May 26th 1794 Mr Nicholas Bogart his
lectures May spring begation

Lecture 1st on real property

Definition of the term real property.
The subject of real property are of two kinds,
viz and Incorporal tenements

Land in its legal sense comprehends
every thing that adheres to the soil, such as hav-
es trees and emblements, mines &c. ev-
ery thing above or below the land. Corpore-
al tenement is a term of the same con-
tent with land.

[illegible]

[illegible]

Real Property

Lecture 2nd May 27th 1794

Fee simple. Fee in its original signification
is an estate held by some superior, on
condition of rendering land service
on fee in fee simple is an absolute
property of the land
and is at his pleasure to dispose of, either
by deed during his life, or by devise to take
effect after his death: and if not disposed
of is descendible to his heirs general.
In technical terms a deed, an estate
in fee simple is created, is to his heirs
forever. By the English law these terms
are indispensible in a deed to create it
But in wills a fee simple will may
be created in the devisee without these
words heirs forever.
The term heirs makes a heir or an
intent term entitle the grantee, neither does this phrase give the heirs any
to the land. But the term heirs any expresses
the quantity of interest the grantee is to
take effect. If an estate is given to a
man forever, this is only a life estate, if
to him and his children, this is only an

Real Property & Fee Simple [illegible]

This right in an estate is created by the words heirs & for ever, any attempt of the grantor [illegible] would be repugnant to the qualities of a fee [illegible] granted, as [illegible] estates, would be in vain. Should the grantor attempt to restrain the grantee from [illegible] such attempt would be vain, for it is an essential quality of a fee simple that it vests in the grantee the power of [illegible] so a deed to J.S. and his heirs forever, remainder to N.L. and his heirs; such remainder is [illegible] for by the grant [illegible] of the estate vests in J.S. and is descendable to his heirs. Vol. [illegible] page 71.

It has been already mentioned that a fee simple may be created without the words [illegible] It is required [illegible] words [illegible] [illegible]

The rule in the interpretation of the [illegible] is always to be construed with the [illegible] intention [illegible] the rules of law. [illegible] necessary of create a fee simple, [illegible]

Real Property Fee-simple

Where as the intention of the testator is not opposite to a known established rule of law. The [illegible] rule is not applicable to the same [illegible] but [illegible] the [illegible] of the estate is changed. As for instance the devise of land in fee simple [illegible] the power of the devisor to dispose of it: but then the intention of the devisor be as it may, he cannot alter its quality by any restriction [illegible] by law [illegible] estate passes the [illegible] [illegible] by will [illegible] be made descendible to heirs, be the intention of the testator [illegible] so [illegible] [illegible] will be entailed, no [illegible] can alter the law. [illegible] whatever else [illegible] of the power of the testator to do, let him use [illegible] in the will, no [illegible] shall be effectual. But where the thing plainly intended to be done is in the power of the testator to do, [illegible] the intention [illegible] although [illegible] technical [illegible]. For instance can a man

[illegible]

Lecture 3rd May. 28th 1794

Fee simple. how created by devise
it was mentioned in a former lecture that
the quantity of interest needed in a devise
was to be governed by the intention of the
Testator or where words were made use of in-
dective of the intention. [illegible]
been adopted [illegible] the devise
[illegible]

[illegible] fee simple. [illegible]
[illegible] that he
[illegible] the devisees relate, [illegible]
power to sell be effectuate [illegible]
[illegible] of the Devisees, by paying the rents;
but a simple [illegible] would [illegible]
[illegible] to B. [illegible] [illegible]
[illegible] possession. But had the simple power
[illegible] made payable out
of the annual profits of the [illegible] this has
been [illegible] [illegible] willing [illegible]
[illegible] the legatees [illegible]
[illegible] he wants all any estate [illegible] fee,
[illegible] only all the [illegible] that [illegible]
but all the [illegible] [illegible]
[illegible] from the estate [illegible] fee simple [illegible]
[illegible] Bot of words of locality are annexed or
connected with [illegible] [illegible] an
[illegible] of [illegible] [illegible]
that is a [illegible] [illegible]
[illegible], and to this point there are contra
dictory authorities [illegible] [illegible]
[illegible] 38 and Peer William 624. [illegible]
[illegible] Pitfell [illegible] fee [illegible]
[illegible] 418 [illegible] 36

Wherefore, and considering with
as the rule for ascertaining the
Take same [illegible]
all agree, and [illegible]
[illegible] mentioned [illegible]

[illegible] My effects real and personal [illegible]
[illegible]

[illegible] I am worth [illegible]
[illegible] My [illegible]
[illegible] confirmed [illegible]
and will. 4th Dec. 1730 All my estate in
[illegible] of [illegible]
[illegible]

[illegible] and his heirs B. [illegible] in
the life time of [illegible] the rest of estate [illegible]
[illegible] there being no such person
[illegible] and [illegible] the intention of the testator was to point
out some particular person, by the name
[illegible] known and not any one who might
[illegible] to be born [illegible]
such intention shall prevail, and devise to
the heirs of B. who was then alive, to wit C. B.
[illegible] the testator
[illegible] J. Raymond 1730

In any case of a devise to the heir of a person living is not the presumption that the testator meant the heir apparent.

Of Estates in Tail. Words are used to make an estate tail. The technical phrase is heirs of his body. These words are indispensible to create an estate tail by devise. Co. Lit. 20 to 27th. But in a will the intention of the testator prevails the same as in the creation of a fee simple, and the technical term may be dispensed with. If an estate given to a man and his heirs his sons &c. he then having issue and if he has no heirs of his body then the estate reverts back to the original grantor. The original fee simple estate is to be deemed a fee simple. But by the construction of courts the intention of the testator was pretty generally defeated, which produced the statute de donis in the 13th Edw. 1. which directed that the intention of the donor should in all cases be pursued. This revived the ancient feudal restraints upon alienation of landed property. The obvious design of this statute was to preserve all the landed property in the hands of the nobility. But this statute was evaded by a common recovery, of which see Black. com. 117. 271

Tail general is an estate to a man and his heirs of his body, without any limitation with regard to the woman, as specifying a particular woman in whose body the heirs were to be begotten, which limitation creates a tail special. When an estate is given to a man & the heirs male of his body the person to take must not only be a male heir, but also must be the heir male of his body by the same woman. Co Litt 25

[illegible]

[illegible] tail [illegible] the [illegible] allege [illegible] deceased, and the [illegible] entailed [illegible] will be [illegible] the [illegible] tail may be [illegible] a woman [illegible] [illegible] by the [illegible] for all [illegible] [illegible] is not a fee but will [illegible] [illegible] all the [illegible] he has [illegible] the [illegible] his life. But on his death the title of the grantee is [illegible] [illegible] [illegible] [illegible] he [illegible] [illegible] allowed [illegible] [illegible] [illegible] [illegible] only

[illegible] particular words of limitation. For
[illegible] the remainder may only
[illegible] the first original grantee, and therefore
[illegible] reversion has been the fee simple
of the state taken by the grantee
[illegible] the in a life estate. But if grant be
made to remain in special tail, and the grant
[illegible] dies leaving no issue. The remainder is
[illegible] to all the tenants of the
[illegible] holders in fee tail or a fee simple
estate or [illegible] in tail or a life estate. But
all estates which may by possibility last
[illegible] the life of the grantee are life estates
[illegible] the period for which they are given is
indefinite, as to a man so long as he
[illegible] of such a place. To a woman during
[illegible] life estates. But if the period
is defined, even if it extends to [illegible] years
yet it is only an estate for years. But the
[illegible] when a lease is made [illegible]
[illegible] period of time [illegible] it is a
lease for the life of the lessee. But if
[illegible]

[illegible] for life, [illegible] all
life estate [illegible] of [illegible] tenant
for life upon [illegible] is punishable [illegible]
and liable to forfeit his estate, he cannot
alien in fee as tenant in tail may, for
such alienation is a forfeiture of the
estate to him in remainder.

"A tenant by the curtesy of England, [illegible]
a man marries a woman seized of lands,
he [illegible] in fee simple,
the woman dies of inheritance, and has
issue born alive, [illegible] capable
of inheriting her estate. In this case
he shall on the death of his wife hold the lands
for his life as tenant by curtesy."
For, by the law the wife must be actually seized
[illegible] by which alone [illegible] right of freehold
[illegible] to be perfected, unless there is issue born alive
[illegible] the [illegible] of the [illegible] of the
[illegible] of the wife [illegible] village.

It may admit of a question whether a
[illegible] estate in [illegible] curtesy [illegible]
[illegible] Only by the law of [illegible] which was
[illegible] by the [illegible] lands [illegible]
[illegible]

Lecture 4th

Dower state. [illegible] wife of a man, [illegible] dies seised [illegible] state of inheritance, shall have one third of the inheritable estate [illegible] which he was seised during coverture, to hold to herself during her ~~[illegible]~~ natural life. In order for a woman to be tenant in dower, these things are necessary. 1st the marriage [illegible] the husband. [illegible] must [illegible] at the time of his death. [illegible] he must have been seised during coverture of estate in [illegible] fee tail, and it must be an estate of which the issue might [illegible] capable of inheriting. These things are [illegible] the [illegible] indefeasible title [illegible] of the real estate. [illegible] indefeasible title [illegible] title [illegible] [illegible] may be void. By [illegible] By elopement with [illegible] she [illegible] at [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] the [illegible] [illegible] the [illegible] [illegible] time [illegible]

[illegible]

Divorce by the Connecticut Law. The [illegible] shall be entitled [illegible] of Such the husband [illegible] of [illegible] meaning, but I must [illegible] the mode of getting at the [illegible] different [illegible] must have recourse or resort of law [illegible] in Conn. a [illegible] the man [illegible] and [illegible] the [illegible] [illegible]

Divorce a vinculo matrimonii. [illegible] in no [illegible] the wife has [illegible] guilty [illegible]

If the testator intended to dispose of his
slaves, he may do so by mentioning them in a
note annexed to his will, if the intention is
sufficiently ascertained, by distinguishing
them from other slaves belonging to his
estate. Nor is there any deed or device in
which the wife may be endowed, dissenting
under the seal of a man made and delivered
to her in indenture only as a remembrance of his
profession, and therefore cannot require the
same such an device.

If a testator devises to his son and
heirs a fee simple in the estate. After
words of the devise for life and remainder
to his heirs, only a life estate in the devisee
the word heirs inserted in the instrument make
it a fee simple, for this is the technical term
to create such an estate. It is agreed on all
hands that if nothing appears from the in-
strument but the words mentioned, the person
named in the instrument takes a fee simple.
But it is contended by some that if there
are other words in the instrument, especially
a will, indicative of the intention of the testator
to create only a life estate, no greater shall
be created, notwithstanding the technical
term heirs is made use of, and the fee simple

vests in the heir whomever he might happen to be, and he takes ~~by~~ the fee not by descent but ~~by~~ as a purchaser by the ~~deed~~ instrument about this point however there has been much contention among the English judges

2 Atk 247 2 Ridgeway 203
1 Ves 412 1 Atk. 231
1 Mm 142
1 Rep. 93. 66 3 T. Rep. 610 Doe v. Prince 7 Ay 123
Doe v. Lewis Burr. 612
Cook Eq 313

Lecture 6th May 1817. Estates less than freehold

It is a maxim that no state of freehold can commence in futuro. In the following manner an estate of freehold may commence in futuro (viz) by having an intervening estate by way of remainder after a life estate has expired. But it is a rule that this intervening estate must be a freehold, for no freehold can be in abeyance. It may commence in futuro by way of devise without any intervening estate which is termed an executory devise. And a distant person by way of devise may take the fee simple. At law present a feoffance this person may be, may be made a question, but by Comn. Law it is determined that no estate by deed or will can be given to commence of a present feoffance than to a person never being in esse to be termed a descendant of such an one

Freehold estate are those in fee simple, fee tail and for life. The two former are termed real estates as a freehold estate of inheritance. The latter a freehold not of inheritance.

Estate for years. Is not a freehold but in all cases is treated as personal estate, and goes to the executor. It must not depend upon any contingency or that by possibility it may last longer than the life of the grantee for it then becomes a life estate. There is no necessity of actual entry and possession, to obtain an estate for years.

By the statute of frauds and perjury no estate can be created by parole lease, except for years. And by an statute, for no fixed time. The parole lease, altho void as a lease absolute, yet is good for several purposes. It operates as a license to the person entering and thus prevents him from being a trespasser. If the tenant continues upon the land by parole lease, the lessor shall recover in a court of law, by an action of indebitatus assumpsit, the true value of the rent. It is the consideration of making the parole lease the tenant has promised. Consequently sum to the lessor, is entitled to recover. But must bring an indebitatus.

Altho a parole lease is void at law yet the lessee under such a lease having paid a stipulated sum for the rent, may demand, and a court of chancery will compel the lessor to make out a good lease to him. Now it is an established maxim, that no person shall come into a court of law and take any advantage of any defect of title for which he is compellable in a court of chancery to remedy.

Tenant as in other cases forfeits forfeiture he may have his fine bote &c

From the date and from the day of the date mean the same thing in Cowper 714

Estate at will. properly no estate, it is neither real nor personal it does not go to the heir nor executor. The qualities of this estate are that it may determine at the will of either of the parties. But the lessee will suffer no inconvenience from any sudden determination of the will by the lessor. Any act of owner his exercised by the owner is a determination of the will, if lessee is incompatible with his enjoyment. The lessee determines the will by any act incompatible

with good tenancy, and is after that a tenant
after

Estate at sufferance is where a tenant has entered by agreement for a term of time and continues after the expiration of the time

Emblements. are the annual produce of the land produced by the labours of the husbandman as grain &c. He is entitled to the emblements upon the determination of the several estates already mentioned. If the estate is determined by any act of the tenant, he loses the emblements and he retains them.

Incorporeal tenements

Little need be said upon this subject, as few of these tenements either do or can exist in this country. Those which exist in this state are Annuities Rents & Ways

Annuity is a sum of money paid yearly to a man. It may be granted to a man & his heirs for ever but a grant can never be in such terms, would cease with the grantors life, for in order to bind his heirs some thing more particular must be expressed or then the heirs of the grantor may be

bound so long as they continue to have assets in their hands which they receive from him. Arrears may be an note said, for life or year Cokes 7 144

We have nothing no rents in Con. the purpose of them is answered by taking note payable yearly. The rent always passes with the reversion. Croke Eliz. 288 Ventris 161 & Reports 111 Crk Eliz 838 Crk Cha. 289 Arrears of rent go to the executor Crk Eliz 574 Colk 578

Mortgages Lect 8th June 9th

Estates which have been already mentioned may either be conditional or absolute. A mortgage is a conditional estate, which is generally granted in consequence of some precedent debt, for the security of the mortgagor's creditor. The mortgage does not pay the debt, or effect the obligation in the least & is no objection to the creditors pursuing his remedy upon the note. A question may arise, in whom is the legal title vested in case of a mortgage, between the time of making the mortgage

and the day of payment. It has been determined that the title vestes in the mortgagee at the time of executing the ostote, before the day on which the condition was to be performed. The mortgee then has a fee simple conditional in the estate and if the Mgor does not perform the condition at the day appointed then the Mgee has a fee simple absolute. But even after the day has passed, the Mgor is entitled to the equity of redemption, which is obtained by application to the court of chancery, who in case that any injustice is about to take place will order the Mgee to reconvey the estate and to induce him to obey their order, they impose a heavy penalty in case of non compliance.

Payment at the day appointed is a performance of the condition, and revests the title of the land in the Mgor. Tender of payment does the same.

Mortgages

In case the mortgagee is in possession the Mgor may sue out a writ of ejectment, and prove by witnesses the payment or tender. But if the mortgagee in possession he must make application to the court of chancery who will order the Mgee to reconvey, and impose a penalty in case he does not. But the Mgee may be a bankrupt and disregard the penalty or fine of the court and still continue to hold the land. In this case the court of chancery will order him and quiet the Mgor in possession.

In some cases a tender extinguishes the debt, and neither the land or the person of the Mgor is any longer liable. This when the mortgage is granted for some gratuity.

The mortgagor in possession, will not be a tenant at will, altho the clear title is vested in the Mgee. he is not liable for any rents. But when he is turned out of possession he has no right to the emblements, and if the mortgee takes them he shall account to the Mgor for them

Mortgages

The Mgee has not his option to take possession and when thus in possession he shall be rewarded for all ~~legal~~ reasonable improvements, and such as a good husbandman would make

Lect 9th. Once a mortgage always a mortgage 2nd 4th Mellor vs Lee

A piece of land is conveyed by an absolute deed, in which there is no condition, yet a condition in a seperate instrument may make that a mortgage. and seperates in every sense ~~of the~~ between the parties, as the same condition would do annexed to the deed

But these lands conveyed to a third person, he is not affected by the condition in the seperate writing. But the Mgee must reconvey the land, or give an equivalent to the ~~premis~~ Mortgor in case he has performed the condition.

The mortgagee may purchase the equity of redemption, and then he need not in any case be liable to reconvey to the Mortgagor 15th Viner 468 Brown's Chancery cases

Mortgages

Where any person to promote the interest of a friend engages to give him a sum of money, for this purpose grants him a mortgage of a farm as security of his interest. The mortgagor dying no redemption shall take place afterwards.

2 Vent. 364 Hardis 411

A person grants a mortgage to a friend in the words to the same import, in default of payment, the land cannot be redeemed.

It has been a question whether a mortgage can be created by parole agreement between the parties. Determined that it cannot. For instance, A grants gives a deed unconditional to B. B. by parole agreement, engages to reconvey the land to A on his performing some condition. This no mortgage for it is an established principle that no parole agreement shall be grafted upon a written one. Every instrument. But in this case the Court may summon the agreement to assist if necessary. Here to be based on it not whether the parole agreement was not entered into. If he appears in the

affirmative the court will judge it a mortgage otherwise not. But where the mortgage engages to make a defeasance ~~parole~~ it does not parole testimony is admitted to prove the engagement 3 Atk 389

Where there is any appearance of the deed being treated as a mortgage the court will always consider it as such 3 Wood 430 Precedents in Chancery 526

Where there has been any [illegible] or [illegible] evidence to show it always will in no case be considered as a mortgage

A Mortgagee may recover in ejectment against a tenant claiming under a lease from the mortgagor, made after the mortgage, with the assent of the mortgagee Doug 21

2 Cooke 660

A lease from the mortgagor is good against every body except the Mortgagee

Strictly the Mortgagor but every person interested in his estate may redeem the land for his own security. Lessee of Mortgagee may redeem

Mortgagee may treat the mortgagor's tenants as his own and compel them to pay his rents to him Doug 266

[illegible] plaintiff [illegible] land and [illegible] waste, a court of equity may grant an injunction 3 Atk 723

Mortgages

Lect. 10th Lands sold at public auction to pay taxes, may according to the statute be redeemed in one year, which makes them mortgages & others. After one year the right of redemption is not confined to the original holder but may be redeemed by any of his creditors or those who have any interest in his estate. After the expiration of one year redemption, he shall hold them as a mortgage by the statute. True it is the words of the statute say that the owner of lands thus sold shall redeem the same in one year or ever after be barred the right of redemption, but the same words are applied to private mortgages, and we may reasonably conjecture that the legislature in this case considered them as a technical term, applying to mortgages. To the maxim once a mortgage & always a mortgage there is this exception. The mortgagee may at any time, even after having foreclosed the mortgagor, in the early [illegible] an equitable, and make the same [illegible] in consideration of res[illegible] [illegible] [illegible] mortgage

Mortgages

The mortgagee being made [illegible]
and improvements for the mortgaged
premises shall be allowed the money he has thus
expended, together with the interest. 3 Atk 518
It cannot be pleaded in bar of an injunction
can against the mortgagee for waste. 3 Atk 723
and the waste thus committed will go towards
reducing the Mortgagors debt. There are instances
of waste being committed and no
injunction will be granted against the Mortgagee
this happens where he is [illegible] insufficient
yet the Mortgagor and his heirs are fore-
closed to redeem if they are inclined to
redeem 1 Atk 603. A tenant for life has a right
to redeem the mortgage of his husband
satisfy she will pay one third of the
interest he may be endowed When land
is sold, [illegible] to get a decree affirmed
[illegible] the first mortgagee shall be preferred but
the subsequent mortgagees shall be
[illegible] to the creditors, and may redeem
from former Mtgees 7 Ver 72
If a man devises lands under mortgage to
one for life, remainder over to another the
devisees may redeem the lands [illegible] Ld Ch Talbot

[illegible] heir [illegible] two thirds of the [illegible]
[illegible] mortgage [illegible] paid him for
the remainder man of the [illegible]
[illegible] to redeem and the [illegible]
declines. A court of chancery will compel
[illegible] to pay and [illegible] or abandon the
[illegible], unless the life estate falls short of the
[illegible] estate in which case they
will apportion it accordingly. A court
of chancery will compel a sale of an [illegible]
[illegible] redemption [illegible] payment of [illegible]
[illegible] Williams. 341. 2nd Atk 40. 2. P. [illegible] 212

[illegible] 11th June 12th

[illegible] as
[illegible] to [illegible] and
[illegible] the incumbrance shall be [illegible]
ed [illegible] purchaser an equity of redemption
worth [illegible]
[illegible] on the [illegible] of 200. The pur-
chaser [illegible] under the incumbrance
[illegible] stands in the place of the mortgagor.
If the mortgagor [illegible] to the mort
gagee besides that for which the land [illegible]
gaged, he shall not be entitled to redeem by
paying the [illegible] [illegible] shall

[illegible] the whole demands of the mortgagee [illegible] by a note [illegible] they say. This applies equally to the mortgagor and mortgagee and their heirs, in the [illegible] case. Where there are two mortgagors and the property has three deals [illegible] one be dead, [illegible] which the land was mortgaged the survivor and mortgagee may redeem by paying [illegible] the lien upon the land [illegible] in the mortgage 2 [illegible] 2:1 [illegible] 8:3 [illegible] the mortgagee and his assignee [illegible] the same [illegible] having their [illegible] debts paid off the redemption. The general principle established by the courts of chancery is this, that the mortgagor shall pay the mortgagee all that he equitably owes, in order to redeem the land. It is a kind of [illegible] with a penalty. The interest shall be paid by mortgagor [illegible] it ought not to be [illegible]

It has been made a question whether the mortgagor and redeem, without paying the whole to the [illegible] and to the [illegible] the [illegible] and their claims upon the [illegible] to which the mortgage was granted but

Mortgages

The question has received a recent decision. But if the mortgagee has parted with the land to a second party, and is now getting [illegible] his debt, then the creditor may redeem by paying only the stipulated sum in the mortgage. The reason is this: if the creditor knows of the second debt he would have [illegible] the mortgagor.

When two separate mortgages are given of two different farms, the mortgagor may redeem either as he pleases, unless the second is a different title, and sufficient to pay the sum or debt. I am [illegible] if the mortgagee is compelled to sell his mortgage under its real value, the purchaser has all the advantage of the gain.

A distinction is to be noted between mortgage and right of preemption in the latter the terms of the agreement must be strictly complied with. 1 Zeh. 104

[illegible] the mortgagor in order to redeem must pay all that is due to the mortgagee, and the performance of the [illegible] must be made by paying only the stipulated sum in the mortgage. L. range 1107

The right of redemption may be lost

tey length of time with the attendant circumstances. The mortgagor must be out of possession and the mortgagee have quiet possession for the space of twenty years, without there being any evidence of its being treated as a mortgage. When this occasion the equity of redemption is lost and there is a bar to every bill any circumstance that will be a sufficient presumption as the party being beyond sea in prison &c will prevent the equity of redemption being lost.

There is a case in Ch. Rep. where the mortgage held possession 40 years and the equity of redemption was not lost.

Mortgagee held quiet possession 20 years, but in his devise says if the mortgagor redeems the money shall be thus applied, the equity of redemption not lost 3. Atk. 288 3 Atk. 313. 2 Atk. 332.

The welsh mortgage which prevails in Virginia and in the Plantations is very reasonable. Herein the form the condition is to pay on the 1st of June the money &c. to the end of the world.

Mortgagee by his heirs to end of day [illegible]

Mortgages

We have observed of the mortgagor, applies to redeem he must pay all the debts due from him to the mgee. But if the mgee brings his bill to the mgor to redeem, he fancifully, the mgor necessarily pay the sum stipulated in the mortgage. If the mgee sells a mortgage and it falls short of the debts he will indorse it on the back of it. Mortgages he must be content in a court of chancery.

Sect. 12 June 13 1794

Upon the death of the Mgee the nominal interest vests in the heir at Law. but the real be beneficial interest devolves on the executor. and if gor comes to redeem the land he must pay the redemption money to executor. In case of a trespass upon the land the heir must bring forward the rent, but if he recovers any damages they must go to ex^r. Mortgages are personal property see 2 Verner 611

If a man devises his lands tenements and hereditaments, a mortgage interest will not pass, unless it is clearly the intention of the testator or that it should pass 2 Burr. 978

Where the condition in the Mortgage is to pay to me my heirs or executors, the mortgagor may upon death of Mgee pay

to either the heir or ex.r of his Sth on, and he shall again be entitled to his land 2 Vent 348. Hob. 467

But if the money is paid to the heir he must account to the ex.r

If the mgor is not able to pay the mortgage money, the heir has it at his election either to pay it or, convey land to the executor

As the mgee takes land in security of money lent it is to him, personal property. But when assigned by him, his assignee takes it not in security of debt, but as real property. It will therefore go to his heir and not ex.r

If it is apparent that the mgee. in a devise considered his mortgage as real property it shall go to the heir and not executor

Where one of two joint tenants dies the other is entitled to the whole of the joint estate. But the jus accrescendi does not prevail in mortgages 2 Salk 248

Perdiscovery a mortgagee may bring a bill in the court of chancery to compel the mgor to pay the money at the forecloser. and the court will decree that it shall be paid by a particular day or that he shall loose his equity of redemption 2 Vent

The Mgor shall not be allowed to redeem the mgee till

by shewing that his own was defective at the time he made the mortgage. For it is a common Law maxim that no man shall be allowed to impeach that to instrument to which he has given currency!

