these words, give, grant, demise, use, etc., farm, let, etc., these words import a COAT in Dower, that the lessor had a good title to the house, that he shall quietly enjoy during the term, any one of these words of grant has the same effect. And yet it is very obvious that nothing can be more peculiar or foreign from the language of the Deed. I repeat, that an implied COAT is not raised from the terms or phrasingology of the agreement, but from the nature of the Contract on COAT. If the lessor proves not the same title, whether the lessor is void or not, the lease is liable to the COAT of seisin. 4 Co. 80; 5 Co. 17; Earls, 99; 10 Boll 517; 1 Mod 93; Palm. 388.

Again all COATS are susceptable of another division, as being either Personal or Real.

A Conveyance Real is one, by which one kind of thing, slave or interest given or assumed things Real, as lands, tenements, a hereditament. Thus, if I make a conveyance to this in fee 1 Conveyance, that he is well seized, or to warrant and defend. These COATS are Real.
A. **Personal Covenant**, on the contrary, is one, which is made by the person or concern personal property merely. Thus, if one **Covenant** to do an act of service to another, here the **Covenant** is personal to the person, or, if one **Covenant** to pay a sum of money, here also, it concerns the personal property of both. In both cases, the **Covenant** is personal. 1 Lib. 139; 29 V. 266; 294; 3 Co. 16. 17. Tit. 11, 145-243.

This division of **Covenants** into personal and real is derived, quite perforce, from the subject of the **Covenant**, as the former division into express and implied was from reference to the nature of the **Covenant**. 1 Whit. 625.

With regard to the **Structure of Covenant**, I would observe, that it is not form of words, but technical language is necessary in many cases to the formation of any **Covenant**. Any words showing a concurrence of the parties in an agreement are sufficient to create a **Covenant**. Any words in short, importing all agree. 1 Barr 290; 3 Roll 578; 1 Bona. 10; W. 297; 2 Bona. 175.

Thus, in the case I mentioned, A. leaves B. paying, yielding or receiving such a Rent; here, the words are the language of the lessor, and they amount to an express **Covenant**. Next the **Covenant**; for the lessor, by accepting the lease, makes them his own. Here are no express or implied **Covenants**, so that B. promises, **Covenant**; contract or agreed to pay Rent. Yet, as the intention of the parties is manifest, B. will be liable on **Covenant**. Broken if he does not pay. Co. 166. 598; Co. 203. 241; 2. 1. 237; 275.

I am aware, that Mr. Powell calls the **Covenant**, in the example just mentioned, a "Construction **Covenant"; but I must observe, that in treating of **Covenant**, there is no difference between, what I term, the **Covenant**, or express **Covenant**, as Mr. Powell calls it, or Mr. Wilson, the editor.
of Sanders' Reports calls this an implied cost, but this is demonstrably incorrect, for the cost of paying rent is clearly not raised from the nature of the contract. The cost if the lease was in these words: 'demise, lease, the lessee would not be bound to pay rent. The obligation arises out of the words 'rendering, resorting to' which expressly express the intention of the parties, as any cost that can be supposed. 17 Feb. 12, 1414.

The subject of a cost may be something past present or future. Thus one may cost with another that he has done a certain act, e.g., a creditor with the debtor that he has destroyed a bond, if he has not, he is guilty of a breach of condition that he makes the cost. A cost of 12th ridius is de presente; thus a lessor or grantor covenant in this manner, "I am well seized, I have a good title, it respects something present." And lastly a cost may respect something future, as any executory contract or deed, e.g., a cost of warranty is almost any covenants which are personal, as to perform service, pay money, etc., Pl. 3, 208.

Covenants in Deeds may be restrained or excluded by express covenants, etc., other than from the nature of the contract, a cost in deeds made the raising an express covenant on cost will prevent the implication according to the maxim express contract esse tacitum. Thus if a Deed ran by the words, "grant demise to the

lives whereby a covenant of good title in lessee to quiet enjoyment" for lessee, but if this were followed by an express cost of eviction by lessor, or any person claiming under him, the implied cost is then excluded by the express one, and the covenantor will not be liable, unless the lessee is excused by the lessor or some one claiming under him. 12 M. 13, 81, 3 Ky. 273-4 Co. 81, 6 Co. 2, 675-6 Mod. 92.
It has been said, that on an implied contract raised from the words “give, grant, demise,” no action will lie for a breach by a stranger, or by any person but lessor himself; but whether expressed or implied, it is not less for the lessee to be liable, or such case, if lessee is estopped by higher title. Probably all that is meant, is that if lessor will not be liable for the acts of wrongdoers, he, certainly, is no insurer against the unlawful acts of all mankind. Decreese 211, 250; 95 D. 307, 310.

I have declared that no particular form of words is necessary for the creation of a covenant. I have further to add, that a clause in a promise to do, creates in itself a covenant, on which an action may be supported. Thus, whereas it is said, “I agree to be bound,” whereas it is said, “I agree to serve one year,” the deed which confirms the parole agreement makes the a court on the part of A. 5 Kirby 465, 1 Bacon 222; 4 Esp. 260.

But as to covenants in deed, if the word “covenant” is not used, there must be some words, that import an agreement, otherwise no court can be created. Thus lessor covenants to repair, provided lessor will furnish timber, on condition lessor acts. Here are the words cannot be construed into words of contract by lessor to furnish timber, it amounts to no more than a condition upon the lessee’s cost.

But on the other hand, if the agreement were that lessee shall repair, “provided it is agreed that the lessor shall furnish the timber,” it is a court. That binds the lessor, for the words construed, “it is agreed,” transform the condition into a covenant. 1 Roll 510; 1 2d 48; 2 Esp. 267; 3 Com. Digest 560.

And when a clause in a deed is in the nature of a mere defasance, it can never amount to a court in law. Thus in covenant to repair, but if the lessor does not furnish timber, this court is the word. Here lessor evidently is not
found of course the timber.

By a lessor covenants a collateral bond, conditioned for the performance of the covenant, in a lease, either by another hand; the obligations extend to implied as well as express covenants. Thus a lease is given in these words: "give, grant, demesne, let"—here observe the covenant are twofold, that lessor has good title; that lessor shall quietly enjoy. At the same time lessor covenants a bond conditioned for the performance of the covenant in the lease: then if lessor has not good title, he is liable on the bond. Precisely as if there had been, had he expressly covenanted that he had title, and lessor in existence, lessor would be as much indebted on the bond, as if he had expressly covenanted that lessor should quietly enjoy. 

The next subject to be considered is,

The Construction of Covenants.

On this subject the Rule is, that covenants are the

as bound liberally. 5. Durfey (393). Or the meaning of intent of the parties is also sought without, such strict adherence to literary terms, as must be observed.

Grant, executors conveying present interest. 1 Chit. 455. H. 140- 1 N. 539. 1 Pull. 419. Prod. 439.

Therefore in many instances, literal performance will not avoid the covenant, but there must be a substantial performance, or one according to the spirit of the instrument. The general intention of the parties. E.g., A holds bond, and C is covenanted to deliver that bond to such a party before that day he needs it; or the bond is reconserved where he delivered the bond to B, that before the time of payment, delivery had expired. A would hold title on the covenant, for literally the performance was literal, yet in...
was not substantial - the evasion being evident. 

So also where husband commandeth to leave, at the determination of the Breach, all the Sincker on the land, but at the determination, cast it down & left it on the land: this was very reasonably adjudged a breach. 

Is when it is commanded to deliver a piece of cloth, B. first cut it into fragments, or otherwise, to impair it, and tender it saith the base & knew delivered it at the day appointed. 

Is when the law of contract was not delivered at all the grains that should be thrown out of his Breachery, which he literally performed by delivering them after he had first spit them with ashes & interceded & prayed 1. 39. 40. 12. 19. 24. &. 8. 11. 15. 59. 127. 15. 16. 128. 

But on the other hand what is called a substantial performance is such, that it be not literal. 1. In. 13. 20. 20. 13. 20.

Thus where it is commanded with B. that his son, who was under age, should live such a fine, or being under age, a male, should marry B.'s daughter before such a day, before the time appointed, the son leant the fine, or married the daughter of the fine was afterwards released or restored by a man, or the son whom he came of age, disagreed to the marriage & thereby avoided it -& redded it null, yet was his present substantial performance held such, for both parties must have previously known that the fine was receivable & the marriage voidable, when the son became of age: so that the contract was construed according to their intent, it is presumed.

But where in the construction of the words
are uncertain, the intention of the parties cannot be absolutely ascer-

tainable. It is a general rule, that it is to be taken in that sense, which is most strong against the covenants. And thus you will observe in the general rule of all construction of con-

tracts, it is not particularly confined to covenants. Therefore when

the lessor covenants with the lessee, that if he would marry his daugh-
ter, he would pay him $20, per annum, without specifying how long, it was held, that it should be for the life of the wife. The greater

is not for one year only, such construction being most benefi-
tial to covenantees, as to covenantees. Clarke 1st S. 206. 277. 1 N. B. 159, 160. 171.

If one covenants to convey land, to another for such a day, before such a day arising, covenants it to a third person, the coven-

ant is to forfeit. The covenantee is liable immediately, tho' the time stipulated for performance has not arrived.

It is a general rule, that if the covenantor once volun-
tarily disabled himself, after form a contract, he is considered

in equity, as having broken it, at this be afterwards able to per-

form, St. 214. 7 Co. 15. 1 N. B. 313. 23, 1 John 222. 6 Co. 116. 1-2.

Digest 1st S. 106. 40.

Thus if a covenant to convey to B., a house three years

hence, and promises to destroy the house, an action lies immedi-

ately after him. So if a covenant to sell a house to A., before the time;

issue him or will him to death, he is liable from the moment.

Such authorities,

There are some cases in which a clause in favor of an

exception in a lease amounts to a cause on the part of the lessor,

wherein it doesn't. The distinction is this viz. Rule. When

the lease is of a given subject, except a certain part, the ex-

ception is not a cause. That lessor will not remedy that part as a

third person, if he does occupy a distinct lessor in the occupation of the

part excepted. he is liable as a trespasser, but not on the covenant.
Thus, if a lease is a tenure for years "except a particular clause" it is evident that clause, he is liable to an action of detinue, but not to ejectment; such an exception would be good unless it is apparent the clause was passing to the lessee; so that if lessee should claim it is being an action to recover it, the exception in the deed would stop him to make a claim.

But when the exception is of a thing or project, issuing or derived out of the thing demised, it is a case that lessee will not sue for it, nor disturb lessor in his possession of it. Thus, A leased B, and with the exception of a particular right of way, a "reserval of this back buildings; here, as the right of way, arise out of the subject of the. And so in the benefit of the lessor it is a cause of action; it is not a direct title or easement in the ordinary sense, to the lessor the right of a long a way, there is an evident consistence in construing the exception here as the lessor gives the lessee has an interest in the right of way, or thing issuing out of the property demised, so that he cannot be liable merely as a stranger for a trespass, if he disturb lessor in the enjoyment of it. It becomes necessary therefore to insure lessor's interest out of the case above, there is no necessity for this, for the lessor having no interest in the close, is liable as a trespasser if he occupy it. For authority I have to last rules, sec. 657, 90 Com. pt. 6, 12-1 Roll 431, 2. 12th 86, Pard. 2. 292 (2) bid. 610, 11th 170, 1 Bar. 331.

And I should suppose, that this rule would hold, whether the exception was to a deed, by indenture or a deed (Roll. 1 Pard. 2. 338. 43 Bid. 657, 90.)

There is said to be a Difference, between express and implied Co Illustrate, in regard to their Construction.

The former are construed more strictly than the latter. The case stated under the Title of Contract will since
Illustrate this rule in one of its branches. You will recollect that if one consents to do a thing not in its nature impossible to be performed by some subsequent cause over which human control 1.## is left by the law of the land, for non-performance at such time as is agreed by the landlord and the tenant, in a given time, the tenant is in fault, but was prevented by it. So the landlord was held liable under the breach of contract. But you will observe that these facts of things, in their nature, are not, so it would be otherwise, if the one had been to go a voyage of a 1,000 miles a day, this being not only impracticable to him, but to all men. And in its very nature, it could never have been the intention of the parties that he should perform it.

And where there is an absolute, unconditional consent of the landlord, for a given time, for a house, the house is destroyed by lightning, or some other cause over which human control is left by the contract or by law, liable at all events. For had it been the intention of the parties that he should have been absolved from such liability, the contract would have been so qualified. 2 fir 1763 - 3 fir 1710 - 7 pr 1 fir 1777, 3 fir - 27 pr 1770 - 3 barr 53 - 3 barr 63, 2 fir 23, note 11 to fir 67.

It has been made a matter of question, whether equity can relieve lessee after such destruction of things leased, being constituted absolutely. Hence the rent, 1 fir, 2 pr, 53. There was a decision by Sir Chaloner Ashley in favour of lessee in 1773, 4 fir 619. In the first case, the loss was no device, but an opinion for relief was given. The subject is discussed in 1 barr, 360, 71, note. 1 barr is a relief in 1 fir, and 2 barr is a relief in 3 fir 23. It seems that I agree with him. The first reason is that a rent of property cannot in the classic cases, continual case, but merely the

minister relief from the capacity to attend to circumstances, the cause of which cannot be adapted to, in a Court of Law, the
there the ground on which a Court of Equity must proceed is, that the Rule of Law was not made for such a case; but it cannot remediate the reasons of the universality of that rule consequence of that universal rule, it would be oppressive. Now there is not the case here. The law makes as well, ad

What the circumstances are equity ga the Rule of Law" made for this very case; so that there can be no pretense that any point can be raised in Equity that the law could

Mr. Tenblanche's second reason is that where the

But further this is a question of mere construction.

What is the intention of the parties? That Lessee should be, or

The Rabbi died in his own hands? Who then should hear

Can Lessee claim on the ground of morality that he should be relieved? Does not lessor already fast his

Natural justice then cannot sanction a relief? There is no principle whatever to sup

Lessee's claim. Equity is already not merely equal

But more than equal in favour of lessor. Why then should it interfere to assist him? Would a relief be proper to

When one views the subject therefore, we recognize

In the case of an implied contract, several, and

and accident will impose the consideration. This in case of a
a case with an implied Court of quiet enjoyment, the case of a lease is drawn by granting, or the public, money or sale, another case, where the leaseholder, here there can be no instance, that lessor is liable to lose the disturbance in his quiet enjoyment. In this case, he would not have been liable indeed, had there been an express Court of quiet enjoyment, for it never could have been the least, but the example will serve to illustrate the Rule. 2 D. 1693, 7 T. 266; 1259. And if it were an equity, to repair the party, without express exception, to promise, the burn down, the party would be D. 245, 11 Edw. 11.

There are many examples in the subject of quiet, in which you will recollect, that one implied, perhaps, upholding, does not subject him, like an absolute unimplied agreement. (See 2 Edw. 11.)

Sec. 11. If this rule strictly a divinity in the Rule of Contract, i.e., a Contract or Covenant, or Covenant or Contract? If so (as I think it is) the reason of the universality, in that the law does not imply a court of inevitable accidents, the party may make one by express words.

It is a General Rule. That performance of express covenants is not discharged by any collateral matter, i.e., by common accidents, as in the last example. So then, if the accident deprive lease of the benefit that he expected to receive, yet it does not discharge the express Court, or his part, by any pact or words.

But then, there are exceptions to this Rule, 1st. Any Court to do one act which at the time of the Court made was lawful, but a subsequent Statute makes it unlawful, in such case, the Court is excited, so the lessor will meet this obligation a man to do an act for the performance of which it would punish him. 2d. If the Court is excepted, and an Embargo interferes, the Court is discharged. 3d. 190. Dec. 270.

Sec. 12. Does the case fall under our Constitution?

of Contract, cont'd not. The law is not made for the
court, purpose of altering the Contract. The effect on the court is
merely the effect or consequence of a rule of good policy
that accidental; vid. Amicable Div. § 23. For a
one court not to do a thing which is lawful at the time, a
flat conflict with its duties. After the court is annulled, so
is the rule laid down, but the court, lawful at the time,
should make no difference on the rule, would hold if the
act were unlawful at the time of codifying. Sa. 92.
Ball 156-8. Thus, suppose a court to serve 10, one year
a subsequent state makes it his duty to leave 12.5. It is service
for the purpose of resisting an inscription or succession.
he may break the court. Instead

But if one court not do an act, which was not
lawful at the time, a state making that act lawful merely
does not annul the court; you here the contract. The act
are not inconsistent or a compliance with one, but the
no violation of the other, whereas, if in the case above, the court
were to omit one act, which the state requires, a compliance
with the requisitions of the latter is inconsistent with the en-
forcement of the former; therefore the court is annulled. 1 Dec. 190.

It is a general rule, that, comparatively, perfecting
any particular subject matter are construed in their
relation to that which is in being at the time of making
the court. There is lesser court. It removes the act, if act
only to such a degree as, in being, at the time of the execu-
tion of the court, is not to those of another kind impor-
ted afterward. And if it were (e.g.) Say the tax on health
during the Excise a tax on commodities, if an additional
one on health is imposed, the court does not extend to
the latter. 1 Dec. 60. 111. 223. 32 T. 37, 349.

A court contrary to law, a good policy is void.
This is a rule applicable to all contracts. 2 Pomer. 164. 1 Pomer. 164. 261. 270.

If one lease a freehold estate to another for a certain term, it becomes useless to have a tenant of recover, or is worn out during the term, the

lease is not broken. The rules on this subject are however much divided. See 42. 113. 531. 764. 44. 13. 324. 321. 322. note 4. 323. 324. 325.

Although " choses in action are not assignable by Act, " is it often said, yet they are often assigned. In reality, if such assignee of his debt to a third person, is an implied Co, the assignor or assignee shall have the benefit of the

obligation, that he shall be at liberty to collect it, in the name of the assignee & enjoy it without interruption. In

when it is said that a " choses in action is not assignable by Act, " is meant merely, that assignee shall not sue

in his own name. Yet this assignee remaining good as a bearer, the party, if then the assignee is to recede, the

assignee, amount to a Co, that if assignor releases, or collects the money due on it, he shall be liable to Co, 

Bond. And if the assignee were without Debt, if a

money, to a singleCo, Contract of the same effect. Thus I

had a Bond, and I got an assignee of it. Now if I release the

obligor, after this, or precedent thereof, Collecting the money

due on it, I sue bide, or the implied Co, for & to. But there are

no express words of Co, hence, yet the words of the grant

or assignee are not, to imply a Co, 1 Pomer. 161. 161. 44. 136. 44. 136. 44. 136. 44. 136. 44. 136. 44. 136.


In Ct, the regular practice in such cases is for the

assignee to sue the obligor in an action on the Co, for paying the original creditor or assignee in receiving a release from him, if

the notice of the assignee. The obligor assigns are both held liable.
But this is not the case in England, nor in those States of the West
Union where a Court of Chancery is established. There can
then, he no case in which such can be brought out, the ob-
jection is a new, but Co. Prid. is the best of the latter.

A Co. in one deed cannot be pleaded in bar
of an action on a Co. in another deed, unless the for-
mer is in the nature of a defeasance. Allis. 2 New, 217; Pe. 335; 1 C. 260; 1. 706; 2 Coke, 292; 3 Coke, 573, 5.
Thus (as I shall hereafter have occasion to remark) if the con-
eeantor in one deed give another deed binding himself
not to sue Coneeantor for one month or year on the
former, the latter cannot be pleaded in bar in an action on the
former, the party suing being liable after the Co. in the
latter deed.

But a defeasance in a separate deed may be
pleaded, thus if after a Co. in one deed by A. B. for the payment of a certain sum of money, B. execute a sep-
ate Co. in a distinct deed, conditioned that on the happen-
ing of such an event, the former deed shall be void,
then on the occurrence of that event A. B. sues A. may
sue on the latter deed in bar. Lem. 572; 1 Ch. 476; 2 Ch. 300.
2 Bla. 290.

Hence also (to recur to the exception first given) a
Co. by a condition not to sue his debtor for a limited time
is no bar to an action best for the recovery of the debt, but
the Coneeantor by being within the time, makes himself li-
able on the Co. The reason is, that if the Co. could
be pleaded in bar of the action for debt, it must be in ef-
fect during that period, a release of the debt, but if a per-
sonal right, as a right of action, he once suspended it is gone.
forever so evidently contrary to the intention of the parties.
But of such a Court make a part of the instrument (as by a memorandum endorsed, or a cause underwritten), it may be so pleaded, how prevent a right of action. A secured debt, until the time expires, this, or the face of the instrument, the debt is payable on demand. For the good of it, is in the case, page of the same deed, that creates the obligation, the whole is construed together; so that the original instrument, though in conjunction, are construed in Court. A day the debt at the expiration of the time appointed. 862 183 - 626 127 - 728 950 - 118 152.

But I observe again, that it is a general rule, that the Court may be pleaded in parts to another Court in the same deed, without altering the value in the case; for the case is then collected from the whole deed (as I observed) with all its parts. The court. How? Ay. Any lesser covenant. That $100. The amount as Rent, & lessee afterward, agreed that he shall retain, $50 for repairs. Lesser for, $50. & lessee been here on the former Court, for the remaining $50. Lesser may plead the latter Court, in bar &c.

The rule above states that a mere Court, notice for a limited time is no bar; it does not operate as a Release. does not a bar. But any other than personal action, for a temporary suspension of a right. As a Release is not an extinguishment of that right; whereas a suspension of a personal right is a total release. It is, as this is contrary to the evident intention of both parties, it cannot be so pleaded in bar. 2 465.

Rent a court never, to sue at all in a bond. It's because as a Release & may be so pleaded. 465 878 - 176 486 - 1 Roll 439.
This Case is designed to present a multiplicity of suits, where a recover one at the same action. For if the creditor were to sue it for the debt, he might be compelled by suit to recover the whole. The parties might then be in statute, and there would be the expense of raising more costs, which would only delay justice. Moreover, it seems to affect the interest of the parties, the court, and the debt; and the Release of the debt, this is one instance in which an instrument of one party operates as an instrument of another person.

Prima R. 646.

But a suit not to sue all or none to sue one of two joint-secured debtors, and her to an action at the suit, of the other, it seems, & an action at the common solvency. The formal release is not a release. But, in these cases, one or no release & the other. Buller 640. 9 Plow 17 (Denuzec C. J. Tenston v. Dull) 17 D. 81. 1364. 171. 14 Mo. 254. 12. 204. 22. 22. 22.

Now if it be asked, "why the suit, not to sue, is not a Release to the other?" I answer, it is evident from the intention of the creditor or common-take no to distinguish his whole claim. If, if one had kept his intention, he would have conveyed to release both, if he did not, he inten- dethold the claim & act. And, if however, he sue the co- common, or may recover his portion of the debt on the suit.

If however, a creditor, suit not to sue one of two joint-secured debtors, suits not joint & suit for a Release of both. Did remedy is thereby abandoned.rationally. This, it is rule, is not settled in the Book.

Yet if one suit with a debtor that he shall not sue, sued before, but a day after he he, he may plead such a grant or acquittance in bank. If the obligation shall be used, so that the debt shall be foreclosed, it is a Condite.
A Court not to sue one in a foreign Country to a good action but in that Country. And if it were a local, not a total, absolute release, then a Court by a Dutch seaman, not to sue the master of a Dutch Ship in England, nor anywhere, but in Holland, was in the Court of CP. But a good bar to any action but by Writ in the latter in England. The release here was merely local, hence, it did not interfere with the right of suing in Holland. 2 BL. 171 603. A lap 490 Cantle 139. Tulk 292 11 Mol 254.

Now such a Court as this is allowed by Law, because it is in itself reasonable & consistent with good policy. When such action is authorized by statute, a Court of this kind might be necessary. To suit there at such a distance from friendly & friendly might be extremely inconvenient. If it belong to the one indebted to the other.

And in pursuance of this rule, a mutual & reciprocal agreement of submission of a claim to Arbitrament is provided for not null, for when the award is made, after such submission, & such submission is not contrary to law, yet the Party will not comply. As an agreement to submit to Arbitrament.
for the court of justice are the proper places to present to.

In the meaning this title, it became necessary to consider distinctly, before the introduction of his excellency's rule, those Covenants used in Deeds of Conveyance.

In all deeds of conveyance, except what are in the county called "Quit-Claim," but more usually "The Lease," there are regularly two Covenants either expressed or implied, viz.

1st A Covenant of Seizing a good title - 2nd A Covenant of Warranty, or in case of a Lease, a Covenant of Quiet Enjoyment, as it is usually called.

The first is simply a Covenant of title. It shall be a Covenant, to defend that title. A Co. 804.

Now in all conveyances, except "Quit-Claim," these two Covenants are either expressed or implied, from the words, deed, conveyance or, unless there is something else in the deed, to include them, or rebut the implication. P. 179-201. 2 Dep. 217-2. Mass. 92. Dep. 92. 466. 728.

A Covenant of seizing a good title is a Covenant to defend, i.e., an assurance by Conveyancer that he is well seized and has the necessary title to make a valid conveyance. Hence if the title be not good to make the conveyance, the Covenant is broken, immediately on the making of it. There fore, in a Covenant of seizing, plaintiff may sue before eviction by the person having the better title, in order to maintain them, as now it is difficult for grantees to show that grantor was not lawfully seized. It is not necessary that grantee should allege eviction, or that he has sustained special damages, but merely that Conveyancer had not the title which he professed to have. Co. 170-189. 9 Co. 66. 199. But further, in an action on the Covenant of Seizing, it is not to aver in the Declaration, that Deft was not seized, without stating who was. It was
determined differently in the Supreme Court of Ohio many years ago, but the case, I think, is now settled for the reason that it is such a case not to necessitate the Court that Convenantor was well seized. If the Convenantor is incumbent on the title, he shows that he was well seized, and in this straight a prima facie title must be proved. He must then sustain that prima facie proof of title by showing a higher title in another person. Then if that cannot be substantiated, his prima facie title, the suit proceeds.

A Court of Seizin is broken not only by a total defect of title, but by an existing incumbrance, unless that incumbrance is executed in the Convenantor. Thus a Mortgage Covenant, that he is well seized of the subject of the Mortgage. This is a Seizin is broken by the existing incumbrance upon it. Therefore, the Mortgagor must prove that he was well seized, excluding such incumbrance, he would have been safe. Elias 491, 492. Ex. 18.

In this case, however, where the breach of Court consists in a mere incumbrance, that incumbrance must be specially alleged in the Deed, or in the nature of the inlosure of the cause of the interruption must be shown. If it is not, as in former cases, when there was a total defect of title, suit to the Convenantor. house that Convenantor was well seized, for here the Convenantor takes the affirmative of the court in demand. It is also necessary to allege the facts exactly that the Convenantor may have notice of them so as to dispose of the action to the Court. Mass. 432, 433.

A Court of Warrant in Quiet enjoyment is, on the other hand, a Court de futuro, amounting to this, that the Convenantor will defend the title, and that the Convenantor shall enjoy quietly. In this court, then, the lesser cannot
Alleging in the plea, that the executant was entitled by such an one having lawful right to title, it is not stated, on what right such one had derived his title, and the title he derived may have existed before the death of the executant. In such case, he could not, certainly, recover. 4 Deo. 666. 20 Sam. 177. It must appear, then, in the plea, that the executant had elder or better title than the executant conveyed in the conveyance. As we also see, that the executant was by such is not right; it indeed much less so than the former averment, for it does not aver any title in the executant; the privity might have been traced without difficulty, by collusion or false testimony, or by appointment. 220. 447. 58. 103. 659. 460. 3. 337. 9. Clarke 1. 323. 9.

Moreover, there is no technical form of necessity in alleging this elder title in the executant, but if it appears in the plea, that the executant was entitled by a person deriving under elder title, it is enough; the words "elder title" are not technically indispensable. 2 Deo. 79. 4 Th. 647. 9 Th. 790. 64. 302.

Now is it ever necessary even to state, under what title the executant was, i.e. the executant must certainly state the title he derived in his plea, so that he was the heir or devisee of the title of the executant, who was prior grantee of the same subject from the executant. In short he need not show, or from whom the executant derived his title. It is enough to state, generally that he had an elder or better title. 2 Deo. 79. 4 Th. 647. See however 2 Sam. 177. 4 Deo. 166, where the Court made it plain in the language of the Report, that the plea must state under what title, the executant entered, which is in terms a plain contradiction of the Rule, which I have just laid down. It however, this language referred to the word in the deed, it will be obvious, that it means nothing more, than that the plaintiff must allege elder or better title to the executant, which is
precise the Rule before laid down. The words in the Text were "legal jo" & "necessity." The Court held these not strict, if they clearly were not in the present paper, so the writer might have had title under the bill. This I take the law to continue from the language of the Court, in that case, either it would apparently imply something else, if, however, it means anything more, it is not clear. The reason, which is necessary to allege, is, the writ is because the act of Warranty does not extend to the tortious acts of others. This of course, its warranty does extend to all claims & demands, whatsoever, he does not know so far as to warrant surrender & assent. It is, however, the law of all men, which is, as that below shall not impair the sense, etc.; it extends only to the title, & it is not broken, unless Conquered, is waived by one having higher soldred title than Grantor had. In other cases of injury, the common mind is the law through against the word of God. 1 Cor. 3. 16-17, 18-19. A. B. 43, D. 273-274.

And it has been determined, that a cost to which prevails, and that a claim of demand is a particular person, ex- tends to actions which are given by that person. This rule is founded on the supposed intention of the parties, Act. 93, 872, 212 - 1 Cast. 812 - Stat. 604.

I say that this rule is grounded on the supposed intention of the parties & it has been said; I mean under the power of the parties, & I conceive, that this construction appears to be questionable, if I should doubt whether the intention of the parties was affected by it. Such a cost at law, doesn't rather a qualification of the general cost, than an extension of it - that the Warranty cannot be at all
the claim of title. If the Grantor takes the risk as to all others (or)
not every title he is to be considered as warranting against the
claim & demands of all persons as well as against J.S. yet it
seems some time since, the construction is that he warrants against the State of J.S.

But if the Covenanter disturbs a Covenantee, e'en by
a tortious act, under a claim of title, he is liable on his own
self, & not State, that debt. Had any title, if the act stated
in the Deed, appears the or there were been an asserted right
(which is what is meant by a tortious act under a claim of title) it
is such. And the rule holds, whether the act be by the very terms of it
more expressly confined to lawful seisin, or if the Covenante
were to void the Covenantee by an act altogether unlawful under
a claim of title, he is liable, as the "locking up a Rent" which
had been demised with such a C. is & stating the fact of lock
ing" was held safe, ancient, as that amounts to an assertion
of right. And the reason, why the last rule holds is, that the
Covenantee cannot defend himself by alleging, that the act
was unlawful, he being in fact stopped (the notion in a techni-
cal sense) by his Co. S. 17 H. 67 Roll. B. 41. 2 Shaw. 445. 4th
June 1273. 3601.

And the Rule is the same, as to all persons included
in the Co., i.e. the representation of a Grantor both real and
personal, as his heirs. 1st. 1 S. S. 17. So that if he dies
of his Heirs at law were to void Covenantees or Disturbers,
either without title, or if it were under claim of title, he is
liable as the Co. 2nd.

Again in the case of Leases, an eviction by
Lease, himself, suspends the Rent, but a mere trespassing
does not go on eviction by lessor is a breach of the Co., that
will prevent his claiming performance on the part of the
lessee. A mere entry of trespass does not, however, amount
To a breach. 1st. 24. 3.
And again, this rule is the same when the execution is by any person included in the trust, as by the heirs, executors, administrators, or trustees, 308. 5 T.R. 21 6413. 312. And the rule is the same, that the heirs, executors, or trustees are not named in the trust, as appears by the same authority.

If Co's executed by the trust, as such, for quiet enjoyment, as to all persons whatsoever, is restrained to the delivery of premises claiming under them. Hence, to object them to a breach of such trust, the breach must be in consequence of some act of the Co's themselves, i.e., it must be directly or indirectly their act. Thus a tenant for years dies, the lease being a chattel interest, no title descends. Suppose them that they make an underlease, commanding, as to Co, for quiet enjoyment, as to all persons; the Co's cannot be broken, except in consequence of some act of the lessor himself, i.e., not by the act of the other persons or persons, who, Touch. 168 11 N.B. 36.

It is a little difficult to be satisfied that the construction of a Co's, so broad as to be made is according to the intentions of the parties. There is however a technical reason for it, which I do not find in the Books, viz., that the Co's is here construing as such, not as an agent, so can be made liable, solely in their Representative capacity, & in such capacity they can be considered as assuming the testator's rights. If they assume more than they are liable in their private capacity. Wherefore, they can't, as Co's, act the claim of any person, it must be considered as a Co's, to assume nothing more than the testator rights. After all, however it is not certain, that such was the intention of the parties.

I have now explained to you the difference between a Co's of seisin or good title & a Co's of warranty & quiet in payment, with the different actions maintainable on them, &c.
The Rule of Damages in an action on the Coot

Covenant of Seizin is that in an action on the Coot of Seizin, the

expectancy are different. In such a rule in case of Warranties is different

from the English practice.

In an action on CoT of Seizin, if it be breached, he

receives the same money the Interest. The interest is

computed from the time of payment, if the Money was paid

for the leased or purchased, or if the money had not been paid

down, from the time it was intended. From the Covenant:

D N. 128-57. 4. N. 180 1. B. 551 1. N. 180. 1. 32 44-4


Since you receive after recovery in common prono

on the price of the Land, at the time the Coot was made

Broken, which was an instance, of the Rule of Damages in

an action of Seizin is the same here as in England.

In an action on the Covenant of Warranties in

England, the plaintiff recovers all his costs, Money with Interest

the costs of suit, in which he was entitled, and nothing for inc

crement or on the rise of the land. This is the only rule obtain

in England & in New York. 2. CoT 1. 4. 1. 3. 2. No. 2

5. 6. 1. 103. 3. 1. 4. 214. 2. 243.

In an action on a CoT of Warranties in CoT. The

plaintiff recovers the value of the land at the time of breach. To

father with the damages. He had sustained by the breach, i.e.

the Costs of Suit in which the property was recovered from him

To, and such is also the Rule in Massachusetts. 2. No. 40. 3. 576.

522 - Kirby 3.

I confess I think our Rule the correct one enunci

ating the principle of two actions. Now in an action on the CoT of

Seizin, plaintiff recovers the value of the property at the time the

case was broken, i.e., at the time it was made. In other words, the

case, which is the damage he suffered in consequence of the

breach of that CoT. It would seem, then, from analogy, that in
an action on the covenant of warranty. The first should also recog
ize the nature of the breach, i.e., at the time of the coven
ant, but upon payment in a country like ours, where the value of
land is constantly varying, our rule is the guipone, that will
do justice between the parties. But in England, or indeed in all
countries, it is not material, whether P, the recovery according
to the value of the lands at the time of making the conveyance, or
the conveyance for its value, will save his estate, if he does, it is but right
by future accidents caused. But with us the rent, as time passes,
remains the same, which usually increases in value, by the influence of popula-
tion, rather than deterioares by constant culture. Surely then,
justice requires, that he, who has increased the value of the land,
should recover that increase in value, as it stands at the time
of dictation. This rule would certainly be best adapted to those
parts of the United States, which are hitherto unsettled.

On a count of seisin the assignee of the covenantor (i.e.,
a subsequent purchaser) cannot maintain an action on the
covenant against the original covenantor. Thus A conveys T B
with count of seisin. Then B, the assignee of A cannot maintain his ac-
tion on the covenant against T. Thus, if B was a mortgagee, and the
mortgage was broken or instatinct, it was made. It then became a chase
in action, in hands of B, which by the code is not assignable.
But if C, continue A, it would be making the chase in action
negligible. It is contrary to the code for C, to sue A. 2 Selw. 329.
Bell 138-9. Casp. 295-2. 2 Joun 1. The same point has been this
decided on in T. in case of Tyler v. Tiffany not reported.

But upon a count of warranty, the assignee of cove-
nantee can maintain his action against the original gran-
tor or against the covenantor, if he assigned with warranty. Thus
in the case just supposed, had the count been a warranty,
A might have maintained his action against B, or A, at his
discretion, at any rate, he could assert, if you now the count
is broken in the time of the assignment, there was no right
of action, until the estate came into his hands; so that there is
no assignment of a chose in action. C. is the person currend.
2 John 177. 5.-50. 129.

But an intermediate assignee, who has not been dam-
ified either by action, or subject to ejectment subsequent as-
signee, cannot sue the original grantor, for if he could, he
might be subjected to an indefinite number of actions, by
one intermediate assignee and damned if he might maintain
another might. 1 Cst. Ref. 244.

In all cases, however, the original covenantee might
suppose, so principle, recover at least nominal damages, in
an action on the Court of seisin a quo. The original covenantee
for a right of action accrued when it was broken, which was
imposed by a deed made, if this right has not been, for it cannot
be transferred. But not so on the Court of Harrenant for that
has gone out of his hands it was not broken in his possession.
The last covenantee or any subsequent purchaser, cannot main-
tain his action against covenantee on seisin for reasons already
given. But I take it that the first covenantee may if the title
agoes may be nominal, as he has received no actual damage.
There is however no such case.

In an action on Court of seisin, the dust having ac-
quired title after action has, is no defenser, for the covenantee's
right of action was consummated, if when a Court once breaks
the dust always preserve damages. The subsequent purchase of the
title is but a struct when the old title; if I conceive the case would
be the same, if the purchase were made before the action were
but, but after the Court was made. The Court intended to
the benefit of C. by way of interest, a new right of action cannot be
divested by the mere act of the covenantee; but certainly this
acquisition of title subsequent to conveyance would go in mitiga-
tion of damages perhaps would reduce them to something like nominal.
If an action of ejectment is brought as a praecipe ad quod, claiming under a right title, the concumenter or grantee may, by his own assent, in writing, make the concumenter, that he desires may appear to defend, as he please. This notification is called either the interdict, or “breaking in the grantor, or concumenter.” And if the grantor does not appear, the concumenter must defend as well as he can. 3 Bl. 300. This notice, upon you, the owner, makes the lessee, or tenant, a party to the action, which enables him to defend, if he choose. 2 Pa. 506. G. 324. 92.

I observed, that concumenter might, for his own security, as well as in the grantor, he is bound, under no obligation to deliver, he is as capable of defending the estate as his grantor, but if the concumenter is not named in, he is not concluded. But the justice given upon the titles, or the question of title, is still open; if he might prove it to his own satisfaction, the recovery, but if he is named in, whether he appears or not, he is concluded by the deed. G. 324. 92. 5 B. 276. 31. 1 N. 22. 1 N. 34.

The particular form of giving notice in the English practice, I am not acquainted with, but sure, which I suppose is substantially like this, by a species of summons, issuing from the court, called a “Writ of Vouchers,” giving notice of the existence of this suit, and notifying the concumenter to appear if he sees proper to defend.

Quinones, B. D. C. S. or as they are more usually called, Releases, contain neither of these concuments of which I have been speaking, for a deed contains either, if it be expressly in such, it is not a Quinones, or release.
It has been determined in Ch. that the quiet, claimant may he made liable in an action for deceit for fraudulent representation of title or the quality of the land. But in a like case (Sothern v. Sherwood) it was determined, that it would not be, except in case of a conspiracy to defraud. 2 Day 128.

And in England, the rule is, the same in effect, viz., it is said, that a purchaser of land or other realty must protect himself by suit, for it is said that every purchaser must refer to the title deeds, for on them only should he rely, or if he makes insurance on the title or quality, he must erect it, and not rely on an action of Deed, for fraudulent misrepresentation, nor in the case of personal chattels. Bulk 216-231, R, Ay. 1, 16-17, 201, 318, 378, 379.

It seems, however, that the rule is not fully settled in England. In Margrave the contrary doctrine is held, that an action will lie for fraudulent misrepresentation (which the Warranty or Grant does not reach), as it never does in Suit in Chancery, when the seller conceals the instrument subject which occasioned the defect, or conceals some encumbrance whereby the estate is subject. See 3 P. & R., note, 2 in Ormerod, 1; 2 H. 3, c. 8, 237. 1 Tem., 366. See also in Cursitor's Case 84. These authorities tend to show, that an action on the case in the nature of an action for Deed may be maintained in such cases.

During the peace for land speculation in our land, much fraud of this species was practiced. Sellers would use title when they had none, to induce purchasers to take deeds, and make many fraudulent misrepresentations as to the value and situation of the land. They drew Maps & Plots of Plantations & Mill lands, that never existed. Carefully, however, avoiding contracts that could subject them.

Admitting that the English rule is correct, I am inclined to think, that such an action ought to be maintainable here. In England a man may avoid deceit of this kind; but the necessity of our forests cannot be explored by every purchaser,
The means of information are so limited, the opportunities of defending so numerous, that in my opinion, good policy requires, that such actions should be supported. Male accumulate lands are continually in the market, & it appears to me, that such sales should lay the foundation of an action for frauds, as well as satisfy any other kind of necessity. The situation of England is obviously different in this respect, the rule, therefore, need not be the same.

There is another species of Covenants, that requires a distinct case. viz. Covenants to pay Money by Installments. On a Bond, conditioned to the payment of an aggregate sum arising by installments, Debt, if not a breach of the main purpose of the first installment, & the 5th, prorogues the whole penalty, 17th 1782. 16. 3d. 5/2. 5/4. keep 53/8. 8th 1783. First make two down a rule directly contrary, in 1788. 57. 29/3. 10. 29/6. 25th 1795.

Where hanged is the word is there used, it is also understood as referring to a single Bill. 1 W. Bl. 328. Ex Part 205. Bull 1690.

Indeed the very structure of the Bond shows this rule. The word is "payable" as I have stated it. The Bond runs thus: "I promise to acknowledge myself bound to D. to the sum of $1000; and, in the event of $1000, there is an absolute debt payable in 12 months, conditioned is provided, that if A. shall pay D. $100 at the end of the first year, $200 at the end of two, etc., then this bond is null & void; & it stands no other condition than repayment, or the obligation is discharged, if the A. does not pay then the penalty is forfeited & this is the ground on which an action for debt lies for the first installment.

But with regard to a single Bill the rule is different for upon that, Debt, which is the appropriate action, will not lie. All the installments have become payable. 1 Bull 601—1787. 29/2. 10. Ex Part. 29/6. 25th. Thus, if A. acknowledge myself indebted $1000, in the sum of $1000. Also paid third: $100 in one
year to 10 succeeding years. Here the aggregate Debt of 1810 is entire & indivisible. There cannot be two actions of Debt on the Contract. The aggregate is $1000 & there is no condition annexed to accelerate the payment or to create a forfeiture of it. If therefore, it reach of course comes within the first rule & general rule.

By our Statute, providing such a Penal Bond, condition for the payment of a Debt at several times or by instalments. The Court of Equity are allowed to change the penalty so that it shall recover only his actual damages. That is, if one forfeits instalments, he recovers that but that only. He must then bring Deed Seizing or Decree Seizing on the Judge to have them for the other instalments as they become payable. This has been a more statutory regulation & is contrary to Cpr. Stat. Ch. 35 6.

But on the other hand of Rent is reserved at so much per annum payable house & by quarterly instalments & an action lies for each successive payment, i.e. at the end of each quarter. Some it may be asked what constitutes the difference between payment of Rent by instalments, by a single Bill in the same amount? The aggregate payment of a particular sum is then completed the end of each year.

The difference is this, the aggregate sum constitutes an entire indivisible debt, as before explained, but Rent is considered as part of the reservation of the issues of the Lands, which shall have accrued on the day appointed for payment. The year is merely a measure for the for proportionate but the principal difference is, that the quarterly payments are, in the nature of distinct Debts, & do not altogether constitute one entire debt, as in the case of a single Bill. Indeed if Rent payable quarterly and not the whole when due, that which is payable yearly, for a term of 10 years, could not be collected yearly, but the whole must be collected at once, at the end of the year, which would be extremely inconvenient or oppressive. 3 Co. 29 - 10 Co. 129.
On a Bond or Note, for the payment of an aggregate sum by installments, an action at Assumpsit in Assumpsit will lie, where the first installment becomes due. So, so with the Debt on the Bond or Note will not lie, until the last installment becomes due. Cases, 721, 817; 165, 324, 9 Co. 44; 8 Co. 53; 8 Co. 155. Rule 166, 175, 315. Section the first clause of the Rule, ibid. 110.

The Rule, you perceive, is this: Act a Debt on a Bond or a Note. Bond or Single Bill, you Act on the Bond. On this subject there is a great deal of confusion in the Books, arising from the use of improper language. There appears here no discrimination between bonds & single bills, or between Act of Assumpsit & Single Bills, nor any precise Rule of damages.

To repeat the Rule then, Act a Bond or Bond. Bond on a Bond, you Act on the Bond. On the amount of an aggregate sum by installments, the debt will be discharged in installments when each installment is due. If the whole is due at once, the debt will not lie, but, until all the installments have become payable. On a Note or Bond, an action of Assumpsit, Breaks or Assumpsit, will lie, when the first installment becomes payable & so forth. The suit, covering in each action, what is due at the time of the debt will not lie, and he cannot all become payable.

The difference in these cases arises from the form of the actions & their effect proceeding. Act a Bond, Breaks or Assumpsit is to recover damages, in the case actually sustained, but a Bond & Assumpsit will lie in recovery of the first payment, but Debt will not lie, but for the recovery of the whole debt, & if not paid all the installments are due. Unless indeed in the case of a Bond, when Debt lies on failure to pay the first installment, the whole is reckoned. Perhaps the debt, because of the form of the Bond, which becomes defective on the failure of payment,
If there is a court or note by several sums at different times, there being no aggregate in the case, it is clear that an action of Coa. & Broken will lie, & so I take it. And I conceive that debt will lie for each successive payment. I know of no such determination. There is a covenant to pay $200 on the 1st. of Jan. 1792, & $400 on the 1st. of Jan. 1793, &c. Were there not perfectly in instalments of the same debt due in no aggregate instalments? They are in the nature of separate distinct debts. That Coa. & Broken would lie, appears clearly from the former case. In R. Bill 163 - Oct. 776 - 807 - 90 - 1279, &c. 351 - 1 Jan. 2924.

There being no aggregate in the case, it can make no difference whether the obligations, from these several sums are in one installment or in two or ten. The difference between the two cases is, that there is not, as in the former, an aggregate debt divided up into several payments, each one constituting a distinct debt. Whether the case is precisely like that of which I conceive to pay $200 an annuity of $100 on each $100 for 2 or 10 years, etc. Debt lies for each payment and behinds due, but for this opinion I have no authority.

A clause in a Coa. & broken note, is not a payment of any instalment. The whole debt shall immediately become payable, is good. Ch. A Coa. & Broken to pay $1000 in 10 equal installments, with an express stipulation that if a covenant to pay the first, or any subsequent installment, at the time appointed, the whole sum shall immediately become payable. Ch. Bill 212-13. In Coa. Jan this appears to be a dictum opinion, expressed, but the Rule I conceive to be correct.

On this. In Ch. any number of breaches may be assigned, and in Coa. & Broken's, for one is a perfection of the whole. Ch. 76, 413, 4, 145 - 2209 - 192 - 1277, &c. 92 - 2 2209 - 37 403 - 18 - 189 - 50 - 51.
And many by Stat. of 5 & 6. W. 3. left over assign amongst the beneficiaries, & he pleased to attend on Board, or the performance of Consecutio & therefor. 1 Bov. 344. 2 W. 377. 3 Bov. 466. 9 B. 71. 118. 12. 71. & 118. 376. & 457. 462. 1 Ch. 417.

Same case. In treat of the Rights & Consequences of the Representation in this action, i.e., representation of the original parties.

In the language of the C. P., the personal representation of the Consecutio, i.e., his Quid. w. Consecutio are implied in himself, for they are bound as a matter of course, without being named by those consecutus, by which he himself is bound. This by the way, is only a general rule & not universal. Matt. 5:19. 2 Cor. 14:1. 2 P. 7:9. 1 Bov. 170.

I observed, that this rule is not universal. There is an exception to it where the Consecutio is fiduciary, or where it is founded in personal confidence, placed in the Consecutus or the party contracting. Thus in Master & Servant. Thus a Master is bound by Co. A to instruct his apprentice, not by the law of fraud, but for the Consecutus fiduciary confidence being placed in the master, who suffered capable of instructing. Some copies (not, as a personal representative when the responsibility does not devolve,) that it is generally true, that personal representations are bound.

C. 553. 1 Sid. 116. 1 C. 27. 1 2. 1667. 1679.

But the personal representative could be liable, even in the last case, i.e., where the Consecutus was fiduciary, if the contract broken in the life time of the Consecutus, for a right of action accretes after, then is his life time, & it a claim on the personal of Consecutus, should pass into the hands of his exec. or administrator. C. 476. 479. 573. 1 2. 3. 1679.

And an ancestor or any person dying in the way, and his heir at law, by a Consecutus & the Consecutus having Consecutus, this to convey real estate at a given time, dies before the time.
his heir may be compelled in Chancery to make a conveyance of it. The executors, however, in general go to the Executor of the Decease.

Indeed it is a general rule, that where the real is in the hand of the Completed, he, on the other hand, descends to the heir of the Convenants; & as in the last case, if Convenants had died before the performance, his heir might have compelled performance. This rule is of more extensive application. Bull. 125.- Wallst. & Felshtra. N.B. 343. 1794.

And the heir of the Convenants may also be a Caut. Real. The real estate, provided the Caut. real with the land, happens to continue after the actual breach after Convenants' death, I shall explain hereafter what is meant by “Caut. real with the land.”

Thus, if lessor, Caut. with lessee, to lease the land, Convenants in ejector & Convenants dies before the execution of the lease, the heir of Convenants may recover of lessee, if the breach were not left in repair, for the breach of Caut. real; place after the death of Convenants. Yet the term had not then expired & did not until the land descends to the heir of Convenants. The lessee or Convenants then had sustained no injury. Therefor the action belongs to the heir & not to the Caut. real land. 2 & 31. 42- 305. 37. 1794.

None of the distinctions are artificial, & are important & should be well understood.

Again, there is a Caut. real, with B. by be highest for quiet enjoyment; in a lease of the real, he breaks in the life-time of the Convenants, the Caut. real was of Convenants' real his heir is entitled to the action at his death & thru, whether the heir was or was not named in the Caut. real.

What, then, is the distinction, between this the former case? The only injury in the preceding case was to the heir, therefore the right of action was his, but here the damage occurred in the Convenants' lifetime. The person here then, was the Convenants; he had the exercised that right. The money was
We would have gone into his personal funds, there for his personal representative, and the hire. Sec. 5201, Vol. 12, p. 120. But the implied case in a deed, or conveyance, is not
liable, when it is broken after Condemnation, &c. &c. F. Brande, p. 371, 423. in the words, "give great, demean or, &c., she is not liable, though an express contract he would be for in the last case. There is a principle of Contract extending other Representation. focus in the former or implied coo? The right of recovery, says H. G. 2, 5, &c. found out on a private proof. This is a right of the App. has none; the succession descends to the heir at law. It follows, then, that the heir is not liable for the breach of action, following the estate. 1 E. 4, 157—1 B. &c. 533, 24037.

If an Estat. or Adm. comes into possession of a Lease on Tenure for years in his per., capacity, he may be considered: as an assesse of the term, it may be paid as such. He may be described in the Deed, as such, for he is strictly assesse, by operation of Law, having assigned to another he becomes assesse by deed of the parties. The assesse, or Estat. here is liable for breaches occurring during his continuance in possession on the ground of priority of estate. 1 W. 2, 4—1 W. 3, 4—2 S. 2, 224.

Having considered the right of the heir of the covenantor, let us next advert to the liability of the heir of covenantor. The General Rule, here is, that if the heir is named in the Estat. as real until by descent, he is liable for breaches of contract, either before or after Covenantor's death, to the extent of those with. But if he is named in the Estat. &c. &c. he is not liable. Thus suppose A. making a Covenant for himself, &c. &c. the Estat. is broken, the heir is named by the Estate of the co. &c. so the heir has, has no further. 1 T. 3, 57—1 B. 3, 66—10—5, 44, 2 Bl. 3, 78, 8—2 D. 2, 241.

In all actions at law, the heir at Law, (mention this here, the it is a rule of practice only) on a Cause of action, the succession of the heir at large is one bar, yet he is bound on no Cause of his own, and not because of the funds in his hands; he is not personally liable; the property only is liable.
his infancy could be plead only upon his incapacity to contract; had he not purchased what he did contract a sale. The Co. is the act of his ancestor, who commenced suit.

At Co., the heir at law, as such, is named in the complaint; he is the descendant, in law, of the ancestor. The Co. is certainly bound at Co., a common law purpose, even on the personal representatives at his election.

But in these States, the Statutory regulations have materially altered the system of law and regard to the heir. And the Stat. is in those States, where such Stat. exist, pointed out the general mode. It is done here under the order of the Judge of Probate, and the heir is made liable, as de facto, the whole system. I think that at Co., the heir is liable, that it makes no difference whether the breach happened before or after the death of the successor. And as those States authorize the State to make the personal receiver liable, viz. he having the entire control of deceased funds, the heir, in this case, cannot be liable.

With regard to a breach of Co. of Warranty, happening after the death of the Converse, as a day of the heir is liable in Co. at Co. of S. Co. makes it the exclusive duty of the Co. to satisfy all outstanding claims against the deceased. And therefore, will, all Co. of Seizure, Seizes, as a Co. of Warranty.

This may well regard to the Rights & Liabilities of the Representation of the original parties to a Co.

Of Converse, that are used in Converseances, are said, to have with the land”, viz, to follow the interest whenever it goes. Matters are denominating collateral. Now a Co. is said to have with the land”, as I understand it, when the obligation created by the passage from an assignor of interest,
so as to declare upon whom I lend the assignee, or in other words, how it passes or the title passes. In fact, it amounts to the same as the Bill presents the title to the purchaser. On the other hand, there is a rule, which does not pass with the interest or subject matter of the conveyance. In other words, "ass diamonds with the land" are settled collateral, and out of this distinction a diversity arises as to the liability of assignees on the conveyance used in Consequences.

The subject of the first general Rule is, that the assigee of a Lease is liable for breaches during his possession, the word named in the Lease, provided it runs with the Land.

But on the other hand, the assigee on a collateral basis, if not named, is not bound. 1 John 343.

The inquiry then arises, in what case does the collateral basis follow or "run with the land." In as the liability of the assigee depends on this, a rule is, the liability of the different parties in a variety of cases depends on this, it is essentially necessary to understand it.

Where, as in the thing Consecrated, the done, or concern, which something runs or "run with the land," was in one of the time of making the Lease, the Rent or decree with the Land, it is therefore the assigee or Creditor, is liable for breaches during his possession. Thus a Creditor or 1 Easement. The Easement, the Coart, I repair the case, or "run with the land." The rule is the same whether the building were alone demised or the land with it. Here, you see, it runs with the Land, for it concerns a subject matter which was in use at the time of making the Paper. Therefore, the Consecrated Creditor is liable for any breach. 1 Will 511, 3 B. 451, 5 Co. 16. 24. 42b, 1 Co. 82.

So also a Coart by lesser Anew Client, it is said to "run with Land." For this, the Coart itself, is not actually in use, yet it is functions. So, in legal language, because the land or subject matter out of which it is to issue, is actually in use, hence of an assignee, he made the assignee is liable or not?
on the other hand, if the thing concurred. The done
or concerning which something is the done, was not in case, or con-
cept, was done or subject, regardless it concurred, the Coas, is collateral there
and, according to the set distinction, the assigee is not bound by the
lease, unless named, nor is he liable in case, even if he
were named. By his name is not meant his personal name, it
will observe; for it shall. In name, being "the assigee," there
is, suppose of. l. 10. v. 36, 37. Ean. 201. 5. 17, 1842.
B. c. 11. v. 30, 31. 10. 10. 10. build a house de
novo, & in the interest assigned to, by whom named in the
Coas. C is not liable. Then, for the Coas, is collateral. But did
not even to the land, the house was the house de novo, nor
in case of the time of the Coas made; but near the eed of
further, 5. Co. 16. 2. 1771. 2. 1771. 3. 1771. 3. 1771. 555. 3. 1771. 555. 3. 1771. 555.

To observe this distinction between this, & the last case,
it will be necessary take somewhat recitations. If the Coas
is 5. 17. 10. V. 30. 31. 10. 10. build a house de
novo, the assigee is bound by that Coas. If the Coas, be not a building, the assigee is liable for the
same reason, that the subject matter was actually in the same
potential to be building out of what was in case; but when
the Coas was to build a house de novo, assigee is not liable, being
a distinct collateral Coas, which does not follow the interest.

But as the contrary, a Coas which goes to the supporter pres-
ervation of the thing demised, is said. B. 3. 1. 3. 1771. 555. 3. 1771. 555. 3. 1771. 555.
Therefore, both the assigee of the interest, the not named. Of
This distinction is a Coas. P. 3. 1. 3. 1771. 555. 3. 1771. 555. 3. 1771. 555.
also of how Coas to be. He. 3. 1. 3. 1771. 555. 3. 1771. 555. 3. 1771. 555.
by ploughing the premises with the land, as the farmers say;
"it plough the land," i.e., the support or preservation of. These
were this Coas, passed with the title. Then the assigee, though
these were, he injures the quality of the land is not liable.
In laying down the first two general Rules on the subject, I observed, that 1st. The assignee of a Grant, is liable for breaches of the Grant, whether agreed or not provided, with the grantor, party. But the, on a Collateral Coa. of not named, he is not bound for such breaches. Again.

It is a 30th Rule, that, if the assignee were named in the Coa. The assignees are bound in general, whether the Coa. runs with the land or not. 5 Co. 16. 4. B. 34. This is a old and wise Rule. It shows a well of assignee. So if the assigree, before the time set for performances has expired, does not build, he is liable, for that covenant, for himself, & assignee. Assignee, there is bound by those covenants, which concern the demise. So if the Coa. had been to plant a Grove or an Orchard &c.

But the Coa. being for the assignee must be a thing, which relates to the thing demise, or subject matter of the demise, otherwise the assignee is not bound, the named. In other words, he is not bound to do any thing, foreign to the thing demise. Thus, if B. a lessee Co. A build a wall on the land adjoining (on the land adjoining) which he afterwards assign to D. to build other lands on, and then agree $6. C. not bound $6. C. reparo, for this has no concern to the subject of the demise or lease. So if the Coa. were $6. C. to co collateral, such a same distinct from the Rent &c, in Gross. 5 Co. 16. 4. B. 437, 1 T. 352.

The reason why the assignee is not bound in this case is, that he is in no privity, but that of estate. Priority of Contract, does not bind him. Ge, who takes the assignee, but from the original lessor, is not bound by the contract which is do not exist, concerning a subject not contained in the lease, himself, in which he alone has an interest. The Coa. being relative to another piece of land not
contained in the demise, in nothing therein, and in regard to
that land, there is no priority of estate to his assignee, or a lesser, in nothing but priority of estate can bind him;
such an assignment, as this is another deed of total
with intent to bind interests by virtue of which the assignee
is bound.

But when the assignee is bound according to these
distinctions, he is liable, only for such breach as occurred dur-
ing his possession; or the continuance of his title. If a breach
of land occur before assignee, the assignee is not li-
able. The continuance of the land, the he is required, cannot
be paid to the lessor. For at the time of breach, assignee had
no priority of estate. Thus, suppose A, B, C, to "the
beneath, deed from W, Y, Z, if they assignee to E, F, G,'s
not liable for what occurred before he had interest. Fett
374, Mc. Cas. 177, 199, 3 Com. 127, 128, 380, 1
long 376, Doug. 443.

The obligation of assignee is bounded by priority of
land, whether it is bound, because he takes the interest, to which
the same are attached; of course, his liability can be co-
extensive only with his interest. I cannot commence before, nor continue after, that interest. Hence the lessee con-
tracts, in his house, within 10 yrs. the time having passed.
If the same not being performed, if the assignee, his as-
signee is not liable, the named, for the breach accused.
In the right of action, was completed before the assignee com-
pleted his deed. No. And

Again, an assignee is not liable for breaches, which
accrue after he has assigned, a transferred his interest,
re a subsequent assignee; or for this Rule corrim. That if
the assignee the more any breach is due, he is liable, on no
part of the Rent, Cas. 177, Doug 735, 3 Co. 22, 1 Salk,
51 or 31, Bul. Nov. 90, Bull 157, Hill 77.
The reason is that the amount is deemed due at the fay day arrires the whole aggregate personal property for which the debt is due is due on that day not the money itself and the debt is due before. The rule therefore does not affect the lessor, so he is liable on his own contract, by the Rent if it is not paid by assignee at any distance of time.

The rule that the assignee is not liable for any part of the Rent accruing after assigned is a rule that has been so rigidly construed that he is not liable at Law, although he assigns for an Insolvent, and according to some opinions at the Lord, for the purpose of defending the assignee, the true principle, it appears as manifestly said that if the assignee is a beggar, by a show conscience he would still be considered as the Tenant is subjected to Dues, the weight of authority is against this, Adm. 483 Sec. 172-173 p. 166-171 Bar. 173-174, Sec. Contr. That an assignee by show will not protect assignee, Sec. 329 31. But this authority food may not stand, if the assignee would be good, that he is not guilty of fraud if he assigns to a beggar, Sec. 329 32, note 10.

It seems however true that assignee is considered the assignee of the assignor, unless indeed there were a continuance of force after show conscience.

And if assignee than assigns to a new covenant, who cannot bind himself to the benefit of the assignee the Rule is precisely the same. Doug. 455 a 455.

Now the reason of this has in effect been given already, that the assignee is liable only the assignor, and the assignee assignee owes before his liability to a right of reversion, in the event he is not liable for any part. And hence home is, that equity will relieve assignee to account for the rent, during the time that he occupied or 30 years after the subsequent assignee is involved, 1 Barb. 351-3. 2d 87 1465.
Whether a Court of Equity under any circumstances can restrain an assignee of an Inheritance from assigning to a third person, with an intent to defraud, has been a disputed question. I should not think it could. Whether the assignee shall after assignment be subject to another action? But it seems the going very far, any Court to say, that they will prevent his assignment, because it might be injurious to a third person. 2 Am. 219. 1 Tom. 351.

If an assignee is entitled to part of the premises subject demised, he may be compelled to pay (at equity) for the residue of which he remains in possession. For this purpose the Rent is proportionable. Thus, a lease for 200 acres of which 150 is entitled 1/4; for the remaining 50 acres of which he continues in possession, he may be compelled to pay Rent 2/3 of 2/5. When then, it may be asked, if he not compelled, when he has continued in possession for 11 months & has then assigned 5/11 of the Rent? For a reason already given, the whole Rent accrues only on the day of payment; but in the case of a partial possession, it is defereed to continue in host of that part from which he was not evicted, till the day of such payment. Therefore the Rent is, in this case, appurtenant in a Court of Law.

Also if the original lessee is entitled to a part of the land leased, as 50 acres out of 100, he may be compelled in an action of debt, to pay Rent for the part of which he was not evicted, but in Co. 6 Broke, 257. The reason for this discrepancy is, that Debt for Rent when paid, apt. either lessee or assignee by any party is found on a priority of estate, which continues as to the 50 acres in the case above. Hence, he may be compelled to pay in that action. But Covenant (Broke) is founded on priority of Court merely & not a critic claim, grounded on a per-
sound, cost, is not divisible; therefore, such an action could not lie. In debt he may recover profits, i.e., the annual Produce
Rent, as is in the same ratio to the stipulated Rents that the
estate, continuing in Donne, bears to the estate demised.

It was formerly doubted, whether a COAT by lessee, not
assigning his interest to another, was binding in Case if the
doubt was founded on another, whether such an assignee was
not frequent to the nature & incidents of such an Estate. It
is now settled, that it is binding. In point, if the COAT is properly
framed, for the purpose, the Estate will revert to the lessee.
assignee. Dig. Cas. 180-3 Wilson 237. Ibid. 133-603-8 Tho.
37-60-880.

Such a COAT, however, by lessee, is broken only
by a voluntary assignee on his part. If then the interest of
a lessee is taken out by a createe, the COAT is not bro-
ken; for the assignee is made by operation of Law, and
voluntarily by act of lessee — it acts as though in intestate Dig. Cas.
180-17 Wilson 83 8 Tho. 37. Ibid. 103-346 237.

So is such a COAT broken by an under lease
of part of the term, i.e., part of the unexpired residue of the
said fee, that is not an assignee, in legal language, shall
have occasion hereafter to notice the nature of an un-
derlease. 4th 4th it differs from an assignee. Tho. and Vol.
post 146.

So is such a Dease violated by a devise of
the term & take effect from the death of the Devisor.
whether it be voluntary, still it is necessary that it should go
to some one or other, if the term is unexpired at the death
of the devisor. Dig. 3rd 20 46 2 dies at the expiration of 10 yrs. of the Dease. The unexpired residue must
of course go to some one; it must in short go to his Repre-
sentative, or Regatee. Therefore a devise of it, is no violation.
of a co. 2 Bl. R. 764. 3 Mls. 234, 8 T. 59.

Indeed it would be safe to lay it down as a general rule, that such a co. is not to assign in
trust to any assignee, appointed by mere operation of law, as the party becomes a bankrupt, an assignee, or
sells (i.e., the bankrupt, or what one once was). The bankrupt, only contemplates voluntary assign-
ment.

I have been considering the cases in which the assignee is liable, but I shall observe again that the
original lessee continues always liable on his express contract. The liability of the assignee, notwithstanding it does
not follow, that because assignee is liable, the lessee ceases to be. He is ever liable for breach by himself or
assignee. You see then, that he cannot by any assignment exempt himself from liability on his own express contract.

For if all the rent is to be paid for, you be the assignee for 20 yrs. i.e., I bind myself that
my assignee shall pay it in case they do not pay. rep. 3, 2 458. 3. R. 180, 440, 90-100. 1 297, 1 Fr. 199, 1 Fr. 354.

But if the lessor has accepted the assignee as his

Tenants, instead of the lessor, as he may do by taking Rent
from him, he cannot afterwards have debt for the Rent
age, the original lessee, for debt is from 2nd or priority of
sale. C. 393-3 El. 2 3 c. 2 3, 54, 1 Hill. 439-44.

But where there is an express contract to lease for
Afr. 751, he is liable on Cost. 2 Bl. R. 764, 3 T. 59.
The lessor has accepted the assignee as his Tenanter, for
in this case, the Cost (for the price of Rent, being express
the priority of cost remains, that the priority of estate is deter-
mimed by the acceptance of assignee as Tenanter. C. 297, 393-522.

Bro. 100, 1 2 40, 7, 1 237, 1 139, 1 354.
But where there is no express contract by lessee for payment of Rent, the lessor can maintain no action at Law against the original lessee, after accepting the assignee as tenant, in any event. If this, the lessor has accepted assignee, he can subject assignee to what is aptly termed the suit of a lessor on an implied cause, and the suit of a lessor. The implied cause is always founded on the implied estate between lessor & lessee, which is totally discharged by the acceptance of assignee as tenant. Hence there can be no claim against lessor by lessee for subsequent breach, where there is no express cause. But as to liability that accrued before assignee, the lessor must remain as he was. C.J. 329 - 9th 11th 12th 22d - 1 Dall. 335 - 1 Dam. 241 -

It ought here to be observed by way of explanation, that a lessee can accept of an assignee as tenant, not only by accepting Rent, or by an expressed assent to the assignee, but by any act which signifies such an assent: 11th 12th 23d -

When the suit for Rent is express so that lessor is habitually contemns after assignee. The lessor may pursue his remedies after the assignee: the lessee as assignee or after the assignee a suit at Law against the assignee in a suit at Law, and in the same time, 27 q. more than ever (except in) suits of action can be endorsed. He may however obtain costs from both. If after one satisfaction the party the latter may be recovered by an Andita Quercus, i.e., on Tender & Tenders of costs, he may be discharged. C.C.J. 393.

I now add further observe that by Stat. 3D 8th, which is an ancient 8th. prima facie binding here, lie quarters of the lessor or the remission of a most generally called by the same remedy on Conventions, & being with the latter, of the original lessor himself had, according to the distinctions above taken, he being placed precisely in lessor's situation. At any rate, it was supposed, that he had not the right,
And by the same Stat. the Grantee's Lessee or Assignee shall have the same power as the Grantee of the Lease, as he had upon the Lessee, according to the restrictive above to him, i.e. precisely the same power which had at the first the original lessor. And 31st 15. 16. 48. 13. 12. 22. 41. 3rd 15.

