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fictions that it fell into disrepute; the celebrated Rules of Hilary Term were adopted in 1834, and we have since substituted very generally for the technicalities of the common-law system what we term a plain and concise statement of causes of action and of defenses, administering law and equity in one suit, and sometimes permitting adventure evolving a judgment as incongruous as the one examined in Bennett v. Butterworth, 11 How. (U. S.) 669, or exhibiting the chaos of pleadings and proceedings tabulated by the reporter in Randon v. Toby, 11 How. (U. S.) 493. Speaking of the reformed procedure, how many lawyers are aware that the chief merit of the Code system was recognized and recommended for adoption by the preceptor of Judge Reeve, founder of the Litchfield Law School? The first volume of Root's Connecticut Reports was published in 1798. The reporter was Jesse Root, afterward as above stated, a judge of the Supreme Court, with whom Tapping Reeve had studied law in Hartford. We will close with a quotation from the introduction to that volume: "Are not the courts of chancery in this state borrowed from foreign jurisdiction, which grew out of the ignorance and barbarism of the law-judges at a certain period in that country from whence borrowed? And would it not be as safe for the people to invest the courts of law with the power of deciding all questions and of giving relief in all cases according to the rules established in chancery, as it is to trust those same judges as chancellors to do it? Those rules might be considered as a part of the law, and the remedy be made much more concise and effectual. Further, would not this remedy great inconvenience and save much expense to suitors, who are frequently turned round at law to seek remedy in chancery, and as often turned round in chancery because they have an adequate remedy at law? These are serious evils and ought not to be permitted to exist in the jurisprudence of a country famed for liberty and justice, and which can be remedied only by the interposition of the legislature."

LITCHFIELD'S LAW SCHOOL

Interesting Sketch of the Famous Connecticut Institution.

(Law Notes.)

In a recent issue of one of the New York newspapers an advertisement announcing the number and destination of daily trains leaving the Grand Central Station mentioned "two for Litchfield Hills." Maybe the spirit of commercialism, lately deprecated in a striking address by one of New York's foremost citizens, has left no recollection of Litchfield Hill in the minds of Gothamites, except for those of them who spend their summers in that quiet village in northwestern Connecticut, or have heard of its wonderful beauty and delightful environments. To-day its attractions as a summer residence are not surpassed by those of any other town in New England. More than a century ago the town had fame of another sort, which must have been known to every New York patriot, for the murmur of it reached across the Atlantic. One who looks through the records of the town meetings of Litchfield from 1765 to 1775 will find that there were discussions on the Stamp Act, the Boston Port Bill, and other acts of Parliamentary aggression, as clear and well defined as the debates in that town meeting where Samuel Adams and Harrison Gray Otis were the principal speakers. The child Liberty would not have been born in the Boston town meeting had not the Litchfield town meeting and other like town meetings throughout the colonies prepared the smoke in which alone that child could breathe. Litchfield was the principal station on the highway from Hartford to the Hudson; and a depot for military stores, a workshop, and a provision storehouse for the Continental Army were there established during the Revolution. Many distinguished royalist prisoners were sent there, and a military atmosphere pervaded the place. General Washington was a frequent visitor, and so were other general officers of the American forces, including Lafayette, who, when he visited the

AMERICA'S FIRST LAW SCHOOL.
Litchfield, 1798.

United States in 1824, went to Litchfield to renew old memories with some of his former comrades in arms. The leaden statue of King George the Third which stood on the Battery in New York was conveyed to Litchfield, and in an orchard in the rear of the Wolcott house it was melted into bullets for the patriot army. All through the struggle with the mother country Litchfield was a hotbed of patriotism, and when the first law school in America commenced its regular systematic course of instruction there in 1784, the ambitious village had among its citizens numerous men of exceptional intelligence and culture. One of them was Andrew Adams, who had been a member of the Continental Congress and was afterward a judge of the Supreme Court. Oliver Wolcott was there. He also had been a member of the Congress, had signed the Declaration of Independence, and was afterward governor of the state. Ephraim Kirby, who a few years later published the first volume of law reports ever published in America, Major Seymour, who had commanded a regiment at the surrender of Burgoyne; Benjamin Tallmadge, perhaps the most noted cavalry commander of the Revolution; Julius Deming, a very prominent and successful merchant and financier, and many others of like character were residing in the town. Into this community in the year 1773 came Tapping Reeve, a young lawyer just admitted to the bar, to settle in the practice of his profession. Born in Southold, Long Island, in 1744, the son of Rev. Abner Reeve, a Presbyterian clergyman, he was graduated at Princeton College in 1763, and was immediately appointed teacher in a grammar school in connection with the college. In that station and as a tutor in the college itself, he passed seven years. He then came to Connecticut to study law, entering the office of Judge Root, who was then a practicing lawyer in Hartford, and some years later a judge of the Supreme Court. From Hartford he came to Litchfield. He had just previously married Sally Burr, daughter of President Burr of Princeton and sister of Aaron Burr. Until the conclusion of the Revolutionary War there was but very little civil business done in the county at Litchfield, and Mr. Reeve betook himself to giving instruction to young gentlemen who looked forward to the legal profession for support and advancement when quieter times should come. This employment tended greatly to enlarge and improve his stock of legal learning, and led the way for him to begin in 1784 a systematic course of instruction in the law and to regular classes. The Law School dates from that year. It continued in successful operation and with annual graduating classes until 1833. The catalogue contains the names of one thousand and fifteen young men who were prepared for the bar subsequent to the year 1798, most of whom were admitted to the practice in the court at Litchfield. The list of students prior to that date is imperfect, but there are known to have been at least two hundred and ten. More than two thirds of the students registered from states other than connecticut. Maine sent four, New Hampshire fifteen, Vermont twenty-seven, Massachusetts ninety-four, Rhode Island twenty-two, New York one hundred and twenty-four, New Jersey eleven, Pennsylvania thirty, Delaware eighteen, Maryland thirty-nine, Virginia twenty-one, North Carolina twenty, South Carolina forty-five, Georgia sixty-nine, Ohio four, Indiana, Mississippi and Tennessee each one, Kentucky nine, Alabama three, and Louisiana seven. There were four from the District of Columbia and one from Calcutta. The greatest number who entered in any single year was fifty-four in 1813.