The Mgee may pursue all his remedies at
It shall be the business of the executor and
and of the heir, to bring forward the bill for
foreclosure.
Upon dead the heir and ndexecutor is n-
to the equity of redemption P. W. 333
for to him lies real property

Foreclosure may be had not only against the
organ but all subsequent mgees and interested
persons. Infants may be foreclosed, but they are
allowed six months after they come of age to look
into the matter and if there has been any
improper a court of chancery will grant relief
Foreclosure does in all cases actually put
the state in a situation irredeemable. but
there there are any very peculiar circumstances
a court of chancery will open the foreclosure
But courts in Eq. have said where there is any
very great disparity between the land mor
and the sum for which such mortgage is made
they will not suffer a foreclosure

Mortgages

Lord 13th June 1714

[illegible] mortgagor may recover [illegible] a [illegible] land
[illegible] and is liable to be foreclosed but if he
offer any rational [illegible] a foreclosure
[illegible] when [illegible] happened it is not [illegible] to do this
[illegible] when it is [illegible] 1 Wms 14

3 Wm 3 & 2. 1 Brown C.C. 301

[illegible] mortgagee [illegible] against a [illegible]
[illegible] but if the [illegible] obtained by the
negligence of the [illegible] rights [illegible]
[illegible] 2 Wms 155 [illegible] 3 Wms 134
[illegible] foreclosure [illegible] opened [illegible]
[illegible] the mortgagor had previously to the [illegible]
[illegible] obtained [illegible] to pay the [illegible]
[illegible] any [illegible] conduct on the part of the [illegible]
will [illegible] the foreclosure.

Barnardiston 2 C.P. a [illegible] court [illegible] increasing
[illegible] debt [illegible] mortgagee [illegible] debt
[illegible] foreclosure [illegible] will not [illegible] the [illegible]
[illegible] more [illegible] as a [illegible]
[illegible] a maxim that a [illegible] satisfies the original
debt. If the security [illegible] the [illegible]
[illegible] [illegible] [illegible] [illegible]

Mortgages.

A court of equity will compel the mortgagee to accept payment of the money secured by the mortgage, if the mortgagor shall offer full in chancery to have the mortgaged land sold. Payment of the debt and disbursements, a decree for the mortgagee, the money raised by the sale will be applied upon the bond, and if it is insufficient to satisfy the debt the mortgagor shall be accountable for the remainder. But if the proceeds of the sale of the land under a decree from chancery, it is at his own peril, and if the money thus raised does not satisfy the debt the mortgagee shall have no demand upon mortgagor.

In a mortgage of a parcel of the land where there are more mortgagees than one.

2 Brown P.C.
1 Brown P.C.

A subsequent mortgagee may gain a priority to the first mortgagee. Where the first had notice of the fraud of the mortgagor, see page 2 Atk. 49 where the first mortgagee was witness to the second deed he shall be postponed. Contingent interest 1 Atk. 1 Brown Particular [illegible]

any negligence in Mgee to obtain a title deed will give the second Mgee the priority if he obtains it. See 3 P Wms 1 Vesey 360 where are in Parson where the mgee denied his having a deed and was not prefered. [illegible] the question [illegible] But had he been informed that the person he proposed was about to take a mgage he would [illegible]

He who obtains the legal title will be preferred as the preference to all others. [illegible] where the 3rd Mgee buying in [illegible] mortgage in any way obtains it he shall have the demand [illegible] settled 2 Vesey 573 1 Ch Ca 240. 2 Ch Ca 133 Cases of the person incumbrances [illegible] the legal title [illegible] and he shall be [illegible] in [illegible] claims upon the estate

Sect 14. The prisne mgee at the time of taking as mortgage must not be acquainted with the part of there being other mgees than the 1st. If he does he can never, by a purchase of the legal title, so attach a subsequent incumbrance, as to have it preferred to the claims of the second Mgee

J. Ath 2 38

Mortgage

[illegible] mgee having the claims [illegible] mortgage than those [illegible] receive the mgee: [illegible]

[illegible] any [illegible] lien upon the land as a second mgage, and the second mgee may redeem by paying only the mgage money, and if in [illegible] of a judgment debt which the second mgee must also pay in order to redeem the land. But if the 1st mgee had knowledge of the second mgage at the time [illegible] the mgee the sum for which he afterwards got judgment, the subsequent mgee may redeem without paying this judgment.

Where the 1st mortgage is defective and the second is good a court of chancery will not aid the 1st against the second but will [illegible] it against the claims [illegible] 2 Ld Ch 449. 3 Barn [illegible]

[illegible] a common [illegible] actual in cons. [illegible] mortgage [illegible] the [illegible] in the mortgage [illegible] after the common [illegible] on [illegible] stipulated "and all debts [illegible] contracted between the time of mortgaging [illegible] money" [illegible] advances the mgee claims [illegible] of [illegible] [illegible]

If a the mgor cannot redeem by paying only the sum stipulated in the mgage and that no subsequent mgee knowing the condition of 1st mgage, can redeem with out paying the other sums, which the mgor is bound to the mgee 7 Viner 52 But if the 2nd mgee did not know of the condition of 1st mgage at the time he took his own mgage he may redeem by only paying the sum stipulated in the 1st mortgage

The 3rd Agee purchasing in the legal title from a trustee in a mgage does not protect himself against 1st Agee 2 Ves 491-3

Where there are several mgees they shall be paid according to the priority which they obtained, and the 3rd Agee shall in no case have opportunity to protect himself against the second, by purchasing the legal title after they had joined in petitioning for a sale of the land.

If, after the 1st mgee has obtained a decree for a foreclosure, the mortgagor pay the sum so decreed, as tendered him by mortg. it shall defray the foreclosure

If the person who has obtained a decree has been negligent and [illegible] put up an second and

Mortgages

A second person has obtained a deed and gets his first recorded. It will generally stand against the other Cowper 712. If the person who had his second deed — put upon record, had known that another person had a deed of the same land his deed shall not stand against the first.

Lecture 18th June 17th 94

When there is several Pages a subsequent mortgage may get the money and the mortgage in fee and prevent it, but does not lie with the Pages to say to the agent no title. If a first Mortgage [illegible] a mortgage [illegible] — as he [illegible] him and sufficient Mortgage [illegible] shall account for the profits. At the mortgage [illegible] the mortgagor, but [illegible] continue in the [illegible] take the rents and profits and if B's mortgage will redeem, A shall account for the profits. But if the subsequent mortgage brings bill to redeem, he must account for the profits against the [illegible] received them and may redeem by paying [illegible] the sum stipulated in the 1st mortgage. After redeeming the rents of the land [illegible] [illegible]

Mortgages

The Mortgagor cannot redeem the mortgage without paying the mortgagee. A mortgages to B. in fee and [illegible] Sufficient Deeds to C. say first [illegible] Particular point at the end of the term A may [illegible] & trespass [illegible] with C to say that A [illegible] is no title. But say that B brings the ejectment against C and prevents A. In this case C is not liable after judgment in favour of B. to be ejected by A. B has not obtained judgment suffers C to remain in possession paying nothing. B shall recover to A the mesne profits for the rents and profits.

A mortgages to B and comes in [illegible] B sells to C. A sign [illegible] redeem against B. [illegible] paying the mortgage money. But say that B. had entered in [illegible] of [illegible] C then entered and received profits. Suppose at the time A brings his bill to redeem, the principal and interest amounted to 100. The profits received by B were 30£ and the profits received by C were to the same amount. A then owes only 70£ for redemption money. Yet C takes account for more than he has received. B must be made a party to the bill then the receiver will be found [illegible] the mesne profits of the estate [illegible] if the [illegible] to C [illegible]

Mortgages

A subsequent mortgagee cannot redeem in law, but by the assent of the first mortgagee, for there has been collusion 3 Burrow 654

A mode of accounting where the profits received by one exceeds the interest of the debt. Suppose the interest and profits 19 l. there is a surplus of ten pounds. The principle sum bearing an interest must be 150 l. This sum then must annually be deducted from the principal which shortens according to compound interest in sinking. so that the second year there would be only 140 l to carry interest to an. 2 th 5 sh. But where many improvements have been made, they go to counterbalance the surplus of the profits.

The mortgagor's equity of redemption descends to his heir and personal to his executor. If the heir or the executor shall neglect by the after to the Exchequer to redeem the redeemable. The enquiry is, what sum has been benefitted by the mortgage and then [illegible] take the money to redeem

2 Cook 119 – 6 Bacon Ab. 726 3 Ro 14 Cook 2

The devisee must take the consequences of redeeming the personal debts [illegible]

Where lands are devised on the payment of debts the legal and equitable, the land is taken

[illegible] to pay the debt [illegible] of a delivery of [illegible] and [illegible] 3 Br. Ch. 200
But a man may exempt by a reference [illegible] his person [illegible] 1 Ves. Jr. and in this case it is asserted by and being [illegible] a [illegible]
The rule that the heir may have the [illegible] of [illegible] or incumbrances [illegible] does not obtain against creditors or general Legatees
Lastly must be paid before any is given to the heirs. When they are paid they not remains [illegible] applied and the heirs in preference [illegible] Legatees

Lecture 16th

The heirs of the Mgor we have seen may have the [illegible] assets to disincumber the real estate
But the heirs of the purchaser of the equity of redemption shall not be affected by the personal assets to disincumber the land 3 Brown 6. 101

If the mortgage is for a term of years, the wife of the Mgor when dead shall may redeem. But if it is mortgaged in fee she shall not. But if she will keep down one third of the interest she may be endowed of the mortgaged premises. If the Mgage was made before marriage she shall not redeem or be endowed for he was never seized of the land during coverture. To these points see 1 Atk 606 — 2 Atk 426 Prec in Chancery 137

Mortgages

Shall the wife of the mgee be endowed?
for the mortgage is a perpetual state
and goes to the ex.

The husband by mortgaging the wifes land pas-
ses his interest therein, but not her interest
yet a mortgage by the husband and wife may be
confirmed by the death of the wife if coverture is ended
Doug 53. Caulk 201- 2 Wm 107. 2 Ryan 526
So wifes estate mortgaged and by fine, if the
husband die she is entitled to the rent of the husbands
part at law & recover in ejectment. 15 Pm
Tate v. Hosier 204
Where the husbands estate is under a mortgage
and the wife joins with him and mortgages
her own estate to disencumber his, upon his
death she shall be bound in the place of the mgee
and be defended all dis. 2 Atk. 384
When the wife is owner of an estate that is at the
in action if the husband dies this estate belongs
to the wife. but if the husband before mar-
riage makes a settlement on his wife which
in time will be perfected competent. this
shall be considered as the wife of the wifes
estate, and when he dies the wifes rights in ac-
tion go to his ex.
So where the wife is the mgee the husband hav-
ing made a settlement and dying his ex. shall
have the mgge. a settlement after marriage,

and not in pursuance of previous articles, but voluntary, will have no such effect 2 Atk. 444
As the wifes mortgage is personal & pole the husband may reduce it to poss. and it then goes to his exr. an alienation for a valuable consideration is reducing the to possession
So if the husbands creditors have got hold of the wifes mortgage they will hold it 1 P Wm 458
3 P Wm 197. Had such mortgage been secured to the wife by articles before marriage, it would have secured it from creditors 2 P Wm 316
A court of equity would not even permit a Mgee of the wife to pay the mgage money unless the husband would make a suitable
on the wife 1 P W 382. Yet it would rid the particular agree for valuable consideration
It is a rule in Court of Chancy. that if the condition in the mortgage carries more than legal interest the chancellor will not say that the rest is void, but will only expunge the illegal interest
Where the contract is to pay a certain interest by law not is legal as 4 per. cent. and a proviso that if that interest is not paid by the time that 5 percent should be paid it shall be

Mortgages

But if the contract is to receive legal interest and if [illegible] at such a time, an abatement to be made, in such case if not paid ~~in such case if not paid~~ by the time there [illegible] 3 Atk 520

3 Burrow 1374

Where the mortgee sells the mortgage with the consent of the Mgor and the vendee pays the mortgee principle and interest, the whole now becomes principle in the hands of the assignee and carries interest. But it must be with the consent of the Mgor or [illegible] interest paid by the vendee to the mortgee [illegible] 3 Atk 271

Where the Mgee enters and the profits fall short of the interest, this surplus of interest does not carry interest

The Mgee or Mgor filing a bill to have the account liquidated or reduced to a certainty, the sum total from this time carries interest 1 P Wms 478. But where there are Creditors or subsequent Mgees, whose interest ~~or~~ will be affected by this, where of course have interest, the rule is different with

The rule does not obtain against an infant 2 Ray 2[illegible]
2 Burrow 1[illegible] 5 Ves 103. If the [illegible]
[illegible] 6 Atk 47 [illegible]

Lecture 17 — June 14th 94

[illegible] An agreement entered into by the parties at the time of the mortgage, that the equity of redemption shall be made [illegible] and a law interest if not paid [illegible] is a good agreement. Ath. 449

This rule is [illegible] conformable to the [illegible] of equity. But an agreement that the [illegible] that has already accrued shall be turned [illegible] into a debt is void [illegible] of law and equity 2 Fonb. 31. So likewise in Bank [illegible] where the debtor enters into an obligation to [illegible] it is void 2 Atk. 331

If the Mortgagor sells the land, the purchaser is obliged to reimburse [illegible] expenses, but he may deduct and add in a reasonable expense to his principal and [illegible] 3. Atk. 518

If one lends is mortgaged and there is a tenant for life of the equity of redemption, [illegible] the tenant for life being in possession of the mortgaged premises, the remainder man may call upon [illegible] to redeem, [illegible] the remainder man [illegible] the tenant for life may pay one third of the redemption [illegible]

[illegible] not in fact or [illegible] any [illegible] by
[illegible] the mortgagee man [illegible] to keep [illegible]
[illegible] 477
[illegible] the Mgor under the money by the time
[illegible] in the [illegible] and it receipts the title
in a tender of [illegible] although it does not
[illegible] the yet it prevents any interest
accruing after tender [illegible] [illegible]
[illegible] given that the tender will be made.
The note given not originally reserved upon a
mortgage [illegible] altered by parole agreement
3 Ann. 3 Cases 580. [illegible] all the other [illegible]
[illegible] is a dispute [illegible] the [illegible]
[illegible] upon a principle
in the Eng. Law that [illegible] that any one may
waive his own right, and if evidence can
[illegible] if he waives his right it will be binding.
[illegible] by the laws of New York for
the use of the State of a mgor who has relinquished
the payment of the mgee, and the mortgage
[illegible] is to execute the deed of release and
when [illegible] is allowed the mgor to all the
[illegible] in account, and if he has received
more than his [illegible] debt he is to return it.
Mortgages are to be registered and
[illegible] before the mortgagee
[illegible] Where there is a
[illegible] that must be registered. The [illegible]
[illegible] of two mortgages to avail [illegible]
[illegible] in the name of the Mgor to authorize
[illegible] more [illegible] the land mortgaged

And in such case no equity of redemption
remains in the mortgagor. He has not to the
[illegible] the land mentioned more than enough
to satisfy the debt. But this power in the mortgagee
should be used so as to affect the rights of
Mortgagees and Bona fide purchasers. This power to sell must
be recorded and in no case valid since the mortgage
is under 15 years of age. The sale must be at
public venue.

Of Estates Upon Condition

They are such as are granted to commence
or be defeated upon the happening of some ~~con~~
~~dition~~ event, under a called precedent or
subsequent conditions ~~according to the~~ the
former that is granted to commence upon
the happening of some condition is called
the a precedent condition. But if it is
granted to be defeated upon the happening
of some event it is a subsequent condition.
A subsequent condition must
be granted as to the commencement
of the. If the condition of an estate
does not come to pass it is impossible
or unlawful it will not exist in the grantee.
But where an estate is granted with express
in case the grantee does not do some lawf-
ful act it is not to perform

Title act will not expect the title be
Blackstones commentaries to the paint as
Estates as it respects the number of years,
the title of paint tenancy, coparcenary and
tenancy in common
A coparcenary estate is where a number
of men hold together, their [illegible] to them
for an same inheritance. By the common law
the coparceners must be females. If they
make partition their [illegible] an action
against the heirs as such, must be brought against
the heirs of the coparceners & by the same rule
an action must be brought by all as
heirs.
1st 16th. An entry of one of the
coparceners is an entry of all, and the one
entry cannot avail himself of the sta-
tute of limitation, unless there has been an
ouster. In such case he may, and
under same circumstances, a receipt of rent
profits will an amount to an ouster, as a
receipt of them claiming them as his own & hold-
ing them adverse to the title of the person may amount
to an ouster. And when there has been an ouster
by one tenant the other may eject. Par-
tition may be made by agreement or upon
[illegible] of [illegible]. The nature of an [illegible]
[illegible] improvements
he has or is about to make: but is a peaceable re-
[illegible]
[illegible]

Lecture 18th June 20th 1794

The coparceners may destroy by division the make of partition in case of a disagreement between the parties in by common law process. If parceners agree to make a partition they are compellable in a court of Chancery to execute the same. When parceners cannot agree upon a division. One may bring a bill against the other stating that they were parceners of a certain estate, in which the plaintiff must establish not only his interest but the [illegible]. The court will then authorize the sheriff to take twelve jury men and [illegible] the same. Within [illegible] days the sheriff is authorized to make the division but he generally takes three men with him and then the division is final. Between parceners neither an action of [illegible] nor [illegible] will lie, but a court will [illegible]

For the remainder of this lecture see Blackstone's commentaries on joint tenancy, tenancy in common &c.

Lecture 19th June 21st 1794 Of Rent

Whenever an estate of inheritance in fee simple is vested there is a reversion in the grantor. [illegible]

divisable and in the hands of the res
[illegible] except in case of contingent estates
[illegible] entirely [illegible]. The re-
version is the residue of that which
[illegible] with the [illegible] the grant, and
[illegible] to the [illegible] only [illegible] of law.

A remainder [illegible] here [illegible] less than
~~[illegible]~~ [illegible] granted that a [illegible] which
[illegible] a [illegible] a [illegible] to [illegible]
[illegible] a [illegible] to [illegible]
[illegible] to B remainder to C in fee simple
vested remainder, [illegible] clear.
In the instance given we see the person and
estate invariably fixed. But here it depends
upon some contingency that may or may
not happen [illegible]

Contingent Remainder

And when the contingency happens the estate
vests. An estate to A for life, remainder
in fee simple to B's eldest son yet un-
born is a contingent remainder. For it
is uncertain whether B will ever have a
son or whom the estate can vest. But the
moment B's son is born it vests [illegible]
A is alive. If A is dead and B's [illegible]
[illegible] born it cannot vest for the particular
estate is determined before the remainder [illegible]

[illegible] the remainder to depend so much upon
[illegible] and the contingencies which they
[illegible] must not [illegible] as possible, unless
the Lawyers effect. There must [illegible]
[illegible] possibility. [illegible] for life to A
remainder in fee to the heirs of B. [illegible] in
being. This is good for it is probable that B
[illegible] line may have a son before A die.
But suppose it had been limited to A for life
remainder in fee to the heirs of B. who is not
yet born. [illegible] B. will have a son. Shall have a son
[illegible] it is so remote a possibility that the Law
will not suffer such limitations.
To make a contingent remainder it is not
necessary that the [illegible] be certain but
he may be. [illegible] the event [illegible]
[illegible] he is to take the estate. [illegible] to
A for life remainder in fee to B, [illegible]
[illegible] to A. for [illegible] remainder to B.
[illegible] not a good con-
tingent remainder for to make it good
[illegible] the other a vested

54

Distribution according to the Statute of Connecticut. Rules 1st Calculating kind of case in the civil law according to the statute of Charles 2d remembering always to take the express direction of the Statute here that has either preferred those who are more remote or postponed those who are nearer.

2nd Trace the lineaments of consanguinity according to the rules determined in the statute of Charles

3rd Distribute as if the word legal relations were inserted in the statute, and as if they stood immediately after the Brothers and Sisters of the half blood.

4th Distribute as if the Statute read the next of kin of the intestate of the blood of the ancestor, instead of kin as it now reads of the ancestor.

Case 1st J. S. died seized of real property and left a child or Nephew & a Niece. To be divided equally between the child or Nephew & Niece according to the rules of consanguinity.

3rd same case but Charles is also dead & left
B & C. they the by representation to be
[illegible]

4th Polly, also dead leaving C & D
the property should take [illegible]

5th A is dead leaving E & F. both the parents [illegible]

6th J. left no issue and died seized of land
were which came to him by descent by de
vise by deed or gift from an ancestor other relation
[illegible] which is purchased [illegible]
[illegible] the half blood and Sam & Polly Miles bro
thers & sisters of the whole blood ~~same~~ & the mother
[illegible] the whole sister of the half blood
[illegible] by Miles his father.
In this case Miles, Sam & Polly will take Jack
are [illegible] mother and sister of the whole
[illegible] from whom the property descended.
If Jack Miles were dead came by purchase
will go to Sam & Polly Miles brother and sister
of the whole blood

7th In same case only Polly and Sam are dead
without issue ~~[illegible]~~ gave to Miles, and Miles dies
[illegible] only Mary and ad. Miles brother
as before and the purchased Mole is inherited be
cause [illegible] the half blood

9 [illegible] the same was only Son left a son [illegible]
[illegible] Black were with Stiles and White
[illegible] yr [illegible] his father. [illegible] living
and [illegible] a third of Black were and half of White
were.

10 [illegible] is dead without [illegible]. Polly and Ben[illegible]
[illegible] take equally Black & White were

10 [illegible] of the Stiles is [illegible] T. John & Susan
Rawe the the [illegible]

12 George Stiles the uncle [illegible] and Brother of Ru
[illegible] is living he takes black were, and then
[illegible] and Susan Rawe [illegible] White were

13 George is dead but [illegible] the son [illegible] and
B & C [illegible] Polly [illegible] living [illegible] take
[illegible] White & [illegible]

14 George is living. Divided as in the [illegible]
[illegible] only Rawes and in for a Trifle of White
were

15. [illegible] is dead [illegible] living D & E. Sh
ly is living. He takes the whole

16 Polly is dead leaving children B & C
children take Black were and [illegible] & Susan
Rawe White were

17 B is dead leaving A & C. dead leaving J & H. Angu
& E & H & [illegible] [illegible] Black were, and J & J
[illegible]

18 J Newby dead leaving J. Angu [illegible] black were as he
for a J & B son Rawe [illegible] White

19 [illegible] is allowed dead leaving B & L
Black [illegible] White were

20. [illegible]

21 [illegible]

22. [illegible]

23. [illegible]

24. [illegible]

25th Salamar is decaded [illegible] the good [illegible]
[illegible] Hum & Jeanga [illegible]
[illegible] a [illegible]

26 Hum [illegible] & [illegible]
[illegible] Stole [illegible] & [illegible]
[illegible] blood and godly near [illegible]

27th The only [illegible] the [illegible]
[illegible]

28 [illegible]

Ans. [illegible] the Black [illegible] all except [illegible] Dale are

The following cases [illegible] only to Black [illegible]

30 Sam & [illegible] are alive. The [illegible] [illegible] Sam Ruben [illegible] by deed of gift [illegible] [illegible] Goods. Ans. Sam & Sal the [illegible]

31 Ruben is living. [illegible] Sam Sam & Sally [illegible] fate. Ans. Ruben takes

32 The estate came to Sam [illegible] land by de[illegible] no way related to [illegible]. Ans Ruben takes

33 The same and the relations are [illegible] & Mary. Susan & John [illegible]. A. Ruben & Mary [illegible]

34 Bacre came by deed of gift from Ruben [illegible] [illegible] leaving [illegible] to an [illegible] Ruben [illegible] fate [illegible]

Distribute the following cases according the directions [illegible] given.

[illegible] left no relative [illegible] George [illegible] his father & other & he [illegible] & Susan [illegible]. Distribute [illegible] acre which descended [illegible] Sam Ruben [illegible] "of the dead" meant according the feudal sence lineal descendants. Black are [illegible]

[illegible] relatives are [illegible] Sam

and B & C the children of Polyane [illegible]
and [illegible] Rowe. Distribute
both of them as [illegible] taken [illegible] to wit
[illegible] of the deceased without [illegible] respect to the
[illegible] of Blackburn. ~~[illegible]~~ A [illegible]
and the other two half of Blackburn [illegible]
3 [illegible] but George [illegible] [illegible]
[illegible] the [illegible] [illegible] other
[illegible] in the settlement. Schedule

Also distribute a [illegible] of inheritance was
[illegible] as we have heretofore [illegible] [illegible]
and the [illegible] the [illegible]

Distribute the [illegible] of the blood was
[illegible] since. Schedule

Distribute [illegible] of the blood [illegible]
the [illegible] that it shall go to the
[illegible] of kin to [illegible] of the blood of the [illegible]
from whom it came, [illegible] A. B. & C. the
[illegible]

Distribute [illegible] inheritance
is to be under [illegible] in the second [illegible]

Lecture 25th June 28th 1794

Of purchased estates

Every mode of acquiring property except by descent is called purchased estate or property acquired by purchase. By the [illegible] purchased estates are descendible to any [illegible] the purchaser may have. But with respect to estates tail some bye laws the rule is different, for in this case none but descendants from the stock from whom the estate came can inherit. Estates by descent are assets in the hands of the heir. But if one purchases an estate tail it is not assets in his hands for the payment of the debts of the ancestor.