In explaining the law of the power of the Lessee, I observed, that the Rule, subjoined here, did not extend to a Derivative Lessee, or Sub-Lessee. The difference between them, I did not explain.

An Under-Lessee or a Derivative Lessee is one who takes a conveyance of only a part of the unexpired residue of a term; it is never considered as an assignment. Therefore, suppose it lease $1,000 per $100, at the end of 50 years. The assignee the whole residue $10,000 in the place of B. it is an assignee. But if after 10 years he had made a lease for 5 years to another term, and the whole residue $10,000 would have been a Derivative Lessee, and not an assignee. A Derivative Lessee may take the whole residue and the term to the time at which the term has not expired, and the person at whose hands the whole lease is, and who is under the name of a Derivative Lessee, who shall be, or who takes a conveyance of only a part of the unexpired residue of a term, or who takes the whole residue as Tenant to the Lessee. Day 17th 3. 7th 22. 2. 18th 21. 7th 66.

Again observe that such a Derivative Lessee or Under-Lessee is not bound by the terms in the original lease as an assignee would be accordingly to the Rule above laid down. The power is, that is to say, power of the lessee; there is no tenant or lessee, none of the estate, because he is not a party to the original contract, none of the estate, because he holds under lessee, who is possessed of the landlord. 1st Court. 31st 15. 14th 43.

The Rule, formerly held, is the same as the most of the whole residue, of the term, unless he takes part.
He meant not liable on the Court of lesion, unless he was the Mark, because he took and paid on incumbrances, and not as a purchaser. But it has since been determined, that the mortgage of the whole premises is liable on the Court precisely as a purchase, whether he be in lease or not. For the old rule is, Doug. 113, 113. Bl. 114, 114. 50, 340. Contr. 116, 116. p. 235, so the Court, opinions in 313, 313, 116, 116. 116, 116. 360, 360, 360. 761.

From what I have said above, you will perceive the difference between an Assisee and a vendor of lands. That is a vendor of lands is a Sale of the whole of lessor's interest, but a vendor of lease is the Creation of a tenancy under the Lessee. The assigees is a tenant of lessor's lease, and in a species of estate between them, but the lessor cannot have such priority with the lessor of course, he is not bound by consent in his favor, and the Lessee might he, Stra. 405, 405. 360. 761. 761.

Assigees are liable according to the distinction already taken, whether the assignment be by deed, decree, sale under the lessor, or as it would seem by any other mode of transfer by operation of law. Thus of lease becomes a Bankrupt, his lease is also thus transferred, if he dies, it is assigned by law. 761. 761. 761. If it seems to make no difference, whether the transfer the by operation of law, or the act of the parties, Doug. 177.

It has been made a question, whether an assigees of part of the subject of a lesion (not the lessor) is liable for heat in any part of the one other than on the. Real be thus apportioned? Thus, if lessor $45,000. 45,000. and assignor $40,000 of the same, can it come upon C. for part of the Real? Besides, 130. 130. 130.

Thus a mortgage of a recent decision, it would seem, that it might be thus apportioned. Do not, it has been decided, that where an assignee has been evicted of part of the premises, he may be compelled to pay
Read protest: in this case the Rent may be appropriated 2 ways.

1. The analogy between the two cases in 3 Sreet. 3d Weld. Thinks, that the Rent might be appropriated in both. Edw. W. 162.

3. Lessee. C. F. for himself passivously as long as they shall be in hand, & the other assignee continued in possession after the expiration of the term he is liable on the Cst. either at that time not strictly seazee or assignee, yet being so liable, he is liable as such on the Cst.ought be subject to he ought not. He allowed to assume the character of lessee or assignee to receive all the benefit of the remaining rent to avoid the Statute of Frauds 47. 2 Pet. 564.

Thus far of these covenants which do & those which do not run with the land.

There is another Species of Covenants which require a distinct consideration. Covenants of Bonds (in they differ only in form) to save harmless.

A Covenant to save harmless, may, first. Be defined as one by which the Co-

vanator covenants to secure or indemnify the Co- 
vener against some Case, Damage or Charge, wherein the covenant

ter may be exposed, as a Cst. by principal debtor, with his surity, as in a Bond of indemnity or Counter Cst. This spe-

cies of Covenants is not defined in the Books.

I would observe first, that these covenants are not broke

on by the tortious acts of another. They appear alike somewhat in the nature of a Cst. for quiet enjoyment, which you will re-
collect, are not broken by tortious parties of necessity.

If the creditor should greatly injure the security & Cco-

vanter, the Cst. is not of course broken, the a lawful enforce-

ment of the claim agt. the security would be a breach.

So if an assignee Cst. to save the lessee harmless
from any claim for Red. & the spacious illegally extera, it is not a Cast.

On a Coa. & save harmless, the Coa. may in some cases maintain an action against or the ground of this
more licentious a Coa. on account of the Coa. being
because the Coa. has suffered him to
become liable. This is usually the case where the
contract's liable by reason of the Coa. of indemnity was executed. Then a Ch.
where a Bond of Coa. becomes himself harmless as to the estate of a person having the liberty of the Bond. If the prisoner escapes, the coa. may immediately bring his action, either, he has not yet been subjected. For he was immediately liable over to the creditor, whether actually dammified or not, on this ground.

So also, if a surety, for a debt, the said indentures, take
a Coa. or a Bond of indemnity from the principal debtor & the
debtor fails to discharge the debt at the time appointed, the sa.
urety may sue on the Bond immediately, because his liability
is a breach that the surety has not been subjected or called upon
to pay the debt. 2 Bl. 94. - 3 Co. 74. - 1 Bl. 507. 2 Bl. 74.
2 Bl. 404. n. 23.

But suppose after the surety has recovered of the prin-
cipal. The creditor also calls on his debt of the principal, so that
the surety is not called on at all, the principal's only remedy is by
Bill in Equity. Stating the two Indemnities, with the attendant con-
sequence, & that the surety ought not in consequence, to retain
the money. The Court of equity will consider him as a Trustee
of the money will decree execution of it.

It has been made a question whether Indemnities
Assumpsit will lie, for this money a part the surety. I am clear
by of opinion that it won't; & by the principles of the Coa. there
is no case in which an action will lie, when the object is necessary.
affidavit of a recovery will be & invalid a former Indemnity.
3 Burr 1354 - Be Raymond's opinion. The case of Jones at Mr. Fairland (3 Burr. 105) does not apply. That case has been questioned. 7 Tall. 269 - Judge Beam, the deceased disagrees with the opinion advanced by the last authority. The substantive question of which that case in Virginia proceeds is correct, and the authority of the decision has much weight. 2 Rill. 1114-16, where it is clearly denied. 7 Tall. 267 - 1 Day 130 - 1 Rill. 666 - 4 Tall. 102. This case goes on the implied concession that it is not large.

If one having obligated himself as surety, taking bond of indemnity after his liability as surety was attached, he has no right of action upon the bond until he has been actually demunified. There is the former case (on other page) if he had executed a bond of indemnity 1813. After the original obligation were the single bills payable instead, or by promissory note payable on demand, the surety must have been actually demunified before he begins his action otherwise there is actually an invalidable instrument in the form, the object of the bond being clearly to insure against damages that are to arise in future by some act of the principal, or if the consequence in this case, and one on the ground of more liability, the court must be considered as impliedly ed instant that it was made. The surety is immediately liable, which is the intention of the parties. 1 Scat. 39-123 - The distinction is clearly laid down. 1 Scott. 196-5 Co. 24 - 2 Rill. 234 - Root 570 - 2 Rill. 494-533.

If the surety, having a bond of indemnity, is obliged to pay the debt immediately, he may have. Indeed the assessment is the principal, as for money had, paid, laid and expended for this use.
But if he has taken a Bond, the implied covenant of indemnity is merged in it & either he must present as the higher remedy. C. 294, 525, 57, 1 Plow. 190, 1 Plow. 579, 1 Hold. 13, 269, 346.

When there is no specially agreed upon indemnity, the remedy of the party agg't, the principal or upon the implied promise of indemnity arising out of the transaction. Now a right of action arises in favor of the payee of the debt, so what is equivalent of it being held in execution.

W. Miller 13.

The same remedy when an implied covenant exists between co-endorsers for contribution; when one has paid the whole or more than his proportion, he may claim from the others. Suppose A, B, & C, when two or more become co-endorsers, the last pays a recoupment implied on paper, that if one is found liable, it pays the whole. The other shall contribute to thus he may recover of each his aliquot part. T. B. 150, 268, 70, 219, 12, 11, 456.

If, however, there are more than two co-endorsers, the only remedy between them is in Equity, because the action would be so numerous & complicated, that the business could not be adjusted by Common Law. 218, 456, 230, note.

There are two Rules in regard to releasing co-endorsers that require mentioning. In the case of Choses in action a Release after assignment is, in some cases, good & effective, & in others not, i.e., in some cases will operate as a discharge, in others not.

On this subject the general Rule of discretion is, that if the instrument creating the debt is not assignable at law, a Release thereon after assignment will be effective to discharge it. But when it is assignable or freely negotiable, a Release after assignment will not discharge it. This agrees to a Note not assignable
B. assigns it (as when given by a release). The note is discharged because it being assignaible, the assignee, upon it must
be in B's name; or, course a release from B must bear the action. But if the note was not assignable, such a release
and a note effect for the legal title is transferred to the
assignee or endorsed before the release is given, so that
B, judgment, at the time, he was in C, who is bring
the action in his own name.

In pursuance of this principle, if a lessee, after
on assignment of his predecessor, release to lessee all the
court in the lease, still the assignee of the succession can pre-
cede for all the breaches occurring after the assignent, notwithstanding the release, for the predecessor is assignable,
so that the assignee has the legal title. The action is due
by his name. 4 Co. 786. 6 Co. 503-1 Kent. 345.

It has however been determined, that a lessee can
release his assignee of all the breaches in the court in a
lease, by a release to the lessee; this given after assign-
ment, provided it is given before action had, by assignee
in accordance with the rule of recovery by action. Why such
a release should occur to be effective, in case of dis-
cance, is contrary to principle, for analogy that it should
the case supposed is of a cause running with the land;
it is precisely like a negotiable note, the legal title un-
der the court passes with the property to the assignee, yet
it is said, that if assignee gives a release before action
but, it shall discharge assignee. Hence, as the Rule is well es-
thablished, 4 Co. 786; 5 Cal. 397; 1 Dan. 111, 103; 302. 8 Co. 308.

It is a general rule, in relation to covenants, in
general, that a release by covenants to covenator
also, in the most general terms, as of all claims, demands.
quite actions &c. given before the Court is broken, is not
for the action on the Court, because at the time of the release,
there is no demand existing. There is nothing with a release
given from a lessee &c. for an act not to be afterward voided.

So too, if a Release of all demand is in the lease, or in the
release, it does not affect the Court.

But a release of all demands or is terms, equally general,
whether it is in a specially broken, discharges all damages for the
breach. And if one deed contain a variety of Court, some
special at the time are broken, if some not, the discharge will
not affect them, only the former.

But the General Rule before said doth not go, that
Release of all claims &c. demands, before Court, broken,
does not affect the Court, cannot as some one, extend to
absolute Court, for the future payment of money, because
they create a debt, it is present, if these actually is some
thing else released. Something in the nature of a demand,
there is, there in this respect, no difference, because a simple
General blank (note) - whereas debt will rise, I think the
rule does not apply, and a release of all demands will clearly
release all unconditional, engagements, or absolute instru-
ments, for money in future.

A Release of all Court, this executed before
a breach occurs, will discharge a Court of Warrants, Indentures
and in specie, or any other Court, it has all actions upon
there, for there is no material difference between a release of
this kind, of "all Court," or a Release of "all Demand,"
according to the terms of this release, it must act directly
the covenant, "I release to you all Court," Such a release
Of Ploudings in Court Broken.

Under this head I shall recite some of the Rules that are exclusively applicable or at least appropriate to this action.

The Saluar i dium. The action of Court Broken must always rest upon the defect, concealed by Deed, and this is an indispensable accessory, because at law a Court cannot exist except by deed, or a writing under seal; of course, without such an annexment, the Deed would be ill.

And there is this distinction. The observation, that when the instrument is under seal, damages Broken lies in the proper action, but Case, or Assumpsit, will not. On the other hand, on a Court, or writing, without seal, easer Assumpsit will lie, a Court Broken will not, because Court Broken lies only on a Court. There can be no Court without Seal. 1 T. R. 519; 2 T. R. 153, 209. Sta 911; 1 Chitty 593, 514. In this last authority some exceptions are mentioned.

In an action of Court Broken, every day, after settling out the terms of the Court, must alight a breach, fourth, and a breach, there is no cause of action. In most of the Rules in this part of the subject relate to the assessment of the breach.

1. The first Rule is, that when the Court is good, a year, assignee of a breach is safe, if the assignee of the breach made the year. This Rule will not hold, as in cases, as to plead in performances that of Grantor, &c., assignee, that he was well seized. It is safe, for assignee to allege, by way of breach, that assignee at the time was not with seised in the deed.
of the cost, with the more instance of a negli- 

gence.
So if one cant not buy on sell certain articles, with 
in a certain place, the same answering that the de- 
scription persons are diverse persons within the period stipulated, 
is safe, without specifying the same. N.L 8 Ch. 147. 8 B. & C. 
139. Ch. 4. 8 Qd.

The more general assignment is in the word of the cost 
This in gen. is the more easy, better way of assigning 
a case of Cost of Seisin, the most god asset is, the con- 
cumber will not well seized, merely negating of the cost. S.C. 
S.C. 8 Co. 60. 8 B. 8 Qd.

The fines must be always so assigned, as appear 
on the face of the Record. The clearly not necessarily within the 
Cost. Then when lesser commenced with lesser to eat some 
whether, they may necessary for repairs, an answer, that de- 
had out to the value of a $100. would not suff. - the Law know 
nothing of the quantity necessary for repairs. That is a question 
of fact. The value of the timber necessary for repairs might 
there been $100. - So that it does not appear on the face of the 
Record, that the cost was Broken. There was no apparent 
cause of action, the answer should have been, that de- 
t out a greater value of timber, there was necessary some pairs 
513. $100. Vol. 83. 8 B. 8 Qd.

If the oft, after assigning a breach, narrates a quality 
it by subsequent words, he is required to it as then qualified, must 
so confine his proof. Thus, when one contends to use the land 
in a husband-like manner, the Court for a breach averred, 
that customer had not used the land in a husband-like man- 
ner but had committed waste. If the latter words had been left 
bout, there had been no qualification, leaving the assignment 
good. This might have proved whose was misconduct or 
 neglect, which amounted to a breach; had by that qualification 
it is considered as stating the breach done occurred, in that par-
Form of using the Land in an husband with the manner, the 3d must procure Waste or lose this action, as this the case is confined, if by this order it does not proceed the preposition, the 
ancient order have been better, had it been, deft, cannot be for the her committed Waste. 3 P. 307.

When there is a promise in the deed, defeating the cause in a certain event, the party need not call for his own negligence, it, for it is in the nature of a defeasance, of which the deft may prevail himself, as may be observed. But deft answered that he would deliver certain goods at a certain time and place, provided if he were not prevented by the dangers of the sea, it was determined, that in Simple and certain, as from delivery at the time and place without more was past. But that the omission of the proviso was no variance. But by deft. may he that the cause contains a certain proviso, whereas that he had been exercised to the dangers of the sea; for as perfect the rules of pleading, this proviso is similar to the condition of personal goods. It is a defeasance which the deft. need not rely on his deed. R. 65. 3 P. 300.

But the Rule is this, as to this express in the book, if the exception must be set out and negatived. If deft. be annexed to a case, it is properly a defeasance it voids of a defense for the deft, that an exception is part of the case, which, entering into the actions of this subject matter, if omitted, the deed would be ill or Demurrer. Thus a case of conveyance of a defeasance, the interest of A. This is not a case of conveyance a good title, without more. I did not intend to convey the interest of A. The exception, then it is clearly a constituent part of the case, an omission of it, therefore would not make a variance of the deed, might be demanded. Ed. 3 P. 300.

If the case is in the alternative, as to do one of two things, the breach must be assigned as to both; otherwise, the
But an assignee virtually in form is in the alternative, are not always so in legal effect. In such cases, the last Rule would not apply. Thus in the case of the fund paid, it is safer to answer that the assignee has paid without giving more, or causing the bond, as in effect paying thereon, to be paid in accordance with the statute "qui fecit non habet qui facit horum," and evidence that the assignee paid the fund, and without a plea, that he himself had paid. 1 Sw. 297. 1257. 300.

Again, when one asks if pay one of two contingencies which shall first happen, an assurance that either shall happen is as good as if the fund paid, in the event the death of a person, or the marriage of a person, or it shall first happen. An account of the occurrence of either or both, because whether it be the first or second condition, provided the one has happened.

1257. 301.

On a Cont. that an act shall be done by a certain or his assignee, if it occur in the best aps. assignee, the breach must be laid in the assignee. But shall it have been done by a certain or his assignee, for the assignee might have done it, either the assignee himself.

But if the action were best aps. the assignee it would be true, and is as good as to allege, that he had not done it without more, for when the action is the best aps. it is presumed, that there has been no assignee, that when the action is the best aps.,
The first rule then is, that the breach must be laid in the assignee, as it was in the present action, and if it is alleged in the assignee, that he or his assignee will abide the breach, within 10 years upon certain premises, if the assignee is assigned against 10 years after action, the breach, if the assignee has never assigned to the assignee under the discretion, had of a 10 years merely, it is as if he had not done it, 10 years. The rule is, that a breach ought not to be alleged above anything more than a 10 years, and if it be alleged, he need not anticipate any probable prejudice, or delay, there could be no pleading, if the breach is alleged, that it is not alleged, 10 years. So true, but it is particularly in the words of those.

So if one does an act for a man, if his assignee, as to make a consequence, it is such, for contrary, then, that the assignee has not made the consequence himself, the assignee is not presumed, and it does not appear. But on the other hand, if the action were made by an assignee, it would be necessary for both; the necessary case, that the consequence had not been made to the contrary, or his assignee, the draw. Then an assignee, of course, an allegation would be consistent with reparation. 1. Edw. 2. 3. Eliz. 1. 40. 5. Eliz. 1. 33.

In a covenant for the payment of a sum certain, there can be no appointment of the demand, or the breach must be for a sum certain. Thus, when the price of the Sum, concurred May 10, 1570, for 150L, alleged for the Sum, for carrying 20 days of 1562, or Mr. Jones, paid the estate, containing no stipulation, to pay by the fraction of a Sum, the above allegation is proved by consistent with the fact, that debt has paid for every
There can be no recovery without nobling him to pay for the freight of a CHARBON or a Load. But if the Cook had been being bought, then the allegation would have been good as the Cook would have covered the action 2
Dece. 24. 19, 93. 393.

This assignment of a breach would be ill on Demurrer, yet if Dr. [illegible], issue, instead of Demurrer, is verdict or if he would offer a verdict or some such answer or question, he might in this particular instance, take Judg. on the position or the amount or rate of the Damages appear in the Dece. 393. I. 655. 1. 66.

Having explained the general rule in relation to the pleadings on the part of the Pleading. something remains.

The most usual Plea to an Action of Breach, is, that of Performance. It has been customary in 1st. Jus general in England, for the Pleader, when he has not broken his case, if the Pleaded are plea of performance or what is equivalent to it, viz. that he has performed.

I think however that such a plea cannot be good in any case whatever, for it refers to the day every point of law which may be involved in the question of Performance if it were competent for the Pleader to plead. If it might 

The particular facts on which the plea should appear, if there are any, if none, there can be no performance. It seems there is a question by eminent
counsel in England. Asequence of concluding his prepa-
ration of breach of l. It's, say, a 500 debt. he broke his cist.
A debtor pleads that he has not broken his cist; it
is said, that it is a good plea, because it is a direct nega-
tion of the decree & demands a complete issue. s. 2 f. 1-
81. But this pleading is certainly bad if the averred debt
is divisible, it being a mere conclusion from the special
date alleged. s. 19. 2 1. a 1712.

It is laid down as a rule, that when the asset in a
benefit are in the assumption, it is competent on the draft to
lead performance generally, & when the asset are specifie
benefit, to do any act of goods & not negatives, as to ab-
staining and doing them. 1 st. 3 57. 25th. 3d. p. 366 4. 1. a. 1621.

This rule however must relate to cases in which
the assets are complete, the donee, are in some measure in
ability of myriads, the court by shf. to return
all 3d. 1, or keep a D. sh. & discharge all the duties
of his office. The plea in such cases should be, that a <shf.
he has returned all 3d. etc. But such general pleading
is allowed in such cases only. 1s. 35. 4. 1. a. 1612.

But on the other hand, debt having contributed
assurance to do certain specific acts, if he hands in-
nuance, he must do, by alleging remuneration especially
of each specific act, or of the covenant & expenses
of all the lands of which I was seized on that day, if
I owe on that asset, it is not suff. for me & other debt.
I have ensured hien of all the lands, I was possessed or may
be, so that I have the my covenant at
I must plead, that I have ensured hien of such & such
lands. I then own, that they are all of which I was then
seized.
So any Dec. whose side on his Bond or Cant cannot

who that he had kept his cove, nor that he had paid all the

Sexages; but that he has paid such a legacy to B. Such

a legacy to C. I say now, that these were all that the

Will contained, for 1747 1 Augt 11th note 1726 752 6 deg.

39° 30' 12° 30' 30° 49' 45° 1 17° 151

The General rule then really is, that when cove and

performance must be pleaded specially; the other

Rule shall first be laid down, that if no pleading is

general, it may be pleaded specifically, with the same effect of

avoiding probability, as in the words of Sir

Edm. Coke, saecundum infinitatem, & non necessitate

Respectably, for It is obvious, that after a decree and

have passed 3 years, in the required of such a moral impossibility

Says, that he shall not, in other specially all the official acts

which has been done in the performance of this duty.

And there are other cases, which are similar

as when a Brewer conveys to deliver all the grains thrown

out of his Brewery, he was affected directly generally from

necessity, and such cases such kind of pleading is allowable.

Coat. 54 1707 553 60 749 96 1730 64 60 306 2 305

And a plea of performance, whether general or spe-

cial, otherwise than in the words of the case, is not corre-

sponding with the words of a case. It is ill on gen. Demurrer.

The reason of this rule lies, that if the plea does not conform

to this rule, it of course, discloses no such defence. 1 354 245.

Thus suppose an action 1st of Aprt 1752 on a Cant. I say

all legacies, in a will, the landlord, that he has paid such

a legacy to B. Such an cove to C. I say, and it without more,

would be ill; for either in fact these may be all the legacies

questionable, or if they do not appear, the landlord, and the

necessities were all, that he will contain, which would be

concluding in the words of the case.
I have thus far spoken of affirmative acts. When, on the other hand, some of the acts are in a declarative negative, they cannot plead performance specially as to them. If, when all are negative, he cannot plead performance specially as to any of them, and when some are affirmative and some negative, he must plead as to the negative cast that he has not done the acts connoted. As to the affirmative, he must plead according to the Rules above laid down — there is a solici citatum. Saying that one has performed a negative act, performance presupposes an act.

If, however, he has not pleaded, that he has performed, it doth not mean that he has left his case as the plea is defective only (profession not in substance), advantage can be taken of it only by special Compl. Inst. 223-293. 1 Inst. 323. 2d Ed. 5371. 1 Wend. 71. 2d Ed. 305.

If there be some cases in a declarative negative where affirmative acts are void, the negative acts are void, he may plead, as if they did not exist, without noticing them. He may plead merely performance as to the affirmative ones. Thus, if in an ejectment, among the defenses were to consent not to execute a particular kind of process — by the Rules laid down in Title of Shropshire Charters such as a Court is illegal & void, it is the Court, not to do one's duty. 1 Sand. 623. 11 Wend. 580. Meem 886. 2d Ed. 117.

When one cast is in the declarative, acts must show by his plea which of the two things he has performed, as if he had conceded to convey a certain tract of land or pay a certain sum of money, he must allege in his plea which of the two he has performed. 1 Inst. 303. 2d Ed. 659. 5 Co. 139. 1 Sand. 117.
And it is said, that if he pleads performance without this specific allegation, he plea is in General demurrer. See the Rule of Evidence, sec. 333. Co. D. Ch. 2.

This rule does not appear stated on principles, for the defect is not in the substance of the Plea, but in the form of it. But if the case is upon the special demurrer, Sec. 333. Bacon, who, however, is not of the last authority. 4 Bac. 111.

When oneicompts to do an act, which consists of what is termed matter of law, as to make a conveyance, or execute a discharge, not only he who has made it must plead, but also he whose shall, the Court may know whether it is right, in law, for the construction of such conveyance or discharge, or whether it be so, shall appear of record. D. 29. 9 Co. 25. 107.

On the same principle, if one should do an act, which must appear of record, as to levy a fine, or to suffer a common recovery, he must allege performance of the act made, for this is matter of law. 56 Co. 56. 56 Co. 56.

There are some rules of pleading, which apply exclusively to Bonds or Courts. of indemnity on the part of debt.

One such Court, or Bonds, Debt, may sometimes plead a new, demurrer of non-performance, even if he has not been dammified. In other cases, the plea of pleading is not correct, for debt, must plead not only that the defendant has not been dammified, but also, the plea made in which he has prevented it. One thing, subject to the first. General Rule is, that if the Court is to discharge or requisit
the convenience of any particular thing ascertained in the instrument required, as of a Debt or Bond, or other new demand is not a good plea, he must plead that he has acquitted or discharged the same according to the terms of the case. It will be the quia modi, as by payment, tendere, &c., before 3 H. 2, 2 Co. 14, 2 Bl. 243. 4 Bl. 382, 4 Bl. 382, 1 H. 2, 3 Bl. 382, 1 H. 2, 3 Bl. 382.

The reason is, that as the debt has been paid, it is a quia modi. In such a special act he must plead performance, especially according to the rules already given. If the thing done consist of matter of law, he must plead the quia modi, but when the act is general & done harmless, no indemnity is to indemnify the debt or obligation, or duty new demand, is not a good plea. He must not plead, that he has acquitted or discharged the same, according to the terms of the case, it will be the quia modi, as by payment, tendere, &c. Because no special act is warranted. The debt merely costs & being about a certain result, viz: the due & harmless, the manner is not specified, it may be done in various ways, by cancelling the obligation, &c., discharge, &c., tendere, &c., 1 Bl. 382, 4 Bl. 382, 1 H. 2, 3 Bl. 382, 1 H. 2, 3 Bl. 382.

But whether the cost is good, as to some harmless, or particular to discharge or acquit costs, of anything not ascertained in the instrument, not specified, as of the damages, costs & charges that may occur in such a suit, new demand is a good plea. The distinction depends on the circumstances of the things being ascertained in the instrument, as in 3 H. 2, 2 Bl. 252, 1 Bl. 382, 4 Bl. 382, 1 H. 2, 3 Bl. 382, 1 H. 2, 3 Bl. 382.

The reason why new demand is a good plea, in both these cases, if that as the damages, costs & charges from which the costs is the discharged, are not ascertained in the instrument, is virtually a quia modi, & done harmless, or no indemnity, because now constant that any damager, cost or charges have accrued, cost in such a suit. Now, here, note a
diversely between the is a former case of a Cent. to recover to
discharge a debt be heard been claimed in the deed in which it
is clear that I can't & acquire upon of a certain existing
claim: and I can't & acquire upon of all damages that may
enforce: it does not appear that other damages have re
covered & there can be no acquittance of that which has
existence. I cannot plead performance quoad modo, ease
ably, & I hence prosecute & proffer my Cent. & I should
be entangled by the rules of pleading, if they required it. In
every is therefore a good plea, & it is in effect saying no
more than that the party has been damaged, by what I am
guessed should not injure him. Then if either damage has in
fact accrued, it may be alluded in the replicatio. 1. S. S.
inter. 3/5 - b. 369 4 - 2. 41 - 369. 12b.

When now again is a good plea, if debt or plea of
definitively, so that he has acquired & discharged self. and
not specially, i.e. point out the act by which he has done it be
cause his affirmative allegation implies, that he has done some
specific act, it he must show what it is. So it will not
be pleading, that he called self. harmless, without more than
it would do to say less. that self. has not been damaged. 2
b. 34 - b. 364 - 369 - b. 601. 91b.

If however debt, plead in the affirmative general.
because he has stated the self. harmless, without showing how
the plea is ill on Special Demurrer. for it is defective in form

Now dam. is not a good plea to an action on a Bond
or Cent. for the payment of money at a day certain, unless it appears
in the instrument, by way of recital, or in the condition of a Bond
claim, be given, as a general indemnity, for the obligation is
perform of a Specific act. 1. b. 369, 620.

If debt, plead wander. when the plea is proper the
of Joint, Joint & Several Covenants.

Any number of persons can be jointly & severally, they must be all join'd & deft in an action on the case. If two persons cost joint & severally, they may be joint'd as def't in the same and, or may be joint'd as def't in the same and, or may be joint'd & def't separately because they covenanted generally as well as jointly & may be joint'd & def't in the same and, or may be joint'd as def't separately because they covenanted generally as well as jointly & may be joint'd & def't in the same and, or may be joint'd separately because they covenanted generally as well as jointly & may be joint'd & def't in the same and, or may be joint'd separately because they covenanted generally as well as jointly & may be joint'd & def't in the same and, or may be joint'd as def't altogether, or altogether severally, if there are not without the third, the case is joint as to them & general as to the third. This is the good rule of distinction applying to all Joint & Joint & Several Contracts whatever, whatever & obligations, promises &c. Per.S. 26, 1 Ed. 1688. 2 N.P. 1788-1789, 3 B. & C. 697. 3 Th. 703.

If there are two or more joint co-owners, all must join or files in an action on the instrument for each co-owner being a separate action the co-owners must be necessarily subjected to as many actions as there are co-owners, 2 Th. 103.

And if in such case, one of two co-owners, one alone, deft. may either plead the non-payment in absolute, or for


If one of two joint co-owners dies, Sec. 24, 171
In some common cases when one co-own two or more jointly, especially, one may sue alone or anoth or all without joining. On this subject, the Rule is, that if the interest of the co-owners appears the general, this may sue separately, but if the interest is joint, they must sue jointly. Thus if a man brings the same deed lease to A, B., 
and C., and pays the rent to each of them as the whole, that he has good title, each may sue alone, because the interest appears the distinct and several it is not a lease of an entire tract to B, D. if lessor should prove B's title & B's, see it is no injury to C. 5 Co. 3-18-19. 2 Dean 41. 2 Mo. 160. Bull 157.

So also a Co-own $100, each equally divided between them, each may maintain a separate action, i.e. each may sue for his $50. At deed may declare when the co-own as having been made himself, without naming the other or in legal effect it is a distinct co-own each for $50. For the two deeds are in the same deed, yet the subsequent words make them several as they may be so declared on, each may declare on the co-own as it is free from his proportion. 1 Co. 729.

But if both the co-own are in one deed, it would seem general as well as joint. Still of the interest of the community at heart the joint, they must join in the action. As if A. co-own with B. D. say them or both or either of them $100, without the words "the equal".
If two or more persons concurred jointly or severally, each may be sued alone for the defaults or neglects of the other, unless the one sued had not been in fault, because each is in the nature of a solitaire to the other. Thus if two debtors, joint or severally, owe all the money given in debt, if it should receive all the objects of nothing, to the other thereby may be subjected on the bond of it, if it should come that B. should do a certain act, he may be subjected by B. default. Thor. 355.

And in these cases, where one of two persons joint or severally known, is sued and judged recovered against him, it is not bar to an action of the other, for both continue liable until the case is performed or paid. made, even if the debt be taken on oath, and committed for each is responsible at all events that payment shall be made. All proceedings not terminating in payment or satisfaction are no bar to future process. C. Co. 40. bro of 50. 3 East 237. 5 Co. 56. Chief 124. 125.
I have already observed, that if one of the joint obligations or co-contractors die, the debt or co-debt of the deceased cannot be enforced, nor may the survivor, as solo, enforce an action, nor sue with the survivor. So too, if one of two joint obligations or co-contractors die, the other surviving, the liability surviving and paying the whole, he may oblige Rept. to contribute.

On the other hand, if the co-debtor or co-contractor be discharged by his creditors, the other surviving the debt of the deceased is liable at law, not jointly, but upon a several footing, because when a general, it is precisely in the character of two separate contracts. 1 Kent 464.

If two persons are not jointly or severally then "or" in exposition is construed as "and,": if construed literally, it would be as the obligation of the co-debtor, they could defeat any form of action. 1 Kent 465.

If one of two joint obligations can be made liable to concurant, the obligation in the law, released in toto, as to himself, for one of the debtors, by virtue of the representative character, becomes credited also. He cannot save himself the law will not allow him to sue his company. 3 Co. 136, Salk. 35, 13 B. & C. 31, 1 B. & C. 34, 31 Edw. 3d.

That co-debtor discharged in an action cannot maintain Court. In this case, however, a Court of Equity may compel payment, or performance in favour of creditors. Legacies to unfortunate shall not in favour of their more. Acts, Vols. 160, claiming under the Act of Distributions, but this payment is controllably, when the debt, legacies cannot be found, with no. 3 Act 31 Thomas 240. Yet 16o. 20o 373, B. 254. 5 9 Mod. 62.

The reason why Equity will enforce payment in favour of creditors is obvious, a man must not be just before he
is generous. The appointment of a devisor or co. in a legal effect, making, being unlegated to the amount of his debt, be up a sort of negative gift. But what is an implied legacy? It is first bound to those that are express, but a legacy here, or implied is the property to those claiming under the Stat. of Limitations. This is the reason why the court is not confined in favour of heirs.

If an instrument begins “the 1st. etc. etc.” the signed thereto lived alone, he may be said alone on it, because in legal effect, it is his sole deed. Where there is no incoherence between the after words of the signature, the execution is safe, except $4. Indeed he merely takes the Royal style “that’s all.” 1 Burr 323 - 2 Cr. 37.

So if an instrument requires that A, B, etc., co. in the one part, it is does not execute it. A may be said when it alone, covering that C. did not execute it. I do not see, the use of a word with that sufficiently appears. It is absolutely usually inserted out of abundant caution. 2 Star 146 - 13 B. & C. 323 - 2 Cr. 37.

If two or more bind themselves in one obligation or to one promise, the co. is of course joint, tho’ the word joint is not used, unless the word generally means one obligation is made, which would imply generally of obligation. Thus the law is: A & B promise May 14th. $300 - without “jointly or severally” being used in the instrument; 2 M. 31 - D. Ray 1203 - 1 Phil. 236 - D. 1828 - 897.

But if a court or other instrument, begins “the 1st. co.” a promise or signed thereto it is several as well as joint; whereas if it begins with “he,” without words of, severally, it is joint only. Then “I” is used, it must be taken distin...
tidyly; indeed it is impossible to consider it joint merely. Gov.
Brok. 6b.
Dlay 1544 - 8 Re 26 11.

About made by a stranger subsequent to a not in
purposes of Cost. don't charge it, but where there is no more are in
which is bound by one will 37 No 26.
V. Bailment.

Bailment is defined. A delivery, either under a contract express or implied, that they shall be restored to the bailee, or according to his direction, where the purpose for which they are bailed, shall have been answered. 2 Bl. 452. Jones 3, 483.

Every bailment rests upon a qualified property in the bailee. This principle is of extensive practical application. It is said in the oft books, that a promise differs from other bailments, because the has a property in the thing bailed; but there is no such distinction. Every bailment confers an interest specially, or a qualified property in the bailee. Lord Coke lays down the distinction referred to. Bac. 246. Bost. 129. Jones 112. 7 Bl. 392. For the distinction, vid. 4 Co. 83. 1 Inst. 89. 2 Bl. 172. 3 All. 36.

Indeed it may be stated as a proposition that admit of no exception, that a mere lend or pledge which of course presupposes a present right of possession includes a qualified property or special interest determined in case of finding. Ibid. 505. 7 Bl. 392. 7 8 9 2 Bl. 452.

By the definition the bailee is to restore to the bailee, or order her. It is not upon this to be understood, that he is answerable in all events, for which he fails to restore it, yet if it be in consequence of a loss without any default on him, he is regularly not liable. Bac. 236. Jones 38.

But to determine when he is in fault in case of loss or damages sustained the nature of the bailment. If the quality of the thing bailed, as well as the bailee's own conduct are the regarded.

Different bailments require different degrees of care, for what would be deemed extraordinary care in case of large bulky articles bailed, might be gross neglect in property of a less or light species. Jones 38. As a box of Knick or jewels, and the principal inquiry under this title is
ascertainment in all cases what degree of care & diligence of the lessor and the lessee is required, on the ground the lessor is bound to supply the lessee with as much care as is required on the lessor’s part.

The least general rule is, that where the lessor incurs a general responsibility, he is bound to keep [as] the case may be, the goods with a degree of care proportioned to the nature of the thing.

An acceptance is said to be general when there is no special agreement, nor the lessor with respect to the degree of care or diligence; he shall owe, or the degree of responsibility he shall incur, when it is left [to the lessor] to determine what care & diligence is his duty to use, & to be accountable for, not using.

But on the contrary, a special agreement by which the goods are held is a special acceptance, by which the lessor’s liability is either extended or qualified, he may then enlarge or diminish his legal liability to any degree, by express ‘donum, humani capitis.’ When there is an express agreement, the one implied by law is excluded.

The law distinguishes the different degrees of diligence or neglect into three classes; without noticing the minute degrees that may arise among them.

Ordinary Care or Diligence. By Ordinary care is meant that which natural men in general use in their own affairs, or this degree is the standard or middle term by which the others are measured: In other words, Ordinary Diligence is that which every rational man of common prudence uses in his own affairs, Jones. 9. 10. 23 Ed. 4 & 3 Ed. 11.

The degree of diligence on each side are not distinguished by any technical or
appropriate remuneration, but are not entitled to a pecuniary
what amounts ordinary care is called more than ordinary
care in the act of hire, in the main, arises from a corresponding sense
of default & neglect. Neglect as here used, as well as in the want
in omission of care of some degree. Hence the omission of or
ordinary care is called ordinary neglect.

The omission of that care which attentive & diligent men only, use in
their own affairs, is less than ordinary neglect. But the omission of that care, as
inattentive & careless men use is more than ordinary neglect. Jones, 11, 13-30-1. 2 Pa. 453 n. 11.
The omission of slight care, or such as negligent men use, is generally called
cross neglect. This, in gen. is regarded as evi of gross breach
of faith, but it is not decisive. For unless shown
it is prima facie evi of fraud, for if the bailee has been guilty
of the same neglect with respect to his own goods, the pre
sumption of fraud is excluded, yet the neglect is the same
The most general rule on this subject, observe is, that the bailee, under a Gen.
acceptance, is to use such a degree of care as the nature of the
bailment requires.

Now to apply this Gen. Rule to particular
cases, it is necessary to observe three other Rules viz.
1st. When the Bailment is exclusively for the benefit of the
Bailor, so that the Bailee derives no advantage from
the Bailee is bound to nothing but good will & is liable
for nothing, less than Gross Neglect.

This rule proceeds on the
maxim "qui sunt communi debit jure sibi" i.e. he who enjoys
the benefit ought discharge the risk. As when one engages
Guarantors to keep or custody goods or money, whatever the
rules of mortality may require, the Municipal laws subjects
In a case where a bailee’s care is found wanting, the court assesses damages. The case of Jones v. Smith (15-23-18) is a pertinent case that illustrates this principle. It is stated that the bailee is bound to use the same care in his hand, in her hand, or with the greatest care, that he uses in all other cases advanced, in that case, if it is established except that, from which the Record appears to be correct.

I observe again that these rules apply to cases where a Special Acceptance, the bailee’s liability may extend to all risks whatever. Jones 22-3-61-2. Dilay. 910.

II. When the bailee only is benefited, he is liable for neglect, i.e., he is bound to use more than ordinary care, i.e., in case of horse or carriage leant. The principle that governs is the same as in the former rules. When the Butler only was benefited, Jones 15-23-18.

III. When the Bailement is for the benefit of both, i.e., mutually advantageous, the risk is equally divided between them; the obligation hangs in an equal balance & the bailee is bound to use ordinary care, nothing more. Nothing more is liable for ordinary neglect, nothing. Jones 22-3-61-2. Dilay.

I proceed to enumerate in the order under the Rules applying in cases where the Acceptance is general.

Of the Different Kinds of Bailements.

The Divisions in Bailements are six. In many cases, more not five. I name five; the division does not appear some like the most Logical, it has however the division made in the great case of Coop v. Bevan, the Magna Carta in the law of Bailements in other authorities. It is the one I have chosen to adopt. Before the case allowed to 2 Dilay, 914, the law of Bailements was little understood, even in Westminster Hall.
Ist. Bailment of the first kind or class is called a Deposit, from Latin Depositus. This is a delivery of Goods to be kept for the exclusive benefit of the bailor & without any reward to the bailee. This is sometimes called a naked Bailment & the bailor, naked bailee; I shall call him a Depository.

Ray 912 Balh. No. 72 1 Par. 247. Hen. 250.

II. Bailment of the second class is Lend or Lease. There is a simple English word to distinguish this kind; it is a gratuitous loan of goods to be used by the bailee for his own benefit, e.g., where A lends an engine or an instrument to use, or the use, at a rate especially. It is a gratuitous loan; the bailee is called the Lender or the tenant. See the Borrower. Ch. Ray 914 s. James 41, 157.

This species of Bailment differs from what in law is called, mutuum, the in some particulars they are precisely alike.

A Mutuum is a Loan or a gratuitous lease, but for Consumption & not for more use. It is the mean in property of the same, but not its speciality restored. Upon this reason a Mutuum is not a Bailment. Thus, Money loans or any articles of Food, which we never intended to restore,

In a Mutuum the Absolute property is vested in the money & in case of loss, even the property itself the property is said he bears it in all events, because it is the loss of his own property & not that of another. Dact. 12 Gen. 184.

141 James 54-90.

III. Kind of Bailments & Conduits. This is a delivery of Goods to be used by the baillee for a Reward or Hire, & paid to Bailee, who is called a Lessor or the Lessor, the bailee, Conduits, as of where a carriag or horse is hired. I should call this letting or hiring as the same class is lending, borrowing. If it is in fact a letting or one side, or hiring on the other, this language is not legal language - James 50, 18-1 Par. 257. Q. Ray 913.
IV. To the delivery agrees on depositions in a case, due from the bailee to the bailor. This is stated in the general law of De May 913-Jones 52-104 - 1 Puff 287-2.

V. So a delivery of goods to be carried on some undertaking about them by the bailee, is a reward for public service. There is no technical appropriate denomination given to that clause De May 917-Jones 50.

This class included not only deliveries to common carriers, who act in discharge of some public employment but private carriers or bailees, as to common seamen or masters of a ship. So also to a tailor, &c. &c.

VI. So a delivery of goods for conveyance or for some work to be done about those goods. A bailee of the class described, Mandatum & the bailee Mandatur De Ray 913-18-Jones 73.

VII. The first kind is considered & explained is what is called a deposit: being a delivery of goods to the bailee to be kept without any reward or advantage to the bailee & to the benefit of the bailor only. And of course by the Three Rules before cited, the bailee is bound only to the observance of good faith & is liable as a master for gross neglect only. Nothing short will subject him.

And gross neglect subjects him only as bringing private sins, &c. &c. Of fraud or want of good faith & cause it appears that he is not liable in all cases for gross neglect. De Puff 129. De Ray 999-13. 1 Puff 2-127. Bullett 72. Jones 32-64. 5-1762. 15

And for it is the presumption of fraud only that subjects him, for De Ray 915-2. 36-432. 1 Puff 58-13. 13-56. 5-64. De Ray 55.

It is true that you will find it laid down that ordinary care will not be excused a bailee, which seems to imply that want of ordinary care, or by being guilty of ordinary neglect will subject
In short, a depositary is not liable for gross neglect in all cases. Indeed, it appears to me the correct view of speaking & thinking, that he is not liable at all on neglect as such, but merely for the negligence, presumed by a show of the neglect, for it is proof if there is no fraud, he is not liable.

On this subject, Dr. Holt observes that if the bailee is a negligent drunkard, fellow, it is too bad, or even ought if the goods are lost, he should not have trusted him. I think, then it is strictly true, that a depositary is liable for fraud only. 15500 - St. 1099 335-24 46 Jones 65 6

I would, remark again for I cannot repeat it too often, that a depositary may by a special acceptance or apparent subject himself to any extent, even for inevitable accident. You will observe, I have been speaking of the law in relation to bailees under the general acceptance. 535-56 3 Reg. 113 3 Reeve et al. 24 3 241 3 Crum 83 12

Sir, Mr. Jones introduces another exception where a depositary not merely becomes a depositary by his own offer, but is bound to use ordinary care. He is, of course, liable for ordinary neglect. But this distinction is too minute to become practical. It is not recognized in any judicial decisions. Jones 67

The old opinions are very different. From the Rules now laid down, Southwark's case was an action of detaining & a depositary, his declaring a special acceptance; defect, please. Deny, that the goods were stolen, & on Demurrer felt, had Judgment. The decision in that case, as it appears, is doubtless correct, but there is hardly any principle laid down in that case which has not been denied to be law, and it is a little strange that amid so much a justice shou'd have been done to parties. 40 53 4 1595 531
The doctrine here prevails stolen without her consent, but
the doctrine applies to the case where, if a bailee, under general
acceptance of goods, is again to keep safely at all event, is not lawfully
815. 2 Rev. 206-111. Contr. 5 May 3:59-10-14. 4 Rev. 1899-82,3:3-38,4-73.
817. 50.
I would, however, by the way, that that expression of Sir W. A.,
that circumstance, case is hard and does not apply to the decision
and to the doctrine in the case.

Again some have taken a distinction between a special agree-
ment between the Depository to keep, founded upon a valuable con-
tract, and a special agreement of such kind without consent. If it is said, that
the former binds him, but the latter does not, the distinction is entirely
exploded, for the mere delivery is of itself, done to support his promise.
And besides it is a solecism to say, that the Depository accepts a case,
for the moment he receives a reward he is a bailee of the 5th Class
- so that the very suggestion involves a legal absurdity.

It is the distinction to be based on principle as well as over-

It was said in Southcot's case that
if goods were left with a Depository in a chest of which bailee
had the key, the bailee was liable for the chest only, in any case
as well for the goods, so it is said, they are not trusted to him, 4 Co. 3-4,
29 May 185-11 bars 59 46.

Locked in the case of Cogg. & Bernard, so the bailee has not the
authority over the goods as to any benefit he might have by
them, where they are out of the chest, as when in same
right to defend itself when in or when out of the chest. 5 Rev. 94.

And another Coke, 5
not, not notices the knowledge of the
Depository as to the articles in the chest as an equitable ground.
That appears to me an important fact, for what in one case
might be extraordinary care, in another case would be gross
neglect, Lord Holt would have him liable if the goods were
stolen.

If it were not known what was in the chest it might
The question is not definitively settled by authority, and I do not think it could be fairly done to unconditionally declare the bailee not liable for the goods, not knowing the contents of the chest, i.e., when not guilty of gross neglect as to the chest.

Indeed, according to the current of authority, the ground on which they stand is, appears that when a depository unqualifiedly engages to keep safely, he will not be subjected without some negligence, i.e., and engagement of that kind binds him to use ordinary care, and he is not liable for the act of wrong-doers.

II. Commodatum.

It is a gratuitous loan of goods to be used by the bailee for his own sole benefit, and specifically restored. The bailee is of course bound to use more than ordinary diligence and care, it is liable for less than ordinary neglect, i.e., slight neglect.

The requisite care must be ascertained different so that each case is to be determined by its own particular circumstances, one example has been given viz., that because a horse & place him in a stable without looking the borrower is liable if he is stolen, but if he had looked the horse in
In general, not liable for loss occasioned by such force as he could not resist, if hence a borrower is not liable prima facie for loss occasioned by Robbery, as distinguished from Theft, for Rape does not involve such loss only more than ordinary. Thus, a borrower of a horse on the Highway, though he might subject himself by carelessly or carelessly exposing the horse, it appears, then in case of Robbery the borrower is prima facie not liable, which then the rules probably on the lender. As, on the 11th, 1795, 1796, 1297.

But on the other hand, he is in general not liable for loss occasioned by such force as he could not resist, if hence a borrower is not liable prima facie for loss occasioned by Robbery, as distinguished from Theft, for Rape does not involve such loss only more than ordinary. Thus, a borrower of a horse on the Highway, though he might subject himself by carelessly or carelessly exposing the horse, it appears, then in case of Robbery the borrower is prima facie not liable, which then the rules probably on the lender. As, on the 11th, 1795, 1796, 1297.

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But a borrower is not in general liable for the accidents called inevitable, as Lightning, Earthquakes, Incidents of occasion. Though he would be liable, if he had carelessly exposed the property to destruction by such inevitable accidents as by rashly putting a horse into a Boat in tempestuous weather.

And a borrower might render himself liable for any loss, however occasioned by a previous breach of trust, for then time he is a possessor in his own wrong. As if one borrows a horse to go to Hartford & he goes directly to Jackson, he would be liable for all the consequences of his illegal conduct, as for example, the horse were killed by Lightning.
III. Location and Conduct

In England it may be called Letting & Hiring, in a Loan of Goods to the hirer & for the use of which the hirer is to pay a reward to the hirer.

By this Contract the hirer gains a transient qualified property in the thing hired, and the hirer an absolute right to the price or hire. D. Ray 1793, 16 Nov. 3rd, 129, 625.

Here the Bailee, being mutually advanced, the risk on principle ought to be equally divided, the bailee is bound to use Ordinary diligence, and no more, and the hirer is liable for Ordinary neglect, nothing less.

This is what I take to be the true Rule, but in Coypus & Bernard Lord Holt says the hirer is bound to use the utmost diligence; if so, he is liable for the slightest neglect, & so equally liable with a borrower, but this is contrary to analogy & principle. The truth is Lord Holt made a misread in that case very loosely, as I think he did in the instance.

There is no writer that considers how a borrower equally liable & Lord Holt's opinion in this point would extend the hirer's liability beyond all analogy even beyond that of a borrower. But this principle is so well established that there is no hazard in saying that a hirer is bound to use ordinary care only & be subject to ordinary neglect, nothing less. Jones 31, 1296. Indeed Sir W. Jones traced this mistake of Holt to a mistranslation of Latin superlatives.

As there is no decided case requiring more than ordinary care, & as no analogy requires more, the hirer is to be excused in case of Robbery, tho' if it be proved that he was...
only exposed the property, he would be liable.

IV. of Vadium.

This kind of Bailment being adhesive to both parties viz. in securing pawnor's debt, preserving & prolonging credit of pawnor, the pawnor is bound to undertake care & be liable for nothing less than ordinary neglect. This is agreeable to principle & authority. 2 R. 917 - 1 B. 232. L. 253. S. 103.

But in Southcot case Dr. Coke says that the Pawnor is liable to Keep the goods as well as account. As liable like a Depository of goods received only if the reason assigned is that he has or has a property in the goods. So as everybody has such power in the thing backed, so that there is no foundation for the distinction of the rule. According as it is not law. 4 Co. 83. 1 Barn. 189. 2 R. 240. Jones 105. 12-13. L. R. 917 - N. 523.
In this case, there are abundant authorities to support the proposition that when the loss is occasioned by robbery, the patience is prima facie excusable. But he must subject himself to any loss by breach of trust or breach of promise, as in the former cases. And the degree of care required of any debtor was not indeed ordinary care, but it is even to some extent robbery, contradistinguished from theft, 12 M. 522. 4 May 1764-75. 161. 167-72.

In the present case, it is laid down, that the patient is not liable for losses occasioned by breach of trust and reasons assign. So is the same as that urges to show that he is liable only for gross neglect viz. his leaving the property or property in the goods. Whatever bound only to keep them; led his reason.

But Sir W. Jones holds unconditionally that the patient is liable for theft. His reason is as follows: to show that the patient cannot be considered as having used ordinary diligence, when he has suffered the goods taken from him by theft. 4 Co. 84. contra Land (106.) 507, 50.

But Sir W. Jones holds unconditionally, and well, the analogy of the Law. It is not true that ordinary care will protect us, the theory and the practice to say that national men of common intelligence do not suffer by theft. It is a question of fact whether ordinary care was used, or not. And this must determine the case, need liability. Lord Holt places the case of loss by theft on this footing. As a factor who is entitled, if he use reasonable care, ordinary care.

Indeed, Sir W. Jones himself says that in common law, the borrower is liable for mere theft, unless he shatters, extraordinary care; then admitting, that there may be theft even where extraordinary care had been used. 12 M. 522. 4 May 1764-75. 161. 167-72.
The Proratee, being like other bailors, a qualified propriety in the thing bailed. But this interest is defeasible by payment, if determined by payment, or by tender, which for every purpose of vesting the property in the proratee is equivalent to actual payment made & held. 1 Rand 237 s. 8 Co. 644. 4 Co. 53 s. Bull 68. 78. 160. 179. Jones 112. 50. 76.

If then payment or tender is made & afterward the proratee demands restitution on the day appointed for payment, if the proratee refuses to deliver, he is guilty of a breach of trust & liable of course for every loss or injury the property may sustain while in his poss. however it may be occasioned, as by Lightning, fire &c. 1 Salk. 523. 17 Almy 97. 2 Ed. 625. 4 Co. 53. 1 Pa. 149. 3 East 40.

And on proratee's refusal to deliver the goods on payment or tender & demand of restitution, the proratee may immediately maintain Trover as he shall, & the Rule is (of the same) if the refusal be made by the proratee's clerk, agent or servant acting regularly in the course of his employment, for this amount. As a conversation by the owner himself, agreeable to the maxim "qui facit per alium facit per se": Indeed if it were not the regular business of the agent to re-deliver such article the principal would not be made liable by the refusal, for it would not make the lender a wrong doer. 1 G. & J. 274. Salk. 641. Moore 341. Jones 111. 176.

In this case however the proratee may have his election, between the two actions, Trover & Assumpsit. The breach of trust is the foundation of the action of Trover, & the breach of an express or implied contract grounds a suit for by a Bailor, the proratee either expressly or impliedly engages to re-deliver on pay. Bull 92.

But it seems he cannot maintain either of these actions without tendering or paying all that is due lawfully. The principal & legal interest, even when the payment is made on an uninsured cause, for these actions on the case are founded on equitable principles although

A refusal to deliver properly pawned, or a Paynt or Tender of an Indictable offence at all. They are not general actions, breach of trust strictly, they being deemed Civil Suits only, that offences. On the point there are divergent opinions, but the law seems well settled. Smt. 572, 356, 369, Case 277 - 1 Mac 340-2 March 410.

This rule is not

visibly a mere rule of Policy, for it is clearly that a breach of trust between Proucer & Proce is no more criminal than between any contracting parties. The object of the rule is to guard the fraudulent. Arnaud or oppression, the danger of which increases in this than in any other species of Bailee, inasmuch as the transaction is generally secrete, so that the Proce is enabled to conceal the facts. Besides the Proucers are delivered by persons who are necessarily unembarker who of course are the most likely to fraud or oppression. Those stake to be the true ground of the rule.

It seems the Proce may in some instances use the pledge, where the use may be profitable, in others he has not this right. This right, when it subsists, is said to be founded on the proce's consent, expressed or implied, or inferred. Foundation to the foundation of the right in all cases. For the presumption of consent is said to exist or not, in general, as the thing is likely to be made worse or better or not affected at all by the use.

A case in which a Proucer can be made better by use can seldom occur. Dr. M. Jones supports a proce of a lot or dog which is confined to useful habits by exercise. And that might be a case where the chattle, pledge for a long time, and how the kept tho' the intence of year might be benefitted by use or sort, moderation. This however would be allowed on another principle. Jones 112-13.

And it seems agreed that when the thing pledged is of such a kind as not be injured by use, the proce may proce it,
And in the third place when the security is at expense in keeping the Pledge, he may reimburse himself by setting it, as where Honest & even are punished; for he is at the expense of providing subsistence for them, not as I conceive that there is an absent by the bailor or by the bailiff of a recompense which justice demands. 1Bk.916-17 10Bk.621.

And I do not discover from the Books that the Pledge is liable to account for the use of Cds. by the Roman law, however, he was thing handed. Jones. 115.

But when the Pledge will be injured by the use and the keeping is not expensive, the security is not at liberty to sell it as is said there is no consent implied, doubtless there is none and I doubt whether the law refers to this reason. It is the duty of the security to keep & restore when the debt is paid, as there is no expense or trouble incurred which the law will regards; there is nothing to reimburse so that there is no justice in using it; he ought require the security by something altogether foreign to the Bailment. This clearly the security are not to be used. 1Bk.917 Jones. 115. 1Bk. 917

And if the security has no right to use the pledge, I take it, if that he is ipso facto guilty of a conversion & liable to Punishment in an action of Trespass immediately; for in the action of Trespass, unlawful detainer is holden a conversion, so is an unlawful sale of the goods in any way deemed a conversion. 1Bac. 257-266.
If the prisoner should desire the goods be when the law Bailor does not allow it, the same is not redeemable nor awaiting the pay day arrives, he may commence his action immediately.

Lord Coke says the rule is the same with respect to goods found as to the liability of the finder. It is very much the same that the finder has no lien upon the goods as the prisoner has; the same diligence, however is required of each as Mr. Coke says the finder is bound to use ordinary diligence in keeping the property for the true owner. D).(May 917-1 Princt 5.)

There is a case in Bradley, in which it is said a finder of goods is not bound to keep them safely if it is not liable at all for negligent keeping. This I think cannot be said over at all, nor possible on principle, as it is a mere distance, the determination of the case is doubtful right and wrong making it erroneous. 3 Dig. 219; 3 P. &. 37; 6 P. &. 71. 1 Blia. 123. - 1 P. Com. 180. The action of the ordinary care of the subject for negligent keeping.

Nace it would seem on the first impression, that a finder might not be subjected to any thing, but gross neglect, for the sole benefit of his possessor; a deemed to the owner, the finder cannot compel the owner to pay him for his trouble. The finder here appears like a Depository.

But in case of a deposit, the Bailor deliver goods or not, as he pleases; delect his Depository, knowing man or ought to know him. This is not the case with goods found, which of course cannot be said in strictness. He handled it; it seems that the finder is bound to use every ordinary care or leave the goods for some one to take, who would be honest enough to do it.

The Stat. laws of Ct. enable the finder to recover compensation for trouble. For, here, where the finding is clearly advantageous to both parties, the finder then is bound to use ordinary care.
And I take the last rule to be the same. The reasoning is a little more involved. The finder has no action of trespass or the finder for an injury which had been first found & spoiled in the hands of the owner by negligence or other act. In R. v. Robins, it was held that the action would not lie. The decision was right, for the action of trespass will not lie for a bare non-payment; it must be a positive wrong. The gist of trespass is conversion, but the nls of the Court in that case are not clear. Black, 19-85, 146-58 & 1827-1851, 27; C. & R. 570. The Court of Appeals overruled 589.

It is well settled at C. A. that a finder has no lien upon the goods found for his labor expense but whom demand made for the true owner with a true ownership he is bound to deliver if he does not, he is guilty of a conversion & liable in trespass, for as before observed he has notice.

Bl. 57-2 Hil. 174-176, 26. 571, 2 B. N. 117.

Now the case of salvage is quite another. The goods are wrecked or lost or abandoned at sea. The finder is entitled to a reward, but the law depends upon the public Maritime law of Nations, & not upon any rule of the C. A. Dib. Ray, 253-254. B. N. 254, 5 B. A. 270.

But in short: it is agreed that the finder has no lien upon the goods if he has not made a "lost" question whether a C. A. he can in any way recover a reward. If he can it must be by some statute or assumption to work & founded, on an implication of request or promise. Now the law will imply a promise, but not a request for there is no priori between the parties; the finder's act is founded in curtesy; and I confess that I do not discover room for a recovery; there is nothing in the nature of a Contract express or implied, 2 Bl. 57-258. As to voluntary curtesy see Rob. 106, 2 B. D. 86, 95. I am strongly inclined.
But it must be remembered that the suit for the pledge is not decided by the praemunire, unless it be for the mere purpose of recovering the pledge. If the prae munire is not merely for the pledge, but also for the debt, the suit must be determined by the court of law.

But there is one case, not decided in the book, which I believe belongs to the praemunire. In an action for goods which were delivered to the defendant, the plaintiff was entitled to recover the full value of the goods. The court held that the defendant was liable to the plaintiff for the full value of the goods, and that the defendant was entitled to recover the debt for which the goods were delivered. The court also held that the plaintiff was entitled to recover the debt for which the goods were delivered.

If the goods were not delivered to the defendant, the defendant was entitled to recover the debt for which the goods were delivered. The court held that the defendant was entitled to recover the debt for which the goods were delivered, and that the plaintiff was entitled to recover the debt for which the goods were delivered.

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order: The Prince is near a satisfaction, but a security for the debt, and care below.

However great may be the misconduct of the Prince he is still entitled to recover his debt: and on the Prince may receive in the loss of his property. Where complete justice is done, each party recovers what he ought to recover. 1 Will. 32-124, 229, 304. 177. 1 Bac. 235.

And while the pledge remains unimpaired in the hands of the Prince, he may sue for his debt recovered it, unless, he has qualified his right by an agreement that he would rely on the pledge alone, for the pledge alone does not answer the debt. 229, 304. 177, 2 C. 116, 306.

If the debt for which the Goods are pledged is not paid at the time appointed, the property is absolute at law in the Prince; it is gone from him. If the Prince does not qualify it, the principle is the same as that of a Mortgage; the Constitution holds him the title absolute at law. In England, however, the right of redemption is not gone in analogy to the law of a Mortgage. 165. 4, 205. 2, 9. 3, 116. 375. 1 Bac. 235.

It seems to me, however, that this Equity of Redemption cannot only be exercised when the property remains specifically in the Prince, or assigned by him as a pledge, for taking absolute property he must have a right to sell. If sold, I should not think the Prince could redeem. 14, 250, 64.

A distinction is to be observed between a Prince and a Mortgage of a personal chattel: here the mortgagee has a general property if there is no equity of Redemption after the day of payment (actual mortgage.) It does not create a mere lien as a Prince does. 3, 4, 250. 5, 258. 14, 250, 578.

But in case of a Prince, property, if called, this right of Redemption exists after forfeiture of the, if might have been agreed at first, that if the property was not redeemed at the time, it should be considered as sold in analogy to the law of a Mortgage, or as a Mortage, always and always.
A Factor cannot pawn his principal's goods so as to give the pawnee any how against the Principal. Sir. N. H. N. Young.

The reason is that the Factor has not a lien upon them, if that is a personal right which cannot be transferred. The Contract creating it is a fiduciary contract. The principal is willing to trust the Factor to give him a lien until his accounts are settled, but he does not give him a right to select a new keeper. And it is now settled that if a factor pledges his principal's goods to secure a loan of debt, the principal may sustain the loan after demand at the holder, or without tendering to the Factor the debt, due him. The act of parting with possession is a breach of trust by which the Factor forfeits all his own rights. (See 15 R. 362, 7 East. 7.) This case decided the point that tendered of the same as the assignee.

On failure of payment at the day the pawnee is at liberty to sell the pledge for the title is absolutely vested in him at law. 1 Lea 205.

And according to some opinions he may sell or assign the pledge before the day of payment. 15 R. 364, 1 Bace 293, 3 R. 239. But these opinions for numerous decisive reasons cannot be correct. Every Bail is impliedly a Contract, strictly fiduciary; Justice Baller observes that a lien is a personal right, i.e., a Right annexed to the person and not transmissible; 1 Lord Ellenborough expresses the same opinion. In a doctrine of the same kind it is deducible from the other cases. 2 Lord 144, 17 R. 25, 5 R. 606, 7 East 6.
The decision on this point is not one way or the other.

It is also laid down by Brooke (a good authority) that a "pawn" cannot be assigned before day of payment; a "pawn" is in the nature of a personal trust. If the pawn could be assigned, the pawnor would be in a dangerous situation, as if the assignee should become a bankrupt, the dash would be lost thorough fraud or misconduct. The pawnor could not recall the pawn or the pawnor, and the principle is same with presented.

And this is the principle that governs all fiduciary contract as to property. The case is different from that of a mortgage; for land cannot be embarged & mortgages insolvency or bankruptcy cannot prevent redemption; but a chattel may be run away with, destroyed or embezzled.

There is a case in the 2100 61-8, which seems to show that a "pawn" may assign a "pawn" before the day of payment. The case was: A. Prior & B., who directly after

before the day of payment, pawned the same goods to C.
A bill to redeem

But on the other hand, the pledgee may forfeit his right (his right) to the pledge by trespass or by any other crime which works a forfeiture, but the king or public cannot take the pledge from the pledgee unless the pledgee has paid his debt, or the interest of the pledgee is lost. The right of Redemtion, which is perfect.

I trust, then, that the fairest construction is that the Pledgee cannot assign the pledge before forfeiture or the day appointed for payment.

It was sufficiently decided essential to a pawn that it should be delivered at the time. The debt accrued, which was intended to be secured by it, if it was that if delivered afterwards it was not a pledge, but a licence by reason of trepass in taking it, but retained during pawn's procedure, which he would of course continue. But when the debt is lost, for it is settled that a pawn may be delivered unconditionally at any time after the time of debt contracted or assigned.

It was formerly doubted whether the day of payment was fixed, so neither payment or tender would reach the pledge, unless made during the time lines of the parties. It was settled however that it might be made at any time during the life of the pledgee.
And the question has been made whether, in such case, the owner may assign the promise for a paid sum, to another, as, &c., during the promisee's life. The promisee, on the death of the promisee, is to pay the tender to the promisee's executor, &c., as the assigns. This question depends entirely upon another one before mentioned, viz., Whether the promisee can legally assign the promise before the day of payment? As the rule in such case is, that the promisee is at liberty to redeem it at any time during his own life, if it is assignable before forfeiture, payment is to be made to him, if not to his assigns at his, &c. In view of the subject, &c., the assignment of the promise to the executor of the promisee is not to the executor, &c., &c. (C.P. 244, 114 A. 230-240, 226.)

But when no time is fixed for payment. The promisee must be redeemed by payment or tender during the promisee's life, otherwise it is forfeited. If this be not done, the right of redemption is law, &c., &c. After forfeiture no legal claim can be made by him or his representative. (Bul. 9, C.P. 244, 114 A. 239-240, 226.)

You will perceive that the Rule that extends the tie of redemption to the life of the promisee when no time is fixed by the parties, is a cardinal one. But the establishment of some precise time is not arbitrary; general convention requires it; without it the contract would be uncertain, &c. Hence accomplished; if the promisee died, &c., &c., the promisee might in effect be discharged, for the never could dispose of the promise.

But when the law limits the redemption to the promisee's life, I trust there is a right of redemption after his death in equity, unless an agreement to the contrary be clearly proved. There is no precise authority to this point, &c., but it is laid down, &c., &c., in Bacon (4). I presume it is correct that no equity of redemption remains after forfeiture, for the time is fixed by the parties; &c., &c., no reason why it should not be the case, &c., &c., when fixed by law. 114 A. 239.

When there is a day appointed for payment, by the parties
V. Delivery with a Reward

This is a delivery of goods to a private person, or some other act be done about them for a Reward to be paid to the Bailee. It includes a delivery to private Carriers, or other private persons on the one hand, or on the other persons, who are in the exercise of some public employment, as common Carriers, Inn Keepers &c. Per 491- Jones 32. 44-
1 P. 6. 253.

The consequences of these two different kinds of Bailment are so different, that I shall treat of them separately.

1st. Of Delivery to a person not exercising a public employment, as Tailors, factors, Common agents, Clerk, Bailiffs &c.

Now a delivery to a private bailee may be to one in a private professional character, as a Shoemaker, tailor &c., or to one pursuing no particular employment or profession. Per 491- Jones 32-128-9.

2d. Of this kind includes a delivery to assisting farmers, &c., one who pastures the cattle of another, if he takes care of them, he is bailee of the 3d class.

This Bailment is advantageous to both on account where it is so in preservation of the Lance. According principle & authority, it is well established, that a bailee of this class is bound to take ordinary care only & is the subject of nothing less than ordinary negligence. Per 491- Jones 32-128-31-8.

A private bailee of this class is prima facie second in case of Robbery, &c., the rule relating to him is the same as he is liable to the act, & as in the case of a bailee, if he is in no fault, he stands excused. Jones 12-13-48.