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In the library of the Law School at Yale University may be found several bound volumes of manuscript which apparently contain the entire lectures of Judge Reeve. They are in the handwriting of his son, Aaron Burr Reeve. But marginal reference interlineations in his own hand make it certain that these volumes have all been revised by Judge Reeve himself. The tradition is that they are the manuscripts which he used in his lectures during the years that he taught. An inspection of these volumes shows that the course of instruction given at the Litchfield Law School covered the entire body of the law. They speak of the law generally —in reference to the sources whence it is derived, as customs and statutes, with the rules for the application and interpretation of each. Then follow Real Estate, Rights of Persons, Rights of Things, Contracts, Torts, Evidence, Pleading, Crimes and Equity. And each of these general subjects is treated of under various subsidiary topics, so as to make the matter intelligible and afford the student a correct and adequate idea of and basis for the work he will be called upon to perform in the practice of his profession. Judge Reeve conducted the school alone until 1798, when, having been elected a judge of the Supreme Court, he associated James Gould with him. They had the joint care of the school until 1820, when Judge Reeve withdrew. Mr. Gould continued the classes until 1833, being assisted during the least year by Jabez W. Huntington. Judge Reeve remained on the bench until he reached the limit of seventy years in 1815. The last part of the term he was chief justice. He died in 1823, in the eightieth year of his life. He left an only child, Aaron Burr, who graduated at Yale in 1802. Aaron Burr Reeve married Annabelle Sheddon of Richmond, Va., in 1808. He died in 1809. He left an only child, Tapping Burr Reeve, who graduated at Yale, but died unmarried in 1829, and thus the family became extinct. Mr. Gould became a judge of the Supreme Court of Connecticut, and was the author of the celebrated work on Pleading. He died at Litchfield in 1838. The course of instruction at the school must have been incomparably more exhaustive than would be possible at the present day, for the obvious reason that there was so much less to learn. In 1784 there were no printed reports of decisions of any court in the United States. Substantially the entire body of the law was to be found in the English reports. It is said that Judge Gould had systematically digested for his students "every ancient and modern opinion, whether overruled, doubted, or in any way qualified." But vast bodies of law of which the modern student must learn something were unknown to the curriculum of the Litchfield Law School, and many principles latent in the common law were just beginning to be developed. Lord Mansfield resigned his office of Chief Justice in June, 1788, after presiding in the King's Bench over thirty years. Prior to his time the greatest uncertainty had prevailed on questions of commercial law. "Mercantile questions were so ignorantly treated when they came into Westminster Hall," says Lord Campbell in his Lives of the Chief Justices, "that they were usually settled by private arbitration among the merchants themselves." There were no treatises on the subject and few cases in the books of reports. Thus in Helyn v. Adamson 3 Burr. 669, decided in 1758, it was first distinctly ruled that the second indorser of an inland bill of exchange was entitled to recover from the prior indorser upon failure of payment by the drawee, without making any demand on or inquiry after the drawer. In 1770 it was held that the indorser of a bill of exchange is discharged if he receives no notice of a refusal to accept by the drawee. (Blegard v. Hirst, 5 Burr. 2670.) And not until 1786, in Tindal v. Brown, 1 Term Rep. 167, was it finally determined that what is reasonable notice to an indorser of non-payment by the maker of a promissory note, or acceptor of a bill of exchange, is a question of law and not of fact. Of course there was no American constitutional law when the school was founded, though some of the states had already adopted constitutions. 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SOUTH MANCHESTER.

Death of Mrs. Purnell—Medical Examiner Parker Ill—Other News.