One mode of purchase is that of [illegible] which takes place in all cases where there is an alienation of land or [illegible] the land who granted it. But in [illegible] it is very different with respect to [illegible] there is an alienation of land it does not [illegible] to any land [illegible] the

62

[illegible]ble, who have the right [illegible]
there any of them [illegible] are [illegible] of it for
[illegible]

In England there must be a total extinct-
ion of legitimate descendants or relations
in order that a purchased estate may escheat
But in estates by descent, the land will
[illegible] family [illegible] lineal descen-
dants from whom the land came ~~[illegible]~~
are extinct

[illegible] the [illegible] law [illegible] purchased
estate that shall descend to the heirs, and in
case of an extinction of all [illegible]
the [illegible] of the [illegible]
or hopes in and to inherit. Where there is
a taint of blood there are no heirs who
can inherit and the estate escheats. [illegible]
[illegible] by the [illegible] of [illegible]
[illegible] there is an extinction [illegible]
[illegible] estate escheats to the donor or
[illegible] to the Lord who originally granted
[illegible] been [illegible] by
[illegible] adjudication of [illegible]
By the [illegible] law the children [illegible]
[illegible] inherit, unless they [illegible]
[illegible] the times [illegible]
[illegible] the age of 18. [illegible] in the
[illegible]

Lecture 26th June 30th 1794

~~A promise~~ by deed.

A deed is a writing sealed and delivered by the
[illegible] but the name is missing and cases is
[illegible] to be sealed & delivered. There must
be either a good or valuable consideration
acknowledged in the instrument or actual
[illegible] The man who holds and delivers under
[illegible] must prove his action upon it. The
acknowledging a consideration without expressing
[illegible] as parcel [illegible]
[illegible] hundred pounds is a deed. But where the
[illegible] is designed to be, and the notice
in which [illegible] the consideration are
[illegible] it is not strictly a deed, and a nakedness
can not be brought upon the original
[illegible] and the instrument offered is void
[illegible]

The consideration we have observed must be
either good or valuable. A good consideration
is such as that of blood or natural tie.
A valuable consideration in law is money or
money's worth, [illegible] equivalent given for the
[illegible]
When the consideration is expressed in the deed
[illegible] said to convey the property granted
whether in fact there was any consideration

are not. The reason is not that a grant under seal as such is good without a consideration, but because the grantor will not be permitted to prove by parole ~~to make~~ a fact contradictory to the writing itself. If there is the recital, a grant acknowledging the consideration and detailing at the same time what it is, and it appears that it is not a consideration, the instrument would not be valid in the hands of the grantor or those claiming under him, and it appears from the written documents taken together that there is none, altho acknowledged by the grantor the contract is void. A case came up before our court of errors in which the above principle was established. The case was this, A. sued B. upon a note of hand, B. exhibited a writing from A. in which the consideration of the note was stated, and A. proceeding to show that it was not a consideration they determined against the defendant B.
Where the consideration has been actually given and not expressed in the deed, parole testimony may be admitted to contradict the deed, all the operative, this does not contravene the maxim that parole testimony shall not be introduced to alter or add to a written instrument, indeed the maxim is not strictly true

thus far is true no parol testimony shall be
admitted to vary the writing or question
the consideration entered in it which it has already had, tho' it may be, to give it efficacy.
If the consideration be illegal this may always
be proved to destroy the deed, tho' the recital
of the consideration be acknowledged to be admitted
by parol testimony, but the burthen of proof
lies on him.

It is true that the consideration can
not be varied so as to prevent the transfer
of the property, yet the same
may be in the deed and explain evidence
between the parties, tho' this was the real
sum given, but only prima facie evidence
of the sum. And if any cause requires an
enquiry into the quantum, it shall be made,
as in a suit for damages, or an action on
an enquiry into the consideration may be
made for some other purpose besides affecting
the land.

Between the parties it is immaterial with
the consideration is a good or valuable
for altho the conveyance is only upon a good
consideration yet between the parties to
it, it is as good as if the deed disposed, but it
may not be so with a purchaser who
may always inquire into the consideration
and whether there was any fraud in it.

[illegible] and [illegible] the [illegible] Paid
the [illegible] may [illegible] the seed But
[illegible] consists [illegible] consequents to the [illegible] of
the ~~good~~ seed [illegible] the [illegible] of
federation, cannot in the said the deed so
[illegible] not [illegible] Trust [illegible] are
[illegible] of the [illegible] [illegible] [illegible]

Voluntary conveyances are [illegible] as [illegible]
[illegible] and [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] and voluntary settlements [illegible] [illegible]
[illegible] in favour of creditors by [illegible] 70th – 432
[illegible] purchasers. But [illegible] actually fraudulent
[illegible] conveyance the defrauded creditors are
[illegible] this doctrine of fraudulent conveyances is
[illegible] regulated by the Stat. of Eliz & Jam. but they
[illegible] [illegible] affirmance of the common Law

Lect 27th June 30

[illegible] conveyance of land [illegible] good unless by
[illegible] & [illegible] 16 [illegible] in England this neither
[illegible] the said [illegible] [illegible] [illegible] [illegible] & [illegible]
[illegible] [illegible] inoperative unless attended with
the requisites. It appears however that in
these cases in the reporters [illegible] two cases
[illegible] in which a seal to the deed
[illegible] & it was Sufficient. By our law, [illegible] necessa
ry to a deed have the seal.
[illegible] the [illegible] by the [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]

In the second of Zolt there is a case where the
[illegible] not affected the seal instead of being
that not affect rendered it indicative 9 Co. 13
If the seal is destroyed by a stranger or by any
mistakenness in tang. the deed by that decision
is considered ineffectual 2 Lewis 120

The the general rule respecting exceptions
made in a conveyance of land is that ~~in~~
if the grantor makes an exception in the
deed, the thing excepted will not pass
but the exceptions to be effectual
and the thing excepted will pass. as for in
stance a grant of 20 acres of land except
one acre, and an heir and heir, except
the stone here the exceptions are of no
avail. From the authorities on this subject
the following rule may be drawn.
If a grant is made in which the general
term is used and an exception is made
in appropriate terms the exception is good
for instance land is a general term and
house an appropriate. now where a man
grants his land excepting the house the ex
ception is good. But where the appropriate
terms made use of in the grant are and
exceptions is made by the other term, not and

[illegible] phrase is said which defeats the grant itself 2 Roll 45 Holt 170 Cro Car 147

Deeds must be delivered. Notes of delivery will always be a subject of dispute. The rule is this if the act indent [illegible] often [illegible] which induces the court and jury to believe that it was delivered it is a good delivery. Proof from the deed itself any [illegible] collateral evidence of the delivery Co Litt 36 2 Roll 24

Deeds are sometimes delivered as escrow that is delivered to a third person to be delivered to the grantee upon the happening of some event or the performing of some act. If the stranger delivers the deed when the act to be performed have not been, or if he in any way misjudges the subject is open for litigation, and if the court judge that it was an improper delivery it is void 2 Co Litt James & G. 2 Roll 25 Cake rule 36

Where a man delivers a deed, and declares at the same time that it is no delivery unless the grantee on his part perform a certain act stipulated, the condition here annexed is void and the delivery is good Cake 1.6

[illegible] A makes out a deed to B and delivers the same upon condition that B on his part make out a deed of another tract of land to him, and does it immediately. B takes the deed and does not perform the condition. This has been judged a good delivery. 6 Coke Eliz 5 20. 10 & 11 Hobt 24 - 9 Coke Rep 137 Moor 647

[illegible] authority upon better principles and direction to the principle above laid down is found in 6 Coke Eliz 835

[illegible] of the [illegible] of deeds the instrument is [illegible] it will not invalidate it if parole [illegible] found to shew the mistake

2 Cokes Rep. 5 2 & Roll 21 [illegible] 193

Lect 28th July 2nd

[illegible] and [illegible] to one creditor with a design to [illegible] another creditor of equal [illegible] [illegible] the difference between the debt and [illegible] the [illegible] parted with is very [illegible] by [illegible] make a conveyance [illegible] [illegible] must be [illegible] the grantee must have [illegible] to receive [illegible] [illegible] condition

[illegible] [illegible] [illegible] [illegible]

Two years the [illegible] [illegible] [illegible]

[illegible]

But if the warrantor is not the person and the person who is [illegible] the warrantor may also [illegible] the notes and bonds. But he has a title and it will not avail the grantee to say the warrantor may amend a defect in favour of the person who is [illegible].

Quitclaim Deeds. The grantor is not liable for any but the grantee may obtain a title by reason of the defective title of the grantor. But if there has been no release on the warranty it is the same as a warranty deed.

By the common law there is no need of subscribing witnesses to a deed but by our laws there must be two at the least in number. If the witnesses delivered in manner of the subscribing witnesses are dead or their residence unknown or their testimony otherwise

If the grantor acknowledges the deed it cannot be necessary that any person should be called to witness to establish the same. Between the grantor and grantee it would be unnecessary but it is required by law as a matter of [illegible]

In case where there are not two witnesses ~~[illegible]~~ to a deed tho' it is good relative to the grantor & grantee, still it is [illegible] either [illegible] creditors, and the current of authorities seem to establish the principle that voluntary purchasers who knew of such deed may take advantage of the same

But in case a settlement is made [illegible] a son and there happens to be but one witness to it it is a question whether the other children can come in and take advantage of such defect tho it is certain a creditor may

A deed must be recorded this was not the case by the common Law, but rendered necessary by a statute of the State. We likewise have a statute that a deed must be acknowledged before a justice of the peace this was not so by the common Law

A coppy of a deed from the record is considered as evidence of its execution tho it seem [illegible]

In cases where there are no third persons concerned and the title of the grantee is defective by a deficiency of witnesses upon a petition to a court of chancery will establish his title by putting the same upon their records

When any person for fear of creditors delays to put a deed upon record the creditor

man upon condition that the land lieing
to him only upon the same and that it was
certain but in this case the title wave depend
upon the memory of man and that will be se
dome [illegible] a duty of nature upon [illegible]
altho they cannot give a title, will of title it is
[illegible] but upon [illegible] that will [illegible]
[illegible] the [illegible] kind of evidence

Lect 28th July 3d 91

The law regeiving [illegible] is different from that which regulates the
[illegible] transactions. With respect to parol mod
[illegible] in obtaining a deed, if the fraud lies in
the execution of the deed, as where a man signs
not knowing that he has signed, the deed is
void. But where they are only parol agreements
the consideration will not move [illegible] the
deed by law. But a court of chancery will re-
lieve against a fraud in the consideration, and
if has been established by a [illegible] in the state
[illegible] the fraud in the consideration is that
they will relieve against it. But where it is only
partial as by mistake in entering into the
they will grant [illegible] a court of law no relief. In men
cantile transactions if the fraud ~~[illegible]~~ is made par
[illegible] in the consideration [illegible] they will grant
relief

Attachment

~~Attachment~~ A writ by ~~the~~ attachment

At common law no execution could go against the lands of a debtor except in the hands of the heir, as he only found by the common law, and it was necessary to produce an attachment of them.

The executions by common law were 1 Levari facias 2 Fieri Facias 3 Capias ad satisfaciendum

1 Levari facias must go against the land and yield rent of the ~~medium~~ tenton, but the land was not taken and delivered to the creditor in the execution. But the emblements were not considered as emblements were not taken by this execution. Rents also might be taken see Crowden's case 4 H 1

The rents were therein the day; execution against the land, and the creditor gave notice to the tenant to pay him the rents. see Jenkins

The creditor then stood in the place of the landlord

2 Fieri facias went only against the goods and chattels both real & personal. Emblements are considered as personal chattels in order that they

[illegible] Cannt 1 Co 3 7 8 a 68

Co Lit 171

A term for years may be taken in execution [illegible] is extended.

On the [illegible] there a debtor is [illegible] [illegible] may [illegible] the same and [illegible] released and the [illegible] to the payment of the debt [illegible] But it immediately reverts to the remainderman upon the death of the debtor.

The capias ad satisfaciendum went against the body only of the debtor and that in a single instance in case of a trespass vi et armis. This kind of execution has since been extended to all kinds of accounts, debts & [illegible] for debts. These executions may be renewed untill satisfaction is obtained from the debtor.

Statute Merchant. The debtor ought to be [illegible] ~~court~~ or [illegible] and [illegible] then execution [illegible] [illegible] But [illegible] was [illegible] statute [illegible] the payment of debts [illegible] [illegible]

[illegible] the chattels, land & [illegible] to the [illegible] by [illegible] the [illegible] [illegible]

Sept 29th 1774

[illegible] the property [illegible] the property [illegible] land the [illegible] from this time [illegible] the land [illegible] the [illegible] land [illegible] the [illegible] land of the letter

[illegible] the [illegible] [illegible]

The [illegible] were known under the [illegible] [illegible] the 32 & 4 [illegible]

established devises in their nature from
the words of the statute are here. Whoever
has lands tenements and hereditaments
in fee simple may devise them
whether under this that. Possible interest
would be directly a question the other are
only is say they were not 3 Lev 427
But the law is otherwise now 1 Black 222
An estate for the life of another is devisable
by the statt of Charles
An estate to one and his heirs on the
life of another is not divisable, but descends
immediately to the heir upon the death of the
law and Frame is wrongly
2 Ind 376 Cotton vs Cotton in the 1/6
Mon 2 ch
Statt of Frauds upon the non performance
of same action not devisable 1 Ves jun 223-424
By the statute of Geo. all estate is devisable
— 1 Bro

[illegible] the [illegible]

[illegible] same [illegible] the

[illegible] to

[illegible]

[illegible] will [illegible]

[illegible] different [illegible]

[illegible]

[illegible] different [illegible]

[illegible] lands [illegible]

[illegible] same

[illegible] life for life and [illegible]

[illegible]

[illegible]

will may [illegible]

[illegible] itself [illegible]

[illegible]

[illegible] will [illegible]

[illegible] by the [illegible] of the

[illegible] it is [illegible] appendage to the will

[illegible] by the [illegible]

[illegible]

[illegible] must be in writing

[illegible]

[illegible]

[illegible]

[illegible]

A will made in [illegible]
[illegible] must be made [illegible] to
the [illegible] 2 Mm 291
A power given to the [illegible] to [illegible]
may dispose by [illegible] mandatory [illegible]
will must [illegible] to the [illegible] 13 Mm 744
So where a legacy is given in an [illegible]
[illegible] lands, such will must be [illegible]
according to the [illegible] 2 Mm 289 - 285
So to where the wise [illegible] given to all and
in a will 2 [illegible] 15
signing is necessary. [illegible] all be [illegible]
[illegible] signing [illegible] a copy and [illegible]
[illegible]. But it was determined that the
name of the testator in his own hand [illegible]
[illegible] of the [illegible] is [illegible]
signing [illegible] 1 [illegible] 2 Mm 219
[illegible] if it appeared that the testator [illegible] and
[illegible] 2 Did not [illegible]
[illegible]
It appears have been [illegible] of the
[illegible] that signing is sealing [illegible] 764
[illegible] 1 Mm 313
A will [illegible] and [illegible] 3
[illegible] this attestation must [illegible]
[illegible] that the testator signed [illegible]
[illegible]
[illegible] will 3 P Wms 3

Proof

It is not necessary that the testator sign in presence of the witnesses if he acknowledge the will and his name to be his own deed

2 Rogers 4 5 L-5 3. P. Wms 253

A will written by the testator in his own name and owned by him ~~subscribed~~ declared to be his will in the presence of 3 witnesses is a good signing and the witnesses could attest it. In the case of [illegible] will this was determined a good signing

Lee 31 July 9th 1794

Be it the will must be present at the time of publication. Where the will is made of several sheets and written on different sheets of paper each sheet signed by one witness is a good publication 3 Burr. 1775

[illegible] in the opinion of the [illegible] [illegible] 1 Eq. 81 pl. 688

[illegible] 2 Ch. 30

[illegible] 1 P. Wms 239 [illegible] within the [illegible] of the testator, [illegible] and clandestinely [illegible] 1 P. Wms. 1 Hy. [illegible] not the left [illegible] 2 Aug. 222. or 242

[illegible] witnesses all dead [illegible] of this [illegible] will [illegible] [illegible] was published in presence of the testator and [illegible] [illegible] 1100

There must be three [illegible] witnesses to a [illegible] [illegible] [illegible] will [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] codicil to the will [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] will executed it was determined [illegible] to be [illegible] [illegible]. But if the codicil is on the same piece of paper and duly executed it is a good execution of the will Burrow 1775 Where the will is made at different times and the [illegible] duly executed it is a good execution of the will. It is not necessary that the witnesses should all attest the will at the same time 2 Atk 177

The witnesses must be credible, i.e. not interested in the devise 2 Raymond [illegible]. A witness interested at the time of signing cannot be purged so as to become afterwards a credible witness. Strange 1253. But this is a point that has occasioned much dispute and the Eng. Judges are equally divided upon it Burrow 414. The superior court and court of Errors in this State have each determined this question different ways

A legatee may always be a witness against a will 2 Atk 691

The will must be published

Lect 29 Feb 18th 94

There must be a publication of the will
This is sufficient in a will therefore well executed
to point out a [illegible] ation has not
been made. But there must in all wills
be something farther than the mere sign
ing in the presence and testation. In one
of the [illegible] is made [illegible] the words
in signing as in presence of the witnesses
The notice and it was adjudged a suffi-
cient sufficient. 3 Atk 156 - 8 Lines 1 [illegible]
Who may devise real property. All persons who
[illegible] to labour under any legal inability
[illegible] property as idiocy &c By the long [illegible]
a feme covertes not capable of devising real
[illegible]. But by the decision of these courts
a feme covert can ~~can~~ devise real property
The remainder of the Lecture was an elaborate
argument in favor of feme covert's devising
real property. The principles of which may
[illegible] in an essay [illegible] ever on feme
covert's devising real property

Mich 33rd July 11th 1794

Idiots, persons of insane memory & cannot devise. Persons born deaf dumb & blind cannot devise Co Litt 42

A will procured by duress, by any undue advantage &c, fraud is void

If the devisor labours under any inability at the time of making the will, altho removed before the arrival or yet it is void 1 Ridersfin. 162

Where the person was not of full age. and in Hawden 343 Ld 238 where the devisor was a feme covert. but at the consummation was sole.

The testator must own the lands at the time of the execution of the devise.

It was held that if a person devised land and afterwards purchased the lands the devise was void

It is not necessary that the testator be actually seised of the lands provided he has a vestable interest in them and an complete and unrevocable power of disposing of such lands is a good devise

But where a testator devises lands after making a will devised all his real estate and afterwards purchased land the devise of the 2 Vern 630 Mich Term 1694

Lands contracted for, by articles and considered as his in equity will pass by any general words of his will relating to devise of land. [illegible] necessary that the agreement be in writing, executed, [illegible] one of such a nature as Chancery will enforce. 1 Atk 578

A devisor may not only vest the devisee with an interest in the thing devised but also with an authority to sell or otherwise dispose of the estate. But if the devisor only makes use of common words as letting [illegible] the devisee cannot make a title. But if he makes use of technical terms in the devise as enfeoff or release, he may. Eq. Ca. 678-73 [illegible] 3 [illegible] Salk 201

[illegible] devised by the [illegible] and [illegible] [illegible] with an interest [illegible] [illegible] the [illegible] with the lands [illegible] a [illegible] [illegible] to [illegible] the [illegible] [illegible] estate [illegible] 774

A bare authority cannot be executed [illegible] the Exr [illegible] [illegible] trust [illegible] executed, [illegible] [illegible] [illegible] [illegible] [illegible] the [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] sell [illegible] [illegible] [illegible] the others [illegible] sell, [illegible] a devise that his lands

Devises

[illegible]

Last 30th July 1794

Devise.

[illegible]

An alien may be a devisee but a writ may grant to see if he is an alien and if it appears that he is an alien he shall not take the land but it shall be held till attainted alien.

Cro. Eliz 509 to 1 Ent 123 1 Ch 1 m 4 E 3. That when a testator has altered a name and [illegible] devises to them by that name the devise is void 1 Ch 1 m 4 E 3.

A devise to uncertain persons as to the daughters of a person who shall marry a certain person and devise to such of the children in tenancy more or in being having a devise made to him shall take by that devise the devise is in these words to such a child when born it has never a title of a tenant and that the devise is good but these words are made use of which ~~carry~~ any put interest have been intended not to be void Temp 128 [illegible] 6 Ch Eliz 483 [illegible] 1 Ch 1 m 4 E 3 that shew the devise to be good see Moore 177 Roll 609 1 Levinz 135 — 156 1 Ch 1 m 4 E 3

[illegible] that there is no [illegible] devise [illegible] the [illegible] in the treasurer of the state Robert 32

A devise to a particular family or a [illegible] [illegible] the heirs [illegible] all the devise [illegible] [illegible] the [illegible] [illegible]

Devises

A devise to a man & his heirs male & female, or to his heirs in equal degree, is a fee simple by the Fee and property

An estate given to A and his children if A has any children at the time the estate is given they take as tenants in common with him, but if he has none he takes the estate for life. [illegible] children in fee simple 6 Cobert p. 17

An estate to A and his heirs is a mere technical word definitive of the quantity of interest without a [illegible] in the devise

A devise to a man & heirs is not good unless the devisor points out the person whom he means by heirs for [illegible] inventis.

Revocation, wills. Any will may be revoked by revocation in writing signed & proved in the [illegible]

A revocation may either be found in writing, or revocation by the common law is good if it is done deliberately & before witnesses called for the purpose, but a hasty expression that proved from not an intention to revoke, will not [illegible] 6 Ves. 11 & 15 6 Ves. 106. Any writing [illegible] is intended [illegible]

revoke the will is a good revocation

In full revocation, any declaration inconsistent with the will if made with the intention of a revocation of the will

A codicil inconsistent with a former will is a revocation of it. Willy 511

Cowper 133 Ch. 1 2

Revocation extended to a partial revocation

Hobson 197 Cowp 8, and the same in Brown v. Parkes

A codicil inconsistent with the will is a revocation pro tanto to the extent of the difference 1 Willy 32

But a will making a different disposition is a complete revocation

Lee 135 4th July 14th 1792

A second will if made upon a false representation of facts is no revocation

Where the devisee in the first will is dead or to be read better of the in order and is made under this impression it is no revocation, but if the mistake is not proved to the court it is a revocation

Where the second is made so that it is an implied revocation of the former, the second cancel will is set aside the first stands and the second fails

If the second is an express revocation of the first will, and then the second

is cancelled the first can never be
set up Cowp 49 - 53

Any act evidential of a design in the
testator to revoke a will as burning, and at-
tempt to burn is if done animo revocandi
is a revocation.

An alteration in a material particular in
circumstances is sometimes a revocation of
a will as where after making the will
the testator marries and has issue who
by his decease are left destitute of any part of
his estate.

Yet after all however the testator family are
provided for by other ways it is not a re-
vocation of the will 1 Mod 304 - 4 Burr 2182
Doug 37 - 38

A feme sole makes a will afterwards
marries, this is a revocation of the will as to
the personal estate: But as to the real
the will by marriage is only suspended so
that if she dies before her husband the will
would not be void but if he outlives him
the will is good to be executed Marsden 343
The reason of this is that the statute pre-
vents her making a will and the total change
of her circumstances is a sufficient
ground to think that it was not her intent
that the should not with to have her first
will stand. Notwithstanding this marriage

the will of a person that becomes
non compos mentis will remain revoked 1 Ch. 61

An actual alteration of the estate of
the devisor is a revocation. The enquiry
is not, whether he intended a revocation
but whether he intended an alteration in
the estate, if he did, it is a revocation
as if a man should devise and thereon-
after another to devise as if he should die
intestate, then he disposes of it in revocation
Lee 1 Rolle 615 1 Ath 176

In 3 Levins 298 there is a case where
a tenant in tail made a will and
then suffered a recovery to give effect to
his will, yet it was a revocation
Even if he was seised in fee and devised so
notwithstanding it was an entailed estate should
bar the supposed intailment and
give to give his will effect, it would
be a revocation 3 Ath 803

[illegible]

[illegible] 1 Ath 311

[illegible]

[illegible] Sandford 347

[illegible]

all be no revocation. As where a devise [illegible] to B and then enfeoffs B to the use [illegible] the trust [illegible] of [illegible]

[illegible]

Last 26th July 1675

Difference is a revocation unless where it is accomplished by feoffment. If the Devisee is seised at the time of devising and then is disseised and reenters it is no revocation

1 Coll Ch. 378

Land devised and then mortgaged the mortgage is a revocation pro tanto and if lapsed to the devisee a revocation pro tanto

Cro J 158 3 Atk 748 and Cro J 168

Where a man has devised his title, and then as the ad[illegible] [illegible] a [illegible] privilege [illegible] a term of [illegible] to be a [illegible]

Devises

This is a revocation pro tanto. Ath. 272

Where an estate is devised on the simple and a smaller estate is devised and part of this it is a revocation pro tanto as where a lease is made this the devise in fee simple Roll 616-18 Jac 49

The above revocations by conveyance

Eng. which prevails in most of the states. Does not revocation be good unless by a subsequent will

Writing or same writing expressing the intention of devise to revoke the same in presence of witnesses. bearing hereon a subsequent will.

The statute has made no alteration with respect to unpaid revocations for the 81.

A subsequent revoking will must be a good passing will, or it will not make the first void. But any writing signed by three witnesses if designed to make the last instrument to revoke.