And the rule is the same of all private bailors
In case of theft, if the act is fraudulent or not, according to the degree of care or diligence he has used, he is bound to its value in the franchise, as in all cases of breach, that are mutually at variance and the face of the facts, it is an excuse to remit on the observation of the writer. It is, that ordinary care will prevent other theft will not excuse where ordinary care is required. In the case, the says, that if goods are locked up with reasonable care the bailee is excused. Thus in effect refuting a contradicting this above doctrine. It is a question of fact in every case whether reasonable or ordinary care was used or not. [Footnote: 121. 225a 251. 257a.]

If property baile is distrained by bailee's landlord & said, as it may be so that bailee loses, the bailee is liable for it was want of ordinary care to suffer the property of another to be taken for his own debt. [Note: 121. 232a.]

And this Rule is doubtless continued to every bailee who receives pay or compensation for keeping goods or doing any act respecting them as tailors, Carriers for & to Bailee, which are mutually advantageous.

If either be delivered to a Smith who made into an order or all, he makes the Smith as a Mutual or an Act the Smith. Hence the property, according to his opinion acts absolutely in the Smith. If it is lost by any event, even inevitable, the Smith bears it. [Note: 121. 143.]

And hence also he holds that the Smith may use it for another if restore an equal quantity of the same standard.

Now if this proposition is correct, no doubt the other is. The reason on which he builds is, that the form of the property by the terms of the contract is to be restored by fusion, that it cannot be identified if so, if cannot in legal contemplation be specifically restored, if it could not be the intention, the
It should be & if this were so, it cannot be a Bailment, but a Mistake, being similar to a loan of Bread or of Grapes take made into Wine, or of Flower for bread. 2 Bl. 404. - P. 36.

It seems difficult to deny the correctness of this artificial reasoning & yet I never could be satisfied - Clearly the parties intended the property should be attended. But if the fact can be ascertained that it is the same, it is clear why bailo's should not be the loss of ordinary care were used, if the property remained as it was without suspicion the case would be still stronger. & it may however quit, the same right, & liability immediately on delivery, as after delivery, founded on the intentions of the parties.

A rule of law would hear extremely hard on that class of men, if it were followed through the hands of the Supreme Court. So that the artificial technical reasons must be very things to induce them to follow it. This is still a "legal fiction."

When the bailo is to do some act of skill in his professional business or character, in kind, the law implies a two-fold contract viz: that he keep & deliver rising ordinary care & also for to do the work skilfully i.e. he is to use all necessary skill & post 228.

But if not in the line of his business, the law implies no engagement that the act or work shall be done skilfully. In this case therefore he cannot be subjected, unless there is a special agreement. Thus if blown he delivered to a Blacksmith the made in to a garment & he received it, the bailo has no remedy, unless there be a special undertaking: & over the bailo's own folly & the case comes within the opinion that "the Law will not assist Foolish & Dizyards. 4 Bl. 152. - 11 Co. 54. & 5 Bl. 165. - 1 Darm. 324. - Rep. D. 601. Jones 125-9. 137. to 140.

If Good be delivered to a bailo of the 3rd class, are lost or destroyed, is there want or omission of requisite care before the act, he contracted to do about them was finished, if it an incidental question, whether he can recover by way of what he has done.
I see no reason for doubt; it is clear he is liable for the loss of the property, the labourer is not benefited by the labour; I shall quote from the decision that he was not. The objection meets him in time; it is not the dictate of common justice that he should recover. Besides, it would be unjust to pay if he were to recover for the labour; the labour is his action for the goods, or their value, ought, of course, to be allowed the value of the goods, as increased by

the labour. 3 Burr 1592. 9 C. 6 Esp. 28.

III.

Partments of the 5th Class, also include a delivery to a person who exercises some public employment, or a Common Carrier. 2 T. Steph. 76.

A Common Carrier is every person, in general, who makes it his business to carry goods of another, for hire, as a Common Porter, Carriage-ganger, Hymen, ferryman. Shep. Master's Ye. 3 Pery, 385. Jones, 157. 11 Co. 84.

It was formerly doubted whether any other than a land-carrier was a Common Carrier, but it is now settled to be immaterial whether the transportation be by land or water. 17 Eliz. 10. 2 Cal. 332. 17 Eliz. 287. The law was first extended to Common Hymen in 8 Eliz. 1 Ch. 17 to Shipton, Easton, 1 Ch. 147. 1 Eliz. 149. 152.

Owners of Ships, employed in carrying goods for hire, are considered as Common Carriers. In case of a loss, an action may be brought against either the Master or the owner. 11 Eliz. 15. 15 Eliz. 140. 9 Darm. 129. 62. 1 Ch. 27-91. 146. 5 Esp. 623.

Drivers of Wagons are not liable, unless they are also the owners. There is a St. in England, 9 Geo. 2, limiting the liability of Ships-owners to the value of the Ship and Freight when loss is occasioned by the navigators. This is not one of those cases at all.

If a Common Carrier, having the convenience to carry goods, some are offered him, he refuses to take them when the hire is tendered, he is liable in an action on the case.
But a Common Carrier is at liberty to make a special condition, i.e. Conditional, quod, that he will not be answerable for the negligence of the drivers, or losing it or money being lost, unless he is notified of their being contained in the parcel so, at is paid, according to their value. And he is not liable, as a Common Carrier, unless the condition is complied with. This is very reasonable, as he ought to know how to adjust his diligence, the greater the value, the greater the risk. 4 Burr 2290, Decoll. 622, 3 Bl. 165. n. y.

A Common Carrier however cannot impose what terms he pleases, on such unreasonable ones as destroy his liability, as to be liable for neglect or robbery, or losses from a ship's being unserviceable. These conditions would but prepare a vehicle for Recovery. 2 Burr 2290, Decoll. 3 Bl. 662.

I respect a case in which no late Carrier suffered for only the carelessness of the drivers of the stage between N. Y. and S. Haven; a condition him to advertise that he would not be accountable for the negligence of the drivers employed by him, such a condition could not be enforced if the notice were not given him. The effect is the same as no greater, than if he should publish that he would not be accountable for his own neglect or fraud.

This kind of Bailment being advantageous to both, if there were nothing to impede the operation of the fair rule the Common Carrier would be bound to use ordinary care only. He could be subjected for nothing less than ordinary neglect, if it was held in the time of Rev. 8. that Robbery exceeded him, Jones 14. But it was settled in the reign of Elizabeth, that Robbery was no excuse 4 Co. 84 n. 1 Wall. 2. Jones 144. 5 Co. 345.
And the rule now is that he is liable to loss occasioned in any way, except by the act of God, public enemies, (Inevitable Accident) or by the act of the carrier. D. Ray 910. D. Burow 1573. Bull 496. 1 Rep. 253. 1 Mich. 261. 14 Moz. 18. 3 Bl. 165. n. 7.

This was not the original rule at L. 2d, the foundation of it is public policy, which works an exception for the then General rules advanced at the commencement of that title, where the "damage was mutually advantageous to both, the bailor's liability was limited to ordinary neglect; but public policy requires no more extended liability. For the exigencies of a commercial vessel requiring some persons to act as common carriers if the public should have confidence in them. As any person may become a common carrier, the law ought to make the burden safe and the burden of such person to act by common with liberty. The opportunities of determining are so numerous, that the law imposes a higher liability than strict justice between man & man would require. D. Ray 910. 1 Bl. 34. 1 Mich. 143. 1 Moz. 618.

In Sambeater's case D. Coke says that the ground of a Common Carrier's liability is that he has arrived. It is not so, for the reason is equally applicable to private carriers or any similar case. Indeed, where the "damage is mutually advantageous it is true, that if the parties agree to carry he is not liable for in such case he does not act as a Common Carrier of course cannot be subjected as such. 2 Bl. 455. 1 Moz. 604. D. 6 21. 4 To. 84. 2d June 6 145.

You perceive then that a Common Carrier is in nature an insurer against all events but the act of God, public enemies, or the carrier himself. 3 Bl. 165. n. 7.

By the "Act of God," according to Dr. Blackstone, is meant an act which cannot happen by the intervention of man; as earthquake, lightning, inundations, tempest. D. 1 Bl. 33. 3 Bl. 128. Nolaaonec. 3 Bl. 165. n. 7.

And it has been determined that a Common Carrier is not excused by a loss occasioned by the ship's occasioning loss or damage. Sir W. Jones says ordinary care will prevent such loss; this I should doubt. Still it is not inevitable accident within the Rule 1 T. R. 281. Bull. 70. January.

A Common Carrier is not excused by the act of Insurgents, or Rebel States, for they are not public enemies within the Rule. But when a loss is occasioned by pirates he is excused, for such are deemed enemies of civil society. 1 T. R. 239. He is not excused by what are called fresh-water Pirates that infest Rivers, Harbours, &c., they being not regarded as Public enemies. 1 T. R. 116. 1 T. R. 116. 1 T. R. 85. 1 T. R. 86. 6 T. R. 620. 7 T. R. 74.


There is a case (in c. 4 T. R. 72) where the Common Carrier was made liable for throwing a box of goods overboard. The case is hardly reported, but the probability is that there was necessity of throwing it over; and we should suppose a box of that kind the more light. If this was probably the ground the Jury went upon, the Case. Rule is well settled.

When the goods are thrown overboard necessarily, the owner, master, freighter or passenger must cover the loss among them; the carriers are not included. This is a rule of the Prize merchant & not a Case rule. 3 R. 394-5. 14 East 220. Swann 20 Oct. 1819. 2 T. R. 405.

But if a Common Carrier voluntarily unnecessarily exposes the goods to danger, from inevitable accident & goes beyond Public enemies, he is not excused. As in the case of a Hayman voluntarily putting to sea in insubstantial weather where a loss was probable, here he would be liable, as the immediate
prostitute cause was inevitable accident. See p. 22. The cause was admitted at Ch. Riwane Williams & Grant in Nov. 1807, p. 620.

A Common Carrier is excused according to the conception of the Gen. Rule where the loss is occasioned by the act of the Carrier himself, or where an act is done for the loss by a person not reconciled by the Carrier. It appeared at the Trial the Twice was in a state of fermentation when sent, this having occasioned the burning the Carrier worked not liable it was the act of the bailing in sending it at an improper time. Rule 690, 174. 2d 6. 621.

And again, the Wagon of the Common Car.
rier was full & the bailing forced the goods to such hind. The loss was occasioned by overloading, the bailing was excused on the ground that it was the guilt of the bailing. 2d New York 13. 344.

But in order to charge the common Carrier to the extent of the Gen. Rule, the goods must have been lost while in his poss. or under his immediate care & control. See if the owner sends a servant with the good in a vessel to have the control of them, & they are lost, the carrier is not liable, i.e. as a Common Carrier, for he does not act as such when the goods are under the control & guardianship of another. See p. 621. Bull 70.

Still however, if the loss were occasioned by the fault of the bailing & the goods were committed to the immediate care of another, the bailing would be liable, & if they were lost, by the vessel being not seaworthy, or the misuse, or negligence of the Seaman. 2d New York 327. Bull 70. The 690. 13. 344.

But where goods were delivered to a Common Carrier & a passenger was requested to take the oversight of them, the Carrier was adjudged liable for a loss, for a mere request. The duty to look after the Goods does not deprive him of possession or control over them. See p. 330. 13. 344.

Nov. 17.
And it seems that a common carrier, the ignorant of the contents of a box or parcel, is liable for the goods unless he discharges himself by a qualified acceptance or some other writing preceding such as Bell v. Pate 178, 59 R 145; Carr 185; Jones 110, 1 Dab 345.

If such condition is prescribed and the bailee does not comply as by information the bailee is either not liable at all or only to the value of what is specifically accepted.

It will doubtless be remembered that questioned the propriety of the rule making the depositary liable, where he did not know the contents of the parcel until he was grossly negligent or to the parcel.

Take it that the rule just laid down, as the common carrier's liability in such case is strictly correct for here the liability is mutually advantageous to bailee & bailee. The common carrier's liability does not depend upon the degree of care or negligence the may raise the nature of the goods then cannot affect this liability & if he is willing to run the risk & accept unconditionally, he ought to be liable, so that the rule appears correct.

Here are two cases in which it was determined that the common carrier was not liable when he was misinformed as to the contents of the parcel by the owner, unless the acceptance was specially made by the owner. The owners intended to deliver the carriers, which the ch. Justice observed might go in mitigation of damages. Allen 93, 1 Mer 238; Bell 10, 1 Dab 345; 2 Pet 185; 2 K. 60 & 130.

In both cases the owners misrepresented the purpose of diminishing the harm. These decisions appear to me contrary to principle. They are pointedly disapproved of by Judge & Kean, & may now be regarded as correct, overruled. They judge that the common carrier ought to be exonerated on the ground of ignorance. And perhaps the case was within the third exception to the general rule, placing a loss occasioned by the fault of the carrier if Burr 2300, 153, 610; Jones 148, 185.

I would just observe for the purpose of making specific
accusations and the necessity that they should have been made, or at least some communication between the parties, to a notice in The Public Laws of the state on which the common carrier engages to transport merchandise sufficient for the "mark" or in the manner in which the common carrier engages to transport the goods of the person in question, or the ascertainable value of the goods engaged in for such transportation, that the person had notice: it does not appear to be borne; the person had notice; it does not appear to be borne. The person had notice: it does not appear to be borne. The person had notice: it does not appear to be borne.

Upon perceiving from the rules already laid down, that under a given acceptance, except in cases of fraud, a common carrier is liable to the full amount of the goods received, whether he may not know the value of them; but when he acquires especially, he is liable for so much only as he received extending to-the place where a bag delivered to the carrier was described as containing only £200, when it actually contained £400, he was liable only for the £200. Car. 485. Bull. 70, 1. 85, 86, 87. 4th Ed., 621.

And where a common carrier published that he would not be answerable for certain valuable articles at all, such as money, jewel, &c., except on certain conditions, if they were not complied with, after reason to the bearer. The carrier was at least not liable at all; nor where the condition is of being informed of the value of the articles perhaps misstated. This case is nice. From the former, the condition was that he would be liable only to the amount he was asked for; here the carrier says he will not be liable at all, unless informed. Co. 1. 84, 85. 290. 85, 86, 622.

The matter of a stage coach where receives hire for passengers, but not for baggages, is not liable to common carriers, but if he carries goods for hire he is thus liable. Co. 25, 70. 252, Bull. 70, 84, 9. 622. 4th Ed., 85, 86, 944. Good law. Thus the matter of fullest extent, if he takes in goods for hire, he is liable for goods, and a common carrier is liable accordingly, to the distinction here taken whether paid before hand or not, whether there was an express promise or no, or not, he can recover on the implied promise on a quantum meruit. 1. 1. 12, 623.
He is not bound to receive goods unless payment or tender of hire is made him.

To discharge the Carrier it is not necessary that the goods be lost in transit—so if lost at the store where he arrives he is in general liable. He is clearly liable in the case if the custom is to deliver to the consignee & if that is not the custom he is liable till the time of delivery—so that in either case he is prima facie liable if the cause is thrown upon him. 2 Bl. 916—3 Will. 427—Crown 39—2 C. 623.

But where the custom is not to deliver to the consignee in person, but for the common carrier to keep the goods to deliver at a common warehouse— he ceases to be liable as a common carrier. Tho' if he is keeper he may be liable in another capacity. But if the goods are not in his custody, he ceases to be liable entirely at the delivery. 4 Mo. 581—8 C. 623.

If the consignee directs by whom the goods shall be brought, he is regularly to bring the action in case of loss & not the consignee, the purchaser is done & not the ship; so if I purchase goods & send an order for them, here lies the burden as between the seller & myself from the time the common carrier is my servant & if a right of action accrued I must improve it. 8 B. 335—Tan. 294—Ball 35—1 R. 343—55—2 Esp. 576.

But where the consignee directs his own carrier, the right of action for loss or damage is in general in him. As if I order goods & the seller delivers them to what Carrier he pleases, in case of a loss he must bring the action— for there is no principle between me & the Carrier & I, even if I have designated the Carrier, if the seller makes himself liable by agreeing upon the price of consequence or takes the risk of consequence, he may bring the action. For the agreement makes him principal & creates a principal between him & the Carrier. 5 B. R. 2030—1 M. 359—8 Mo. 533.

As to the law of parties & how to take advantage of wrongs in respect, see the Matter of P. 25. 449—5 J. 67—5 C. 522—B. 2628.
At a Post, a Post Master not being an officer created by Government was considered as a Common Carrier of the Letter he committed to him. If adjudged liable as such, but this the 12 Car. 1. established a General Post Office & suppressed private Posts, Post Masters are not held liable as Common Carriers, they are regarded as executive Officers of Government. A Post Master makes no contract with the parties who carry Letters; receives no compensation from them; he is paid by the Government, therefore there is no priority between him & the party delivering letters at the Office.

And a Post Master is regularly not liable for the actual defects of his servants, or under Officers, the he is for his actual defects, like another individual, but his servants & under Officers are the agents of Government & he act as servant of the Government in appointing them. 3 Mils. 44:2 - Const. 70:1 - 2 Rob. 18.

Common Carriers have been generally said to be liable on the Custom of the realm & the common method of declaring has been to count upon & recite the custom, as if it were a special one in favor in particular district only. But this is no more necessary than it is for one heir at law to count upon & recite the Custom of Descent. For a Custom of the Realm is no other than a part of the Case, extending throughout the realm. 4 Litt. 245 - Hard. 485:6 - 1 T. 103:33 - 2 Rob. 22:7 - Jones 106.

When Property is stolen from a Common Carrier under or otherwise lost or injured so as to subject him, there is no fault in him, when he is guilty of negligence, the remedy is by a special Action on the Case, Trover will not lie. But if it is guilty of an actual misfeasance as by breaking a Box, Trover will lie & where
one pierced a Pike of Stile & drew out a little, it was deemed a conversion of the whole & Co. 146. 5. 29. 10. 2027. 5. 14. 52. 51. 50. 36. 155.

He is not then liable in Tresper for actual negligence because to subject him to this action he must have been guilty of some actual Misfeasance 80. 6. 55.

II. Of Inn-Keeper's.

A delivery of Goods or Baggage to an Innkeeper is a Bailment of the 5th Class. This subject has been strangely classed by some authors. Roginnsae placed with Commodatus to which it has not the least affinity. Better treat it as a Mandate which is equally incorrect. The true place no doubt is in the 5th class of Bailment in Jones 133. 2. 89. 5.

It is not however very important where it is classed so the rule relating to it are so well defined, still it is very manifest that it belongs here. Because it is a delivery to another to do some act about them for a reward as given, and that are no nominal rewards, the request is included in a discharge for room rent etc. Storage Jones 133.

In this case I shall consider Inn Keepers as they are liable for the Goods delivered there by their Guests, as Bailors which goods they strictly are. Their other rights & duties will be the subject of a distinct article.

The Bailment being mutually advantageous in these cases according to general principles the Innkeeper is bound only for ordinary care & is liable for nothing less than ordinary neglect. But the policy of the law has extended the liability somewhat further not so far however as that of a Common Carrier at least I find no rule extending it thus far Jones 133. 5.

In the first place then an Innkeeper is clearly liable for any loss occasioned by the act or default of his servants in any way, for he is bound at all events.
to provide honest & careful servants. &c. 32-3. Bull 73-1 Bl. 420, 29. 9. 626.

You will shortly recollect that masters were in general liable for any fault committed by their servants, much less for their offences. But if an Innkeeper's servants steal or rob, the master is liable, similarly for all the damage occasioned thereby.

So if Goods are stolen by a Stranger, the Innkeeper is liable by the general rule whether he has been negligent or not. So that something more than ordinary care is required of the Innkeeper. The rule is founded in policy for the Innkeeper has a great opportunity to cheat, & rob & unite with thieves & Thieves, & for the purpose for the safety of the public the rule is adopted. &c. 33 & 34. Co. 189-224. 5 T. R. 276.

There is an exception to the general rule however, where the Goods of a Guest were stolen by his own servant, a Companion or by any one who by his request lodges in the same house with him, for the law in such case, impose the loss as his own folly, for by travelling with a Companion, he gave him credit & by requesting the stranger to lodge in the house, he furnished the occasion for stealing by showing him where the goods were & by affording him greater facility to steal them. &c. 3. 285 & Co. 33 & 34. 183-233. 9. 625.

And an Innkeeper's trust is liable for a loss occasioned by Common Robbery & on the same principle of policy. There is however nothing definite to be found on this subject. Plowden says if the same is broken then the goods taken the same liable. &c. &c. However, no rule that places him under the same liability of a Common Carrier. Jones says that a force truly irresistible prevents the Innkeeper, if it were irresistible by the Innkeeper and all the force he could command. Indeed, the reason Plowden gives, why Robbery excused is that such violence cannot be resisted-
The common impression is that an innkeeper is liable to the same extent with a common carrier; indeed, I must confess, I do not see why he should not be, his house is absolutely necessary for the accommodation of others; his means of defence are incomparably greater than those of a common carrier; he is surrounded by his castle in the midst of his family & his means of collecting with robbers & thieves & affording them facilities to depredate are much greater than a common carrier, who, on the contrary, is travelling on the highway, usually alone & unprotected.

It is laid down by Coke, that an innkeeper is liable unless there is some default in him or his servant, thus reducing his liability below ordinary care. Buttedeven at this it says to subject an innkeeper it is never necessary to prove negligence: a common carrier is liable for all losses, except those occasioned by the act of God. Public enemies, or the Bailor himself. The exception is more comprehensive in favour of an innkeeper, who is excused if the loss is occasioned by irresistible force & Co. 32, reason the law 5,10, 276. & 277. has adopted Lord Coke's rule, that since the decision in 5,10, 276, he is apt to make mistakes. &c., &c.

An innkeeper is liable for those goods only, that are in free hospitium, including Stable & Dock &c. Co. 32, 21, 21.

If then the effect are removed by the owner's directions & lost, the innkeeper is not liable as such, unless there is some actual default in him. If he should order his horse to move, if he were lost, the innkeeper as such would not be liable on the principle which governs this title.

But, on the contrary, if the innkeeper put the horse
to pasture without the consent & direction of the owner
he would be liable & Co. 32* 1 Roll 4. Bull. 3- Cap. 5. 650.
The remaining Rules relating to Inn Keepers will be
considered in a short article by themselves. Post. 273.

VII. MANDATUM.

A Mandatum is a delib.
cry or Good. For Bailee 5he carried or some act to be done that
on which 5hem without a Reward, or done gratuitously.
The appropriate name is mandate, it is sometimes incor-
rectly called acting by Commission, but it has no relation
to that species of Trust. The Bailee is a Mandate; the Bailee
is a Mandatory. Jones 50-73. 5Ray 910.
The difference between a Mandate & a de-
posit is merely that the latter lies in Custody. The party
of 

This species then appears to be of the same na-
ture of a deposit, it is bene ficial to the bailee & so by the
law. Principles it is clear, as it is well established by authority
that the bailee is bound to good faith & liable for gross neglect
only B. Ray 910. 1 Cow. 5. 235. 1 Bl. 158-160 2.
As in other kinds of Baileys where there
is a Special agreement to use a greater degree of care, the
bailee is liable, if loss is occasioned without emitting to have it.
This was the case in Baggs v. Barnard 10. 5th. 2 Jones 50.

And an agreement to use all necessary care &
skill, may be implied in certain cases, but such agreement
is not to be implied unless the act to be done is in the
way of the bailee's profession or accepted. Thus if
a tailor gratuitously engages to make a garment he in-
spiredly engages to use all the requisite care & skill 3 Bl.
165-6. 10 Bl. 158. 11 Co. 54. 1 Lamb 324. Jones 139.
Sir Montagu makes a distinction between the duty of a Mandator when it consists in performance when in custody, or in other words, between the duty of bailor when it lies in a suspensive, or when in sleeping possession. Then his duty consists in actual presence, he says, in a degree of diligence requisite to use his own expression, "a degree of diligence adequate to the performance of the undertaking."

Now I confess that this is a distinction, which I neither see the reason nor feel the propriety; it is arbitrary & not consonant to any Judicial Determination. It is an unhappy peculiarity in this excellent little Treatise. — Deniz 4 Mev.O188 165 & 6 1 T.B. 398.

This Treatise is a distinction unknown to the Law. There is however a doctrine quoted in the last case from Blackstone by Lord Loughborough which deserves attention as coming from such a respectable authority. It says, that when the engagement, by the bailee is to do the act skillfully, the omission of the necessary skill, is gross negligence; that is, when the law inflicts such an undertaking, so that if a loss is occasioned by a failure, it is gross negligence, why not to perform the undertaking? The amount is that, whether the bailee is subjected, he is of course guilty of gross neglect, whether subjected or not — such a Declaration confuses the two degrees of care & neglect. The whole doctrine in the case of Egges v. Banard & all the other subsequent cases are rendered nugatory, as it reduces all bailed to a level by subjecting them all when in any manner liable, or the ground of gross neglect, as if they were hired. Lord Loughborough appears to go on the ground, that a bailee by his engagement is subjected only for gross neglect. Whereas a bailee may be subjected for slight or ordinary neglect.
When there is no engagement express or implied to use skill, or more care, than he uses in his own affairs, he is liable for gross neglect only. Thus in the case in 2 H. c. 143, having two consignments of goods, it agrees to enter them both as "the custom house," but C having entered them by wrong description, they were forfeited by the Revenue Laws. Therefore A, but his action after, but he did not recover, for there was no special engagement to use skill & the law would make it a general merchant & title, he might in fact have been guilty of gross neglect, yet as he last his own goods, it afforded no presumption of fraud. 1 H. c. 153, 10漫 c. 255.

The true distinction then I take to be, that when one engages to do an act gratuitously in the line of his business or occupation, the law implies an agreement on his part to use all necessary care, & skill, but when the act is done outside the line of his duty, he is liable only for gross neglect.

The agreement, then implied by law extends, it seems, only to the doing of the act stipulated to be done, & not subject to accidents from foreign causes, & not connected with the stipulated act. Thus in the case of the tailor, before mentioned. The law implies a contract to use the necessary care & skill in making the garment, & not to preserve the garment or cloth from cobwebs, inevitable accidents, so, and he is not liable for loss by circumstances unless he is guilty of gross neglect in exposing the goods. A statute of keeping & storing, the law implies no greater liability on his part, than in the part of a hotelier, who is of a particular occupation, or a mere depositary. 9 V. d. 203.

Thus if a tailor agrees gratuitously to make a garment, if not well made, he is liable, but if well made & taken afterward, because he left it out of doors, the question of his liability must depend on the proof. (Here, in the case of gross neglect, which is presumptive) of the goods.
of the Goods, and once exchanged, must be held without the intervention of a
third person. There, he would be liable. He, which takes the effect
of a Mandant's contract, when entrusted professedly and in a
communion with the opinion of H. F. Hall, the he could not be
successful. Dec. 91. 1819. 275.

And there is an express agreement by which
Actuary, as well as; he is not liable in loss or occasion by virtue of
hence of irresistible accident - I think clearly he is not liable
with an agreement, without some degree of default. Then in con-
tract thus - "liability" he only means that he will not un-
necessary care for that purpose, he cannot be considered as par-
mutual - with the Actuary, and as a matter of law, if he is no
apparently, he is not liable; however unconditional the agree-
ment may be. Dec. 91. 15. 1809. 25.

But I trust a Mandant cannot secure himself
in the express agreement. This liability, for fraud, it is con-
trary to law, or illegal under the principles of Contracts, 2nd 65.

There has been some chronicle of opinions
expressed as to, how far an agreement by a Mandant is bind-
ing as a Contract, i.e., an agreement to carry Goods or do some
act about those goods. According to some opinions, the man-
dant is not heard by his agreement, as a contract, because it
is a Medium pactum, but his liability is founded on Tort or Fraud
in want of Care.

According to others, I think, on principle,
when delivery, his agreement, the voluntary basis. Lin as a Contract.
It is so far voluntary that he got no benefit, still the delivery is suf-

The true distinction is, that if one gratuitous
engages to be a Mandant of another, afterward, he finds the
same, once, he is not bound. The Contract is Medium pactum, but
if the Goods are actually delivered into his hands, he is liable, may
be sued in a Dismissal, which sounds altogether in Contract. If
is true however, that he may be ex aequo in Fort 532. 143. The distinction there taken is that of A. agree gratuitously for B. B. does not deliver the material, A. is not hindered, but if B. does not deliver, A. is liable. Lord Holt says that a delivery on one side, B. is held to the trust by the other in Swift, Com. 112 a 241; 2 Ray 920. 3 Mod. 129. 12. 1984. 530. 149. 150. 1026. 324. 1894. 667. Contra 136. 14. 120.

In the case in Yelloe. It was held, that the agreement, did not bind as a contract, but there are other opinions to that effect. But the case in Yelloe, is a very strong case precisely in point, & the case in Yelloe, is then considered overruled. In that case, A. delivered money to B. on a promise by B. to deliver it once he had received 1.000.00. without reward. B. failed to perform. A. then brought his action against B. on the express promise stating the delivery only as cause. & recovered. A. was of the opinion, & has been held, that A. is impossible to recover this, unless the agreement were binding as a contract. If it is true it might have recovered had he brought an action on implied assumption for money had & received, but this was an express contract, & seems to have been held. It is hereby to try the question, & J66. 18 20. Lord Holt recognizes & confirms the doctrine in the case of Cougs & Bernard.

Sir W. Jones observes however, that whereas the special damage arises by failure not performing his agreement as by not becoming voluntary when he has agreed to an action will lie against Jones 76 to 80. He also says that the ground of the action in those last cases is some special damage, but it is the remembered that it is a breach of contract, the damage arises from: it is difficult to suppose that there can be special damage in consequence of a breach of a contract, which does not exist.

Thus it appears gratuitously, that he will carry a letter to A. Jones, from disappointment, or even a dispute, if you please he does not carry 16. 13, suffer a loss in consequence of it. Sir W. Jones says an action after it would lie. & nourish how.
ever I knew of no principle of law to support him. True if there were an actual delivery or conveyance, a fraud in the case, B might sustain his action.

Sir W. Jones agrees that the action could not be maintained, unless the special damage, 

there is no contract by the hypothesis there was fraud or misdescription, so that it cannot be subjected to that ground. But he he subjected to the ground. Of Contract, Sir W. Jones says: 'But how is this to support the action? The validity of a contract is generally determined from the facts existing at the time of making the contract, if made be good or not. If the special damage may be considered damages in an action on the breach of contract; yet special damage can never give validity to a void contract.' It can never go to the question as to the right of action: A contract cannot be made binding by any thing of itself; but if a contract has not been true enough to support an action on the contract, it certainly cannot have with it. Sir W. Jones is certainly mistaken. That no special damage is necessary.

Dec. 27, 10-19-20. John F. Scott says that damages are presumed if the party cannot recover them, viz., fine, 194.

Sir W. Jones says further, that where an action is not apt a mandatorily negligence is the ground of the action of the express undertaking. I do not see how this is subjected by negligence, if the contract is the foundation of the action, but is out of the question. Of negligence is the ground of the action, it must be on the ground merely, that the party has been guilty of a breach of contract, therefore the action may be based on the breach of the promise.

Besides one or two cases contradicted to this, where a mandantory expressly undertakes to take a given degree of care, he is bound to the extent of that care. But here can he be subjected to his express
promise when that does not bind him? how can it extend his liability beyond what the law would require? 

Hence, a Careless or Mandataire engages to carry goods war. 

Robbers, Book 1, t. questions that he is liable in case of loss. How? Jones says, in consequence of negligence? But suppose he used the utmost diligence would be not be liable? How is that he is liable further than the law requires of the agent? Is a Middle Party? If so, then 

answer be that the contract binds him. He is liable is con- 

fused on this subject, but his authority is too respectable to be passed in silence.

The true distinction then is wherein engages gratuitously to become the Mandataire of another & afterward released he is not liable, but if he be- 

come Bailee & makes an engagement, he is liable to the extent of it in virtue of the Contract &c. May 9th, 1849, 5 East 40, 146-156. 3 Yeast 62.

Miscellaneous Rules.

Under this General dis- 
vision of Miscellaneous Rules applying to Bailments in 

general the first enquiring is, 

In what Class has Bailee a Prince? Bailor?

Now a Bailee is a direct claim on incumbrance upon some specific property of another in way of security for a debt or duty, it is always accompanied with actual 

power. A Bailee is not a Bailee without Surety or Property, but they may be Bailee without Surety.

A Bailee exists in favour of Bailors of the 4th & 5th, i.e. March or those paying rents about Goods forward. A Bailee does not Bailee exist in favour of all Bailees of the 5th Class.
All promises issue in a Sien on the ground bounded, Bailey, if it be executed by the delivery of the property, the Bailey having nothing done by past facts to the Bailey. The principal object is to create a Sien to secure debt or duty. The security consists essentially in the existence of the debt or duty. The Sien then has a right to use the estate under the contract is lawfully held the property until the performance of the Bailey, to accomplish, which is a discharge of the debt or duty. Case 1. 2 D. 445. 7 Co. 170. 2 H. 6. 422. 419. 2 C. 363. 2 Bl. 553. n. 11.

Most Bailey, of the 5th class have a Sien in a right to retain goods on the bailee by way of security for compensation. Here, the Sien is not created by the terms of the Bailey, as, in the case of the promise, where the object of the promise was that the Bailey should do something for which he is to receive a consideration for the security, while he has no lien upon the goods by a condition in law annexed to the Bailey. The law does not require that the bailee should give his own safety, demand payment before he has received goods legal enabli to retain the property until he is paid. 3 Baer 185. 2 Co. 42.

It is not universally true, that Bailey of the 5th class have a Sien, though generally they have, and shall distinguish as I proceed.

The particular Bailey have a Sien, for third persons, who obtain them wrongfully from the bailee, cannot avail themselves of it. The bailee may recover without tendering, to any body, & if it be goods & c. get wrongful possession of them, it may recover them without tender. & c. cannot retain against either. 2 Bl. 553. 3 Bl. 555.

In the 1st place, all goods, the common carrier has this Sien in a Right to retain the goods, after the owner, until he has paid the reward or price of transportation, he may keep the goods even forever if he is not paid. 2 Lay 752.
And indeed if goods are stolen & delivered to a common carrier by a thief, he may retain them up to the true owner, until he's paid the price for transportation, for by law he is obliged to receive & convey all goods tendered him. The law does not oblige him to deliver them to the demandant, 'till the act is done, but allows him to retain them as long as after D Ray 867.

An innkeeper on the same principle has a right to retain the house of his guest until the expenses occasioned by the house be paid. & so of other animals D Ray 867, Bull 45, 3 Pol. 260, 6 Mc 388 & Co. 147, 3 B. & A. 185.

And this the house of the guest is taken there by one who is a stranger, who does not own him. & the innkeeper provides for he may retain him up to the true owner, 'till the expenses are paid. The case is parallel to & precisely like a common carrier & founded on the same principle, T. & A. 87, Part 120, 174, 554, 17th part 277.

An innkeeper may also retain the person of his guest, until the whole debt be paid, for he is a pledge for the whole bill, 'though the house is only for the expense of the house, & so to that the innkeeper is bailee, & in cases of Bailment a lien exists only on the thing bail'd & extends only to receive payment. The labour bestowed on the subject of the Bailment. Vid Part 277.

But the person is in the nature of a pledge for the whole bill & no legal process is requisite, if the innkeeper would take advantage of it. He may retain his guest with his own right hand & the assistance of his family, if he pleases & shall have his duty in any apart, 'till his expenses are all paid. This is one of the cases in which the law allows an individual to enforce his own remedy.
But in this & in all other cases of lien, the Right is lost by voluntary relinquishment of actual possession to bailor. Thus if an innkeeper or common carrier delivers poss' to the owner, he cannot reclaim the right is gone forever. For a lien cannot exist without actual possession. A lien without poss' is a mockery, and if one abandons voluntarily abandons poss' he abandons the lien; actual poss' is of the essence of the lien, so that if it is abandoned destroys the lien. This is the principle 1 Bac. 117, 12 Bac. 493-4, 1 Chit. 4, 2 Mart. 354.

A bailor also has a lien upon the material which he has warranted or laboured in, as has all other mechanics in general, so that a tailor may in general retain the garment until he is paid the price of making it. 5 Co. 147; 2 Ab. 2; 4 Hold. 13; 2 Bac. 245, 2 Cst. 105, n. 11.

In this latter case the same reasons however do not exist as in the case of the innkeeper or common carrier, for the mechanics is bound to labour for any owner, but in cases of this kind the condition is secured as it is said, in behalf of trade & commerce meaning manufacturers & merchants.

When however the mechanics is in the habit of trusting to the personal credit of the bailor, he ought not to detain or in a particular instance assert the right of detention without having given previous notice or information at the time of receiving the goods. For if he does not give this notice, he is presumed to receive as he had done before unless there is no judicial determination on this point, but it is laid down by the editor of Bacon, 1 Bac. 248.

But an estate of farmer who isbaillee of the 5th Class has no lien for neither of the reasons which operate in the case of the common carrier or innkeeper.
o in the case of the mechanic exist in disguise, he must
not seem to receive for his service of the interest of Trade or
Commerce are not all concerned. Bull 49 Prob. 177 Bac.
240.

The Captain of a Ship has no lien upon the Ship for wages & stores, 6 the mariners have. The reason is that the Captain is presumed according to the common

course of business, to trust to the personal credit of the

economy, but the mariners trust to the Ship. The master

is employed by the owners, the mariners by the mas-
ter who acts as agent in engaging them & they are entirely

unknown to the owners. Doug 97 101

Abbot 10 Shiff 140 460 - Act 467 576 124 445. That the

mariners have a lien on the Ship. Val 93 41 Doug 101 Add

Shiff 459.

But when there is a special agreement, upon which

the lien is creased for his consideration. The law on this topic

is in favour of the owner. Thus in the case of a French four-masted

sloop delivered. The ship owner, it was proved; the

owner was by a decree detainer & it was determined that,

that agreement, entitled him to his lien in right of detainee, the

reason assigned is that when there is such an agreement

the lien does not rely at all upon the personal credit of the

salesman, however the true reason is more artificial, it is this, that where there was an

express agreement. The law cannot imply one, on the maxim

"expressum facit regula tacitum," & that it may imply one

when the parties have not made one. 2 Roll 62 10 Feb 66 53

271 - Acp 4 555 6-

So also, a factor or any Commercial agent

in general has a lien upon the goods of his principal

in his actual possession for the balance of acts due to him. For a variety of Rules respecting Merchants & Creditors.
These are the principal bailies entitled to a lien or a right to detain goods until the debt or duty is paid. It is not, however, as I understand, that no others than those I have mentioned, have a right of property at all until the bailor. Most undoubtedly a tercer has a right to hold until the object is accomplished, or the time expired for which the property was bailed; till that time, he bailor has no more right to take them at third person if the rule is the same in relation to a borrower, where the bailment is gratuitous.

True if I engage gratuitously, I am not bound by this express contract, but if I refuse payment not to take until the object is accomplished, or time expired, without subjecting myself—how so great can be contained but a tercer may retain for the stipulated term; purpose, but this is not a lien, he has a special property and is not to receive a general debt or duty which makes a lien a particular kind of special property. See 172 Mod. 123—132 ace 240.

Thus far of the Right of Detainer by a Bailie, I next subject to one of far more practical importance to be considered is

How far the Rights of Strangers may be effected by Bailies?

Disputes do not often arise between a shop bailor and the right of the creditors of the bailor & purchase under him are often discussed.

Before I enter upon this subject there are a few Introductory Principles to be laid down.

In the 1st place it is said this I think incorrectly, that if one bails to his own the property of another the bailor must restore it to the bailor & not to the true owner, of the person from whom he received it without regard
to the true owner. Because if it is said that the bailee cannot judge between the bailee & the true owner, But the Rule you will observe goes further than the reason 1 Roll 67 Times 23-42.

Parker held This rule means nothing more, if it does, it means more than is known, than that the bailee will be justified if he redeems & to the bailee & that he may thus discharge himself of the claims of the true owners; the reason assigned goes no further. It would be extremely hard to compel him to judge at his peril for the might be third parties subjected to a loss when the Rule was for his protection if the true owner will not subject him if he redeems to the bailee. This ought to the Rule on principle.

It would be unjust to cast the owner of his property who总书记 it might reclaim that pleasure again how can the bailee exercise a right which he has not? To prevent hold the property from the owner which if he knows the fact?

Besides it is said afterwards in Roll 67, whence the original Rule was taken, that if the bailee delivers the property to the bailee, before or when, an action brought against himself by the true owners it will bar the action. This protects the honest bailee & does not deprive the true owner of his right. It shows then the owner may recove of the holder. 1 Roll 67 Tinct. 137 138 242.

In cases of this sort where there is a dispute about the title to the property, Bailee, if the owner does not exhibit sufficient evidence of ownership, the bailee ought not in principle be subjected, but if it were so, were shown that he would be liable unless he discharged himself as above by delivery to the bailee. 2 Pet May, 67.

The rule laid down by R. Holt is that if goods owned by e. are stolen by B. if delivered to a
Common Carrier, he may retain them until the true owner will have paid, 

Now if the Rule from Roll C. correct the one from Holt is entirely negligent. & the common Carrier would be bound to deliver the goods to the thief at the he knew the facts. 3 May 567 - 29 Dec 569.

Again according to the text of the Act of the goods in a case of this kind. the 3d. part. is conveyed possession of the goods, the 3d. must deliver to the true owner at his part, if sent to the carrier, he will not be discharge in delivering to him for the testator received them against the claim of the true owner. Because it is said the 3d. not having acquired possession by legal conveyance from the testator, he must deliver to him who is the true owner in law. This rule seems to present a case somewhat after the 3d. a testator might have delivered to the carrier not discharge of the claim, of the true owner, because he could not be compelled to judge between the claimants. The 3d. does not of course possess a better opportunity of judging correctly. In most cases not as good. There is no decided contrary to Roll's Rule, but I conceive that cannot he done. It appears to be arbitrary judgment.

We are now to consider the Rights of those persons who purchase under a bailee & the Rights of Creditors, who levy upon the goods supposed on his. cases often occur in which the following Rules will be found

We must observe, that by the Stat. 21. Cap. 3, which it makes on the liens of the goods. if a person becoming Bankrupt have in his power. order destruction the goods of another person by his consent, they are liable for the debts of the Bankrupt.
The Stat. you will observe, relates to those who become Bankrupts or to the possessor of the goods of another, by a person becoming a Bankrupt while the goods are in his possession, and to cases in which the bails does not become a Bankrupt.

The Stat. extends to goods originally belonging to a Bankrupt, and bailed to him, as to those which did originally belong to him, even after him without a transfer of property, i.e., it includes not only goods sold, & not transferred in poss., but also those which are not his, but bailed to him. *Cp.* 233-18 P.R. 82-28 S. 564.

And I would here premise that as to goods originally belonging to a Bankrupt a person sells & permits to remain a part of the State as the law is. For, in the Stat. 18 P.R. 4, it was said, that a sale of personal chattels, the vendor continuing in poss. was fraudulent after his creditors, & a prima facie case, of it, which might stand, & be rebutted. *Cp.* 233-3 P. 1-257, 57, 572, 872, 71.

The Creditors of the Bankrupt who is bailor, are allowed by the Stat. of 21. Geo. 1. to come upon the goods in his possession, & to act upon the ground of all frauds, frauds, or the breach of the bailor, & baillee, that by reason of the false credit given him by the possessor, of the goods., for fraud, might have been usually suspected or enlarged from his being the ostensible owner; indeed, it is the apparent ownership, which gives more credit, with one another, it is on this ground that creditors are allowed to take them. *Cp.* 364-3 P. 777-2, 87. 366.
The Bailor rebutting any presumption of actual fraud between himself & bailee is of no avail, as between himself & bailee creditors. Their claim is not founded on any presumption of fraud, but upon this false credit, the ostensible ownership gave the bailee 1 Ves. 365, 19th June 1803. This Stat. seems to be founded upon it in accordance of the great principle of the C.S. that when one of two innocent persons must suffer by the act of a third, he who occasioned or enabled the third person to cause the loss, shall suffer rather than the other.

The Bailor in this case by permitting the bailee to act as ostensible owner has given him a general credit, the question whether the credit given in a particular instance was thus acquired, was never made, it is said that the hauer deceived the public, & thus the bailor credited the bailee to occasion the loss, he must therefore be the loser. This is clearly the Rule of the C.S. & of Equity. 2 T. 270.

As the Stat. is in accordance of the C.S. it follows that the Stat. of the Construction of has relic in England are of as much importance here as there.

It is not to be understood that this Stat. extends to goods in the hands of the Bankrupt, which the hold in the right of some other, e.g. as Guardian, Husband, Etc. for the loss in such cases gives him poss. of the goods in whom the right of property is, cannot prevent it. It is not in consequence of any deligited right of poss. that they are sold, & it is not the fault or folly of the owner or Bailor that occasions the loss, of course the case does not come within the Stat. 1 Cth 159, 3 T.R. 187, note 3 T.R. 610.

The Stat. however does extend to chattels as well as absolute ales, & goods, when the creditor will hold to the exclusion of the Mortgago of the goods who is left in possession. 2 B. 185, 349, 165, 349, 165, 2160, 19th B. 366, 1 Sal. 189, 99.
You will observe, however, that the same rule does not hold in relation to a mortgage of a ship at sea, for the owner of the ship is in no way the creditor, since the possession of the ship is no part of his legal title. The title of the ship may always be traced back to the creditor, whether he be a traitor or not, and it is his own fault. The Stat. of 21 Geo. IV. extends only to a mortgage of personal Chattels.

Further, does this Stat. extend to the sale of a ship at sea, for in this case immediate possession can be given? Suppose a mortgage by way of Sale of the Ship at Sea, immediate possession by A is impossible, for it cannot be given. Suppose a Ship at Sea, immediate possession by A is impossible. A is therefore in reality, his Agents, the Master & Mariner. Still the Stat. does not reach the case of mortgage; for A will hold to the exclusion of the creditors of B, the Bankrupt, because immediate possession cannot be taken. B, must however take possession immediately on the arrival of the ship, if he does not, if he suffers her to remain in the Vendee's or Mortgagor's possession, it will continue his title and it thus come within the spirit of the Stat., 1 & 2 Will. IV. & 1 & 2 How. 160-160, 354-416-2, 1849. 462-405-44. 1825, 567-55. 1861, 567-55. 1861.

Thus, if a Store of Goods are sold by a Bill of Sale & the Keys delivered to the purchaser, it is such, and within the control over the subject, so that if the Vendee afterwards becomes Bankrupt, the Vendee will hold to the exclusion of Vendee's Creditors, 1 & 2 Will. IV. & 1 & 2 How. 160-160, 354-416-2, 1849. 462-405-44. 1825, 567-55. 1861.

It is also to bring a case within the St. The goods must be possessed by the Bankrupt bailee, as his own goods are, i.e., he must not only be in possession, but must have the orders disposition of them, to use the language of the Stat. That is, he must not be in such a way as to appear the visible owner to the world. Hence, the possess would give him no bailee credit. Thus: A Box is deposited with the Depository, shut up out of his sight, so as not to appear his, or not to appear at all indeed; these words not reliable for the Bank.
rupts debt, merely because he was depositing. But if it be proved that the factor or agent is merely to remain a dormant owner until he dare to take posses.

But, on the other hand, it one gives another a horse to ride a mile or a journey, the creditor cannot take it. For the purpose for which the horse was hired, no evil of ownership & if the Creditor were otherwise divided he would be extremely inconvenient; a Bankrupt could not go a mile. But the great & decisive principle in this & similar cases is, that the Factor, his credit, in such cases, by such persons.

Hence also a temporary use of a horse by a person coming in Bankrupt for a particular, special & necessary purpose, does not bring the case within the Stat. Thus A. lends goods with B. to keep, while he (A.) could have an opportunity to sell for them, or if you please to store or keep, or till a ship or Wagon arrives: & in the meantime B. becomes a Bankrupt, his Creditor cannot hold them, for these are cases evidently not contemplated by the Stat. If they were not, man would be safe, unless the goods were in his own hands. 1st Act. 1555 & 10 Eliz. 197-200. Dep. D. 50.

And a Bankrupt bailee must appear in every respect to be the owner & bring the case within the Stat. for if from the nature of his business the possession of his ownership is excluded, the bailee will hold to the exclusion of the bailee's Creditor. Thus if is a Factor in the possession of the goods, so far as his agent go, he appears to use them as his own & to have the whole control, notable.
is known to be a factor, if he should afterwards become bankrupt, his creditors could not take the goods; the principal or landlord would hold for the bailee, being then known and acquiring no false credit by the statute 12 Geo. 3, 1810, 318-218.

Thus far, have I treated of the right of the creditors of the bailee: I would further observe in relation to

The Purchasers under a Bailee.

The purchaser under a Bailee who supposes the goods belong to him, will hold, as the bailee, precisely like the creditors of the bailee, i.e., according to the distinctions already taken before. Indeed, where goods have been sold by permitted by vendor, to remain in possession of vendor, who becomes insolvent, the statute 21 Geo. 3, provided, that the subsequent purchaser shall hold in exclusion of the first purchaser. The statute 21 Geo. 3, affects the same purpose, and extends also to cases in which the goods have not been sold.

The case, however, would have attained all the ends of both these statutes, at any rate, the statute of shelf, has been considered declaratory of the case in Ch. 1, correctly, I think, that the statute of shelf, is of the same character, vide 2 Bac. 434, 2 Bac. 802, 83.

In common cases of Bailments, where the bailee is not the creditor, it is not of course the pretended owner, or when he does not become bankrupt, the general rule is, that the true owner, i.e., the bailor may recover against the purchaser under the bailee, or any subsequent purchaser, or a creditor, who levied on them as Bailees, unless the sale was in a market court. So also, after a person into whose hand they might afterwards have fallen, however honestly, he might, hence obtained them, the maxim being, causa emptor.
Here, you perceive there is no credit given falsely, for the goods are in the actual possession of the bailee, yet he has not the Order of Disposition of them & for this reason, the purchaser cannot hold them, although the bailee should sell the property in such a manner as to excite a belief that he was the real owner. The sale is a breach of trust & can convey no title. Thus if A. sells a horse to B. to ride 50 or 100 miles, & B. in breach of trust sells the horse $6, while on his journey, C. cannot hold off the bailee for the circumstances of B.'s riding the horse is no ev. of ownership; the fact of letting & hiring, rents & carriage is a fact of daily occurrence. If B. should sell $6 to C. & C. to D. & D. to E. & E. to F., the same rule holds, unless the dealings are honest & intended the purchasers. The rule is the same, the purchaser must look to his money, unless he can prove it if the dunderhead, in the horse has been sold in that way, & so you observe the bailee has not the Order of Disposition of the Horse. 1 Will. 8. 2 Stra. 147. 3 Will. 44. 253. 3 Will. 574.

And in another case where the great leading case in the English Reports, where A. deposits a Leasing Bag of Jewels, the question arose whether the pawnee could hold off the true owner, who kept it & T. & C. threw the jewels in the first place were renewed with a jeweller & he in breach of his trust broke the seal & forwarded the jewels to the pawnee--on this question, the court held unanimously that he the pawnee could not & it was solemnly determined, that with the pawn, he was not in the Order of Disposition of the Jewels. Hartop v. Brown, 2 Bar. 14. 46. 33. 260. 6. 11. 28. 53.

When the bailee has been in trust for some considerable time, & not in the Order of Disposition of the goods, with the owner's consent, the rule is the same, it has however been a great deal grumbled at. 3 Will. 276. 4 Will. 640.

But there is an exception to the general rule, when the property named is Money, i.e.: Specie, Bank Bills, whatever constitutes the currency of the Country. In cases of
this kind a regular transfer by the bailee to a bailee's
receiver, &c. to a person ignorant of Bailee's right will bind
the property tho' he not in Market Days: 313 P.R. 1516-

Thus if A. delivers or departs a sum
of Money with B. for safe keeping for a longer time per
kind &c. in reach of trust transferees &c. to another, who
does not know of A.'s ownership; the receiver will lose
to the exclusion of A. Indeed the Rule would be the
same if B. had stolen the money.

The reason assigned for this exemp-

tion is, that money has no "Car Mark" but this reason
will not hold in the case of Bank Notes any more than
it will in the case of Securities &c. it is not the true rea-
sone, whilst it is a genuine one. The truth is the Rule
originated in Commercial policy: it is necessary that
is enough; were it otherwise no one would be safe
in the present degenerate state of the world &c. if every
one was obliged to surrender into the title of the holder of
money before he rec'd it. Commerce would be at stand.
13 Bl. 452. 0- 3 Bl. 1576. 1 Bl. P.R 804.- 2 Co. 79-479.

I have observed that we have no such status
21. Sec 1. The Rule adopted by our Court is confor-
mably to it. I conceive that our Court considers it as O.K.
& lends every property. Both in England & C't. (for take the
Rule the same in both) the Creditor of a bailee who
seizes the property as his, or a purchaser under a bailee will
due hold the property in any case unless the bailee is indem-
nent. The reason is, if the Creditor can have his remedy
get the bailee (as he can in the case of solvency) the purca-
cher can receive his injury, for he has his remedy & his bailee
can the implied warranty & the Creditor has it in his pow-
er to levy on other property.

The reason why the Purchaser or
Creditor can hold in every case, is the great principle
principle of the C.L. before recited as the foundation on the Stat. That where one of two innocent persons must suffer by the act of a third, the one who occasioned the third to cause the goods must bear the loss. And unless the Bailee is in Bankruptcy there is no false credit given. It is there gone indissoluble under the Stat. & at C.L. that the bailee is the insolvent to entitle his creditor or purchasers to hold, otherwise there is no occasion to divest the bailee of his title. 3 & 4.

And even if the Bailee is insolvent his pur- chasers or creditors will not hold agst. the bailee unless the goods are such as to give him a false credit: this rule is founded in the words of the Stat. "Bailee must have been in the Order & Disposition of the property," by which is meant he must appear the attachable owner of it.

And farther the creditor of an insolvent bailee will not hold agst. the bailee unless the terms of the Bailei were such as to entitle the bailee to the goods: as his acon, i.e., he must appear the attachable owner, otherwise he had not the Order & Disposition of the Goods by the consent of the bailee: the consent is indissoluble. Know the case of Harth & Noble, the Jeweler broke the seal & Bag & thus became the apparent owner, but breaking the seal was a breach of Trust & the Jeweler did not appear the attachable owner, nor had the Order and Disposition of the Goods, by consent of the accused, (he could not appear by the terms of the Bailor) any more than a thief could. 3 & 4 & 1 & 485.

The general principle governing the relative right of a bailee on the one hand, & those of their creditors on the other i.e., creditors of the bailee or purchasers under him, have already been explained, but they
ure of frequent application, I will state a few more examples.

So bring a case within the statute, the bailee must not only hold in hand, but he must have the effect of the possession of the goods, i.e., he must appear to the world the true owner of the goods. This is also the C.S. rule. So if A. purchase goods of B. & leave them with him until the duty is removed, if B. becomes insolvent, they will not go to his creditors. And if a bailee takes his horse & leaves him with another to be curried or break his carriage & leave it with a smith to repair it. In the mean time, the bailee becomes Bankrupt, there is no prerogative that the creditors can hold upon the bailee.

And it is a general rule, that where there is given to the bailee for a particular, special, reasonable or necessary purpose, a temporary loss or possession, the creditor of the bailee on his becoming Bankrupt cannot hold upon the bailee. Doug. 603 - 13th 105 - 67 - 15256.

Now the circumstances under which one man may be in the poss. of the goods of another in the character of a bailee are indefinite, varied & numerous. There are many cases in which audacious man would trust to the evidences of ownership, when a cautious prudent man would not. I have however explained the criterion as far as I can.

I will state another example which occurred in this State. A merchant, Driver of Beef Cattle (or Beaus) hired a driver to take his cattle to New York. The driver left the main road & sold the cattle to some incipient purchasers, whereupon the owner claimed the cattle & recovered them in an action of Suer. The mere fact of driving was no evidence of ownership, the truth is owners habitually drive their cattle to market, many cases might be cited, but it was Draper. 248.
Where goods are bailed for hire it is used for a certain time by the balee, it has been a point of law whether the balee's creditors could take his interest in the thing bailed on hire. Thus suppose A. hires a horse of one of B. for six months, where A. has a pecuniary interest, for that time, can his creditors take him for his pecuniary interest? Dr. Kenyon seems to assume this in his argument, where he says, that the creditor would be entitled to the beneficial use during that time of the property.

But I conceive that the creditors cannot take the goods. I go on the ground, that a Bailment is a present chattel and always a fiduciary contract. I think in my observations on the subject of Pales, I showed clearly that a person cannot assign a paen, until the property becomes absolute in him; Can a creditor of a hiree take his interest in the thing hired? If he can, if one should hire a house to day to go to his creditor might take him from him, it is when the hiree could not assign the chattel.

I repeat the contract is founded on personal consideration & convey no rights in the bailee to transfer that was not the intention of the parties. If bailee could lawfully assign he would not be answerable for subsequent bailee's conduct & a stranger would be the arbitrary disposer of another's right of interest. It appears then Dr. going too far then, to say, that a bailee can assign personal chattel, a portion of his estate, thus, cannot take them for Dr. Kenyon's dictum vid. 7th B. 11. 12. That a bailee cannot assign 5 Th. 604. 7 Est. 6.

The truth is however that Dr. Kenyon's opinion Secundum Substantiam materiam is not at all foreign to the principle. I have laid it down, that the balee was a question of to the Temporality, leased with a house & if the tenant might be taken the good might be taken with it. 2 Bac. 352. Com. D. For C. 1. Del. 466. 7th B. 11. 12. 16.
Thus far as to the relative rights of Bailor on one hand, & Bailee & Purchaser under the Bailor on the other; we are now to inquire.

So what Actions, the Bailor & Bailee may be respectively entitled to.

It is a good Rule (placed down in the Books as Universal) that the Bailor, as the General proprietor in the Goods, may recover in Trespass to land or by any proper action, against any strangers, who takes away the Goods, or injures them, while in the Bailor's possession. Notice to show, that this Rule is not universal.


And if a deposit of Goods with B. & without notice or taking them away, the Bailor may maintain Trespass or Trespass on his action, the Case may require any Part of the Goods, the Bailor has of the Goods; and in things personal, General Property there is after it, what is called, a Constructive possession, or a Trespass in Law, that is not effectual in Law to support Trespass or Trespass, a Trespass, a Trespass, &c.

I would observe, that a right of Possession in any one amount to a Constructive possession, or a right of Possession, unless some other person is in actual possession, under colour of title, i.e., adverse title, or constructive possession, or possession in Law being the same thing. Thus in the case above it, the right of present possession may be terminated the delivery at any time. Bailed in actual possession, under colour of adverse title, if therefore has a constructive possession, & one or the other is indisputably entitled to an action for the injury done, this is to take the true construction & on this principle the bailor may recoup in the case stated.

So if a Watch be lodged with a Goldsmith to be repaired, & if he taken away, the
Bailor may maintain trespass on Tressor, for he has a right to Countermand the delivery.

Suppose Goods to be bailed for

Matthew I hire Bole and paid the hire, I further suppose, with in six months they are taken away. Can the bailor maintain Trespass on Tressor, for them after the wrong done? 4. Tho. 409 7 Tho. 9. 5 Tho. 409 4 Esp. 683 8 John 539 Bul

65-242, 676.

That the bailee may maintain an immediate action there is no doubt, whether the bailee may maintain any, if any what, is the question.

But if goods are wrongfully taken from a depositary or injured while in his possession, the bailor may doubtless maintain an action immediately. As he has a constructive fault, which is a right of present fault?

ed this rule holds true in all cases where the Bailor is countermandable at the pleasure of bailor, for here he of course has a right of present fault.

5 Tho 164-260, 2 Bac 214-1 Ralph 4-3 Ener's Kid Exp. 392 2 Bul 260.

It is said in the books that if the bailee gives the goods to a stranger, the Bailor cannot maintain Trespass as the Stranger or done, nor in the instant instance Tressor, i.e., he cannot maintain either way. The demand made, when a refusal amounts to a conversion, the original taking being lawful.

5 Bac 164-261, 10 Ralph 606-7, 113 Bac 287-282.

But according to a late case this doctrine would appear questionable for the delivery of the goods would itself be a breach of trust. In the case before cited of the Factor'sazoning the goods of his principal, it was decided that the principal might maintain an action after either the Factor or Proceedee without rendering at all for it was a breach of trust.
or a misfeasance amounting to a conversion thereto.

And yet it has been determined that
if goods are given to a Stranger & tenant be kept for them
in the first instance, it will not be, & this I conceive
tol be a more flagrant breach of Trust than the Stealing.

These decisions cannot be reconciled & it would seem
that the latter one relating to the gift is exploded.

Any rate after demand made & such levy of ownership &
liberated, on refusal to deliver by bailee's hands, the Bailor
may unquestionably maintain Trespass. 1 Buc 242. 1 Nolt
1604. 1 Noll 86. 01. 58.

(And also it is agreed that most bailees & Ionide
all bailees without exception may maintain Trespass or
Trespass, or any other proper action, the case may require
for wrong done for the full value of the goods. 4th, Common
Carriers. Special Carriers. The Shipping Farmers, primer
Ricer or Borrower. These do not have the right for the
bailee in each case as between himself & a stranger maybe
considered as the true owner & it is to be declared as such in
his action. For he has a Special interest in right of poss.
which confers it & he may therefore maintain the action
as well as if he were the true owner. 5 Buc 165. 264.
519.

In the same principle, the finder of goods may
maintain Trespass or Trespass against a stranger, who injures,
wrongfully, & takes them. Thus, in the time of Henry, a boy
having found a jewel, went to a stranger to know the
value, who deceived the boy & purchased it for a mere
song. The boy then by his next friend, sued Tresor &
it was sustained, because the boy came lawfully into
possession by finding & as who has lawful poss. has a right
to retain the goods after all but the true owner. Bull 33.
ibid 505. 1 Buc 346. Bap. 3, 575. 7.)
Even if, then, he said, that a depository or a mandatory is held up to the express consent of the bailee, he has less interest than a finder, or who may become merely because he has possession of right; but finding & having only a less interest or more slender title to support an action?

But it is said, that in the ground of the bailee's right, to sue for the full value of the Goods in any action is his own liability, which to the bailee; therefore, it is said, that a depository or a mandatory under a general power, who is liable only for god, cannot maintain any action, which, however, has not been adopted in most of the abridgements. Cott, 79 - lid. 492 13th, 64, 5 164 5 272.

Now in the first place, with regard to this reason, it is not true in point of principle, that the actual or possible liability of the bailee even to the bailee is not the ground of action, if it were the ground of his right to action, he would then have a right to recover as any other bailee had. For 1st every Bailee has a Special Property in the thing bailed, when he is liable over to the bailee or not is not material. It is his Special interest, his rightful actual Possession, that gives him the right of action; as can be shown by every analogy in Law. Thm. 392 8. Jones 111. 1 Bac. 246. These authorities, some of which might be added, show that every Bailee had a Special interest that entitled him under the lawful power to give him the right of action. 1 Bac. 346 5 Bac. 264 7 Thm. 396 3 Pit. 275 7. Thm. 575.

In the last cited v. Strange, in the case of the Finder, there the case of thing is superficial. The there, says that the finder has such a property which is the ground of his action is his only, and has the legal Possession.
But there are other analogies which are strongly in favor of my opinion. By the statutes of Westchester, commonly called the statute of "F-lue way" it is settled that a mere servant may maintain an action against the hundred in which he is robbed by his master's goods. Yet the authorities are all agreed that the servant is not liable unless the master be guilty of fraud. 1254. 12 Salk. 54.

It is also settled that a mere servant may have an appeal of robbery (in a criminal process) without if I claim it yet he is not liable unless the master unless he is himself guilty of fraud. 1254. 12 Salk. 54. 19 Edw. 129-130.

Do also it has been very recently settled in the C. P. that in an unregistered Bankruptcy having acquired goods, since the Bankruptcy may maintain an action of Trespass for the goods after the bankruptcy, he is to all intents and purposes either and his assignees' for the full price, which he had paid therefor. 1854, 44. 7th 3967. This decision may be shown that any trustee may have action for goods. 2967. Again, where a house, that was erected or blazoned daubed by a tenant, it was determined that the lessor could maintain Trespass for the timber of the component parts of the house after they were separated by the tenant, the general property was in the Reversion. Yet by the statutes the house was deemed into a chattel interest of the lessor into a lessor of the lessor. Here there is a very

Strong case, the tenant or rather lessor was not liable for the loss occasioned by the tempest, nor was he under any obligation to defend or keep the timber. Yet he sustained the action. 25 D. 575-7. Bull. 33.
Indeed, I take it to be well settled that a bailee is liable for injuries to the bailor if it is found that the act of the bailee or the servant of the bailee has caused the injury. The rule is laid down in many words in 7 M. & W.

It appears to me, that there is no necessity for resorting to the question of bailee's liability over in order to determine whether he can recover in trespass as the wrong doer. The true ground then is, as I think, that he has demonstrated that the wrong was done. Or all else, but the true owner, the bailee is in the utmost answer & it is not for the wrong doer to say that he is not.

III. Granting that the bailee's Right of Action is founded on the liability, barely possible, to accident once to bailor, & may be actually subjective to when the bailee's liability over is spoken of, we are to understand by it nothing more. The impossible liability, for his actual liability in any given case cannot be tried in an action between the bailee & wrong doer. If it could, it would be futile, for it would not be binding on the bailee in any event, nor on the bailor, nor the other. Their respective right cannot be tried in an action between bailee & wrong doer. All bailees of a particular class are not always liable. A depostary or a clementary may be liable certainly, if it is equally certain that other bailees may not be liable. It is very clear that on this ground the right of a depostary or clementary is precisely like that of all other bailees - for being indisputably accountable to the bailor & in subjection in the same manner as a bailee, he is entitled to an action as any other bailee.

Again the Policy of the Laws & general intendency require that every bailee whether should have a right to sue a stranger or wrong doer. For it is not uncommon.
man that the bailor & bailee reside at a distance from each other, sometimes on differ Continents, in such cases if no
writing does not take the goods from the Bailee, he shall not be necessary to send around the world to procure a
pawn of a物 from Bailor to sue him?

The next Rule in the title in aiding my
argument is, if a Bailee deliver goods to a stranger, is an ag-
pelled point, that the stranger may maintain an action ag-
st any one, who injures or takes them away, yet what is
the best hint of a discretionary? The goods are delivered him
for mere custody, this then comes directly in the title
of the Rule, have been contending agst. [Bac 242-2
5 Bac 260- Rull 607.

It is an agreed point, that an Aution-
er or Broker may maintain an action in his own
name, on a Contract made for Goods sold by him to a
purchaser & his Rule holds, although the purchaser knew
who owned the goods. As a General Rule where a servant
makes a Contract in the name of his Master, the Mas-
ter is not the servant must maintain the action.
Mr. Pitty assigns as a reason of this diversity, that the
Auctioneer has an interest by way of Commission in the
goods sold. I believe however, that it is because he
makes the Contract in his own name, [Ch. 7. P. C. 5. 1 Hb.
81- 2 Hb. 591.

A portion, then, a Tactor may maintain an action
on any one, who purchases under him, with reasons un-
doubtedly exist. Is also a Shipp Master may maintain
an action for freight. Where a Agent contracts in their own
name & must from necessity be allowed to sue in their
own name, for their Contrators & purchasers generally
reside in foreign Countries. The Rule is the same as to
a Broker, the substantial reason in all these cases

Note that the Agent Contracts in his own name, etc. [Ch.
Master & Serv. 1 Bull 137- 1 Hb 82. 2 Hb. 591- Park. 5110.
Thus you perceive that under certain circumstances either the Bailor or Bailee may maintain an action for the wrong done for the full value. That sometimes either Bailor or Bailee may bring such an action the not, yet it is not always that the bailee may have an action and the Rule that qualifies holds under what ever description the case may fall.

The rule the Bailor & Bailee may both have a right to sue a stranger yet there can be evidently but one recovery for the full value. When then the Bailor brings his action in trespass or Treson & recovers the whole value, the Bailee cannot recover in either of those actions for the same value; But if the Bailee has recovered the bailee cannot recover at all.

The rule is not precisely alike in both cases, the difference is, that after a recovery by bailor of the full value, the bailee in a direct action may recover for his special damage, but not the full value 13 Co. 69-57 Bae 165-265-265.