Mrs. Elizabeth M. Purnell died yesterday after a brief illness of heart failure and pneumonia. She was ill with grip two weeks ago, but did not take to her bed until a week ago. Her physician, Dr. Moore, was called, and he soon found the case hopeless. The death of Mrs. Purnell causes widespread regret in the community. She had a large circle of friends and acquaintances who held her in high esteem. She was the widow of Samuel Purnell, who practically founded the part of the town which is now the heart of the business section. Mr. Purnell died four years ago, and since then his wife had control of considerable property in the business center, including the Park building, the Orford Inn, the Orford Annex, and several tenements. Mr. Wells of Hartford, administrator of the estate, and F. W. Mills of this place, looked after the management of the property for Mrs. Purnell. The deceased was 43 years old. Prior to her marriage she was Miss Elizabeth Finlay and always lived in South Manchester. Her husband was a resident of Hartford, and after her marriage she lived there four years. Mr. and Mrs. Purnell moved to South Manchester over twenty years ago. The deceased leaves four children, Helen, Dorothy, Elsie and Catherine the oldest 11 and the youngest 4 years, also three brothers, George W. Finlay bookkeeper at Cheney Brothers' office, James and William Finlay, printers in Hartford. Mrs. Purnell was a member of the Center Congregational Church, and in her church work her sterling character and refined nature won her many friends. The funeral will be held Saturday. Services at her late home will be conducted by Rev. George W. Reynolds and the burial will be in

LOCAL STOCK MARKET.

Thursday Morning, February 6, 1901.

New York, New Haven & Hartford has ranged this week between 211¾ and 212¾ and there has been a transaction in the New Haven Convertible bonds at 193½. The price of Adams Express has been somewhat erratic; it has sold at the prices and in the order given, 155, 162 and 156.

The inquiry for local stocks for investment is greater than the supply, and it will be observed the prices of fire insurance are for the most part higher than last week.

We append the usual schedule of the latest prices bid and asked by professional dealers in stocks:—

State and City Bonds.	Bid.	Ask.
Conn. State, 3½%, 1903	100	..
Conn. State 5% 1910	..	..
Hart. City Water, Con. 5%, 1906	109	..
Hart. City Res. Rcd. 1903	104	..
" City Consol. Water 4% g. 1918	..	..
" City Cap. Refd. 3½% g. 1922	..	..
" City Funding, 4% g. 1918	110	..
" City Park Imp., 3½%, 1926	105	..
" Town Refund, 3½%, 1903	100	..
" Town Untax. Consol, 3½, 1909	97	..
" City Sewer, 3½% g. 1922	105	..
" City, Sch. Br. & Pav., 3½% g. 1926	105	..
City Police, 3½% g. 1925	105	..
Arsenal School Dist., 4%, 1911	100	..
Second North School Dis. 4% 1924	107	..
East Hartford Road, 4%, 1924	105	..
Railroad and Miscellaneous Bonds.		
Adams Express Co. 4%, 1948	105	..
American Thread Co., 1st 4% g. 1919	82	90
Conn. Western R.R. (old Conn.) 1909	20	..
H. & C. W. R. R. 1st Mtg., 6%, 1903	100	..
Hart. Elec. Lt. Co. 1st (Opt. 1905) 5%, 1915	102	..
Hart. Lt. & Pow. Co. 1st (Op. @ 105) 5%, 1901	100	..
Hart. Lt. & Pow. Co., 2d (Opt. @ 105) 5%, 1901	100	..
Hart., Man. & Rock. Ty. Co., 1st 5% g. 1924	106	..
Hart. St. Ry. 1st mtg. 4s gold 1930	105	..
Hart. & N. Y. Trans. Co. 6%	102	..
East Hfd. & Glas. Tnpk 7%, Rcd 1900, 1927	115	..
Hart. & N. Y. Trans. Co., 6%, 1st	103	..
Swift & Co., new 5s	102	103
Int. Sil. Co., 1st 6% g. (Opt. 1901 at 105) 1948	97	..
Meri. Sou. & Com. 1st 5% g. 1928	106	..
New Eng. Cot. Yarn Co. 1st. 1903	100	..
N. Y. & N. E. R. R. 1st 7s, 1905	112	..
N. Y. & N. E. R. R. 1st 6s, 1905	109	..
New Eng. R. R. Gold Cons. 5% 1945	133	..
N. Y., N. H. & H. 1st Mtg. 4% 1903	100	..
N. Y., N. H. & H. Deb. Conv., 3½, 1903	107	..
N. Y. N. H. & H. deb. 4% 1947	116	118
Torrington Co. 1st 5½ g. 1918	106	..
U. S. Envel. Co. 1st 6% g. 1918	100	..
Railroad and Street Railroad Stocks.		
Hart. & Conn. West. R. R.	42	44
Hart., Man. & Rock. Ty. Co.	..	..
Hartford Street R. R. Co.	150	..
Farmington St. Ry.	50	..
N. Y., N. H. & H. R. R.	211½	215
Banks and Trust Companies.		
Aetna National Bank	132	..
American Nat. Bank (par 50)	70	..
Charter Oak National Bank	93	..
City Bank	112	..
Conn. River Bank Co. (par 50)	45	..
Connecticut Trust Co.	183	..
Farmers' & Mech's Nat. Bank	152	155
Fidelity Co.	115	..
First National Bank	122	..
Hartford National Bank	137	142
Hartford Trust Co.	125	..
Nat. Ex. Bank (par 50)	62	..
Phoenix National Bank	125	..
Security Co	130	..
State Bank	125	..
United States Bank	380	..
Fire Insurance Companies.		
Aetna Fire	280	..
Connecticut Fire	195	200
Hfd Steam Boiler, (par 50)	150	..
Hartford Fire	505	515
National Fire	220	..
Phoenix Fire	170	180
Life and Indemnity Ins. Companies.		
Aetna Life	236	..
Connecticut General Life	150	..
Hartford Life Ins. Co.	150	..
Travelers	390	400
Aetna Indemnity Co.	95	100
Miscellaneous.		
Adams Express Co.	155	..
Am. Hosiery Co., (par 25)	150	..
American Thread Co., (par 5)	4	..
Am. Publishing Co., (par 25)	25	..
Billings & Spencer Co., (par 25)	35	40
Broad Brook Co., (par 25)	25	35
Burr Index Co., (par 25)	15	25
Case, Lockwood & B. Co.	125	..
Collins Co.	125	..
Corbin Cabinet Lock Co.	250	300
E. & P. Corbin (par 25)	80	..
Eagle Lock Co. (par 25)	61	..
Eddy Elec. Mfg. Co., (par 25)	..	12..
Farm. Riv. Pow. Co. (par 25)	49	..
Hartford Carpet Co.	100	..
Hart. Electric Light Co.	180	..
Hartford Gas Co. (par 25)	103	..
Hart. & N. Y. Trs. Co. (par 25)	25	..
Hart. W. Wire M. Co. (par 25)	20	25
Holyoke Water Power Co.	320	..
International Silver, com.	7	8
International Silver pf.	40	45
Johns-Pratt Co.	106	..
Landers, Frary & Clark (par 25)	61	..
J. R. Montgomery Co. 660	93	100
New Eng. Cot. Yarn pfd.	100	101
National Machine Co., (par 25)	15	25
Peck, Stowe & Wilcox, (par 25)	23	..
Plimpton Mfg. Co.	120	..
Pratt & Cady Co. (par 25)	80	100
Pratt & Whitney Co. pf (new)	70	90
Rock Mfg. Co. (par 500)	475	..
Rus'l & Erwin Mfg Co (par 25)	62	96
Smyth Mfg. Co.	360	375
Stanley Rule & Lev. Co. (par 25)	73	..
Stanley Works (par 25)	62	67
Swift & Co.	102	..
Torrington Co., pfd. (par 25)	27½	..
Torrington Co., com. A (par 25)	27½	..
Utica Cement Co., (par 25)	15	..
Union Mfg. Co. N. Brit. (par 25)	36	40
United States Env. Co., pfd.	88	92
United States Env. Co., com.	40	..
Western Au. Mach. Screw Co.	250	300
Whitlock Coil Co.	..	..