2 Ves 8 10 Mod 343

With regard to revoking wills by burning cancelling & obliterating the statute has made no difference from the com. Law. Many of these things be done animo revocandi

Cowper 52 10 Mod 346 2 Judge Black one 1343

Last 37th Geo 16th Ch. Republication of wills

The republication of a will is a new import
and where the will has been revoked a re
publication is a revival Sid. And by the republ
ication a greater estate if made to pass than
he did intend to have passed without republ ate
ion. Republication may be either express
or implied and the same rules govern this
tst as the revocation. A codicil is a repub
lication of the will 3 Atk. 180 9th Mod. 68 Ny 443
of the codicil ~~amounted~~ related only to personal estate
this republication of the will 1 Vesey 493
The effect of the republication is to make the
will speak at the time of the republication
A. purchases land after having made his
will, these after purchased lands pass by
the republication, if the words of the will
are general so as to embrace them, as
all my real estate, embraces all the devis
able at the time of the republication
1 Wms 95 But if a man devises all his lands
in L. then purchases land in H. by a republication
the land in H. do not pass

Parol averment in wills. Parol declara
tion of testator, to give a different import

to the will, from that the words themselves are inadmissible 2 Atk. 216 Parole testimony not admitted to prove the intention of the testator 2 Atk 372 Cland 345

Parol arguments are admitted to give direction to the devise consistent with the natural import of the words. as where a man made a devise to his son John and he had two sons of that name here parol evidence may be admitted to prove the intention of the testator Co. Rep. 155 2 Atk 372 5 Reports 68 62 Wm 137

Rule to be observed with respect to the admissibility of facts. If the uncertainty which arises out of the will itself, as where by reading it we discover an uncertainty no parol evidence to explain is admissible. But if the uncertainty grows out of the will parole evidence may be admitted

Cases which illustrate this principle. A devise to J.S. there was a father and son of the same name parol evidence admitted 6 Mod 199 2 Atk 411 2 Ray 216

Where words of equivocal import are used and an ambiguity arises from them parol proof is admitted to show what was meant. Nor 165

[illegible] the [illegible] 8 - 18

[illegible] 2 Atk 240

Lecture 38th July 17th 94

The intention of the testator may be collected from the circumstances of his estate & of his family and other matters collateral to the will. Parol evidence is therefore receivable of parol proof, which may be admitted to ascertain the meaning of the words used in the will. As where the words of the will taken in their strict technical sense, convey ideas which are not consistent with the state of his affairs, family &c. Parol proof may be admitted to prove that the words are not to be taken in their technical sense; as where a man devises all his real & personal state to one, upon his paying £100 to each of his sisters. The technical construction of such a devise is only to use a fee state in the devisee there being no words of inheritance inserted, and the personal estate not being sufficient to supply the legacies. Parol proof was in this case admitted to prove that a fee simple interest in the land was meant ~~upon~~ to be conveyed by the words made use of in the will. See another case in Coke Rep. 6. Part 16.

The value of the thing devised may explain equivocal language. Ad Sir Fitz Polk. 234

Trespass

1 Brown ~~Pas~~ Chan Ofes 472

From the case we may draw this rule that
Parol declaration of the intention shall be re-
jected, but every other is admitted, unless it
places upon the will something foreign or
necessarily exist with it. But no
does not stand well with the words of the
will can be proved by strange 1261
hand declarations and parol to contain
equity of Law matter of implied or resulting
trust de mare nick Humphery 1 Roy 325
Ld Raym 1324
1 Ld 9th Roy 180

Of injuries to real property and their
remedies

Trespass is a wrongful injury to real property,
by the invasion of the property without the
consent of the owner, and the remedy is by
action of trespass vi et armis
This is an action founded on the possession
of the plaintiff, and he must have a legal
or equitable title. The difference between
the original and drawn is that the original
must be an actual possession
of action. But in law the
right of the right of
at all events there is a legal
possession

Tenant in fee in the fee simple in part in the two settlements the owner of the fee is a trespasser, as regards the fee simple in the actual possession. The tenant still has a right to the [illegible] under the law in the same. But if the owner in fee enters upon the tenant he will not by entering him in the possession of his settlements be a trespasser.

In either of the cases above mentioned the possession of the tenant is sufficient to enable him to maintain trespass against a wrongdoer. But mere possession will not support trespass against the owner of the estate, [illegible] carries off the tree. A cannot have an action of trespass against B. 2 Roll 551.

In case a stranger enters upon the land of a tenant, the tenant may bring an action against the wrongdoer, in such case the reversioner is not a party. Against the inheritance is joined under & either the tenant or reversioner, and in some cases either can maintain the action. The reversioner upon the payment of the damage done to his

Trespass

[illegible] the lease [illegible] liable to pay [illegible]

[illegible] the lessee [illegible] If the lessee [illegible] [illegible] the lessee [illegible] [illegible] damage.

The lessee [illegible] liable for the waste [illegible] the lessee [illegible] an action [illegible] damage.

The lessee for life or years is not liable [illegible] the lease [illegible] [illegible] but may be in Case 57, Roll 560 [illegible] 57

[illegible] lessee. The diffe[illegible] may [illegible] the act of vi[illegible] 2 Roll 553 Rich 1 [illegible] [illegible] all [illegible] against [illegible] [illegible] may have this action for ~~all~~ the hole [illegible] against the diffeisor Lessor lessee [illegible] 2 Roll 555 10th [illegible] 51

If the vi[illegible] diffeisor does in possession the land de[illegible] force lessee [illegible] the lessor [illegible] ~~right~~ action of trespass and can not the [illegible] only [illegible] judgment

The grantee of land may have an action [illegible] [illegible] before the grant made.

If the lessee devises the [illegible] to him [illegible] lease [illegible] [illegible] the owner of the land only

where one mans cattle break in upon another in close an action of trespass will lie. The form of the redemption is to be entered by us cattle

Trespass justifiable in certain cases, by the bailiff to see to the repairs. By an executor to take the personal property which belongs to him. By the owner of land hunting that has been there and deemed upon the adjoining land. but if the property has been carried upon another land the owner has no right to enter and chase it. By the owner of the cattle where they get upon anothers land through the deficiency of the fence of the owner of the land. By the person who has a legal warrant to enter — to prevent a fellony or breach of the peace — for necessity to avoid a greater evil — by license of the owner of the land. Where the land of the wife has been trespassed upon. if the injury is done only to the usufruct the husband alone may bring the action, if done to the inheritance the husband wife must be joined in the suit

Trespass

The master is liable for a trespass of his servant, if done in the presence of the master, or not.

If a person is voluntary trespasser, if sufficient compensation is given, it is regarded as a transaction

Sett to 10 July 1794

The Connecticut statute of trespass, gives double damages against the trespasser, but the declaration of the action is brought on the statute which gives those double damages, and therefore, if in the opinion of the court may sufficient to support ~~some~~ a man on the statute, yet the court may give him such damages which are only single, without a new suit being instituted. If by common law, he could recover.

The statute has provided that if there is any probability of the Deft being guilty, the plaintiff may swear at the false, and the deft is to be discharged: and the deft must then swear that he is innocent, and discharged from the trespass. If he swears falsely he is to be punished.

This is directly against the principles of the common law. and holds out a temptation to the plaintiff to perjure

Trespass

The plaintiff in such case could take no
remedy as to the grounds of his suspicion.
If in an action of trespass the deft. claim
to have the land. The merits of proceeding
is for the Dft. to enter into a bond & go
but he will remain his plea to defend his
title before the ecclesiastical court as being in
a ground of detinent against the Pltff.

Of an officer's power to break doors

In general the officer is not
to break doors in order to execute his
process in the house, but in civil cases
he may break doors and windows even to the house
of a freeman within his own house. The house is a protection
for a man and his wife and family
of persons in house ~~[illegible]~~ sentence
[illegible] precedent [illegible]
[illegible] may be broken the reason of this
is that in populous places thieves
would take advantage of a man's house
being open from fear and the [illegible]
be [illegible] & the law [illegible]
after the officer has legally [illegible]
[illegible] a man's house [illegible]
[illegible] very unlawful & [illegible] to [illegible]

have [illegible] thing [illegible] very [illegible] [illegible] [illegible] [illegible] table [illegible] [illegible] [illegible] forcible [illegible] [illegible] a [illegible] on of the law

Lect 41 July 21st 1774

Forcible entry. At com Law ~~who~~ any person having a right of entry upon lands might enter instead of his possession regain it with force. A man may use force in getting possession of his personal property & [illegible] his delay he would lose it [illegible] for [illegible] not [illegible] remedy [illegible] case a man steals [illegible] the owner may forcibly take [illegible] from the thief.

But by [illegible] 5 Ric. 2 stat. 1. a forcible entry upon lands or houses is made a crime and as such punishable. Such forcible entry must be facta manu [illegible] multitudine gentium. It must be with actual violence or attended with such acts as would have a tendency to excite terror, and with a [illegible] to [illegible] possession, whether he succeeds or not. See Hawkins pleas of the crown. All [illegible] engaged in the [illegible] [illegible] tho not particularly active

are equally liable with those who commit the actual violence.

A forcible ~~entry~~ detainer is where the person who has been guilty of a forcible entry detains it, or has the possession forcibly, or where the person in possession withholds by force him who has the right of entry and possession.

Forcible entry and detainer may be committed at the same time, as where one has got possession of another's house and detains it against the owner, who attempts again to get in by force. Thus a man may be guilty of forcible entry into his own [illegible]. Upon the first [illegible] the person turned out in this way is entitled to recover damages. But may[illegible] the justice [illegible] inquire [illegible] whether [illegible] forcible entry was made and if they find there was, the person thus turned out [illegible] to be restored to the possession.

[illegible] will not so far [illegible] made [illegible] [illegible] received [illegible] [illegible] The [illegible] [illegible] [illegible] [illegible]

This gives the remedy to be called a quasi delict and

Waste. A action of trespass does not lie against a tenant for a tort for waste against a tenant for life. Waste may be committed on houses & lands. If the tenant must have a cause of action waste could not be done if the cause of action [illegible] the tenant is guilty of waste if he does not repair it. If a tenant comes into a house upon [illegible]

2 Roll 815

If a tenant suffer a house to be in the letter case [illegible] waste 2 Roll 815 [illegible]

Any stroke on a building and thereby [illegible] 2 Roll 14

There is one exception with the same [illegible] 2 Roll 814

Litt 12 If suffer the land to be overrun with trees is waste in a tenant — to cut timber or as [illegible] to decay as

to not other [illegible] a [illegible] [illegible]
[illegible] convenience to the [illegible] [illegible]
to [illegible] [illegible]
[illegible] wood sufficient, is wife 2 Roll Ab.
For necessary repairs the lessee may cut timber
[illegible] and with it more to repair, but he may
[illegible] timber [illegible] the same repairs [illegible]
[illegible] he cut timber to repair when the
[illegible] repairs [illegible] the defendant, and [illegible]
had [illegible] some of the timber [illegible]
2 Roll Ab.

If the defendant covenants to repair at his own
expence yet he may take timber on the
[illegible] m, and by such covenant he has not
[illegible] any other obligation
[illegible] to keep up the repairs than he was
[illegible] by com Law he is obliged to repair, and
this covenant can be [illegible] any an
[illegible] formation of the com Law. yet the Lessee by
such a covenant is liable upon it if he does
not repair. So if the Lessor covenants to repair
and does not he is liable upon his covenant
[illegible] over for [illegible] of the Lessee
[illegible] neglect of repairs.
[illegible] the lessee except the wood [illegible]
[illegible] wood that [illegible]

tenants may possess land and house [illegible]
subject to impeachment for waste, and in
this jurisdiction of waste will lie against
the tenant for any of those acts which in other
tenants amount to waste. But the tenant
[illegible] is not liable by law for waste yet
for very malicious and wanton destruction
of timber houses &c. a court of Chancery will
grant relief.
A tenant is liable for waste committed by
a [illegible]
This action lies only for him in immediate
reversion or remainder. As B. opens for
years & remainder for life & remainder in fee
to B commits waste [illegible]
[illegible]
Lit 54
No action of waste lies against the exx for waste
in the lifetime of the testator 2 Roll 828
No action lies against tenant by elegit for waste
done against a lease it will [illegible] Cro Jac 729
When waste has been committed [illegible]
the heir may sue to bring his action [illegible] against
the heir or the [illegible] who had committed the
waste [illegible] to bring it against the
other.
A tenant at sufferance has had [illegible] given him
[illegible] is not liable

Forwards [illegible] must accounts with the [illegible]
the same principle it is that it will apply
to mortgages.

It is a general rule that where an action of
waste will not lie against a tenant, ~~that~~ the
court of chancery will grant an injunction
against him to prevent his committing waste
But a court of chancery will not grant an
injunction against a tenant in tail
The [illegible] has a contingent right to the fee
may in general obtain an injunction in his
favour 1 Vesey 555 - 2 Ch. 56
The case is made without impeachment of waste
the [illegible] may [illegible] ~~at~~ [illegible]
See 1 P. Wms 528 1 Atk 267 - 305 3 Atk 246

A tenant has a right to open mines but may
work those already open

Of Nuisances.
They are of two kinds public and private
[illegible]

For a public nuisance no action can be
brought by an individual unless he has sustain
d some particular injury. The person com
plaining of a public nuisance is indictable and
may be punished. For a private nuisance
[illegible] cases, and a person injured
may recover damages. [illegible] Action
[illegible] B. [illegible] & pray A.

Lecture 43 July 23 1794

The 2d. action of ejectment which is where a person running a term for years has been dispossessed, the remedy is an action of ejectment to recover the possession of the lease.

A dispossession of the fee itself is termed a disseisin. The action is used to try the title to the fee, and unless the right of possession is taken away (which is by means of an act of possession of one who has not the fee) it is used in every case. Whoever may enter into the land, he made [illegible] in [illegible] of the land.

Plff. sets up a fictitious lease from the claimant, and states in his declaration, that under that lease he is entitled and that John Doe a fictitious Deft turned him out. Then the Deft writes to the person in possession informing him of what has been done, that he may make defence. The person in possession then applies to the court to be admitted as made deft. which the court grant upon condition he admits the facts stated in the declaration. (viz) The lease, the entry and the ouster. If the person in possession does not appear to make defence, the court will determine in favour of the fictitious Plff

and the sheriff will then turn out the
[illegible] in possession. If the person in possession
agrees to admit the facts of those entry &c
but then before the court of Nisi Prius denies
them. the Pltiff is nonsuited but upon its re-
turn to the kings bench the fictitious Pltiff is
again made to sue, and he recovers against the
nominal Deft. and the [illegible] the actual
possession is turned out by the Sheriff after
this recovery. This action cannot be made
use of for the recovery of incorporeal tenements
as a stream of water Cro Charles 492
He who has a right of entry, and he who has had
possession 20 years is entitled to this action
1 Ld Raymond 741. This possession however
must be an adverse possession. For if he is ten-
ant at sufferance or at will he acquires no
right of possession even after 20 years Cowp 217

Lecture 11th July 24 1794

Personal actions the Law & practice

Slander.

Slander is of two kinds. 1st where the words are actionable. 2 Where the words in themselves are not actionable but the action is maintained on account of some

particular injury occasioned by the words.

In the first species of slander it is immaterial whether any particular injury follows in consequence of the words; but from the evil [illegible]; the presumption is that the person against whom they were spoken might have been injured by them. There are four species of these actionable words.

1st Those words which if true would subject to a punishment greater than a fine. as a man is a thief if true he would be subject to a corporal punishment, and the only enquiry is would the words spoken if true subject the person to a corporal punishment. [illegible] slander. The charge of Adultery is not in an action of slander but in Court it because we have a statute. Such words are corporally injurious [illegible]

2. Any words which affect a man in his trade, are words actionable in themselves as to charge a Physician of being a quack. But to call him a knave is not actionable, but to call a Lawyer a knave is actionable, for his trade is in business & depends upon his honesty.

3. Such as affect a man in his office are actionable

Art to charge a judge of bribery and corrup
tion, is a thing which may injure a man both
in integrity and understanding.

If the charge a man with having some
[illegible] which would lend to injure him
in his society, is actionable.

Damages do not however follow as a ne
cessary consequence from a proof of the fa
cts having been made. But the words
must have been falsely and maliciously
spoken. For any of the above charges if they
can be proved to be true, no action cannot be maintain
ed. The words must not only be falsely but
maliciously spoken.

Malice in Law does not mean the same
as in common conversation: but the meaning
in this is this. Malice may be imputed to
in the law some act with a wicked, unjust
[illegible] and [illegible] heart. Now if the defendant in this
action can prove that what he said was not
[illegible] maliciously, the action is not maintain
able.

Reporting a story which in circumstance
[illegible] confession, and which any man in
the same situation would report is not dan
[illegible]

If a man is charged with some offence which
in its nature is only finable, as to rob an au
[illegible] lie, in some not.
The rule is this when the charge affects the person

to a fine and scandal or injure his reputation, an action may be maintained.

The second species of slander is where the words are scandalous, and the person about whom they were spoken has been injured by them. It is a question which has received no direct decision: whether it is necessary that the words thus spoken to the injury of any person, should have been spoken maliciously.

The Pltff may be admitted to prove the words stated in the declaration, if they are not words actionable in themselves. as where one has accused another of theft. and an action is brought the Pltff may prove that the deft has called him a liar. thus he is admitted to prove it with a view to enhance the damages but to prove that the deft was actuated by malice in calling him a thief.

Words spoken in heat or passion will in some cases mitigate the damages, as where a man has just cause to be angry but if he is without reason it will not avail him to plead it, for the damages will not thereby be lessened. The law is a mantle over the weakness of humanity, but to the wicked it gives no quarter.

The manner in which actionable words are spoken is material. as to say that a person

Slander thing had been stolen and then
to say I was to prefer who I thought pilfer
Dan A. A in this case has his action on
a speech as if it had been positively affirm
ed that he was a thief
words are actionable, as a knavish fellow
is actionable if the previous conversation
will bear to convey that he is a thief as
did the speaker intended to convey that idea
Pillon 1 v. 2. Ellis v. 3 2d H & Mell 18
Lewis 4 H 2. 2 Dana 27.

Lect 40th July 25th 1844

Malice is wickedness in the abstract. In ~~tak~~
ing a direct pecuniary & the only enquiry is did
the speaker mean a charge of any crime If
the words imply a charge of a thing actually
done and not a mere intention to do it
it is slander.
The same thing may be said of men in
office as of others unless said with immed
iate reference to their office 3 Wils 177. 3 Burr 1610
Where special damage is stated in the de
clarat an it must be proved
So if a slanderous letter is an indict
able, then the only special damage c
in the ~~[illegible]~~ of this tort of slander

is not much affects a man as being. The &c in Cro Eliz 289 referable to the same [illegible] Slander &c are to be found in Deering 64 [illegible] 6 Ca. The case of calling a man a rogue is in section 4 above 17.

Charges actionable in themselves cease to be so, when used in a legal course of proceedings. But if charges are made before a court not having cognizance of them, it is no excuse, and the charge will be actionable as much as if spoken in any other place Cro Eliz 230. Neither will I do to aver the time in the case, for it is not [illegible]

There is no such thing as faint Slander

Words of Slander are to be taken in their middle sense or severest. not according to common acceptation

Prol Slander is no crime by the Eng Law

Of Libels. as written slander

Whatever is parol slander, is, if written, a libel, and more. for that which wounds the feeling insults the honour &c is actionable. [illegible] 139 [illegible] 2 [illegible] 7 M. Whatever tends to injure the [illegible] of a family is a libel 2 Burr 980

to prove it expects the party, truth of the libel will be a justification. but a libel is a crime against the truth but it is no justification for the public peace is a crime if true as if false 4 Coke 12 b. libel of a person then dead is a public libel and punishable. Reflections on the government. is public libel Cas. p. 6 2 Publication of obscene book libel 2. Ld Ray 809 & Publications against the established religion 1 Str 834 2 Burn 196 - 4 Bur 2666. in finding a man guilty the jury have no [illegible] to do with the law they are only to judge of the facts stated in the libel viz. whether the printer published them or not - for this opinion Ld Mansfield has been much injured but it is an established rule that where the law and the fact are against the jury they must decide with the law.

There are three direct defences to this action 1. The facts stated in the declaration admitted or the deft admits that he spoke the things alleged to have been spoken or written, but denies that they will furnish a ground for a recovery. 2 Admit the facts but says they were true 3 Denies that the plaintiff was ever made by him. The 1st is called a demurrer - the 2d By a special plea in bar. 3rd by general issue or not guilty

Trinity Term 46 Geo. 3rd 1806

Form of the Plff's declaration in an action of slander

1st That in consideration to induce the execution of the Plff in a matter of business & that the Defdt falsely & maliciously spoke & published of the Plff these words viz. "he is an insolvent & a bankrupt" the Plff meaning thereby that he was not able to pay his debts & was not able to pay his creditors

2 These words must be stated to have been spoken maliciously. This is a matter of inference

3 It must be stated that the words were spoken in the hearing of some person they need not be named but the general form in the hearing & divers good subjects of the King be

4 If the words were spoken with reference to some previous conversation, and

Declaration

the words you are and as he is a
convicted villain you are a thief. It must then
be stated that Deft spoke &c in hearing &c in
[illegible] action &c and concerning the Pltff
[illegible] &c the meaning of the Pltff the
[illegible] of this inquiry do is not to explain
[illegible] meaning he
[illegible] but only to show
[illegible] that they [illegible] 4 Co. Rep. 20-27

0 The damage is then stated in general or special terms as we saw with
If special damage is stated the story must
[illegible] in a manner as will
If the declaration is for words which affect a
[illegible] of which he is engaged
[illegible] state that he is of such a trade
If the declaration is for speaking against
[illegible] it must be stated that the
[illegible] action was concerning his office
7 If it is for written slander it must be
stated that it was published

If the [illegible] is false

If the Deft admits the truth of the words to
[illegible] declaration but denies that they are

whatever. he demurs, which is no more than saying the Pltffs declaration is insufficient in law

2 If he denies that he ever spoke the words he pleads the general issue which is saying that he is not guilty

3 If he admits that he spoke the words but insists that they are true, he pleads a special plea in bar. (ie) that the Pltff ought to be barred because the true. tho he spoke the words, yet he says they are true and prays judgment

4 that the words were spoken in course of legal proceedings is a good bar to an action by Act 91

5. The justification of the truth of words, if it has been attended, might be given in evidence under the general issue to mitigate damages, but the Law is not so now 1200 yet where the Pltff proves those words therein stated in declaration, the truth of them may be given in evidence under the general issue. A justification under the bare truth of the words under general issue may be waived.

6 recovery of damages in a slander suit is a good bar to effect this state particularly

Pleading

the former recovery, and that was for
the same [illegible]

with costs and with satisfaction is a good
bar to an action on agreement to receive a certain
sum for the injury done; it is enough
to plead this with propriety you must state
the agreement to receive a satisfaction, the
action for the injury sustained. The agreement to receive will be no bar. The
thing received must be of value 2 Roll 90

6th The statute of limitations may be bar
in bar. This in Lord is 2 years in Lean 3. This
does not extend to words actionable for
special damage: but only to words actionable
in themselves

7th A Release may be pleaded by to no
[illegible] the Deft release in the words and
[illegible] following — ready in court to pay
[illegible]

10th An award is good bar. but is no bar in
[illegible] the Deft has complied with the award
where there are two sets of words the one
actionable the other not, if the jury find
a verdict generally the Deft may move an
arrest of judgment. 1 Roll Abr 130. The jury must
have found the verdict as to the actionable
words if would have been no
[illegible] the Deft may demur to the last, which
is actionable and [illegible] the general issue
to the other words

Lecture fifth July 28th [illegible]

[illegible] for [illegible] & [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
[illegible] able Salk 13

1. If the Pltff [illegible] the [illegible] [illegible] the [illegible] [illegible] the deft may have an act against such Pltff Hobart 260 [illegible]

2. If he sues [illegible] the Deft [illegible] [illegible], an action lies as when the Pltff to [illegible] a small debt sues the Deft, craves large [illegible] and attaches his goods or holds him to bail for it 1 [illegible] 228

So if another person sues in my name where I have no cause, without authority from me it is actionable. Salk 15 [illegible] a man [illegible] a debt [illegible] against an [illegible] in failing circumstances, sues in the friends name, it is not a vexatious suit

Suing a man before a court that had no [illegible] [illegible] the cause is vexatious but in this case it must appear that the [illegible] [illegible] 3 [illegible] 302

[illegible] fraudulently by [illegible] a judgment [illegible] [illegible] 80

Malicious Prosecution

it is necessary [illegible] before there is an end of the one claimed to be malicious in prosecution — but it is not necessary that the [illegible] will be determined by any but the opinion of the court

There must be actual damage sustained to the [illegible] or the person — but the least degree [illegible] actual damage is the rule of damage.

When a man arrests in other or a different title [illegible] than that in which the parties have, if the Deft [illegible] will arrest the Deft and recover cost in this action. it is a vexatious suit for [illegible] commenced [illegible] for which treble damages are recoverable

For a malicious public prosecution

It is essential to this action that there is malice and a want of probable cause in the prosecutor Burrows [illegible] 1 Durnford [illegible]

Altho the prosecutor is [illegible] actuated by malice if there was a probable cause no action will lie against the prosecutor. So too if there was no probable cause and the prosecutor acted without malice no action [illegible]

An acquittal is prima facie evidence that there was no probable cause, and it then devolves upon the prosecutor to shew that probable cause existed. What [illegible] if no acquittal had [illegible]

[illegible]

[illegible] the justice found sufficient [illegible]
[illegible] a grand jury it will generally [illegible]
[illegible] the prosecution [illegible] 1 Deam. 493

General grounds for damages.

1st where the [illegible] damages [illegible]
[illegible] no damage needed [illegible] 2. [illegible]
[illegible] offence which meanwhile has suffered
in his reputation [illegible]

[illegible] in defending his reputation
[illegible] Sharpe 477

There is no necessity as formerly that the defendant be acquitted in order to entitle him to his action [illegible] vexatious suit [illegible]
[illegible] if [illegible]
[illegible] prosecutor who has aided [illegible] this prosecution [illegible]

[illegible] the [illegible] reference, [illegible] either a justification which will be that [illegible] was probable [illegible] a [illegible]
[illegible] of the act by not guilty.

In pleading the justification the Deft. [illegible]
[illegible] that the crime charged was committed [illegible]
[illegible] when and [illegible] and the grounds [illegible]
[illegible] the Pltff [illegible]
[illegible] the evidence.