The rule laid down in 2d Roll is that if both have an action, pending at the same time, he who first recovers must give the other the benefit of his action. I found however the more correct Rule to bee, that he who first commences his action for the full value will defeat the other of his action of the same nature. For by commencing the action the party attaches in himself a right of recovery which precludes the other party. This rule appears reasonable to enunciate 2d Roll 569.

Thus when a decree is not made, the deponent the bailor may have two actions & he that begins first shall receive & prevent the other of his action. 2 Bae 659 - Sixth 127. This does not enlarged

And if the bailor has recovered satisfaction of the wrong done, he clearly cannot have an action against the Bailee, even when the Bailee has been in
fault, as by exposing the goods to injury or loss, so the
Law allows no damage. Satisfaction for the same thing
is generally the C. I. allows but none recovery in any
case. D R. 1217 - C. I. 24 2085 - 3 Lest. 124 2125 11
I. 60, Est. D. 310, 5 1230 280.

The Rule just laid down is entirely
correct, but I think it might have been laid down more
strongly and made more extensive, for if a bailee first
commences an action agst. the stranger or wrong doer,
he also fails to discharge the bailee, or in other words
waives his remedy agst. the bailee. I find no authority
or absolute precedent for this, but if the bailee by
commencing his suit, once precludes the bailee
from having one agst. the wrong doer, it certainly
ought but the Rule, for it would be extremely unrea-
sional to expose the bailee to an action at the suit
of the bailee when the bailee had himself deprived
the bailee of his indemnity by commencing & discont.
uing a suit agst. the wrong doer when perhaps the bailee
come in Bankruptcy (ID. 557. This is quoted here by mistake.)

Besides, it is supported by analogy. Thus, in a
case of Rescue, the plt. may sue either the ship or
the rescuers at his election, and if he commences an
action agst. the rescuers, the ship is discharged. The
situation here of the ship, is that case is very much like
that of the bailee, he is the keeper of a pledge viz.
the goods he is the keeper of a pledge viz.
the ship he is the keeper of a pledge viz. the

And there are many analogous cases in which
the party having one election of two remedies must ac-

cate by the one, he chooses & not abandon that for
the other. S. 12 214 2125 10 10 2163 44.
But it is otherwise, if the bailee first commences his action. The tenant, however, finds that he who first commenced such action is not liable to the other if his action be of a similar nature. It follows clearly from the case the bailee takes the same interest as the lease. If the bailee, having the same interest, were himself liable to the bailee, he ought at all events to be liable himself. 320. 65.

But if the bailee first commences an action and even if he has recovered not the bailer may have a special action on the case for his special damage, if he has sustained any.

Now there are many cases in which a bailer can receive special damage (in a compulsory or depository cannot receive special damage) by the injury of the article bailed or by being dispossessed of it, in as much as they receive no benefit from the same.

But not only a Pannier, but a thir or Pannier, or may maintain special damage in that way. They may maintain an action for it distinct from the action by the bailor to recover the full value and before observed, this action by the bailor is not prevented by a former recovery by the bailor of the full value. There is no precise case in the books but the principle is very clear, for it is well established, that where one does a wrong act, involving what is called damaunum injuria to another, the sufferer may have an action for the special damage. 370. 65.

If the bailor himself, take the property wrongfully from the bailee, as before the time agreed upon therefor, or the purpose accomplished, the bailee may have a special action against him, for he sustains an injury in consequence of a wrong act done in violation of the Bailment. I apprehend, however, that he cannot maintain
Trespass on Trespass or Trespass on Trover are actions to recover the full value of the goods. The theory is laid down by Coke, adopted by many writers since. 5 Bac. 155-266. Esp. 5401-13. Co. 69.

Now the reason why he cannot maintain Trespass on Trespass is, that his special property is the ground of his action, if he special lords the ground of his damages. It is true, that this special property gives the bailee a right of action against the persons for the full value. But there only, as I conceive, as to such he is the true owner; if they are not competent to deny it— as to them he has the good property, but not as to the bailee. And there is certainly no propriety in allowing the bailee an action against the bailee to recover the full value. That this is the bailee's relation to strangers, vide the 505-20, 575-1200. 359-12.

Thus, as between the bailee & bailee, the latter has a special property entitling him to the custody & use, & this is the extent of the bailee's right against the bailee, but as against wrong doers, he regarded owner & recovers full value in behalf of the Bailor.

According to Coke's Rule, the bailee may bring Trespass on Trespass if the ownership is kept. The Bailor will go in mitigation of damages, but I conceive, that in all cases where full damages are sued for, i.e., full value, the plaintiff is entitled prima facie to an action to recover the whole value.

So if goods taken are returned it will go in mitigation of damages if so in all cases where damages are mitigated by any thing or past facts.
But in the present case the bailee had no such
right originally or at the time of injury done & this
is what distinguishes it from those cases - But there are
still stronger reasons why the bailee cannot bring
Weschulz v. Trover. viz. That in an action agt. the baile
for the real value of property furnished no rule of da-
nings, even presumptive, the special damages may be
much greater than the value, why then should he bring
an action in which the Real value is prima facie,
the Rule or Measure of damages.

I quote the injury may be less, than the full
value of the goods. In such case Dr. Coke says the da-
nings may be multiplied down to the actual injury, if so, it is
Dining rather, a very awkward & incongruous mode of recovery.

The reason why the bailee sues in any case for
the full value is that he may recover for the benefit
of the bailor, but in this case the bailor has secured him-
self by taking poss. & has also injured the bailee, so
that in this case the bailee does not sue for the ben-
efit of the bailor. I make these observations because I
think Dr. Coke's Rule incorrect, still however it may
be. & I suppose it is now considered as law, tho. I think
it clearly opposed to principle.

If a Bailee delivers property to another in
violation of bailor's orders, he is in a quaere, guilty of a
conversion or misfeasance amounting to a Theft with
out demand. For Trover sees, for an unlawful Taking of & detains. This is an unlawful
act 1 T. 301 - 302 & C. 531.

As a General Rule the Bailor can main-
tain no other action agst. the bailee, than detinue
or an action on the Case. He may bring the ac-

ciend for remedy of Dsix, but that aaction is now dis-

used & succeeded by a special, action on the case for
negligence or omission of duty required by law. The

act which is an action on the case for conversion or

adsum which is founded on the promise, express or

implied to keep with care & to deliver. These injuria-

ing acts are the only actions he can bring the bai-

lee. 13 Tr. 478. Bailey 2 Co. 244. 10 Tr. 478.

And when the goods are lost or injured by neg-

lect of bailee, the bailee may sue the bailee either

in tort for the neglect, or in conversion, on the

agreement, express or implied, but not in trover

because mere negligence can never constitute

conversion which consists in misfeasance or for-

feiture. 1 T. 301. 59 V. 292. 2 T. 319. 6 Tr. 381.

But in general trespass never lies in bailee

for a 

neglect, the tort is done, because the origin-

al taking was lawful; so that the bailee has neither

the act nor constructive foss. But there is an

exception to this Rule in that the bailee should

not only destroy the goods, he would be liable to the

bailee in trespass, for by that act he distinguishes

the Bailor, or as Lord Coke says he is presumed to have

sued the goods for the purpose of destroying & not of

keeping them. As an affidavit, farmer Hill, the bail

told him to return. I once heard a case cited

to this effect, 'that if the bailee sold the goods, the bailee

should maintain trespass,' but I never could find

it. 8 Co. 146. 10 Co. 191. 5 Co. 137. 11 Co. 347. 2 All. 595.

2 T. 466. Contra 5 Tr. 346. Where it is said that

the bailee cannot maintain trespass even in trespass,

homever, *not* law. 9 Mo. 253.
VI. Inns & Innkeepers

This title is closely connected with that of Beelzebub, which precedes it, in the course of which most of the principal relations to Inns & Innkeepers have been noticed.

If it be any person may exercise the employment of Innkeeper, unless the number of Inns becomes so great as to be inconvenient to the Public. For by the Cal. Laws, Inns are established without Licence. The St. of the U. S. of 1794 & all laws of most of the States require such persons to be licensed. 2 B. & B. 170. 9. 10 Boll. 84. 2 B. & B. 549. 3 B. & B. 347.

And it follows of course that he who assumes the character of an Innkeeper becomes liable to its duties & costs.

But Inns or Taverns, from their inconvenient numbers may become nuisances to the public, & the Keepers may be indicted as Cal. Laws Common Nuisances. You will readily perceive that this will not be the case where the Innkeepers are Licensed according to stat. 4 B. & B. 160. B. & B. 549. 2 B. & B. 174.

So also a Disorderly Tavern may be considered as a Public nuisance & the Keeper indicted for it as such, independently of any reference to numbers. It appears in Mass. 198. 225. In Cal. no Inn can lawfully be established unless licensed according to Stat. The Rule is the same in most of the States. I believe, as to the mode of appointments &c. vid. Stat. Cal. 640. And by our Stat. the Keeper of any Inn without a Licence is punishable by a Fine, which is doubled or increased in geometrical progression for every repeated offence. Stat. Cal. 646.

And there is a temporary law of the U. S. requiring all Innkeepers to obtain a Licence. It is not a law regulating the establishment of Inns, that is left to the in-
individual States, but being exercising the employment of
innkeepers, they must obtain a licence. It is indeed one
of the sources of revenue by indirect taxation.

The State Courts of Ch. provide, that the Civil au-
thority, or detective may suspend or otherwise punish
innkeepers for Stat. 47, 8 Geo. 3.

Such proceedings do not, I trust, aught the
Court of Ch. for keeping disorderly houses,
for there is no such express provision in our Stat. Thus
a Court provision is not in general to be construed in-
junction.

The duties of an Innkeeper extend only to the outer
management of Travellers generally speaking, & keeping their
goods & horse animals. their bread &c. 3 Boc. 106-9. 1557.

And if an Innkeeper refuses without cause,
courte to keep a Traveller an reasonable price tendered (for he
is not compelled to treat his guest) he is not only liable to an
action on the case in behalf of the person injured, but al-
so in an Indictment, for being disorderly behaviour, this to
frustrate the end of their Institution 4 Boc. 148 1661.

The care required of an Innkeeper does not
extend to the person of his guest but to his property only, i.e.
he is not bound to protect him from the violence of
others. e 4 Innkeepers are bound no more that every per-
son in the community to prevent a breach of the peace
& hence if a guest is beaten at an Inn, the Innkeeper
as such is not liable & Co. 32 - 3 Boc. 101.

If an Innkeeper himself, or by his servant,
deals out to his guest unhealthly food or liquor, he is liable
to an action on the case 1 Doll. 96 - 3 Boc. 102.

The principle rules in relation to an Inn-
keeper's liability for the goods of his guests have been preva-
ted in the title of Bailor, for as respects the goods he is
strictly a Bailee, there are some additional Rules however
which I am now to notice.

The liability in this respect is not discharged by absence or sickness of each innkeeper. This strictness is founded in policy to guard the guest from fraud. The absence might be on purpose to defraud or avoid liability in intended ease.

The sickness or inconvenience might be affected, as at any rate he is bound to provide against such contingencies. Besides the opportunities he has to defraud and hinder make strictness in these rules indispensable. Sect. 520. 3 Bac. 102.

An innkeeper is not chargeable like other innkeepers, i.e., he cannot make the contract express or implied, on which all duties are founded; he might, however, be subjected for fraud or violence on any positive sort, but not for omission or mere negligence, for the law will not allow his privilege to be thus infringed on the ground of public policy. 1 Nott. 2. 31 Bac. 102.

If an innkeeper be not the convenience to accommodate a stranger, as that his house is full or the Traveller desires to stay, if taking his chance, as the saying is, the innkeeper may be liable like other persons for positive sorts of misconduct but in such case he is not liable as innkeeper & if goods are lost or injured, as in the case of a Common Carrier under such circumstances the customer must bear the loss, occasioned by his own folly. 1 Dyer 135. 3 Bac. 102.

It has been made a question, whether, if a guest request a host to leave his apartment if his goods are stolen, because he did not, the host is liable for them? The opinions appear to be divided. 3 Bac. 163. Dyer 266. 4 Blom. 70. 158.

For my part I should think he ought not to be liable; the request is certainly very reasonable, & should
he obey'd, there may be many in the Tavern unknown to both of if he does not lock the Door the Host ought not take liable, unless it were proved that he was privy.

Mereely delivering a Key to his Guest does not discharge host. This is partly giving his guest an opportunity of securing his property. It being supposed, there is no intention of danger, a request to lock the Door. But it is to much to say, that an Innkeeper ought to keep a guard even every apartment, when he has request to the guest to lock their Doors. &c. 32. 3 Bac. 105.

An Innkeeper liable as such the ignorance of what his guest affects may exempt the host if he were deceiv'd as to their real character. Representation I thought sufficient his case and he like that of a Common Carrier, which I have before considered. 1 Wash. 572. 773. 3 How. 158.

In a general rule Innkeepers are liable as such, only to travellers. & such as stay at their houses in the character of guests, & at the price usually charged to Travellers, he is not liable to his Neighbours, even tho', they should lodge at his house. As in case one lost his Hat on Coach, nor the Boarders properly so called, who live with him to pay the price charged at private houses. For there is reason, why a Boarder should have a higher claim after him, than any other man in whose family he may board. The Host in this case is not in the character of an Innkeeper, & cannot be liable as such. 3 Co. 32. & 3 Edin 276. 3 Bac. 105.

Besides, the policy of the Case does not ex- tend to him, for one who lives in the house himself as a Boarder can judge for himself of the character of the Innkeeper.

An Innkeeper is not chargeable in the absence of the
owner for any goods, for keeping of which he receives no profit. By the owner’s absence here is meant such an one as directly him of the character of a guest; for the Innkeeper is liable as such only in consequence of the relation of Innkeeper & Guest. Vol. 3. 339. Brev. 180.

But for goods for the keeping of which he receives no profit, he is liable, at the owner’s charge, for as to himself personally, for as to the goods the relation does continue, whether a traveller needs leave about which it is profitable for the Host to keep, for the purpose of charging his manner of travelling perhaps. Brev. 109. De tit. 360. 1 Roll 7. Nov. 176. Octr. 1777.

And when the goods of a man are in post, if he does not take leave him to an Inn, the Innkeeper is chargeable to the carrier precisely as if the owner or a carrier himself were the guest. Brev. 124. Vols. 162. Decr. 1958. 5 Mill. 375.

d) As to the Remedy an Innkeeper has got his Guest, I have already partly stated the Rule to you. One Innkeeper may detain the person of his guest until the whole bill he paid & if the guest leave the Inn without paying his bill without permission, the Innkeeper may pursue & take him, a rule as I have no doubt he has the same remedy as this guest flies into a neighboring State. For it has been determined in Gl. 29, that Bail may retake the Principal in a neighboring State with a Bail. Rice. In Gl. rule vid. 2 Roll 95. 3 Brev. 186. De tit. 360. Car. 185.

He may detain the horse for the expense incurred in keeping the horse, but not for any other part of the guest’s bill, this is according to the Good Rule in relation to Brev. 174.

But: also he may detain the horse of his,...
guest, yet he cannot sue him, for he is in the custody of
Treas., is like an estrey, distress for Rent or Damage Treas.
and 5c. if he uses the house or other animal at all the
very act will make him a Trespasser ab initio & he is
liable to an action at the suit of the guest, for the De-
tainer is a Process in invitum & compulsory, for which the
law gives the innkeeper a License, if when the law gives
a License to the party against it, he is a Trespasser ab
initio & may be sued in the same manner as if the
original undertaking had been unlawful & by force. 3
Baer 105—Sta. 376; Cloon 877.
He cannot sell the Horse. Ib. aut 2.
VII. Executors & Administrators

[By Judges Story & Gould.]

General View. By God.

This subject will include in it all cases of deceased persons of a personal nature; so it is the duty of the administrator to see to it, and to make Will it is the duty of the executor, to the disposal of all property.

To get at the idea of will, all must suppose the person to be dead, if one holds his estate under the law as to the disposition of the estate. But when there is no will, the law points out who shall have the estate.

The law has pointed out a different course for the disposition of Real & Personal Property. We will show the manner in which each is disposed of at our pleasure. There is however almost a complete Revolution of the Civil principles in the United States.

The Real Estate goes directly to the heir. There is no will, as effectively, as if the heir had it conveyed to him by a valid deed.

If there is a will, it goes to the devisee, so that he may, personal property never goes to the heir as such, unless he holds the lands, indeed as his ancestor did not the executor administers the personal property as trustee, in the first place to pay the debts, in the next (if there is a will) he is trustee for the Legatees, upon the principles of the Code, according to the meeting, then man.
must be paid before he is generated; so that the Proportion of each must be an after cost. & if enough assets remain they will be paid.

The Real Property we have said you deduct to the heir & of course it cannot be come at through the medium of the Eq.: to pay debts: this is a great defect of the Eq.: But by St. 1 Geo. 2. The estate in Jesuit Plantations are liable to Simple Contracts as well as Specialty creditors: which then was the Stat. law here before the Revolution. 2 Wood. 377 note 5.

The heir however as devisee is liable to pay Judgment creditors, for lands when they pass to an heir pay with the Site upon them. Specialty creditors may likewise come upon the heir.

The heir or devisee will not liable however personally, so that should he sell immediately sold to a homestead purchaser, the Specialty creditor would as the law stood have lost their debt. But a Stat. has been made to remedy this, by providing that the heir or devisee should he personally liable? The extent of this liability is to answer Judgment & Specialty Creditors.

Cases & Adjudgments are liable to the extent of the assets.

If Marshalling assets in Chancery.

As far as the English Stat. have mitigated the rigor of the Eq.: I have mentioned. All the residue has been done by Chancery. Chancery will allow the Simple Contract creditor to go after the heir, for so much as the Specialty creditor might have gone after him; for no more. The remaining Simple contract debt or Credit must be lost if there is no assets.

Personal Property is adjudicated liable.
for all debts; Real Property is a second grade liable for debts; a Specialty Debt is by the State; the possession of the heir or devisee (so far as the land are) Chancery goes the further in the Specialty Creditor goes apt the heir, on what is the same thing, lets the simple contract creditor (in the Specialty Creditor have gone apt the property in the place of the Specialty Creditor) 6 Ms. Ch. 150.4

The C.L. is here very defective even with the aid of State C.L. doesn't now seem to do complete justice. In the United States generally, this not entirely have the defect been remedied?

What one Stat. have done in case of failure of assets is done frequently in England by the Debit or the heir or devisee (so far as the property are) Chancery goes the further in the Specialty Creditor goes apt the heir, on what is the same thing, lets the simple contract creditor (in the Specialty Creditor have gone apt the property in the place of the Specialty Creditor) 6 Ms. Ch. 150.4

In England where a man devised land in the words, "I do hereby declare bequests are the debt to pay my debt," it was held that it was not the test of the personal property was exhausted even though the personal property was entirely bequeathed in Legacies, 125 (1) this construction does not prevail in the United States. The ground of the English construction was the anxiety which the law always manifested to preserve the heir in his right. If all those decisions have been but in this country we have no need of such constructions.

Priority of Debts. 7 There is a priority to.
he observed by C43: when the assets he holds are all legal assets; but where there are more legal and equitable assets, all debts are to be paid alike.

Legal assets are such as arise from the sale of property which the C43 receives in the capacity of C43, which he can without any restraint convert into money.

Equitable assets are those to obtain the property of which he is obliged to have the aid of C43. 1st. For the receipt of which he might have been obliged to pay aid of C43; or those which arise from the sale of lands or other property known nothing of priority of debts in these cases, but direct all the debt, the paid out of their fund alike.

Where one directs in his will, his C43 to sell lands C43 cannot of course direct or perhaps he will not, or perhaps they are devised to another to sell them if he will do nothing about it. In all these cases, as Chancery has to interfere before the lands are sold, the assets are equitable.

In that it never wills beyond his assets — Nothing are assets, but what are turned into money in his hand. If the C43 wishes to sell the personal property in his hand, or to sell it, or sell it for an under value, he will be liable to an action for a Deed void but not as C43. 1st. goes after the property of the deceased in his hands. If then, he refuses to pay or turn over property on a Sc. 2d, 3d., C43 will go after him personally. 1st. goes after him to the extent he has actually wasted or they will be paid by Creditor according to Priority. In C43 an C43 cannot pleadplea. 4th Admin. intestate except in one instance.
In case where specific as well as recunyary legacies are given, the legal title to the property vests in the Decease. The legatee cannot take title if the Decease has given his consent. But if he has paid the debt, so that he does not want the funds to then refuse to deliver them, to the legatee, when they cannot recover the specific thing, may recover damages in a Court of Equity for withholding them.

Legacies are Bequests of Personal property. They are Specific & Recunyary. They are Specific when an identified thing is given, as a horse, bag of money, &c: Recunyary when a particular sum or quantity of money is named without identifying it as $100. There is a difference between the situation of different specific legacies, for, when there is not a sufficiency of assets without taking some of the legacies to pay debt, must first take Recunyary Legacies, and if all which were to pay specific legacies is exhausted, if the debt remain, he may then take specific legacies. When the property of specific legacies is taken, they must be thrown in proportion to each other legacy. Such part only.

The Decease is the testator, and is not only for his guide, when there is a surplus of property after paying all the debts, legacies, if it frequently happens that such surplus goes to the residuary legatee. But if the residuary legatee are paid there still remains a residuum, undisbursed by the will, to whom does it go? As if all the testator's hands are divided except one only. This will is must be disposed of according to law. 6 McR. 153. But where the testator meant to devise a thing in a residuum, the nation which prevailed in the spiritual Court was that the Decease might take it for his services.
Upon this general principle, Equity has made a great inroad. They thereupon, on the principle that if the will shall have it, if the testator had made no provision for him. If by will it is clear, that testator did not intend & give to the Cypr, anything for this trouble, by an actual premium in the Will, the Cypr shall have the residuary both in Prue & Chancery. But if it is provided for by a Legacy, or Specific Reward, he shall hold the residuary for the benefit of the relations of the deceased as directed according to law.

If however it was clear that the Legacy was not intended to recompense the Cypr for his trouble, as where it was given to procure a deed of delivery, he will still hold the surplus.

The legal construction of the Will is clear, from the equitable. As in Equity, so in Law, the Residuary is given to the Cypr. In favor of the Cypr, is provided for, then it is distributed to the Kinder, but Cypr holds it as a recompense. This is called the equitable construction. But here proof in admission to show that the deceased designed to provide for the Cypr by the residue. But proof cannot be admitted to contradist the legal operation of the instrument. It may be admitted, to rebut an equity arising out of one equity, where the equitable and legal construction differ, therefore the old legal construction.

It is a maxim that governs in all cases on this subject, that the intention of the Testator is always to be the Rule of Construction, if consistent with the Rule of Precedence. The principal difficulty is to understand the intention of the Testator, next comes the Construction.
The rule is this: not to the words as to the
estate given. If the testator used words which cannot
apply to the estate (as where one real or personal property
the intention will be defeated, for the law interposes to
the absolute property in the first possessor.

If the testator, in any doubtful or then to
meet, that usage should not convey it anyway during
his life, the provision is void, as inconsistent with
the estate given.

If one adds a quality or restriction contrary
to law, it is nugatory. But if he has given such an estate
as he can give, in whatever words; it may be created
if it is consistent with the rules of law & the intention clearly
known, the donation is good & the will shall govern.

With respect to verbal proof, to explain the
instrument as to the intention of the testator: it is begun
with that such proof is not admitted to explain will.

A distinction is taken between a Patent
or a Present ambiguity. If there is an ambiguity on the
face of the will, verbal proof may be introduced to con-
plain it; as where the devisee had two sons of the same
name, verbal proof may be admitted to show which son he hadreference
to; the ambiguity is here latent & even in this case you
cannot add verbal proof to make the construction con-
stitute the will. Again, where a Legacy is given by an
old maids & to the three children of my cousin E.B. & C.B.
had six children two be a rich; the third & fourth & apor
subsequent one, there was a necessity of verbal proof & by
the strength of it. It was decided, that the testator meant
the latter last - but the further gave more property to the
children of his cousin C.B.; here then if we should say that
He meant Shand have it, the construction will not stand.
with the title, of course, it must be the 3/4. For all were
the children of E3. What then is the extent of the bequest?
Merely to facts alone? It can never be admitted to
explain the sentence when they are obscure. If it be
so blind that no one can understand it, it is called
void for vagueness.
But when a will is written without story you
may obtain the meaning of it by a view of the whole. This
is a principle of policy as to sentences.
Still hard proof may be admitted to show
the circumstances of a man's estate or family at the time
of making the will. If where a man made his will
leave his real estate to his children, but his
children take an estate as joint tenants. But if he have
children he take no estate in fact. Here we may
know, parcel whether he had children or not. In this case
"children" denote the kind of estate there. He is equal to
the words "issue" or "heirs of his body." In the case
of his having children they are descriptive persons.
In all such cases of ambiguity it may be explained
by hard proof.

The situation of the property may be
shown to explain the meaning of the estate; when
one had an estate in fee in the Belziger in
London & in the reversion, in his will devised it to
the same as tail. By the devise, the devisee took
not a life estate when the thing is specified. But as
he already had a greater estate it was construed to be
the passing of the reversion. The point of his having an estate
tail was proved by hard proof.

We have said that at the hard proof
cannot be admitted to explain sentence, nor it maybe
admitted. To explain ambiguous words of by the use.
In law formerly when an estate was given "succession" it was uncertain whether it meant the eldest child or eldest boy, as "succession" occasionally means either, and proof was admitted to explain the ambiguity.

Estate was once the name of an ambiguous word, and was sometimes used to denote the thing, sometimes the interest conveyed. Hence it means not only the thing by name, but also the interest in it.

There may be a misdescription of parts of the will, and if the whole will taken together will show the meaning, it is where a man gave his estate to "John" who is in the service of the Duke of Ancaster; his real name was William, but as proof of the fact the description was the duke's name.

So where a man gave a name, but in the will, which was "pretty sure", on proof of the fact he took the legacy. But had there been a personal clause of that name, this wise would have been explained. These things stand well with the will.

No real estate passes by the will except what he had at the time of making the will; but all the personal property which a man died possessed of may pass by a will, made previous to the acquirement of such property.

In an express may have a beneficial interest in the estate after all the trusts in the will are performed, for the residue cannot be collected out of his hands by process of law.

The power of creating a trust or trust in a qualified one, he cannot take, unless there is a residuary left after (left after) the creditors are satisfied; for they cannot be defeated by the debts, however, no matter what the form of giving is, or may be, whether it be by deed or bond etc. If the estate goes in.
to the hands of a voluntary assignee he cannot hold it as a trust for the creditors; and it will be carried out of his hands by an application to the Court. A voluntary is one who takes property under a will or by distribution of its execution.

The liability of an Espr. to account strictly, and to carry out the estate, extends no further than the extent of the estate; but it is not strictly the value of the estate, but what is contained in the amount of the inventory, and the amount in the inventory of the sale of the property contained in the inventory; of course the estate may be more than the inventory it may be less. The estate contained in the inventory is prima facie the sum of the estate. But if it should exceed the inventory, the Espr. is liable for the surplus.

If fraud had been practiced in the sale of property, the Espr. or executor is not liable as such, further than the extent of actual assets. But he is liable for a default or act of any person under him; and he is liable the donee's property on account of debts, and in other cases where it is the first place goes in favour of the creditors and not the estate in his hands.

By Judges Reeves & Gailey

Executors & Administrators are the representatives of deceased persons, as to their personal estate, and to their debts affecting personal estate of theirs. 1 Bl. Com. 139 - Co. Litt. 254 & 2 Bac. 139 - 3 St. 260 - 1 Com. 373 & 522.

An Espr. is a representative (but inferior) appointed by the will of the deceased. His duty at first is to operate the last will of the deceased; 2 Bl. 338-5; 7-15.
The appointment of an heir is essential to the validity of a will. Co. 1, c. 11. 31 Bac. 392. Godd. 292. 2 Bl. 547. 2. Bac. 1901. Neither the appointment of an heir is necessary that the estate should be settled, it is sufficient if the intention of the decedent was to make an heir. Pro. 1 Cor. 234. Godd. 177. D. 247. 23 Bl. 507. Godd. 292. Dyer 90. 1. Office 277. 8. 12.

The disposition of personal property in contemplation of death, not containing the appointment of an heir, is called a testamentary disposition or in some cases the personal property of the deceased. In some cases, it is called a codicil. Winter 2. 2 Bac. 89. 102. 3 Bac. 466. 23 Bac. 465. Godd. 277. Thus there may be a will without a testamentary disposition or vice versa.

The naming of an heir is by implication a gift to him of the goods of the deceased, and an heir being named to pay his debts, it is the naming of the heir makes a will. 28, 29. Godd. 292. v. 22.

A c. B. a testamentary disposition of the land without naming an heir was called a will; but in case of a will, a Testament, but a testamentary disposition of land is not so defined now. 5 Bac. 497. Co. 111.

An heir is the representative of a deceased person, appointed by law. 39, 53. The proper organ or minister is the testator. Co. 111. 5. When no heir is appointed by the testator, 21. 29. When he cannot act as a testator, 21. 29. Then he will not act as such.

An heir is the person appointed by law to succeed to the real estate on the death of his ancestor. 3 Bl. 501. The devisee is a person entitled to the real property by the testamentary appointment of the deceased. 3 Bac. 465. 2 Bl. 466. Godd. 277.
A legatee is one who is entitled to personal property by Testamentary appointment. 3 Bov. 466-471, 213, 271, 213, 471.

The power of a devisor over personal property is merely that of a trustee except so far as they may be entitled to it. Over real property they have not the power to add any power for the sale of any real estate was not original. 2 Bov. 466-471, 213, 271, 471, 213.

An heir may have the disposal of real property by the order of the Executor, so if lands are devised for the benefit of both the heir and the executor expressly empowered, it is considered a character of the person to sell, no other being expressly empowered. 2 Bov. 471.

But the heir as such has no power in any case, whether or by whom or by any other power or power. None of the powers of the real estate. 2 Bov. 471, 213, 466-471, 213, 471.

A deed of land and under a power of any court of Probate by 3 Bov. 177, signed by heirs, is 3 Bov. 177, in which the person named as such in the power, and the person empowered, does not pass the interest. Such deed need be proved in evidence as evidence of title. 1 Bov. 471, 271.

If a legatee receives (waxed) his legacy through the will, or devisee takes possession without the intervention of the Executor. The power of the Executor has the same authority over real as personal property. 2 Bov. 471, 213.

The personal property is charged in law with all the debts of the deceased, and the real estate for debts by operation of law. 3 Bov. 471, 213.

At Bov., or rather, since the Stat. 471, 213.

2. Judgment debt, heard the real estate from the first
day of the term on which judgment was rendered & costs settled, from the date of the term, but now by Stb. 24, 4th Ed. 2d. They bind the lands &c. locus side purchasers only from the day on which judgment was declared, & the goods &c., held only from the delivery of the same to the officer. 3 Stb. 24. 2 Bl. 420.

By the old law judgment removed lands in the hand of the heir from the time of the original title's being purchased. 2 D. 93. 3 Bea. 20.

Specifically creditors may proceed to either the Reals or Property on Personal if they attach the personal & it be not due. If there be all the debts, the creditors by simple contract are to be able to have all their demands, as they cannot take real estate, they are without any remedy at Law. 3 Enc. 131. 430. 2 D. 93. 2 Bl. 377.

But in the last case the will relieve the simple contract creditors by letting them indorse the real estate for so much as the specifically creditors have taken of the personal property & here the simple contract creditors stand in the place of the specifically creditors for so much of the real estate. This is effected by Ch. Y ordering a sale of the real property in the hand of the heir & the same indulgence is done to the specifically. 3 Enc. 131. 2 Ch. 142. 1 Ch. 14. 5 Stb. 436. 2 T. N. 401. If the amount of the sale of real estate is insufficient, half is to be made. The spirit of the Ch. Y collaborative.

Under our law, but 2nd law, subjects the whole of the real estate to all creditors simple contract debts or creditors.

Of Creditor in equal degree, he who first to claim judgment as the plaintiff is entitled to his whole demand, the exclusion of the rest. 3 Stb. 140. 401. And if one of the creditors of equal degree has commenced a suit, or both, a Bill in Chancery, as the rule now is, the Cpr. cannot defeat the claim by paying the other creditors. 3 Stb. 140. 401. 2 Ch. 217. 2 Bro. Ch. 207.
If land is devised to an Eq. for the payment of debt
the Eq. cannot be sued at law for the payment, by a cred-
tor, as having assets. 1 Can. 401. 2 Pe. 970. 2 Wm. 416. 12.
Vern. 106. No one can be compelled at law to make the sale of
the land, land not being considered as assets in his hands
so as to subject him at law. But Ch. 17 will compel the Eq.
to sell that even tho the devisee is not Eq., if it be sold
to any other person. 1 Am. 420. 2 Bl. 570.

Assets What: 2 Bl. 570.

They are all such property of the deceased as his real
personal representative holds for the purpose of enabling
him to discharge those duties which have devolved on
him as representative of the deceased.

There are two kinds of assets: 1. Real.
Asset which descend to the heir, to make him liable to
such debt of the ancestor & claims upon him as bind
the real estate. 1 Can. 391. 9 3 Bl. 22. 114. 3 Mc. 214.
2 Bl. 244. 301. 40. 3 Dao 296. Can. 127. 111.

2. Personal
Asset, i.e. such property of the deceased as comes to the Eq.
as such makes him liable to creditors & legatores. 1 Am. 420.
2 Bl. 570.

Again, assets are either legal or equitable.
Legal are such as go in a course of Administration, i.e.
according to the order or priority of debt. Equitable asset are such
as are distributed among all creditors equally. 1 Am. 125
104. 430. 1 Pe. 279. 9 Bl. 179. 2 Pe. 412.

An Equity of Redemption of a mortgagee is
are equitable asset, for at law, the whole estate is forfeited.
1 Am. 124. 1 Pe. 274. 3 Pe. 341. 3 Be. 33. 2 Vern. 164. or
141. 4 Vern. 411. So in equity of Redemption in case
of any debt, whether in Eq. or not is equitable assets,
but in case of a mortgagee the mortgagee has no
other than an equitable interest, because there is no reversion.
But in fact in Eq. the mortgagee for years, the reversion in the
mortgage is legal asset, the creditor may have Judg.
There is a controversy in the authorities as to the qualification of assets arising from the sale of lands devoted to be sold. [The term is often used for the purpose of determining whether they are legal or equitable. 2 DeL. 16, 416. According to most of the older cases, money arising from the sale of lands devoted to, or subject to, the payment of a debt, is a legal asset; upon the principle that whatever comes to the hand of an executor, as such, are legal assets. 1 Vern. 42, 416, 448. 177, 440. The Ch. 127, 36, 2410, 416, 552. 1 Ch'to. 420. 1 Yor. 331, 1 Sw. 224. Hard. 415.]

Yet the latest cases frame of the act and consider the estp. in double capacities as an executor and as trustee, and have arrived themselves of the latter character I have held the assets to be equitable. Since 166, 2 Vern. 183, 4. 1 Ch'to. 482, 3 V. 363. 12 Ch. 105, 40, 1 Ch'to. 420. 1 Yor. 122. These cases seem to have overruled the old authorities. R. S. 331.

Money raised on equity by trustees inequitable assets by reason of the power of equity over property. Trustees 21001, 416, 2 Vern. 183, 4. 1 Ch'to. 323. R. S. 331.

But it has been held that when lands have been charged with the payment of debts, the title to the assets as not delivered, i.e., when the intent does not pass by the device, they are legal assets. 3 Ch'to. 350, 187. 3 Bac. 17, 53. For the same, a fictitious device has given the priority to the creditors, in such cases an action of debt at law against the heir of the estate. 2 Ch'to. 297. 21001, 183, 1 Ch'to. 430, 2 Yor. 416. R. S. 331.

In conformity with the last rule it has been held that money arising from a sale of lands under a lease power...
to sell for the payment of debts, so that the legal assets, because the land descends, the descent not having broken, but it is otherwise if the interest passed by devise. 1 Sis. 404-450 or 1 Mor. 430. 3 Sis. 630. 1 Mor. 430. 1 E. 1. 331.

This distinction is however avoided or explained by P. Thurlow, who held that the descent was taken by a power to sell, as much as the devise to sell, conveying the interest by the prescription old. 1 Bl. 1. 135-140. 1. 136. 1. 112-13. 2. 112-13. 2. 112-13. 2. 112-13. 2. 112-13.

So and descending to the heir are to be applied to the payment of bona fide creditors before land, especially devised (specifically) can be taken. This rule is exercised when the lands are devised for the payment of debts. 1. 130-131.

If the Testator charged debts on the heir's creditors reverter to the personal fund, the same may come upon the heir for the amount taken, i.e., where the Testator's intention is that the personal fund shall not be diminished. This rule is distinct from the former one, where the personal fund was, or is exhausted by hand creditors. Simple Contradatory creditors are allowed to resort to the heir as a rule which obtains where there is a deficiency of personal assets. 1. 132.

The heir as before remarked is liable for specific debts to the amount of his asset, yet the obligor may if he chooses sue the B. 14, 3. 1. 25. 3. 25. 3. 25. 3. 25. 3. 25. 3. 25. 3. 25. 3. 25. 3. 25.

...
The heir is not bound even on special contract unless expressly named; because according to the old feudal law, all other than water, chattel, personal productions of the land (not the land itself) were liable to demand on the personal service of the ancestor or tenant. 2 Bae 449, 450, 452. 9 Rob. 60, 1213; 460, 1237. The heir should take the land if it is necessary to alledge that the ancestor bound him, Rob. 12 Rob. 213d, 3d mile.

The body of a debtor was not originally liable on a post mortem. 11 Rob. 60, 1213; 3 Bae 3154-9; 1 Wm. 130.

The land is absorbed in the creditors notwithstanding, but the real estate in the hands of the heir, because if it were otherwise, the nature of debt, allowed at 6d. a pt., the heir would be useless. The is the only estate in which land could be taken in coasonry founded on personal action, as 6d. in behalf of the subject. But the thing may change the land in coasonry on deficiency of personal assets. 11 Rob. 60, 1213; 3 Bae 3154-9; 3 Bae 11; 3 Co. 12; 4 Co. 450, 3d mile.

The land of the debtor is first made liable, while in his own hands: i.e., half of time to pay for debt, by Stat of Wms. 2, 12 Ed. 3, by the action of 6d. a pt. 3 Rob. 449, 450, 452, 2 Bae 329, 3d mile. 475. This Stat granted the debt of 6d. a pt. in the same year the Stat of

The persons of debtors were first made liable to Court by the Stat of 25 Eliz. 3. which gave a Certificate of Satisfaction 2 Bae 329, 3d mile. 475.

Exemptions are excluded in the contract of the deceased in Justice or in the Gentlemen's trust in the Debts, because they are liable in respect of the property
only which they hold for others & not in their own right & that they do not themselves draw — But it has been held that charging the debt & interest in any case by verdict under Act 13 of 16 & 17 of Car. 2, 2 Bae 443 — 3 S. 139 — 1st Ed. 374.

So this rule then there is an exception when the party is personally liable, as he may be in certain cases, as for debt incurred when there is a lease for years after the death of the testator or intestate for he is charged in his own right, the deceased having never been indebted 2 Bae 443, 464—1 Roll 603—604, ed. Case 411—414—225—1, Mod. 1, 144.

So he is charged in the debt & interest in case of a descendant, i.e., after judgment against him as 245, decons intestator, for he shall not be charged with a debt, or mere durance. 2 Bae 444—1 Lid 390—1 Roll 603—5, Ca.

32—1 Nov. 315—21.

The heir must be sued in the debt & interest because he has assets, in his own right & the debt descends with the land, charging him, however, in the distinct only is cured by verdict by virtue of the Act 16 & 17 Car. 2—3 Bae.

29—5, Lid. 36—Dree 446—Dree 344—1 Sec. 130—Cass. 8, 112.

At 2 Bae, the heir can defeat the specially creditor by alienating the land before action & if he alienated after he took & purchased or Bill filed & the land still liable in the hands of the purchaser the suit having relation to the time of purchasing the debt or filling the Bill 3 Bae 26—Car. 245—1, Mod. 248.

So judg. upon the heir binds the land by retro-
spect, it is otherwise in the case of judg. upon the ancestors. But now by Stat. 3 Bae 412, &c., the heir in case of such alienation before action, is liable out of his own estate to the value of the land sold, not the land sold is real liable in the hands of a bona fide purchaser, if the heir sale.
after action but it is a question whether the sale stands as
in Ch. 3, 2, 1, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25.

I have been told that the verdict cannot be the
case when he is not himself. Thus a covenant, that
his father shall pay £500, no action will be apt. The
same for the same. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11.

Formerly lands devised were not liable in the hands
of the devisee. The rule for bond creditor, is hence they were
without any remedy, either at law or in equity. 1, 2, 3, 4, 5,
6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29.

A devise for the payment of debt or for raising pos-
tions for younger children is not within the meaning of the
rule. Such devises are good if the bond creditor cannot defeat
the same, he is paid only like the rest. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29.

The heir of an heir is liable for bond debt, of
the ancestor of the person to whom he inherited. But he is not
liable to execute in any case farther than the first heir
had added, so not to far, unless he has assets of equal amount
from the first. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29.

An heir or estate of an heir, clearly is not liable as such for the bond debt, if the heir's ancestor, for the
heir himself, is liable, and is not paid to the bond.

The heir's person, not being charged. But if the heir should abuse
the land to defeat creditor, equity will follow the money into the
Who may be an Executor?

All persons who may make Wills of any others may be appointed by the testator in any and all descriptions. Person in will, almost all descriptions may be appointed as a Will makee. 

If one appoint an infant in ventre ou nascere, & the Mother be declared of two or more, they are all bate. 2 Bae 375 - Godot 103 - Woot 213.

But an infant cannot act until he is of age, or during that time an executor durate minoritate must be appointed, Godot 103 - Bae 375 - Godot 103 - Woot 213.

Regularly the acts of an infant under 17 are not binding. Thus he cannot sell testamentary goods or assert a legacy. After the age of 17, he is not bound by his assent to pay legacies, unless he has assets to pay debts. 16 Bae 217 - 2 Bae 317 - Woot 213 - 17 - Godot 103 - 5 - Co. 76.

An infant under 17 cannot sell the testator's lease for years even to pay debts, and it has been held that he may sell goods to pay debts or any other person by his order. This, however, is contrary to the general rule. 2 Bae 377 - Woot 254 - Roll 730 - Godot 155 - Woot 503. At the age of 17, or more, he is bound by his assent as Bae 730 if done according to the office's duty, as Co. 76, and if he discharge a
An Order can in no case commit a dehactavit until he is 17. Therefore if a Bond be given to the Infant, or release it or receiving the principal only, the release is no bar to the action for the penalty 1 Conn. 249. Nove 320. 2 Bae. 370. 1 Shot 467. 10 Roll 738. 10 Roll 76-467. An infant by the use of 17, cannot when sued appear himself, but by Guardian like other infants, or the proceeding will be erroneous for he cannot make or defend an answer when none is done according to the Act. 20 Act 145. 1 Conn. 249. 2 Bae. 370. 1 Gio. 371. 10 Shot 172. 10 Conn. 172. 10 Roll 730. 10 Roll 146.

But if an Infant die, or be by City recovered, if it is not erroneous, he sues in another's name, and the Judge is for his benefit. 3 Bae. 130. 1 Gio. 451. 1 roll 130. 1 Gio. 889. If an Infant Adult, say he City. It is said he void or erroneous, the Judge is for him, and distinction is probably founded on the rule that an e Adult cannot act until 21, but can a Infant he an e Adult? 3 Bul. 100. 10 Roll 220. 10 Gio. 151. 10 Shot 220. 10 Gio. 141.

If the Infant 2 an e Adult are cited, they may both sue by City, for the adult may make an e City for the Infant. 1 Roll 47-472. 1 Shot 232. 1 Shot 1449. 1 Shot 464. 1 Gio. 102-412. 3 Bae. 172. 1 Gio. 124. 1 Gio. 370. 1 Roll 220.
But if they are sued for in absent, both must appear by guardian. 3 Bac. 270. 3 Bubble. 318. 364. Tho. 704. For an infant, if it may be liable to mislead, it is not a love of propriety, for which it has no remedy ap't. The father but he has as for the guardian, but the infant itself is not liable unless for torts. 3 Bac. 704. 373 Bac. 150. 1 Wall. 207.

A Jerome, Covert, may he an X. According to the spiritual courts, she is considered as a donee still capable of meeting a suit or being sued alone, if taking upon her the office of a woman without the consent of her husband. 2 Bac. 373; Wat. 102. 81. 91. Godol. 110. 1 Conr. 235. But by the CoR, she cannot take upon herself the office & duty of CoR without the consent of her husband. 2 Bac. 117. 378. Wat. 203.

Therefore if the husband dissent she can construct the spiritual court attempt to compel her to act a suit of prohibition will be issued. 2 Bac. 373; Godol. 102. 10. Wat. 203. She cannot be compelled to take herself the spousership by the consent of her husband. If the husband actually administers, she is bound by his act during coverture. She cannot plead the same.

So if the wife administrate without the husband's consent & an action be brought against her, she is entitled to pleading, that the never was CoR. 2 Bac. 378. Godol. 110. If a sincere solicitor named CoR is married before the in a meddle with the spousership & the husband administrate. This is such an acceptance as will bind her & the cause, or afterwards secure it. This rule supposes the wife never to hence dissent. 1 Bac. 107 after Coverture. 2 Bac. 378. Godol. 110.

A Jerome Covert, spousership. It is said may make without her husband's consent a will or rather a testament of such goods as she has as CoR. 2 Bac. 378; Wat. 190. 9. Godol. 110. But it is said on the contrary that the husband's consent either before or after is necessary to the va-
Nead of the Will. viii. 2 Bae. 49. 10. Nol. 5. 6001. 1 Mod. 20. 23.

But it seems not the disposition, that the a's 35. may
make division of the goods, which the holder as such is this seem not
the same as making a testament: for the execution as such into
hence, the disposition of the goods. 2 Bae. 49. v. 430. 2. 52. 1
Nol. 6001. 972.

The thing may be done by the English law, but he may
nominative others to take upon themselves the execution of the trust:1
They may be sued as the representatives of the deceased. 1 Cor. 235.
2 Bae. 374. 10. 435. 23. 76.

A Corporation aggregate cannot be an executor. 1 Nol. 915.
Contra. 1. Because it is a body formed of friends for spe-
cial purposes: and III. 25. It cannot take the oath to make the
proves of the will. The latter reason is the substantial ob-
jection. 1 B. R. 363. 10. 1 Cor. 235. 2 Bae. 275. Miss. 17. 25. Gadd.
85. According to the Civil & Canon Laws, e.g. Justinian, Justin.
Traitors, Felons, others cannot be 1 Cor. 275. Gadd. 85. 2 Bae. 275.
A sole Corporation maybe an executor because it can

take the oath. Gadd. 85.

By the laws of England, no person is disabled from be-
ing executor by public offence, or the civil law. Thus Be-
ularity of persons attainted cannot be an executor because they claim protection in Ante-draft. 2 Bae. 275. Co. Litt. 120. 1 Nol. 914. 1 Ren. 104.

Nor they cannot make will of their goods because they are proscrib
2 Bae. 499. 3. 264.

Persons excommunicated cannot be executors for being
excluded from the Church. They cannot dispose of the deceased's

This (sends) is the only instance of the English law dis-
qualifying "ex delicto." e. De Male may be an executor because the
may have the disposition of lands as well as movable prop-
erty because he hold in dower direct. 1 Cor. 235. Bae. 17. 25.
Went. 17. 25. Deem, by the Civil law, except in a Milita-

ry Testament, which are governed by the "jus gentium." Gadd.
85. 1 Ren. 417.
It is a question whether an alien enemy, who is not to

can maintain an action as such. It seems to be con-
ded that he may hold assets & by the weight of authority
that he may sell or sue. 2Bac 275-6  Bis 142-683

MA 431-7  Skin 370.

By the English law idiot, drunkard, & insolvent can be

able of being executors or trustees for they cannot execute a trust

for they cannot or competent to the trust. 2Bac 976. Good.

Sh. So it appears becomes more complex. Administration
shall be granted to another. Sh. 36.

Prerogative Court cannot refuse to grant Probate

because he is poor or insolvent for he derive his

authority from the Testament 2Bac 352-5  Sh. 34-299 Car.

458-7  B. May 361 10th 35.

So can the Prerogative, i.e., Spiritual Courts,

demand or require caution, i.e., security since the testa-
tor required none. 2Bac 376 Car 457 Sh. 336-299

B. May 361. But Chancery considering 2Bac, 377 as trustee will

compel them like all other trustees to give security of insol-

vency. 2Bac 377 Car 458 1 Shew. 200-2 Nor. 249 Ch. cas

179.

So when the testator not insolvent is wanting the

assets, Chancery will compel him to give security to Bac.

377 - Ch. cas. 126.

So on suggestion of Insolvency in the Ch. Chancery

will order deposit of the deceased not to pay to the debt pendente

2Bac 377 16th cas. 176.

Which person may be Administratrix?

All persons not legally disqualified may be admitted.

1st Disqualification inherent in the 50 person can be

an extend till 21 for before that age he cannot give
Right of adm. may devolve on an infant son of his, but the courts administrate until 21. 2 B. & C. 201-5 Co. 29. It seems proper to say that an infant cannot be an eadward. tile 21. Then he is no infant, for no one can be admitted until appointed by the ordinary. This is different from an infant eadward under the age of 17. because he is named 20. by the testator.

A form of consent may demence by the consent of her husband be an eadward for clearly she may be eadward as next of kin. I find no disqualification in them any more than in the case of infant. 1 Com. 202-49. 2 B. & C. 453.

It is also inferable from a rule laid down by Judge Reeve. And a form of consent is just as good to others in quality. degree. it is also held in some books, that the may be had.

Reeve's热论 72-1 Com. 249-62.

If a form of consent is made, the husband is liable during coverture for her acts committed during coverture even to a debt to which. 1 B. & C. 293. 1 M. 351. Mr. 761. Cl. 200-27. 455. 1 2d 387.

At law the husband in the last case is hound only during coverture. but in equity the creditor may follow the assets into the hands of the husband after the death of the wife. and also into the hands of the wife. The question here arises may not the legal interest of the wife pursue the assets in equity? 1 B. & C. 293. 1 M. 351. Mr. 761. Cl. 200-27. 455. 1 2d 387.

Corporations aggregate cannot have an eadward. 2 B. & C. 375-8. 1 M. 351. Mr. 761. Cl. 200-27. 455. 1 2d 387.

In an action may be an eadward. for no act in equity debar a person for his own actions. 2 B. & C. 262-4. 1 M. 351. Mr. 761. Cl. 200-27. 455. 1 2d 387.
To administrate a felon attainted, as in the case of an
attorney, for he stood in Some. 2 Bac. 475. Rull 114. 1 May 1842. As a
client may he admit as well as Bo; for the same
reason. The same question arises in an intestate estate in
case of one acting in the capacity of executor. 2 Bac. 475. Rull 114. 2 May
1842. 2 Coll. 140. 2 May 1843. 1 Coll. 475. It will be

Administration by whom Granted.

Whenever the

right of proving will is disputed, as at the testator's
death, the same is originally pending, the right of granting a
writ of error in an intestate case, are in the

erys. It is

not

in the lifetime of the testator, the testator's

right to grant letters of administration. This right has

been denied. 2 Bac. 475. 482. 2 Day 405-6. 477. 1 Day 355.

S. 32. Red. 405-6. 413. 494. 5.

And it will cannot be given in evidence in a Court of

law. It must be personal property, until it has been found in

the Ecclesiastical Court. 2 Bac. 475. 372. 73. 500. 8.

As if a personal devise intestate having no kindred

The practice is for the King to grant letters of administration. The

admits the

Patron to administer. The admission is said

however not to extend to

1841. 1 Day 475. 575. 8. 413. 473.

73. The Ecclesiastical court

cases dispose of the goods in "joint lives": that is to say, the

presence of joint issue as in the case of a Baronet

intestate having no issue. The King according to usage

to his goods. 2 Day 475. 575. 8. 413. 473.

In certain cases the Court Baron have by immemorial custom the right to

great letters of probate wills

that is not the way. 2 Day 475. 575. 8. 413. 473.
In ch. the granting of adm'rs fall within the juris-
515-8 Co. 135- Godd. 279- 4- 1 Sec. 233- 2 1748- 447.  But every
st. distribution, 22 & 23. Cap. 2. ed.  are obliged

to distribute, yet husbands, adult. of goods are declared by 22,
29. Cap. 2. not to be within st. of distribution 22, 23. Cap. 2.
 Sec. 515. Hence if the husband die before a test., the grantee
takes his representation in his place, or adult. will be entitled
to administer on the wife's estate to the exclusion of the rest
of kin in equity. If the ordinary is said by Sec. 515. the com-

plicable. So grant it, Sec. 2-3. 213 b 505. 3. 1885-1790-301.12.
The husband is even entitled next of kin in some cases, 1074. 301.

If the wife being alive to another dier, the adult. of
the goods which she left as Eq. goes not to her husband, but to
the next of kin to her husband. Sec. 2-3. 1 Sec. 21.

By Sec. 31. Cap. 3. 1-27b. Sec. 6. the ordinary is compul-
able to grant the adult. of the husband's effects to the widow or
next of kin, but he may grant it to either or both. 213 b 96-
Sec. 6- Sec. 3- Sec. 552-1 Sec. 265. 1 Ray-93-1 Plow 357-1 1 Com. 315.

When the intestate has no wife, adult. goes to the
next of kin, among kins. those of the next degree are pre-
ferred. But of those in equal degree, the ordinary may take
which he pleases. Sec. 265. 213 b-504- Ray-93-1 Sec. 380-1
Com. 265. This is a general rule to which there are some excep-
tions. See "Subter."

An adult. when granted, is to two or more may always be
joint in some cases general. Several administrations may
be granted of several parts of the goods; to the wife by reason
of kin, as children, brother, parents. Sec. 265. 1790-1 Sec.
351. But an entire thing as of a Bond of $100 or several
administrations cannot be granted. If two are appointed
they must he jointly appointed. Sec. 4. 1 Sec. 380-1 1 Sec. 100.

The degree of kindred are compiled according to

the Civil Law, not according to the Common Law. Therefore
children are preferred to parents, for according to the Civil Law com-
petition is from the deceased as does not descend among claimants but among children in equal degree. 4th descend in default of children. 2 Bkt 115, 2 Bkt 504, 2 Bkt 506, 2 Bkt 507.

The order is this 1st. Children 2nd. Parents, 3rd. Brothers, 4th. Grandfathers, 5th. 1st. 2 Bkt 502, 1st. 2 Bkt 503, 2 Bkt 505. Daughters are entitled equally with male in equal degree 2 Bkt 504, 5th. 2 Bkt 504. In computing degree of kinship that equals the blood of blood is equal. Therefore half bloods are equal to one with the whole. 2 Bkt 505, 1st. 2 Bkt 506, 5th. 2 Bkt 507.

Do the claims of "next of kin" or next friend, widow or daughter, brother or sister extend to their representation? Do such representations as such exclude more distant kin than their parent? The Acts do not mention next of kin. And it seems according to it to be without the Acts. 1st. 2 Bkt 508. The right of representation does not obtain, as in Acts of Distribution. 2 Bkt 509, 2 Bkt 510.

The order under the 2nd. 2 Bkt 511, is said I have here. 1st. Husband and Wife, 2nd. Children, their representatives, 3rd. Parents, 4th. Brothers and Sisters, their representatives, and in order to the representatives.

Some of these words, first mentioned as husband, wife, if they will not accept any, a custom in England, I think may be, he is next of kin. 2 Bkt 512. 5th. As to these words need not be used in the above, the Act according to a point of order, I recommend it.

Ordinary appointment of course. 2 Bkt 513. 2 Bkt 514. 2 Bkt 515.

If another requests to act on died intestate leaving goods unadministered, then, an estimate must be granted. 2 Bkt 516. 2 Bkt 517. 2 Bkt 518. 2 Bkt 519. 2 Bkt 520. 2 Bkt 521.

The ordinary, he may appoint whomsoever he pleases. 2 Bkt 522. 2 Bkt 523. 2 Bkt 524. 2 Bkt 525.

He may grant "Admiral" to the residuary legatee on conclusion of the next of kin on the President it is
the deceased meant to prefer him. But such a presumption does not exist for the residuary is given to another. The Sect. 21. Nov. 10. requires it. The grant to the nearest kin is not a residuary appointment only other than the residuary legatee, unless he be disqualified. This is a doubtful point; it seems the residuary must give the residuary. Sometimes he may. 2 Tha 356 - 366.

If a testator died intestate as to part, i.e., no residuary legatee being appointed, the next of kin is presumed to be appointed. In this case, the case differs from the Common Cases of Intestacy. 2 Bac. 386 - 392, 372 - Show. 25 - Gadol. 216.

If a residuary legatee entitled to a testator's estate, himself a child of the testator, must have the estate. Thus, Gadol. 150. If there is none of these persons, the ordinary may appoint such persons as he pleases at he might have done previously to the Sect. 31. Ed. 3. 2 Bac. 393 - Show. 447 - 1 Pl. 135 - 1 Pl. 175 - Show. 247. Decr. 5. The Person next appointed may now it seems be a judic. e. admiss., tho' before the Sect. 31. Ed. 3. he was merely a servient e. admiss. to the Ordinaries. In this case, the Ordinary may grant letter to such person "ad colligendam bona defuncti." The next to make him an admiss. is a friend of the infant or trustee & keeper safely the goods into some other act. Decr. 5. 2 Pl. 175 - Ment. 14.

When an admiss. durante minore estate, is the admiss. the Ordinary is not bound by the act of the infant, for he is but a curator for the infant & had no interest or benefit but in right of the infant. He therefore is not bound to appoint the next of kin to the residuary on infant. 2 Bac. 384 - Show. 217 - Show. 244. Granting e. admiss. in England to the husband is not within the words of the Sect. 27, Nov. 10. 1 Pl. 123 - Yet under this sect. nominees are appointed.

If a person named e. admiss. does not appear before the Ordinary on being summoned to account or require he is exam.
Of Transmitting the Trust of Executors

If an Adm. dies his executors are not Adm. to the intestate. The Adm. must be appointed anew. Sec. v. Enter 14. 0 Bar 383. 6. De barnum 10 B. 55. 2 131. 566. The Adm. cannot transmit the Trust in hand in him to another, because he has no interest except what he derives from the Ordinary; the Trust results to this Ordinary. Lem. 244. 4 376. Missouri 974. G. D. 234. 1 Com. 251.

So if the Adm. dies, his Adm. is not Adm. to the first intestate for there is no priority between them. 2 131. 576. I mean no priority unless one is appointed on his estate. Hence the second Adm. is appointed to administer the effect of the first only, not of the Trust. Therefore it is necessary for the ordinary to commit the Trust of the goods of the deceased, not administered by the former Adm.

But the last clause. The latter having first known the Will, is Adm. of it. For the power of all others is gained by the appointment of the deceased, and the appointment is final on a full confidence in the Will. He may therefore transmit to anyone in whom he has equal confidence, i.e., after he has joined the Will, 1 Com. 251. 1st Act. 468. 1st Act. 173. 1 Sec. 275. 1st Act. 468. 2 131. 576. 479. John Ether, having two creditors 225. 479. Adm. leading C. his son. C. is not Adm. of his estate during his life. The whole authority survived C. but if after his death C. dies, leaving C. his son. C. is the Adm. for 2 131. 405. - 1st Act. 217. 1 Com. 251. 2 131. 576.

If the Adm. of A. S. C. is not the representative of C. for the Adm. in this case has no relation to the being no priority between them. 1 Com. 251.

The Adm. is commissioned to administer the goods of C. 1st Act. is not those of C., the original testator. 1st Act. 405. 2 131. 576. G. D. 234. 1st Act. 251. An Adm. de bonis non caus
Testaments must be granted. 2 B & 65. c. 10.卷。15. 30. 97. 19. 2.
If before the death as 2. & 3. &c. above. last year in 1 roll 900. 2 B & 65. c. 10. 30. 97.
Deq. 37. Deq. 37. 2. Deq. 37. Dea. the last year in 1 roll 900. 2 B & 65. c. 10. 30. 97.
Dea. the last year in 1 roll 900. 2 B & 65. c. 10. 30. 97.

When ever therefore the cause of representation goes that. As then is presented as a new one. And set the good or not administered. Admin. must be granted. 1 roll 900. 2 B & 65. c. 10. 30. 97. 2 B & 65. c. 10. 30. 97.

Admin. de bonis nova, like an original. Admin. may be special. is a piece of certain specific part of the whole estate not administered. The remainder being committed to the. 1 roll 900. 2 B & 65. c. 10. 30. 97.

The Manner of Proving Wills.

The Ordinary may at the instance of any person interested in the Will. 2 B & 65. c. 10. 30. 97. The ordinary may at the instance of any person interested in the Will. 2 B & 65. c. 10. 30. 97. If the last year in 1 roll 900. 2 B & 65. c. 10. 30. 97.

If the uncertainty although the testator is dead the testator be in distant part of the town being dead. The fact are the judge of by the ordinary whether there is good presumptive evidence of his death or admitted. The will take for such. 1 roll 900. 2 B & 65. c. 10. 30. 97. 2 B & 65. c. 10. 30. 97. If the testator be alive the testator is made to the ordinary having no jurisdiction.
The time in which the will ought to be proved, is not settled, by any precise rule. It is left to the discretion of the ordinary. But the existence of the will ought to be made known within four months from the time of the intestate's death to the proper officer. 2 Bac. 403; Godl. 64. 7.

There are two modes of proving wills. The common form, where the testator presents the will without calling the parties interested to defend himself, that it is the true last will of the testator, & the judge, upon his proof, 2 Bac. 403; Godl. 64. 7. The form of least, i.e., where most of kin, widows are cited, the present to be made when witnesses are examined.

When an heir proves a will in common form, he may be compelled to prove it again in form of law, but otherwise, when the Probat is in form of law, first Godl. 64. Phil. 290. 2 Binney 511.

The probate of a will in common form may be questioned at any time within 30 years. See 2 Bac. 403; Godl. 64. By statute it is a nullity if not probated in 7 years. Stat. 530. 302.

**Executors Proved.**

The office of executors. Being private, the being named by the testator, is not annexed. But by law, he may refuse to accept of the executorship, in the first instance; if then an heir, even intestate who were not the maker, 2 Bac. 403, 5. Show 252. Mount 36. Godl. 140.

But it is said, that the ordinary may compel the heir to prove the will, & make his election to accept or refuse, that he cannot compel him to accept. Godl. 61. 2 Show 332. 215a. 405.

But the testator cannot assign his office. It being his own, nor can he refuse by any act or practice, as by declaration that he will not accept, i.e., this alone will not bind him, it must be by some act recorded in the spiritual courts.
In a case however (in (p.98.2.) when the executors were liable to payment before the will, the question was whether the renunciation was holden binding. Cor. 92. 2 Bac. 205. 4th Ed. 37.

If there be no such words as the renunciation of the will, or testament, the renunciation must be granted, and the beneficiary cannot obtain an order to enforce the will or deed out of court. 2 Bac. 403. 4th Ed. 907. Anno. 21. Qn. 1. May he not have his original copy to enforce the will before another granted?

Yet if one of two executors be removed before the executor, and the other prove the will, the first may administer any time after the removal is after the death of the co-executor, for the executorship survived, and he is entitled to all the effects of his co-executor as the will had been proved. The executor has no authority to take the benefit during the life of him who proved the will, but may afterward, since probate by one co-executor is not entitled, take all to suit. 5th Ed. 31. 311. 2 Bac. 405. Mc. 373. Dep. 11th Ed. 39. 5 Co. 29. 9 Co. 3. Co. S. 227. 4th Ed. 307. 307. 311. 251.

But according to the opinion the renunciation is presumptuous & continuous. 5th Ed. 311. 311. 5th Ed. 9 Co. 37. So the party refusing to take the last estate, may release debt due the testator. 5th Ed. 307. 4th Ed. 365. 2 Bac. 307. 307. 9 Co. 37. Co. S. 227. 9 Co. 37.

So the debt remaining must be sued on & executed before the testator's co-executors. 5th Ed. 365. 307. 4th Ed. 365. 2 Bac. 307. 307. 9 Co. 37. 9 Co. 37. 9 Co. 37. 9 Co. 37.

It is said, when the renunciation is before the will is proved. Co. 337. 2 Bac. 396. Because the plaintiff is not supposed to know that any other person is a better than those who act as such.

After an executor has administered he cannot afterwards renounce the will, if he acts in the capacity which determines his election and makes him liable to suit. 2 Bac. 403. 4th Ed. 907. 2 Bac. 307. 9 Co. 37. 4th Ed. 307. 4th Ed. 307. 4th Ed. 307. 4th Ed. 307. 4th Ed. 307.
It is a good rule that whatever the testator does with respect to the effect of the testament which shows an intention to accept the office, amounts to an administering. So that he cannot afterwards renounce. So also every act which would make an act of the testator in an absolute is deemed an election of executors. (3) The 30th of May in an absolute is deemed an election of executors. (4) The 29th of June 1606. (5) The 28th of June 1606.

So taking possession of testamentary goods conveying them to his own use is an election. (6) The 16th of May 1607. (7) The 29th of June 1606.

So taking the goods of a stranger & administering them under an appearance that they are the testator's amount to

the same thing. Yet it would not bind him, if he should take the goods, or indeed the goods of a stranger. (6) The 25th of July 1607. (7) The 29th of June 1606. So if there are ten dollars, one of them takes poss., with the consent of any of the others. If a specific article he gives that he has the testator. This is one & it will go to legatees. (8) The 29th of June 1606. (9) The 29th of June 1607. But if the Judge knowing he had administered, will receive his refusal notice the goods are granted to another. The grant is good if the testator can never afterwards remove his office. (10) The 29th of June 1606. (11) The 29th of June 1606. Yet if after he had only because Clerk did not appear in summary to prove the will, if the Clerk chooses to accept, he may & he shall be refused 2. (12) The 29th of June 1606. (13) The 29th of June 1606. And if after the Clerk had refused & another grant to another, it appears to the Judge that the Clerk had administered before refusal (and) the Judge may direct the Clerk to administer the same.

If the Clerk appears & takes the usual oath that he will faithfully execute his office, he cannot afterwards renounce it, for he has by the oath accepted, nor can the ordinary require to admit him, even thus after taking the oath, he had refused, for if he does this a new mandate is issued. (14) The 29th of June 1606.
The manner of granting administration. (Undivided)

In what cases it is granted, including the different kinds of administration.

Administration must be granted by writing under seal and the hand. 1 Com. 263. 4 Co. 194.

It is also granted when one dies intestate. Hence, the person entitled by law to administer has a general authority which, for himself, and for another who has a superior right, 1 Com. 265. 5 Beav. 191. 9 Co. 37. Sir. 12 Ed. 3. Thame.

The ordinary may take bond of the administrator for due administration in all cases, except where it is in pursuance of an estate annexed to 1 Com. 262. 2 St. 1137.

It may be granted jointly to two or more of one or the other surviving. This therefore is distinguished from the common case of delegated authority, i.e., as of Attorney to two who one dies, the authority continues. 9 B. & C. 416. 2 Cro. 440. 2 Slo. 214. 11 H. 33. 1662.

But administration is not an office; several administers may be granted for distinct things, but not for an entire thing as Brand & 1628. 1 Law. 76. Cholm. 70. 1 Com. 165. 16rol. 43 Ed. 10 Per. 12. 2 B. & C. 406. 354.

If a person be made executor without any limitation or restriction, he cannot renounce as to a part, since he cannot waive a term less or less than the whole, he must renounce in toto or at all. The same rule obtains in the conveyance generally (cited) 9 B. & C. 394. 1 Mo. 97. 1658. 133.

III. It was formerly doubted whether a debt could be granted to one during the absence of the other, even out of the realm, but if it settled therein, 1 Ed. 11. 14. 12. 1 Com. 566. 155 41 Ed. 418. 1 Com. 263. 5 Beav. 42 Ed. 192. 2 B. & C. 445. 378. 5 May. 1671. 1 Roll. 906. 8-10. 3 Slo. 219. 75 Ed. 192.
III. So when the might of probate is made by the will, in prison or in an outlay a temporary, any may be appointed. But why shall it be granted in case of a temporary, when an outlay may be or clear to admit? This kind of in the law, every case where there is absence, imprisonment, or of bar or adull. Co. Rite 118-119 Bae 378-381 Bae 378.