OLD SAYBROOK.

Miss Sarah G. Grannis is spending a few weeks in New York.

Mrs. Robert Chapman left yesterday for a week's visit in Hartford with her sister, Mrs. C. L. McMurray.

Elbert H. Clark, assistant postmaster, is ill at his home, and Benjamin H. Chalker is supplying his place.

Mrs. Edmund C. Spencer is in New York, as the guest of her sister, Mrs. John Wood.

The first of the course of entertainments to be given by the Saybrook Town Improvement Association occurs this evening, when Charles F. Underhill of New York will read "The Rivals."

Rev. Gurdon F. Bailey of Westbrook will preach in the First Congregational Church Sunday in exchange with Rev. Edward E. Bacon.

Miss Mary L. Griggs, teacher of No. 3 in the graded school, has returned to her work after a week's illness. During her absence Miss Arrietta H. Acton had charge of the room.

The funeral of John P. Bushnell, who died Tuesday morning, will be held at the First Congregational Church tomorrow afternoon at 2 o'clock.

STAFFORD SPRINGS.

Timothy Collins, who lives at Stafford Hollow, was before the borough court yesterday afternoon charged with breach of the peace and assault upon his daughter, Julia, who keeps house for him. He pleaded not guilty. Tuesday night about 10 o'clock Collins appeared in her room, and began to light matches, because he thought he saw and heard some one in the room, he said. He is, however, very deaf and his eyesight is greatly impaired. His daughter fearing that he might set fire to the house, got up and thereupon, it is said, he seized a pocket knife from the window sill and threatened her. She immediately went to the nearest neighbor where she remained until yesterday afternoon when the accused was brought before the court. The only defense made was the claim that his daughter was receiving company at improper hours and that was his reason for visiting her room at that time. Judge Parkes found him guilty of breach of the peace and sent him to the Tolland jail for thirty days.

LOCAL MARKETS.

Pillsbury's Best flour has gone down 1 price this week from $5.50 a barrel $5.35. The prices of fish that come fro Massachusetts are still high on accou of the storms there. White bait has b added this week at 40 cents a pound a pompina at 30 cents a pound. The pri of sea bass has gone down from 18 cen to 15 and the price of white perch h gone up from 15 cents a pound to 18 cen The meat list remains the same as l week and the only change in the vege ble quotations is that southern stri beans have gone down from 20 cents quart to 18 cents. The prices in gen follow:—

GROCERIES

Corrected by Newton & Robertson, 323 and 242 Asylum street.