[illegible] an acquittal he must [illegible]
[illegible] the Pltff. [illegible] 1 Esp. Blakfones 96
[illegible] Pltff may show the evidence that was given in
[illegible]

124 Lecture

[illegible] Attorney General [illegible] the Defendant [illegible] and [illegible] [illegible] [illegible] [illegible] the Defendant [illegible] malice, [illegible] the Defendant [illegible] the [illegible]

[illegible] the jury are in giving damages [illegible] general [illegible] the authorities are contradictory. If the offence [illegible] and the [illegible] the [illegible]

Lecture 48 July 8th 1794

[illegible]

3 Where a man comes right to the [illegible]
[illegible] fully [illegible]
[illegible] remedy [illegible] and
[illegible] [illegible] to entitle the [illegible]
to a remedy [illegible] [illegible] must have
made a demand of his [illegible] In the [illegible]
[illegible] no demand need be made
[illegible] in 2 Ch. Cases Eighth

as supposes relation it is necessary that
there be a species of property in the [illegible] Pltff
[illegible] that the [illegible]
owner but if he has found any property
the act of finding is sufficient proof
[illegible] in to the action.
[illegible] cial [illegible] in the [illegible]
such as the Bailie Carier Sheriff [illegible] will
entitle to the action. So that to support the
action there must be a property in Pltff and
possession in Deft and conversion.
Of course on by deft [illegible] notorious [illegible] the
[illegible] the [illegible] case [illegible] on
[illegible]
In the [illegible] are the wrong side of the [illegible]
[illegible]
[illegible] but the demand and refusal
construed [illegible] on

Demand and refusal is [illegible] evidence of conversion [illegible] Deft [illegible]

[illegible] when he can [illegible]

[illegible]

[illegible] ~~[illegible]~~, 1 Camp. [illegible]

When a person has found any [illegible] he may retain, until he is satisfied of the true owner, for he may [illegible] it to the [illegible] claimant, [illegible]

[illegible] that the gist of the action is conversion and this must always be stated.

Of actions concurrent with trover

[illegible] has been a [illegible] thing in action of trespass [illegible] concurrent with trover [illegible]

[illegible]

[illegible] has been [illegible]

[illegible]

[illegible]

2 Case. Where the Deft comes by the property [illegible] [illegible] But where the Bailee [illegible] the bailment indeb[illegible] will not lie the information is then power as special [illegible] on the case.

3 Case. [illegible]

Examine of trover. — 1. [illegible] [illegible] the Bailee [illegible] the Bailee may [illegible] [illegible] the Bailee [illegible] to the Bailor to allege [illegible] [illegible] the same [illegible] [illegible] the Bailee [illegible] [illegible] But neither the [illegible]

1 Levinz 282 or 302 1 Roll. Ab. 21

[illegible]

[illegible] jury [illegible] in

[illegible] may be [illegible]

exceptions [illegible] out to the [illegible]

[illegible] a [illegible] [illegible]

[illegible] public [illegible]. Where a

[illegible] [illegible] [illegible] in this

[illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible]

If the thief cannot be found the master pur-

suing of him must [illegible] the of

[illegible] [illegible] [illegible]

[illegible] unless the money

has been [illegible] to the [illegible]

[illegible] 3 Ph. 330. 40

[illegible] he where there

[illegible] consideration of the

[illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible]

[illegible] must be a direct [illegible] to the

[illegible] of the [illegible] [illegible] 525

1 Ph. 328

[illegible] may be maintained either against

[illegible] in his [illegible] If the

[illegible] [illegible] [illegible]

Trover and the form of the declaration

Tenants in common are not allowed to
act against each other except in case of
an actual ejectment of the property Dunch v
Cowp 444 5 Co Litt 200

Trover will not lie against the Exr for the
wrong of the testator if the testator in his
life time had made the conversion. but
the remedy against the Exr is an action
of indebitatus pmt. If the exr has the
property converted in his own the action of
trover lies against him

This action of trover does not lie against
a common carrier for goods lost on the
way, if it was not through his neglect
there is a remedy against him. a special ac
in nature of the case 5 Burr 2827 Peake 64 5

Lecture 19th July 30th 1794

One form of a declaration upon the
all the cases in an action of trover

The essential things to be stated are that the
plaintiff lost the article that the deft found it &
converted it to his own use. The thing lost or
converted must be described. Where an action
[illegible] It is not necessary
to describe the exr.

the time when the [illegible] was committed
[illegible] in the [illegible]
towards the [illegible] converted to [illegible]
[illegible] the [illegible]
[illegible] reason of
[illegible] which
in London &c [illegible]

either in the [illegible] where the [illegible] or 2d pt.
[illegible]
[illegible] the value of the [illegible]

[illegible] variable rule [illegible] 19 & 20 Car 73
[illegible] pleading may [illegible]
[illegible]

into court if they are not of a [illegible]
nature, and the proceeding [illegible] speed by
[illegible] rule to
[illegible] in this country.

Writs of replevin are of two kinds, [illegible] in Eng. are of the kind
are common both countries and are pe
culiar to each.
1st the are peculiar to England. replevy
[illegible] and all the goods and raise the mo
ney, but to save the tenant this writ of reple
vin was introduced, it prevents the goods
being sold before judgement obtained in
case of land and the tenant goes before
[illegible] upon [illegible]
being given to give the [illegible] both coming
to trial the judgment if any is obtained, re
lieves the [illegible] as it is certain is the ten
ant's opinion so that he can have the use
of [illegible] it.
2nd [illegible] is where beasts are taken dama
ge feasant. this is common to both countries
Cattle taken damage feasant or taking da
mage upon the land of another, may be im
pounded and impounded [illegible]
[illegible] then sends word to the owner of
the cattle [illegible]
pound till damage ascertained [illegible]
attorney then [illegible] the damage

The equity of the
, they are delivered
his entering into a bond
with the sheriff to try the action and to pay
the thing taken if the action
fails
On this bond the person who owns the goods
empounded applies to a justice in order
the bond and directs the pound.
to release
When by the justices intervention the goods
have been delivered back to the claimant, he
on
sues this action. This action is in the form
of an action of trespass and the declaration
this out he will recover his
damages. But if he does not the defendant
recovers his damages, and the bond is seized
Of creatures not amenable yet not of
a giddy. it is no matter what the force
in business in the case and they
the other kinds of replevin, is where goods
are
taken by an order. This is regulated
a judgment
released by getting a man of
into the amount of the
property tried upon so that the property shall be re
ment
The extent of the liability of the bondsman in this

case may be a great question. whether he shall be liable for the whole judgment, or [illegible] [illegible] [illegible] [illegible] or only to the extent of the value of the property possessed. So [illegible] [illegible] the [illegible] [illegible] [illegible] [illegible] must plead [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

Lecture 52th July 31st 1794

Of trespass vi et armis on personal property and the [illegible]

The destroying one a man or her personal property by another or her cattle comes under the denomination of trespass vi et armis. It may be [illegible] [illegible] land immediately [illegible] or only consequential [illegible] [illegible] of [illegible] the case may be.

A man may be a trespasser ab initio, as where the first entry is not unlawful [illegible] [illegible] & [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Tolls [illegible] a right to enter, yet if the man after entered should steal or abuse the goods he would be considered a trespasser ab initio. So where an officer entered a house [illegible] [illegible] to be lawful [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

legality of some respect not in his lawful employ [illegible] a
[illegible] of [illegible] and [illegible]
[illegible] will be. But the [illegible] must
be a misfeasance [illegible] a non feasance, as
where a man [illegible] a town [illegible] tolls for
[illegible] and [illegible] fuses to pay [illegible]
[illegible] will be.

To this rule there is an exception, at least
[illegible] as where an officer attached an
[illegible] and [illegible] compelled him to prison, he dare
not return the writ to the sheriff's office, but
may [illegible] on the ground that the officer
[illegible] the case had a writ by a stay
[illegible] the clerk, [illegible] the
evidence admitted and if true [illegible]
[illegible] an exception to the rule.

[illegible] the whole of the doctrine ~~[illegible]~~ see 8 Coke 146

The person who commits a trespass ~~[illegible]~~ purely
involuntary and perfectly accidental on
[illegible] will not be a tort against him. But if
there is any fault or negligence on his part
it will be. If where a man goes into a field
to shoot a neighbour's game and [illegible]
[illegible] but a man under the [illegible] although it was
[illegible] involuntary yet the act [illegible] against
him. But if he is about to kill his own
[illegible] and shoot to shoot him [illegible] and he sees
[illegible] look a man riding with the bell he is
[illegible] liable [illegible] of [illegible] whereas
[illegible] was important of his [illegible] [illegible]

guilty of no negligence, and doe that he
and the person in his state is unwarrantable
and happens to commit a trespass, no action
will lie against him for it. Bur. 2092
Ph. 701. the authorities will not all agree upon
the point. see Black. Rep. and trespass in
case. [illegible]

Of different causes of action and of trespass

1. An action of trespass in terms will lie
for mere words or threats, when they are of
such a nature that they would intimidate
a man of ordinary firmness, from the
pursuit of his business

2. For an assault which is unaccompanied
with a battery the person, for another with threatening
gestures or striking the first & the action
of trespass vi et armis will lie

3. The action lies for an assault and battery, and
is maintainable [illegible] of
hands, spitting in her face &c
Mere words are not an assault but may be
a justification in case an assault is commit-
ted. [illegible]
In Buller's nisi prius there is a case where
one has an agree to get in a horse and
[illegible] Mr Reeve [illegible]
[illegible] found

Of the justifications of an assault & battery

1. An officer that has a warrant to serve and cannot do it by any other means may use an assault and battery upon the person on whom it is to be served to the extent that is necessary to accomplish the object [illegible] further

2. [illegible]

[illegible]

3. [illegible] no [illegible]

4. [illegible]

5. In defence of [illegible]

[illegible]

7 A man may repel his goods within
[illegible] even to the death of the man
attempt to take them, but the goods must
been taken out of his house he may not pursue
[illegible] them in hot pursuit

8th A man may use force to prevent an
[illegible] from breaking ~~into~~ his house and [illegible]
[illegible] but may use violence in turning
him out. But never a man ought one into
house the owner or master knows not of it or
[illegible] if a man has
come in a stranger & suspicion of
room in my house and refuse to have it
I may turn him out by violence.

9 The relation between Parent & Child
that an assault and battery may be justified
defence of each other unless the Parent, master
the relation and even in the case of the
[illegible] the son fends his father
down and on other beating him he may
be justifiable in [illegible] him even to
death.

[illegible] ion may be [illegible] but
in England they must be [illegible]
within in Scotland they may be given in evidence
under the general issue

False imprisonment

Lecture 51 August 1st 1794

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

False imprisonment.

[illegible] false imprisonment, and [illegible]

Q.

The [illegible] of false imprisonment [illegible] nothing [illegible] beyond [illegible] beyond [illegible] condition is liable: but if he signs the [illegible] without examining it he is not liable, [illegible] the unit is li[illegible]

[illegible] condition [illegible]

[illegible]

[illegible] of the [illegible]

[illegible] 2 Sh. [illegible] to proceed [illegible] the [illegible] 6 [illegible] 7 – of the offices proceed to execute the [illegible] judgment 1 Cro. 7 [illegible] case of the Bishop of Ely 2 Wilson. Croates and Coxin.

This action is most strenuously opposed by the [illegible] Attorney Lord Raymond and Serjt. Cowper & Mott

An action for rescue will lie in case a man cut upon another land, and knowing it to be in a neighbour's land, rescue the man cut and judged that the line was in a fault and rescue will lie according to that line, cut a tree when on the land he was liable because it & [illegible] all the case see Sayer 37. 2. Mod 196

A. is damage feasant [illegible] land, means of the person who has sustained the injury may impound the cattle & may maintain a Trespass. By driving the cattle and impounding the cattle, he is pursuing the remedy given by the law. If he pursue the cattle, or seek for pound he waives the right to the perfect action of his remedy

If the cattle of A [illegible] break [illegible] into [illegible] and [illegible] through the negligence of the [illegible] they are of [illegible] the person repairing the fence. may he have his remedy against the [illegible], [illegible] the cattle or may [illegible] action on the case against the owner of the cattle. If the cattle be in the [illegible] [illegible] through the negligence of the inhabitants [illegible] [illegible] trespass [illegible] lies

If a person [illegible] cattle to keep and they get [illegible] [illegible] [illegible] may have action on either against [illegible] or [illegible]. If the agister [illegible] & [illegible] [illegible] is claimed against the [illegible] the trespass. he may have his remedy against the agister for keeping bad fence. So if [illegible] action be brought against the agister for the [illegible] and he has good fence and the cattle [illegible] he may have his action against [illegible].

If a man keeps a [illegible] vicious & animal [illegible] liable in the first instance [illegible] [illegible] of the animal may do. [illegible] with [illegible] &

tame animals, the case is different, for the [illegible] is liable for the [illegible] they [illegible] do. [illegible] the keeping an animal [illegible] [illegible] & [illegible] the owner will be liable to the full extent of the damage. [illegible] proved & that the owner knew the animal was used to [illegible]

Search warrant

London [illegible] August [illegible] 1784

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] liable [illegible] any [illegible] for any [illegible] to place the [illegible] by the [illegible]

[illegible] in this case it is for the person who wishes to use the search warrant to procure a magistrate and make oath to the following facts. 1st that he has lost some particular property. 2 that he apprehends some particular person 3 that he suspects they are concealed in some particular place in the opinion of the person [illegible] suspected. [illegible] they are same [illegible] claimed by the person in his case [illegible] the officer [illegible] deliver the [illegible] property is determined. If the claimant neglects to try the right of property the officer must deliver it back [illegible] may [illegible] for theft.

The man [illegible] of his reason, is not [illegible] punished for [illegible] of his [illegible] he may be [illegible] [illegible]

As a general rule the ministerial officer is liable for any [illegible]

Liability of officers. Ministerial & judicial
[illegible]: but a judicial officer [illegible]
It is not in every instance true that the ministerial
officer is liable, as where he executes a warrant
or execution proceeding from a justice of
the peace which was [illegible] upon the face of it
[illegible] to be without the jurisdiction of the
justice, but which in fact is. In this case the
officer is not liable for [illegible]
the warrant &c.

As it respects bail the ministerial officer
[illegible] liable [illegible] bail is apparently good
at the time of taking it.
The judicial officer is not liable for any error
of judgment concerning [illegible]
[illegible] jurisdiction. But if he [illegible]
jurisdiction [illegible]
[illegible] 651

An executor [illegible] the [illegible] of the debtor
[illegible] to remain there [illegible]
[illegible] of the [illegible] liable
[illegible] but if he had taken
it away immediately he would have been
liable only for [illegible] 67
[illegible]
[illegible]
[illegible]

Where the damage [illegible] proceeds
from the [illegible] act of [illegible]
[illegible] see the [illegible]
[illegible] 8 [illegible]
Privileged persons cannot be arrested. [illegible]
[illegible] be arrested 1 Black. 110
[illegible] reported in Wilson

[illegible] Sheriffs in Attorney

Arrest on sunday in false imprisonment Cay

lap 646

[illegible] principal, [illegible] Sheriffs

[illegible] Sheriffs [illegible]

[illegible] other [illegible]

[illegible] release [illegible]

[illegible] as

witness against the [illegible] [illegible]

[illegible] general rule of admitting [illegible]

[illegible] but the [illegible] of the [illegible]

[illegible] strained judgment [illegible]

having [illegible] against the

[illegible] defendant [illegible]

[illegible] issue in plea [illegible] defendant [illegible]

[illegible] damages [illegible]

[illegible] damage [illegible] Indebitatus

[illegible] 20 Bushels for 40. [illegible] Sheriff may

[illegible] agent [illegible] [illegible] tide that

[illegible] [illegible] [illegible]

[illegible] [illegible] [illegible]

[illegible] [illegible] [illegible]

[illegible] the sole

Transfers in at [illegible]

Lecture 23d August 4th 1864

[illegible]

any further than the [illegible] within 3 years
a [illegible] all [illegible] within the [illegible]
[illegible] when [illegible] is alleged.
within 3 years [illegible] before the [illegible]
a [illegible] The [illegible] [illegible]
[illegible] any [illegible]
particular act of trespass, he is to defend. But
in [illegible] case the [illegible] always give [illegible]
to repose this defence. [illegible]
the Plff to assign a certain [illegible] by pleading
a special justification [illegible] the [illegible]
[illegible] and [illegible]
[illegible] upon the [illegible] he must
[illegible] [illegible] assign a day from
which he cannot depart in proof. [illegible]
the Deft [illegible] then [illegible] day [illegible]
— Where the Deft pleads licence to [illegible]
[illegible] or the like, on a certain day he must
traverse all the time before and after ~~and~~
within three years [illegible] of the [illegible]
[illegible] of the Deft pleads a release he must tra
verse all the time [illegible] the date
[illegible] the Deft as [illegible] the
[illegible] then [illegible]
[illegible] the Deft [illegible]
[illegible] the [illegible] must traverse
[illegible] continuando always making the
defence as large as the Declaration.

Trespass on the case. This action may be main-
tained for the consequences of a [illegible]
[illegible]
[illegible] upon his neighbours [illegible]
[illegible]
[illegible] over
[illegible]
[illegible]

[illegible]

[illegible] 20. [illegible] do [illegible] the [illegible] and [illegible]

[illegible] interest if one [illegible] of [illegible]

[illegible] sea [illegible] but [illegible] — In this case it [illegible] the [illegible]

[illegible] 172 [illegible] the [illegible] case of [illegible]

I maintain [illegible] the [illegible]

[illegible] 196

When the information against the public at large [illegible] the [illegible] case [illegible]

[illegible] 9 [illegible] be [illegible]

[illegible] — When a person [illegible] complaint [illegible]

[illegible] 1 C. 2 [illegible] are [illegible] to be [illegible]

[illegible] 12 [illegible]

Of those [illegible] that refer to the person — [illegible] an or surgeon [illegible] a man [illegible] he is liable — but [illegible] a man [illegible] [illegible] be against him [illegible]

[illegible]

418 [illegible] on the case

The action on the case [illegible] is the most proper [illegible] for beating [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] The action for the seduction [illegible] which must always be brought by the person experiencing the loss (in case of the wife [illegible] the husband [illegible]) [illegible] or [illegible] [illegible] by the husband [illegible] for the consequential damages [illegible] [illegible] of the person [illegible] [illegible] [illegible] the case [illegible] [illegible] [illegible] [illegible] many then the action might [illegible] [illegible] be in the case [illegible] generally [illegible] [illegible] [illegible] [illegible]. It is evident from the decisions, that loss of service is not the only principle ground of damages [illegible] [illegible] disgrace and injury done to the [illegible] are taken into consideration and are the principal ground of damages. yet some [illegible] the [illegible] entitle to the [illegible] can [illegible] [illegible] on the other may be [illegible] that the girl be of age, unless she be [illegible] [illegible] from home.

[illegible] the girl was [illegible] before [illegible] [illegible] [illegible] [illegible] 3 [illegible]. 73

Lect Cath – August 17 1786

It has [illegible] question [illegible]
[illegible] the [illegible] of [illegible] But it is not de
termined [illegible] the [illegible] is liable for all
the [illegible] but [illegible] a corporal punishment for
the crimes of his deputies but is accountable in
damages in case a [illegible] [illegible]
[illegible]

[illegible] a [illegible]
[illegible] the [illegible] of the [illegible]
[illegible] but [illegible] in the [illegible]
[illegible] Sheriff alone is liable to the [illegible]
[illegible] the [illegible] officers to him.

An action of trespass on the case lies where
there has been an escape on mesne process.
Instruction of debtor [illegible] the [illegible] of the
[illegible] the action of debt [illegible]
[illegible] the [illegible] for which the arrest was made
is [illegible].

There can be no escape in a [illegible] arrest
[illegible] of two kinds actual and constructive
[illegible] actual arrest
[illegible] must be touching of the person, a
[illegible] arrest. [illegible] when a man has [illegible]
[illegible] and [illegible] stop. The officer may [illegible]
[illegible] from 1 Cobb 79
[illegible] the officer
[illegible] the person to be arrested and

[illegible] on the case

[illegible] informs him that he has a warrant [illegible] and the man [illegible] officer, that he [illegible] real [illegible]. But if the officer tells the same, and the man [illegible] away, [illegible] to sal[illegible] [illegible] it is a nullity.

The officer may take a different person [illegible] and if one of the [illegible] officer [illegible] it may be [illegible] the person and the officer [illegible] town 6H [illegible] way it is an ~~[illegible]~~ [illegible] [illegible] and an action. [illegible] in [illegible] of the [illegible] in case of an [illegible] execution.

[illegible] goes for an [illegible] and the [illegible] person ready to [illegible]. But if any [illegible] has been suffered from an escape in [illegible] degree the officer [illegible] liable.

[illegible] will execute the [illegible] if the [illegible] is effected in any way except by the act of God [illegible] enemies of the land. The officer [illegible]

[illegible] mean [illegible] of the officer may [illegible] a refuse. but if the person [illegible] James [illegible] [illegible] the jail, no refusal will avail him the officer.

Different kinds of escape. There are three
voluntary and [illegible] the 1st is where
the officer voluntarily [illegible] the prisoner to go
at large all the effects of [illegible] negligent
escape of a voluntary escape the officer
is always liable, and he is left entirely without
remedy, he cannot have his remedy
against the person who has suffered the escape,
even if he has an indemnifying
bond from the escapee, he cannot sue it,
for it is for an unlawful consideration.
If it is a negligent escape, the prisoner
may be pursued and retaken at any time
[illegible]

[illegible]

[illegible] debt

Substance of the case

[illegible]

[illegible] and the office [illegible] before any suit [illegible] by the creditor against them, [illegible] is not liable, but if the creditor institutes the suit before he [illegible] the debtor, he is liable

Turn and see a copy of an [illegible]

[illegible] the office [illegible] bail [illegible] the bail is sufficient [illegible] and the [illegible] [illegible] full [illegible] can be obtained [illegible]

[illegible]

Trespass on the case

[illegible]

[illegible] liable.

If the sheriff is sued shall the sheriff [illegible]

[illegible] 1 Roll 808 – 4 Leon 84 – 1 Leony [illegible] 2 Wils 275 Cro Eliz 87

The sheriff may immediately [illegible] and not wait until he is sued by the [illegible] grounds of action [illegible] Eliz 53

Attorney liable [illegible] Cro 206

If the attorney will free no one [illegible] 86. the attorney if he neglects to [illegible] a public [illegible] sign [illegible] [illegible] If he neglect, he is liable [illegible] all [illegible]

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Principles on the case

[illegible] on the case will lie against
[illegible] bailee [illegible] guilty of gross
negligence. If [illegible] must exercise the
same care over [illegible] he does over his
[illegible] 2 Strange 1099 2 Ld Raym 909

[illegible] who is liable to the same extent
[illegible] sheriffs [illegible] or the servants of the and [illegible] Ex
[illegible] him from liability in case of a loss
[illegible] 2 Ld Raym 909
The regular packet boats are subject to the
[illegible] 1 Phe 128
[illegible] C T a owner of the vessel is
liable for the [illegible] negligence
[illegible]

[illegible] 1 Dunn 32

[illegible] to the value of the goods
[illegible] 1 Hill 148 [illegible] 2 Hill 78
The owner may [illegible]
[illegible] C T in case of loss [illegible] 5 Burr 2611

Freeport v. The case

[illegible]

3 Wilson 429

With regard to the duty of the sheriff [illegible]
Bayley [illegible] insurance [illegible]
[illegible] and riders. See Pierce of Lane & Cowp 7th [illegible]
[illegible] in an action may be by the action against the sheriff
Prisoner [illegible] must be detained in jail for [illegible]

Lecture 26th August 8th 1794

Wherever the pownee has no amount
d with the pledge, that it receive an in-
[illegible] he is liable [illegible] of [illegible]
[illegible] the case. But if the pownee has an
the same case with the pledge that even
of his own property it is a general rule that
[illegible] liable for the [illegible] that may be
fall it any more that the [illegible] Cowp 89
There is one case in which the pownee
[illegible] liable at all events and this is
[illegible] he claims [illegible] pledge [illegible]
of the money and where he has taken a pledge
[illegible]
[illegible] of [illegible] the pownee. But where it may
[illegible] pownee
[illegible]

[illegible] the pledge may
always be used [illegible] an
[illegible] in
pledged. But there [illegible] his service while
[illegible] the jewel is stolen
whole in use the pawnee is liable to
the owner but if the whole is stolen he is
[illegible] for the reason above mentioned
if the pawnee receives a compensation
[illegible] 2 Salk 522

In case of a bailment of the thing hired
the bailee is liable — if it has been expressly
[illegible]
[illegible] an action of [illegible]
the same as if there had been no bailment
If the bailee has no design of exceeding the
bail — out of the bounds of the contract but
[illegible]
[illegible] — as if with the [illegible]
[illegible] be considered [illegible] Denaturing
[illegible] — there must be [illegible] proved
by the bailee in the first instance [illegible]
[illegible] Do design [illegible] of the time
[illegible] the contract [illegible]

If the bailee does not exceed the bail
[illegible] is not liable for any injury that
may happen to the thing bailed, provided he
has not treated the [illegible] as his own
But if the bailment has been exceeded
[illegible] to ride 20 miles and ride

[illegible] £10. and he is robbed or by accident lost [illegible] not have been, he [illegible] accident [illegible] But if the horse should die at the [illegible] by the use, as if the boots, it may be a question whether the bailee is liable.