IV. It may be granted "precedent fit." If a will is to cease when it is decided. Yet I know no law, whether adoctrine could be granted in this case. 1 Com. 924. 1 Sarn. 976. 9 Sarn. 56. 2 Ser. 576. 9 Bae. 118. 9 Sarn. 129. Moore 605. 9 Bae. 133.

V. So if there be a dispute about the right of adull, it may be granted "precedent fit." 1 Com. 113. 1 Sarn. 153. These temporary adoll are capable of doing self being held while their authority continues. W. Russ. 97. 10 Bae. 1671. 17 Bae 455.

VI. If the debtor refuses an estate in testamento annexo must he granted an estate de bonis non for none of the goods are administered before. 2 Bae. 386-388. Such of the goods at are not administered upon. 9 Co. 374. 10 col. 384. 5. 1 Com. 255. 10 Sarn. 396. 1 Valer 99. 10 Sarn. 415-435.

VII. If the has died in the adull, an estate in testamento annexo must he granted in the bonis non. 2 Bae. 386. 10 Sarn. 394-395.

VIII. If the has died before the adull, an immediate estate is granted in adull. He died before he undertook the execution of the will. 2 Bae. 386. 10 Sarn. 394-395. 10 Valer 99.

IX. If a person makes a will of names of an adull, an estate in testamento annexo must be granted immediately. If an adull dies leaving goods unadministered, adull de bonis non, must be granted. 2 Bae. 385. 10 Sarn. 396. 10 Valer 99.

X. So if the adull dies intestate, after proving the will, adull de bonis non. "Estate in testamento de must be granted for then..."
the executor has administered in part 2 Bace 386. 1st Bk 240. 5. In the
case the testator is said to die intestate 1st Bk 307. Admits the
executor includes all personal property of the deceased which
remain undistributed, household goods. 2 Bace 386. 1st Bk 316.
Skirt. 143. Money due by the original debt. Skirt. 143. If it can be identified 1st Bk 260. To debt due original the
testator, test if the original debt is due a note for debt, due to testator
the acceptance of the note is such an admission of the property,
that the note rests in the representation of the original
executor or clerk a note in the Adm. de hominon 2 Bace 386.
1st Bk 473. 2 Bace 362. 1st Bk 300 a. 1st Bk 260. Skirt. 143. 143.

By an old rule of law if the original debt was and an action to recover the debt, died without taking effect an
Adm. de hominon could not sue and was estopped, on any way to the advantage of the debt, by not being prosecuted
2 Bace 386. 1st Bk 333. 386. 1st Bk 290. 1st Bk 322. 3
Bk 1072.

The executor by Stat. 17th Car. 31st Sec. 2. The Adm. de hominon
may sue a limited capacity of the debt when it is con-
sidered as a hardship. 2 Bace 386. 7. 1st Bk 290. 1st Bk 322. 3. Bk 1072.

XII. If the testator under the age of 17 an Adm.
durante minor estate must be granted. 1st Bk 504. 1st Bk 382. 8.
5 Car. 280. 2 Bace 280. 1st Bk 1975. 2 Bace 307. 3 Mod. 26. 5
If the person entitled lie an infant 2 Bace 385. 1st Bk 250 1st Bk 300 a. 8 62. Skirt. 155. 5
Mod. 375. 3 Bk 39. 3 Bk 247. 3. Bk 240. 5

An Adm. durante re as in the last case being a
Curator of the Infant, the Ordinary may appoint whomsoever
please. 2 Bace 385. 1st Bk 385. 1st Bk 280.

It is laid down in 5 Car. 29. 5. That a debt granted durante
minor estate of an infant 2 Bace 404. under 17 determining on
her marrying a person of full age, cl so becomes interested
with her right as 285. 5 1st Bk 300 a. 7 62. 2 Bace 387. 5
and is denied by some authorities. 3 Bk 247. 1st Bk 250.
If an Infant and an Adult are both Adm. the
adult name is not granted to a third person for the adult
being of full age may execute the estate, &c. And so a third
person in trust S. 19 c. 193. But it is said that the Boy of full
age may take the estate durate min. I declare as such
1 B. 36. Ex. 40. 1 B. 294. 19.

so if two Infants are Left one of them of the age of
17 of the other under the greater may execute the trust &c.
durate min. is not granted. In the case I think the older
cannot take the estate durate min. for no person below an
Adult can be an adult S. 193.

If Adm. die leaving his Ch. & Adm. leaving his
Infant his Ch. &c. I am to give it to adult durate min. &c. If a
he acts for B. who is old &c. and an adult durate min. &c. if B. must be appointed. 1 B. 38. 
B. 294. 37. 1 B. 294. 19.

The Authority of an Adult "durante min. actali"

An Infant "actali" or Adm. "actali"

It is laid down in 1 Cor. 290 (the power is given
actali to the Agent) that the Adm. "durante min. is one entitled to act
for the time that all the power of an absolute Adm. I deal it out to
the agent as an absolute Adm. has, for his authority is
generally given him "ad commodum et perpetrum exercendi", so
that he is "the nature of a Bailee to the infant Ch." or a adult.
2 B. 39. 5 Cor. 294. 1 B. 294. 1 Cor. 290. 1 Cor. 103.

These authorities relate to the case of an Adult "durante
min." of an infant Ch. &c. only, last his power is the
same as that of an adult "durante min." of an Infant entitled to
actali. The authority of an adult is generally granted pro hac
voce.
A commode executor, is not always, not even, the authority, such that he may do all acts, which are incumbent on all executors, which by legal presumption, for the advantage of the infant, of the estate of the deceased; thus he may assert to a legacy where the assets are left to pay all debts, but not otherwise. 2 Bacc. 381. 5 Co. 29.

In fact, may assert under any circumstances, the infant. 2 Bacc. 381. 5 Co. 29. — He may issue the said 2 Bacc. 426. 3 Ef. 187. 1 Co. 67. 1 Co. 719. 6 Co. 67.

But as he cannot dispose of any thing to the prejudice of the infant, he cannot sell the goods of the deceased except for the payment of debt, which is a case of necessity, or unless they are pernicious, in which case, he may act briskly, sell it, 3 Co. 103. 1 Co. 350. 2 Bacc. 381.

The case is made for a sense of a term vested in the executor. 2 Bacc. 381. 1 Co. 250. 5 Co. 29. 6 Co. 67. There is no exception to this rule, when the administration is made, generally, i.e., not ad commodum. Here a term may vest in the infant, on it is good title to it, and obtains the age of 17. 2 Bacc. 382. 6 Co. 67. But it is now laid down, that the administration may vest, and sell the goods of the deceased, except for the payment of debt.

When administration may be repealed.

It was held, formerly in some decisions, that the ordinary could not refuse Letters of Administration, having executed his power. 1 Co. 263. 1 Sid. 173. Re. 683. 1 Co. 115. Ray 93. 2 Bacc. 440.

But it is now clearly settled, that the administration may be revoked, for various causes, 1st: when undesirably obtained. This happens 2nd: if letters be granted me, the supposed grantor of interest, who in fact there is a little, which invalidates here an estate of Trustee, the admin. must be revoked. 2 Bacc. 440. 1 Co. 115. 1767. 1 Doll. 907. 1 Sol. 47. 1 Co. 162.
23. When obtained by false suggestion or any kind of fraud, it may be rectified. 1 Sam. 19:370 - 2 Kings 6:370 - 2 Macc. 40. 230 if obtained by surprise in the ordinary way granted. Adm. or a false suggestion, it probably not fraudulent. 

24. If obtained in any irregular manner, as without citing the parties required by law. 1 Cow. 263 - 1 Sam. 305 - Barnab. Act. L. 336. - 20 if obtained without giving security to account, or in terms within 14 days, or according to Robb. 15 - 2 Sam. 410 - 2 Kings 6:64.

25. So after ashure is granted a new Ashure is obtainable. 1 Tim. 4:3 - 1 Tim. 3:17 - 1 Tim. 4:39

26. An Ashure duly obtained in consequence of matters post factum, as if the original Ashure should become a dispensation or otherwise incapable of administering. 1 Kings 8:60 - 1 Sam. 263 - 1 Cow. 135 - 1 Sam. 273

27. So if a person legally entitled, be incapable at the time of the estate to be granted to another; this Ashure may be revoked, or the former become incapable. 1 Sam. 10:34 - 4 Kings 8:7 - 7 - 1 Matt. 3:6 - 2 Chron. 11:60

28. Ashure it is said may be revoked without a sentence of revocation, as by granting a new Ashure which of itself revokes the former. 1 Sam. 19:40 - 26:4.
The Consequence of Repealing Letters of Administration.

It is a general rule that when the only objection to an Administrator is that it is granted to a person to whom it is absolutely not valid, or if it is afterwards rejected on citation by the Ordinary, all the intermediate lawful acts of the first Administrator may stand, as if he acted in the quality of the testator, and no other, for the effect of a lawful act, i.e., such as a rightful Administrator may do. 1 Com. 84; 3 Co. 166; 3 Lees 70; 6 Co. 60 a. 3 Ross 396.

In this case if the first Administrator were a creditor to the intestate, he may reclaim to himself the other rightfull Administrator to satisfy his debt. 2 M. & W. 38; 2 Dall. 63; 4 Com. 96; 12 Dec. 412; 10 C.B."s. 309.

But if the first Administrator, whose letters are revoked by citation, make a gift of the intestate goods to one, before the refusal, the gift is valid as against any other rightfull Administrator to satisfy his debt. 2 Co. 81 b. 3 Co. 10 b. 22 a; 4 Co. 30. Yet if the first Administrator set aside, on an appeal to a higher court, the intermediate act of the first Administrator, i.e., between the appeal taken and the refusal, those are valid. 3 T.L. 128.

A refusal to continue an appeal in only a refusal of the former letter of Administrator does not affect the original sentence. But, if a court sentence the appeal, and it is afterwards pursued by the appeal itself, after the refusal it is considered and treated as such. 6 Co. 16; 1 Com. 264; 3 Co. 1462; 3 Rob. 206; 1 3 T.L. 129; 4 R. S. 240, 241. Note, these cases in 6 Co. 175; May 224, are where the appeal was after an affirmation on citation.

And if the first Administrator in the last case has obtained a Judgment, at the death of the intestate before the refusal, the debt, may be recovered against the administrator, by an "audita Querele." 1 Com. 262; 4.
So if the debtor be taken in Escrow on this last, the may
be discharged on motion. 2 Bac 412. 21 Feb. 660. 10 of.

Admt. granted by a wrong authority, as by a Bishop of a Diocese is void. Let. 430.

Agreeable to the Rule that a repeal or citation does not make void all intermediate acts, it has been held that if a person dies intestate, & a will forged is proved as his, the testament is afterwards renewed on citation, & Admt. granted, all lawful acts, as much as a rightful Admt. might do remain good. Thus, a creditor who took a debt & the supposed Admt. was obliged upon the same debt again to the rightful Admt. 3 Th. 125.

But the Rule does not hold, so that after a repeal or citation, that all lawful acts remain good, when the deceased left a valid will, & the case of actual intestacy only. 1 Com. 263. Bac. 25.

If the deceased left an Admt. the Ordinary, not knowing of the last grant of Admt., at the Earl of the act, & afterwards proves the will, he may avoid all lawful acts done by the Admt., because he had an interest in which the Ordinary could not deprive him. The Ordinary has no authority to grant Admt. except only when a person dies intestate & the Admt. is void. 2 Bac 411.

1 Nov. 342.

Mr. Justice Butler seems thoroughly strongly disposed of this rule. If the Ecclesiastical Courts say he have jurisdiction their sentence as long as stand unappealed shall avail in all other places & when they have unappealable jurisdiction 3 Th. 460-1. 2 Nov. 174. 1 Nov. 380. 1 Nov. 27. 2 Dec. 1910.

So is the Court overcome by two wills, one of which the former was revoked by the latter, & the Court of the first proceeds by the Probate of the deceased by the rightful Admt, all the lawful acts of the first Admt. are void. Butler's great justice say the Rule. Here: What of the two last cases, cases of inte
When the debt is not paid, the creditor may proceed on the collateral security, and in this case, he is entitled to all the estate in the hands of the debtor, so far as the security extends, Bac. 411; 1 Cor. 1344; 2 Cor. 570. But his lawful interest in the estate as well as those before are good, Sal. 28, 6, Co. 15.

The effect of the debt being paid is the debtor of it, unless otherwise provided for, in the event of the first debtor being considered as such, the debt of a stranger; or if the first debtor is declared to be a trespasser, Bac. 411; 3 N. S. 379; 1 Cor. 236; 64; 2 Cor. 570; 2 Tav. 150.

Yet in the last case, if the creditor has paid the debt, S. P. C. C. 335. and funeral expenses, which the first debtor ought to do, the creditor shall retain the amount so paid or charged as so much in mitigation of damages, Bac. 411; Rolle 99; Ven. 349; 2 N. S. 379; 1 Co. 26; T. 534.

So in those cases where the estate is made to (as supra) a voluntary juncture of a debt to the original estate, does not discharge the debt or debtors, even when a release is given of the debt or debtors, Bac. 411; Rolle 99; N. S. 534. Justice Butler contends, that this rule in case of a release of the estate, is, on the Probate of a Will, this not in case of replev in any kind, upon an appeal, 3 T. 130-1.

But it has been held, that if a debt is payable on a deed, is not made, de facto, having a Probate under seal, he shall never be forced to pay it over again, 1 Bac. 190; 5 H. 411. - So doubtless if paid to one of the debtor, de facto, on the deed, 5 T. Cow. 130. - Where then is the necessity of an "audita relata"?

If after the debt is granted a new debt is obtained, by fraudulent means, the first is not released, but the second is not released, the released is not entitled as a creditor, but not as a trustee, 6 Co. 19; 1792. 1 N. S. 534; 2 Tav. 339.
What acts an executor may do before Probate.

An executor derives all his authority from the will. The property of the testator's estate is vested in him before Probate on the death of the testator.

Proving the will is called a necessary ceremony, but it is properly a necessary evidence of its existence. The executor must prove the will is valid, and that the testator is dead; if it should be that the testator died, then it would be necessary for the testator to produce the Probate. Stat. 11, 21 B. 396—3d. 3 & 6.

This evidence of the executor's right to Probate is necessary because it is said in the Probate, there is no inventory, sale, and other acts. There are for the benefit of creditors & legatees, 2 B. 412—Low. 363—Stat. 11. 3 & 6.

Therefore the executor has the right to all the property before Probate, all acts which will be valid, 1 B. 412—2 B. 412—13 Stat. 39, Good.

But an executor can do no act which the testator is prone to do, for he derives his whole authority from his appointment by the will, and for the benefit of creditors & legatees, 2 B. 412—Low. 363—Stat. 11. 3 & 6.

The executor must take possession of the testator's goods. He may enter the decedent's house (if he can without breaking) to take security belonging to the testator before Probate. 2 B. 412—2 B. 412—Low. 363—Golder. 144—Low. 277—Stat. 13.

But he may not break any other door, nor even a chest for that purpose. Low. 175.

So before Probate he may present to a legatee or the assignee of a legacy, and vest the interest in the legatee. Ca. Lite. 192—Golder. 144—2 B. 412—2 B. 413—Stat. 34, 49—2 B. 587, 20.

So he may pay a receiver debt & legacies given.
take releaser, Nov. 174 - 5 Co. 20b, 1 Carm. 238 Thir. 31 Nov. 251 27 20 9 Co. 39b - Co. 277 27 4.

But if one entitled to such decree shall not give releaser before debtor granted, he might after debtor recover them again. For the right of action was not in him. Nov. 14 272 20 20 20 20

So the debt before Probate may be sold, give away on otherwise division of goods of the deceased. And it is otherwise in case of our Adm. 2 Bac. 713 Law. 174 - Mont. 33 49 1 Law. 238.

As if a Bond of the Testator be conditioned for payment at a certain day, which happens after testator's death, but before Probate, it must be paid by the day to the Testator or his Co. The penalty is for debt. 2 Bac. 411 - Mont. 34 - Nov. 174.

So at other wise, if bond was made by testator, the Executors pay it by the day, this before Probate of the future ensues. Law. 174 - 31 now by Act. 4 Ann. Executors are claiming in Court of Law, on a protest in Court of Principal, Interest & Cost. 2 Bac. 413 - 315 491 2 67 - 2.

A person named as Debt is said to be a complete Debt for all purposes except that of bringing actions, for he cannot bring an action it is said before probate. (Law 174) For 1st after death apply at all, except in two cases viz. Actions of Debt and other actions on the Testator's contract in to such actions for Debt, as are committed in the life time of testator.

Therefore before Probate, he may maintain, trespass, slander, libel, or any injury done to the assets after testator's death, since in this case, he may declare upon his own account. 2 Bac. 413 441, Mont. 35 30 - Nov. 174 - 1 Law. 183 188. Vell. 33 83 2 Bul. 269 1 A. 302 7.

He may indeed maintain an action in his own name without describing himself as Debt Dec. 174 - 21 Bac. 413 Cad. 174 - Hence a successor of letters Testamentary is not necessary. 2 Bac. 441 6 1 62 2 2 1 68 2. 2 Re. 66 68.

So before Probate he may distrain or assize for Rent. When the reversion for a term of years comes to him from.
The testator is the rent accrued after the testator's death, because the rent after the reversion is vested in him, yet he cannot do these acts if the rent accrued during the testator's lifetime.

So before Probate, he may maintain debt on a date of testator's goods by himself, for here the contract is his, but the testator's, 1 Co. 238. Dec. 174. Meant. 41. 59.

With respect to actions of debt & other actions on the testator's contract, it is not true as laid down (5 Co. 29) that.

The debt before Probate cannot being actuated in this case. 9 Co. 39.

It is clearly agreed that he may commence an action before Probate, tho' he cannot maintain the action or declare before Probate. This is to say he must declare before Probate, it is clear, if he produce his letter Testamentary at the time of declaring, where he must make proof; there remove the impediments. 2 Bae. 41. 1 Roll. 47. 1 Co. 238. 7 Dec. 23. 3 Dec. 58. Nw. 370. Ray. 481. Comb. 371. Sale 302. 3. 7.

Of Co-Executors.

If there are several executors they are deemed in law but as one person, representing the testator; their interests are joint entire & undivided, therefore it is a general rule that the act of one is the act of all; 2 Bae. 395. 1 Co. 240. Godd. 134. Dec. 21. Amdis. 319. Meant. 95. 1 Roll. 926. 24th 23. 2 Co. 347.

Hence the poss& of one is the poss& of all, a sale or gift of the assets of one is valid, it being regarded as the contract of all. As a release by one of debt, actions & binding on all. So if one grants his interest in the testator's assets to his Co-Executors nothing passes by the grant for each had poss& of the whole before 2 Bae. 395. Godd. 134.
...one great and universal interest in the life of the tenant in possession. The tenant must be able to prove that the house was actually occupied by the tenant in question, and that he had been in possession for a certain period of time. The court will then decide whether the tenant has a valid claim to the property.

One cannot have an action of account against the estate of the tenant in possession. The action must be brought by the creditor of the tenant against the estate of the tenant in possession.

But one of two tenants cannot make a valid release unless both tenants agree to the release. Both must join in the action to release the tenant in possession.

There is one exception to this rule: when the tenant in possession may be released in their own right, as in the case of a lease. The Tenants Act, 1834, provides that a tenant in possession may be released by agreement between the tenants.

If one of the tenants dies, the power of the survivor to release the tenant in possession is derived by the Act of Settlement, 1603, 36 Eliz. 2, ch. 5. The Act of Settlement provides for the release of tenants in possession by agreement.

It is said that the tenant in possession cannot compel the tenant in possession to account with him in the event of the death of the tenant. But the tenant in possession is entitled to the possession of the property after the death of the tenant in possession.

...
It is a general rule, that one acts is not chargeable for the money of another unless, if he is so further liable than for the debt which came to his hands, 2 Baco 396- Gadol. 134- 242- 240. 47 R. 216.

If all the debtors join in giving receipt for money actually received by one only, all are liable as laid to, as if they had all received, i.e., each is liable for the whole. This rule however is oft in Equity; there the actual receiver is only liable for receiving in the substance, joining is only matter of form in giving Receipt. 2 Baco 396.

In all the cases one and one person in law, they are regularly, all the sued together shall must be. 2 Baco 396- Gadol. 134- 17 R. 565.

If an action is not apt, and ced a plea that another is also, &c., without occurring that the latter has administered ill for the Co. but has not administered, the self must have to know, that he is one. 2 Baco 396- 134- 17 R. 242- 240.

If an action is not apt, and ced a plea that another is only without occurring that he has administered, because the fault is not supported (the within his cognizance). 2 Baco 396.

If an action is not apt, one of several debtors has not freed the mistake in estatament he loses the advantage of li. 2 Baco 396- 134- 17 R. 242.

In an action by the several, all must join, the one hand must join the bill or is within a. c., or has refused before the ordinary. 120. 2 Baco 396- Gadol. 134- 17 R. 242.

If in case of two deb, one refuses to accept or refuses yet he must be named if there must be a summons to service. 2 Baco 396- 134- 17 R. 242.

The object of summons service is to prevent the debt, who do not act, from releasing; its effect is to take away his princi, or priority to the debt, to make him 110 party. 2 Baco 396- 134- 17 R. 242.
Part of the suit is committed on the goods of the testatrix, while in part of one of several cases, he alone may surmise it, for here he need not see as others had in their own cases. 2 Depr. 134. 2 Bac. 197. note. 21 H. 2, 104. If contrary rule is held in favor of the books, or the ground, the fault of one is the fault of all. 3 Depr. 109. 2 Bac. 397. 17 H. 462.

Of an Executor de son fort.

An executor de son fort is a person without any authority from the deceased, or from the ordinary, does such acts not belonging to the office of testator. 21 Sir. 517. 21 Pyn. 287. Note 171. 2 Bac. 406. 1 Cram. 267. 100. 21 H. 299.

In general, any unlawful act or meddling with the assets of the deceased will make an executor de son fort, or a stranger. 21 Sir. 334. 171. Thus taking possession of the assets, converting them to his own use, paying debt out of the assets, procuring a suit for debt due the deceased, in you, all acts of acquiring, transferring, or possessing the assets, will make any person unauthorized an executor de son fort. 2 Bac. 407. 1 Cram. 410. 1 Depr. 395. 2 Sir. 395. 2 Bac. 166. 21 Pyn. 100. 21 H. 296. As this liability, we have rec'd. 2 Bac. 203. 21 H. 297.

In paying legacies, and of the assets, taking a specific in specie without the consent of the executor, or by pleading when sued as executor, every other plea, then "no认真等。 2 Sir. 397. 2 Bac. 912. 2 Me. 174. 1 Roll. 910. 1 Cram. 264. 5.

So the widow of the deceased became executor de son fort, by taking more apparel than is convenient for her degree. 2 Sir. 397. 1 Cram. 265. 21 Pyn. 166. 21 Pyn. 27.

If a stranger takes possession of the assets, divides them to another, the latter is "executor de son fort." 2 Bac. 297.
By the Stat. 31. 185. If goods be given by grantee to a third person, or a release be given by grantee for debt, the donee or releesee becomes deb. de son fort. By Stat 31. 2.1 Com. 265 - Aec. 416. 810.

If one intermeddly with the estate, own in tam-ination of direction from the deceased, he is Act. de se. 2 Tho. 97.

A fraudulent gift by the testator himself, will make the donee Act. de se ract. as to executor from the necessity of the case, but not as donee of his legatee, nor for it is good as to them. 2 Bae 605 - Roll. 97. Yelv. 97 - Aec. 271 - 2 Tho. 97.

But one may do many acts relating to the effect of the deceased without making himself an Act. de son fort. 2 Bae 388. 1 Com. 265 - Aec. 94. - Aec. 97. Thus, sending or taking care of deceased's cattle, paying debts of the deceased, or the deceased's necessities, or making needs for the children. 2 Roll. 97.

So taking the effects under claim of property, unless the claim is merely colourable mere artifices, for in the former case he does not undertake to act for Act. 1 Com. 265. Dyer 165. 1 Root 184. Intermeddling with real estate does not make person an Act. de son fort. 1 Root 184.

What acts are such as to make a person an Act. de son fort? is a question of law. 3 Dyer. The true principle of discrimination in this rog. is, the effect of the stranger he shall, as fairly warrants the inference, that he obtains the management or disposal of the asset, he is Act. de son fort, but otherwise not. 2 Bae 388. 1 Com. 126. - Dyer 166. In the first case, the act is such as belongs to an Act.

The above Rule as to what makes an Act. de son fort, applies in their fullest extent only to cases where there is no rightful Act. de se. And is to those where there were...
none at the time of intermeddling, for after Probate of the will or after the death of the testator, the stranger in intermeddling is at the mercy of the testator's executors or administrators. After a trustee's grant, common acts of intermeddling in distributing, selling, converting, or embezzling property do not make the trustee liable. However, if the goods taken after Probate are added to the hands of the rightful owner, they become come his hands.

2 Bae 388 - 5 Co. 34 - 3 mac 313 - 41 rect. 289-390. Yet the wrong done is liable as a trespass, and by the Act of 20 Geo. 2, c. 20, 7-2 Bae 414-41 2 Bae 388 - 5 Co. 34 - 44. See also 313.

But even after Probate, if a person not an intermeddler, but claims the goods, he is chargeable as such, de son tort. 2 Bae 388 - 5 Co. 34 - 313. It seems from Saltwick that this claim may be enforced as to certain acts, such as receiving unpaid debts. The act of 14 Geo. 1 is in the nature of common law just passed. See also 313.

If the intermeddling be before probate or in case of intestacy before Act, the stranger in intermeddling is at the mercy of the testator. Then, the act he nothing more than taking possession, if he is liable as such to the creditor, unless he delivers over the goods to the rightful owner before action. See also 388. 5 Co. 33 - 313 - 41 289 - 565.

The ground on which the Act de son tort is liable to creditor is, that since his act, creditor has reason to presume, that he is the owner, and on legal representation of the fact no right to disprove that presumption, when his own wrongful act have raised it. 2 Bae 388 - 50-12. See also 414-41 2 Bae 507-6-0.

In Act de son tort is liable to all the trouble with out any of the profits or advantages of an过错 in business. Thus, he can be sued as such, but cannot sue as Act, 97 507.
He cannot retain for a debt due himself, nor his Adm. may do, even as a creditor of an equal degree. Star., 527. C. 69. 1 Mer., 137. 2 M. 111. 12 Mor. 441. 71. 2 H. 1106. 1 Cam. 266. 1 B. 258. 9. 5. Co. 50. But if he pays debt with his money, he may retain so much. 1 Cam. 266. 2 H. 1106. 1 Du. 180. 3 Coke, 337. 2 B. 225. 1 Ed. 154. So if after interimedius he obtained admittance, he may retain for his own debt, as a creditor of equal degree. 4 Inns. 113. For the better of this rule, except that he is still liable to be sued in the name of Adm. his son, he having, however, after Adm. gained the privilege of a rightful Adm.

A rule apparently contrary to this last is, that an Adm. of one's son, after obtaining letters of admin. may discharge, for that he shall not discharge himself for any thing "ex post facto, " 2 B. 391. 2 C. 190. 1 B. 183. 355. 310.

But the rule now nothing more it seems than that, once after a admin. is obtained, he may be discharged in a suit, and that he shall not discharge himself for any thing "ex post facto, " 2 B. 391.

An Act of the son in tort liable as far as he has assets to the rightful Adm. to all creditors of the deceased. 5. Co. 70. 2 B. 391. 2 C. 190. 1 B. 183. 355. 310.

An Act to the son in tort, when sued by the rightful Adm. is not discharged as the son, as, Not as to a Stranger, 1 C. 266. 2 B. 391. 2 C. 190. 1 B. 183. 355. 310.

But if the son, as Adm. has a creditor of the deceased, he may bring debt against him as Adm. of son in tort, with the decrement that some of the assets comes into hands. 2 B. 391. 1 Coll. 940. 1 Coke, 359.

In actions by creditors he is named as a genl.
This is a general rule that all debts due to a tenant are liable to the extent of assets, and as aptly express they are allowed all payments made to another creditor of equal or superior degree. 5 Co. 30. 21 T. 417. 24 Eq. 29.

He may plead plene administration, in support of the issue. But as to the right of voiding the tenant he cannot by pleading such fragment clear the action & the plea of such fragment is therefore rule 12 H. 501. 1 Vern. 171. 271. 5 Co. 30. 21 T. 417. 24 Eq. 29. as pro. 2 Bac. 390. 21 T. 417. 2 Vern. 171. 271.

Yet under the general issue, he may be allowed in mitigation of damages, the amount of such fragment, unless perhaps the right of voiding the tenant is prevented from retaining by his own debt. These lawful acts however kind the property, thus disposed of, &c. the right of voiding the tenant 1 Vern. 171. 271. 5 Co. 30. 21 T. 417.

The tenant de son droit is chargeable only to the amount of assets actually paid. Yet if the pleading requires an action by a creditor, he liable for the whole demand, whether he has assets not to that amount. 1 Vern. 171. 271. 5 Co. 30. 21 T. 417.

It is said in these cases if he pleads plene administration he shall not be charged beyond the assets paid? 1 Vern. 171. 271. 5 Co. 30.

It is said however of the assets are not paying their debt de son droit, may be relieved in equity 2 Bac. 390. 1 Vern. 171. 1 Vern. 171. 271. 5 Co. 30.

If there be a right of voiding the tenant, de son droit, they may be sued jointly or successively, but it is otherwise in case of a rightful adm. for an act of de son droit cannot be joined in actions. 1 Vern. 171. 271.
If a Testator left his Goods to his Sons, i.e. his Debtors, were liable to creditors and in Equity 1. Pask 2. 66. 2. 110. Deq. Pask by Th. St. 30. Part. 2. They are liable as long as creditors 1. Bow. 371. 2. Bow. 51. 4. Bow. 170. 4. 231.

In one case they may be originally an Est. de son Tontine, in case of a gift by deceased to devise and creditors.

## Of Making Debtors Executors.

By the old English Law, if an debtor was made Est. his Debt was discharged. But now the debt of such debtors are assets in his hands for payment of Debts legacies, etc. The reason given for permitting the Est. to retain the debt was, that he could not sue himself, and that the reason might have been assigned, with propriety in case of Mort. Yet they were not allowed to retain any creditors. 35. 1. 4. 359. 326. 246. 1. Bow. 179. 2. Bow. 511. 2. Co. 30. 156. 3. Bow. 164. 2. 245. 20. 5. 1. Bow. 97.

So if there be such assets to pay all debt and legacies, he may still retain his debt because the debt is considered as a residuum. 3. Co. 30. 156. 3. Bow. 370. 4. Bow. 160. 2. 245. 20. 5. And it is the opinion of Judge Reeve, that he is discharged only when he takes the residuum. There has been, it is true, no decision, recognizing this principle, but a clear proof that it is a true one is, that the debt of an Est., who more entitled to a residuum, is not discharged by his appointment.

In England, the Est. as such is residuary legatee, unless there is something in the Will clearly manifesting the testator's intention that he should not be. 1. Bow. 379. 1. Bow. 170. 4. Bow. 160. Bow. 373. 2. Bow. 305. 6. And in his right he withhold the payment of his debt against those who claim under the Will of Distribution, or founded on the idea that he is entitled to the residuum. Then? If he had such a legacy abroad have his right to the residuum, can he in that case retain his debt against all claimants?
Of Making Creditors Executors.

A debtor may make his creditor executor; in such case, the 2nd creditor has as much of the testator's estate as will satisfy himself, but must be understood when the debt is of an equal degree with such creditor; for if he is not a simple contract creditor, he cannot retain any creditor by specially, or any other of a superior nature. 2 Bacc. 217-4-3-8. Plow 185. Hut. 193. Mont. 130. 1 Gard. 115. Salk. 304. 1 Incr. 496. 2 Bl. 512. And the rule is the same with 1 Adm. 41. auth. 5 Bl. 63.

These rules from the nature of the case are both reasonable & just; for the creditor, who first commences the action, acquitts a priority to all others in equal degree. P. 102. & 103. Cannot being an action act. himself, he must unless allowed itself for his own debt, be postponed to all others in equal degree. 2 Bl. 63.

But an estate in executer who is a creditor cannot retain for this would be allowing him to take advantage of his own wrongs. 5 Bl. 30. 2 Bl. 394. An exec. is not obliged to take in part when there are not suff. assets to pay all the debt. 2 Bl. 63. 411.

Of an Executors right to the Residuum.

In England, if an exec. is appointed it has been a question to whom the surplus or residuum, of personal property after the payment of debts & legacies belongs. 2 Bacc. 143. 3 Wet. 4. 2 Bl. 514. 1 Adm. 146. Bro. Par. 274.

Formerly the exec. himself was considered as residuary legatee, but now, if any inconsiderable legacy not appropriated to any particular purpose, he left to the exec. or if there can be collected from the will an intention, that the testator should not take as residuary legatee, the
Court of Chancery will order a distribution as in the case of
Admiralty. Still however if no such intention can be inferred,
from the Will, the Ex. will be considered as residing legatees.
30. P. 43. Pre Ch. 81. Ward 493. 26th 47. 75. 256.
360. Rojor 284. 1. Boc. 3. or 179.

An Ex. in England has no power for his trouble. A
Legacy by the Ex. to the residuary in those cases,
where it is charged proof of intention in the willor that the
Ex. should not have it. Roper 230. 2 40. 465. 75.

Hard Proofs are inadmissible to show that not with
standing the Legacy the testator intended this Ex. Should he
reside by legatees. But this rule does not hold vice versa
Roper 230. 2 40. 465. 75.

It is laid down by legal writers, that in cases of
such clear proof is admissible to rebot an equity or new
writs in application, i.e. that such proof is admissible to
establish the old legal intent of a will or other instrument,
when such intent varies from the equitable construction
yet such proof cannot in such case be admitted to establish
the equitable in contradiction to the old legal construction.
But the former must be collected from the instrument itself.
2 60. 60. 220. 3. Pow. C. 417. 2 40. 40. 40. 40. 40.
Ward 473. 1 60. 60. 60. 60. 60. 60. 60. 60. 60. 60. 60. 60.


Of Wills

A Will is the
Declaration of the mind of the testator, written by word or wri-
ting, disposing of an estate. To take effect from the death of
the testator. So every Will there must be the will. 5 60. 1 47.
43. 43. A Will must be appertaining to the, as called a Testament.
2 24. 4. 7 46. 46. 46.

Generally a person may take under any disability.
may dispose of his personal chattels by will in his estate. See 114. And in all cases the presumption is that he was of soft discretion and capacity, so that the "amor praestanti," viz. a man, did at the time of making the will, dilatorily construe the will. 21 Moore 312. Co. Sitt 89. Butcher 314.

But if a person of the following description cannot make a will viz. old, blind, person of non sane memory, as Dumonths, aged person cannot make a valid will, if it appears plain his concoction at the time of making, that he was not of soft discretion. If the testator was under the ignorance or blindness to read the will, Ernest Brown, declared him a such reading must be proved. What degree of incapacity is requisite no definite rule is established, the court, generally relying on the opinions of the witnesses to determine whether the testator was in possession of his senses or not. 4th Generally said, a drunk person cannot make a will, but must must be submitted to show, that such person knew the contents of said will, and was of such understanding to make a judicious and disposition, but a drunked man cannot make a will. The like when drunk cannot make a testament of lands or goods. 2 C. Bl. 375. 296. 15th 142.

A will made under duress or under fear is in validated, if it would seem, that in the case of the lack of fear, whether actual or imaginary ought not be regarded. The age of discretion for making wills, is according to some author the 14 in males, 12 in females, others set it at 15, but Judge Greene thinks it 17, because according to 40. Look, the Civil law governs in this respect, by which the age was 17. 2 Vern. 467. 21 Had. 316. Co. Sitt. 59. Prev. 1. 315. 2 C. Bl. 456. 7.

A husband cannot dispose of his wife's choses in action, chattels real or personal, without the consent of all by deed, except the first kind of personal.

Also can a person by will dispose of property held
A Remainder of a Chattel interest may be held
A residuary devise, he limited once after an estate for life
Provided it the Remainder more be in case of the time
Of testament death, or first devise is that the Continguous
On which the remainder interest happen within a lifetime
21 years of the expiration of a year. 3 Bl. 74-75. 6 Bl. 33. 197-198.

The life man must have an Inventory of the property
limited over in the County of Chancery, or in no case.
Hancis must give security which shall be forthwith coming.
2 Bl. 74-75. 3 Bl. 33.

An estate cannot be created in personal property.

If personal Right, he given in England a man to the heir.
Of his lands, the absolute ownership vests in the first taking
Posses of it. The reason assigned for the by English Daws is
Is that no estate in personal property cannot be based
by Fine or Recovery, therefore if such to exist it must
the a perpetuity which the law abounds.

A Will of personal property ought regularly be in
writing, signed & published by the Testator. It is not necessary
there should be subscribing witnesses as in the case of devise
of real property of the testator name written by himself or
her in any part of the will is safe. There is indeed an in-
stance given, by Alexander, where the testator’s name was written
by another, yet being a second of, by the testator was holden
safe. signing. Tool. To signing indispensible? 2 Bl. 304. 2
Cram. Sept. 753.

But if the testator cannot write, his mark with his
name written by another person will be safe. It is said too.
That the will, if it be in the handwriting of testator without sign-
ing is good & alse if it be in the handwriting of another person
in certain cases.
Duty of Executors & Administrators.

The first duty of a Executor or Administator is to make an Inventory of all the Estate which can be ascertained in his hands & there are no obligations of it by judicious persons under 21st. St. 2, 1274, 279. He must account with the said Inventory for the property Inventario, but he is not liable at all events for the amount of the appraisement of the estate if sold for less than the said Inventory unless it was incurred by his own negligence or fraud. 27th 1174, 27th 1175. He must account with the sale of the estate for all debts & expences. If the loss does happen then the guilt is imputable on his hand to an action by his creditors. But if the creditors sue in common form for their debt, they must join their actions merely on the inventory. Warren, Ann. 61.
A Judge of Probate ought not to reject an Inventory, of property, the title to which is disputed, for his decision cannot affect the right of trying the Title at Law. 1 P. 120.

The Debtor is never liable to creditors until a judgment is entered against him, unless he has made an unreasonable delay. 1 P. 122. 46. 7. 22.

If the Debtor submit the Adjustment of the Debts to an Arbitrator, and award against him the sum of a certain sum, he cannot afterwards receive the funds, or assets as to that claim, as far as they so come. His hands, his liability increases. 1 P. 452. 5. 14. 6. 81. 6. 67. 6. 68.

The engagements entered into, and such to pay a debt, being from the Debtor, does not make the Debtor personally liable. 1 P. 142. 249. 663. 69. The Power of the latter to the former, are nearly the same; there are some points in which they differ. They are bound to their testators or intestate creditors, as to the remainder of the assets only. 2 P. 157. 180. 318. 319.

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The Payment of Debts.

The Court is bound to observe a certain order in the payment of debts. 1 P. 123. 1. Succession of the Possession of the Will being proved. 2. Debts due to the heirs by reason of Special Agreements. 3. Debts by particular Statutes. 4. Debts by Records. 5. Debts by Certificates. 6. Debts by simple Contract. 2 P. 114. 402. 7. Debts due to the creditors of the estate. 11. 2. 221. 511. 223. 2. 225. 226. 1321. 1026. 660. 130. 2. 218. 239. 81. 6. 115.

This part of the original law does not present a very accurate picture to the mind, for simple contract creditors, whose claims are often more meritorious being preferred to all others, may be defrauded of their whole debts.
A creditor may gain a preference to another in equal degree, by what is called legal delinquency due to obtaining an Act of Parliament, 24 Geo. 3, 408, 402, 2 and 3 Geo. 4, 44, 42, 41, 40. In a voluntary bond it is said that all other debts shall be preferred to debts due. In C. S. 199—Nov. 27th—23 Geo. 3, 2 and 3 Eliz. 2, 44, 42, 41, 40.

If a creditor objects to the payment of a debt given by the deceased, on the ground that it was voluntary, the bill may be brought in the Chancery at their own expenses to litigate their claims, and if it is heard, and the decision is given, the inquiry may be always made into the cons. of bonds, where third persons are interested. Dicey 3rd vol. 16, No. 28.

An existing debt in the estate of the deceased ("he cannot in present solicitude infer."") is ascertainable, within the time limited for the exhibition of claims, and if he had assets, he might be recovered, but if he had none, he might not be recovered. (24 Geo. 3, 408, 402, 2 and 3 Geo. 4, 44, 42, 41, 40.

It is the duty of theadministrator to retain assets for the payment of such debts, if he should afterward become bankrupt before payment. Dicey: Whether the creditor can pursue the asset, or the hands of the deceased's legatees. It seems reasonable, however, on principle, that the creditor can pursue them in this as in common cases.

No time is limited in the English law for the exhibition of claims against the estate of deceased persons.
Of Legacies.

After the payment of debts, the next duty of the testator is to pay the legacies. A legacy is defined as a "gift in absentia of a particular goods or chattels by its testament." The person to whom the gift is bequeathed is called the legatee. See 46 C. Jur. 2d 277. Bl. 179.

In the case of a legacy, a legatee is given a mayoral proxy himself, as in the case of debts, 11 Will. 3d.

At the death of the testator the inchoate rights of the legatee commence, and the legal property of the legatees, still resides in the estate. He may declare, either as a specific or as legatees for the legacy of debts. The estate of the testator, vested in the legal property of the legatee, is not a debt, but an asset of the estate, 11 Will. 3d. 277. Bl. 179.

If an action is brought on a legacy under a promise by the testator in case of assets, 11 Will. 3d. 277. Bl. 179.
pecuniary Specific legacies

Specific legacies are bequests of things which cannot be specified or identified. Pecuniary legacies are bequests of sums of money in general terms, which do not identify any particular pecuniary legacy. Section 25-1112, 25-9000-1111-2142.

Pecuniary legacies are liable to execution before specific legacies, both are liable if the first are not sufficient. Section 25-212, 25-9000.

But if a part of the specific legacies be to be paid for the payment of debts, the legatee whose part is not taken is competent to deduct the same from the estate, to the extent of a reasonable allowance. Section 1113-212, 2142.

This rule obtains only when it is necessary to take a part of the specific legacies for the payment of debts. The legatee whose part is not taken is competent to deduct the same from the estate, to the extent of a reasonable allowance. Section 1113-212, 2142.

After receipt of specific legacies if there are not assets left, pay all the pecuniary legacies, there must be an advance. Section 1113-212, 2142.

But if there is not sufficient to pay all specific legacies, those who are first paid are always preferred if there shall be no liens between them. There are cases when pecuniary legacies are preferred to specific legacies, but this preference depends on the intention of the testator. Section 1113-212, 2142.

Thus if all the personal estate at a particular place is bequeathed as specific legacies, if afterward a pecuniary legacy is given the paid out of the personal estate already disposed of to the specific legatee, there being no other personal estate elsewhere - that specific legacy
in charge with the payment of the after-wards granted pecuniary legacy. But Ch. 474, 374, 321. 746, 2. 8 320
and
Adms.

Wasted and Lapsed Legacies.

A wasted Legacy is one which, of course, rests in the legatee or his representative. A lapsed Legacy is one which cannot be taken by the legatee, but sinks back into the residuum. If the legatee dies before his testator, his legacy becomes lapsed. 1 Ch. 745, 374, 321, 746, 2. 8 320. 470.
The residuary legatee of these in unavoidable to the lapsed legacies but there is none appointed by the will, lapsed legacies go according to the Act of Distribution, Sum 746, 2. 8 320. 470.

If a lapsed legatee, failure of a condition on which it is given, it passes to the residuary legatee. 2. 8 374, 321, 746, 2. 8 320. 470.

A Legacy may be made with a proviso that if the legatee die before the testator, or before legatee arrive at the age of 21 years, or shall become a minor of 21 years, such limitation is voided. 1 Ch. 746, 2. 8 321, 746, 2. 8 320. 470.

A Legacy is given to a certain person in a wasted legacy. But a Legacy given to a certain person in a lapsed legacy is voided, and the lapsed legacy is transferred to the residuary legatee. 2. 8 374, 321, 746, 2. 8 320. 470.

This distinction seems clear to some, but probably tends to defeat the intention of the testator. The Rules of Inten-
sions are not however without exceptions.
Nevertheless if an a Legacy made in this manner interest is made payable, the legacy is void. Ver. 674, 10. 462. y. Whitfield 9. 305. 17. Pre. Ch. 316. 4. Mc. 512. 3. Mc. 645. 7. W. 606.

If such legacies are charged on real property of the legatee dies before the time at which they are payable in one place & given in another they shall lapse, this exception is taken for the benefit of the heir, who is a great favourite with the English land. 2 P.M. 976. 9. 610.

Another exception is that when a Legacy is given at a future time, it is paid out of a certain fund which yields an annual income, it is vested & secure.

Chances will compel the heir to pay a legacy charged on the land, yet if such legacy be given before, or if it is paid by the legatee dies before the day of payment, the heir will hold the exclusive of the residuary legatee, or those who claim under the act of distribution, 1 P.M. 507. 8. 2 P.M. 276. The same favour is shown to disceivers, in whose devise, legacies are charged. 610.

The person who is entitled to a charged legacy may demand payment, immediately after the death of the first legatee, provided (semi) a year and an day be passed in no day expired by the testator. 2 P.M. 311. 102.

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**Conditional Legacies.**

The General Rule is, that if the condition is in favour of the person it cannot take effect until the condition is performed, and if the condition is illegal or fraudulent it need not be performed, the legacy will not. Thus, if a legacy is given on condition of not dissolving the Will of the Legatee, whenever a suit to dissolve the Will is filed, the Will of the Legatee is deemed void. The Will of the Legatee commences a suit whereby he dissolves the validity of the Will, but this is no prejudice to the succession of the Legacy.

There are probably causes written: "Ch. 42 2 P.M. 162."
Legacies for which an annexed general condition, in the absence of a clause entitling the remainder to any other condition, must be enforced, are not to be considered as affecting the remainder; nor are they to be considered as impairing the power of the remainder to dispose of the remainder, or to appoint the trustees or other personal representatives. 

When a legacy is given to a person, either general or particular, in trust, the remainder is subject to the same conditions as if the legacy were given to the remainder. 

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Where Legacies are well given.

What words constitute a legacy? Gadol. 20. 2 Verc. 467. A judicial mandate that hand, children may take under the description of "children" of the testator had none living, but there is no other case: 2 Mc. 206. 2 Verc. 116.
1st. Well, being made when the testator was
presumably dead on his death bed. The law regards this intention, rather than the
impression of the words really used. So, note that intention is there and any words that
manifest the intention to create an Estate in Debt Gen. 24:32-34. 465.

2nd. In all descriptions, whenever claims the legal
tess, the intention must be sought. So, if a man devine
to all his children according, it is left standing only to those who are in tesse, at the time when
the will was made. Dyer 177. Co. Pitt 119. Pre. Ch. 470.

Property given also equally divided among testator's
relations or among his "poor relations", or among his relations of a "good moral character" in the divided accord-
ance to the State of Distributions. The description being
to general to have any efficacy, this doctrine shows
fully established. 42 S. 527. Pre. Ch. 461. Talm. 217. Contra. 2
Wern. 381.

When property is given to a number of children to
distribute among them according to the direction of a partic-
ular person named in the will, the division will stand
necessarily manifestly unjust & monstrous 2 Wern. 421. 513.

It is said by Godolphin, that in order to find
the true meaning of the testator with respect to the thing
intended he gave away, it is necessary, chiefly depend the
time when the will was made for it is presumed that
he has not altered his mind, unless it otherwise appears
by direct evidence. In another place he observed that
this Rule must be understood, as the testator makes use
of the words in the Present or Future Sense, & that if they
be doubtfull whether they refer to time past or future;
they shall be understood as relating to the time it comes.
Gaddo 272-4.

But it is not settled that a gift in a will of all the
testator's personal property, all that he had at the time
This death per se more will pass, whether the quantity or personal estate will be increased or diminished from the time of making the Will. Leavis v. 40 - 8, M. 237 - 332, 633.

The true respecting real property is this: if all that the testator had at the time of the devisee duly shall pass as what he might have between the time of and King his Will & his death.

As in personal property all being bequeathed in a particular place, extends till that he may have afterwards in that place. 3 Yor. 633.

By a request of a particular at a certain place, to the precise, whether it was at the specified place, or not, at the time of the testator’s death.

A testator gave £200 & then said “& out of the 200 which I gave A & 1 gave B £50.” It was decided in this case that “when the words of diminution were added, they took away the whole from the legatee first named – I last, all the; the testator had intended half for each.”

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**When a Levy is not a Satisfaction for a Debtor Duty**

The doctrine obtained in Chancery for more than a century was that if a man gave a legacy to a creditor it should be considered a satisfaction for the debt. If the legacy were equal or superior in value to the debt, that was otherwise. Pope 169-207, 132, 66, 2 H. 227, 337 - 394. 1179. 124, 52. 7, 4th, 220. [25th], 1777.

This rule it was supposed was supported by the intention of the testator, & in that position it stood for a long time undisturbed. But succeeding Chancellors rejecting that Supposition, laboured hard to take particular cases out of the spirit of this rule, & now by repeated adjudications it is virtually abolished.

The following exceptions are taken to the Rule that the legacy to operate as an extinction of the debt should be
so expressed, i.e., that it shall be in satisfaction of the debt. 293:226:260-180:110-280:55-556-557:176:8:129:258:45:309
2nd exception: That it should be payable at the same time, or at least, as soon as the debt is payable. 226:286-
226-236:226-
3rd: That there be no clause directing previous payment of just debts. 180:1440: Paper 160.
4th: That the Rule does not apply against any illegitimate child.
5th: That the intention of the testator to extinguish the debt by the legacy be apparent. 280:555.
6th: That it be expressly given in payment.

If several legacies are given to one person & are exactly the same in quantity & quality & in the same instrument, they are not administratively, but otherwise, if the same legacy is given in the will & in a Codicil, it is administratively, unless there be some circumstances showing a contrary intention in the testator. 180:423:5-180:526-180:155

A legacy to a wife or other person entitled to money from the testator by articles of marriage settlement is generally considered as intended to be a satisfaction in all or in part of what is then due & that the legatee may have her election her to which the will take, yet she shall not take both. 39:53-160:205-850:166-152:24-52:55

A gift by a legatee to testator during his life is to be considered as part of the legacy bequeathed by the will made provisions to such gift. Pre. Ch. 262-11:555-95-2 Venn. 115.
Ademption of Legacies... 3rd.

The Ademption is the taking away of a legacy which may before he executed. Deut. 27:18. Ch. xvi. 7. The Ademption of a legacy is never presumed, but must always be proved. Deut. 27:18.

The accidental destruction or alienation of a legacy may be an ademption, or may not, according to circumstances, but it is not necessarily such, for the legacy may be specified, it may be replaced by a similar article. Deut. 27:18. Ch. xvi. 7.

To determine whether there be an ademption, or not, recourse must be had to the intention of the testator. If the ademption cannot be accounted for, it is upon the supposition of the testator's intention to adempit the legacy it is an ademption. Lev. 25:5. Deut. 27:18. Ch. xvi. 20. 26:14. Ver. 636. 81. 18. May 25 or 27.

But if the legacy be so lost or destroyed or disposed of that any other intention can be inferred it is an ademption. Lev. 25:5. Deut. 27:18. Ch. xvi. 20. 26:14. Ver. 636. 81. 18. May 25 or 27.

If a debt be inherited and the testator calls it in for no other purpose, than to take it away from the legatee it is an ademption. Ver. 636. May 25. 27. 18. 26. Ch. 307.

But if payment of a debt bequested, has been made, or by the testator or the debtor is satisfied, or if the testator was in want of money, the receipt of the debt is no ademption of the debt, but answerable for the value of it. Had. 373. Forrest 228. 20. 46. 168. 392. Ver. 636. May 25. 26. Amb. 40. Ver. 636. 81. 18. 27. No. 39. 45. 26. 35. 6.

In many cases also, when the legacy is destroyed, a house bequested is consumed by fire, a new one not being done by the testator in it, it is ademption of the legacy. Had. 373. Forrest 228. Ver. 636. 81. 18. 26. 392. Amb. 40.

So also when a man gives his daughter $200 by will and afterwards by her marriage gives her the same sum or more.
The legacy will be distinguished.  2 Ves. 175.  Dec. 8. 278.

1. If the legator have made a devise from one of his children, and in the same instrument give the same legate to another, the devise to the one is void, and the devise to the other is void.  1 Ves. 179.  Dec. 8. 278.

It is laid down as a rule, by showing a direct intention, that if the legator be of sound mind, he should issue the legacies in a particular place.  They must be there at his death, & given after his death.  1 Ves. 179.  Dec. 8. 278.

But the removal of goods, &c. is not before testator's death in an adoption, and in a transfer, 1 Ves. 179.  Dec. 8. 278.

**Shifting and Posthumous Legacies**

The Creditor is not obliged to pay any legacies till the legataries give security & refund of debts.  Should afterwards appear, he must before he made no time is limited within which the creditor must exhibit their claims at the deceased.  2 Ves. 180.  2 Ves. 203.  Case. 287.

No legatee or receiver of his legacies have not given security & refund, he is not obliged to do it of debts alluded afterwards arise.  2 Ves. 180.  2 Ves. 203.  Case. 287.

285-7-


Judge Screech thinks an action for money had and received, in such case the money is paid by mistake & the case fail.

A creditor may come when the asset of this devise in the hand of his legatee. By a bill in Chancery, if the asset is
Payment of Legacies

1. In the first, same care must be paid in the payment of legacies, to take a proper deed or have a receipt. It is better to have a deed, as an equitable demand, as it is not bound by the Statute of Limitations. So after a long time a legacy may be presumed due paid. Rev. Ch. 229, Vern 256, 1508, 1571. Refer 101.

2. If he ought to have care to pay legacies in proper hands, for without a device, notice of a Court of Equity, the creditors pay them since they gather in other potations of Infants. Prob. Ch. 91, Ch. 240.

And if without such device or order see Sect. 2 says a legacy to the gather of an infant, he does it because there, but if he pays it the infant, the Guardian, for every the Guardian gives security to discharge his trust faithfully. 1211, 285, 5 Ch. 10, 27, 1274, 1275. 50, 127, 10, 127, 103, Pro 405. 2 Ch. 127, 132. 300.

If a legacy is given to a home, it must be paid. See husband, 1 Vern 28, 27, 40, 196. When a legacy is given to a
time convert, so lives separate from the husband & it is
paid her & she gives a receipt to the same, it is been
decided an whole but by the husband, that the lega-
cy should be paid over them with interest. 2 Vero. 96.
Roos, 96.

And when the husband & wife are divorced or a
man & woman, it has been adjudged that the husband alone can
release a legacy left the wife. 2 Vero. 96. 97. 497. 499.-
But the rule does not
hold when property is given to the sole & separate use of the
wife.

3? 3. If no time is annexed by the testator for the
payment of a legacy, it is payable in a year from the testa-
tor's death; this rule is copied from the Cibell Ind. 1844.
A legacy is payable to the representative of a deceased
legatee at the time originally fixed for payment. 2 Vero. 119.
99. 100. 101. 102.

The person entitled to a lapsing legacy may demand
payment immediately after the death of the first legatee, provided
a year & a day he paid a notice is given by the testator. 2 Vero.
31. 103. 104.

At the time a legacy is devised generally it is to be regularly
to carry interest from the expiration of the first year after
the testator's death. Is a demand necessary? In case the
now it carries interest after a year without payment. 2 Vero.
415. 2 Vero. 251. 60. 612. 613. 614. 615. 616. 617. 618.
Writ 796. Pre. 60. 60. 60. 60. 60. 60. 60. 60. 60.

But of the legacy being 8 full age neglect to demand
at the time, he cannot have interest began from the time of
367.

And there may be noticed a difference between
a legacy & debt, the latter of which there being no time fix.
In the demand for personal legacy interest, whether acknowledged or not, the reason of that difference is that the legatee, who is trusted as not like a debtor, claimed to search for the person whom he sues, if by act of he advanced the security on his trust when demanded, 2 Bl. 104.

But in a legacy it is generally two times maintained for the legacy, and if the legatee be an infant, he shall be entitled to interest from the end of the first year after the testator's death, no demand made, because no demand shall be made to him. 2 Bl. 145. 1 Will. 247. 1 B. C. L. Rep. 167. Rov. 209.

If the legacy be appropriated by the testator himself to be paid at a certain time, it is not fully settled whether it shall bear interest from the time of the appropriation or from the time of the demand, and in either case it is charged with the latter division. 2 Bl. 116. 1 B. C. L. Rep. 167. 1 B. C. L. Rep. 173. 3 Ves. 482. 4 Ves. 180. 2 Ves. 67. 2 Ves. 69. 2 Ves. 116.

If a legacy is made payable to a child of the testator, even at a future date or time as otherwise provision made for its maintenance, it shall bear interest from the end of the year immediately following the testator's death, because the father was obliged to have provided for it, while living, and it is presumed that he intended that it should be maintained after his death. 1 Bl. 116. 2 Bl. 105. 2 Ves. 329. 3 Ves. 104. 1 B. C. L. Rep. 167. 1 B. C. L. Rep. 173. 3 Ves. 482. 4 Ves. 180. 2 Ves. 67. 2 Ves. 69. 2 Ves. 116.

Suppose a legacy be charged on a Black acre, which produces an annual rent, interest there paid. And the legatee desires by law to recover the legacy in a suit. What amount to be assessed? "Give you pay," does not. This once it was to contend. He, there must be something clearly evident of consent. 5 Bl. 125. 1 B. C. L. Rep. 300. 3 Ves. 838. 1 B. C. L. Rep. 55.

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**Legacies Now Recoverable.**

The method of recovering legacies is by a bill in the
As to Residuary Legacies.

A residuary legatee is one appointed by the testator to take the residue after payment of debts & other particular legacies. Hence when the debts & other legacies are paid & discharged, such residuary legatee, if any one is appointed, will take the surplus to the exclusion of all other, except in case where legacies charged on real estate are lodged or lapsed for the benefit of the heir. 2 P.M. 276 - 3pike 552 - 2 P.B. 352.

If the residuary legatee dies before the debts are satisfied, that it does not appear how much the surplus will amount to, & the debt in default of such legatee, shall have the whole residue of the personal estate, after all debts & legacies are paid, & not the estate of the first testator. 3pike 52.

If there be residuary legatee & the testator part of the testator's effects out of the inventory or under power, those which he put in, the residuary may file a Bill of discovery against him before he has paid the testator debts. 3 P.M. 1604 - 3pike 499.

But if no residuary legatee be appointed under the will by the testator, or can be shown, that there should not be, residuary legatee, the residuum is distributed as the testator died intestate. 2 P.M. 33. 1 V. 173 - 2 V. 2674 - 2 V. 707 - 3 P.M. 550 - 3 P.M. 40.
Donatio Causa Mortis.

This is a specific present made to a person in contemplation of death, and is always conditional, so if the donee receives the devise is not entitled to the property, 1 Bl. 214.

There must be intimation to the thing given or done not amounting to it by the donor. 1 Bl. 269, 1 Pl. 206-11, 3 De 37, 12 H. 2-17, etc.

The donee dies, the legal property of the donation vests immediately in the donee without the intervention of another person, its giving effect to a 'donatio causa mortis.' There must be d manuel traditione (ut supra).

A gift of this kind is not good, a writ, nor an action lies at. The testator becomes interested with the gift. Judge Aeneas supposed that the creditor also claims gift, the donee must not bring this action as long as the latter is also dependent for the representative of the deceased, being bound by the gift the donee cannot have another cause in court, the protest being the donee to recover it.

It seems that a 'chasim in actum' or a negotiable nature may pass as a 'donatio causa mortis,' but if it be negotiable, the latter opinions seem to be that it will not pass. But Chancery may protect the assignee, as in other cases.

1 Pl. 206-11, 3 Pl. 224, 242-257, 21 H. 214, 276. 431, 50 Hardwicke's opinion at large.

Distributions.

After the payment of debt, legacies, the Assets is destined to make out a distribution of personal property and real. Stats. of 1652, 2 Ed., in England the mode is settled by Acts, 22 & 23, Car. 2, which direct, that after payment of debt, legacies, and thewidows share, the remainder shall go to the children of their repute.
sentatives, or if there be no children to the next of kin, and
their representatives. As representatives are admitted among
collaterals beyond brothers' children. Sec. 66. 1737.

As the Ecclesiastical Courts have the manage-
ment of the estate of deceased persons, the rule of civil law
was adopted. To determine who are next of kin pointed
out in the Stat. of Distributio. The distributary share
are vested in the kindred of the testator as his death
is absolute and the claimants die before distribution. Bac
474.

A distributary share rests in an infant in need of
some under the Stat. of Distributio. No distribution is made
till after the expiration of one year from the testator's death,
Sec. 66.

The personal estate goes to the next of kin in the de-
scending line of their legal representatives, i.e., the children
of their issue. 3 Me. 56. 2 Ves. 218. Sec. Ch. 23.

So long as any of the old stocks in any of the lineal de-
grees, the estate goes per stirpes jus representationis. But after the
old stock is extinct, the estate is distributed per capita and
per stirpes. Some however contend that the distribution in this
case is per stirpes. Case less agree to this rule. But Judge Lewis
supposes, when there is no representative, or in this case
the distribution is per stirpes. Sec. 71. Sec. Ch. 54. 2 Bac. 119.

Of persons related in equal degree to the deceased no
distinction or preference is given except those in the descen-
ding line, who exclude ancestors & collaterals, whatever may
be the degree of kindred. In the Civil law, proximity in
the common quality of blood is regarded in calculating de-
grees of kindred. 1 Ves. 316. 328.
The just representation among collaterals indeed no farther than to the children of the brother and sister. Beyond this degree, kindred can claim in their own right only. 1 Pet. 2:5. Gen. 2:34. Deut. 20:4. Exod. 22:25. Gen. 45:12. Exod. 20:5. If then, the brother or sister of the proprietor having no part of their children also, those nephews or nieces, who survive, shall take the whole estate to the exclusion of grandknight, or children of the proprietor, i.e., to the exclusion of the grand children of the brothers or sisters of the proprietor.

The law placed the mother in the same rank with brother and sister in the division of personal property. But the degradation of the mother took place only when there were other sisters living. Exod. 1:45.

In the distribution of personal property no distinction is made between the whole and half blood. The civil law, which regulates the distribution, regards the proprietor as not the progeny of blood. 1 Pet. 3:16. 1:22. Deut. 25:6. If the father of the person deceased is living, the brother to his nothing because whoever the right takes, belongs to the husband. If after a divorce of a father to his wife a vinovato matrimonio by Parliament for adultery, the man die, his father and another heir alive, it is doubted whether the brother could be entitled to any thing or not. But if the father's right of personal property has ceased in this case, it would seem that as principle should have a good claim.

If the divorce were only a marriage or those he could not claim any share of the personal property of his children while his husband was living, because the husband's right to the personal property still continues, this after his death. The right, in all cases where the marriage was not void of abstinence, she is entitled to a share after the death of her husband. The brother accordingly to the English adjudication takes to the exclusion of collateral parents; but are these decisions reconcilable with the governing Rules? 1 Pet. 3:4. Exod. 1:46. 1:22.
Cases Distributed:

1st. John died leaving a wife and 3 children. His estate is divided among them in the ratio of 1:3.

2nd. A child died leaving 3 children. The estate is divided among them in the ratio of 1:3.

3rd. A child died leaving 2 children. The estate is divided among them in the ratio of 1:3.

4th. A child died leaving 2 children. The estate is divided among them in the ratio of 1:3.

5th. A child died leaving a child. His estate is divided among them in the ratio of 1:3.

6th. A child died leaving two children. His estate is divided among them in the ratio of 1:3.

7th. The heir left a wife and no issue. The estate is divided among them in the ratio of 1:3.
The only relatives living were Jane Dick. Their eldest son, who was the eldest, was also the eldest of the whole blood. Of Jane Dick, her children being the only children of the whole blood, her uncle George Adamson, their brother, and sister, and the whole family, take in succession of the children, one child, the eldest, and in the second, while the uncle, in the third degree.

10th. The same as the last, only Jane. She has no issue. Dick Jane dead but left a child, Jane. Dick and Sally are entitled to 1/3 of the estate, being the estate of her father, deceased. Jane, the child of Jane is entitled to the other third, being the legal representative of her father. Jane.

11th. All the children of the pre-dead except Sally and Jane, child. Dick, and all the children of Dick are living. In this case, Sally takes one third of the estate, as well as Jane, another 1/3, and Dick, the residue, being represented of Dick.

12th. All of Dick's children are dead. Jane and Jane, child. Dick, left by Dick. Sally left 1/3, by Dick. Sally, left. In this case, the Dick, being extinct, representation of Jane, the only child of Dick, and to the children of Jane, Dick and Sally, divide the estate per capita, being all of the 3rd degree of kinship.

13th. Same as the last case, only the children, Dick, and Sally, are dead without issue. All the grandchildren, all the same degree of kin, divide the estate per capita equally.

14th. Same as the last case, except Jim's dead, leaving 3 children. Dick, Sally, and Jane. Here, it is 1/3, to the whole of the estate, in exclusion of the children of Jim, because representation extends no further than 3rd degree.

15th. Jim is dead, leaving 1 child, Dick. Dick, and Sally, leaving 3 children. In this case, the only one of the 3rd degree that survives takes the whole estate, as head of kin, to the exclusion of the children of Jim, Dick, etc.
13. The same as the last rule, if the testamentary intent is clear and unambiguous, the estate is to be divided according to the terms of the testament.

14. If there are no other heirs, the estate is divided among the surviving family members.

15. The relationships of the deceased are as follows: the grandson, the son, and the daughter-in-law have equal rights to inherit.

16. The estate is divided according to the terms of the will.

17. The estate is divided in equal shares among the surviving family members.

18. The estate is divided according to the terms of the will.

19. The estate is divided according to the terms of the will.

20. The estate is divided according to the terms of the will.

Distribution is compulsory in Chancery, where the heirs are divided equally, but in a General Act, the personal estate is distributed according to the laws of the County of Country, which the intestate provided for at the time of his death. 2 H.36, c. 25, 218, 235.
Advancement

By the State of Car. 2. every child except the heir at law if he had any, is entitled to an advancement during his life, unless he be entitled to a distribution under his father's will. If he be intestate at his father's death, he is entitled to such advancement, as the part of his father's estate that he would have been entitled to, had his father's estate been divided among his children at his father's death.

Whatever is given to a marriage settlement is an advancement. Will. 455, 2 Bac. 430, 20. Ch. 144, 24. 3d. 2d. Vernon 430.

It seems that the doctrine of advancement departs far from the rule, where a mother has property which she does not adopt in her will. Will. 455, 2 Bac. 430. Where a man dies without a will, his property is distributed among his children, Will. 455, 2 Bac. 430. When a man gives a greater legacy than that to another & dies intestate as part of his estate, the residue in the nature of an advancement to his advancement must be made in the life time of the testator. Will. 455, 2 Bac. 430.

Devastation

Any act of negligence of the estate or failure by which the assets are lost or injured subject him to a devastation, in which case the executor gives the bonds of the proper & releases debts at a discount, deducting from the inheritance, debts less than in due - Escheating an unreasonable amount due for general charges - diluting the property by the injurie of the deceased intestate. &c. &c. Will. 431.
When in these cases a hand is given, he may be charged on the bond.

If there are two hands, one having assent to the other, once or the former consent, it shall not be deemed, in the first instance, in the several hands, but in the whole. But if no assent be joined "nemoa" will be required. A decease Fiduciary will go apt. both & the judge will go apt. the receiver only.

If there be a debtor, and is not liable for a default of the other, unless he has directly or indirectly consented to it, for a default in is in the nature of a trespass. D.C.July 13, 20, or 1326 23nd 14.

Actions by Receipt after blank.

In some cases the testator or intestate might sue when he could not. There are also some cases, when the testator or intestate might be sued when the land or hand could not. The rule of distinction in these cases, in which the land or hand might be sued, as a result of the intestate or attempted, in those in which they may not. Has been laid down, that the land or hand is liable for the contract, but not for the tort of intestacy or intestate, but neither knew of the rule is strictly true for there are cases in which the estate is not liable for the contract of testator, and others in which they are liable for the tort. The rule now established is the tort applies, as the "if the tort committed by testator or intestate have benefitted his estate", they (land or hand) is then not liable, are not liable. But on the contrary, the action does not succeed apt. there, even tho' the estate of the injured has been injured by the tort.