Baking Powder—		Flour—	
N. & R.	30c	Washburn, Crosb	
Cleveland	40c	& Co	
Royal	40c	Buckwheat	15c
Cream	35c		10 lb.
Rumford's	30c	Rye, 10 lbs. for	
Butter—		Pillsbury's Best	
5 lb. box Simsbury			
Creamery	$1.50	Charter Oak	
5 lb. box Gilt Edge		Graham,	
	31c		10 lbs. for
Creamery—		French Peas, Gl	
Firkin	26@28		
Wapping	25c	Pects, Glass	
Bay State	22c	Hominy, 2 lb box	
Maplewood	30c	Hominy, 5 lb. box	
Candy—		Macaroni, 1b	
Fancy	10@40c	Molasses	
Candied Peel		Gallon	
Cheese—		New Orleans	
Plain	12½@14c	Oatmeal—	
Rich Old	20c	Pound	
New Crown	15c	Quaker (rolled)	
Young America	13c		
Pineapple, each		Rolled Oats	
50c., 50c			10 for
Sage	20c	H. O. Oats	
Brie Cheese	25c	Raisins	
English Cheddar	40c	Table Raisins,	
English Dairy	22c		
Cream, each, 10@	30c	Sultans	
Roquefort	45c	Syrup—	
D'Isley, each	22c	Best White, ga	
Edam, each	25c	Gallon	
Neufchatel, each	5c	Maple, gal	
Chocolate	35@38c	½ gal	
Cider Vinegar,		Sugar—	
	gal. 30@25c.	From 6 to 8c.	
Lemon Peel	25c.	New Comb H	
Orange Peel	25c.		18@20c. lb
Citron	20@25	Strained Honey	
Coffee	25@10c		13@18c gla
Crackers—		Tapioca, lb	
Plain	6@10c	Cheese—	
Fancy	10@20c	Oolong, 25, 40, 60,	
Cracked Wheat	5c	Very finest For-	
Eggs—		mosa	
Domestics	30@35c	English Break	
Prunes	7@25c	fast	
Silver Prunes	15c	Ceylon	
new Sweet cider,		H. O. Buckwhea	
	gal. 20c		10c pkg
Mince Meat—		Streets Buckwheat	
Package 5 for 25c			

FRUITS.

Dates, 3 lbs	25c	Pineapples	5@25
Figs	10@20c	Tangerines	20@6 dz
Lemons, doz	20@30c	Mandarines	40@50 dz
Olives (glass)	10@35c	Winter Nellis Pears	
Olives, gallon	$1.35		50@75 dz
Nuts, 1b—		Bananas,	
	25@35c		10, 20, 25, 30
Brazil Jumbo	15c	Eng. walnuts	14c
Almonds	25c	Cal. Limes	15c. doz
Paper Shell	20c.	Malagas, 10, 20	25c. lb
Fancy mixed Nuts,		California Pears,	
15c., 2 lbs for 50c			20c. quart.
Pecans	10@15c	Apples,	20@40c. pk
Oranges, doz,		Apples, Fancy Table	
	25@50c		40@60c. pk
Grape Fruit			
10@20 each			

MEATS.

Corrected by Newton & Burnet, 319 Asylum Street.

Beef—		Calf's liver	
Roast, shoulder,		Calf's tongue	
	12½@14c	3 for	25c
Rib	20@25c	Calf's heart	6c
Rib, short cut	25c	Calf's head and	
Rib, cut long	18@22c	feet, per set	@$1.00
Loin roast	25@35c	Sweet bread	60c
Short steak	25@35c	Tripe, plain, lb	5c
Boston rump	20c	Honeycomb	15c
Round steak	18@20c	Pork—	
Shoulder	12@14c	Hams	12½@15c
Shoulder clods,		Shoulder	10@11c
	14@16c	English bacon	22c
Corned beef	4@18c	Bacon	18@20c
Sirloin steak	20@25c	Pork Chops	14c
Dried Beef	25@30c	Sausages	12@14c
Beef liver	10c	Salt Pork	14c.
Smoked beef	25@35c	Pork Roast	12c
Beef tongue	20c	Bologna	10@12c
Smoked	25c	Ham bologna	15@20c
Lamb—		Lard—	
Spring Hind Quar.		Pure Leaf	11@12c
	18@20	Com. 10 lb. tubs	7c
Fore quarter	12½@15c	Turkeys	18@22
Leg	15@18c	Poultry—	
Chops	15@25c	Roasting chickens	
Lamb plucks	10c.		22@25c.
Mutton—		Fowls	18@20c
Hind qurs	15@18c	Squabs	
Leg	18c	Natives, doz.	
Fore quarter	12@14c		$3.50, $3.75
Shoulder	12@13c	Philadelphia,	
Veal—			$4.00 to $4.50
Cutlet	25c	Spring ducks, lb.	
Chops	15@25c		22@25c.
Stewing	8@10c	Grouse	$1.75 pair
Roasts	14@25c	Ph. Chickens	28c
Sliced Ham	25c	Capons	20c.

VEGETABLES.