But keepers are liable for the property of the [illegible] houses. They are liable to the [illegible] carriers are, and like them have a lien upon [illegible] for their bills [illegible] But the property [illegible] he is a traveler, and not a neighbour, he must be received as a guest. 8 Co. Keller case. Mar: 78

If the traveler's property is stolen by his own [illegible] the Innkeeper is not liable

If a [illegible] by the direction of the traveler [illegible] liable. But if the Innkeeper [illegible] been guilty of negligence, as leaving [illegible] doors, so that the horse is lost, he is liable not as Innkeeper but as bailee. If the Innkeeper offers to take the property [illegible] custody and refuses to be answerable for it on any other terms, and the traveler will [illegible] it, he has been and will be considered [illegible] whether or not the [illegible] liable. If an Innguest on there are an [illegible] 3 Lev. Mar 75

Trespass on the case

If a tavern keeper receives a traveler from the great inn [illegible] he is liable for the injury done [illegible] if a traveler takes his horse into a barn and lives himself among his servants and his horse is burnt then the tavern keeper is not liable Cro Jac 189

If a tavern keeper is dubious yet he is liable for it is expected will keep person in his house [illegible] Cro Eliz 622

If tavern keepers receive travelers they are obliged to entertain all who will offer them money unless he has some special reason as when he is full or is with family, and if without such reasons he thus offers he is liable in an action on the case. C

This action of trespass on the case lies for all frauds and deceits as 1 Warranty 2 False affirmation of the truth

1 In the case of warranty [illegible] for any fraud but is a rule that a man warrants a thing to have [illegible] this is no warranty [illegible] will subject a man warranting [illegible] &c the warranty must be at the time of the sale

2 False affirmation. He who makes an affirmation [illegible] &c [illegible] is liable [illegible] 289. Cro Car 411 Popham [illegible]

Pleas on the case

Lectures 17th August 1774

If a person sell an estate to which he has no title but which he has in his possession and to which he supposes he has good title an action of fraud will not lie against him but an action for money had and received will lie against the vendee L. Raym. 593. Salk. 210

3 Ins. If the vendor knew he had no title to the estate he sold an action of fraud will lie 6 Mod. 171

[illegible] opinion not yet decided whether an action of fraud will lie against the person who sold an estate, the vendee knowing he was a stranger before sale would be a deceit. [illegible] of fraud an action of fraud would lie [illegible] the vendor [illegible] to pay loss, [illegible] had the disposal [illegible] and the sale [illegible] converted into a bargain & sale.

[illegible] opinion seems to be [illegible] believe the action lie [illegible] will lie [illegible] in this case, as the vendee must really be [illegible] to be [illegible] action of fraud [illegible]

[illegible]

[illegible]

[illegible] ... and ... in ... [illegible] immediately ... [illegible]

[illegible] 18 ... 198. [illegible]

[illegible]

A feme ... [illegible] ... is liable [illegible]

By law merchant, an action ... the case ... where the ... [illegible]

the creditor ... [illegible] 187

[illegible]

Criminal Conversation

which they have [illegible] [illegible] [illegible] the [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] the [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] the [illegible] [illegible] to [illegible] he is liable. By their [illegible] there is an implied contract [illegible] [illegible] there is no debt as in the former [illegible] [illegible] of insurance as in the second

But one man has consigned [illegible] [illegible] other in a foreign Court [illegible] to [illegible] [illegible] has an [illegible] [illegible] to [illegible] [illegible]; [illegible] [illegible] [illegible] [illegible] [illegible] the [illegible] [illegible] [illegible] [illegible]

Action on the case lies for [illegible] [illegible] the [illegible] of [illegible] is [illegible] [illegible]

In this action the grounds of damage are 1 [illegible] [illegible] of the husband 2 that the affections of the wife are alienated 3 imposing upon the husband a spurious offspring

It was formerly held that this action admitted of no justification But it is now held that in some cases the damages shall be nominal as where the husband consents that his wife shall be a common prostitute [illegible] &c

The badness of the wife's character may be given in evidence to mitigate the damages And in all cases where the character is but [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Damages may be enhanced by showing the [illegible] [illegible] of the married [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

I drop on the case

Letter 28th August 1[illegible]

[illegible]

[illegible] ~~[illegible]~~ [illegible]

[illegible] may be brought [illegible] against a man who entices away another's wife if he does it without a reasonable cause. Abuse of the wife by the husband [illegible] a reasonable cause, [illegible] ~~[illegible]~~ [illegible] of the wife

Debauching a daughter [illegible] 3 Wils 18 - 3 T. R. 18 [illegible] The father may bring an action [illegible] against the seducer for [illegible] may [illegible] daughter [illegible] in action [illegible] on [illegible] the case lies for enticing away a man's servant [illegible] will [illegible]

[illegible] it is material that [illegible] of another. But after [illegible] the servant [illegible] them [illegible]

[illegible]

[illegible]

[illegible] August [illegible]

[illegible]

[illegible]

[illegible] A, [illegible]

[illegible] in an action of debt on a warrant of the [illegible] indebitatus assumpsit

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] as far as the employment of the [illegible]

[illegible] the consideration [illegible] as when a man purchases goods [illegible]

[illegible] price [illegible]

[illegible] not the [illegible] needs [illegible]

[illegible] a man [illegible]

[illegible] any [illegible]

[illegible] Douglas [illegible] 6 B.

Lecture 6th

[illegible] action of indebitatus assumpsit [illegible] debt will all be [illegible] by law [illegible] where there is a certain penalty annexed [illegible]

[illegible] on a premium [illegible] But the [illegible] in this are not at liberty to [illegible] the price of the article, they must take [illegible] the market price.

[illegible] is not maintainable [illegible] when the money [illegible] in his hands [illegible] as far as it serves.

There are certain kinds of contracts [illegible] and promises which of course will not compell a man to perform [illegible]

[illegible]

1 [illegible] Ear

2 a debt of the testator

3 [illegible]

4 All agreements concerning plant[illegible]

5 All agreements or contracts that are [illegible] to be performed within one year [illegible] must all be in writing or the [illegible] void

1 Where the act forming the debt of the testator [illegible] he also acknowledge that he was [illegible] [illegible] Terms and that he had [illegible]

2 Where one man promises to pay the debt of another in one year and under some circumstances it is admitted that a promise would be binding [illegible] as a rule it may always be [illegible] whether the promise be [illegible] or based upon the original debt of the promisor is always [illegible] but where the liability of the original debtor is not discharged by reason of the promise, and the [illegible] said [illegible] this [illegible] a collateral promise such [illegible]

within the statute of Lars and Lim
the promisor 1 Salk 25
Where one has a lien upon the goods of
debtor and by the promises of another
makes his goods liable to the debt
the promise is binding
If the promise is in this form. Let A have
an article and I will pay you for it the
promisor is liable. but if it is in this
form. If A have an article and if he
pay you for it I will the promisor is
not liable 3 Ter R 13. If I pay the
debt if you will give up your action
against Phillips 20. In 3 Burr. is a
case in which all the prom. fell
on this reply it may be a mort. 1 Wils 305
3 Term Rep

3 A promise to pay a man of money in
consideration of a marriage is void unless
in writing

4 All promises relative to land
must be in writing. But a promise
of a number is not void

5 The parol contract has been reduced
into writing in full. it then ought
to be the parties shall be con
ed to abide by it in each case where one
of the other has promised to do
and but for such promises a court of
will decree specific performance

[illegible] a man [illegible] out to acquire [illegible]
himself [illegible] not [illegible]
[illegible] contract [illegible] chancery will
compel him to [illegible] his [illegible]
[illegible] engaged to [illegible] a farm [illegible]
[illegible] number [illegible]
[illegible] would be [illegible]
with the farm and [illegible] the lot [illegible]
[illegible] to give [illegible] a court of chan[illegible]
[illegible] compel him to execute [illegible]
[illegible]

Lecture 61st August 15th 1794

As [illegible] this lies not only upon [illegible]
contracts but also upon [illegible]
[illegible] are not specialties, which are
such as do not detail the contract
[illegible] particularly specify the
consideration but simply express
[illegible] value received. In this country
receipts are specialties, the action in
such case is usually assumpsit, or
[illegible] but more commonly which
[illegible] species of assumpsit, in the [illegible]
[illegible] is but the receipt may be given
in evidence. It is not necessary to
[illegible] on the writing in the declaration
but may produce it in evidence.

[illegible]

the goods shown and have been left
in that way the vendee not being
[illegible] 2 p. In this country it is
the custom for the country merch-
ants to receive the goods of the
people of the country towns and
[illegible] the value of them
[illegible] them. The language
of the case in England is
[illegible] frequent [illegible] when
[illegible] wholesale merchants to
send to their customers their
goods. as they [illegible] they
want without any particular
order therefore and [illegible]
has arisen whether such goods
be left on the way. The language
would [illegible] this has not
as yet been determined but it
seems [illegible] in the
home [illegible] in the
merchants that they [illegible]
[illegible] man [illegible]

[illegible]
[illegible]
[illegible]
curity for the bargain, in this case it
is the law, but if the vendor refuses to
deliver the article, the vendee may
either have trover or an action of
[illegible] the [illegible]
[illegible]
[illegible] the [illegible]
[illegible]
[illegible] for the remainder of
the purchase money, as he may let
the note [illegible] and keep the deposit
[illegible]
[illegible] the [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] the [illegible]
[illegible]
the vendee [illegible]
[illegible]
and [illegible] the [illegible]

Judges

[illegible]

[illegible]

rather on account
of the numerous precedents than because
but a practice is consistent with principle
for usages are evidently against the feelings of
bar there has not been a single
of this question in this Country but it is
[illegible] that our Courts would adhere
to principle notwithstanding the number
of precedents the requisites to make a
for binding in Eng are that the court
must be contingent & [illegible] to the
[illegible] of [illegible] & [illegible] [illegible]

give
occasion to the introduction of indirect
[illegible] the feelings of [illegible]

labor of a third person Anno 1729 no
wages will be paid which is made use of
to cover an illegal view which is an
the immediate effect contrary to the public
policy & ought to be treated as never an
issue in the report of a debt contracted
the mutual debt not indebitatus assumpt
will lie for them a special assumpt is
the only action that will lie for them

Where a man enters into an agreement
to complete a piece of work in a cer
tain specified time & does not complete
the same by a certain day he can
recover nothing for his labour upon
the articles of agreement for the failure
in this part neither can he recover
upon a quantum meruit the equital
price of labour per diem for this would
encourage people to fall for their
agreements but he may recover upon a
quantum meruit a proportionate
part of what he was to have for the
whole of as if a sixpence was to have 10£

(Transcript.)

for finishing a house and it gets it
but half done by the time he will be
owed but 40£ the computed at the usual
price for our labour it might come
to three times that sum & if he leaves
the work so to the employer suffers
many particular damage more than is
marked for the whole price he is liable
to an action the case for such damage

Lect. 62 August 16. the 1794 —

Gentlemen and it lie to recover back a
reasonable consideration for the damage
if the person to whom the fraud is
known & with a expectation of receiving
part of the benefited promise to pay
it he will be bound by such promise
one of this kind we to be distinguished
from those where the person advancing
money or other who generally
have said the distinct & generally advance
to be nothing out of his own pocket for
the receipt of the principal without

husband to that purpose and also from the case where when one furnishes the wife & family of another in his absence with necessaries for in such case the acceptance of the request of wife is the acceptance of the request of the husband It has been determined that whenever in one case any thing say the way of advancing cash or by goods with or without an expectation of a reward if there was no kind of contract about it or promise to pay it is a voluntary courtesy See J.R.S.

An example of such voluntary courtesy is where a son serves a father after he arrives of age in expectation of a part of his fate

In assumpsit a promise to pay so much money such sum is the rule of damages otherwise if there was no express promise for a certain sum. In the jury are at liberty to determine it. Quere is due debt to pay such sum in one action that where there was a

promise & pay [illegible] of money the
demurrer is to be sustained [illegible] & [illegible] the
the promisor was entitled not knowing
the extent of his promise as about one
days earn by the carrel increasing in
rapidate proportion. When the consid-
eration is illegal the contract is void but
if it is held in the declaration it must
be in [illegible] in order that the consid-
eration by giving the claim might be
proved demur & the declaration void
if it is a [illegible] & contains in the
condition [illegible] the condition
and then demur but if there be no con-
dition but it is said for valuable consid-
plead the illegal consideration in bar
& substantiate that plea by parol tes-
timony for there is no obligation how-
ever solemn if given for an illegal
consideration but what the consideration
may be enquire into for the purpose
of [illegible] it on that ground for a [illegible]
of illegality will vitiate the contract Co 8 190
Co 8 Ej 190

Money won at play in and not paid cannot be recovered, and if paid it can not be recovered back [illegible] on [illegible] statute [illegible] Upon it may say in all cases where the parties are in pari delicto the law leaves them where it found them. if A promises B £10 to beat C and he do it, he cannot recover it. and if A has paid it he cannot recover it back.

[illegible]

upon the ground of rescinding the contract the [illegible] [illegible] [illegible] and he does not do it. he [illegible] recover back [illegible] [illegible] [illegible] [illegible] illegal act for the sake of retaining the money ~~Damages~~ Ld Ray 80

Where there are two or more engaged in an illegal transaction as partners [illegible] one of the [illegible] cannot sue upon such illegal [illegible] [illegible] [illegible] [illegible] committed [illegible] [illegible] cannot collect at Law yet if the one

[illegible]

[illegible] Salk. 7 [illegible] request [illegible]
Application of his [illegible] — he can
by this action [illegible] recover his share out
of such partner. 3 Dur. n 416
Where two who are out of the realm
bargain, the one being an Englishman
[illegible] to the other that he knows he is a
[illegible] to smuggle to England [illegible] may [illegible]
[illegible] the contract was void. (super
Where one by false [illegible] and deceit [illegible] on
[illegible] another unknowingly to do an ille-
gal act, [illegible] as to [illegible] a person [illegible]
[illegible] in [illegible] and the like. and the
person [illegible] upon him damages,
[illegible] of him for ~~that~~ misdoing.
[illegible] he may have a [illegible]
[illegible] who deceived him. But if
[illegible] promises and offers a reward to
[illegible] the law obliges him to do as to an
officer to serve a writ the promise is
void and no recovery can be had.
[illegible] 24. The reason given in
the book, is ~~that~~ it is an illegal [illegible]
[illegible] on. but a more rational one
seems to be ~~that~~ there was no con-
sideration
[illegible] 793 [illegible]

Ft

this is a general rule — but where a person promises to pay his son if the parents will marry him, when he does not [illegible] ble for the damages, but an action against [illegible] This promise for [illegible] original [illegible] can be in the hand Cro Jac 206 — 213

at

[illegible]

Lecture 6th [illegible]

[illegible]

194

Assumpsit

[illegible] in action [illegible] the [illegible] [illegible] [illegible] [illegible] [illegible] the [illegible] [illegible] [illegible]

[illegible] [illegible] 5.

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] page 21

Certain promises must be [illegible] in writing [illegible] [illegible] [illegible] [illegible] it is necessary to state in the declaration that the promise was made in writing. But [illegible] the promise [illegible] [illegible] [illegible] [illegible] in this manner [illegible] 450

Upon a special agreement it was formerly [illegible] that the action must be brought [illegible] [illegible] [illegible] [illegible] assumpsit [illegible] [illegible] [illegible] the [illegible] [illegible] the same [illegible] [illegible] [illegible] 137 page 71

[illegible] [illegible] must be stated in the declaration, [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] page 618.

[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] declaration [illegible] [illegible]

[illegible]

A [illegible]

[illegible] the plaintiff [illegible] under the [illegible] of [illegible] no proof in evidence. But the defendant may [illegible] [illegible] in [illegible] full [illegible] [illegible] given in evidence under the general issue for an assumpsit for [illegible] of limitation, must be pleaded specially.

The defendant may [illegible] payment in satisfaction of damages and a release. [illegible] the defendant may admit the assumpsit in [illegible] [illegible] the [illegible] [illegible] for the same thing which is a [illegible] which is [illegible] [illegible] the [illegible] [illegible]

[illegible] is [illegible] the statute in [illegible] the statute [illegible] itself in [illegible] on this [illegible] 3 years. [illegible] [illegible] when the statute has done [illegible]

Assumpsit

[illegible] of the [illegible] Virginia [illegible]
[illegible] the [illegible] of the [illegible] [illegible]
[illegible] action is not [illegible] against the recipient,
[illegible] but it is given in preference, in an
action [illegible] the original debtor. If one
one has made a partial payment of
principal or interest, or where one has
acknowledged the debt to be due, this
be the evidence of a promise, and the
law will imply a promise. But where one
[illegible] where a man [illegible] debt
[illegible] at the same time [illegible] the creditor,
[illegible] for the [illegible] state, [illegible] was a [illegible]
[illegible] judgment in [illegible] [illegible] the
[illegible] another [illegible] the
debtor [illegible] the state and [illegible] him
liable. Indeed the principal upon
which this goes is a waiver of the tort.
[illegible] the debtor [illegible] the state, except some act of the debtor
which amounts to a waiver of the
tort, as promise, acknowledgement of
the debt [illegible]
[illegible] civil court
[illegible] They said that [illegible]
a partnership before the [illegible] allowed
[illegible] the [illegible] of the [illegible] and the
[illegible] of the tort. 2 Sent. 151 [illegible]
[illegible] 20 [illegible]
Bandy - [illegible]
[illegible]

[illegible]

[illegible] to obtain [illegible]
[illegible] being hindered on [illegible]
[illegible] the [illegible]
[illegible] the [illegible]
[illegible] will be [illegible] by the [illegible]
[illegible] in evidence [illegible]
[illegible] to obtain [illegible] information
[illegible] which shall prevent the [illegible]
[illegible] 1881. Green [illegible]
[illegible] name of the [illegible]
[illegible] of green

Last 6th [illegible]

[illegible] pleading the [illegible]
[illegible] Court we plead the [illegible]
[illegible] that there is [illegible]
[illegible] the [illegible]
[illegible] the [illegible]
[illegible] the [illegible]
[illegible] the [illegible]
[illegible] the [illegible]
[illegible] the [illegible]

[illegible]

[illegible] the [illegible]

[illegible]

It has been made a question whether the [illegible]

[illegible]

[illegible] the [illegible] of [illegible]

[illegible] Aug 6 23

[illegible]

Plaintiff

is tendered the Deft. must [illegible] the tender [illegible] that he always was and still is ready to pay the money. By this means the Plff will get his Debt but will lose his costs and have to pay [illegible]

If pt is not money but some thing else [illegible] that is tendered the Deft may [illegible] in his plea that he tendered [illegible] in the deed in the Plff presence on [illegible] the Plff refused [illegible] he tender [illegible] this the attorney [illegible] 1 Strange 476 — 2 Lev. 5 Ewbank 11 H. 6 [illegible]

Defence. If the Deft. was [illegible] to the [illegible] the [illegible] and [illegible] and [illegible] should be [illegible] in the [illegible] [illegible] the [illegible] [illegible] [illegible] [illegible]

Lecture 67 Sept. 6th 1794

A seventh defence, which may be pleaded in bar of the action, is one that may be pleaded in bar of every action of debts [illegible] a foreign attachment of the Deft. can not plead this in bar. the Plff may recover

But the Deft having paid the money on an judgement in favour of Plff will not protect him against the demand of the foreign creditor who served him with the foreign attachment for the lottery money owing in France against the Deft who will be compelled to pay the money a second time. If the person in favour whom the foreign attachment is served has not obtained judgement against the Plff in the action the Deft in this action may move the court for a continuance and that will indubitable be granted

8 Defence. A composition with creditors may be pleaded in bar.

9 Def. that the contract or promise on which the assumpsit is founded is usurious. The mode of pleading. If it was expressly agreed between the Plff & Deft. that he the Plff. should have forbearance and give a day of payment at a certain rate of interest, shewing rate on the law allows & it would be reason. Does not lose pleading, tis say it is to Plff with more than legal interest, and by overpay the part illegal in the rest would go to Plff. whereas that is a question peculiarly for the court

[illegible]

If a Slave be sent for the action, is a release and receipt must be release but a release from the contract. This release must be executed before the action is brought, if the contract be a promise. For if after the breach is incurred, there is a release upon an action shall the right of action, it will not be release of the injury, as disposed to injure, but it will be considered as a release without a consideration. So the Defts plea therefore it must appear that no breach was committed it will after the release.

If a release under the hand of the Vp in a bar to this action will all personal be [illegible]. It must appear from the release that it was executed for a consideration. [illegible] that the Deffendant [illegible] consideration on executed a release in the words and figures following [illegible] the release at large [illegible] with a [illegible].

Contracts not [illegible] there is [illegible]

may [illegible] in a [illegible] in defendant
general issue from [illegible] by
and [illegible] the [illegible] are [illegible]
[illegible] [illegible]

Both sides rest

Five things are peculiar to this action. 1st Witnesses in [illegible] may be used as witnesses. 2d The defendant [illegible] if a balance is [illegible] due him.

This action, even the quantum meruit, may be sustained, called [illegible] where that may. It also may be [illegible] where there has been a [illegible] agreement for the price of a [illegible] & for a quantum valebat.

An action of Book debt will lie for money loaned & [illegible] [illegible] [illegible] same. It will [illegible] a man shall bring an action of Book debt for a large sum of money loaned. He wauldn't be permitted to sustain the action. But if a rich man who wauld be liked to pay money wanted [illegible] he shall bring the action [illegible] [illegible] [illegible] to sustain the action [illegible] [illegible] the [illegible]

[illegible] there [illegible]
[illegible]
[illegible] without [illegible]
There can no certain rule be laid down
with respect to [illegible] where the action may
be brought for money had & rec'd [illegible]
[illegible]
~~[illegible]~~ [illegible]
such that he would be likely [illegible] to
[illegible] the money.
It may be brought for the [illegible]
[illegible] both [illegible]
[illegible]. But if [illegible]
[illegible] be proved the parties themselves
[illegible] admitted to prove it.

This action is concurrent with the [illegible]
[illegible] for money had and rec'd in some
instances tho not in all. In those cases
where there was no possibility of an a-
greement or contract between the par-
ties as fraud usury &c the action will
not lie. But in those cases where there
[illegible] have been an agreement between
the parties it will lie.

Where a man has given a note and by agree-
ment between the parties it is to be paid in
cattle, the person who gave the note may
[illegible] the cattle [illegible] in both ways.
The cattle may be charged in [illegible]
Money paid on a bond may be charged in
[illegible]. And the greatest extent to which

2 [illegible]

[illegible] has [illegible] [illegible] was in a case decided in this county. Judgment affirmed by a majority [illegible]

The case was this. A gave a bond to B. After B's death his administrator sued the bond & A [illegible] payment of a part and that he had had receipts [illegible] the [illegible] lost. But not [illegible] according in his [illegible] he offered himself [illegible] witness to testify that he had paid part of the money for which he had had a receipt but the court rejected him and judgment was rendered for the whole sum in the bond. But afterwards in an action of book debt which A brought for the money which he said he had paid and for which he had a receipt. he was admitted to testify to the fact of the payment and of the loss of the receipt. and recovered from B the money paid on the bond

Original entries may be admitted, for there the parties have sued. But where a Wife has been taken from the bed in which [illegible] were originally entered. and [illegible] and [illegible] by a magistrate, the [illegible] not be brought into court

Where there has been any special agreement between the parties other testimony than the parties themselves [illegible] required.

Where two men [illegible] in partnership, [illegible] [illegible] one of them [illegible] partnership [illegible] [illegible] of the action

Action of Debt.

Lecture 68th — Oct 8th 1844

The action of debt lies for all express contracts whether in parol or writing or where a sum certain the action of debt is not so much an assumpsit as an agreement. This action has been given by the Com. Lawyers the reason they give is. If debt is not so much an assumpsit as an agreement is because the Deft may wage his law, whereas in assumpsit for the same thing he can not. It has been said by some writers that an action of assumpsit only lies, where an action of debt does, but this is a false principal. In an action of assumpsit in all the cases where there has been no express agreement, a sum certain and for an implied promise but in the cases in which an action of debt does not lie. Where a sheriff has collected a sum of money on an execution and has not paid it over. here the sum is certain and an action of debt will lie. But the indt assumpsit is always brought in this case. Where a [illegible] assumed by the [illegible] as willing [illegible] an action of debt

[illegible] of Debt

[illegible] case for a sealed [illegible]
[illegible] debt.

Where [illegible] a penalty, he [illegible]
[illegible] an action of debt for the penal[illegible]
[illegible] the only proper remedy. But an
action for a covenant [illegible] he
[illegible] to recover the damages, but
the [illegible] by the breach. [illegible]
[illegible] and may either of them
accept the [illegible] to sue for the
penalty. he may bring his action of debt
[illegible] precisely the penalty in the
[illegible] may waive the penalty and bring an
action for the damages [illegible]
[illegible] or the breach of the covenant
[illegible] damages [illegible] the penalty in
[illegible] by the question. and the Jury
may at their judgment give [illegible] a
[illegible] more or less than
the ~~sum~~ penalty. But the Jury have no
[illegible] discretion [illegible] on the
[illegible] from one or the other
This is the only action [illegible] in which
a [illegible] [illegible]

[illegible] the [illegible] to be [illegible] to some [illegible] and [illegible] generally [illegible] and other conditions of the land is [illegible] upon an illegal consideration [illegible] it is void. Cowper 6 6. Wilson 444

When an action is brought on the bond where the consideration is illegal and appears in the condition of the bond. If the defendant pleads the bond and condition sealed. The defendant [illegible] to the [illegible] Bottomley [illegible] does not receive the condition the defendant pleads [illegible] of the bond and [illegible] the [illegible] and [illegible] the condition of the bond [illegible] illegality consists, and then demur. But where the illegality does not appear upon the face of the bond and consists in the consideration. The defendant [illegible] no consideration, [illegible] evidence admitted [illegible] and particulars will not be admitted to prove the contrary. But he may plead specially and [illegible] evidence to prove the reason [illegible] which is illegal, the bond is void.