Judge Reeves of the belief that the enquiring should decide whether the assets have been benefitted or if another has been injured. 
If an action would survive after the death of the decedent, the action must be brought against the personal representative of the estate. If the personal representative does not sue, the action does not survive. But if the action does not survive in the hands of the personal representative, it may be brought by a surviving heir or legatee of the decedent, who was not a party to the action. If the action is brought by a surviving heir or legatee, it must be brought in the name of the decedent. If the action is brought by a personal representative, it must be brought in the name of the estate. If the action is brought by a surviving heir or legatee, it must be brought in the name of the decedent and the personal representative of the estate.

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But when according to the contract the testator was not to receive any thing given the other party, but consummation arising itself from the performance of the contract & in which the other party was interested. The failure of performance this more negligence, his lord is not Webster of an Office to lose his legal fees from the estate of a proctor, fail this negligence to receive it.

In some instances also the testator can maintain an action, where the suit is commenced by the testator & of such a nature that it would serve in favor of the testator, if the testator died before suit. The testator makes himself a party to the action by suggesting the death of the heir & entering his own name instead of the testator on the Record. See 6. 377- Nash 160- 9. 8. 97.

According to the Stat. of N.C. if testator die, his heir may be the execut, in which case he becomes a party to the suit & the defendant may as the heir. But on the other hand if the heir were dead, The 8th sec. limited to enter his name, the defect would be remedied.

The heir may sue in his own name when the cause of action is founded on a contract of his own or has accrued since the death of the testator. 473. 200.

The 8th section suited by a creditor of the testator is not denied to take advantage of the Stat. of Limitations, But if he thinks the demand good, he may suffer suit no the case to go up against him without being guilty of a Delinquency. 1 Will 3. 94.

Whether the heir is obliged to take advantage of the Stat. of Limitations or not may be a question on which the English law degre...
It is settled that in gen. he is obliged to take advantage or avail himself of any illegality in the c. of the contract, but it is doubted whether there are extant ed. debt, which in honor & conscience ought he paid. The c. is not perhaps warranted in avoiding himself of those legal advantages, which the testator might.

Acc ord for there had been joined to the use of & c. at such, may be joined, with a count for money had & to the use of the testator to 3 Bl. 267., Ch. 2. 204.

But it cannot join in one deed or cause of action, those which appear & habe & d. that he has in his own right. See 4 Bl. 485. & 2 Bl. 571.

If that were true, the equ., & w. does not deeds, when recovered to redd y. in his hands, he must sue in his propriety. Equ. is the case in all cases of this kind to sue as such, or does the rule mean, that unless he sue in this way, he is liable costs. It cannot mean, that he is obliged to sue as such, nor is he excepted from paying costs in all cases. See 2 Bl. 12. 5 Bl. 234. 7 Bl. 350. 47 Ch. 35. 7 Bl. 450. per 2. 493., 550., When a promise is made to an equ., he may sue as such & in the right of another as to that cause of action may be joined, 2 Bl. 233. 6.

He takes, himself, as defend, he is personally bound & cannot plead "lack administration." 1 Bl. 649.

It is a gen. rule, that when an equ. goes to defend, he is liable to pay costs, for as at law, no person is liable for costs, who are in their own right, & therefore as they sue in the right of another, do not come within the provisions of the Stat. 3 Bl. 446. But does the above apply only who are joined & take, 28. Ch. 350. 47. Ch. 35. 7 Bl. 450. & 2 Bl. 233. 6.

There is one case however in which an equ. de. asuly shall be liable to costs. This is when he brings the actio in his own right, and for a conversion or trespass in his own time. See 28. Ch. 350. 47. Ch. 35. 7 Bl. 450. & 2 Bl. 233. 6.
**Things are Personal Property**

**And**

**Deeds inter vivos.**

It is a general rule that all personal property goes into the hands of the Heir, and the real into the hands of the King. There are some things which seem personal which go to the Heir, and others that appear real that go to the King. Thus, 'First in a Bore, a Last in a Party' to the Heir, and if the latter had been tamed, they would go to the King.

To the same effect on land, the seeming personal property goes to the Heir, while what is growing on the land at the time of the death of the tenant goes to the King. Co. Litt. 55.

The disposal of the residue of an estate on account of the tenant's death during its continuance is not the same.

Emblements are sometimes considered real or personal, their class of course, determined by the land or by the owner. There it is a question of the relationship between the land and the person of the tenant. The emblements are always regarded as personal property and also between the landlord and tenant in cases of an uncertain tenancy. There is no doubt that the digging of which is injured the landlord. They go to the King. Similarly as well as the tenant for they are Emblements, not Fixtures, and standing

By the old law every thing affixed to the hereditament, however slight, was considered as part of the hereditament, realty. But the rule is now clearly reversed for whatever is merely affixed to the hereditament is regarded as personal unless its destruction would materially injure.
Burlington, Jan. 6, 1826. I hereby certify that the enclosed contains all the papers.
No. 1. from 1. to 16. inclusive in the case of John D. James, 54% on John Gilmores debt as struck and determined this day before me.

[Signature]

Justice of the Peace.
Copies
Car
John Gilman

$2.50
Certain Chattels are by the Custom of Boni Partibus omitted, like real property by descent, or are called Ideo-
lomes.

A person who possesses a farm or estate it belongs to the lord of the land. If a lease come to the hands of the lord, he must commonly add to the Inventory the description of the

If the testator seised in life makes a lease, the

The leases however distinct the time are real assets in the hands of the heir or devisee may go to him immediately the lease is sold when they shall happen. This standing

Equity of Redemption or the Mortgage of Testates are in equity real assets in the hands, but not as far. If the

estate in reversion to the heir is in the hands of the

If the testator seised in life his estate in

The heir also in this case may compel a foreclosure

That species of personal property called Paraphema

The first kind of Paraphema is never vested

The second kind or possession of personal estate.

This subject however has been considered under another head.
Administration Bonds.

Administrator must give Bonds for the faithful discharge of their Trusts, and the Debt are completable by Chancery by giving "Suit on," i.e., security, the being Trustee. 21 Bree 3149 - 21 Bree 407 - Dillay 321 - Dillay 294 - 5 Buiton a Bond, interest will not be lost, from time Judge Roth made Decree 1826.

No person can be added before he is 21 years old; if the reason assigned is before that age, he cannot give Bonds 2 Bree 3149 - 2 Bree 407 - Cbr 446 - Dillay 321 - Dillay 321.

It seems the case that when Bonds are required of Infants, they are binding notwithstanding the principle of the case. 1 Bred 46 - 3 Bred 681 - 2 Cbr 446 - Dillay 321 - Pettetone 72 - 315.

If the debtor does not inventory or if he make a false account, or does not account, he forfeits his Bond. But the non-payment of a Debt or Deed without is no forfeiture. 6 Bred 681 - 2 Bred 661 - 6 Bred 681.

Then distribution is a forfeiture.
Exr. & e. adm'r. must Account.

An e. adm'r. of one who was domiciled abroad in Eng., having taken out letters of adm'r. there, afterwards having taken out the same here, is not held to answer in this country for effectues done by him in Eng. Note: P. 284.
VIII. Evidence.

By the Learned Counsel.

I shall commence this subject by considering the General Rules of Evidence. As to the Definition of Evidence. 1st. The Admissibility of Evidence being a matter of law, is not settled by the Court, but the credibility and weight of it is generally left to the determination of the Jury. 2d. When the credibility of the witness is in question, the Court determine it by reference to the Credit of the Witness. 3d. For the question must be decided whether the witness whose credit is in question, is or is not, a witness of Credit. 4th. The Admissibility of the evidence, which is always a Preliminary question, is one which is always determined by the Court.

When the matter in issue is put directly in issue by the plea of "null and void," the weight of the evidence and the admissibility of it are left to the determination of the Jury. 1st. The Court never interfere in such cases. 2d. When the matter is in issue by the plea of "null and void," the evidence is left to the determination of the Jury. 3d. When the matter is in issue by the plea of "null and void," the evidence is left to the determination of the Jury. 4th. The admissibility of the evidence is always a Preliminary question, and is always determined by the Court.

And here I would remark to you, that the Court of nisi prius is the Court of nisi prius, as well as the Court of nisi prius, and as well as the Court of nisi prius. The Court is the Court of nisi prius, and is the Court of nisi prius. The Court is the Court of nisi prius, and is the Court of nisi prius. The Court is the Court of nisi prius, and is the Court of nisi prius. The Court is the Court of nisi prius, and is the Court of nisi prius.
But where a record is introduced incidentally as evidence on an issue, it is no part of evidence to show, what or in the absence of it it is unnecessary. This will not affect it imports to establish, etc., or the force in each issue. The question then whether the record is to be tried by the Court or jury, is determined to the issue of the issue, i.e., whether the record is part direct, by it issue, or incidentally in Sec. 2.3.

Neither party is bound to prove those facts which are not denied by the other, for such part of the pleadings as are not denied by the adverse party are of course admitted. The same rule of Sec. 2.2 applies. Thus, if the decree state an indefinite number of facts, the party, who does not admit or traverse it above the amount of the past, that the defendant is not entitled to all traversible allegations. Pears. 4, - 5, 4, Bac. 2, 75.

The admission on the record becomes part of any allegation on the other side, preclude the formation of any matter on trial, what it is admitted, or that it is not. If so, what is admitted, if the other is not permitted to retract his admission or deny his allegations in Sec. Pears. 4, 5. - Laws. 11, 60. - Bull. 209, 2, 72, mod. 5.

The burden of proof rests on the party who takes the affirmative of the issue. For generally, the negative do not admit. The nature of things of direct proof. Pears. Bull. 217. 5, 1. - 144, 149. - 18, 33, 3. - Phillipslove. 150, 1, 200, Bull. 469.

But there is an exception to this rule where one is prevented for not doing an act which by law he is bound to do. Here the party prosecuting calling it a negative, i.e., an omission takes the burden of proof. In the presumption, the negative, whereby it presumes guilt, while the law never does, and this exception
holds as well in civil as in Criminal cases. Thus suppose a Turnpike Company, whose duty it is to repair a Bridge or Highway, is indicted for not doing the same. They are not bound to prove that repairs have been made, the prosecution must prove they have not, the negative is here easily proved. But the facility of proof can make no difference, and it is true in all cases, that when one is charged with an omission of legal duty, the prosecution is bound to prove. 12 T. & S. 194 - 2 F. & R. 290 - 11 T. R. 57 - 10 Co. R. 216 - 2 Bl. 118. 217 - 2 Wall. 354 - 2 Hall. 117.

You will perceive a manifest difference between the last case & one, in which there is a charge of positive wrong, and the first is a tort, here the party taking the affirmative, to show she was not. The party charged must prove he was innocent so that the General Rule applies.

If the issue he taken on the life or death of a person existing, the onus of the party alleging his death is the rule I trust does not depend on the mere form of the issue, but upon the substance of it, for being once alive the law presumes him to be so, till direct or presumptive evidence appears to the contrary. K. v. E. J. 12 T. & S. 194 - 2 F. & R. 290 - 11 T. R. 57 - 10 Co. R. 216 - 2 Bl. 118. 217 - 2 Wall. 354 - 2 Hall. 117.

In the reasoning of the rule it can make no difference which form the issue is, i.e. whether affirmative that "he is alive" or negative that "he is not living." This issue is often joined & I think the rule as laid down is seminal. 12 T. & S. 194 - 2 F. & R. 290 - 11 T. R. 57 - 10 Co. R. 216 - 2 Bl. 118. 217 - 2 Wall. 354 - 2 Hall. 117.

When however a person once existing has been out of the realm unreheard of, or unreheard of 4 years, the law presumes him to be dead. This was introduced as a negative rule by the relation of妨害。 But it has been extended by analogy to all cases to which it could be applied. So that the fact of A, being once alive that he has been absent for 4 years unreheard of, being proved, throws the onus on the party, who wish to prove
in living, the presumption of death, being once raised, no
more conclusive unless rebutted. 6 Elst. 80-5, 2 Campb. 113.

So also where a legal marriage is proved between two
parties, the issue of the marriage being during such period as
within a reasonable time afterwards are deemed illegitimate, this presumption is conclusive till rebutted. These
twofacts appearing, the onus is thrown upon the party whose

III. Irrelevant Evidence. No other evi
can be received upon the trial than such as is relevant to the
issue, or matter of fact in dispute; any other is called in law
inadmissible, i.e. irrelevant, inapplicable & inadmissible.

Hence the character of either party in a civil action
cannot be proved in evidence unless put in issue by the pre-
ceeding itself, i.e. unless it conduces to prove or disprove
some matter of fact involved in the issue. This is the meaning
of the term putting the character in issue; the Books do
not define it. See 2 Campb. 246-247. Phil. 140.

Thus, in an action for fraud, the law is not at liberty to prove that
the def. is indebted, or to prove in an action for slander
that he is addicted to intemperance, for these do not pertain to
prove the matter in issue, but only

Now is the deft. in such case allowed, by proving the
character to support his character, & if he seeks to prove his
character, it is not considered for it to prove that he is "peaceably
disposed." For the law, in favour of his character is considered.

as no more conclusive to support his part of the issue, than
of, if it would be to maintain the allegations of the Pl.
Bull. 246-247. 140. Phil. 140. Phil. 129. 2 D. 107. note B. Ch. 12
note.
IV.

But there are cases in which the issue
of the parties may be in question, because the
character is put in issue by the suit. Thus in an action of
Crescendo, the defendant, in mitigation of damages, not only
pleads the general character of the plaintiff, but proves parti-
cular facts of her adultery with others. For in this case, by charging
the defendant with seducing her into her character for adultery,
her general behavior in issue. It would be an abuse of language to
think of seducing a female into a prostitute. Note, therefore, the
distinction between this and the preceding cases. Rule 246. 1 Dib. 145,
20-1. 2 P. 163, 36. 113. Phil. 139, 139. 2 Pe. 72. 2 B. 9. 162. 362. 1 9. 150.

But in the last case the defendant is not allowed to prove
instances of her misconduct subsequent to her adultery, for which
misconduct might have been discovered by his own inquiry. Pe. 72,
2 Dib. 154, 11. 1 St. 139, 139. 362. 1 9. 150.

So also in an action for breach of marriage-promises, the
defendant is allowed to prove the general character of the plaintiff,
and any instance of her conduct subsequent to the time she was
under a deposition character for adultery. Note, 36. 1 B. 109, 109. 362. 1
St. 139, 149. 1 John. 2 B. 162. 1 9. 150.

Here: may she not impeach her moral character in any
way in every respect? For it has been held in recent cases, that
she might impeach the plaintiff's character for immorality, whatever
such abandonment of character might operate in a well regulated.
Her guilty mind, to break off the connexion.

But it has been held that where the defendant, seduced
the plaintiff, and her good character cannot be admitted in
reference to the time between the making the promise and the
breach of it, 3 Dib. 165. 119. This seems to make a correct distin-
cution. Be contra. 1 John. 2 B. 162. 1 9. 150. Where the above distinction is
overlooked (Here: would it not be more proper to say, whether
the time of the dedication is the time of which is not the
reason for the above distinction in the last case, shall not take
advantage of his own wrong.
Also a North w'th. v. Lyn. Prince of Wales for the deduction of his daugter's service. (A new sect. vii.)

Thus far also in one below by x. v. Prince of Wales for the deduction of his daughter's service, her good character being lost, the debt may in mitigation of damages instead of the good character of the daughter or servant for Chastity or prudence her conduct should have been rebuked. 1 Sam. 49- 28, h. 16.

But how, it may be asked, can this effect the issue? The gist of the action is the loss of service? To this answer, that although the loss of service is the gist of the action, yet it is not the rule nor the principal ground of damages. But the real ground of damages is the damaged reputation, irrespective of the lost service, and the most appreciated damages are often when the loss of service is merely nominal. Case 2. 3. 19. 3 W. 19. 1009 (Ex. 19. 1007. 1 lev. 62. 17. 1, and see 19. 1007. 2 lev. 63. 19. 79. 909.)

In an action for slander it is the constant practice in Ch. 1. For whilst the debt in mitigation of damages is implied the good character of the lcss, as to the existence of the fact or species of crime charged by the words said: and where the charge was defamatory, viz. reflecting his good character was admitted, because the character in this case affects his character. The good is the evil goes to the point of damages. 1 Root 351. 480.

So if the charge were of theft, deft. may prove the lcss good reputation. viz. that of a thief, under the good issue. So on a charge of bankruptcy, of the lcss good reputation was not of the bankrupt. This question arise in this of the Court, composed of 4 judges were equally divided. 1 Ch. 18. 46.

I was astonished upon looking into the books, that such was not the practice in England. There is particular instance in the English books which in case of sui generis where the lcss having said special damages by loss of friends, the deft. was permitted to show that the lcss general
reputations was such, that his friends left him, & not in consequence of the slander, that the corporation took place. 2 bamp. 7 18.

In actions of slander, the party may give in evi, the party's condition in life, for the purpose of aggravating damages. 2; & if the same not apprised of the adoption of a rule, in terms,

In England, yet it appears were the obvious, & correct. 2 bamp. 340. Phillips 140; do also the party may exhibit proof of the same kind, for the purpose of mitigating damages, when such proof will tend to affect that object. 2 bamp. 7 18.

In such cases, for a malicious prosecution, the party may give in proof of probable cause, or the party may give in probable cause, & therefore to show a probable cause, will be a justification. The company, reputation of the party, was rebutted by the pretension of malicious; it goes in a great degree to show probable cause. Here the character is put directly in issue, & this respect in which it is attacked, 2 bamp. 7 130. 17th 139.

In criminal cases, where the party's character is put in issue by the private action. The prosecutor may attack the party's character by showing particular facts, for otherwise, it would be impossible to prove the charge or support the action. Bunting, 1 Mc. 304. 1st 4.

But what, it may be asked, are those cases in which the party's character is put in issue? There is no definition given in the Books. From the example. I shall think, that a criminal prosecution is put the party's character in issue, whether the meaning of the rule, "when it charges a habit or course of criminal conduct, as contradistinguished from individual or specific acts", do such cases, the prosecutor may attack the party's character by proof of particular facts, not alleged in the Deed. As when one is indicted under a general charge of keeping a lewd house
although not for particular acts of misconduct, it is a claim of "crime or Criminal Conduct," which finds the great character of issue.
we also see the indictment as a "Common Brawl," the charge of being a "Common Brawl," an instance which occurred in Boston a year or two ago.

But on the other hand, forgets, that a circumstance does not put the great character in issue if the prosecutor cannot prove any other instance of misconduct, that is alleged. Thus, he cannot have the great reputation of the defendant, if that of a thief, the charge being of a specified act, unless the defendant has introduced evidence for his good reputation, as this hereafter.

VII. But there are cases of this kind in which the prosecutor is not allowed to examine, as to particular acts without giving notice previously viz: Where a reason is put for being a common brawler. This rule is founded on the presumed difficulty arising without notice - lest the indictment is most usually against lawyers, whose business it is, to carry on suits. Bullen 4th Met. 821 - 7th 7.

But in other cases where the character of the defendant is not put in issue, the prosecutor cannot examine into the defendant's character, either in relation to particular acts or his good reputation, unless the defendant has commenced the inquiry. Bullen 4th Met. 324.

And even if the defendant had opened an inquiry on his part by exhibiting evi. in his favor as to support his character, the prosecutor cannot examine as to particular acts not alleged, and as to the good character only, because it is not to be presumed, that the defendant is prepared to meet particular charges not put in issue, without notice. 1 McR 384 - Bull 296 - 7th 7 - 7th 7 141. S.

VIII. And in Criminal Proceedings in which the defendant's character is not put in issue, he is indulged in giving evidence in support of his good character. It is obvious, that such evi. on the
part of the Debt, do by further to prove the matter in issue
than merely aver in, intent or the part of the party of the party before
defendant, commenced the examination. What then is the reason or the
distinction? It is founded on the strict principles of cor. It is upon
the benevolence of the law to offender. Pea. o. 145. 32o-4. 3K 140.
Civ. 141.

Thus if one be indicted for Theft, Forgery or Perjury
the prosecution cannot in this fist instance impugn his
character for honesty, integrity or Veracity.

This indulgence was originally allowed, only in
prosecution ex aequo i.e., in Capital cases, but it is now extended
to cases of criminal, to mere misdemeanours, provided the di-
rect object of the prosecution is to punish an offence and
not merely to collect a penalty. 1 N. Y. 329. 320-1. 243. 332. 333.
Civ. 141. 139. 140. 141.

But the Debt is not thus indulged in actions on informa-
tions for mere Penalties inflicted by penal Acts, for these are in-
considered as purely Criminal prosecutions or direct prosecutions
for crimes that are to be collected a sum of money; Yet if the Debt were in-
dicted at 380 for the same offence he would be allowed give in cor.
his good good character.

Mr. Pech in his Law of Evidence says the Debt is not al-
lowed in Criminal cases to impugn his character, except in cases of
conseptions for offences which incur corporal punishment. But let au-
thorities do not by no means support him in such a proposition. And
there are opinions directly opposed to it. I think his distinction fall
of what the real rule above given is the correct one. Read not sup-
ported by 2139 P. 332. Opinion at. N. Y. 320. 322. 145.

In all in an Indictment for Rape, the prisoner may
give in cor. that the woman's character before the act was notorious
by leads in point of chastity or that he had previous intercourse with her.
But he cannot prove particular instances of her illicit intercourse with other persons. The reason is that the former cases the cor. dimin
VIII. Evidence in support of the character of the defendant in a criminal case may be particular as well as general, i.e., a witness may give particular instances, as reasons for his testimony in favor of his general character. 1 Mcal. 274, 3d. div. 141. But caution must be taken, as the defendant cannot be presumed to have a particular character without notice. (Britain 290.) Also, in many cases, where the case is for guilt, in order to prove the particular instances of guilt, the character of the defendant may be very important. And in opposition, direct and credible testimony is of very little avail, after all that has been said in relation to the admission of such cases. It may be observed, however, that such proof is important, not only where the case of guilt is weak; but when the proof on both sides is in equipoise. 1 Mcal. 274, 3d. div. 141.

It is a good rule applicable to all cases: That the best evidence, which the nature of the case admits, must be produced, withholding the possibility of another of an inferior or secondary nature affords presumption that the former would operate on the person producing the latter, and therefore it is that secondary one is not to be admitted, when it appears there is better one, within the power of the party. 1 Mcal. 274, 3d. div. 141.

Thus if a party wishes to prove the contents of a written instrument or evidence it in his custody, the instrument itself must be produced & explained, & it is not competent for him to prove the contents of it, either by Parol or by Cepos; he must produce the instrument itself or fail in his suit. 10 Co. 92. 1 McC. 356, 60, 2d. 460, 2d. 69, 92 to Instruments lost or in the power of adverse party, suit post.

IX. So also if a Cepo or other instrument is attached by a subscribing witness the execution of it, can regularly be proved by no other one. Then if, for being selected...
by the privity, he is considered the best evi, of witnesses. This comes with
in the rule, requiring the best possible evi. in all cases. (Except cases. As this rule,vide note.) Rep. 237 D. Janp. 205 at 216. 11 Bat. 138. 74
103. Rep. cas. 89. Juni 916. 113th. Bl. 280. 1120. 104. 1
110. 111.

But the law does not require that all the evi, which
might be obtained, should be produced. Hence the evi, of one
of two or more subscribing witnesses may be suf. to prove the ex-

The good no precise number of evi, is necessary to es-
sablish a fact. The good rule is, that such evi, or sufficient evi,
are set forth any issue, of course, are credible evi,
are all the laws require. To prove every fact. This rule however is not
universal. (See blister 3d. Car. 144. 111. 148. ti. 16. N. 1h. 91.

Thus on a prosecution for Perjury, two wts, are necessary
for a conviction, for if there is but one wt, there will be only an evi,
of one person. And if of another & at the time of taking the oath, the
privity was not competent to testify as this wt, if he continues to
swear, convicted. The case is precisely the same as if both had
not upon the trial of one & the same evi, & contributed each
other. So that we have only evi, of wt, & And without the oath
of one wt, may be suf. to satisfy the evi, for the law from the
danger that might ensue, is preteratory in requiring two. 4 B. 358.
10c. Mad. 194. 11 B. 114. 37. Bllt. 107. (See: Whether this rule is the same by
the ancient (2d. 11 B. 114. 37. 7. Hawk. 25. 129.)

The above rule however does not absolutely require that
there shold be two wts, to the same fact, but it means (as above
understood) that there shold be some independent evi, in addition
to the testimony of one wt. Mih. 100.

X. As High Treason also & Petit treason & misprision
of treason two wts, are required, by several English Stat. the first of
which is that of Ed. 6. These Stat. do not extend to every species
of treason, as releasing the current Cain. Counterfeiting
the King's signet. 4 B. 358. 357. 7. Foster's cas. cas. 240-4. 1136. 15 to 21.
Phil 311, note 160. That such was not the Rule of C. L. and 2 Trench. R. C. 42, sec. 129. 3 H. 30; 17 Mc. 163, 31 Phil. 160. Lord Campb. says it to be a rule of C. L. 2 Trench. 126. 18. But the weight of authority is against him. This may be a question of moment in some of the States where the English laws are not binding.

And in cases of treason it is required by the Stats. 7. 8. 9. that both must testify to the same overt act, or that one testify to one overt act of the other & another, i.e. each testifies to an overt act or other wise the prisoner cannot be convicted, except upon confession in open court. 4 Bl. 357. 1 Mc. 321-24.

But by the Constitution of the U. S. Art. 3, not only two, but any number of overt acts are required, and both must testify to the same overt act or there can be no conviction, except by confession in open court. Art. 3. Stats. Pat. 3. Art. 3. Art. 3.

The requiring two overt acts in cases of treason, extend solely to overt acts of treason: Collateral facts, i.e. facts not constituting, nor tending to prove the overt act may be established by the overt act alone. Thus Def. Where was a natural born citizen of the State he lived in? Foster. C. C. 1240. 5 State Trials. 33. 1 Mc. 34-35. 260.

And a similar rule or distinction obtains in case of perjury. Collateral facts that do not constitute the perjury, nor go to prove it, may be established because fact. The crime may be proved by helper the oath, under which it is alleged to have been committed. 1 Mc. 27.

XII. It is a rule in Chancery, founded on the same principle as that which governs in the case of perjury, that if the oath of the deceased is contradicted by new witnesses, the party shall have a decree for the a non-evidence under oath, there is oath only after oath. 1 W. 161. 1 W. 160. 95. B. C. 17. 2 W. 160. 055. 1 Mc. 46. 9 T. 414. 1 Mc. 243. 9 T. 182. 3. 1 Mc. 67.

All testimony in a court of justice is regularly given under oath & the declaration of a stranger, i.e. one not a party to the suit, are regularly no evi. unless they are made in court under the solemnity of an oath. Hence, even if a Judge, or
XII. It follows also from the same good principle that "Hearsay Evidence" is in general inadmissible. By Hearsay is meant testimony by one person of what he has heard another say. This is inadmissible for two reasons: 1. The Deponent does not testify respecting the fact in question "directly," but he testifies to the mere declarations of another to declarations not made in Court, nor under the sanction of an oath. 2. There can be no cross-examination as to the fact in issue for the Deponent has no knowledge of it independent of the Deponent, who he swear was made. It thus impossibility of cross-examination for the benefit of the party of the Deponent, who could have, would go, but go a stock object. New to rule out any evi. Gill. 107. Pem. 10. 11. Phil. 153. Bull. 274. 3 St. 121. 2 East 27. 54. Haw. 121. Eas. 796. 1 Mad. 203.

But when the fact in question is in its nature or in common presumption, incapable of positive direct proof, as on questions of Custom, Practice, Title, & Pedigree. This exception is a matter of necessity for the fact cannot be excepted to be proved otherwise than by common reputation. Bull. 248. 1st Per. 269. 1st Eas. 85. 798. Per. 11. 1st C. 121. & 1st Phil. 1. 3 C. 1. 316. 11.

This on a question of Custom, which can only be proved by usage, good reputation may be proved by Hearsay evi. But a Deponent may state what he has heard from dead persons respecting the reputation of the right or what was the common belief or opinion respecting it; but not what such persons have said directly. Facts, deducing the exercise of that right. They may state that they always supposed there was such right, or what deceased persons have said to confirm them in the belief of the existence of it. Per. 13. 1st Per. 166. 5 Mer. 1. 31. 2 Per. 512. 12 East 62. 1st Per. 32. 231. 3 C. 1. 368.
XIII. Hence in a question respecting ancient limits or boundaries, a witness may testify what were the reputed limits formerly of the Tenement, or Farme, or what deceased persons had respecting them, but not what such persons have said respecting the former existence of a Monument, Building, or Wall in such a place for that would be evi. of a particular fact & not of general reputation (ante 2 S. 53. 12. 6. note - Phil. 102. 2. - Deut. 17. 1.) Evidence of reputation is upon the same principle admissible in questions respecting the right of way. (P. 12. Bull 295.) So also authority of deceased strangers, (i.e. in relation to the reputed existence of the right, but not to any specific examples of the exercise of that right) such as are cognizable by the Custom. (Bull. 295.)

Debts in questions whether such a piece of land was formerly part of such an estate, the devisees of a deceased Tenant are evi. as to the generally receivable opinion. (May 1734 - Phil. 102. 2 Mag. 53. - P. 12. 91.)

XIV. If also the devisees of deceased Parishioners, made when no dispute existed in respect may be proved to show what were reputed to be the Parish limits. (P. 12. 4. 4. 33.) Do any facts of deceased Officers of a Township, or monies received by them, of another Township, or Church rates, have been admitted before the Genetic of the latter Township, the entry having been made when no dispute existed & by persons who made themselves chargeable with the money & (Phil. 169.)

Do entries made by a Deed Steward of monies received in satisfaction of trespass done upon a Waste have been done admissible to prove the right of soil. (P. 12. 2. 12.)

But entries made by one claiming the monies of the land, of money paid him by a Tenant in possession of his title, even as between other parties. (P. 13. 3. 12.) Still however it is a rule of daily practice, that entries of deceased owners.
of land, restraining the limits of persons holding under them, whether
life, may almost be given in one. Decision not restraining such limits can
not. That rule is founded on the principle, that in many conces-
sions, the land may not be considered as passing to the grantor's
successors, while in possession, while owners. 5 Th. 122.

XV. On questions of Pedigree, the rule is, that their
day, and is not admissible as more related than upon any subject
whatever. In these cases, the decisions of dead persons, whose their
decision would be likely to know the fact in question, may be given
in one, as facts of this kind can frequently be proved in another way sufficiently,
Decisions of the parent upon questions of legitimacy, whether a child was
born after or before marriage. Cases 391-392, 599, 6 Th. 354, Reg. 129,
10 Lent 127-128, 143, Am. 741, 742. 219, 743-744, 745, 219, 746, 747;
248, 249, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764,
cases only where they are supposed. Those have been made without any
interest or bias in the person who made them, and if he has made
a decision respecting the pedigree of another, when there was a suit
pending, or in contemplation, of which he is not at all connected. In such a
party, the decision cannot be proved. On this subject there is a contra-
dicty of opinion. Some saying that such circumstances would only go
to the credibility of the decision. The better opinion, I think, is that it
goes to its competency; it will be admissible. Phil. 179, 179, 179. Went. 92.
Test. 118. 121. 32. 33. 33. 33. 33. 33. 33. 33. 33. 33. 33. 33. 33. 33. 33. 33. 33. 33.
Dec. 32. 32. 32. 32. 32. 32. 32. 32. 32. 32. 32. 32. 32. 32. 32. 32. 32. 32. 32. 32. 32.
Declarations as to facts of more general inadmissibility in ques-
tions of pedigree. E.g., Decisions of the neighbor, so they are not supposed
to have the better knowledge. 3 Th. 33, 34. 33. 34. 33. 34. 33. 34. 33. 34. 33. 34. 33. 34.
13. 34. 33. 34. 33. 34. 33. 34. 33. 34. 33. 34. 33. 34. 33. 34. 33. 34. 33. 34. 33. 34. 33.
14. 34. 33. 34. 33. 34. 33. 34. 33. 34. 33. 34. 33. 34. 33. 34. 33. 34. 33. 34. 33. 34. 33.
The deposition of a stranger is not admissible in evidence of a question of Pedigree, nor the good reputation of the neighborhood on which one belongs is admissible as a foundation for the general reputation of a family, as to the legitimacy of a child is admissible.

In all these cases, however, the deposition of a relation can only be admitted, if the party who made the deposition is living, and can be produced in Court; he should appear personally, so that in the above exception to the general rule, relating to the family, the deposition must be supported, where been made by persons dead, or in existence not produced in Court, 2 Thuc. 924. Bell 113-3. Campb. 437. Phil. 56.

XVI. But to prove the state of a family, as to marriages, births, or deaths, the question of legitimacy not being involved, the deposition of any person who knows the fact or the general belief of the family, is good evidence. And the question of who was married, what children he had, whether he died abroad, etc. Bell 294-5. Esp. 730-85. Per. 12. 3 Cil. 368-9.

And indeed for this purpose a recital in a deed—a special notice from the members of the family, stating Pedigree—Monumental Inscriptions—Herald's Books—Family Bible or Records in other books—a bill made by an ancestor cancelled—Documents in a Bill in Chancery—Engravings on things of Interest, or all Family Memorial are good evidence, to prove Pedigree. Bell 294-5. Esp. 730. Phil. 175-6. 11 Part 318-13 Part 319. 144. But hearing also, may be good evidence of Pedigree. The place of one's birth, for that does not present a question of Pedigree, has a simple point of locality. As proved, the above ordinary fact, 8 Part 371. 14th. 376; 2 Part 27. 54. 13. 3202. 707. Phil. 100.

In some cases a memorandum in writing is made of the time of the transaction, in question, by a dec. person in the
ordinary course of his business is with the circumstances admitted in
ev. This is not strictly necessary ev. and is derived from the act
rather than the decorum of the person making it. Thus a memorandum
made by a clerk in a book of goods receiv'd by the principal is good
So also, either by a deed, by a conveyance of goods delivered for the employer
the course of business being proved, or for the conveyance to make daily
entries. Pan 14, note 2, an entry in an attorney's book for drawing
a surrender, he being dead, was admitted ev. of a surrender
it being corroborated by long practice. But cases of this kind turn so
much on their own peculiar circumstances that it is difficult
to lay down any yarld rule respecting them. For further examples see: Pan
204, 2, Sect 245, 280.

XVII. I would observe by the way that such a memorandum
is never admitted in ev. if itself, unless the person who made it is dead
whether he may be abroad, or out of the reach of process.
entry made by a party himself is never in ev. ev. The entry is so
in connexion with concerning one. Thus such an entry was admitted
to corrobore the testimony of another, who swore that he saw the delivery
of that which he had seen the entry. The memorandum here assured
of the fact in question any farther than that it corroborated
the testimony in connexion of the fact. If the entry had not been from
his own hand, it would have been shaken. See Pa. 1364 - Pan 14, 15, - Rule
194, 2. If the Books are admitted in many of the States, rec. of
Goods sold & delivered, of work & labour. How far they are compel-
ted here, see: Phil. 199, note (Dunkin's edition) 20th. 574, 496.

XVIII. In Criminal Cases the Rule excluding
Hearings ev. appears the somewhat more strict than in
ev. Phil that it may be admitted by way of inducement of
the legal sphere. It is, for the purpose of explaining others.
But there is an important rule, relating to Acquittal, Procs. in Prosecution for murder or, as it is called, very special. Acquittal, which is that the depositions of the deceased, made under the apprehension of death, in relation to the commission of the offence, as well as some of the persons, are admissible, and for this purpose it is considered as giving a sanction equal to that of an oath. 1 Leach C. Cas. 563. 7. 104 Harg. 1. 1st P. 333. 21 & 22 Hen. 8. 321. 2 Leach 174. 15. 16. 3 Cr. 36. D. 11.

But depositions made by persons legally infamous, as an attainted felons, are not admissible. Indeed depositions made by a party in extremity are never taken, unless his oath, if he were in a condition to take one, in a Court of Justice, would be needed, the sanction arising from the consciousness of approaching death being only equal to an oath. 1 Leach C. Cas. 300. 279. 41. 41 & 42 Hen. 8. 321. 174. 15. 16. 3 Cr. 36. D. 11. Part.

The depositions of persons mortally wounded, but not under the apprehension of death, are not admissible, for the sanction arising out of that apprehension is wanting. 1 Leach 174. 1st P. 333. 21 & 22 Hen. 8. 321. 174. 15. 16. 3 Cr. 36. D. 11.

XIX. It is not necessary, however, for the purpose of making such depositions admissible, that the party making the depositions should have actually expressed any apprehension of death. If it can be inferred, or collected from the circumstances of the case, that he was under any such apprehension, they are
It seems that the question whether under such circumstances did exist or not, must in the first instance be decided by the court, for the purpose of deciding whether the defence were admissible or not. If they are not admitted, their decision is conclusive. And if they be admitted, the question is still open to jury, understanding the opinion of the court. If, finally, they are of opinion, that the party who is not under the apprehension of death, they are not to regard the act at all. Deacon's cas. 1662-4 364-97. 11 N.Y. 383-6. 6 Litt. 125.

This is analogous to the case of one declaring upon an instrument, lost or destroyed, he cannot prove by secondary recollection. The contents of the instrument are held he has satisfied the court that it is actually lost or destroyed if after the secondary recollection is admitted, if the jury are satisfied that the instrument is lost or destroyed, they need not regard the secondary recollection. It is, therefore, that in these cases, the credibility of the crier is, in the first determination by a jury, at issue.

The dying declarations are under the same limitation, admitted in civil cases. Thus upon the question as to the genuineness of a will, if the testator made no will, that the testator had made a former will only genuine, which was destroyed, it is held. The great case, 3 Bur. 1264-55. 6th ed. 101-10. 8th ed. 125.

As also what is the true nature of a former will, when between the same parties, may always be proved, (i.e., if the parties are alive?) do if the present parties claim under the original parties, whether the cause of action is the same as no is immaterial. The crier in this case is understood of the crier's case. 1st Part. 203. 5 Part. 373. 6 Litt. 125-1. Foster's C. 397. 2 Gaunt 635. Pena Co. 185. 2 Phil 185.
And what an accused, not having sworn to in a Court of enquiring may be heard. The prisoner, if it appears that the prisoner procured the tool. To ascertain, for it is the prisoner's own fault that the tool is not present, to the person. 2 Sam. 6:10 1 Chron. 29:6. 12 Chron. 37:9 - 1 Kings 7:4.

XX. What the prisoner has said in relation to the matter in issue, may always he proved against him by the other. If a prisoner's confession is always good and subscribed himself. Titus 6:4-5 1 Pet. 4:17-18 1 Thess. 4:11. Such confession of the party himself is not conclusive, as he may prove that the statement made by him was incorrect. Whether it was made by design or mistake, it does not operate as a breach between the parties. 1136c 49 - 1066c 89 - 1171c 74 - 1206c 30 - 1296c 20.

And when the confession of a party is proved all that he said at the same time on the subject is one piece of evidence. If the more confession itself. But the law is not entitled to any qualifying excuses, he may have made at a different time. For this would be making him just for himself. 1136c 46 - 1206c 28 - 1296c 13 - 1171c 79. 1171c 11c - 1206c 20 - 1296c 20.

And a party is never allowed to introduce evidence, as evidence, except when they constitute a part of the case, or matter of fact or transaction in issue, or when they accompany an act of his own. There the parties of a past promise or contract may be explained by the Deeds, of the parties at the time when they entered into the same existence of the contract. If the question is on which obligation a person was made. The Deeds may prove, that he said at the time, that he intended to discharge the money. He may apply its obligations. 1171c 15. Besides he made no such action at the time, a subsequent intention, that he intended it should be applied to discharge that obligation, it would not avail him. So where one with his hand in his hand, said if it were not for the time, he did not admit. Admit to prove, that he did not intend to strike - its evidence.
The person for robbery, theft, may give in cognizance, that he had declared at the time, that it was in secret, but the act of giving, must be contemporaneous. [Blank] 171. 1 Bl. 177-183.

The same rule applies as well to criminal as civil cases. The act of giving, accompanying the act may be found out; it need not always proceed, thus a man may commit robbery under the language of a beggar, if this language he is at liberty to quote on trial, and the acts of violence accompanying the language may prevent the jury from confusing in their minds between the latin and the weapon selecting words.

And there is a case in which, when a party or his witness,

It may appear the person gave in cognizance, the same

The act of giving, in a malicious prosecution. The defect may proceed, he or his legal interest in the original trial, i.e., the Criminal Prosecution instituted by him. This rule is founded on public policy or private justice. Most prosecutions are commenced in the information of the individual, there being no other motive for their

When there was no admission of the credibility with other cases, is submitted to the jury. [Blank] 216. [Blank] 217. 1 Bl. 151. 216. 121.

If the confession is not admitted of the credibility with other cases, is submitted to the jury. [Blank] 216. [Blank] 217. 1 Bl. 151. 216. 121.

So also the confessions out of court of the parties are interesting. The party on record, may be given in, viz. the

The act of giving, in a malicious prosecution. Thus if a deed is not in a course of condition. They made money, $13 and $13, one out of court, that the money had been paid him, is as good as if it had been made by the

The conduct of the instrument at foot of 24, 11 East 397. 1812. 1825. 1816. 1825.

But when he has asserted by a stranger in a party's interest, if not contradicted by him, the act may be construed, as the case may be, into a tacit confession. This is not conclusive, like an absolute confession, and it is good to go to any one who can make what use of it, they please. [Blank] 11. 127. 1279.
22. But in transactions usually made by wives, if the wife make a confession with the husband's authority, her declaration may be proved as evidence. Thus, where an action was brought for nursing a child, even of his wife's instruction, that there was contract made by a certain weekly sum, was admitted. The words of the rule apply quite good. It is not too much to conclude of no other instance of the kind.

Pra. 3, 32. 182. 112. 142. 82. 901. Pra. 18, 64, 107.

The depositions or admissions of a servant are good as the time of transacting his principal's business in the relation to him. They are regarded as part of the transaction. In the delivery of a deed by a servant to a third person, an admission being made with respect to the servant at the same time it is related to it. These depositions are admissible in evidence.
saw vs. spoke of the defect of an article at the time of purchase, his
dissonance might be due to the statute in an action for
ages. 3 Tn. 155. 2 Meant. 461. 6 Tid. 14. 10 Tm. 90. 192.

But an acknowledgment to a servant would not, after
the time of the transaction, which it relates, is no evi. a neg.', the
principal, for they do not form part of the 'Red gesta. and stand on the same
footing with 'Deed and oats'; 4 Cant. 1665. 8 Tm. 1757. 3
- 4 Tm. 17. 4 1 Reg. 155. 2, 47. 2 Kamb. 555. 10 Nng. 1717. 40 P. 14. 1.
The same distinction holds as to the decree of absentee like between two par-
ties (for the same reason). 8 Tm. 163. 7 1 Pitt. 171. 7 1 Pitt. 77. To be it is the word
its agent of the party.

287. The decease of a bankrupt at this meeting of a
creditor, made at the time of receiving, are evi. in an action
but. by this description. it then the act of Bankrupt. they go. They
considere a part of the 'Red gesta.' 5 Tm. 512.

But the general rule, that the death of third persons can
not be given in evi. unless made at the time. there is an exception
over the case of a action. Insurance effected by the husband.
The life of his wife. Here the subsequent decease. A decease. not
her ill health at the time. the policy was effected is not.
4 Pitt. 431. This is a class of cases 'one general' standing.
It even peculiar standing. In frequently the evidence proved. the
nature of that the complaint's cannot be known but by the death.
the subject of them. 4 Rest. 100. 7 1 Pitt. 402. 7 1 Pitt. 104.

For the same reason in presenting in the Civil or
Criminal, for Battery or for personal violence of any kind, the
death of the party injured, restricting the bodily pain occasioned by it,
whether at the time of the act, or not if made during the suffering, are
admissible even. If this case in an action not by the party him-
sclf, yet ascertain what the nourishment surgeon could not do.
The rule appears indispensable. And if, on the other hand it can he
proved that they were made for the purpose of being in evi. on the
trial, or in an, admissible, they will have had little weight with the
jury. 1 Rest 46. 40th 180-1.
When the party to a suit represents or stands in the place of another person, the confessions of the latter are evi. agt. the party representing him. Confessions of testator are evi. agt. his exec. of his ancestor agt. his heir. The loser being suing on the exec. as heir. Nov. 1820, . For the confession of the testator is usually not made on his own behalf of himself. If it is made, they ought to be such as those claiming under him.

24th. So also in an action agt. a def. for an escape to a Mesne Process, the confessions of the escaper that he saved the off. such debt is evi. agt. the def. There can ordinarily be no need of such evi. in case of eject. process. For you will presume, that in an action agt. the def. the off. must prove that the escaper saved him & that he should not be discharged of the benefit of the escarer's confession to that effect merely because the def. has interposed his own pos. 11 Sip. 478. Pa. Cas. 65.

The same rule obtains when an action is laid agt. def. for a false picture by the def. in the suit or def. This off. says 15 B. in cases such as this, the def. pictures "nearest instruction" by which the off. is discharged of his action— an action then lies agt. the def. To the question if he had the off. sustained damages? To prove indebtedness, confessions are admitted against he in esc. party to the such. Pa. cas. 65. 160. 4 TH. 436.

And in this the case if the above above Stait, the court were suffered by an escaper def. his confession of the fact of escape would be evi. agt. the off. 12 Dec. 190. Dec. 17. 180. Dec. 190. The reason is that no breaches of official duty; the maker def. stands in his place & so far as respect civil duty is no breach said to represent him. By the lesser authorities, the confessions are limited to those made at the time of escape & is not extended to those made after. 1 Carm. 87. 91 note. Pa. cas. 65. 10 John. 410. Phil. 74.

In an action by the assignee of a Bankrupt, his acknowledgments before the act of Bankruptcy, that he was indebted to the lienholder creditor is good evi. in support of the
commission, since his confession would have been good to obtain
the commission on the evidence presented him. 26 Coke 164.

PARK v. C. 65.

On the same principle on a Sec. 7, for a garnishment
on he may prove the debt of the absconding debtor, that garnishee owed him nothing. Foreign Attachments are regulated in
127. Thus where a party for debt justifies in an action of trespass
under the title & by the order of B. & A's decree, that he did not
the premises are over, as pt. 1st.

P. 254. It is a general rule that where there are several debts,
& a suit, the decree of one will be good, as pt. himself only, & not
his Co-debts, for once made cannot confer away the right of another
v. Heckling 18 B. & C. 476. McMah. 40 & 129. 129. 32. 130. 32. 133. 32.

Hence in an action as pt. one of two joint & several obligors, promises me, the confession of the other is not admissible
to prove the execution of the contractor instrument. Nor confession can prevent the transmission of which the debt
arises. 136 R. 174. 203.

But there is an exception to this rule, in the case of
Partners in Trade. If one is sued alone for a company debt, it
does not defeat the action by a Plac. joined in evidence, but
suffices the action. Its decides to trial on the merits
of it. The confession of the other partners, the note party to
the record may be given in such. The partnership being previ-
ously proved, for each Co. partner is the agent for both, &
the act of either is the act of both, of course, the acknowledgment
of either,HSV Pv. 32, 1st. 192. 111. 1st. 369. & 129, & C. 194.

And this rule has been carried so far as to allow the
acknowledgment of one Partner, the same bind himself, the given
in evi. as pt. the other, that it was made after the dissolution of Part-
nership. Phil. 72. 3. 111. 1st. 359. 129, & C. 164.

And this rule has been carried so far as to allow the
acknowledgment of one Partner, the same bind himself, the given
This I think is carrying the rule very far. The ground stated in the case, that even after the dissolution of the joint partnership as to all previous contracts, the Partnership still remains.

And tho. the composition of one of two joint personal obligations is not one in an action at law, the other at divorce, the contract, yet the contract being established, such composition may be proved as to the other to take the case of the statute for any other purpose, except it be to prove the execution of the contract. For in this case they are joint share partners, whereas the composition in legal effect is not strictly a decedent, but a contract that bears the effect of a new promise, or a ratification of the old one (Sho. 21 Dec. 929, 38 G. 4, 657). 2 Will. 7, c. 2. 3 John. 867. and ante 30.

This rule however does not hold for presentations for crimes or torts, it is not in terms predicable of either. The composition for decedent proves the other guilty if it were admitted, it would be permitting one to subject another for his own wrong to therefore it is wholly inadmissible.

But here it is also particularly noted that in the case from illegal combination, the combination being proved the decree of one made at the time of doing the illegal act, 2 Will. 7, 867. the motion for doing it in one act himself of the other also, and case of a (riot), when the combination is established, no motion or counsel of the party is there the intention of all as declared, before it will be even attempted unless the other oppose it at the time. But a decree made afterwards would co. 1st act any one that him who made the riot 73.

26th. If one of two debts in an action suffer a default of the other plead issue, the demand of the former may be proved at the trial of the issue, for the purpose of showing the amount of damages for the default asserted in the damage of debt. to that debt that both are on trial. The default is more confession of guilt. If both are
subject, there can be no assessment of damages, so that this is the
only way in which the party can avail himself of the confession.

A confession by the confessor himself, Acts 2:16; Matt. 6:4-5; I Cor. 12:36;
Phil. 1:20-21; I Tim. 1:10; 2 Tim. 4:19-20; Acts 2:17-34.

And it seems more like settled, that confessions are corroborated by any other evi.

But a confession, out of court, extorted by torture, or violence of any kind, or by threat, or endearments, or by promise of pardon, for instance, is not admissible in any case, for it would put the prisoner at the mercy of the violent. The artful designing of the designer, Tit. 2:10; Acts 20:23-24; Matt. 10:22-23; Acts 15:26-27; Rev. 13:12-14; Ezek. 13:2.

27th. And hence a confession made out of court, by a prisoner in expectation of becoming a free man, is not admissible in any case. For otherwise the prisoner would be exposed to extreme hazard, some might be avowed the danger of a trial. Indeed the humanity of the law will not allow an admission to be admitted in such cases, for it is founded in fraud, statu

On the other hand the discovery of a material fact, resulting from a confession thus made is good evidence obtained by fraud, or violence, so that the confession itself could not be admitted. This is one of the acts with which he is induced in any manner to confess his guilt, if he were the only guide he, if he should be found guilty, the discovery of a material fact would be admissible, i.e., if it is 1. Matt. 15:15; Acts 20:20; Eph. 2:9-30; Acts 15:22.

In England the examination of a prisoner before a magistrate is not done in writing, but by the King under the Hall of 10:24; Acts 2:35; 1 Cor. 15:20-21; 11:37:5; 11:28-29; 20:31.
I observed that the confession of a fact, even where he
proceeded not himself, but there is a distinction. For observe he
may either the conclusion of a fact, or an offer of a composition made
by him, or the latter can never be fraught in law, as if a man, if
of a man, treated with a suit on a fine perhaps he would pre-
sure him for 250 to the trouble he had of being an attorney,
even if the more certain of a recovery, the might offer it were
in a man of delicate feelings to a void contumacious as well as
the trouble he had of being an attorney. Dodd Manfield says, 'A man must be per-
mitt me, Hug. Peac. without the prejudice, it is said'; "But, of
such an offer is irrelevant. 1 Esp. Cas. 143, Cold. 343, Bell
236, Phil. 10, 19,- Pec. 10., decr. 126.

20. But the confession of any material fact, during
a treaty for a composition is irrelevant. 1 Esp. Cas. 143, 2 Ib., 275-3 Ib., 113,- Bell 236, Pec. cas. 5.

In some cases the acts of the party amount to an admis-
sion, which is conclusive upon them; which he cannot retract or contradict. Thus if one acts as an innkeeper and
meets with such, he cannot deny that he was asked by an innkeeper, for as he holds himself put in that character to
avoid benefits of the benefit of it, he shall not avail the de-

dies of liabilities of it. This is to say, if another is the people might
be demanded. The same is true whatever character a man may
assume, 2 Ib., 435, note 7,- Pec. 10,- decr. 127.

As if a man lays with a woman as his wife, when she is
not so, and may bind him by contract as a lawful wife, and do,
his acts amounting to an admission that she was his lawful wife.
Pea. 10, 2 Esp. Cas. 637, 104, 149, 14th Ed. Husband's wife.

20. There is some cases of one treat without there
holding a particular situation. 0 Thus, during a negotiation,
his is not permitted afterwards to deny the fact. 0 Esp. A rather
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pation. 0 was not permitted to dispute his title by proof of
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7. Partners, (vid Bank)

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so also if one advance of will pay his
debt 01.36.
so a promise of the paynt of part does 01.45.
so if one direct in his will to pay all his
debt he said 01.23.5.

5. Will.
if one direct in his will that
he direct to pay 00.
these barred by the stat.
of limitation must be paid 01.23.5.
All evidence may be considered as direct or presumptive. A direction given immediately fixes the point in issue. premises are not, in all cases, those facts, which, if admitted of the existence of some other fact, facts, &c. 45. All premises are not. There is, that when a person, consequently the particular facts directly prove another. And if, on a charge of theft, one says he saw it, clearly distinctly take the goods of A, this is direct, one—but if he testifies that he saw it in possession of the goods that were stolen, it is presumptive that those goods were those of A. But this presumption may be rebutted. 1812, 284—294. 457. P. 21. See previous notes of injurious se."
by a tenant in tail. 3 T. R. 139. 2 13 & 14. 1065. Where one tenant
in common had been in actual possession for 36 years, the court
directs the jury to presume an actual title of the other that the
state might have. 3 T. R. 128, 129. Corp. 217.

And not only ordinary facts and deeds, registered
record, advertisement in newspapers, or any other fact neces-
sary to consummate title may be presumed. 3 T. R. 150, 156 & 159.

And it seems that an undisturbed enjoyment in part of
property for 20 years or 15 in Ch. may in analogy to the rule
of limitations be left to the jury as the ground of presumption.
Do hold in a ease (chiro) for obstructing right of 20 years en-
joyment. Corp. 636. On the same principle where a bond
has lain dormant for 20 years without payment of principal
or interest without suit, the court will direct the jury to
presume payment, unless indeed the obligee can account for
the delay by accident, absence of books, or defeasance in solvency
or proof of a recognition of the debt within that time. And as
the rule is laid down in more definite language for 10 or
20 years. 13 Bl. 522. 3 Plow. 395. 7. 8 Law. 279. 4 Buck. 450. 1963.
4 T. R. 270. Per. 24. Lord. 13 & Corp. 216. This statute of time,
throws the onus on the obligee. 2 Sir. 626. 28 Ch. 32. 273. 299.
Per. 535. 536. The obligee can assign a reason for the
delay. Per. 24 note. Corp. 214. If he can prove a
recognition of the debt within the time by payment of interest,
not. (Per. 44 note, Sir. 626. 28 Ch. 32. 273. The presumption
does not arise in such cases, vid ante.

And an endorsement by the obligee, if made before
the time when the presumption might have arisen is good
evidence of full payment. Per. 246. 2 Sir. 296. Ch. 1370.
3150. Corp. 535. 536. Secs. if made after that time. Per. 386
& Sir. 027.

32d. If a creditor entitled to a debt payable by instal
Evidence is of Two Kinds viz: 1st. Written. 2nd. Unwritten or Oral.

Written Evidence is divided into three kinds viz: 1st. Records; 2nd. Public Writings or Documents which are not Records; 3rd. Private Writings. P. 26. Sec. 1.

A Record is a written memorial of the law of the State or Nation; or a proceeding of justice according to the laws of the State. Hence the written memorials of the act of the Legislature & Judicial proceedings of Courts of Record are denominated Records, as Parliament Acts, Stat. Gen. 7-43, Bull 91, 35, P. 58, Sec. 2.

A Record can never be contradicted; for in the language of Coke, "it imports absolute & uncontrovertible verity." This rule is founded on the great solemnity of such writing. P. 77. Sec. 2. P. 17.

This does not mean that any thing in the form of a Record, which may be introduced, cannot be contradicted, for if a Record is made erroneous by any unauthorized alteration, that fact may be proved by parol evi.; it may be proved the forgery of a later date, not of the Record.

On the contrary, evi. is never admitted of prove an alteration, by proper authority, by the person of correcting the Record, was improperly made. 113 P. 184, 14 B. & C. 979. P. 10. Sec. 2. P. 34. And doubtless evi. may be admitted to prove, that a writing imitating A Record is a mere forgery; this is not denying a falsifying the Record. Notwithstanding the good.
rule, the writs are dates at the time issued, in vacation as far as the
contraction of the time of issuing them preceding by seven
weeks, or where no vacation is actually observed at the
preceding term. A writ of scire facias is made of the
same date as the writ, issued also in vacation are virtually treated as
made at the preceding term. A writ of scire facias since that time before the
actual issue of the writ, a return has been made of the
plaintiff's return has barred the action, the defendant may
prove the true time that the writ actually issued, to
take advantage of this circumstance. If being a general
rule that all actions of this nature may be commenced for the pur-
pose of justice. 129 U.S. 361 (1890) 361 (1890) 361 (1890) 361
(1890) 361 (1890) 361 (1890) 361 (1890) 361 (1890) 361 (1890)

As Records are that the precedent in memorializing the
laws for which all persons have a right of access, they cannot
be removed from place for private purposes. Since their
existence & contents are provable by copies, these being the best
secondary copy. The originals are public property. If public con-
venience requires these to be kept separately in a Public Of-
Fice Gibb's Bull. 325 6 (1807) 175 & 72 2 (1808) 41, that the
only copies of a public nature, which if produced itself would be
adequate (intended) a copy of it duly proved is also one. 3 St. 269 (1813)
572 1 St. 93 3 St. 572 1 St. 93 3 St. 572 1 St. 93 3 St. 572 1 St. 93

But on the other hand a copy in bulk is not at all
for the first copy not having produced is not shown to be a
second original at least of higher credit, than the first. 26 St. 183
1 St. 508 2 St. 184

The Public acts of the Legislature require neither proof of
authentic for being the laws of the land. They are supposed to be known by all
persons by especially the Judges, who are bound to enforce them. The privates' need to be known, most
in and of the memory of those interested. As to the Acts of a
Foreign Legislature, the rule is that, Gibb's Bull. 316 5 (1870) 316
2

But private acts not being a branch of the year, laws of the
land, are not supposed to be known to the public near even to the local.
hence they are the proofs as facts, like other records which relate to private rights, e. g. by copy annexed as pg. 12 Dec. 1805, July 13, 1806, May 13, and Dec. 1806. Bell 1807. And the priva-

dy. Book is no evi. of private. That printed with it once held con-
tent by B. D. Fisher. July. 13, 1807, since deceased. (I know)
of the reason why it is in evi. is, that it is no more than a private
unauthorized. Copy, not verified by oath or any official sanc-
tion. Pea. 17, May 1805.

But if the legislature declares, that a fact, which in the na-
ture private should be public, is deemed, the act book is evi. of
it on either hand of proof, the judge being bound to no-
tice it officially as a fact. Thus, Pea. 27.

I want to re-read that, as Records are not removeable they
must be proof by either, Pea. 27, 96, 100, 192. The copies of the Recei-
d of the legislature are the certified by the clerk of State, and the care of
the private state. The records of the courts of chancery by the proper of-
cer of those courts, as by the Clerk or Prothonotary if there is one,
or by the Judge himself. In both cases the Copy is the authenti-
cated by the seal of the Court, if there is one. (The last phrase in 181,
having Clerk or seal, sign certificate, without seal himself). And Courts are
presumed to know the seal of legislature or of the several courts of all
the States of the Union, however styled may be. Sec. 7, 18 Stat. 2, 1st.

Copies of records under seal are called Decennial certificates.
and it is a rule of Ct. that seals of public courts are only evi. in
of themselves without oath or authentication of any other kind. if they
were not Courts would be forced to resort to another species of evi-

A Court of Justice speaks only by its record. The genuineness of that record
can appear only by its seal, which is the established symbol by which one court
certifies another. 10 U. St. 125, 5, Phil. - Gilb. 19, Phil. 1, 116, 146.
1 Dec. 146.

As to the manner of certifying records from one of the
U. States to another, the Stat. of the United States directs that if
an exemplification be attested by a Clerk of the Court, it shall be evi.
in another State, provided it be accompanied with the certificate of the Chief or Presiding Justice, the Governor, Seat of State or Chancellor, that the attestation is in due form verified by the proper officer. 3d of U. S. State, 151. (By the same law Copies of Records or Office Books, if they are Cattle, kept in an Office not appertaining to a Court of Justice, as Town or County Records of lands or are taken attested by the Keeper of the Office under the seal of the Office, if one is certified by the Governor of the State or not subject to... bid. 105, 444, 45.

Copies of the Records of Courts of Justice are of four kinds, (usually divided into three.) 1st. Exemplifications under the great seal (kept by the Chancellor in England.) Under our law, this is not exemplified by the great seal. But with the record, keep under the seal of the Court for which the record belongs. 2d. Office Copies, i.e., Copies certified by the attestation of an officer appointed for that purpose but not under seal. 3d. Issuance Copies, there are Copies compared with the original by a clerk as shown to try them in Court. 4th. 21, 22. Pa 20, 21. Bull 820.

Copies under the great seal are deemed records themselves, not copies from the great solemnity; whereas in England are the only admissible evi of the existence of a record, upon the plea of "null till record" pleaded in a Court of equal or inferior degree, jurisdiction, to the one whose record is in question, if a superior jurisdiction, the record and proceedings may be removed by certiorari for other purposes; other Copies may be soit. Plows 411. 412. 14. 19. Pa 110. 20. 21. 9. Sec. 2.

Exemplifications under the great seal, as to Records of Courts, being unknown here, those certified by the seal of the court are the highest evi in our courts, and are regularly the only admissible evi, upon an issue of "null till record". This rule, however, will perceive applies only to those cases in which the existence of a record is in question, in another Court than that in which the Record belongs. Sec. 2. 21, 22. 20. 9. 30.
For if a record of the same Court in which the issue of "multitui record" is joined, is denied, the Court will inspect the original - there is no need of a copy. The case is in the hands of the Court. Hence the proliferation, adjoining the existence of the record makes no proof of evidence sufficient in law, but provy the Court to inspect the records. Rm 29.

And if issue of "multitui record" it must always conclude to the Court, for it involves matter of law which the jury are incapable of determining. Law on this copy.

But when a record is only matter of inducement for an action a defense multiu record cannot be pleaded to it, for matter of inducement is not issueable. Bull 133 - Gibb. 26-19, 145 6, Law 16 6a 17, 2 4 Bac 6d 81.

In such cases the issue being tried by the jury the evil of the existence of the record is the subject, there is a sworn copy as well as an inducement is admissible. Bull 133 - Rm 29 - sect 2 - Gibb. 96 - 98 1473.

In debt one debt "multitui record" is the good issue of put the existence of the record directly in question, if no copy is admitted but an inducement in under the great deal in England, in the record, produced itself for inspection, it are inducement under the seal of that Court, in question, in the N. States.

Suppose debt. In court ment, pleading general issue, which in England is "not guilty." See 48, "no wrong, no discretion" it claims under a debt. Of court, here the record, direct matter of inducement for the order, the order of the action, is a sworn. And here, is good. Case. But a copy of a sworn copy is no evil, as well with or to the jury or Court, however it only the authenticated before judge. Rm 29.

Office copy are grantable only by an officer appoint. Why laws for this purpose. A copy thus granted is itself evil. Or of course need without any bibliographical. Gibb 29 - Lawo 111 - Rule 29 - Rm 29 23. But a copy certified by an officer not entitled by law to certify, if of no credit, it does not prove itself against
some case, unless examined is shown to alter it becomes a summary.

Gill. 23-165. Bull. 299

But this in all cases, is admissible only by a copy of
some kind, yet if it can be clearly proved that a record thereon exist-
ing, has been destroyed or lost without any fault of the party under its
influence, its content is admissible, especially if the record
is only in complete form. 1 Rev. 257. Gill. 22. - Mall. 295. - Mod. 117. Bull.
297. Rev. 47. - Hard. 429. And in such case a copy of those cases,
the record being destroyed, or recording the true, is admissible. It being proved
by some kind of evi. As to the content, if the record be substantially a
true copy. This is allowed from the necessity of the case. 

Phil. 264.

But in such special cases, evi is admitted only in those
cases, which antient records or those of long standing are lost. Rev. 238.
Gill. 22. - Mod. 117. For if a recent record is lost, yet its content can be
ascertained, the Court will permit one to made "de novo". Bull.

Generally an exemplification a copy of a record much
the admissible evi. Of the whole or some part exclusively.

For a detached part may have a lift: construction up thrown
impact of whole if the rule is the same as Copley as for instrument

For & 4th. Where a Record in a Civil Suit is Evi?
In general a Record in a Civil Suit is evi, only as between
the same parties or their privity. Thus a verdict between J. &. B.

This rule requires some explanation. As to who are meant
as privity? There are many kinds mentioned in the Books, but
there are (seem) only 2 legitimate. 1st. Priority in blood
as between ancestor & heir at bar. 1. 26. 9. 292. 209 & 293.
2nd. Priority in estate as between fees & inferior fees. See,
jointure 2 & 4th. remainder men by the same deed.
The next enquiry is, as to the effect of the record of one action when admitted in another between the same parties or their privies. It is an established rule, that if a court having competent jurisdiction, directly or indirectly, has passed upon the point in question, it concludes the same parties or their privies. Thus if a court has decided on the right of ownership in a certain estate, that court's decision may be pleaded in other actions.  

Hence, if a final judgment has been given on a suit which is not impeached, or called in question, only as to a course of law, in a court of Chancery, directing the party to recover a certain estate, that suit, if brought in an action in Chancery, may be pleaded in any other suit between the same parties; and the right of ownership is conclusively established.  

The reason of this rule is, that a final judgment, defining any legal right, must determine the controversy or litigation, and be conclusive. The rules are the same whether in Chancery or in actions by arbitrators, for though considered in the nature of suits, yet they are considered as final judgments.
If the suit has been given by the deft. on a demurrer or as a plea to the executor or incumbrant, so that the right is determined or decided, the suit cannot afterward, whilst the deft. remains impeached, maintain any similar or concurrent action for the same cause where such actions would lie for the same reason, the same if the action shall make any change in the right of the parties. Thus in the first case it is, by express or necessary concurrent actions of the holder, in the second it is, by express or necessary concurrent actions of the deft. Thus if the right be rendered in either of these actions, it is not absolute but to any other action for the same thing. 3

409 - 304 - 1331 127 - 32 a 346 77 - 6 5 17 - 2 30 4 4 34 4 116

And this rule does not hold, where the first action is given by the parties to the suit, and the second is given on the same cause, as such as the right, claimed in the second, could not have been decided in the first, the ground of it being, if the suit be for a debt of the deft., whether the cause of action, in the second suit is the same, as was the first. C. J. The deft. to allege connection in favor of the deft. in slander, he may bring a second action supplying the necessary allegations. 219 - 1249 - 115 167 - 51 - 7 157 - 2 4 72 - 12 30 33 - 1 1 2 37 - 37 - Dec. 11.

And on the contrary, a suit for the deft. in an action of debt or other demand is conclusive of the existence of the debt or demand, and the deft. or his representative cannot refuse nor himself. Thus, unless the deft. is proceeded by the course of law by the deft. in the suit decided nor the verdict, he by confession, demur and default. 7 31 269 - 223 - 170 - 31 - 214 - 5 3 31 - 32 32 - 1 286 - 3 9 - 239

And the same rule holds in Decrees of Chancery. 409 - 3 - 75 - 173 30 30 31 - 30 30

There is one case where a Writ is held in 221 1249.
that seems to infringe this rule. But I think it does not come under this rule, because it was decided on other grounds. That action was but to recover money paid, paid under a Court of Conscience, it is true, and as that Court cannot take cognizance of a suit, legal differences between the parties, to do that the suit, in the first action, could maintain, the money paid. But even if this case did come under this rule, it has been so much shaken by subsequent decisions, that it cannot now he considered as law. 223. And it has been determined, that if a party on being sued pays the money, though in the same time, denying that he owed such debt, he cannot afterward recover it back, because it is said, that the suit was made in the course of legal proceedings. I doubt the correctness of the grounds of that decision. Exp. 81. 279. Pec 83.