Water cress		Marrow Squash	
	bunch, 10c		2c. per pound
Cucumbers	2@5c ea	Potatoes, pk	25c
Mint, bunch	5@8c	Cauliflower, head	5@10c
Parsley, bunch	5@8c	Carrots	3c per lb
Beets	3c bunch	New Cabbage	
Raddish, bunch			5@10c. ea
	3c each	Southern String	
Sweet Potatoes	30@	Beans	18c qt
50 c. per peck		Egg Plants	20@25c
Potatoes, bush	50@	Lettuce	15@20c
Celery	15c bunch		

FISH.

Corrected by Clark & Crane, 323 and 325 Asylum street, Hartford, Conn.

Salt Water Fish.		Boiled Lobster	25c
Halibut, lb	25c	Oysters	35 qt
Cod, lb	15c.	Clams	40 qt
Haddock, lb	10c	Natives	60 qt
Striped Bass	8c.	Round clams	35c
Sea Bass	15c.	Long Clams	30c qt
Bluefish	15@20c.	Round clams, large	
Sea Trout	12½@15c.		peck 60c
Eels, lb	15c	Round clams, me-	
Flounders, lb	10c	dium, peck	60c
Spanish Mackerel		Long clams, pk	60c
	20c.	Round clams, little	
Salmon	25c. lb	neck, peck	$1.00
Blackfish	15c. lb	Shell Oysters	40 pk
Codfish Tongues	10c	Blue Points	75 pk
Smelts	15@20c.	Salt and Smoked	
Mackerel	20c. ea.	Fish,	
Fresh Herring	40c dz	Salt Mack'l No. 1	
Fresh Water Fish.			lb. 20c
Catfish	15c	do. No. 2, lb	16c
Pickerel	20c	do. bloaters, lb	25c
Shad	30c. lb.	Salt salmon, lb	15c
White perch	15c.	Sm. halibut, lb	20c
Pompina	30c. lb.	Sm. salmon, lb	20c
White bait	40c. lb.	Salt codfish, lb	12½c
Whitefish	20c	Sm. herring, doz	10c
Shell Fish.			
Lobster, live, lb. 22c			

PRICES FOR FARMERS.

Ducks, lb	16@17c	Lettuce, doz	50@75c
Fowls, alive	16c	Parsley, doz	40c
Eggs, doz	25c	Squabs	$2.50@3
Lamb	9c	Veal, live, lb	5@6c
Spring lamb	8@9c	Veal, dressed	10c
Beef, native, lb		Potatoes, bush	
Mutton	8@9c		65@75

FLOUR, GRAIN, FEED AND HAY.

Reported from

Smith, Northam & Co., 129 State Stree

GRAIN, CAR LOTS.

There has been very little change in th wheat market for a week.

Corn and oats are higher especially on the cash grain.

Feed unchanged.

Hay holds very firm.

Clipped Oats	
Yellow Corn, new	47@

FEED.

Fine Middlings	$1
Spring Bran	$1
Gluten Meal	$2

HAY.

	Small Lots.	Large Bales.
Choice Timothy	$19	$
No. 1 Timothy		
No. 2 Timothy		$
No. 3 Timothy		

STRAW.

Long Rye	$17.00@$
Short Rye	$14.00@$

CHESTER.

Scarcity of rain this winter and the continued cold were responsible for shutting down of the factories on Deep Hollow stream yesterday.

Mr. Beebe of Essex, who gave phonographic concert at the Baptist Church Tuesday evening, was a loser by it, as he accidentally dropped a case containing a supply of new records and destroyed $15 worth of them.

A

SYSTEM of LAW

in a

Series of Lectures,

Delivered, ore tenus at Litchfield Conn

From June 1808 to September 1809 by

TAPPING REEVE Esq.r JUDGE of the SUP.r COURT

&

JAMES GOULD Esq.r ATTORNEY AT LAW.

Taken down in notes at their offices in Litchfield and transcribed

In three volumes Vol. III by

ELI WARNER

Powers of the Court of Chancery

Chancery

The jurisdiction of the court of chancery has been ~~said~~ to be different from the courts of common law in that it abates the rigour of the common law. 2d It decides according to the spirit of the rules of law and not the letter. 3d It has a peculiar cognizance of fraud accident & trust. 4th It is not bound by precedents or rule.

Fitzh. 5
3 Bl. com. 41
1 Inst. 24. 575
3 Bl. com. 430

This definition is indeed very inadequate for altho in some cases it does abate the rigour of the com. law yet in many cases its jurisdiction does not extend far enough to give relief in cases of hardships as when an insolvent debtor devises lands away from his creditors to their manifest injury or when an estate goes to collateral kindred however distant or even ~~ejected~~ escheat back to the lord to the exclusion of lineal ancestors and Brothers of half blood. The court of chancery in these cases can not give relief nor can the court of common law. As to the second part of the definition viz that it decides according to the spirit of the law - this is one and always has been done by the courts of L. Law

2 Atk. 239
3 Bl. com. 431
12 Mod. 561 Doug. 264

& that there is not a single rule of interpreting laws but what is applicable to the courts of law as well as equity.