[illegible] to be performed
[illegible] on the [illegible] are
impossible [illegible] of God, the
[illegible] the [illegible] of the [illegible]
the bond is void Cro Eliz 206
The deft. in such case must state all the
pts. have rendered impossible &c
then may produce them by parol
evidence
If the condition is impossible to be
performed [illegible] principal [illegible] tion
is void and bond good. But the [illegible] not
void in principal [illegible] Where
one has contracted to perform [illegible]
frivolous, or impossible, no action can
be sustained for breach of the contract
and in case of a bond where the condition
is immoral, the bond is void. So that
according to the English practice things
~~[illegible]~~ merely impossible are to be per-
formed or an action will lie for non
performance, but things morally im-
possible need not be performed.
Where a judgment has been obtained
an action of debt will lie on that judg-
ment. If an exn cannot be taken out
upon it. But where an exn can be ta-
ken out, an action of debt on judg-
ment will not lie. By Eng. law the
exn must be taken out in one year
after judgment rendered, but in Virginia

exr may be taken out 12 or 15 years after judgment rendered. But it was determined by the federal court that an action of debt would lie even when exr might have been taken out upon the judgment.

The rule is that when the Pltff can not have every advantage upon the first judgment that he can by an action of debt on judgment. he may have this action

In an action of debt on judgment the parties shall not go back behind the judgment, for proof of any facts, or any thing except fraud

See Doug. 1 Impeachment of foreign judgment but then the burthen of proof lies upon the Deft. Foreign judgment is not conclusive evidence of a debt but only prima facie

Where the action of the bond is to save the Pltff harmless. it will not do to plead the words that he has saved him harmless but shew the manner how. which must not vary from the condition

Non damnificatus may likewise be pleaded but it will put in issue the fact that there was no [illegible] debt

[illegible] in [illegible] this court
[illegible] the recording of the [illegible]
If it was a hard promising bond
[illegible] the jury [illegible] without [illegible]
[illegible] the manner in which he was [illegible]
[illegible] he never only [illegible]
[illegible] that he has [illegible] him [illegible]
[illegible] plaintiff in his application, [illegible]
that there was a breach.

Lecture 6th 9th Sept. 9th 91

There are certain bonds founded on illegal considerations which both Law & Equity support. as where a man has lived in concubinage with a woman and for that gives her a bond this bond is good 2 Mill 339. But where a bond is given on the condition of which is to do the same thing as in the case above. the bond is void as where a man give a bond to a woman the condition of which is that she shall live in a state of concubinage with him void 3 Mus. 1768. The authorities apparently different. do by no means support. first is given as a recompence, the second bonds as an inducement to an illegal act. Offm 432.

[illegible] will be liened against [illegible]
of [illegible] every the [illegible] from the
[illegible] it appears that [illegible] of [illegible] may release
[illegible] against [illegible] the [illegible] is
legal

Where a bond is entered into the con-
dition being to execute a release for
a debt. the suit upon this bond it is
not sufficient for the Deft to state in his
plea that he has executed the release. but
he must show the manner in which he has
done it 2 Rep. 104 1 Ld. Ray. 334
where reciting the manner would be
up much time and not be correct
in length. it is sufficient for the
Deft to plead generally that he has exe-
cuted the release according to contract
[illegible] manner and form fulfilled
covenants. The Pltff must then come
over and assign a particular breach
and assign but one. on which the par-
ties join and go to trial.

We have seen that where a simple con-
tract has been entered into, to pay a par-
ticular sum by instalments an failure
of paying the first instalment. the obligor
was liable for the whole sum in the con-
tract. but in a single Bill to be paid in
the same manner by instalments

The obligor is not liable until the last payment becomes due Cro Jac 192. 1 Mod 80. the case of Bowen

It is a rule in Law that whenever a contract has been entered into, it cannot be broken up or destroyed by evidence of a lower nature than the contract itself. If the contract is in writing under seal, to destroy it there must be a deed under seal executed, and it cannot be destroyed by parol evidence. But this rule is never applied to bonds with a condition. The performance of the condition may be proved by parol testimony. This rule can apply only to those bonds where a penalty is annexed to the breach. Payment is no discharge of a single bill, for parol testimony is not admitted to prove this payment. But in this state we have admitted no rule of this nature.

With regard to tender there is a difference between the Law of this state and England. In England the tender must be made at the day on which the performance or payment of the bond was to be made and if made at any other time it will not be a good plea

But in this state tender may be made at any time before judgment, and by tendering the sum with commencement of the cost & interest is tendered it shall be a good bar to the deft. and bar the Pltff action

In England the instrument in which an action is founded must be exhibited at trial or a profert made of it in the declaration. But by our law this is not necessary. our practice however amounts to the same. for the Deft may always have a copy of the writing. When the writing is lost or burnt by accident, the party may still give his action, and rely on it. and necessarily only recite the substance of the writing in his declaration. which may be proved by parol evidence. 2 Rus 773 Change 227 Dang 33

Where the Deft has an excuse for not performing the bargain &c. the Pltff need only meet the Defts excuse. to this rule there is one exception. in case of an award the Deft may plead that there was no award. the Pltff must then go on and shew the award and state the case in declaring upon a bond. the if it is a bond and given say at Madras. the Pltff may state that it was made at Madras in Jordan or the county of Middlesex Dang 612

Lath Day. Put in Evidence the place where the bond was made with an copy of this fiction

Where a bond has been assigned and the assignor afterwards becomes a bankrupt the assignee may use the bond in the name of the assignor and not his commission.
1 Burr 610

Independent of the statute of limitation there is a length of time that will bar and a bar founded upon a bond is 16 or 20 years according to the circumstances of the case. When this time is elapsed if a person is sued upon the bond he may plead full payment and give the length of time in evidence which is presumptive evidence of the payment 1 Bro 434
p 139 1 Burr 270
Where there has been an indorsement before the 20 years have elapsed it is good evidence to go to a jury but indorsement made after is not good evidence to go to a jury. 2 Atky 826. & 27

The payment of money is to be discharged by the payor where a man owes to some of money to the same creditor who owes upon interest for other money. When he comes to make a payment he may direct an

which debt it shall be paid. but if the payee say nothing about the debt in which the payment shall be made it is then at the option of the payee to direct to which debt it shall be applied. (Martin v Cro Eliz 68 & Sym 308. 2 Bing 119.)
But where there has been no direction given by the Payer, a court of equity will find that the money paid shall be applied to the debt carrying interest.
A release must be pleaded to have been given and received in satisfaction of the debt as matter on which the mutis transgressi smaller sum cannot be pleaded in satisfaction of a greater sum of money but a peccatorial matter may as a calf for part of 40 £

Lecture 70th 17th Sept 10

In drawing releases the most extensive word that can be used is a release of all demands. The operation of this is to release and discharge from all present demands but if any thing may come in after it is in a note not yet out. a release of all demands discharges the note and every other claim which is debitum in presenti solvendum in futuro.

Covenants

If one [illegible] To discharge ~~debt~~ [illegible] which debts may become due [illegible]

[illegible] covenant never [illegible] The covenant must not be plead in bar of the action, but plea a release, for the covenant amounts to a release

A covenant is only an assumption made to writing and sealed. No particular form of words are necessary to constitute a covenant if the whole writing taken together amounts to a covenant it shall so be considered 1 Roll 518. 19. As a covenant that one shall enjoy the quiet possession of a farm on condition he annually pay 10 L. by excepting the lease. The Lessee covenants pay the 10 L. When an action of covenant brought it must [illegible] per [illegible]

Covenants in deeds of conveyance are two. viz [illegible] warranty [illegible] seisin of warranty. The person in favour of whom the covenant is made is not entitled to his action untill he has been evicted. On an action upon

The [illegible] of seisin may be [illegible] at any [illegible] when [illegible] is reason to mistrust the title

Where one has given a quitclaim of land to a [illegible] is no title. an action of indebitatus assumpsit will lie for the money paid for the land. because the consideration has wholly failed. [illegible] where one buys land knowing the title to be doubtful and therefore gives a less price. it is a bargain of hazard and he can never recover back his money where he has had only a quit claim

Where one enters into a covenant to defend a lease against all molestation. [illegible] does not extend to to tortious as unlawful ejectments as molestations. for here the lessee has his remedy against the wrongdoer Hob 25. Co Eliz 213

Covenants are again divided into real and personal

Where the contract is personal at the death of the party the right of action descends to the executor. so the liability falls upon the [illegible] In real covenants the case is different the heir [illegible] has the [illegible] of action and is liable for breach of the covenant 2 Lev 25-92 1 Will 4

A man's assignees are sometimes bound and sometimes not by the covenants of the assignor. Where the covenants strictly upon the thing bound and it is in being at the time the assignee is bound without being named in the covenant. If the thing is not in being at the time yet the assignee is bound by the covenant if named as if he covenants for himself and assigns If the thing to be done is not to be done upon the land the assignee is not bound tho named in the covenant 5 Coke 16 - 16

The assignee is bound if the covenants respect the thing leased and is for its benefit. If it is orientated negatively as not to till 15 acres of land Co Jac 125 The assignee tho not named is not bound for breaches committed before the assignment Lolk 109 2 J Black 35

The assignee is liable only while in possession Day 461 735 Lolk 81

Costs and [illegible]

The various defences set up that the Defendant can make

The first business of the Deft is to ask the jurisdiction of the court and see if they can take cognizance of the cause. If he finds they have no jurisdiction he moves the court to dismiss the action and take no cognizance. If it this request the Deft signs in his own name It cannot be done by his attorney

2 – See if there is not some defect in the writ. see if there is not a minor or if debt is paid, if never in due season. If any defect appears plead an estoppel writ and to declaration are joined as issue in the same piece of paper in the writ is the first part. In abatement only the writ and not the declaration

If. Applies itself to matters dehors the writ which may be the subjects of a statement such as the service leaving out &c by the writ abate the Deft cause costs. fitd as to the jurisdiction of the court is the Stanford

If the [illegible] not subject to a nonsuit [illegible] we cannot determine it upon demurrer. It is of fact it is traversable and may go to the jury.

If the Deft finds the [illegible] have in redition that the wrong is good he then looks to the declaration and sees if the Plff has alledged another cause in his declaration the support [illegible] if all his allegations are true

If the Deft is convinced that the allegations will not subject him he demurs to the declaration. A to charge a [illegible] with [illegible] a has [illegible] of a cause of [illegible] there as to make the [illegible] demur therefore to the declaration and the Deft is safe.

If the principal fact in the declaration is demurred to as being insufficient to support an action. if [illegible] this judgment is a complete [illegible] a future action [illegible] upon the same charge.

But where the declaration goes out the want of some essential allegation this is not [illegible] to a recovery upon the same charge.

[illegible] see some [illegible] the [illegible]

A special demurrer, when the allegations are all made as the facts are, and are sufficient to convict the Deft, or when there is some informality in stating the facts and making the allegations, is the cause of a special demurrer.

The difference between a general and special demurrer is this. In a special demurrer the verdict of a jury cures the defects, but in a general demurrer no verdict of a jury can cure the defects. but it may move an arrest of judgment.

But when the Deft cannot object to the jurisdiction of the court, nor abate the writ, nor demur with safety to the declaration. He may plead the general issue if he is not guilty of the facts alleged against him. But if found guilty upon the general issue, he may move an arrest of judgment, if there is is any essential defect in the declaration.

If the Deft is sensible that the charge is true, and can be proved but he can offer some excuse which will excuse or justify him. then he must plead the act of

in bar of the action. the Pltff may
demur to the Deft ~~[illegible]~~ Plea
if the matters therein contained are
not sufficient to bar his action
There are three methods one of which
must always be pursued by the Deft in every
case 1st Demurrer. 2d General issue
3 Special plea in bar

Lecture 72 Septr 12th 1794.

the Pltff may move an arrest of judg-
ment in consequence of any material
defect in the Deft plea as well as the
[illegible] in consequence of any material
defect in the Pltffs declaration. But in
these cases replieds, will be granted
[illegible] to the first defect in any
[illegible] of the pleadings. But when the
[illegible] of action in those cases to
begin anew. In the Note the [illegible]
[illegible] arrest of judgment [illegible]
[illegible] for the [illegible] of
pleading, the faults of the party &
the jury &c

[illegible] arrest of judgment. But
[illegible] be taken upon the [illegible]
[illegible] conclusion [illegible]

[illegible] error [illegible]
[illegible] appear upon the
record no writ of error can be [illegible]
[illegible] witness has been admitted [illegible]
[illegible] if the parties think it inadmissible
[illegible] a bill of exceptions may be filed
which will be signed by the chief justice
[illegible] of the court. This will appear upon
[illegible] and thus a writ of error will
[illegible] lay on under the jury have rendered
[illegible] in a verdict and the court refused
it and assign reasons of the [illegible]
[illegible] of such verdict. Because a
bill of exceptions must be [illegible]
the opinion of the court [illegible]
[illegible] proper influence [illegible]
and thus obtain a writ of error [illegible]
the question then appears upon the record
[illegible] of the judgment, in a writ of error
[illegible] it is upon the ground that
the declaration is insufficient [illegible]
[illegible] of the [illegible] But [illegible]
[illegible] on account of the [illegible]
[illegible] of the [illegible] [illegible]
[illegible] I offer the [illegible]
[illegible] the cause [illegible] of [illegible]

[illegible] after there has been a trial the
day the Deft. may plend this and the
[illegible] a new trial [illegible]
[illegible] if a new trial is granted this
[illegible] over the judgment. yet the judgment
is therefore so far as to prevent the
[illegible] Pltff and Pltff for any steps taken under
the judgment. A new trial granted
[illegible] cases where property has been levied
[illegible] an. But our courts will not grant
[illegible] a new trial unless without same con-
[illegible] an attached to it. as that he shall
[illegible] the Pltff in case he obtains
[illegible] judgment a second time.

[illegible] audita querela is the last step
[illegible] can be taken. which is to stop
execution and indeed it is a com-
[illegible] discharge of the execution
[illegible] there must be a bond given for
security to the Pltff in case the
Pltff should obtain his action
[illegible] such a thing as an error in fact
[illegible] is where a court have [illegible]
[illegible] side of an [illegible]
[illegible] and judgment [illegible]
[illegible]

Pleading

First [illegible] Pleading to the jurisdiction or
the [illegible] the [illegible] to [illegible]
the [illegible] in and this [illegible] must be [illegible]
in the Deft's name. Gilbert on law 187
If Deft. plead an abatement cost shall
be taxed for him
The Pltff for bringing his action before
a court that has not jurisdiction is lia
I: R. ble [illegible] to any [illegible]
140 [illegible] has not jurisdiction.
[illegible] if he was ignorant of this he is
not liable for any thing more than
[illegible] damages in the other [illegible]
[illegible] ribble

2. Abatement. Outlawry is a good
ground of abatement in some of [illegible]
[illegible] in this
[illegible] excommunication in [illegible]
[illegible] abatement but not in [illegible]
[illegible] if a subject of a [illegible]
[illegible] Con[illegible] But
[illegible] contract [illegible]
[illegible] in [illegible]
[illegible] 22[illegible]
[illegible] time [illegible] property
[illegible] abatement is
[illegible] privileged [illegible]

Pleading

is [illegible] on [illegible] of [illegible] [illegible]
[illegible] assumpsit [illegible]
[illegible] a [illegible] statement
[illegible] in this case the Deft must [illegible]
[illegible] so as to give the Pltff [illegible]
[illegible] and ability to bring an action
L Strange 816.

[illegible] case of a misnomer the Deft may
[illegible] the same [illegible] judgment [illegible]
[illegible] against him [illegible]
[illegible] shall be a
[illegible] the Pltff [illegible] and in
[illegible] against him [illegible] his name
[illegible] the action [illegible]
[illegible] of the [illegible] indulgence [illegible]
[illegible] against the
[illegible] name
[illegible] of the [illegible]
[illegible] Chitty.

L Case 73 [illegible] 13th 1794
[illegible] there are more Pltffs or Defts than
one to a suit the death of one is [illegible]
[illegible] of the suit unless it is an
[illegible] for the recovery of real [illegible]
[illegible] then the suit is abated Gilb Hist 243
[illegible] the right of the Pltff is [illegible] by the
[illegible] death of one of the Pltffs suit abates

where there is one Pltff and Deft. and up
on the death of either, the suit does not
necessarily abate. In some cases it
abates in some not. when it does not
abate it is carried on and defended by the
executors. where the Pltff dies the right
of action descends to the ex in all a
ses where he would have a right to in
stitute an action and where the Pltff
dies the action shall not abate in
those cases where the ex would
be liable in an action. Let us ex
amine the in those cases in which the
ex have a right of action under
the rule.
Ex and Adm stand in the same light
as the testator and with respect to
them, as in some cases the ex has a
right of action in case of [illegible] as well as
on written contracts.
[illegible] the injury has been done to
the [illegible] character of the Pltff. upon his death the action abates
and his ex and adm cannot sue
for the ex [illegible] could have been
in the suit. where the tort has
affected the property of the Pltff the

[illegible] the action shall
not abate upon the death of the Deft
for the executor in this case would have
a right to institute an action and if
it is instituted by the testator the ex-
ecutor may come into court and prove that
he is the Deft's executor and his name shall be
substituted for that of the original Deft
the suit go on
suppose the Deft dies. As a general
rule the action shall not abate if founded
on a contract for the executors are usu-
ally liable. And in an action for a
tort where the effects of the testator
have been benefitted the action does
not abate on the death of the deft but the
executors are to be
[illegible] as the
[illegible] of the Deft estate. But the
[illegible] have been benefitted
[illegible] death of the Deft the action abates
[illegible] against the
executors.
[illegible] where one of the parties
[illegible] other the executor is liable
[illegible] case of Hambly & Trott where
[illegible] of a man
[illegible] but in other cases the tort dies
[illegible]

[illegible] Time in all cases that the [illegible]
liable for the contracts of the testator
in all cases where the defendant the con-
tract was entitled to any thing or had
obtained a right of action. The liability
accrues to the executor. But here
the liability is occasioned by the neg-
ligence of the Deft. as sheriff fo[illegible]
and there is no possibility of the defe[illegible]
executor being benefitted the exr is not
liable

Suppose the Deft dies the Pltff may
issue a scire facias to all in the
Deffs exr But it is provided by a
statute that the Deft may issue a sci
facias to all in the Pltff exr
If the case supposed a court
would permit it

[illegible] a feme sole brings an action
[illegible] marries it abates the proceed
ing 1 Ld. Raym 811 — Salk 1 Vol 24
If an action is brought against a feme
sole [illegible] the marriage it abates the
[illegible] no [illegible] judgment for the one
[illegible] the [illegible] Ste

[illegible] is possible that he had
not [illegible] which has not been a
[illegible] by the officer, if the officer will
[illegible] it up to the [illegible] he may get an
[illegible] writ. which [illegible] will not [illegible]
[illegible] an action [illegible] having been
[illegible] before it for the same purpose
[illegible] writs issued on the same day
[illegible] abate to the [illegible]
[illegible] the writ is not signed by [illegible]
[illegible] it will abate
[illegible] not paid, will abate
[illegible] an improvident [illegible] and other [illegible]
[illegible] forward an action without [illegible]
[illegible] hands the writ will abate

Lecture 7th Sept 15th 1794

[illegible] rule in pleading abatement
that it must be pleaded before any
appearance or adjournment of the
the action. To this rule there are
[illegible] exceptions. In the judgment
[illegible] there is an error in fact
[illegible] writ may at any time be abated
[illegible] as where an action has been
[illegible] against a [illegible] it
[illegible]

a judgment against her.

Where the cause of abatement, arises after impleadance, as an action against a feme sole who during impleadance marries this is good ground of abatement.

By our statute all pleas of trespass are to be settled by a jury together, but the practice usually to settle pleas in one time before the jury are dismissed.

after a ~~recedentem~~ writ has been [illegible] it may be amended, if the [illegible] fact, and not the wrong as [illegible] asserts that the Deft. belongs to one town and he is a [illegible] the writ may be amended by inserting the true place where the Deft lives

[illegible] and Jane the [illegible] out of the sole. If the obligation [illegible] and the writ [illegible] [illegible] upon both [illegible] require security [illegible]

[illegible]

[illegible] stated [illegible] may amend the [illegible] [illegible] not amend it [illegible] of it [illegible].

In case of [illegible] the Pltff is compelled to pay the costs of the Deft. [illegible] of it ~~[illegible]~~ [illegible] till the replication. The [illegible] only [illegible] the amendment of the [illegible]

Except Writ duty & officers fees thirty 89

The Deft [illegible] any [illegible] and they [illegible] the Pltff [illegible] judgment [illegible] for him. [illegible] the Deft [illegible] further defence.

[illegible] ment which is [illegible] in the declaration [illegible] of the instrument it [illegible] not appear to be the same [illegible] in the declaration. [illegible]

[illegible] note given, dated the 10th of [illegible] to be paid the 5th of May next [illegible]

A demurrer is an admission of the facts but denial of the consequence that the pltff would draw from them. The deft in his plea of admitting the facts says that they are insufficient in law. General demurrer applies only to the substance, and says that the matters alleged are insufficient and underneath a demurrer. You cannot take advantage of the form or manner. But under a special demurrer you may take advantage both of the form and matter. It is more safe to plead the special than general demurrer.

Neither the general nor special demurrer admits any fact to be true which cannot be proved. If a case an action is brought upon a note of hand. The deft. pleads specially that there was a parol agreement between him & the pltff. that in case the pltff. would accept certain goods in note the deft. may demur to this plea. It would admit it to be true, yet in law it

can never be proved. It is a paid agreement to ans. the as a writing

Whenever there is a demurrer it reaches the 1st. defect. The declaration is essentially bad & the plea frivolous to the plea the Pltff demurs. This demurrer reaches his own declaration which will be adjudged insufficient & as our lawyers improperly say the plea will be judged sufficient for a bad declaration Hob. 76 - 4th. 561.

A part of the declaration may be demurred to and general issue to the rest. but the whole must in same way as the rest answered, and what is not answered is admitted Co Lit 72.

The special demurrer does not affect the merits of the cause at all, but the judgment is in chief. as if A. is indebted to B. 20L. and sues for 30L. upon the special demurrer by A. the judgment is rendered for the whole 30 but in Eng. the Deft. prays for a writ of inquiry, who shall the damages. & deduce the sum given in the first judgment from the sum 30L. that actually due with the int. in this case the sum that was a part of the debt of damages

Pleading

Where he damages are certain and
interest & costs he may enter with the
clerk of the court & ex officio it
We have no rule authorising our court to
assess damages as a jury of inquiry in the practice

Lecture 15th Sept 16th 1794

When one of the parties has demurred
and he finds upon the demurrer that the
case is like to go against him. The court
will permit him to take back his de
murrer and put in another plea
2 Ver 820 2 Wils 173

Demurrer to evidence. One of the
parties produces the testimony recei
ving and by the demurrer admits it to
be true, but denies that it is sufficient
in law to 2 Ld 76. 5 Co the 10th
then the evidence is demurred to the
jury are dismissed 6 Co Coke 43.
in this demurrer neither party can be
compelled to join. as is the case in
ordinary demurrers where the other party
is compelled to join in demurrer
6 Co Coke 7th 2
The reason to evidence is the same
as a special verdict by a jury

[illegible]

[illegible] admits the Pltff's right to the action and his claim to the land, but [illegible] the Deftts excuse which he alleges is a good reason why he should not submit to the Pltff's claims. In this state most of our special pleas may be given in evidence under the general issue but it will not do to plead special facts which amount to a general issue as that denies. In Eng. the defendants are would be compelled to plead the general issue

The plea in bar must cover the whole declaration and if it not a complete answer to the Pltff's whole declaration it will be judged so entirely insufficient that it will avail the Deftt nothing. [illegible] an action for money had & received [illegible] 100 and he states that the Deftt made full payment for 90 — and [illegible] thereby waiving a recovery of the remaining 10 [illegible] will against him for the whole sum [illegible] remains may be recovered [illegible]

[illegible] Dft [illegible]
i.e. the [illegible] not
defence which will require [illegible]
[illegible] from the [illegible] 295 & 303
If double pleading if one of the [illegible]
are defectively pleaded 1 Ld 176
If there are two pleas and one of them
[illegible] defence still it is not a [illegible]
double pleading in bar. [illegible]
Sam 126 it is considered
Where one of the pleas comes as an [illegible]
document it is not double pleading a
[illegible] suit commenced by a married woman
and a release given by the husband. It
is good pleading to state that she is
married and that her husband [illegible]
a release the latter is a sufficient defence
Saar 2 5
Where there are two pleas which [illegible]
the Plff demurs it is not double
pleading Leo Lit 30th Leo Cases 87
Where there are more defts than one
they may plead separately and it is not
[illegible]
this subject double pleading is only a
[illegible] Sam an [illegible] answer
[illegible] of [illegible]
Pleaded 337

Pleading

The plea in a must be certain Lecture Lect 16 Lecture 19 Lec 24 on a common [illegible] in certainty of pleading

Lecture 76th Septr 17th 1794

When a plea in bar is defectively noted the deft may be cured by the replication of the Pltff which admits the plea in bar to be good as which is itself defectively pleaded and demurred to by the deft. 1 Ld 230. (not certain that the above principal is laid down right)

Replication - any plea in bar may be traversed by the Pltff in his Replication, & when the traverse the parties are at issue and the point to be decided goes to the jury except. a record is pleaded which must be tried in all cases by the court

Where there is a traverse the replication should conclude with an averment [illegible] 871

If there is a traverse of the whole matter it immediately goes to the country without the necessity of any further averment

Departure in pleading is not allowed of Departure is the assertion of new matter

no way consistent with what has been before alleged by the same party. and which does not tend to strengthen his former allegations. As where an action is brought for breach of covenant. the Deft pleads performance. the Pltff replies by pointing out a particular breach. the Deft rejoins by saying that he rendered performance this is a departure from his first allegation of actual performance. Co Litt 76. 1 Lilly Ent 72

A traverse which is a denial of what has before been alleged by the opposite party is always in this form. "without that &c" any thing left untraversed, or answered in another way, stands confessed by the traversing party

The traverse if made by the Deft must be done so effectually as to leave the Pltff no right of claim. If by the Pltff, it must be so full a denial of the Deft's plea that it cannot bar the Pltff's claim as a man sued for a nuisance and stopping up three of his neighbours lights the Deft traversed without that he stopped up three of the Pltff's lights he

ought to be barred of having and maintaining his action. but if he had stopped but one the Pltff ought to recover yelv 225

There must not be a traverse upon a traverse. but the other party must join issue. this rule is not without exception. as where the Pltff sues for a trespass on the 1st of may Deft pleads licence on the day and averse the time before & after. the pltff may fall by traversing the licence

When some immaterial point in the pleading is traversed. the inquiry is to demur as the traverse

When the Pltff has traversed an immaterial plea in bar. and the verdict is found for the Deft. the court cannot then render judgment for the Deft but must give it in favour of the Pltff. But where the ~~court~~ Pltff has traversed an immaterial part of a good plea in bar. & the Deft. does not demur as to the inquiry against him. but determined against the Deft the court will order a replead

1 Bus 292 Hob 99 H

A Protestando is as much as if he sit en ... an a ... on as only a protestando ...