On the other hand, a party having recovered debt for a part of his demand, when he attempted to prove his right to the whole, is precluded from maintaining another action in the remainder, for is it substantially a debt in favour of the debt, as to that part, the debt, being recovered.

If however the debt did not attempt to prove but one part, as one "title", after his demand, the suit of which immaterial, was large enough to cover the whole, he may bring another action to recover the remainder or other items, for the question as to that was never raised, nor was put in issue. 6 T. 607. Phil. 235.

I observed yesterday that a joint action was considered as bar any concurrent actions for the same cause. But in the application of this rule, there is a diversity. In one case, between two personal actions, all personal actions are the same degree. Of course a debt in one personal action can be pleaded in bar by way of estoppel to any subsequent personal action for the same thing. Then if Persons finish the Concurrent. A things Trespass at 2. It is defended then brings Trespass for the same thing, the former being may be plead in bar by deft. to estoppel him. 6 Co. 7. Phil. 255.
In Real actions on the other hand, there are various upon some being of a higher degree or nature than others. Hence a suit in a Personal action is no bar to a Real one. The, relating to the same subject. Hence, if A sues B in trespass upon a certain piece of land, B seeks to recover said land; this is no bar to a subsequent Real action to recover the land, for the right in question in the two actions are not the same, which obligation was absolutely necessary for a former suit. Be a bar for a second suit, both suits must be for the same cause.

Nor is a suit in one Real action a bar to one of a higher nature, for the same cause. E.g. Should a defendant in ejectment, it is no bar to bringing a subsequent Real action for the recovery in this action, perfectly consistent with B's recovery in the former action. 2 East 256.

But in every species of action, a final judgment is a bar to any future action on the same subject. 2 East 357.

Hence if any precise facts are put in issue, (as that "I did seize") is found in a Personal action, as trespass it is conclusive of the fact, so as to prevent its being disputed afterwards, between the same parties, even in a Real action). 32 Ves. 346-347. 1 G. & C. 184-5. 5-66. 4 Ves. 12.

The subsequent plea of this intricate distinction is, that a final suit, in a Personal action, as trespass, is no bar to a Real one, between the same parties respecting the same land, because one relates to the past, the other to the future. But if any precise fact is put directly in issue in the personal action, the record is conclusive even in any subsequent action, as to that fact. Phil. 237.

To make a Record of a former suit conclusive upon any matter of dispute, it must appear from the Record itself, that the same matter is directly put in issue in the former suit. Thus, when it appears that the same point now in issue was decided by the Jeff's defeat in a suit upon a contract of tenor.
the first step in conclusive language of itself. But unless this step
years from the record no other circumstance is admitted to show
that a particular matter, not in issue when the record was taken into
evidence, was taken into evidence by the way. Phil. 2:36. 1 Pet. 5:8.
2 Johnson 24

It is, however, admissible to show by extraneous proofs that
the subject in controversy was the same, or not. Therefore, it
is in the case for a horse it is defected in, the same horse for tak-
ing a horse; it is conclusive for the theft. Wherever the horse is the case
for which the former action was brought, or for the theft, where that it is not
the same horse. This must necessarily be referred for it cannot appear
from the record,—one description may answer for 28 horses, 28
descendants, 64. St. 26

It must appear from the record whether a given point or
question of right was in issue—but whether it related to the same or
distinct subject or article, must appear (al季度) or by intrinsic one
attached thereto, as to the cause of the issue. If it is related to point 4. the
same horse, the former suit is a conclusion here to the latter action
the record showing the question disputed the same. 2d D. 103.

I observed to make a record conclusive it must appear
from the face of it, that the same point or right came directly in
issue in the former suit. But a claim for performing works unskil-
sulily, the record of former suit, in which the theft, is recognized if the
computation on the labour done, is not conclusive, a very exact
user. The reason is, that the plea in the former action having been
the cause, issue, it does not appear, that unskilfulness of performance
was used as a defence, and it might have been proved by

A former suit, between the same parties is conclusive:
well when the point decided by it, comes afterwards incidentally
question, as where it forms the ground of action or defence in a subse-
quent suit. Thus, in an action on a Policy of Insurance, with war-
ranty of neutrality—sentence of the Court of Admiralty con-
demning the vessel and enemies' property, is conclusive, that the wound

26
If it be an action of ejectment, the question is, who has a right to the land, under the title of the vendor or lessor, to whom the tenant has a duty to pay rent. If it be an action of slander, the question is, who has a right to the reputation of the slandered party. If it be an action of slander, the question is, who has a right to the reputation of the slandered party.

But in the latter case, if the land is no part of a matter which came in collaterally, it must be shown in direct issue. [p. 373-374]

Action is brought to recover the goods of the vendor or lessor, who is sued as heir or assignee, by the vendor or lessor, or by the assignee, who is sued as heir or assignee, and is defeated. It brings another action, immaterial whether of the same kind or not, to produce, the same issue, which is the same as the issue in the former action, and for the same purpose.

And a judgment of a court in one action, not incidentally concomitant, but it is no issue, in another action between the same parties. Thus, where a question of admiralty jurisdiction arises or in a Probate Court, as well as in a Court of Chancery, in an action or a Policy of Insurance, the judgment in one case will not be a bar in the other action. It may not appear from the judgment of a court that the question is not incidental. In such cases, since being brought before a different court, however it was specifically pleaded or distinctly gained, it would come under a former rule.

The rule is the same as to any matter merely inadmissible by argument from the former judgment. Thus, if in 13 or Contract 13, plead Infancy or give it in one issue the same issue. It is not competent for one to prove the record of a former record or act to show the record of a former record, nor is it to prove that he was legally capable of making a contract.
And a prior debt, given upon the good issue, is conclusive between the parties, unless the cause of action is the same in both cases, even though the title out of which the cause of action arises is the same. Thus it was proved for a given maintenance that the plaintiff had actually recovered a debt by a matter of title, for the same reason. And if every Continental, or any petition of the complainant, the same debt is not conclusive, because the cause of action is not the same, and the title out of which it arises may be the same, as in a second action for a disturbance of the same right of franchise. Per 27 P. 2d. Bull. 232. Bland v. Bland.

The same rule holds in relation to the English action of ejectment, and in those states where the action is after the English method. As it was proved in the case of a fictitious person against a real person, the record of the person would not identify the parties in cause of action. Lincoln v. York, 12 B. 37. 33.

But in these three latter cases, as well as all similar ones, the verdict in the first action is evi. in the second is not conclusive. Bull 230. Gibs. 29. 30. 31. Agra & 115. 12th 79. 101. The debt is not conclusive unless the cause of action is the same as well as the title, and the verdict may be given in evi., when the cause of action is dit. The verdict would be conclusive. If however the title be any such, decisive of the right, had been put distinctly in issue in the former suit, the verdict might be pleaded by way of estoppel would be conclusive. Ibid. 346. 34. 5. 3. 66.

You will perceive then, that no verdict may sometimes be evi., that is not conclusive, when the debt would have been evi. at all, and there is a great difference between debt and verdict as to their office, nature, and effect. By neglecting to observe this difference a great deal of confusion has been introduced into this part of the Law of Evidence.

A prior debt, upon a point of title afterward but in
to question, is a sentence of fact deciding the right. A verdict is once made, of a matter of fact, that when pleaded is pleaded as a fact, will be conclusive.

A verdict, when made, at all is conclusive. A verdict is not necessarily so. The object of a verdict is to decide whether the pleadings are true or false. The verdict is not conclusive as a matter of law. But the object of a verdict is to fix an ascertained fact, but a sentence of the facts as found by the verdict on other evidence. The verdict brings in evidence, and does not in itself decide the question of fact. The verdict is conclusive as to that fact in any subsequent action, but even the party from trying it over again, but that right follows as a consequence of the fact is left to the discretion of the Court. A prior judgment that the verdict is conclusive of the right of the parties. Vide 758-61. 1 Lec. 235-1. Day 170. Dec 34-5-7.

Hence a prior judgment, except in a few cases, is not conclusive, nor can it ever be made so, in any way, unless the cause of action is in both suits, the same, i.e., at the prior it is the same case, and at the prior it is the same. If the verdict is conclusive, if it is made any effect at all, it surely ought to be so. Except where the same of action, is the same. But a verdict is the conclusion when pleaded by way of stoppage, may in many cases, be given in evidence, when not conclusive. This cannot be done, unless the party in question, came directly in issue, in the former suit. Bull 292. 92. 3 Lec 365.
A prior verdict in a suit for a nuisance or disturbance may be given in one, in another suit for the continuance of the same nuisance or a repetition of the disturbance, if the prima facie case. The cause of action is clear; yet the right or title out of which the party’s claim arises is the same. "Cael. 365, 370.

I have observed that a verdict in one action might be given in one or another between the same parties, etc. On this subject I have further observed, that a verdict in a prior action for a nuisance and in eject, may be given in one, in a subsequent action of eject. For the same piece of land between the same parties, the right, however, is not conclusive (however) in consequence of the same ejector in the English action of eject, because the identity of the parties is not being provable in a bar by way of obtaining, but the court will take notice of the real parties, for the purpose of admitting the record or verdict of the former suit as evi. "Cael. 365, 370.

It is stated in Swift, "Evi. 10, that a verdict cannot be given in evi., as to those facts, which are found on a special issue. This cannot be said for in the cases before mentioned.
of the evidence. Evidence, the verdict cannot, under the same issue, be used to establish the same. The true rule is that a verdict cannot be pleaded, or used by way of proof, unless found by a special issue. And the verdict on the same issue may be lost between the same parties, the same conclusion.

Third part of the effect of Indept. Where admitted in law. We proceed to consider

For whom a record is evidence.

In general, the record in a former civil suit is admissible in a subsequent suit as to the same parties and issues which if its issue to establish except as to those who are parties to it and their privies. The principle is that third persons are not in general bound to incur any expense for a suit between other parties incident to the cause of action in the two cases arise out of the same act, because the latter had no opportunity of cross-examining or contending against the subject matter of the record. Bringing a suit for an interposing error, or for setting aside an order for any irregularity, being a stranger to the record. Gilb. 24-24-3. 11. Ch. 212, 26 H. 19. 24. 3. 2. 142. Bull 232-3-42. Phil. 211-21.

And as the benefit of the rule applies to the mutual third persons in law, cannot take advantage of the record of a suit between other parties, even as one of the same parties, or as laid down by Chief Baron Gilbert, "nobody can take benefit by a verdict who had not been prejudiced by it." Contrary. It is therefore due to objection, that the transaction in the former suit are not to third persons "res inter alias acta." Gilb. 34-5. Bull 282-3. Hall 141. 184. 472. Phil. 332-3. There are some exceptions to the generality of this rule, and the state of fact on which they are founded is so complete that I must refer you to the Books. Penn. 32-9. Gilb. 33-5. 35. 730. Bull 282-43. Phil. 232-2.
...to be the rule, that a verdict is no bar, except against the parties, their privies, or their assigns. Thus, when one assumps the name of another as party to a suit, the verdict will be void, for it is the person, not the conclusion, as between, by decision for his interest. As said at 1211, an adverse, i.e., a person who may afterwards be admitted in the case in an action by R. v. B. is, less as an at 1211, a person, decision, for the Court will here take notice that in the entire case, as the person interested is the lessor, a nominal party, in a fictitious person, Bull. 2d of N.B. 3d, 40. 40.

Once more, if the lessor is not one of whom justice must be done, the verdict in such an action is, not conclusive, in a subsequent action but by the same pl. agt. B, who holds in the name of A, either for or against him, yet it is virtually the same nominally. The party, or because he is nominally the party, therefore, the e. v. is not conclusive would not be except by reason of a special issue. Pec. 10. 1c. 40.

There is another exception to the rule, where the question in dispute is a question of public right—ie., in such a case, a verdict finding in favor of a public right, whereby a verdict is found after 40. A afterwards sued C, who defends in the same manner. The former verdict, as against B, will be e. v. ag. C, as it might have been as against D, if it had gone to him in the first action, but also it is not conclusive. Pec. 1B. 15B. 217, 22d 101, 101 1 Exc. 35.

Suppose a B is, in other words, an action at 1211, claiming a certain Tower, by virtue of a custom or prescription, the verdict found in this case will be e. v. in a subsequent action, agt. The probable ground of this rule is, that the right in question, being public, every individual in the community is interested in it, an impossible ground of prejudice, that may accrue to himself, grant it.

The sentences of Courts whose proceedings are in "rem" are not Courts of Admiralty are in general conclusions ad e. v. for all persons...
The case is whether nominally the court or not. Proceedings are said, 

Preliminary, where the sentence, as, without, in the subject, is condemned, as a Ship's affair, if she be condemned. The last took place. She is said to be condemned. -- See 1 P. 428. A court of 429. a court, appears to claim here, the former. It is. Included in the general court. Why all mankind? Because all mankind, become parties, (and proceedings, therefore, are regarded as potentially parties). It is not, and is not, as the Captain, or any other person, the notice, given, as appear, which mankind. These proceedings, therefore, are not. They are considered as, we, in the alias action. 8 Tho. 146-434. 7 Tho. 523-601. 5 Tho. 255-260. 2131. 616. 271. 425.

When therefore, any matter determined by such a court, some, incidentally, in question, is, if at all. And most, in a Court of 429. that sentence is as before. A ship in an action on a Warrant, a warrant of neutrality should arise. A sentence of the admiralty. Court, condemning the Ship is conclusive, that she was not neutral, even the blade were between other parties. But, to the registration, of a ship, or to, in particular, it is 613-429.

The rule is the same as to sentences, of courts, having the jurisdiction of Probate of Wills, de fama. I. For the same reason. It is, because all persons may be parties. 1 Dec. 129-126. P. 170. 243. 3-4. And even where one was indicted for the forgery of a will, he was acquitted at once, on producing the Probate of the Will, under the seal of the Ordinary. 1041. 403.

So also if an action as Est. 13. All deft, intended. Assessment was 1243. B. B. The Probate of a Will in which it was

merely Est. it was conclusive on deft. cannot prove the Will was forged, for it was declared good by competent authority, 1 Dec. 235. This resembles proceedings "in rem" in being open that the word. One may appear a claim as heir at law if willing. They cost in case of failure. -- Affidavit. An evidence, made for Probate, anyone may declare himself. Devisee or Legatee, involve a latter will, or defeat the application.
You will find a case in Sauchie’s Case 1014 Wd. Niccol’s Del. which on the first impression would seem to preclude the case above (of forgery in strange, but that case stands good; the Probate in such cases is conclusive, now one of forgery will be admitted. The cases in Scauchie were cited, the forgery was admitted before the pretended testament was read. In this case a Probate was produced, but it had no effect, because the Ecclesiastical Court acted without authority, the proceedings were Conam non Jusini. Of course good...

Scauchie C.C. 163 – 2 M.Blk. 147. That case turned upon this distinction 3 Tr. 125. (Dill Meut.).

There is another case in 2 M.Blk. 1430, but there the Probate was obtained by fraud in the proceedings, which rendered it void. 2 M.Blk. 1430, 56-46.

In gen. sentence in Ecclesiastical Court in matters of cause, as of divorces & marriages are conclusive of the fact of marriage, when that is incidentally questioned afterward in a Court of Law (which, you assert, all persons. But it applies or their at law; such sentence of that Court, which declares him illegitimate, will be conclusive of that fact. 1 M.Blk. 756-62. 11 C. 197. 12 C. 225. See 901.

Again in an action for Chancery, with wife’s sister, a prior sentence of the Ecclesiastical Court, admitting the marriage of my with her sister’s wife, is conclusive even for debt. 1 M.Blk. 756-62. 12 C. 225. See 901.

Also, if in an action for debt, a man to recover a debt, due from his reputed wife while under prior sentence of the Ecclesiastical Court, declaring the marriage null and void, is conclusive apt. My. for it shows that debt was never married to this woman. As the debt was contracted before marriage, he can not be subjected in consequence of giving her credit as his wife. 11 States fifth 235. See 689.

You will perceive that there is record is conclusive apt. in persons who are not part to it. The reason of this rule is this.
persons, I take it, that the sentence is in the nature of proceedings
in rem, and therefore should conclude all parties, unless they are
not and could not have been parties. A proceeding in rem is for the
principle considered in the nature of a Canadian assize, which
is coe., as a deed between the parties.

Such a sentence however is not conclusive upon an Indict-
ment for Bigamy. Thus if it is indicted for having married his
wife, being the lawful wife, a sentence of death, Court declaring his
marriage with E. lawful and good, a his marriage with B. the
written is not, for he may be convicted notwithstanding such sentence

It is difficult to reconcile this with the decision in case
of Forgings, above alluded to. In support of the law as to the marriage
it is said, that the best Court has not Conscience of Proofed,
as for instance Forgings for in such case the King could have made
himself a party, but he could not in the marriage case.

And in those cases, if individuals who were strangers to the
proceedings, can show, that the sentence establishing or annuling a
marriage was obtained by fraud or collusion between the parties,
these being extrinsic facts, which entitle to the most solemn proce-
dings of being a fraud on the Court, a stranger in the proceedings are
found, but for being a stranger to the record, he could not come in
in a Court where it was established for there there
is collusion a party, but can never avoid the sentence, and
where there is fraud not only on the Court but the party, then
that party can vacate the sentence only by application to the
same Court, that rendered it, or one of equal Jurisdiction.
11 Stew. 762-3. 12 214. E. 146. 11 Stew. 1. 262.

But there are further exceptions to the law. Thus, that is an
order is not coe., except between the same parties, it is held, that
when a person has been convicted to pay money by suit for another,
and in an action for reimbursement, he may give in coe., a Record of
the former suit after himself, not for the purpose of proving the allegations,
that were made in the former trial, or that deft, partly occurs
him for the money advanced, or that that money was really due from him. But merely to show that such a recovery was had against him, is such an amount of the case may be, that he paid it or had, which the produce, endorsed "satisfied," The record then, say, is part of the recite. the fact of payment must be proved. The debt may deny that he ever owed the debt, that if was his duty to pay it, or compelled to prove by other testimony the other facts necessary to prove, except that he had paid.

So also, when a suit is been subjected to the set for the inferior court, defend the debt. When he was the debtor, the def. may exhibit the record to show that he has been satisfied, and an amount for the endorse of his debt, but not prove debt, as guilt, or that debt is his debt. There was, or never has been a debt. But such, that the def. was subject to a part of the recite as much be proved.

Again an action by an endorser of a bill, who has been subject to suit for the acceptance. If, only to give the record of the instrument as such, that he has been able to pay so much, but that def. accepted the note is liable for so much, def. must appear from other testimony. Dec. 23d.

In an action on a Covenant of warranty in a deed of conveyance, if the def. may give in evi, the record of a prior suit by which the instrument was dated or for the purposes of showing that the execution had higher title, for this must be made out by other evi, but to show that he has been erected for without actual execution he can never recover on a Covenant of warranty. Gibbs 2d, Vol. 20. Wall. 445.

And if the warrantor were accused in, in the prior suit, the record is conclusive as to him of the whole case. This is the case when the def. in the first suit, is a covenantor, an being sued, gives notice to the great set of the other of the pending suit again, him thus an opportunity to appear and defend the titles he conveys. In such a case whether he appears or not, the record is conclusive as to him. Did it Covenant Broken?

So in an action upon the warranty of a title to a lot, til ace, force, the def. may give in evi. The record of a suit esp.
himself, in which the value of the house was removed from him. In the purpose of showing, that he had lost the house, go without proving that he had sold it. If you prove, that the seller has no title, or that the person who received of the seller had, must be proved by the testimony. 1 John, 517 - June, 15th.

So also, in a recovery of a former recovery, a satisfaction obtained by P, being a stranger, for the thing or matter demanded, for the debt. If you prove, that such prior recovery, satisfaction, has been had by P, if an inadvertiser, should have his Indorse after he had recovered of the exception, the defendant pled in bad faith, a former recovery of satisfaction, or give it in one, or the same may be. If A&B, both bound jointly secundum partem, should have it alone & should recover of their surety, B, might give the record of the suit, P, to give a satisfaction under it, to show, in one, that P, has been paid.

And so if a keeper has been committed by A&B. The verdict is, & of it. It is one. In favours of B, & in this case, you see it is left. It shows a recovery without proving satisfaction, 1 John 517. 2d Court. Done.

And if the case, in which a party to admit, his title from a deed, in a former action, between himself & A stranger, he may give the prior record, in one. As in eject, between B, either party may give the title by deed, as given in one record of the case, by which it was set off. Done. June, 14th.

Here the record is of things "real inter alias, with the ground on which it is introduced," merely to show, that the P, in all the title, but P, had it in one like a deed or common ad- durance. The consequence would be one, that P, had all the title, that P, had it in 3s. Thus far as to add onto, in Civil causes. 3 M.C. 6215. 23

Whether a Verdict in a prior Criminal action can be used as one of the fact proved by it in a subsequent civil
situ — if any question not settled at law at the present day. One exam-
ple will explain the whole. I committed a Battery upon 13 was
indicted & convicted. It now goes in an action for the civil
injury suffers the record of the former prosecution. Convicted
as one of thefts. Gil. 242; 142; 14; 44 Burr. 4428; 4l East
31. note: 301; 1 Campb. 95; 3 Doll. 283; 153. 395; 240. 2 Blunt
11. note: 301. 2; Dall. 492; note. 7. 306; 21. 16. Exc. 21. note.
219. 2. Boll. 41; 3. 446. 31. note.

If doubt had not existed in the mind of some eminent
Lawyers, I confess I could hardly consider it a question, that
years since is clear that such an e is admitted. Why
should a verdict or pledge in a Criminal case be e rather
than a record in a Civil suit under the same circumstances
at? The case cannot distinctly within the law. Rule, the rec-
ord is strictly of 31 in the alias actio, and no such case is
found, that the record of a prior Civil action for debt shows
the e in a subsequent action for the same debt. So too of Convict,

The other exceptions to this general rule are founded in
sound common sense if when a record is allowed the e, be-
tween other parties it is to prove the facts in a former recovery only,
not to establish the facts which were found by the verdict of Pf. 4.
But in this case the record is offered to show not merely that of the
been once subjected, but that he is actually guilty of the trespass.

But the record of a prior Civil or Criminal case is ad-
missible to show that such a suit has divided the parties be-
more. An Indictment for Petition — The record of the cases in
which the Petition is filed, I have been committed not only,
but must be given in e, a produced to show, that the said
faith in the action was tried, but not to show the facts found by
the verdict of Pf. 5. Blunt 413; Boll. 419; 40.
But a verdict in a former suit is in no sense one of the facts found by it, unless final judgment has been rendered or entered upon it. Therefore, while it is proper to give the verdict in evi, the parties produce only the former part of the record, without the judgment. It is inadmissible. The judge being indisputably to show that the verdict stands good. He has not been set with any provision in arrest for a new trial or in some other way. Mays. Bull. 243 - Phil. 292.

To evi, of the fact found by it is an emphatical part of the rule, for there is no necessity of a record of judgment if the only object is knowing the evidence. A to show that such a fact has been ascertained. The verdict in evi, of that fact, whether it remains unaltered, or is modified, or proven then that such an issue has been tried the evidence, in the part of the record which precedes the judgment, alone is set up. Bull 243 - Phil. 292 - Pena 50.

And a verdict out of Chancery with a decree in Chancery, in pursuance of it may also be evi. of the fact found by it, but not unless the decree had been produced, because the decree of such a Court is substantially the same thing as a judgment in a Court of Law. The same reasoning will apply to both. Bull 243 - Phil. 292 - Pena 50.

There are some rules for which it is necessary to attend to, which are not the found in the Books of C. S. Prefer to the manner of proving records of one state in the Courts of Justice in another.

Here I would observe that the acts & proceedings of Congress & the Records of the U. States Courts, are probative in our state precisely as domestic acts - of course the same, rules already laid down apply to them. Div. 6.

So also under the Constitution of the U. S. according to the Constitution given it in the Ch. Court of a State, a suit in one State is of the same solemnity in another, as a domestic suit. In one State & there have been decisions of this effect, that in Pennsylvania, both in the State & in U. S. District Court. In
And the Exemplification, attested by the writing a court in one State, must be in another State, be accompanied with a certificate of the Chief Justice or Justice Judge, &c. 4 M. &c. 217.

As to the Mode of Proving, the Legislative Acts of other States: By Stat. of Or. it is enacted, "that the printed Acts, transmitted by the legislature & executed by the Governor, may be exemplified by him. If they shall be evidence" Stat. Or. 43, 8. 120. 5. 178. There is, I think, a corresponding provision in most of the neighboring States. This course is adopted to avoid the inconvenience of sending to the extremity of the Union for certified copies of a whole Stat. for a copy of a part will not answer. The method adopted is for the execution to interchange authoritative copies of the Stat. when the copy received, the copy is exemplified the whole Stat. book at once.

Of Public Writings, not Records.

These partake of the nature of Records, as much as they are kept in a fixed place as documents of hierarchical by public authority for the use of the public. Bull 241, 2. 251, 8. 47.

These public writings are evi. in themselves, are regularly in point of solemnity the highest species of evi. Records only excepted. Gill. 117.

They are in general proved as records, sometimes are pr. by copies examined by sworn witnesses. Bull 234, 5. Gill. 567. Coop. 1750.
These Rules relate to the manner of proving the Documents of a State within that State, as to the manner of proving the value of a neighboring State not previous. 434.45.

These Documents cannot be called Records, because they are not documents of the law, nor Precedents of justice according to the laws of usage of the State; hence, the case of high authority, they do not come strictly within the denomination of Records Bell. 295. 22: 46: 46.

Of this sort of Public Writings, there are several kinds: 1st. Records of the Legislature, not to be distinguished from their acts, which are strictly Records; these are merely histories of the proceedings of that body. 555. 48: 53. 52.

But a new resolution passed by either house of the Legislature as a foundation of the proceedings is no act, if the fact is not related; nor is such a resolution, in that form, if that resolution is considered, nor is it true, that such combinations does exist, so that such Writing is likely.

2. Memorials of Proceedings, in a Court, of Equity, the writings of a Public nature are not Records, but that is one the reason, why a Court of Error never lies from the decree of that Court, nor from the records of such Court. But why are they not Records? Because they are not Precedents of Justice according to the strict laws and usage of the State; but Memorials of determinations, precedent, previous. It was formerly supposed, that a Court of Equity was bound to the parties in the case, but this manner was discontinued. They have always abided by force of Precedent. 462: 48: 50: 462: 45: 48: 50: 50: 45: 45: 50: Bul 135.

But a Bill in Chancery is one, only for the purpose of proving such, that such Bill was filed, or such other fact as may be prove as by more reputation & usage as of Pedigree. So to these, they are on a part, with monuments, Inscriptions, & Family Bible, etc.
As that which a party have alleged in a bill is not evidential, being regarded as the statement of counsel merely to obtain an answer. 7 T. R. 253. 1789 - Pea. 12 54.

Formerly it was supposed that the facts alleged in the bill were evidential, the party making them without qualification, but it is not now. 12 T. R. 220 - Bull. 235 - 2 Mac. 265.

But an answer in Chancery is not so. The party making it of the fact alleged, as well as the fact, but such an answer was not made. This is clear if a solemn bond, being under oath, whereas the allegations in a bill are not under oath, which constitutes the difference between them. 2 Pea. 1944 - 202 - 2 Ne. 57 - Bull. 237.

The answer as evidential is regarded, however, as nothing more than a confession of course is admissible only where a confession by the same party in a different form would be. Hence, the confession of a Guardian of an infant is as evidential the infant in a subsequent suit, as he has no right to confess away any part of the rights of the infant, and a verbal confession cannot be proved. 202 - 2 Mac. 259 - 3 Mac. 79 - Bull. 235 - Pea. 54.

As an answer by one of two partners is a suit by each, each himself, by A. is evidence against the other partner in a suit against him by B. as such. The reason is, there is no other acquittance to the whole firm when the partner pleads the statute of limitations, the firm was admitted to prove a confession by another partner, that took the case out of the suit. 202 - 2 Pea. 56 - 3 Mac. 79 - Bull. 259 - 56 - 202 - Pea. 55 - Bull. 259 - 2d. rule 41.

So also a voluntary affidavit by one jointly interested with another has been admitted in an action against both, living in confession of a party in interest in the action. Bull. 51 67.

In regard to answer it is take observed as a good rule, that a copy of the answer is not of any particular part only is the exhibited.
The reasons are obvious. If a deed, as law, the whole must be established or in some way proved. The rule is the same as to all written deeds. As a fact is to be proved by a deed, the whole of the deed must be produced, however false the deed or simulated that part, may be. 3 Salk. 10–Penn. 157. 12 Bull 587–3 T R. 194, 204.

At the party opposite where the answer is introduced there, in a subsequent suit come heard by the admission they give himself upon the other hand, the averments in it, in his own favour are evi. for him & this affords a decisive reason why the whole answer should be produced against him or pressing any adverse agent. All the way said, the time must appear whether its qualification or extent or the whole must go to the jury for them to examine. 2 J. and J. 30. That the party's allegations in his own favour are not conclusive. 2 J. 36–37. He may however have them read to the jury if the other party may satisfy him of the case.

There is an instance in which an answer, or part of an answer, may be read in open court without that. Respective to such a situation, that a person who offered as a witness is interested, in the event of the subsequent suit, for otherwise his testimony might be introduced when the other party did not wish it. If no man came to the first instance introduce his own evidence, in his own favour. But if one attempts to prove, then the confession of another, the evidence call for the whole. 2 R. 33. 3 B. 57. 4 Phil. 224.

An affidavit made by one of the parties in an action suit or in a subsequent suit, or a similar action in Chancery is permissible if by the law. 2 B. 93.

But a Voluntary affidavit cannot be thus proved not being a writing of a public nature. A voluntary affidavit is one made ex parte. If a reason of a written form, unless that he had the title or that it was in his favour. This cannot help me part of the proceedings in a court of justice.
it is no record or must be proved like any other private document.

The affidavit must be made before a sworn to, whereas an assignee in Chancery is proved by proving the bill—there being no proof of it need be sworn to that there is nothing in any record.


I do not wish to be used in a former suit, it is always the

in a subsequent suit between the same parties, provided the defendant is dead or out of the reach of process, or that the party, if the suit might have produced his defendant to do, is not the best, in an affidavit in writing taken by the party—A deponent is given by a witness in writing. Gilber 68—Barney Wink 68 6865,

48—Reynolds 728—Sinha 414—Gilbe 31—168 421—170

A has been said that it is a suit, in a former suit, between

the same parties is not, where the defendant being duly subpoenaed, shall sick on the way. But that is questionable by the least, I think not by it. It might be a substantial reason to insert the trial until he recovers, but not for the introduction of secondary depositions; unless it were assented to by the party. Rule 284—Reynolds 48

1920—Gilbe 60—Reyno quote.

But the deponent, like any other deponent, or written or verbal may be introduced into the affidavit, or so the suit may be in Court and was not, although he is absent, present, it is not, in Chief of the facts as stated in it, but hears from his credibility. Pea 335.

Whether the deponent of a witness, who at the time of giving it was disinterested, but who afterward by expiration of time, becomes interested in the party, can be read in an affidavit or is a question which divided the opinions of eminent men. E.g. a subscribing witness for a Bond, gives a deponent testifying
to the execution of it; the absence of its having appointed the lot with his Creditor, who need brings an action upon the bonds, perchance known to be in every case. Can it be admitted? * Penn. 55-9. - Stat. 101. - Phil. 165. 8. p. 1, a. f. 224. - Pre-Ch. 123. - Ball 240-1. - N. E. 756-756. - * * * 126. - Ellis, Case 2. Vern. 269. - Vex. 84-82. - Att. 15-51. - 1 W. 932-932. - 2 ib. 182. - 172. - 2 ib. 192. - 172.

I have not yet examined these cases, but from present recollection there is no real, there is an apparent contradiction among them. The Chancery decisions have been regularly in favour of the lessor, according to my understanding of the cases, the whole is the same at law. The Delaware, well included, in the case reported by Strange 101, Smith, 206 were an interrogatory "de bene esse" which of course cannot be read in coe, unless the contingency for which they were taken had happened, was that contingency was in both cases (say) the death of the livery, they cannot be admitted as the facts which made them were living. The decision referred to the Chancery case, on the other hand, were for the matter that the livery was admitted as part of a Bill of review. The rule of law that extends to the "de bene esse" of 206 there is no reason why the rule at 206 should differ from the rule in Ohio. Do we, would 206 be "de bene esse" admissible in Ohio? Ought it not be admitted as 206, under the circumstances in question? That it is admissible said be the Arpt. 2.

One principle (I have said the one) was open to the admission of it, above there is no question but what there 206e should be admitted. The only objection offered was as there is interest. Norly the rule of the 206 to conclude testimony. It must be shown, that he who gave it was interested at the time of this case, interest of there is an abundance of cases, in which was interested
in the event of a suit were restored by a deprivation of his interest, as by a release of his interest. E.g. If a debt is restored by substitution for his liability is gone, he may give his testimony for debt. Now invert the circumstances of the case & it precisely the same with that of Soho. Is the one, the witness is interested before the testimony, the other, he becomes interested after the examination, shall he not also be deemed competent, when he had no interest? And was he not, anterior to his acquisition of interest in the debt, even more disinterested (than the bail upon whose mind it may rationally be said, a bias was left in favour of his principal? But the fact is, this consequence is not said to exclude any testimony. Philad. Rea 30. Bex vs Baker 1710, 2 Paol & 7. Sci. Philad. 9, Rea 30. under the head of competency where a number of similar cases were recited.

But even were we to admit the force of this objection, it would lead to an absurdity. Thus it would lead to an absurdity, if it be said, to exclude the debts in the case before us, then by the same reason it would be in the same degree, had the original obligee been the actor on the hand conferred them in eq. For he would have been in the language of the objection, enabling the defendant to establish at the suit which he may have expected to have been a claimant, as much as a recovery would completely throw the money recovered on the hand out of hand of the eq. Here the expectations of the defendant are as completely realized, as they would be in a case like the one under cons., where the bail is the party. If a chose in action, in the same manner it might be shown, that an agreement touching the probability of collection between the defendant with original obligee proves too much I therefore withhold.

If it could be shown, or were there rational grounds of
of doubt, the party in whose favor the decision was made, in an action to set aside the judgment, would be entitled to recover costs and damages for the fraud. But it is clear that the information of a fraud should be given to the court at the time of the motion to set aside the judgment, and not afterward, when it is too late to correct the mistake. If the court, in its discretion, grants the motion, and sets aside the judgment, the party who obtained it shall have costs and damages for the fraud. If the court denies the motion, the party who obtained the judgment shall have costs and damages for the fraud, with costs of the motion.

In the case of a fraud, it may be set aside by the court, if the party aggrieved has not been guilty of fraud, or if the party aggrieved, in the course of the action, has obtained a judgment which is fraudulent, and the fraud is discovered before the judgment is entered.

The court, in its discretion, may set aside a judgment, if the party aggrieved has not been guilty of fraud, or if the party aggrieved, in the course of the action, has obtained a judgment which is fraudulent, and the fraud is discovered before the judgment is entered.

The court, in its discretion, may set aside a judgment, if the party aggrieved has not been guilty of fraud, or if the party aggrieved, in the course of the action, has obtained a judgment which is fraudulent, and the fraud is discovered before the judgment is entered.
If, however, the bill has been lost or destroyed by time or accident, it may be proved by secondary evi., once the parol of the same establishes that the written instrument, which in its course to establish Pea. 20-40-64. B. 20-21-29. 32-6. Dec. 1942. B. 20-20.

A Decree in Chancery is evi. wherever a suit of law would under similar circumstances justify for it, the same thing to effect, is governed by the same rules with it is evi. of the fact which it is to establish. Pea. 20-40-64. B. 20-21-29. 32-6. Dec. 1942. B. 20-20.


In the case of a decree, a decree is conclusive as a Decree at the bottom of the book as it is not called a Record. It is allowed as an admission that the will was proved. Proceedings in Adm. Courts are sections of the decree, but by the one's acts. B. 20-21-29. Dec. 1942. B. 20-20.

These Proceedings are also provable by Affidavits as all other public writings are. Gilb. 21-2-3. B. 1942. Dec. 1942.

The suit of a foreign Court is also evi. here, if right of suit is established by the party's claim in the foreign Court, which is under the suit of the party, who is under the suit of the same Court. The suit of a foreign Court, which is also under the suit of the same Court. The suit of a foreign Court, which is also under the suit of the same Court. The suit of a foreign Court, which is also under the suit of the same Court. The suit of a foreign Court, which is also under the suit of the same Court. The suit of a foreign Court, which is also under the suit of the same Court. The suit of a foreign Court, which is also under the suit of the same Court. The suit of a foreign Court, which is also under the suit of the same Court. The suit of a foreign Court, which is also under the suit of the same Court. The suit of a foreign Court, which is also under the suit of the same Court. The suit of a foreign Court, which is also under the suit of the same Court. The suit of a foreign Court, which is also under the suit of the same Court. The suit of a foreign Court, which is also under the suit of the same Court. The suit of a foreign Court, which is also under the suit of the same Court. The suit of a foreign Court, which is also under the suit of the same Court. The suit of a foreign Court, which is also under the suit of the same Court.
invitations to address the Judges. 27 R. 148. Doug.

Section 2. By an exemplification or production of the seal of the State or Kingdom in which it is
recognized which is supposed to be known to the Courts of all nations, 44. Ch. 68. 7th. 6th.

Section 3. By an attestation of the proper officer of the Court
with the seal of the Court annexed. But the seal you will observe
is not authenticated. The seal of the Courts of all the States in the
Federal Union is. Hence it you have issued in any other part of
the Union, Phil. 30. 7th. 5th. 5th. 5th. 5th. The great seal being the
common seal of the States is established as a proof of the
Genuineness of the seal offered, as the great seal of the State. The Court may judge concerning
the seal if a mere Court, as of the D. of the left. The Court,

Foreign
States' laws
provided for

Foreign law may also be proved by exemplification un
der the great seal or by Deeds Op. 2. 6th. 6th. 5th. 5th. 4th.

Unwritten foreign law or customs cannot be proved
foreign law by common ordinary proof or by Deeds under exemplification of the seal, but they are supposed to be Unwritten - but by the testimony of
intelligent respectable persons, which I suppose includes only
lawyers and judges, the common practice comprehended. One office
sixe ordetmente. 1 John 5: 4. 6th. 6th. 5th. 5th. 5th. 5th.

In this country the usual practice of proving con
victions by exemplification is not a common
law, but the law of the
other State. If professional men or lawyers were to use this it would be an
action for the

Proceedings in Consular Chancery are provable by copy. Receiving is under the seal of the Consul as that seal proves itself, i.e., of authority.
The Roman Debt Courts. (Rev. 9:2-3 - 9:26 - 9:28-5-6.)
For the same reason the Seal of a Foreign Notary Public is subscribed. The reason is the whole world, her being an Office established by the laws of Nations, and the municipal laws, the rule of est necessitate, sec. Yet the Seal of the Court of Bills is not presumed. The reason, that that of the most private notary Public cannot be recognized. 10 C. L. 113. 9:24 - 9:22. It is in part only in relation to foreign bills of exchange. Phil. 321.
It is hardly necessary that I should observe that Public seal of our Courts speak for themselves, that the private seal of individuals, doubt 10:1. Rev. 72-4. 27:4. 10. 14950.

All Hared of Arbitrators was conclusive as a Court of Law. Arbitrators issued from a Court, which theelt created by the parties is not sanctioned by law. - 2:36. 3:20. 4:7. It is opinion of an arbitrator final conclusive, all mat. less direct or contradictory state of evidence, 4:30. 3:15.
And the mere arbitrator cannot transfer real estate to a Court of Law, yet he can award a transfer. The award will be as conclusive in itself as a decree in Eq. The whole amount thees of the rule in blindly laid down by Sect. Others do that the award cannot take a decree and "cede," I transfer the property in instance, but it can order determine the title and also fidelity. 9:75. 14:10.

It has been a great difficulty for a protest by a ship, respecting losses, bearing 40. 1:27. However, it is now settled that this notoriety, in chief for every purpose of the Court States in it, and it only be heard for the purpose of showing the necessity of the protest, when made. 1:27. 249. Rev. 1:10. 1:12. 1:10. 1:19. 1:11. 1:19. 1:11. 1:19. 1:11. 1:19.

In some cases, as in the book of the Executive Office of the President, the seal of the Executive Office is the State seal of the State. 22:3. And the seal of the Executive Office, in its proceedings, as if the title of the stock were disputed, the entry of transfer in the book is cor. Pea. 90-1. 175. 475. 7:23-30 - 7:23-30 - 7:23-30.
A. J. W. writing as a letter to their belonging to a pub-
lie road, can never regularly be proved by Copy. The original
must be proved.

The Decrees of an individual, or corporation are not
for the time, the Corporation, etc. The Decrees of a Resident or
or of the Corporation, etc. The proceedings, therefore, as they
are recorded, are regarded as

As to Acts of State, they are called Acts of
State. This

The Books of a Public Nature are as true as the time
of the office, or the acts, which shall be landed
from the Record of the books, but the ground of commit-
mint or discharge to knowledge of the same is obtained from
the Records of the Court. This is not a valid fit for a private
record, but the other are. Bell, 1745, 313, 131. Headed, Do
in the Book of a Chief of War is cite, if the time, a copy of
sailed, 1725. B. 312. Phil., 312.

General History, as provided, is cite, of such facts as General
Count of a public nature, without of other proof, but in case of just histories
for one

Surveyed & Described, taken in order of the Governor. Surveys
are as true between individuals, as Deed's Books is bound.

Surveyed, when at the present day. As Surveys recorded by the Surveyor in
order of the Governor, are as by the Governor. Surveyed & Described, Taken by

But private Surveys & Descriptions are as true, between the same
parties & their privacies, as in 417, 312. Phil., 312. 317.
When Parish Registers are kept as in England the register itself or a sworn copy of it is kept at the Parish. Marriages & Deaths, as the Old Book records would be if they were recorded there as the State requires. The 1773 Act & the Certificate of persons authorized by law to solemnize marriages are one of the facts of marriage.

Ancient Maps: Those made without public authority are not, when they accompany charts agree with the boundaries as adjusted in ancient purchases. Poth. 38. - 16 May 1732 - Tho. 9 & 10.

In what cases an inspection of public writings may be ordered in favour of a party or settler:

Records of courts of justice, are open to the inspection of persons interested in them. The proper officer is bound to common right on the subject, and to all persons claiming interest, or wishing to prove anything under 13th Geo. III. 1242 - Harl. 178.

Cases from the Books of Public Officers - as Clerk of State, of Secretary, &c., are demandable of right by all persons interested in the same. The Government, though it thinks that public policy required their continuance, should be kept secret. 1 Tho. 30th & 26th. 1752.

If inspection be neglected the Court will by rule grant leave to inspect, &c.; order the officers to search in inspection.
A Court of Equity may, in its discretion, order an inspection of the papers in favour of a stranger for it in the absence of the parties. If the Court before one. But A. O. 2, 70. 572-3.

But in a Criminal Prosecution, a Court, no Court, whatever can order an inspection of the papers, for the safety of memo. 1. 2. 4. 9. 12. 37. 92. 93. No. 574. Pea. 945.

This last rule does not apply to informations in the nature of an information, as the Court for this that proceeding is to ensure Criminal, is in effect Civil, and governed by the same rule as civil proceedings. 2. 70. 574. Pea. 95.

Of Private Writings.

Whenever a fact in the proved by a deed or other private instrument, the original instrument must be produced, if it is in existence. If it is not in existence, whether the party by whom it shall be proved, if it is not done so in any case, the contents of the instrument can be seen? This is merely an example of the primary rule, that the best evidence, the nature of the case admits, must be produced. 10 Co. 92-3. Gil. 92- Pea. 96.

When a deed is in two parts, the couter part may be read in evidence. The party by whom it was made, evidence, the other party or a stranger. E.g. A. executes deed B. A. a counter part D. The latter is good evi. at 93. but not a fact, a stranger Pea. 96.

If some one the original instrument be cancelled or destroyed, an examined Copy, yet, or once past, on, its contents may be read for their use. Which before was secondary, has
now become the best evi. which the nature of the case adone to. Here, however, it is indispensably necessary to prove in the first place, that the original once existed. If the party is evi., well he shift. Suppose it lost, but the prior existence of it must be strictly proved 330 181. Tra. 326-70. 4 East 306-1 Barnes 173. The rule it will be recalled is the same as in all laws of other public writings. In both cases, however, if the party voluntarily destroyed the writing, he cannot advance this secondary evi.; it must have been lost without his fault (if it be to lost), the law will not allow a man to be so deprived of his rights by the casual destruction of his betters.

A person seeing a note a Bond a note in the past, of the adverse party must give notice. This opposition to produce it at the trial, if he does not, second evi. of its content will be admitted. Obj. must prove it "genuine" in proof. If adverse party of that he had notice to produce it, for if he had not notice it is the other's own fault, that it is not produced. 14 Wall. 446. 2 Paine 201. 21 Pick. 39. 237. Child. 206-10. 2 9. 165. 1239. 2 50. The same rule applies to every other document, as a Letter, Bata Court of Law sends Deed cancel, the opposite party to produce the instrument. All they can do is to allow the admission of secondary evi. — All Courts of Equity can compel the production of the original. The rule is the same in regard to notes as the law now stands obtained in Criminal cases. As if indicted for having forged a note, now in his poss. of secondary evi. of its content may be given after notice is produced it. It was observed that, that no secondary evi. can be admitted. If the deft. in a Criminal prosecution but it is now settled, that it can be, even, the Copy or Parol evi. of the content; so that the rule
is the same in Criminal as in Civil proceedings
Sec. 360 & 361.

Notice is given in writing according to the rules of practice & to the fact of notice; that may be proved without subsequent notice & produces the previous written notice, otherwise notice might require notice ad infinitum. Res. 188. 2138. 2149.

And with regard to notice in Civil cases no notice to the Attorney is an notice to the party in person. This is the usual practice.

Res. 2119. 3120. 3121.

If the original instrument is in the hands of the persons, they should be made to produce the same, & to appear & bring with them the original instrument, & if after service they deliver it over to the adverse party, secondarily, etc., may be admitted into evidence, the party being supposed to have made notice. Res. 188. 2119.

If there is a subscribing witness intrinsic, he must be called in person. If he is alive, & in a condition the examiner for the party is deemed the best fit, of the two, & he is admitted as the party desired. 5 Bost. 11. 16. 2149.

But if there are many attesting witnesses, the court may be surprised one of them — their speaking of the instrument as the deed. Conv. of Bond &d. Sec. 18. 16. 2149. (as & Deed of part) 1 Ill. 16. 16. 37.

As a consequence of the General Rule, that a subscribing witness must be called; it is settled that even the confession of the party agt. whose instrument is offered in evi., that it is genuine, & if the defense with the necessity of calling the subscribing witness, & c., it will not be read to the jury as such one. Res. 2119.

Res. 2119. 2128. 2129. 2137. 2149. 1 Ill. 16. 37. 2149. 11. 2149.

This rule however has been explained in N.Y. cts., for in those States the confession of draft is considered as good sec., & better evi. of the execution than the testimony of the subscribing witness. Sec. 129. 130. 2149.
The English rule is a hard one. In the English courts the original instrument is lost or cancelled, for no secondary evi. cannot be admitted of, in subscribing wit it is known the within the reach of execution of process. Pead. 90. Ap. 14. 39. 
Pead. cas. 38.

And in England, a confession of subscriber is needed in Chancery and is not safe evi. of the exec. when there is a subscribing wit. unless such reason is shown for not producing the wit. This appears from the carrying the rule very far.
Pead. 90. note. 4, 52. and 53.

But when the debtor produced a deed, before Commissioners of a Bankrupt is admitted the exec. of it, in his examination under oath before them, it affords evi. of the exec. without the subscribing wit. There is not only confession, but production by a party. 5 T. N. 366.

So also where a party, having a suit confessing agrees, admit the admission on his trial, if it is safe, then the confession alone would not be, for he is bound by his agreement. 2 B. & C. 85. 
5 Esp. 196. and 196.

If there is no subscribing wit. inferior evi. as the handwriting is admitted, it is safe. France. 1 D. 26. 12 Esp. 24. 21.

So if the person whose name is subscribed as a wit. denies that he saw it executed, other wit. may be called as a bystander or in handwriting may he proved which he did not. Pead. 146. 
- 2 D. 9. 216. 2 Esp. 175. 1 Cas. 6, 18, 36. 636. 10 Br. Jr. 474. contra 1 Cauf. 126. and 12.

Secondly, observe here the way. But it is not necessary that the attaching wit. should actually have seen the signing of the instrument, it is safe that the party at the time of signing, requests the wit. to subscribe. As a wit. 2 B. & C. 217. Pead. 80.

If it appears, that the name of a subscribing person has been subscribed as that of a wit. by the executing party, the cause may be proved from the hand writing of the party for it is in legat.
effect unattested. 4 Pa. cas. 235. 5 Pa. ch. 16. Phil. 364.

The rule is the same when the witness is interested at the time of the act, or continues at the time of trial in. For the act being incompetent, the case is the same, as if the instrument did not purport the attestation. 10 Ch. 299. 4 Y. 122. 3 Ch. 271-2 23d 7 103. 5 Phil. 371-2. 29 Y. 135. 5 Phil. 371-2. Tho. 16 from the fact, had given collateral security to obligee at the time of deed, which is in force at time of trial.

The rule also is the same when the person who subscribes the deed did it without the knowledge, consent or assent of the parties, for he is a mere voluntary and not a subscribing wit, within the meaning of the law. 10 Ch. 299. 4 Y. 292. Phil. 363.

So in all other cases, nothing can be heard of the subscribing wit, (who is supposed to be competent) to show the identity, nor from his handwriting. Phil. 364. 27th s. 235. 3 Binney, 32. 192.

The rule is the same if the subscribing wit, at the time was legally incompetent, for his oath could not be read or his signature, his handwriting cannot be used. The instrument is unattested. Phil. 364.

I should like to make one general remark, which is plainly deducible by way of criterion from the foregoing rules, that whenever the instrument is in fact fraudulently attested, the case may be proved by secondary evi. as by confession, by the testimony of the subscribing wit, by proof of the fact, by handwriting, for such then is the best evi. Com. D. wit. 34 Ch. 145. 10 Y. 147. 1 44 Y. 283. 525. 16.

On the contrary, if the instrument is fraudulently attested, but the wit is competent, it becomes incompetent. Success or method or cannot be produced, his handwriting may be proved. And if the subscribing wit becomes interested after deed, by act of law, in becoming owed to the party himself, the name of the party, the only fact, by whom the instrument, or to whom the wit, handwriting is proved for he was competent at the time of attestation. 23d 7 103. 299. 34 - Phil. 362-5 Phil. 371-2.
to also of the subscribing vet. is dead or prevented the
as proof of his handwriting of draft - [illegible] 9th. 360 - 1st. 360 - 1st. 365 - 1st. 360 - 1st. 365 - 1st. 360 - 1st. 365.

A also of a subscribing vet. is blind, so that he cannot
identity for himself, or if he becomes insane, proof of his writing
is sought, prima facie ev. Section 754. 5 1/2b. 161. 9th. 360 - 1st. 365.

The rule is the same when the vet. becomes legally in fa-
mour after the date of the instrument. 3d. 353. 3d. 150. 3d. 355.

Also of the vet. at the time of trial is in a foreign state.
abroad, whether domiciled or not, evi. of his handwriting is
sought. 2d. 154. 1st. 250. 1st. 199 - 1st. 240. 1st. 160 - 1st. 266 - 1st. 266.

The rule is the same if after diligent search the subscri-
ing vet. cannot be found, that he is not proved have gone abroad. 2d. 99 - 1st. 240. 1st. 266.

Also in all cases where the subscribing vet. is not in a rea-
tion the evi. of proof of his handwriting is deemed the best pos-
sible evi. of these are detailed alluding with another photon can be ex-
amined evi. of the handwriting of one of them is draft. 1st. 150. 3d. 360.

And proof of the handwriting of the vet. has been adjoin-

c to draft, without any proof whatever of the party's hand. Of this evi.

d of authority is the best in all necessary to prove the handwriting

in this case, this is usual 2d. 1st. 266.

In this case, the party's handwriting is not the best evi. for proof of the Northwest
handwriting, does not show, that he would testify of produces, that the ins-
strument was legally executed in his presence. 1st. 260. 3d. 360.
And in these cases proof of the handwriting of the party in voce, in everything appearing on the face of the instrument. The signature, sealing and delivery will be prescriptive from the office of the Notary.

Campl. 315 - Phil. 363.

And where the laws demand a subscribing voce, as to the hand of the party, or voce, proof of the handwriting of the party alone is not enough. Juni 27.

Where there are three obligors, proof of all being one, then these were permitted to testify. Deut. 35. Phil. 369. If the influence of the interest of the party, the confession of one joint obligor binds the others if true - but will it prove that it is a co-obligor?

Then in any case the preceding cases, the secondary voice is said to be the voice, the meaning is that it is not. To render the instrument admissible, says the Jury, it is authorized the court to permit it going to the Jury.

If there are two subscribing voce, of whom one only is in a condition to examine, he must be regularly produced. Deut. 16.9.

All of both are in a condition, that present an examination, proof of the hand of one of them is sufficient, that it is clearly admissible, oppose that of Bok. 1349. 361. 1146. 36. 124. 310. 32 and 350.

In all the preceding cases of the will cannot be examined of the instrument, in which the seal is delivered, it is strange to the Jury, that all the formalities in reading it, have been completed, Oct. 29.

The proving Bk. 106, is the number of which is subscribed, and to which is required by law if any one is in a condition. He examined he must appear, if his hand is not false, Bok. 106.

Then for the rule is the same, as in proving Co's Instrument.
If however they are all dead you must prove the handwriting of all of them. The signatures sealing delivery will be presumed from the form of attestation proof also of their respective handwriting must be addressed. Here the rule varies from that of life insurance in proving the handwriting once cut, it is lost. The proof in no case necessary proving the handwriting of the party executing.

And in such a case such one, being produced unless strong circumstances appear to the contrary a compliance with all the formalities of requisites of the state will be presumed to authorize.

Of the facts are all living, the one of own will be sufficient, if the one to illustrate the requisites, unless the devise is disputed, when all the facts in question to be examined must be called. 10th 741- 11th 695-436, Burr 264- 1st 64.

But a court of Chancery will never decree a devise-proved unless all the formalities of testifying are examined, and the one be beyond sea, if the devise is not disputed, the reason is that a decree of the Court of Chancery is conclusive upon all the parties without. Whereas a decedent having no issue and the issue in Chancery one party claims title, under the will is not there conclusively decided? New Dec. 790- 1st 216 - 18th 11.

Our Court of Probate will declare a will proved on the testimony of one witness; if 2 issues and all the requisites. There is however no appeal from their Court of the SuperCourt. So we.

And all the attesting will to a will should destroy the interest of it, as it may later be proved by the testimony of others or if the persons proved their testimony is not conclusive. 11th 64, Burr 264. 2d 1096 - 1st 790- 436.

There is no power of attorney, was executed itself by a power of attorney. The power itself must be proved like any other instrument. In effect the execution of both must be proved by the party claiming under them. Legend 790. 1st 790- 8th 11 - 1st 20.
I have observed often, that most of the cases of the instant
might be made out by professing handwriting. The Q. Mitchell then a-
pissed in

That manner the handwriting is to proceed. The
simplest case of this, would be the testimony of one who was acquainted
with the person.

It is a rule, that the handwriting of the party, must be rec-kon
both in civil and criminal cases. 1 Burr 641. 1 Pet. 102. But whoever
this belief, and in all cases, it must be founded on a familiar acquaintance
with the handwriting of the party, for without it cannot be permis-
ble to testify at all. This acquaintance must have been derived from
having actually seen him write, or a letter from him in the
course of correspondence, or if not, have seen writing pro-
duced by him. 1 Pet. 654. 1 Bl. 384. 4 Bur. 235. 6 Pet. 1024. 4 Bl.
11 12. But the court, having seen the party write his name, hearing
the fact, believes the act, and made of signing, and certify, to let in his
and. It could present a party to make out for himself, 1 Pet. 114.
15—Pet. 207. 1 L. 1 Pet. 117. 392. 4 Bl. 235.

And a lot, in testifying this opinion must speak solely
from the appearance of the writing, without taking into consider-
other fact, or whatever, or that he should not suppose that
defendant give such a bond. 6 Pet. 142. 1 Pet. 102-3.

And in proving the handwriting of a list over, that an-
other written, and is not in some cases, and is as admitted to cou-
test any presumption arising from proof of his handwriting.
It is well-known Pet. 103-4.

In the proof of handwriting, there is one species of evi-
dence, which is much disputatious. Lord Campell—
1841. A question on this subject, the great rule is, that Con-
c partly of hands, in no one whatsoever in any case; either civil
or criminal. 1 Burr 644. 4 Bl. 235. 4 Bl. 359. 6 Pet. 138. 1 Pet.
4 Bl. 274. 6 Pet. 104.

Now in most of the rules applying to this subject, there has
no definition given of comparison of hands, if there had been much misapprehen-
Now would have been admissible. It means a comparison by the jury between the writing in question and the other writings produced or admitted to the parties' hands - or a similar comparison made by a writer who is to testify his opinion of the similarity or dissimilarity of the two writings &c. 2 P. 272. &c. 540. &c. 1004. &c. 1704. 1 Bl. 197. 1 Hen. 9. The question is, did he first sign it? To prove it must of necessity be proved by the handwriting. If the handwriting is the same, but self-offering a letter, who is innocent.Did it depart from the same hand? Testify at this opinion after comparison. This is also inadmissible.

So that comparison of hands is as evi. of the rule inadmissible in civil or criminal cases alike. It was formerly that the admissibility in civil cases - hence must have been considered with the constitution of that branch. As mere evidence, an opinion, &c. 1 Hen. 9. 272. 1704. 1 Bl. 197. 1 Hen. 9. 1802. - Phil. 360. - That this rule is now good. And in the above, 1 Hil. 53. 343. 689. 595. 794. 905. 1. Eng. 40. 273. a. So in Pal. Comp. of hands has been allowed, but that it would not be considered as a new fact. It is not any substance. 30-107. 30. 107. 30. 107. The decision doubtless went upon the ground that the jury were composed of men who could write. It therefore could judge from comparison. But the fact is, it is a matter of the utmost requiring the keenest perception or the most delicate description. And whether there was a jury upon earth capable of doing it, is no one should ever be submitted to a jury, which even the juror could not comprehend. For the law on this subject in 1 Hil. 53. 61. 311. 311.

But when the antiquity of writings renders a personal knowledge of the party's hand impossible, or the entries in a Parish Register - a fact which had made himself requisite.
And it seems that persons technically skilled in detecting forgeries have been admitted to prove that the signature in question appears to have been written in a certain disguised hand—but the rule was never carried so far in England as to allow such persons to testify from a comparison of hands. I think, however, according to principle—which skillful persons as Post Office Inspectors of Grants, etc., have never been acquainted with the party's hand—might be permitted to give their opinion from comparison. There has been a division of the kind—by a decision of the House of Lords in Lord 12, 11-12—2 Bl. 370-374. Lord Kenyon dissented with the English rule—dissented. But it appears, the case.

Here are cases in which instruments may be read in evidentiary without any direct proof of their author. As if it were in the case of the adverse party, and after notice he produced it at the trial—it may be read, without proof of its where, because the party himself produced it as genuine. Dec. 105-9—5, 56, 172, 43-4.

And this rule was once determined, to the same effect, when the adverse party, who produced the instrument, was not himself a party, the instrument. But it was decided I think very properly. Contrary, for another he may have an interest in it. Yet not being a party, he cannot be presumed to know whether it is genuine or not. East 548.

It is an established rule also, that a deed of 30 years standing may be read in evi. without proof of fact, provided the person has followed the tenor of the deed. In re, or a fraud or alteration apparent. Acts 225, 246-58, 146, 27-11. 33, 32—2 Will 466-5, 55, 29, 574.
...This rule, however being founded in presumption does not hold where there is circumstantial proof which a contrary presumption invites out. For the deed appears to be no deed or deed having effect. There must be direct proof of defect. Bell v. Bell 255 G.B. 130. Per II.

The recital of one deed in another has been considered as acquiescence of the reciting deed as against the party to the reciting deed. O.B. recital of another deed by the grantor in a subsequent one: Bell v. Bell II. Per III.

This species of err is now however regarded as secondary and therefore admissible only when the reciting deed is known. The Deed or some other sufficient reason given for not producing it. Hard v. Godden 129. 27. 10. 160. Belden 45.

Formerly if there was any material alteration of the deed or alteration in the deed to be determined upon which has then it was good or bad. But in modern practice, that is left to the jury under the issue of novus actus nascitur. 12 O. 92. G.B. 104.

We are next to inquire how such written instrument may be explained by evidence "feliciter".

A deed or other instrument when proved is conclusive as to the parties. But if the warranty of the deed can be contradicted, the term statement a representation in the deed by part v. The deed being written. More column. This is a familiar rule of the C.G., 5. 5. 5. Co. 157. 2. Miller's 175. 129. Co. 173. Where a bond is payable immediately, it is incompetent of delay. Whoever is payable a year hence. Dyer v. Goodwin 210. 223.

But a patent ambiguity arising in the construction of a deed or other instrument, as to parties, may be explained only by the 4th art. 1. 1. 3. 3. 1. 3. 2. 129. 2. 12. 12. Co. 173. 129. Co. 173. Per II. A patent ambiguity means an uncertainty arising not upon the face of the instrument, but from some collicative facts pre-
able by parol. This kind of uncertainty may be explained away by parol. Thus a devise is made, but it appears that there are
two persons of that name, or the devise is of the same description. Here it is compared for the parties to know which of the two is meant. There is no ambiguity in the devise. A person is produced entirely by affirmative evidence, it may be removed in the same manner. 156.10.2-3.52.1
O. G. 155-156, 157-158, 159-162.

Where the devisee's name is mistaken or wrongly written in the devise, the party may prove that it is the familiar nickname by which the testator used to call him. 157.146.

But where there is such a mistake, the devise is no devise, unless the mistake be going to far from the instrument and beyond the scope of writing. 158.766-768. 159.146.

Moreover, the name of the intended devisee is omitted, nothing being explained or explained to make a devise for the testator. 160.240. 161.117.

But whenever the ambiguity is latent, any circum- stance which conduces to prove the testator's intent are admissible. 162.676.

When there is a right name, straggling description given to the devisee, the devise may still be carried into effect by parol testimony, if there is no other person to whom the description applied, if there were parol, explanatory coi. could enter, but the facts are not the same. 163.240. 164.117.

And the rule holds, provision of the name is wrong, the description is right, and a devise. 165.240. 166.117.

And the rule holds, provision of the name is wrong, the description is right, and a devise. 167.240. 168.117. 169.240. 170.117.

And the rule holds, provision of the name is wrong, the description is right, and a devise. 171.240. 172.117. 173.240. 174.117.
must an implication arise from the face of the instrument. As to
the first branch of the rule, "to rebut an equiv", suppose it
brings a Bill in Chancery against the testator, it being
saying there has been a subsequent verbal agreement varying
the terms of the original agreement between the parties, it
may be pleaded to rebut the testator. This is clear from the
rule itself. The reason of the admission of such evi. in Chan-
cery is, that it is disinterestedly with that court to enforce an
equity or not. 1 Fosb. 234. 11 Vern. 240. 10 Dec. 123. 172.

As to the latter branch of the Rule "Parol evi. is ad-
mitted to rebut an implication." You will observe that im-
plikations always proceed, unless evi. is introduced to rebut
them.

Now it is a General rule of the Cn. that the undoubted
residue of testator's property goes to the Ex. If the Ex. has a
legally given heir, the residuary portion is that the testator intende
it to stand in the Ex. in place of the residue. But this
is an equitable presumption. Indeed, may introduce Parol
evi. showing that the testator did not intend to deprive him
of the residue, but the adverse cannot introduce parol testimony
dshowing that he did not do so, for the would he contradict the
legal presumption with the apparent intentions of the testator.

Dor. 43 - Fent. 348 - Chaff. 247 - 15 Dec. 249 - 124th 66. 224. 2
153. 41. Again it is a General rule, that the marriage of the
testator and the birth of a child after making a will, is an imple-
den. In fact, it is presumed from the fact, that if he had
seen the child, he would not have made the will, as he
had done. Such is the equitable presumption of Parol evi.
may be introduced to prove his intention, that the will should
stand, but not to prove that he wished it not to stand.

H. Dong. 31 (414. 2 Ch. 3. 5) 516.

But the presumption arising from a change of testa-
ors estate cannot be removed by parol evi. of intention.
because in this case a positive rule of law (not the instruction) governs. 2 R. & L. 216 - Pen 114.

A Patent Ambiguity is one arising out of the terms of the instrument itself or on the face of it, and cannot be explained by any parol nor, whatever. One great objection to it is that it is not created by parol nor, for purposes as the question. Besides these, Ambiguities are matters of legal construction, a course, the meaning of laws deduced from the face of the instrument itself. 2 N. Y. 646-642. 9 N. Y. 311 - 286. 259. 239. 396. 257 - 511. 144 - 409. 660.

In some extent cases however, if the explanation by example is not admitted, be under several, the devise is void for uncertainty. The words import, that there are several without distinguishing to the owner of several buildings, devise "one of my buildings," this cannot be explained by parol.

In some extent cases however, which are the explanation by example, patent ambiguities have been explained by words have such need a construction that some ordinary import not however by moving the Deeds, the Testator. The words are inadmissible, but by parol proof of such extrinsic facts as the values of the property, condition of the family, or estate etc. Then, one devise his house called the half Acre to A. the question was, "was I intended to have an estate in fee or for life? The facts were that A. had only a remainder in the house, defendant on an estate tail which of course must cease before A.'s estate could vest in fee, if A.'s in all human probability would die before that. decided then that A.'s should be allowed to take in Fee. 1220. 396. 1472. Dec. Dec. 59. 19. Pen 116
299. 209. 399. 1890. 396. 171. 299. 399 - 821. 234. 831.

But parol ex. is not admissible to contradict, enlarge or restrict the express terms of a written instrument. Thus, if
is a case or agreement for a lease for 10 years at £100. Rent, part of £100. of an agreement made at the time of lease. That it should be for 15 years or so rent is not admissible. 2 Bl. 1249. 3 Bl. 275. 1 Dowl Ch. 92. 257. 1 Terns 328. 6 Has. 60. 1 Coe. 429. 31. Carlis. 47. (See. A subsequent agreement might be proved to rebut an equity.)

But a collateral matter about which the written agreement is silent and is not conversant may be proved by parole, as if nothing were said in the clause as to repairs. A parol agreement is to the person who should make them might be proved. 2 Bl. 305. 510. 329.

And parole is always admissible to prove that the written instrument is, or is not, the act of that party whose act it imports. As that a deed was not sealed deliverd, that the mistake was not made, &c. that the instrument is not used to contradict a valid instrument, but to show, that no such instrument exists. 3 Bl. 147. 76. 1718.

So also parole is always admissible to show the contract to be illegal or prorogued for an extraneous cause of here it denied the existence. 2 Bl. 347. 1 Dowl Ch. 477. 3 T. Ap. 475. 144.

So also parole is admissible to show that or apparent illegality in an instrument, was occasioned by mistake of the erkener. A Bond made as if it was usurious 1 Coe. 6. 507.

If an ambiguity arises in an ancient instrument, unless the parol usage made it which is in the nature of a particular construction may be proved. As 1 Bl. 576. 3 Bl. 279. 389. 4 16. 45. 35. 35. 25. 6 Bl. 210. 4. East 387.

Here you will observe the case is not to prove or to show what the parties meant by the terms really, but to show
a constant usage under the deed, it is like a presumption. But the usage of a few years cannot be admitted, (Cal. 817

3 Ves. 290 & 6 Th. 237 - 2 Sir. 84.

By the term written instrument, as I have constantly used it, you are to understand a written instrument, not under seal. A written instrument, not under seal, is regarded as of no higher authority or solemnity than a verbal agreement, except in the case of a will. If it be accurately stated, a explained by parol testimony. Thus a writing reading "in full of all demands" or not under seal may be proved not to include all demands.

1 John. 4:14-5. 2 John. 372. 3 Th. 247. 5 Th. 62. 9 Th. 304. 9 Th. 310. 12 Th. 531. Phil. 4.

When these Books are admissible, their regular weight, vid. 2 Co. 237. 217. in action as acts.