Wms's. Jur. par. 97-8

As to the third part of the definition in case of fraud every species of it may in some form or other be cognisable in courts of common law whereas they are not cognizable in many instances in chancery such as fraudulent devises &c. In case of accident the courts of L.L. as well as Eq. Chan. may

Bowd. 691
1 P.W. 287
3 Atk. 177-741

Powers of
3 Bl. Com. 431
5 Cruth. 74
3 Thop 151

in many instances give relief and in some the C. Chancery itself can have no legal jurisdiction. if a bond is lost it comes within the jurisdiction of the courts of C.L. to give relief. Where contingencies make it impossible to perform condition stipulated in a bond the courts of law may have jurisdiction. But in case of mistake the C. Chan. may give relief many times when courts of C.L. cannot. their mistakes in written instruments are aided only in chancery because the course of proceedings in common law will not admit of trial. as if a bond be by mistake executed for 200 £ instead of one thousand here the court cannot support the contract and the jury are incompetent to the trial. as to technical trusts the C. Chan. has jurisdiction in some but in most cases the courts of law have also

1 Pow. C. 453
2 Atk. 51-208
3 Bl. Com. 431
8 Cruth 389
1 Vesey 318
1 Brown. Chan. 341
2 Vesey 376
1 Wms. Ex. Com. 2 Ro. 418-419-1 Da. En-Pow. Mort 112-391-2 Wms 340
1 Atk. 604-2 Wms. 4

to the 4th part of the definition concerning precedents & rules. they are bound by them as much as courts of law and have no more authority to depart from them than any court whatever — as refusing the wife her dower in trust estate yet allowing the husband his curtesy — is supported above by former determination.

The court of chancery is distinguished from other courts by its mode of administering justice or of giving effect to the same principle. that is, principally in mode of proof, mode of trial & mode of relief. 1st The C. Chan. may compell either of the parties to give evidence upon oath. to discover facts which are not supposed to be known by any one else

But if in the courts of law either of the parties were purged by oath the stabilum juris of s^d court might take advantage of s^d oath — as if the defendant should criminate himself but in Chancery if s^d party does criminate himself the court has not cognizance of it and the other party is moreover enjoined not prosecute for any oath criminating his adversary. after having obtained evidence by purging upon oath the mode of proceeding is the same as in court of Law. In all actions of account the oath of the parties is admissible in courts of chancery. as to the mode of trial interrogatories may be administered to witnesses by proper authority and committed to writing which may be read in court as evidence — but in Connecticut these depositions can only be taken when the witness is out of the state or is about to go out of it (or dies, more than twenty miles from court, or is infirm) — and in case of an infirm person by C.L. the deposition is taken de bene esse — that is provisionally to be read in evidence provided the trial should be deferred till after the death of the witness. as to relief a court of chancery in many cases affords specific relief that is reinstates the party in his original right where courts of law could not. Chancery may interpose and prevent trespass but a court of law can only give damages or some cases triple damages which would frequently be a very inadequate reparation for the injury sustained in suit of a bond with conditions the penalty at law is forfeited but in chancery the obligee is not bound by the

3 Bl. Com. 381–
382–437.–449
2 Bl. C. 145
2 Dan 277
2 Bl. C. 148
3 Bl. Com. 437
3 Bl. Com. 382–3
Mitf 130.
2 Swift 254
3 Bl. Com. 383
3 Bl. Com 438
1 Eq. Cas. Ab. 16
1 Ves. 534 5 Ves. 215
15 Ves. 415
3 Bl. Com. 434–8–9
1 Dan. 308

Powers & must specific penalty but only the sum expressed in the conditions with such interest, costs &c as shall appear reasonable to the court. so that the penalty is in effect nothing only terrorem pœnæ or nominis pœnæ. In the construction of law there can be no propriety in saying that the court of Chan. differs from court of Law. a Mortgage being in the nature of a penal bond are almost exclusively within the jurisdiction of the court of chancery for on failure of performing the conditions of a mortgage and the whole estate mortgaged is forfeited after the specified time of payment in courts of law but in chancery no more of the estate shall be received by the mortgagee than will make him compensation.

3 Atk. Com. 459

2 Bll: 645-658 Technical trusts also afford extensive ground of jurisdiction in courts of chancery. technical trusts are where the legal title is in one person and the beneficial interest is in another. courts of law may enforce legal title but that which concerns beneficial interest belongs exclusively to courts of chancery. Chitty has gone further in pointing the difference between courts of equity and courts of law and their respective jurisdictions than Blackstone or any other writer. He says the C. Chan. may enforce justice when positive law is silent and that it may abate the rigour of the law when such rigour is a collateral and unforeseen consequence of the positive rules of Common law. Yet if the rule is obvious and plainly intended

for the cash in hand it cannot interpose to give relief — Chancery.