2 Reading

Lecture 77th August 18th 1794

Of granting a new trial

1st Cause is the discovery of new and material evidence. It must be new, and not have been had at a former trial. Bac. Ab. 273. Rex in Chenith 1 Burr 691. The petition for a new trial must state what the witness will say that the court may judge of the materiality. If the testimony is not of sufficient to procure a new trial it is a cause of demurrer.

2nd That a material witness expected was absent without any neglect of the petitioner. Here also the testimony must be laid for the same purpose as in the 1st. 6 Mod 22 Bac. Ab. 645

It must clearly appear what the cause was which prevented the attendance of the witness

3 That a witness whose testimony was expected had been convicted of an infamous crime. But there is a difference between the rule in law & equity. Indian. 194 Bac. Ab. 653

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O [illegible] for a new trial
that the witness through carelessness
omitted any material part of his
testimony

4 If the jurors are too numerous
or related to one of the parties
cause new trial shall be granted
but not granted if the petitioner
knew of the relationship of the trial
& might then have challenged
Cont 30

5 If the verdict is contrary to evi-
dence new trial will be granted
but it is rule must be qualified
to the weight of evidence
~~evidence~~ finding the court
will not grant new trial strong 1142
but where it greatly preponderates
against the verdict a new trial will be
granted. If equity has been done by
the verdict [illegible] no new
trial will be granted 1 Ch Ch 646. 647
Now will it be granted in a vindictive
action where the damages are trifling
644 n 664
O Excessive damages is the ground
for new trial 6 Wis 644. 645 but the
court will [illegible]

7. smallness of damages is a ground for a new trial. But smallness of damages in a vindictive action a reason for granting for new trial Strange 94 - 1051 - 6th 647

8. For any misunderstanding mistake or mistake of the jury as writing lots for the verdict is a good ground for new. Whatever may be the opinion of the court with regard to the equity of the verdict 1 Ill. rep. 234 Bac Eliz 189 Strange 644

9. For misconduct of the prevailing party in inducing a witness to stay from court is not a ground of new trial. If the jury agreed to bring in a verdict by a majority of votes. Neither is the negligence of the attorney

10. If the jury be caught in a general verdict when directed to bring in a special verdict. But in Can the court will not grant a new trial on the misconduct

11. If the verdict was against law, tho' in fact the parties are guilty in all the facts. but there is some illegal construction put upon some phrase — Pickett's rep. 23 In this case they [illegible] for this cause

12 That the judge misdirected the jury in refusing to admit proper testimony. No new trial to be granted in a penal action stange 899 1838 unless there has been some fraud practised by the Deft

13 In those cases where the party is pleaded and might ask his defence the new trial shall not be granted to let in the Deft to plead a plea contrary to the equity of the case as the statute of limitations &c

The petition must show that there is a good defence yet, and where the Deft it is it is no objection that he knew of his defence before the former trial for he might have had two defences and slept the wrong through ignorance

But if there is a point which has often been decided and the Deft makes the point his defence, and it is in fact no defence if the court determine it the same way no new trial shall be granted tho the Deft has another good defence

When the deft states a defence that states a part of the cause of the action or part of the answer will be called

Pleading

Lecture 78th ~~August~~ Sept 19th 1794

Of a Scire Facias.

This is a process that always presupposes an original judgment that gave birth to it. It is as much a judicial writ as any other, because it commences a new judgment.

When any thing has happened whereby the Pltff can not have the benefit of his own, even if this is the fault of the Deft himself, a scire facias lies. Thus if the debtor and creditor release to the court from whence it issued, altho it may be sued in a court of higher jurisdiction, as a judgment by a justice of peace for forty pounds damages in trover & mechandise, yet here the scire facias is sued in a court of higher than the justices court, as for the original action.

The most usual cause of a scire facias is taken out by the Pltff. Thus if he has a judgment against Deft & Deft B. land

Court B. will order them out the property
A takes out a scire facias against
B himself causing an the former judgment
recovery an Exn against B debaris
Lenis the judgment is that the Plf
recover &c.

[illegible] at the [illegible] scire facias against the scire facias which
might have been pleded in bar of
original suit. But the defence must al
ways be when something which is subse-
quent to the first judgment. A scire
facias may be issued out
on a bail bond in order to [illegible]
an end of debt. On a rule [illegible]
[illegible] bail bonds, in order of
[illegible] in the nature of a
[illegible] like a [illegible]
[illegible]

The scire facias if upon a recognizance
in the superior court may be brought to
the [illegible] court. This is a general rule. But when
the scire facias is subject against the
[illegible] in [illegible] a
[illegible] the first judgment was
recovered, [illegible] Spheal lies. but [illegible] the
scire facias issued against a person
who was not a party to the first
suit in Sph. el is allowable upon the
scire facias. [illegible] to be upon
a scire facias [illegible] can appear against it

The Audita querela is not a writ of common right, but it is always the duty of the judge to point out the kind of exception lying, by examining the nature of the complaint, before he grants the audita querela to be satisfied if there is probable cause the writ is always to be signed by the judge of the common Pleas, unless he is incapable or absent when it may be signed by any of the quorum

This writ is a complete substitute to the exr & the Pltff if the audita querela fails, has recourse to his hand

The audita querela is a good ground for an action to recover all damages the Pltff has sustained on account of the non and for the recovery of money paid on the exn

A mandamus is a writ issued by the supr court of any Jy. It lies for any person injured by any inferior court or ministerial officer to do his duty, or to do some act which appertains to his office, but which he refuses to do. The reason shewing the cause for a mandamus must be the truth to the facts he has alleged. He pltff is a common and to the officer & lower court to do the thing, pointed by the writ. Where there is no other adequate remedy, the officer sufficient redress, [illegible] this one

[illegible] sufficient [illegible]
[illegible] mandamus issues which if he
obeys [illegible] will be punishable for a con-
tempt [illegible] the honour of the writ
[illegible] and they will grant a stach-
ment [illegible] confine him in prison till
he shall comply with the commands
of the court.

But if the officer make a false return
it is treated as an nonfeasance [illegible]
[illegible] and be done upon the office, as
if the officer had [illegible] another
the false return [illegible] very proof
[illegible] evidence if found
against him. But by the statute
[illegible] principal which have we made
[illegible] our court, the complainant
has a right to require the return
[illegible] traversing and if found
false the officer [illegible] mandamus
issues and a [illegible] imagerte the
[illegible] same [illegible] passed
[illegible] of setting damages
[illegible] upon the return

Habeas Corpus [illegible] if a man or
[illegible] any one imprisoned under
[illegible] authority without it [illegible] put
[illegible] upon Examination
[illegible] an Habeas Corpus. The writ
[illegible] where [illegible] ought to be
[illegible] and [illegible] the [illegible] with the
[illegible] [illegible] an [illegible] imprisonment
[illegible] Again complaint is made
[illegible] an [illegible]

this writ lies for a wife who is confined by her husband, and when liberated if the husband again confines her she is punishable for a contempt. So far as regards X. Any one who is imprisoned by legal process (except in the cases mentioned above) even for murder, has a right to this writ, and when he is out the judge or judges have to decide upon examination either to discharge, remand, or bail. In vacation the application for this writ is made to the chief justice or in his absence to one of the assistant justices

Lecture 79 Septr 20th 1794

A writ of Prohibition is a writ which the superior court issue to prohibit any farther process in an inferior court which an inferior court have assumed jurisdiction; and of which they have assumed cognizance. This writ is directed to the inferior court or the party. This writ is framed in consequence of a petition on the part of the cause of action &

[illegible]

[illegible] attorney of the court, [illegible] shown he has been [illegible] to try the action. If the [illegible] examined upon the [illegible] he have [illegible] upon over the action [illegible] further but if they have not [illegible] much on they make [illegible] superior court of the action [illegible] will be [illegible] and the [illegible] good before the superior [illegible] letter [illegible] superior [illegible] action, if [illegible] I am [illegible] if I have not, [illegible] judge [illegible] stay [illegible] action; but if [illegible] and [illegible] I have [illegible] the [illegible] grant a writ of [illegible] action [illegible] [illegible] the [illegible] of the action

Action of Ejectment.

[illegible]

Acc[illegible] of [illegible] account

executors of the [illegible] and parties

the Def[illegible] in their [illegible] whether bailiff, [illegible]

[illegible] or receiver, is considered as [illegible]

who has received the property of the [illegible]

to make profit of for him, and to ren-

der account when requested. 3 Wils 73

A bailiff is properly a person who as-

[illegible] rents or series of property [illegible]

[illegible] to make the [illegible]

[illegible]. The bailiff has a lien upon the property

[illegible] put into his hands, for his accom-

[illegible] ordinary, and is only accountable

for the surplus, after having deducted

his expences.

A receiver, differs from a bailiff in

[illegible] respects, he receives only money to make

profit — he must account for the

entire sum, and is allowed a deduc-

tion for expences — as a compensation

for his services, is received [illegible]

[illegible] Tacon and Harmon [illegible]

[illegible] in the [illegible] Co. Feb 172

[illegible] action [illegible] extended by

[illegible] Note, and hereby the same

[illegible] may be [illegible]

[illegible] in lands and for and

[illegible] 1 Mass Rep. [illegible] administration

Co. 1 89 [illegible] another [illegible]

administrator [illegible] against
[illegible] In Scotland we have no [illegible]
[illegible] from the Eng law in [illegible]
[illegible] particulars

[illegible] therefore conclude that there
[illegible] an action will lie against the [illegible]
[illegible] as received the rents and debts of [illegible]
[illegible] been employed to pay [illegible]
[illegible] the person in possession [illegible]
[illegible] goods to be mere [illegible]
[illegible] debts of the party against
[illegible] usually choice of other remedies. So
[illegible] Jan 83

[illegible] always [illegible]
[illegible] the bailee [illegible] will not
[illegible] any [illegible] cause of a thing [illegible]
[illegible] unless the thing [illegible] was to [illegible]
[illegible] made [illegible] of [illegible]
[illegible] one has bailed [illegible]
[illegible] there is an [illegible] of the bailment. It
[illegible] [illegible] [illegible]
[illegible] after [illegible] has been [illegible]
[illegible] by the defence. [illegible]
[illegible] have been [illegible] to these cases.

[illegible]

[illegible] agreement [illegible] the action of account [illegible] the bar of account [illegible] will in chancery because we have a positive statute [illegible] the bill in chancery [illegible] adequate remedy [illegible] law

A man enters into a bond with a penalty to account. In this case you may either bring an action of debt on the bond, to recover the penalty, or an action of account

A man enters into a covenant to account. [illegible] the covenant [illegible] the action of account

[illegible] implied [illegible] the action of account, either, [illegible] the remedy [illegible] either in [illegible] or an account

The general issue in this action is [illegible] bailiff receive

One thing peculiar to this action is the two judgments. The first judgment [illegible] the deft. [illegible] account

a particular case, the defendant's defence should be the general one or account expected. The first defence must be of such a nature as shews that the Deft. ought not to pay an account which can possibly be anything else than the general issue or that the Deft has full discharged a release of all demands is a good plea under this issue. The Deft has full recovered. If the parties have already met and settled all accounts this will bar the action. If defendant expressly meant by such accounts in this case are also the action. If a man issue received of me one hundred pounds for which he is to account unto me has paid me £10. in his own service or let me have goods to the amount of £10. more this clear in his own service duly accounted for and he is still fully to account. If the and not judgment will be in account the deft. the Pltff judgment. [illegible] in [illegible] inquire and [illegible] accounts of the [illegible] this [illegible] for [illegible] [illegible]

October 27th 1794.

Mr Reeve began his lectures after fall vacation, but not having completed his course of Lectures last term, he did not begin as usual his introductory lectures.

Lecture 80th

Of Fraudulent conveyances in general, whether of real or personal property. The time when the conveyance is considered fraudulent, is not till the grantee has possession and the property is changed. A conveyance to ~~avoid and~~ defeat a creditor is void as fraudulent. But a conveyance to avoid a creditor is not always fraudulent. As where a grantee a favourite spot of land for the express purpose of avoiding his creditors, the conveyance is not fraudulent if there remains sufficient property, unencumbered, to satisfy the creditors. But to convey a favourite piece of personal property to avoid creditors is fraudulent, and so in the conveyance of the favourite spot of land, if there is not a sufficient property remaining

such fraudulent conveyance to a
ward creditor, is good as it respects
the grantor & grantee solely. But
if the grant is purely voluntary with-
out any design to defraud creditors
it is considered in chancery as a trust
and upon application in chancery
that court will compel the grantee
to reconvey. It is upon principle
[illegible] that fraudulent con-
veyances to defraud creditors is
made good between the grantor
and grantee, it is a severe pen-
alty upon the grantor for attempt-
ing to defraud his creditors. Such
fraudulent conveyance is totally
void as to prior creditors and
the grantee has no title against the
[illegible] creditors. The conveyance
respects strangers it is good and to
them it is committed against
the grantee. In this case there is
no difference between a prior and
a subsequent creditor either shall
[illegible] in [illegible] from the fraud-
ulent grantee

in against the subsequent creditor it may be said, that the conveyance could not have been made to defeat him. neither could he have trusted the grantor upon the credit of that estate. In answer to this. The grantee has no equitable claim upon the grantors property, and no right to hold that, granted to him for no considera tion. But the subsequent creditor has an equitable claim upon the grantor, property wherever found, and shall have it in preference to the fraudulent grantee. There is no difference between the fraudulent conveyance found in no consideration and that found on a partial consideration for the same purpose (viz) to defeat creditors. in either case the grant is void ab initio. For instance if A. has a farm worth 1000 £. and conveys the same to B. who is a creditor for 200 £. the design of this conveyance being to defeat creditors is fraudulent and void. If B. in this case has given up his debt of £100 which he could claim of A.

he must lose his debt, for neither law nor equity will assist him to recover it. He having lent his aid to a dishonest transaction, he loses his debt as a punishment for his knavery.

Of fraudulent conveyances as they affect purchasers. 1st of real property.

Where the grantor is still in possession of the title deeds and of the land, his conduct is calculated to deceive purchasers, and so in this case a creditor, purchaser and gets possession of the title deeds will hold the land against the fraudulent grantee, and even if the purchaser knew of this fraudulent conveyance, it is immaterial. The case is the same and the purchaser in this case having paid his money will hold the land. But if the title deeds are in the possession of the grantee it is not calculated to deceive a defrauded purchaser, so if a creditor and a purchaser in this case shall not hold the land so he has paid his purchase money. And indeed offers on purchase to the

fraudulent conveyance intention the good would actually defeat the Laws
for making the fraudulent conveyance
good against the grantor.
If may be asked why the purchaser
in view of the fraudulent conveyance (i.e. on
the title deeds remaining in possession of the
grantor) it is to be permitted to hold
the land against the fraudulent grantee
and the person who purchased after the
title deeds were given up, should not
hold against the grantee. In the first
case the transaction is calculated to de
ceive purchasers, and the grantee has
lent his aid to the deception. The pur
chaser will therefore hold the land
as a penalty upon the grantee. In the last case
the grantee by ~~giving~~ taking up the title deeds
leaves no room for deception, the
purchaser therefore is a mere volun
teer shall not hold the land against
him, and thereby defeat the intention
of the Law by permitting the fraudulent
grantor to get the whole value of
his lands, which the Law designed he
should lose as a penalty for his
But in Connecticut we have little
to do with this doctrine as it respects
title deeds, we say a need in our law
of recording deeds.
2nd. If fraudulent conveyance of heir an
[illegible] in tail [illegible] only

If the grantor is dead the fraudulent conveyance is good against his representatives, and in this case the grantee of the personal chattel is an Executor his own wrong. 2 Dum 587 Apply this doctrine in Law here and may be when par otis action of an execution, and we shall see that the grantee of real property may as well be ex in his own wrong, as the grantee of ~~his own wrong~~ personal property.

Can a conveyance of a personal chattel be fraudulent as it respects creditors where a full price has been given by the purchaser? If it is done with a design to defraud creditors it is a void conveyance, and will operate as a penalty upon the purchaser for aiding the fraud. Cowper 432

Of the difference between the claims of prior and subsequent creditors where the purchaser has given the full value of the land but with intent to defraud. Such purchase will not defeat prior creditors, and the purchaser will hold the land against all creditors subsequent to the purchase. There is a difference between the subsequent creditors in this case where the purchaser [illegible]

and there the grant was made without any consideration (see above page 256) In this case the grantee who has paid a full price for the land as against a bona fide purchaser with the subsequent creditors, and ceteris paribus melior est conditio possidentis

Of voluntary conveyances upon a good consideration. They are void as to prior creditors. The reason is a man must be just before he is bountiful. Voluntary conveyances are not as such void as against prior creditors, if it is clear there was no intention to defraud but there being creditors and not sufficient to satisfy remaining to pay the voluntary conveyance founded on a good consideration is presumptive evidence of an intention in the grantor to defraud his creditors. But this like all presumptive evidence may be rebutted, by evidence that removes such presumption out of the way

Subsequent creditors have no claim upon the estate against the grantee where the conveyance was made on a good consideration

Lecture 81 Oct. 28th 1874.

Of fraud arising from the grantor retaining possession of the personal property.

If the grant was made without any consideration, the debtor is liable to purchasers and creditors of every description and as to them the grant is entirely void. If the purchaser or subsequent creditor knew of the grant, this would make no difference for the grantee in such case has no equitable claim to the property which has been conveyed to him or other he has not so good a right as the purchaser or subsequent creditor.

The grantor is frequently retaining possession where the conveyance was in fact for a real debt which amounted to the full value of the property. & as between the grantor and grantee the leaving the property in the grantee's hands may be an honest transaction — or the case is the same where the owner of property entrusts a debtor with it. In such instances will a court [illegible] not?

If the purchaser knew of the honest conveyance he can in no instance hold against the grantee. The prior creditor is in the same situation

But it is a great question whether a subsequent creditor knowing nothing of the conveyance, can levy upon the property, as whether a bona fide purchaser would hold the property against the grantee. The following is the rule by which the question will be decided Where the nature of the bailment is calculated to deceive a purchaser or obtain credit, the purchaser or subsequent creditor shall hold the chattels in preference to the grantee for the latter was the cause of the credit or purchase by negligently suffering the property to remain in the grantors hands, who was trusted upon the credit of the visible property But if the nature of the bailment is not calculated to deceive the purchaser or subsequent creditor will not hold the property against the grantee as the case of Face & Hazlitt decided.

Instances that comfort with the rule
laid down. Where a man secures
a debt and leaves the articles in the debtor's
hands. This is calculated to deceive
purchasers and induce credit.
But where a man lends his horse
to his neighbour to go to mill. This
is not calculated to deceive

In case of a mere naked bailment
the bailor never loses his property
by bailing it, sold by the bailee

Where horses have been let for a journey
and sold by the bailee, the cases have
been differently decided sometimes the
bailor recovering sometimes the
vendee retaining the property.
It is frequently the case in this state
that the father [illegible] his daughter
marriage
will only avail [illegible] son in
law. [illegible] more
[illegible] deceive
[illegible] debt yet it
[illegible]

This is evidently a deception against principle: but the deception is favoured under policy. The policy is this. for we are not willing to trust property in the hands of feme covert in law till they see how they manage with it — and it often is of very great advantage to young women, to have a little property put into their hands to begin the world with.

In case of a mere charitable bailment the chancery court & court of errors have decided that a creditor levying upon such property must not hold it.

Felony. Goods stolen and sold to an honest bona fide purchaser, may be recovered by the original owner, for where there is no fault on either side the first title prevails.

If a man rides a horse and runs upon him, this has been determined to be no bailment it is the act of God or nature that if the bailee sell the horse the owner can hold him against the original owner

Of the Creation [illegible] a trust
this laid down as a general maxim that
[illegible] vitiates a contract and renders it of
no effect. But this maximust be un
[illegible] and with some limitation.
There may be fraud in the consider
ation [illegible] a contract.
If a man may be cheated and there
may be great fraud in the consideration
as. Sell a horse warranting him to be
[illegible] and sound whereas he is neither
the one nor the other. Here is manifest
fraud, yet the contract is binding and
cannot be avoided by pleading the
fraud, for it exists only in the consider
ation. Yet the vendee has his remedy
at law by an action for the fraud and
if he has paid his money agreeable to the
contract for the horse. He must take the
horse for what it is worth and the
remainder of the money paid for him
will be recovered back. But this
Precedent opinion [illegible] fraud in the consid
eration ought to vacate a contract. Indeed
this is the case in the law merchant &
[illegible] as I have determined
that there the fraud in the consideration
is [illegible] it [illegible] the contract
A court of equity will at times relieve
against the [illegible] at [illegible] grounds
[illegible] to the [illegible] mun

And where the fraud is in the execution of the contract, it always defeats it completely. As where a blind man wishes to execute a deed of his hand only and the person who draws the deed ~~mistakes~~ puts in an 100 acres of land, but reads it to the grantor, leaving out the 100 acres, this is a fraud in the execution, the contract set aside.
Where the fraud is in the execution of the contract the Deft may plead non est factum and give in evidence the fraud
1 Black stones Rep. 95 Wyndham v.

Lecture 82nd October 29th
Of the kind of conduct that is considered fraudulent. The fraud must either arise from false representations, or a concealment of facts which a man is bound in good conscience to disclose. A similar case was decided in this country when the ~~court~~ principal ~~the~~ A had undertaken against B who was a man of note in trade, but who had been failed. A applied to C, who was acquainted with the failure, to lay the

the note, representing B as a man of good credit and as safe as the bank upon which C drawn the note, and by a written agreement between A & C. the latter took the note at his own risque and was in no case to come back upon A. But in an action of fraud A was made liable to the full extent of the injury not withstanding the written agreement

There is entire fraud in the consideration, an action of indebitatus assumpsit will lie to recover money paid upon the contract

If men do wicked & fraudulent practices in their dealings with the public they are expected to be detected, & using false weights & measures, may be prosecuted and punished as criminals by selling in a public way. The common cheat wrongs no man of less than more pence and adding using false weights & measures are criminal as soon as detected & punished as the public expect as the public expect & that punishment only is to be inflicted establishing principle that ignorance is not liable!

and the whole consent of authorities are
applied to his liability for his frauds.
But we recur to the precedents
and fashion on principle and ex
tension of equity. Minors are liable
for their torts, immoralities, and injuries
because they are wrongs, and not breaches
of the law, rather than the contract
in fraudulent contracts are wrongs
and not consist of a dispute. It is
a maxim of policy that the minor is not
made liable for his contract, but the
action of ~~connection~~ between collusion
on the ground of their contract but the
[illegible], and motives of policy [illegible] and
[illegible] require that the shall not
[illegible] their frauds
Fraud will destroy the judgment of
a court. Where the judgment is obtained
[illegible] of a [illegible] will relieve
against it
While a cause lies fraudulently
the statute of limitations does not
[illegible] run against it. A man who
is guilty of usury is liable to prosecution
within a year. The usurer may get an

friend of his to pro[illegible]e him, who may let the action lie in court till the year has expired, by which time the statute of limitations would run and the usurer be secure from prosecution which would defeat the Law. But as courts have determined the while the action thus lies in court the statute shall not run

An action of fraud and indt assumpt. are in some instances concurrent as where one by fraud or deceit has got a mans money from him.

Lecture 83d Feb 30th 1791

A contract must be both morally or equitable and physically possible, it will not be enforced in a court of Law or equity, and no penalty will be exacted for the non performance

Men can not act for the performance of an act malum in se — contrary to positive statutes, or sound policy will not be enforced. Not some of these contracts are only to be avoided in a court of Law or equity, for a very Law will render it illegal, as the

Some contracts ~~are~~ of this nature are entirely new, such courts of law will generally enforce but a court of chancery will relieve against them.

Wagering contracts are in England admitted to be lawful. But this is not supposed to be founded upon principle and this question has not come before courts of law in England in a case of a contract for decision.

There are some of these illegal contracts which a court of law will enforce, and they can be avoided only in chancery. But in a case in the second volume of Wilson's Collins v. Blantern the court seem of opinion that they would not enforce any illegal contract, which some on will probably prevail.

Where money is paid on an illegal contract the parties being equally culpable the maxim is "Ex turpi causa non oritur actio" because criminals [illegible] off [illegible] providentes. But if the parties are not in pari delicto the law favours him who is less culpable. As where a man in necessitous circumstances has paid a higher rate of interest than the law allows, here the law and equity have [illegible] the law.

bargainer not to be considered & maintainable. The law appears in the recovery back the excess of intoxication in act of infant. Where money has been given to a man to perform an illegal act and he performs it, the money cannot be recovered back but if he does not perform the act, the person who has thus paid the money may bring his action and recover it back. But this seems to be contrary to sound policy & tends to encourage men to the payer to compel the act to perform the illegal contract

Statute of Frauds. It is laid down by the common pleas writers that if it is pleaded of the agreement to reduce the agreement to writing it takes it out of the Stat. But it does not. 2 Brown C.C. 559-565.