Parol Evidence.

In gen. all persons, not rendered incompetent by some legal disqualification, are of course admissible with 100 E. 956. But there are many grounds of disqualification. No person can be admitted as a witness who is non compos mentis, or in the full power of his understanding. Cal. 144. Dec. 122.


It is also declared to tender an age as the inexcusable understanding the obligation of an infant. For the same reason, on this point the rule is, that if an infant is of the age of 14.
Under the age of 16, no judicial competency is bestowed or apparent understanding of this is also ascertained by previous determination by the Court. The decision of the House is in favor of admission. Goto 144 - Rev. 12.2.3.

Formerly it was supposed that no person under the age of 16 could testify in any case or answer to any charge unless 16 were admitted. This rule was laid down in 1813. It was admitted, however, young may be admitted as a witness, accompanied with the obligation of an oath. There is a case where a child of 6 years old, Adel 948 - Rev. 12.2.8, was admitted, as a witness, on the testimony of a child of 5 years old, 164 - Rev. 12.2.8. The rule is to 1813. - Rev. 12.2.8. - 164 - 346 - 481 - 647 - 719. - 164 - 346 - 481 - 70 - 265 - 612.

Formerly, the practice was to admit under oath, information without oath, but this practice is now exploded. There is no such thing known in courts of Justice, as information without oath or something equivalent. 16 Rev. 12.2.8 - Rev. 12.2.8 - 164 - 346 - 481 - 70 - 265 - 612.

The Constitution of 1813 is not at all an objection to the competency of facts. It is to the local regulations of the various States, but not to information. 16 Rev. 12.156.

Persons, except a number of witnesses, under standing may testify, by means thrown into the interpreter, in this case need not be sworn. 16 Rev. 12.156 - 347 - 357 - 405 - 481.

And even ignorance may debar a person from a bent, as where it appears from previous consideration that he is altogether ignorant of the obligation of an oath. 16 Rev. 12.405.
One of the native Indians on the previous examination was asked, "Are you a Christian?" He replied, "Yes, I am a Presbyterian." Yet his testimony was admitted.

A person may be incompetent to testify from the infancy of his character: the rule is, that a person legally insane is regularly an incompetent in civil cases. 3 tile 124. Gilbert, 139, 149, 156, 8. 47. A person legally insane is meant one who has been convicted of some infamous crime, as Murder, Rape, or the like, as Perjury, Treason, or any other similar incriminating the character or integrity. His capacity to constitute 2 tle 124. 12. Ca. 3. 3. 5. 120. 126. 12 468. 7a. 3 tile 144. Gilbert, 38. Nothing short of conviction on an indictment for crime must justify an insane witness in civil cases, in short objection to competency. 161. 43. 126. 12 368.

The rule formerly was that the conviction of a crime to have occurred in an infamous or local punishment, as the Pillory was a dishonorable one, no matter what might have been the offense. But now the insanity depends upon the crime, without regard to the punishment. 1 tile 6. 2 tile 27. 1140. 206. 2. 2 tile 10. 60. 89. 50. Hence the conviction of an infamous offense as Barratry renders the, civil insane fit to testify, after the punishment, should be a sine, which is not infamous. Salt. 40. 2 tile 10. Gilbert, 146. Peck, 127.

On the other hand, a conviction of an offense not infamous as Salt. 40. The following is an infamous punishment, as the Pillory does not destroy one's competency. 3 tile 448. 116. 12. 207. 11 Gilbert, 41. Where legal insanity is merely a consequence of conviction. The party is restored to his competency by a Pardon from the Executive, as of Perjury or any offense infamous at B. D., is pardoned by the Executive. Salt. 349. Dilley, 257. 3. 116. 219. 17. 60. 89. 128. 3. 174.
When the incompetency of a pardon by the Executive is by statute made a substantive part of the punishment, a pardon by the Executive does not restore the party to his competency as a conviction of perjury under the statute of 1872 for a pardon only. Therefore with the legal consequences of the judgment it does not destroy the judgment itself, nor a constitutional part of it. 1 Will. 4th, 232, 240, 242; ibid. 574, 649, 650, 749, 750.

In the latter case where incompetency is a part of the judgment, nothing short of a reversal of the judgment or a full pardon will restore the competency of the party. 1 Will. 4th, 232; 2 Co., 1. 5.

If once is convicted of a stagable felony and is unable in the land, he recovers restoring the competency for 10 years on a pardon by Stat., being a substitute for execution. 1 Will. 4th, 232; Key 370; Powell 143; 2 Pea. 118.

But if conviction for an infamous offense without a judgment is 180 years, or whatever period the judge fixed by his own case, Bull. 443; 2 Co., 161; Pea. 49; Cow. D. 42; D. 64; Tom. 42.

But proof of the institution of punishment rendered by the court is made necessary by the disqualified judge. The incapacity incurred does not depend upon the punishment. If the conviction is not a judge rendered the incapacity is complete. 2 Co., 161; Will. 10, 5, 74.

And it seems no one has settled, on principle a bynume, how guiltily authorized for a series of contradictory decisions, such as producing the competency of the accused, as it may be doubted whether the conviction of 1948, 2 E. D. 91; 1 Will. 296, 240, 239, 238; 12 P. 574.

It was formerly the practice to enquire or 1847, whether the accused was of an infamous offense, it may be doubted whether this is by the rule, still by case. 2 Co., 440; 1 Will. 42; 740. 13.
Whether a 

whet is known suche a question. 

I think, on principle, he is not. If a question is asked a 

rep, the answer which would disgrace or expose him to 

punishment by the court, he is not bound to prove the 

part cannot object on the neglect of a writ or the ground of 

injury, unless he produce the best evi. v.b. the Bored of 

the condition. 3 Chen Jfl. 210-510- 13 East 55. Phil. 

286-7-8- Sull. 153.

The rule that a person legally in name, is disa-

bled. Deline, relates principally to an action of tort.

he may make an Affidavit be defend himself by a 

charge advanced or to Motion for information to attach-

ment, otherwise he would be deprived of the means of de-

fence. 4a No. 461- 1b No. 2441.

The good character of a writ, not legally in name, 

may be proved, not indeed, to exclude him, but to 

defeat from his credibility: no one is insufficient from 

dishonour, unless it amounts to legal injury of the 

court, which the laws admit this; to impeach his 

good character, for that, the party is presumed to be 

ready to defend, so that you cannot prove that he was formerly 

addicted to lying, or that he did lie in a particular instance,

But 126- 4 East 102- Phil 122- Per. 125.

And this evi. relating to the writ's good character 

can he given by those only who are acquainted with his 

good character. Land the appropriate question in the Eng-

lish practice is, whether in the opinion of the impeaching
In Pea. 125, the party who produced the witness, unless it is concluded that all the grounds on which that opinion is founded, 4 Esp. 123-4, Phil. 212, Pea. 30, Pea. 125.

But the party only once he given in the first instance to impeach the witness, the party who produces him must prove the grounds on which that opinion is founded. 4 Esp. 123-4, Phil. 212, Pea. 30, Pea. 125.

If the witness is dead, his opinion is not submitted. The Devisers must prove their general character for probity. If the same rule would hold whether they were dead or alive. The only case which has occurred is where the witness were dead, 4 Esp. 50, Phil. 72, Pea. 30, 125, 5-3 Gaim. 79, Phil. 212, Haywood 255.

Previous Devises made by a witness out of court and which are inconsistent with those in court may be proved. A subscribing witness in court to his own, but this goes not to the competency but only to discrediting him. Hence a letter written by him in a Devisor signed by him, may be used as evidence to contradict his testimony as any other act inconsistent with his testimony. 4 Esp. 60, Pea. 30, 125, 6-3 Gaim. 79, Phil. 212, Haywood 255.

After the death of a subscribing witness, his confession on his death bed, that the will was forged may be given in evidence to counteract the preponderance arising from his attestation. A Devisor of his, made under other circumstances, not having the sanction of an oath would not be so. 1 Bacon 1244, 55, Phil. 336, 6-3 East 128.

But the party producing a will is never allowed to impeach his character at all, for it would be endeavour to
call him in Court on purpose to destroy him, if he had the
means of so doing, he might force the test. to speak for himself.
Still however the party may introduce a test to certify a mis-
take made by his test. to satisfy an error, but not to impeach

And as one party may impeach the gen. character
of his adversary's wit, so may he introduce another to support
his own, but not unless his witness' character is impeached.
Phillip's 2 210.

According to Et. practice also, a party who produced
a test may by way of answer to the impeaching testimony prove
that the test has no other characterised made the same statement
which he impeached. But this is doubt in England. Gill 135 182
102 in support of the Et. rule. Contra Bull 294 1790 Phil 252 3.

The testimony of a test may be also impeached by prov-
ing that he was intoxicated at the time of the transaction. Day
26 Phil 219, not a.

An accomplice or party who is crimines, even the test
may impeach his credit, may testify against his fellow officer.
When a test his fellow in Civil Causes, he's interested as for his
profit. Still however as the Act is in one case will not prove
this fact, the interest will not exclude him. Lord
Hardy's 169 1 2 Hawk 600 g. Thyn 4 20 Bull 206 185 725.

And if an accomplice where the test or pros-
cutor wishes to produce as a test, is by inadvisery or other-
wise made a Co-deft. The test or the prosecution is Civil may
with his consent strike out his name or if it be criminal
he may enter a whole proseque for the same purpose viz.

That an accomplice has reed a promise of pardon
or reward on condition of his giving eo. goes only to his con-
tempting not his credibility but of he bound himself to testify.
It was formerly supposed that infidels, Pagans, &c. were incompetent with regard to the obligation of an oath. 1 Sam. 7:18. Psa. 139:45. Yet Coke was very zealous in support of this rule: for he had a strong impression that no person could (except a Christian) tell the truth unless by mistake.

The General Rule now is: however that all persons except atheists are admitted to testify: when not excluded by any incapacity, i.e., incapacity of belief, while not excluded by any one, unless such person is an atheist. For no exception can be taken to this of the being of God. The obligation of an oath or a judicial State of deposition. But persons disbelieving either of these are incompetent with 1 Pet. 211; Wits. 120. Which is the best case on the subject in the Book of Wits. 110:4. 1 K. 3:8. 64:96. 261:3. 367:14.

Hence infidels, believing all these doctrines are permitted to testify, when sincere, according to their own notion and understanding. Thus, Mahometans on the Old Testament, &c. &c. 114:1-115:1. 95:14. 104:35. That persons disbelieving those doctrines are not admissible.

The true question is, whether the laws offer believers in the Gospel, but whether he believes in the being of a God, not in God; it is wholly improper to enquire whether he believes in the Christian Religion. Psa. 34:11. 1 Mac. 261: acced.

The question whether he believes in the doctrine is usually decided by examining him without the previous Ohio's examination in Chief, &c. The question has sometimes been made after he has testified in Chief by way of cross-examination; but this appears to be a premium.
terms made were not supposed to be correct. A Day 36.7. 12 S.B. 259. And in Cr. Courts have in one instance at least about to proof that those who believe in those doctrines, and pay them. But that they should not hold for a false reason (that might be) not made under oath and of court might be introduced with the efficiency of "perjury. The question should be made in the previous examination. Other only.

Quakers who believe it immoral to take any oath are admitted to give a civil, without a oath, under affirmation by certain English state in civil cases, but not in criminal. Davis Cuts 4th, 7th 5 M 3 4th 2 G 14th 22 G 2.

Burr 1117, 3d 3d 12, 946, 3d 3d 159, 114.

But in a criminal case, a Quaker's affirmation in some of our affected may be read to execute himself as an avowedist for an information or attachment. Do the 1117, 9th 149. There are states in every state of the Union, I apprehend, permitting Quakers to testify by an affirmation in all cases Criminal as well as Civil.

Another of the most usual grounds of incompetency in a witness is

II. Interest

Formerly an interest in the question or issue, rendered the witness in many cases inept in general. Incompetent. See 2d Part 1043. 159. 300. 44. 45. 46.

The fixing the most usual objection to the rule being intricate it is important in the first place to understand what it means by an "interest in the Event." By interest in the question is meant the influence a litigant, from being in the same situation with the party by whom it is offered, in relation to the
fact the trial; so it is that influence which he is under hav-
ing or being exposed to some claim which may arise out of
the fact in question, to the right would not be affected by the
Verdict or Indict of the case on trial. For, he has no in-
mediate interest in the event of the suit. Phil. 35-17-
Perep 14-4-5.

Third, in an action aga. one of several Underwriters
as a policy of Insurance. Another Underwriter when ap-
pearing for both, has an interest in the question. 3 Salk.
27, 29. So if there are two separate Indictment, against
&c. for. sleeping to the same point, &c. when called on by 29.
A testimony in regard to them. I said I have an interest in the
question, for the acquittal or conviction of the prisoner
was not subject to release here.

Again, Suppose a Master being an action per-
jury, insurance arising for beating his servant suffers the
servant as a B. Ed. &c. According to 23, Standard, he has interest
in the question only, for the right of presence depends on
the same State of fact, yet they record can be of record
of there in his action. Pros. 1669; Op. 59-94. 1854-3 MIL.
40-1470. 472.

And it is now settled since the great Case of Hunt
& Baker, that the fact of interest or influence goes only
in the event of the suit & not what competency, 2 T.K. 96. 113 Wam.
2355. 2 T.K. 1496. 156. 163. 302. 9 T.K. 69. 609. 2 Do. 689. 44 T. R. 10.
589. 1 N.B. 300. 3 R. S. 369, n. 15.

The General Rule therefore is that a bit is not disqual-
ified on the ground of Interest, unless he is in a situation
the benefit or prejudice be the event of the suit. In auth. of
Pros. 144. Phil. 36-7 and 35-7 MIL 176.

Hence in Criminal Prosecution the person injured
by the offence charged is regularly a competent but for the
prosecution, then he has or may have a claim on the party.
inquiring for the Civil injury involved in the crime of Treason.

Incase of Treason the party indicted is in good quallified to be in good quallified to be in. A competent witnes or the verdict in the public prosecution cannot be given in evi in the Civil suit. Now there is no conceivable case in Civil in which the verdict in a Criminal prosecution can be given in evi in the Civil suit. The qualification then arises only in cases of prosecution for that of battery. There is no judgment apt to try the stealing goods of B. in a competent wit. Where the Judge, so in case of assault of Battery, yet after this, if not have an action apt to try for the said record cannot be given in evi nor does d the crime and prosecution as all affect the Civil suit; therefore B. is, interest is subject to the prosecution. 1. Dotties. 211-111 Dotties 55.

And upon an Indictment for Robbery, tho' by the English law the party robbed is entitled to a debt and a conviction, yet he is a competent wit. Where the Robbery. Here then he has not a direct interest in the event of Robbery? He has not in our own Country, for his right to restitution does not depend on the proof of the Robbery. 1. Web. 50-67. 116-144. 1. Dotties 296-271. Dotties 10.

And if one be indicted for a cheat. Simpson 104. 1. Dotties 94-106. Dotties 35. Contra 12. 203. 1. Dotties 1043. Two bit cases are not law.

So in an Indictment for Perjury the individual injured by it is a competent wit. for the Constitution. 1. 230-2205. 1. 199. 3. Dotties 104-4. 4. Dotties 18-10-4-R. 1. Dotties 331. Letter 193. The latter cases are not law are not law. The guard you apt these.

And in case of Perjury if it is material whether or not, the h.t. or party injured by the testimony in giving which the perjury was committed, has satisfied the judge this doing or not apt. h.t. or not. This it was formerly held that this made a difference. 1. Letter 22-35-4. 1. 577. 4. Dotties 1401. 1. Dotties. 57. 1. 22-11. not law.
And it is said that under a prosecution for Perjury on the Stat. 2 Eliz. the accused by the offence is in competent wit. Although he had half of the experience; the reason assigned is that the record of conviction on the indictment would not be true. In this case, it is a subsequent fact. But I think, this rule is incorrect. The truth of his title to a recovery is founded on the conviction, the fact of which constitutes part of the "res gestae." Phil. 88. It is further, certain, that the whole rule is in true one - that (sub.) the weight of authority is in it. 50, 116, 144. 2 Nott. 685 - Bull. 239. - Delany 1209. D.

And even persons in whom counties are given for apprehending & prosecuting offenders & convicts are competent wit. as to them. Nat. 1, 122. 2 Deo. 171. - 1 Nott. 50 116, 44, 79. - 2 Nott. 455. 9 June. 100.

And it will occur that the.J. are immediately interested in the cause, for they are entitled to part of the bounty. This is a strong exception to the general rule. But were it not the object of the Stat. would be defeated; the Stat. then implicitly makes them competent. 50, 116, 144. By O. L. they are not so.

There are other particular examples in which a wife, whose interests are competent. On an Indictment as of a debtor for clearing up a note of hand, the creditor is a competent wit. 100. 595.

So also when a public prosecution under the Stat. of N.B. the bonnmater or debtor is a competent wit. Hence the other case whether he has repaid the Bank, or the Hudson debt, or not, the it was generally held that he was not, unless he had paid off the debt, on the ground of interest in the question. 4 Burr. 2057. - 2 Nott. 496. - 7 Nott. 60. 601. 602. - 1 Caine, 60. - 5 Nott. 110. - Phil. 34. note 7. 39. 440. note 6.

But a prosecution on a Bond, etc., is entitled as a party.
the penalty is not a common law. To testify in support of the prosecution for as he is entitled & part of the accused of the law.
The has an immediate interest in the case. Sec. 215. 12 G. 96.
Sec. 222. 132. 3 Mod. 114.

In the single case of a prosecution for forgery it has been uniformly held that the party by whom the instrument was written to have been made is incompetent to testify for the party, provided the instrument suppose it to be genuine. Vide 111. c. 3. s. 17. 18.

And so subject him to a duty, to deprive him of a right or claim. And of the kind is found in the name of A. H. Then a competent and for the instrument of a genuine must subject him $10,000. This rule has prevailed from the earliest period of judicial history to the present time. 34th 179. 32d. 192. Phil. 88. 90. Dec. 10. 27. 195. 187.

The most important case is in Hardwicke 34. conforme. See contra in 44. 34. Dec. 10.

And his inconsistency extend to every individual might conclude $10,000 for forgery. it is not confined to mere handwriting. In the celebrated case of Dr. Ladd, the was indicted, convicted and sentenced for forgery on a false bill he signed Dr. Chesterfield's name, the latter was not permitted to testify, unless a false was given him by the party for favor of whom the note was made. However as a material collateral fact not concluding $10,000 more, the party in whose name the instrument was forged is competent to testify. 4th 199. 34. 197. 14. 48. 187. Dec. 10.

Upon what principle this rule has been established in case of forgery, no me I think, has ever been explained to discover. For in case of robbery, perjury, and every other case the is competent to testify. There has been much speculation on the foundation of this rule, and Phil. 48. 187. 14. 48. 187. Dec. 10.

Where is said that the rule does not generally prevail in the country. The truth appears to be that this is an anomaly.
found by the strength of Precedent & contrary to analogy but no Justice in England has had the hardihood to overrule its wgs Judge Gard.

This rule has never been kept both where the party in whose name the instrument forged would not be personally affected by its superseding it the genuine. Hence a Cashier in a Company through a forgery on the Bank. Smith & Co. 250. 1 Dec. 120. 1 2 3. Phil. 59. Pen. 169.

So also where a Banker had paid a forged draft but had struck it off his account, his destroying all claim to the payment of it if he was held to be a Competent P. D., for here also the instrument of genuine would not affect his interests. Bull 259. 2 East Part. C. 100. C. 1850. Smal. C. 57. Pen. 169.

There are several similar examples among these authorities.

But when Smith. would be all affected by it he is incompetent. The rule has incorrectly been extended to all persons interested in the greechow. E.g. an Indorser for forging a Bill, the Cashier of the good Bill has been deemed incompetent & prove the other a forger. In a Cooperate. There the interest is merely in the greechow. Pen. 169. Hald. 351. 6 Litt. 172. But the latter part of the rule is not regarded as true of said Claughton but very explicitly explained the two examples. 1 C. 132. 225. P.

But a person whose name has been forged to an instrument of any kind may be restored to competency by a release from him in whose name it purports to have been made. Such was the fact in Dr. Read's Case. Steel. C. 1840. Phil. 296. Penn. 757. But he is competent without a release. See No. 84. 8.

But in C1. the General Rule excluding the party in whose name the instrument has been forged is exploded, he is held a competent Wt. without a release. So decided in a Mo. & Pen. & Thack. It has been virtually in C. 1 Mo. 78. 3 Mo. 82. 1 Dallas. 110. 2 Mo. 869. 2 Mo. 45 (ed.) note of American Case. 41. John. 94. 3 20 2.

28. 2 Mo. 45 (ed.) note of American Case. 41. John. 94. 3 20 2.
Interest in the Event

The General

Rule is, that a party interested in the Event of the Suit is an in
cospectable Witness. 2 Th. 1. 60. 6. 26. 47. 2 Tim. 2. 17. 3. 2 Th.
496. 2 Th. 14. 5. 6. 142. 70. 2 Th. 42. 9. 50. There is already cited
2 the case of Perjury in Louisiana under the Stat. of Calzi.

What then is an Interest in the Event of a Suit? It
is an immediate certain benefit or disadvantage to one side
from the result of the Suit. This definition is too general.
I think it can give a better one.

A witness is interested in the event only when
on one hand he will acquire some certain right or
exemption from liability from some loss by a determination in
favour of the party by whom he is offered - or when on the
other hand he will incur some certain immediate loss
or liability on account of a determination in favour of the opposite party. 3 Th. 32. 4 Th. 20. 2 John. 23. 20.
4 John. W. 362. 5 Th. 257.

And generally, this, not unincidentally, the question
whether a fact is or is not interested in the event of a suit
is determined by another - whether the Record of the suit
in which he is offered one afterwards be given in evidence
after being in a Cause in which he was a party. This is
in many instances been deemed the only criterion, but I shall
the matter present some cases in which it is not so - 3 Th,
32. 3. 6. Th. 1. 8. 4 2d. 58. 4 John. 230. 5 Th. 144. Th
This is not the only Criterion. 2 Th. 62. 2 John. W. 23. 2
4 Th. 67. 2 Th. 67. 5 Th. 67. 2 Th. 67. 3.

Cases of Interest in the Event, where the Rec.
ord would be Evidence.

In a suit where A. claims a right of common
by custom, B. claiming under the same custom in a
I also, if the party offered an exit, would be liable for the costs of the suit, on either side, he in incompetent to testify on that side, for in an action for the cost, the record would be the exit, e.g., a Guardian of Minors and cannot testify for or against the defendant. Tho. 544. 1026. Gibb. 107. 1237. Cas. 12. 156. 491. 1 Wad. 190. Phil. 149.

The same rule holds if any one who has agreed in demnity, either party as to the costs for the record would be for. So also, has anyone who has given security. Assume the costs is recovered at the suit. E.g., a giver bonds upon the bond, 61 the bond enters into a reconven and is for. The Cognizance was an admissible 127. Tho. 149. 576. 11 John. 57.

In the same reason if the bail cannot testify for defendant, he being responsible for whatever may be recovered of the defendant, he cannot be subjected without the record. The bail however may be restored the certainty by substitution. 159A. 1641. 8 John. 487. The bail would be discharged on application. Phil. 47 A. 8 John. 437.

In an action against the Master for breach of contract of duty by his deputy, the Deputy is not competent to testify except on a release of the same. He is legally over to the Skip. So should the Skip succeed, as special, the record would be the exit, not indeed that the Deputy committed the wrong, but that the Skip had been subjected to such an amount. 2 St. Law 1411. Tho. 1450.

Also, in an action against the Master for an injury done his servant, the latter is not competent to testify for the master until he himself is released by the master, for the record would be an essential part of the master's cause of action against the servant. 17 B. 589. St. Law 1007. 1 Campbell, 257. 3 Itl. 576. Pea. Cas. 53. 54. 1 Cas. 94. 349.
And that a release restores the servant's competency id.
Hca. 1082 - 1 Del. 239 - Pca. 53-83.

Again in case of a Policy of Insurance
a fire on the premises of the master. The latter is not
compelled to testify for the Underwriters unless they have
released him for the sum of recovery as to the under-
writer as well as to the sum of the back assurance of recovery
as to the master. 1 Del. 239 - Pca. 166; Phil. 127; Don
Rinaldus cas. vid. 14 Bl. 308; 1 Pau. 1408; Cee 575.

So on the contrary if 1st. for Pf. who is sub-
jecting dept. to exonerate himself of any liability he is in-
competent for his interest in the same whether exonerated
or subject to pf. Guardian not a competent wit. for his
wards for a recovery by bord. or by warrant Guardians
liability to co. St. Pca. 134 - Cas. Jen. 9 Hard. 128

On this principle a grantor who has conveyed land
with a covenant of seisin a warrantee is inadmissible to
prove grantor's title in eject for by proving grantor's title
he exonerates himself from a new claim of title himself who
his own Covenant. Pca. 170 - 2 Del. 625; 3 Day 35:12; Yor
394 - 8 Pf. 523.

The same rule holds as to a lessee with cove. who
an action for rent is brought against lessee he is incomp-
stent whether the CO. be expressly or impliedly for quiet
enjoyment join the word "demise" 14 Del. 184; Phil. 774.
So the vendor of a chattel is incompetent to testify
for his vendor in a suit a ps. the latter, calling himself
(see in question). 6 John 5 - Phil. 774.

But a grantor lessee or vendor without covenent
of title or warrantee express or implied is competent a ps. for a ps. the
purchaser under him for he has no interest. The 445 Pca. 170.
So also where the vendor has covenanted to convey to a grantor. Those claiming title under himself merely, he is a constituent part, as in the case of a Common quiet claim deed or release by of the purchaser invocation he has no claim once again to the vendor of. As 1 Wm. 491. 21st January 95 -

100 - 500 -

To the inhabitants of a Town or Parish habitable the ratio for their poor, if not actually poor, are competent with for the Town or parish on a question of settlement of paupers, for the interest is contingent. Secs. if actually habit. 47th. 1764, 107 - 2 Bost. 56 - Rec. 1634 -

This last rule is laid down founded on the supposed necessity of the case of an universal in their State, Gh, even tho they are actually rated for the maintenance of their paupers. (Part of Corporation the official members &c.)

And by the brought rule as well as that of Gh. The inhabitants of a Parish are allowed testimony in support for the claim section on prosecution for a penalty, tho the penalty when recovered would go in support of their poor. The interest here is too contingent & remote to exclude them as lit.: Their forbearance a foresight of advantage from the event is too uncertain & minute. Phil. 40.

It is a rule that third persons not a party to a suit in object are competent to testify that he himself is not debtor of interest. This appears like a rule and general, that he is an immediate interest. Proceed on the hypothesis that he is an interest. So that if of the paupers he would be costs for the. John 275 - 12 P. or John. 274 -

Thus far of the Competence of Third Person. We shall then be ready for Compentence of Parties to their Shambling.

Competence of Parties to their Shambling.

As a third person is incompetent to testify in favor of his own interest, still less can a party to suit.
And the rule is so strict that the party, as a suit is a mere tender, having no beneficial interest whatsoever in the subject, he cannot be a litigant. In a suit, a guardian ad litem is not liable to costs in case of its success. In certain cases, it is contingent, so that he is interested in the event that he has no beneficial interest in the subject matter. 3 B. & C. 150; 1 T. R. 66 s.

And in cases whether plaintiff or defent, in a suit can not regularly testify, on his own side of the question, though he has no interest whatever in the subject matter, even though he is not liable when plaintiff or defendant. Where the rule is, if the record cannot be rebutted—suppose there are 10 other persons present as a band offers himself to testify as a wit to prove the event, if he will not the admitted, if he must prove his handwriting as if he were dead. 10 WH. 289-2

But the members of corporations having no individual interest in the suit are admissible to testify in favor of the Corporation. For the Corporation is a legal entity, distinct from, himself: whose interests are independent of those which he may have in his individual capacity. And he would not be liable on failure for costs individually. Thus the officers of a charitable corporation who have no beneficial interest in the fund, but merely that the others are admissible as to their constitution, for the funds of the Corporation are not liabilities.
But where the Corporators are personally interested they cannot testify. Del. Stockholders for Banking Institution. Corporator. Da. Tellbridge Co. here they are personally interested, tho' they are individually parties. 1512, 92, 176, 57, 174

It was formerly thought that indeed that where the interest of any Corporator was very minute, that circumstance would remove the objection. This conjectures, 2 Dec. 247. 1
1857, 161 &. 3. But the rule is the same for practice in its more extended - so that the slightest degree of individual interest excludes a Corporator. Bull. 248 - 57 -
118, 174 - 11 John 57.

But in this case the competency of a Corporator may be restored by defense and conduct; whether he has lost his Corporator franchise by abuse or abuse, or whether he has resigned it, for in both these cases he has lost his interest. 1857, 174, 59, 1857, 208, 1084, 432 - Am.
Q. Franklin 30, 30 - Phil. 92, 161.

The second branch of the gen. rule above is that one deft. can no more testify for his Co-deft. than he can for himself. But in the latter sounding in fact, if no evil, whatever is given as to one of the defts., he is entitled at the close of the jury's case, to a discharge or motion to make the witness for the other, yet if there is any evil, whatever after hand, however small, or even - substantial, he cannot be discharged, but the whole case must go to the Jury. 1 Lid 247, 174, 174, 1857, Bull. 187, 187, 1857, 208, 1084, 308, 220, 2282, 38, 25, 150, 57.

And if a wit. for the Jury is by mistake made a deft. the Court will on motion suffer his name to be struck out of them he may be examined ex-parte. And in case of a Public prosecution, as an information, the Attorney Gen. may enter an Ex-parte prosecution. and then examine him. for in both cases he ceases being a party. Therefore is not within the gen. rule. 1 Lid. 141, Bull. 35, 181, 181, 63.
And on an Indictment, a q.d., two as W. 13, 14, having submitted a juidice, in virtue of a conditional verdict, the other does not satisfy the verdict, it is no longer a party.

But on the other hand, B, by suffering a default, does not restore his competency. The case of B, in respect of the rule that one debt cannot testify for another Co-defendant. The 1 B. 4 Inst. 38-39. 5 B. 2 Inst. 49. A Co-defendant. 6 B. 3 Inst. 3. 7 B. 2 Inst. 49. 8 B. 3 Inst. 3. 9 B. 2 Inst. 49. 10 B. 3 Inst. 3. 11 B. 2 Inst. 49. 12 B. 3 Inst. 3. 13 B. 2 Inst. 49. 14 B. 3 Inst. 3. 15 B. 2 Inst. 49. 16 B. 3 Inst. 3. 17 B. 2 Inst. 49. 18 B. 3 Inst. 3. 19 B. 2 Inst. 49. 20 B. 3 Inst. 3. 21 B. 2 Inst. 49. 22 B. 3 Inst. 3. 23 B. 2 Inst. 49. 24 B. 3 Inst. 3. 25 B. 2 Inst. 49. 26 B. 3 Inst. 3. 27 B. 2 Inst. 49. 28 B. 3 Inst. 3. 29 B. 2 Inst. 49. 30 B. 3 Inst. 3. 31 B. 2 Inst. 49. 32 B. 3 Inst. 3. 33 B. 2 Inst. 49. 34 B. 3 Inst. 3. 35 B. 2 Inst. 49. 36 B. 3 Inst. 3. 37 B. 2 Inst. 49. 38 B. 3 Inst. 3. 39 B. 2 Inst. 49. 40 B. 3 Inst. 3. 41 B. 2 Inst. 49. 42 B. 3 Inst. 3. 43 B. 2 Inst. 49. 44 B. 3 Inst. 3. 45 B. 2 Inst. 49. 46 B. 3 Inst. 3. 47 B. 2 Inst. 49. 48 B. 3 Inst. 3. 49 B. 2 Inst. 49. 50 B. 3 Inst. 3. 51 B. 2 Inst. 49. 52 B. 3 Inst. 3. 53 B. 2 Inst. 49. 54 B. 3 Inst. 3. 55 B. 2 Inst. 49. 56 B. 3 Inst. 3. 57 B. 2 Inst. 49. 58 B. 3 Inst. 3. 59 B. 2 Inst. 49. 60 B. 3 Inst. 3. 61 B. 2 Inst. 49. 62 B. 3 Inst. 3. 63 B. 2 Inst. 49. 64 B. 3 Inst. 3. 65 B. 2 Inst. 49. 66 B. 3 Inst. 3. 67 B. 2 Inst. 49. 68 B. 3 Inst. 3. 69 B. 2 Inst. 49. 70 B. 3 Inst. 3. 71 B. 2 Inst. 49. 72 B. 3 Inst. 3. 73 B. 2 Inst. 49. 74 B. 3 Inst. 3. 75 B. 2 Inst. 49. 76 B. 3 Inst. 3. 77 B. 2 Inst. 49. 78 B. 3 Inst. 3. 79 B. 2 Inst. 49. 80 B. 3 Inst. 3. 81 B. 2 Inst. 49. 82 B. 3 Inst. 3. 83 B. 2 Inst. 49. 84 B. 3 Inst. 3. 85 B. 2 Inst. 49. 86 B. 3 Inst. 3. 87 B. 2 Inst. 49. 88 B. 3 Inst. 3. 89 B. 2 Inst. 49. 90 B. 3 Inst. 3. 91 B. 2 Inst. 49. 92 B. 3 Inst. 3. 93 B. 2 Inst. 49. 94 B. 3 Inst. 3. 95 B. 2 Inst. 49. 96 B. 3 Inst. 3. 97 B. 2 Inst. 49. 98 B. 3 Inst. 3. 99 B. 2 Inst. 49.

And if one of two debtors on a joint contract has obtained a discharge under the Bankrupt Law, he is still incompetent to testify for the other, for he is a party. The Record must show his trial at any rate. The fact of the debtor having a discharge does not put an end to the suit. 3 B. 2 Inst. 26.


So also, if in an action upon a joint contract for two, one suffer suit, he be defendant, he is still incompetent to testify for the other, for if the action fail as to the other debtor, the debt will not be able to use the debt, by defendant as such. If therefore were he allowed to give one action, to testify to defeat the action, it would be giving one for himself. The decree is c.t., but if it fail in part it must stand. 6 Inst. 24. 6 Inst. 24.

And a party jointly liable with debt, in a suit a liable solely in his stead, the not himself, a party, is yet an incompent both to testify the suit. So, if one partner alone could the other under prove shall he himself; alone is liable; for if a recross is had, the 2d. would be liable for one half of the costs. This is an interest in the case. 1 Pea. 171-170. 1 Pea. 171-170.

A release discharging the other partner for the debt from all liability for costs would restore his competency. 1 Pea. 171-170. 1 Pea. 171-170.

In Chancery, where one of several debtors, having interest in the suit, he may be examined on either side.
Here the rule in equity differs from that of Col. 3d. 401. Ent. 3d. Phil. 163.

A Bankrupt is not so confident in an action by his Assignee, Prince property in himself or debt due him, as for the Assignee to stand merely in his own place. Besides it would be subjecting him to prejudice ever tending to increase his funds of assignment, his allowance under the Bankrupt law. Bull. 41. Phil. 32. - 72. 2d. P. 167.

The same rule holds as to the credit of a Bankrupt, he cannot testify for to increase the credit would increase the dividend, besides he has the beneficial interest in it of not the Assignee. He is like a Tresury that Star 257. 650. 3 Dallas 209. 1. 429. 2. Day. 462. 5 John. 250. 427. For other instances relative to Bankrupts pro
taining creditors and P. 167. Phil. 57. 2.

A Bankrupt is not a Conspirant kept. As provoking just necessary to establish the commission, because he is interested in the support of it as the means of discharging him from his debts.

Nor can he be permitted to prove anything in support of the commission, even after obtaining a certifi
cate, for he should execute a release of his share to the trustee, for if the commission is not good, the certificate of all subsequent proceedings are void of the Bankrupt would be liable for all the debts from which the certificate was discharged him. Hence to permit him Prince his 

Suppose the commission would be sufficient to support him to testi
fying in his own parole. S. 2d. 129. 2. Phil. 139. 5 Esp. 3r. 29.

But he is competent to explain any equivocal act done by himself; or thus distance the commission, in other words, Prince that he has not committed the act of Bankruptcy (where he has no interest for without the commis
sion, he is still liable for his debt. Bull. Demping himself,
This creditor, i.e. keeping within those limits, so as not to
be
seen. By them, as by Dig. 13. s. 169. 27, an act of Bank-
ruptcy. I explain this equivocal act, he can prove that
he was detained by sickness. This explanation is admitted
of the commodious had not been established. Per 168-169,
283-

So also he is a complete act. He diminishes the estate
claimed by the assignee or his. E.g., in a case by assignee
to recover a debt to the bankrupt, he may testify to dis-
prove the debt, for this is testifying against his own interest.
Case 70 - Per 168.

Formerly I observed that the availability of the Re-
cord carrying, for or against a witness in a future suit is the cri-
terion by which we determine generally what is interest in
the Record. But this criterion is generally good it is not uni-
versal, for there are a few cases. If interest in the event,
whether the Record would not afterwards be so. In other the
way, but these should rather be called excepted cases. So
very rare are these than by Renouard, who established the
same

and the Rule Universal. Swift observes, that there is search-

by a rule of 2006. 7. 1. Bull 254-4 Th. 9,

3. In respect of an act, Arkes is a Sky by B. for taking
goods on 2006. 20. C. I. the Dixon debtor is not a complete
party to the property, the goods in himself. Here it is clear
that the verdict could not be set for or against. C. is resi-
tually acta, yet C. is an interest in the event. The benefit de-
niveable to himself, in case the Sky, should prevail of certain
interests, in immediate, which is the criterion of Ch. 13. Gilbert
in 166. Justin Buller. 2 N. 3. 13 32. - Per 47 not 52.

So also in a suit between A. & B. where C. was debtor
by B. the defendant himself, the suit in favor of B. his bailiff
the court held that C. was insufficient & prove himself to
real tenants, in that the record here sued upon was admitted to show that he had or had not title, yet he has a direct interest in the same and is a procuring party. The same is to be deduced from the act of hab. fee. (Kass. & Wood) 3 T. 100; 1 John car 275, 12 76, 796 - Phil. 48 note 830, 192, 3.

He is also stated by Mr. Phillips, that he has given no authority for it, that a devisee who takes an interest under a will is not competent to speak of the testator's sanity in an action of ejectment by another devisee against the heir at law. Phil. 37, 374, 7. Now it is supposed, that case does not come within the rule, for one tract of land may be determined to belong to one devisee, and that another cannot be said to belong to another devisee, nor can the offered with the tract have any interest in the same whatever. Thus far the State of Indiana, where it might have been otherwise, is not here to consider, Phil. 37, 374, 67.

For one or two remaining cases of interest to consider, where the record could not be used as eic, vid. Phil. 50, 123.

The next, offered is interested in the record of the first, not of that interest is balanced so that he must gain or lose alike by the termination of the said interest, or of either party to be concerned therein, for either title. Phil. 179, 154, 55.

Thus, on an indictment, as in a County for not repairing a Bridge or Road, the inhabitants are competent directly on either side, they being as much interested as the people of roads as they are in the expense of them. As att. 1 Mc. 357, 370, 430, if the laws were not here notice the slight predominance of interest.

On the same principle the acceptor of a Bill of Ex. Change is competent in an action of Es. The dreamer knew that he had no effect of the dreamer in his hands, it was doubtful.
inure with notice to the drawer, if the action by the indorsers fail of their best effort, the drawer then the acceptor will be liable to him, and if he succeeds the indorsors (acceptor) be liable to him with the drawer. So his liability is the same in either event. 1 N.B. 322—2 Phil. 480—Phil 55.

When the indorsor has a remedy against either of the parties to an action, the difficulty of enforcing which may be a failure on the part of the drawer, or a circumstance which renders him ineffectual, it was formerly deemed safe to exclude him, but the old rule has been exploded. Phil. 55, 6.

3 Phil 579, 2 Day 399. But all these authorities are in support of the old rule except Phillips who cites no case in support of the new rule. The claim of the party is here according in either case it is to exclude his testimony on the ground of interest would be speculating dangerously.

So also in Assumpsit for money paid for the use of the money, the Captain of the ship is competent to prove that he paid the money for the use of the owners or debtors, his liability is the same in either event for if he had paid the money over, his employer he must be liable for it he come one. Let the case go as it will. And on the contrary if it has actually paid it over he cannot be liable to another. 7 T. 1447 note e. 1 Campb. 403. 2 Caines 77. 861. For analogous cases, see 2 Rolls 625—3 Phil 382—13 Id. 175.

So also in Assumpsit at Ast. 1 st, how had he? the money from debts, for self, was held competent to prove the fact, that he had not. It is against for self. His liability being the same in either event of Phil. 412—Phil. 165.

If however the act, would be liable in one event to a greater extent than in the other, he is not competent to testify in favour of this balance of interest, i.e. on the side on which his interest predominates let it be speculating for the other party at that interest. 11 T. 144.
There are certain exempt cases in which a Party to a suit is permitted to testify in his own favor. These are exceptions to the rule at O.S., care very rare.

There is an action by Stat. of Manchester 13, &c., alias Newton, alias Stat. of New & Say, with 40, the Hundred the Party robbed or self, is competent to prove the suit of robbery & the amount of loss, unless proof satisfactory otherwise is made out. This is from necessity; Noll 66, fl. 57. Phil. 57. 147.

This is a species of case, which must be admitted, er's as robberies are generally committed in unfrequented places, the action would be defeated 99 times out of 100.

As a further fact which in common proceedings are provable by other case, the Party robbed is not competent to testify, fl. 57. The common precise that the place where the robbery was committed was within the Hundred and fl. 57. 57 the may state the place without reference to the Hundred Hard. 83. Phil. fl. 57. Phil. 57. 147.

So also in an action for a Malicious Prosecution, the case given in 1st on the Original Criminal Prosecu-
tion may be proved in his case defense to those who heard his testimony. Malicious Prosecution is an action complicated from the manner in which it arises, from the nature of the parties of the rule is founded on a necessity arising from the peculiar circumstances of the action, without & rogers would seldom be the best to notice for prosecu-
tion would be deterred from performing their duty; 6 Mod 14. Phil. 57, fl. 57. 147.
But a party is allowed sometimes by Stat. to testify for himself. The Longish Stats. on this subject are local & hence no influence here. But in the U. Stats. (where there are similar provisions) I will refer to two or three cases under the U. Stats.

By Ch. Stat. both parties can testify in an action on Bank debt. So in account v. an action by recover & Countersuit money & other Bank Bills. So also in action for a secret Assay. So plf. in an action in the Stats. of Bastardy & in Rs. 5,000 prosecution for theft. Testify to the very identity of his property, but nothing further. So deft. in Ch. may testify in a del. fact. or a lett. follows. So also in case of Treason on the night before the party accused may testify for the purpose of giving a satisfactory account of himself. St. Ch. 99-101. 90-546 660-28 Depl. 1165. 81-1088.

Upon a similar principle of necessity v. in the case of Trade & custom by usage of his service. 25 556. Agents & servants becoming interested in the course of their employment are competent for these principles a master. 25 157. 641-7. Phil. 94. 7 926. A factor may prove a sale of goods for his principal & charge the vendee with the price of them. He, he himself, is entitled to a commission out of the proceeds. As far as his relation can actuate a bias in favour of his principal, his credit with the buyer may be diminished however 25 126 46-10 Mr 248 25 593 25 Bull. 249. Age. 165.

And in general, anyone who contracts with another for another by proper authority is an agent with the rules. 25 153 597 105 94 167 age. So also an agent is competent & sworn in favour of his principal a payment of money or delivery of goods to his principal. Yet this is Done for himself. So if he has paid the money he is, over improper use, liable to his principal. This is also an objection to
place his credit. In cap. 129. Bull. 437-129. 35. 559-90. 35. 6. 129. 647.

is where an agent had paid money by mistake or overpaid, he is competent to prove the fact in an action by his principal to recover it back. 47. Clocks in a store. Sala. 647. 3. 3. 144.

But the rule is otherwise as to acts of servants not done in the regular course of their business which are claimed as violations of their trusts or duty. In action but to recover money paid illegally as in gambling or which he has fraudulently squandered away, he is not a competent witness unless his master released him from liability. In cap. 129. 3. 199.

So also in an action but for an injury done by the negligence of his servant, the latter is not a competent witness unless his master released him, it was not an act done in the discharge of his duty. Sala. 650. 3. 141. 129. 559. 3. 3. 139. 129. 196. 3. 25. 18. 3. 99. 3.

So also in an action on a policy of insurance for the damage of the Master or Captain, the master competent to testify for itself or Underwriters without a release, because if they are subjects he will be liable over to them. He is therefore directly interested to exonerate the Underwriter. 35. 3. 146. 2. 25. 18. 3. 99. 3. 3.

And an agent when competent to testify shall be competent to prove his own authority, but if his authority has been conferred by a written instrument he cannot regularly testify of same it without producing the written instrument. In cap. 156. 3. 25. 18. 3. 35. 96. 3. 196. 196. 196. 196.

It was once held that if a wit. supposed himself under an honorary obligation, he is not a legal one to indemnify one of the parties even if he was incompetent testify in favor of that party. Sala. 129. 129. 129. 129. 129. 129. 129. 129. 129.
This obligation is so uncertain and variable, that even if Justice cannot recognize it as a motive of conduct, or of a witness’ sense of honor to so strong as to oblige him to break only the truth in one case, or if a sense of honor be what he needs, then he is no longer interested. Undoubtedly, however, the influence created by such an honorably obligational witness would go far to discredit and to this testimony.

To pursue the subject of interest in the event. It had this interest to exclude testimony must hence be ascertained at the time of the fact in question, or have accrued afterwards upon operation of law, or the act of the party who claims the benefit of the testimony. Per 157-0 Phil. 100. I will first explain the Rule three points and its defects.

According to this Rule an interest by a witness’ own act without the concurrence of the party who produces him. He does not disqualify him because otherwise, by any voluntary or unnecessary act of his own, he could at any time make himself incompetent to depose a party of his right, who was justly entitled to his testimony. If a witness for Bond or other contract makes a Bet with another person, that the claiming will proceed in his absence, he is still competent to testify it is compelled by statute for the objection to him must the interest of the other be interested if the Bond was not make no difference, if the objection had any weight whatever. Then were it not for this rule he might deprive the party of his testimony at any time by wagering the debt or on the receipt of the said. Bell 290- Phil. 100. Skinner 556.

Another example: If a Prosecution or other person previous to conviction of a third person lays a wager that the latter will be convicted of a crime, he is still a competent wit. on the trial of the for the same reason. Ib. 115. Smith 145. Smith 1152- 5 & co. 152. In these cases it
It will be observed, that the interest did not arise by operation of law, nor by the act of the parties claiming the testimony. And it has been determined by Lord Hen- mon—Exs. Ashurst, Buller, Rowe, that where a policy Broker had procured B. D. underwrite a Policy of their underwrite it himself. B. D. could not be thus deprived of his testimony. Kenyon & Ashurst lay down the principle that all interest acquired by the takers upon an act after the time of the act in question, is not such to conclude him. It would require the way the Lord and consider the Policy Broker interested in the case, this rule is the ground on which the argument to B. Henyon & D. proceeded. Therefore (cmt.) he might have been admitted without the assistance of such an argument. P. 307. 27. Phil. 100.

This latter opinion which constitutes one ground on B. D. I think is carrying the rule too far; for I apprehend that the rule extends only to those cases in which such act creating the interest is either fraudulent, i.e. meant solely to deprive a party of his right to testimony, a merely gratuitous, i.e. intended to idle. Case of the Pet v. Maltese and prosecution, but the act of underwriting which created the interest of the Policy Broker was honest, though liable—whether fraudulent nor wanted it, in a Court. 300. Phil. 100. It is decided that an interest honestly acquired renders a writ incompetent. For the one underwriter was paid on the policy, another paid over his subscription to the B. D. present, this having obtained a promise from B. D. to refund it in case his actions and the others underwrote failed, where the B. D. offered had honestly become interested for he did become so to avoid a lawsuit, the court held this incompetent, and thereby actually denied the principle above stated.
On the other hand, a third person cannot, by voluntarily acquiring an opposite privilege, himself from testifying, e.g., by subscribing a deed. He would become bail to the obligee, he is still competent to be compelled to testify as to the execution of the instrument in favor of the obligee. P. 165. Yld. 121. 465. 219. 666.

But where the bail of one party becoming bail acquires knowledge of the fact in question, he cannot be compelled to testify. For he was interested at the time of the fact in question, took place. Admit.

But where a subsequent interest in the event is cast upon him by operation of law, he is incompetent to testify in support of that interest. E.g. His apparent interest in a subscribing party to a conveyance made to his ancestor, he cannot testify after acquiring an interest, to the execution of the deed. So also if the third bond is appropriated an bond to an obligee. He cannot afterwards testify as to the execution of the instrument, because he becomes interested by operation of law to the interest of an ancestor, or by any subsequent or declaratory act of his obligee. 1 P. 11. 269-270. 219. 699. 34. 37. 37. 27. 38. 165. 366.

So where an interest in the event accrued with or concurrence of the party offering the fact. The latter may testify for the opposite party, the rest for him to show that interest was created. E.g. If subscribing party, mere obligee, he or she cannot testify for obligee. Thus the mayor of the city of the instrument as for obligee. 2 P. 165. 668. 165. 668. 27. 237. 257-65.

I have observed that as a general rule, the interest to exclude as a last must have existed at the time the fact in question took place. I now observes, that if 

Mist. Continue till the time of the trial,
Hence the removal of interest of court, before trial regularly restores his competency. E.g. If a bill of sale be at

D. in the hands of a legatee & he releases his signature before that time of trial, his competency is restored. 1Burr. 6 33. 7:4. "A bill of sale is the leading star of vindication & Restraining the mov'ret. the


There has not been a diversity of opinion on this the question as affected by the Stat of Englds. E. & A. 21. 22. (Bra 1853) D. in the hands of a legatee formerly held that because the

construction of the Stat. of Englds. did of an attaching bill of sale is decisive & before trial releases his interest he is incompetent. But latter decisions hold him competent -


And now by 25. Stat. Geo 3. The legatee is to a subscribing bill, as in the case last stated, 160 & therfore as the legatee is not interested he is competent. Because the only resides a purpose of provision therein. This Stat is declaratory. P. 14. 12. 12. 7. 16. 3. 3. 16.

D. make the same provision where the legatee has been paid & his legatee before trial or have released their interest or refused to receive payment or tendered before trial. P. 20. 121. 23. 23. 4.

It follows from the last General Rule which requires a continuance of interest till time of trial, that a release to, or from any interested bill, or any other means by which he is divested of his interest at the time of trial will restore his competency. 1912. 6th. at 12. 14. note 50. E.g. to the trial of D. in the hands of a forgery & he releases his signature to the hand of a spurious note. D. Chesterfield the supposed D. named in whose name it was forged, made him a competent D. to prove the forgery of the Handwriting. The rule excluding the tes.
timing in this case without a release is perfectly anal-
agous, as the interest of the Deceiver is only in question.

So also if the fact is in whose name the instrument
is forged has before trial on the indictment as also the
said instrument by virtue of law he is competent to
prove the fact, for then that interest in the question (which
here likewise is) is defeated. Bull 139. Pea 169. And for ana-
logous cases see N. T. 75. Phil 97.

So if a servant for whose neglect the Master has
been sued, is released by his Master he is competent. Pea.

So if a Certificate of Bankrupt also has released
his claim to the allowance, is a competent wit. & proves auth.
ity his own, i.e. to increase the fund. Bull 143. 3 Phil 149.
Phil 75. 69. vid ante.

And where a release or payment to a legatee is- the
not accepted by him, return him to competency, a tender on
his side, thus there be a refusal on the other side, have the
domino. Dpl. 1st tender payment to a legatee or devisee; before
trial, who refuses to accept, he is restored to competency &
may be compelled to testify by Dpl. Thus the rule by which
his name was subscribed as a legatee was duly executed.
Pea 158. 9 Dall 139. 3 Phil 35. 1 Burr 417.

And this Rule extends to all the analogous cases
supra. of a Servant for whose neglect the Master is sued
is offered a release is required. So also if a release is tendered
only to a Bondsmaid i.e. for they retain their interest by their
obstinate.

But if a person give a deposition while interest.

as in the case of that interest is afterward removed his de-
position is inadmissible & he may be compelled to testify.

Dennis 114. Phil 57. 9. Dpl. 1st Reward gives a debt before trial af-
ferwards he is restored by substitution. The Dpl. is inadmissible.
A person is always competent to testify as to his own interest, where it is an interest in a cause in which he is not interested. But I have now closed my observations on this subject.

But persons are sometimes incompetent by reason of the relation in which they stand to one of the parties. Independent of the cause of interest, third persons generally cannot testify as to each other, even if interest is not the foundation of the rule. For if were they might testify as to each other. It is founded on the domestic relation of husband and wife. 1 Bl. 236—1 Bl. 443—4 T. 679—Vid it. "Baron & Cheese" post.

Counsels, Solicitors & Attorneys are not competent nor permitted to swear to any confidential communications by their clients in relation to any suit pending here to the ground of the relation between Counselor & Client. 1 Bl. 234—4 T. 432—753—Vid 197—60 M. 124—Pa. 176-7. For are any of them competent to swear in a cause a paper committed to them by a client in another or 5 Bl. 30, 70—2 T. 499.

The rule is the same if the suit is abated or the Attorney or Counselor is dismissed. If then he has been employed in another cause he cannot testify in the latter if communications made to him in the former, unless his client waive defense with his right to every 4 T. 545—60—7

For can he testify to facts thus disclosed upon a trial of a subsequent suit between third persons. These rules are not founded on any privilege of the Attorney but on the right of the Client. 1 Bl. 695—4 T. 459.
The same rule holds true as to interpreters between a party and his counsel. He is a more rigorous, etc. 77-3-4 Phil. 175. Ps. 23. 110.

But the privilege of the client is confined to communications respecting professional business made during the relation of counsel to client. Hence an attorney is not entitled to the professional business of his client, which is not regarded by the law. 1 Pet. 13. 7-4 Phil. 173. 120.

And if the client waive his privilege the attorney is admissible as a witness for the opposite party, for the attorney has no privilege of his own. Phil. 169.

This rule which confines the privilege strictly to communications made between an attorney and his client has been carried so far that a party who has been consulted by mistake on the supposition of his being an attorney at law has been compelled to testify as to communications that were made to him. This is carrying the rule to an extraordinary length. Phil. 103-8 Sep. 112.

And where an attorney communicates with the adverse party by the direction of his client it was decided that testimony in regard to what passed might be proved from third persons who overheard them, though not from the attorney. 3 Conn. 10. There Mr. Good's thinks that a clerk or student in a law office could be compelled to testify in regard to communications from client to attorney in his hearing. 1-27. Phil. 103-105.

The rule extends only to the three cases of counsel, solicitor, or attorney. So that physicians and surgeons are made to declare, even confessions made to them confidentially in the line of their profession. 1 Pet. 75. Ps. 23. 77. Ps. 23. 30.

And where a confession has been made to a Roman Catholic Priest, according to the practice of the Roman Church.
...he may be compelled to testify to the facts communicated to him. Psa. 100. - Psa. 109. - Phil. 103. - note. Persons have thus often been convicted respecting their own affairs; even tho' they were made under the most solemn injunctions of secrecy. Prov. 20. - Psa. 109. - Psa. 109. - Psa. 109.

It has been determined that a state of the Revenue Commissioners, who had taken an oath of office, not to disclose the secret, he should have in that capacity, should be compelled to disclose them in open court, on the ground that to such an oath, the case of giving one in a case of justice or an implied exception, or at all events, if there were several implied exceptions, then the oath was obligatory, or an judicial.

An Attorney may be examined as to his Client as to facts known. Shuld be held before he was retained. Otherwise the party might at any time deprive the other of the benefit of his Attorney's knowledge of the facts in question, merely by retaining him. Psa. 109. - Psa. 109. - 2 Pe. 104. - 4 Pe. 107. - Phil. 104.

So where an Attorney or Counselor has attended an instrument to which his Client is a party, he may be examined as to the terms of the instrument after his Client was the instrument after he was retained, for here is no communication in "professional confidence". It was made to the Attorney, and he must perform his office. Con. 104. - Psa. 104. - 4 Pe. 105. - 5 Pe. 105. - Phil. 105.

So also an answer in Chancery when produced in court, a party, his Attorney or Counselor who was present at the time may be called to swear that he did make a oath to such an answer, here again there is no confidential.
In a still later case however, the case of Jordan v. Eashbrook, this latter rule was denied. It was determined that no such rule holds even as to negotiable instruments. 7 Pa. 667. Pearson v. Eashbrook. 7 Pa. 656. Rithcr & Co.

In the practice of the several states, this question has been decided as many ways as there are suits to it; perhaps more. Some adopting Jordan v. Eashbrook - some Walton v. Shelly, & others a little of both. 2 Calla 179. 12 Pa. 179. 10 Co. 175. 11 Pa. 176. 82 Pa. 184. 149. 7 Pa. 199. 86. 180. Where the subject is fully discussed by Judge Swift.

The question, then, is often for discussion both on authority of principle.

It is granted in all these cases the induces (or party disinterested) would be admitted to testify to subsequent collateral facts, so that it is contended that he cannot frame the instrument originally void; the difference is said to be arising in this that he would not have signed if he had known of any illegality in the original stages of the instrument; but that he did not have been induced to sign by subsequent act. 50 Pa. 53. 386. 26. 29. 27. 11 Pa. 410. 66. 211. 16. 18. 190. 111. 204. 11 John. 102. Etc. The rule appears taken in the case of Jordan v. Eashbrook has been adopted and this must confess it to be the better ground on principle with Bills of Exchange notes.

How to take advantage of Incompelency.

There are three ways viz. I. To be "Voire Dire." II & III. By proving his Interest by other bill. 1, 2, 

In his own examination when sworn in Chief. Phil. 56. 91. 36. 106. 1502. 179. 106. 1079. &c.

Formerly advantage could be taken only in the two first modes. But now he may be examined as to facts of his own interest he discovered at any time, time, during the trial.
The Rule is the same in Chancery, 2 Vern. 163.

On the "Voir Dire" no questions are proper except such as go to the competency of the witness, questions going to the credit of the cont. are of course irrelevant. 1 M. P. 47–200.

But on the Voir Dire, he may be interrogated as to facts executed by him which create an interest in him, without producing the papers. This is contrary to the law of ed. in gen. on this subject. Yet the rule differs on the Voir Dire & the reason is that the party objecting is supposed to be unprepared to show his incompetency. Pa. 107.

An objection arising from the answer of a witness on the "Voir Dire" may always be removed by his other answers under the same oath. E.g. If he says he has concurred to indemnify Def., Def. may ask him if he has ever given him a release. Phil. 96. And if he may testify to a written instrument not produced & show an interest in himself, he may in the same way show that his interest is removed. 1894. 162. 4; pear. 267, 285; Phil. 97 (Pa. 267).

Part if the interest of the deft. is prove by others. If he cannot remove the objection by testifying to a written instrument. Without producing it. The reason is that in the former case the party objecting. Him makes him known. Hence his incompetency is therefore cannot object to his evi. But here he will be others. Pa. 107.

If a release he gives to a deft. for the purpose of restoring him to competency it must regularly be produced. Pa. 107.

The decon of a deft. before trial that he is interested in the event is not evi. Prove him so otherwise a liar might at any time displace a man of that testimony. This distinction is often overlooked by young practitioners. On this ground defts. are often excused in our lower Courts. 5 Hs. R. 261; Phil. 96.
But proof of such deeds by the party alleging them is good evidence, if a witness on whose deeds may be admitted to co-admit himself, &c. (R. 497).

If the party objecting &c. a writ examine him at the "Voire Dire," he cannot afterwards call other witnesses in evidence, unless he has elected his first. He cannot impeach him. (Dall. 272-11; Mod. 193; Pa. 108-10; R. 219.

The same rule holds where a writ has been examined as to his interest or the examination in chief. This question has never arisen in England, as I know. (Dall. 396-274.) The reason of these rules is that the law allows a man his elections of the three modes of objecting to a writ. But he can take only one of them. (Pa. 108.)

But the party objecting cannot call on other witnesses after one has been examined after examining him in relation to it; yet he may call on other writs to show him unworthy of credit. (Dall. 108; Pa. 108.)

Manner of Compelling the Attendance of Witnesses.

The ordinary mode of compelling the attendance of witnesses is by process of subpoena ad testificandum. (Pa. 101; 1 C. 339.)

And if a writ is in excess of the deed, or document, he may be examined by a special issue called a "disposition." &c. produce it on trial in court, which is then called a "subpoena duces tecum." (Pa. 12 - Pa. 99; 20.) Under which the last is binds the second, or the issuing the writ, into court, or the party subpoenaed is entitled to a "hearing on the merits," or in a question which may be afterwards discussed at last. (Pa. 12.)

* A subpoena is not necessary if the will appear without one; & if he voluntarily stipulates a disentangled in his premises are allowable some as of summons. (Pa. 20.)
And a bill is never completable without any writing, which will expose the reason, to which will subject him or his claim (contra c.s.) the last branch of the rule. But the Missouri doctrine analogy. The law is for the test 46, sec. 3, extends to produce a writ, only before the trial. The question is not so related to it. It is therefore, whether the trial is here adopted. U.S. 405-414. 4281.


As to Mode of Serving a Subpoena, vide Phil. 4. Pea. 192. 3d Ed. Charles 392. The bill is served by producing or procuring a certificate of copy to both in England. It must be done within a reasonable time, which in every case is to be ascertained by the peculiar circumstances. S. 510. Pea, 192.

In England, the subpoena always issues from the court wherein the bill is drawn and is served generally by the sheriff in the United States. In the Commonwealth of this State, may issue a subpoena, returnable before the Chief Justice. St. Ct. 1691. Pea. 192. 3d Ed. 414. Dec. 1894.

A bill the subpoena is not bound to appear in civil cases, unless a reasonable sum of money is deposited, or services in going to, returning the papers. The law of trial is transferred him. This is a condition implied in the subpoena. S. 1150. 5th Ed. Pea. 192. 3d Ed. 414. High in a married woman in the United States, since the same order to produce and return. Phil. 1145. 1146. After service of subpoena is a tender of services, he requires to attend able to an action on the case for damages in favour of the party, whose summons him, or to an attachment for a Contempt of the Court, or an action on the bill of law, for the service, with a service to the party aggrieved, which is also recoverable under the law, under the attachment which is principally used in England, he is also joined compelled to make satisfaction on both part of the action.

The Process in Ct. to ensure the attendance of a Wit. is to issue a Capt. ex audit. directing the Off. to arrest hisiring him before the Court. Testify. A Capt. in England is & susp. him, tho' in Ct. we doubtless may also use this Attachment.

At Ct. there is no provision w. to give a Wit. the privilege, as in England of being suspended, if the Witness' rank in life. In Ct. reasonable costs & charges is required, vid. St. 31. 603.

If a prisoner is in such a situation, that he cannot be called to testify on a board a Ship, whose Officer will not permit him & go on Shore, a Subp. is ineffective, then the process to compel his attendance, is a Subp. of habeas corpus at testif. Jenr. 672 - Foster 396 - Burr 1440.

If however the 1st. is a prisoner of War, the 1st. of Habeas Cor. will not regularly issue to compel his attendance, without the consent of the Executive Government. Day 417 - Pea 148 - Phil. 151.

The mode in Criminal Cases will next be considered. And 1st. By Subp. 2dly. By a Rec. before the Justice or Coroner, who takes the information. This is affected by requiring the 1st. to enter into a Bond for a given sum to appear & testify, if then if he does not appear he goes into his recog. or if the 1st. refuses to enter into the recog., the Officers may commit him for a Contempt. 2 Tel. 201 - Phillips.

In Criminal Cases also it is not lawful to appear for the public without any previous tender of expenses, by the C St. there is no provision made for reimbursing their expense remedied by T. 2 & 17. G. 3. Similar Stat. in Ct. Phil.d.
The person of a defendant attending a trial in a cause irregularly protected from arrest the protection holds "unde mandato or redendo" for a reasonable time. 2 BL R 1715 - P 193. Phil 6. 7.

And it is not necessary to the violation of the writ. That there is a real grave error. That there should be any subpoena served upon him. Convenience of the reason which occurs in other cases is the same here. 2 Do 236 - F 14.

The same protection holds in favour of a defendant attending before an officer or another State. The proceedings under authority. 2 John 294-294. The rule is also extended to situations and the officer of the officer. The principle. If the defendant not appointed by a Rule of Court as these domestic tribunals are so favourable to Justice v. 2 BL R 213 - Phil 6.

But to oblige a defendant to attend by Subpoena, he must have been served with it a reasonable time before trial. A reasonable time is allowed him in going to and returning from the place of trial. To what constitutes a reasonable time the practice of the Court is not very strict, depending upon circumstances as health, distance, etc. 2 BL R 1715 - extra 1613. Fact 16 - Phil 6.

And if a writ in such case is arrested in violation of the defendant's privileges, the Court will on Motion discharge him. Habeeb Corp P 193.

It is usual and convenient for a defendant to obtain a written protection from the Court, convenient for any officer, without it he might arrest him. The unnecessary. If he were arrested & brought back to his own home, the Court would discharge him.

When a defendant resides abroad, he may under an order of the Court, be examined, provisionally, "de bene esse", on Interrogations before Commissioners. But a Court...
of law cannot issue a commission of this sort on his death but the consent of the parties. 2 Tindal, 812. Greenhill, Philp. 18-3723.

And if at the time of trial the defendant is beyond the reach of process, the deposition may be read, not if he remains at home or returns at the trial. Hence the deposition is called de bene esse, i.e., de bene provisionally taken. 1 Campb. 73, 306. 397, 92. Cavigy, 1741, 1803, 211. Subject explained Phil. 15, 16, Vid. ante 452.

Depositions are not admissible as a matter of right at Q. B. unless on Chancery matter. Where the party whose deposition is to be taken is the only one. Depositions in Court of law are only to be read by consent, and in cases of accident, the Court will put off the trial. Where two parties procure a commission to make depositions.

But by Stat. 46 Geo. 1st, where the party whose testimony is desired is bound on a voyage at sea or lives 20 miles from the place of taking or is removing, or is confined in prison, or is aged or infirm, such deposition may be read in court. Stat. 46 Geo. 1st, 397.

In Q. B. Porcupine is assignable, as well on a deposition thus taken as on testumony in voice. Stat. 46 Geo. 1st, 397. Where is it at Q. B. on a commission issued by a court of law? 1st H. 1st, 1760, 241.

If a deposition is taken by the party for whose it was granted or by his Attorney it is an admissible deposition. In Q. B. subscribing 15th 7th Edw., may he sworn before a magistrate thereof. It is struck on the back of the bill, is fee as well. 1st H. 1st, 1760, 241.

But depositions are not admissible under the Q. B. Stat. in Criminal Cases. By construction given if the act be done, or even if they are admitted in Q. B. True, because if no corporal punishment could be inflicted as also on the Stat. of Bedlam. 1st H. 1st, 1854, 387, 1st H. 1st, 1854, 387, 114.
And depositions taken by justices of the peace in other States in the manner prescribed by such State are admissible here, even though by the law of that State a justice of the peace has no authority to take the depositions.

The Ch. S. L. & C. Co. Courts are empowered to take depositions of parties going abroad and in vacation, any judge of such court or of the county may do it. (Sec. 115.

Before a deposition is taken under Ch. law, notice must be given to the adverse party or his attorney, provided either or them reside within 20 miles of the place of capture.

Stat. 127. 1st 87. 7th 74.

This notice is due in writing, to be left with the party or his agent or a copy at his place of abode. The same rule holds as to depositions taken out of the State, if the party or his agent are living more than 20 miles from the place of capture notice is necessary. (Sec. 1. 2d. 12.)

And left's warrant is also to be notified in Ejectment, or Decedent. 2d 76. 85. for they are entitled & defend.

If several parties are joined in a suit, a deposition can be used only against such as have been notified. When notice is necessary. (Sec. 100.)

Every deposition under the C. L. 1st addres.

Sec. 115.

& the Court, i.e., by way of superscription, & unless it is delivered by the magistrate himself, it is blue sealed, on his name. The must certify & seal. Stat. 127. 87.

and as to the conclusiveness of the certificate see vid. Sec. 115.