By common law all ~~marriages~~ contracts made between — 6 Geo. Eliz 651
the parties before marriage become void by marriage but — 1 Ath. 27-8
contracts made between the parties in contemplation of — Ath. 3-4-105
marriage are valid in chancery. — by decree of chan. — 2 Pow. 5-6
specific performance of marriage settlement agree- — Cate. 170
ments may be enforced. If the husband execute a — 1 Ath. 88-95-4
bond, ~~for the~~ before marriage settlement of an estate upon his wife and — 2 P.W. 243-cit 497
children it may be enforced during his life by chan. — 1 Pow. 316. Rob. 216
and after his death by courts of law. An agreement — Sch. & L. 325-5 Ath. 581
made during coverture is by Com. law void and formerly — 2 Roy. 575-Pow. C. 442
by chancery unless ~~by~~ made by trustee. But now the wife may — 1 Eq. Ca. Ab. 158
not only hold estate conveyed to her in this way but may — 1 Ves. Jr. 94-5 P. Wms. 22
dispose of it as she pleases. Contracts between husband and — 3 Atk. 72-2 Vesey 308
wife during coverture cannot be enforced in chancery — 1 Wm. 244-Pow. C. 444
in this State therefore our chancery follows the Com. L. — 2 Vesey 191-6 Ves. Jr. 6.
rather than the chancery of England. When contracts — 462-1 Eq. Ca. Ab. 112
between husband and wife are made without a valuable — Dash. Ch. 221
consideration with evident intention to defraud creditors — 1 Ath. 95-Ves. Jr. 64.
they will not be enforced even in chancery — but contracts — 22-3 P.W. 339
made without adequate or valuable consideration ~~in this~~ are — Beas. 508
not conclusive evidence of fraud. When a husband being — 1 Ath. 15.
greatly indebted makes conveyance to his wife it is a — Ves. Jr. 262. 2 Buff. 215
badge of fraud and contracts so made made may be set — Cooke 82
aside by chancery — such contracts however are — 1 Pow. 152-464
binding upon the husband and his representatives

6. Powers of The court of chancery adverts to the substantial objects
1 Ves. 515 of contracts without strict adherence to the form or let-
2 Vesey 371-4 ter of them. If one or more of certain co obligors dis-
3 Ves. 428 -charges the obligation the person or persons so paying may
3 Bos. 701 in an action at law in the name of the obligee have an action against the other co-ob-
Hard. 164 ligors and the court of chancery will enjoin the defend-
8 J. Rep. 166 ant not to plead payment of the obligation or will
compell them to pay their proportion. The L. Chan. having
thus enjoined him not to plead payment an action
of indebitatus assumpsit will lie at common law
for the recovery of surplus payment — The same will
be the case in an implied agreement to discharge an
2 Vern. 494 obligation or bond. Equity is extended in every case where
1 Vesey 204-444- either the subject or parties are within the local
454 — limits — or jurisdiction of the court or rather where in such local limits the case
requires the interposition of Equity. When the property
and one of the parties is in England it is an action in rem
1 H. Bl. 31 When both parties are in the realm and the property out
2 Bowl. C. 8-9 it is an action in personam In both cases they are
3 Atk 275-557 within the jurisdiction of the L. Chan. Where courts of
1 Atk 545. law will only give damages for non performance
2 Bowl. C. 14-16 of contracts the enjoining of the specific performance
1 H. Bl. 159 falls within Chancery jurisdiction. And when the
2 Freeman 217 court of C.L. will not give damages the court of Chan.
Amb. 406 will not decree a specific performance - because this
1 K. Rep. 327 court is only intended to aid the remedy given by C.L.

courts of chancery will not generally enforce voluntary agreements i.e. agreements without valuable consideration because courts of law will not give damages i.e. they are not binding by C.L. Specific performances of contracts altho generally are enforced yet in some cases they are not even when damages may be recovered at C.L. — as where an executory contract is made for the conveyance of an estate between A & B and B not knowing of this acquires a legal title by express deed the executory contract shall prevail by chancery altho damages may be recovered by B. the legal possessor. Here neither purchasers has as good a title by equity as the other — and it is a rule that where equity is equal law shall prevail — but the alienor after the executory grant had no right to dispose of it as he did to B. If A bring into court of chancery a bill for compelling B to make conveyance of land where the title is under embarrassments altho damages may be had at C.L. yet the C. chan. will not enforce the specific performance of the contract. No damages are recoverable at C. law when a feme sole in contemplation of marriage binds herself in a contract to convey lands to the intended husband yet C. chan. will specifically enforce the contract. It is obviously improper that there should be an action at law between husband and wife. At law the wife is bound to the extent of her contract but in chancery to the extent of her property only.

1 Bro. C. 341-242
1 Atk. 10
1 Vez. 450-74
1 Str. 738
1 Ath. Ch. 359
1 Ch. C. 429-282-279
1 Ch. Ch. 178
2 Eq. Ca. Ab. 201
2 Vern. 31
1 Bro. C. C. 161
2 Bro. C. C. 16 — 254-257
2 Eq. Ca. Ab. 248

Chancery. An infant femme sole in contemplation of marriage may
1 F. Bl. 68-9 - 5 Litt. with consent & presents of guardians convey estate to her
60 - 2 Atk. 244 husband. Courts of Chancery will consider the lender of money to an infant for the purchase of necessaries in the same
2 Pow. 258 situation as the one who furnishes the necessaries and will
5 Mod. 368 - 1 Atk. 558 therefore enforce the specific performance of contracts when
1 F. Bl. 68 the money is actually laid out for necessaries. Where contracts are made by order of chancery they will be enforced
2 Pow 14 specifically courts of common not being empowered to interfere. Where a contract or obligation becomes void
10 Mod. 515 at by the Common Law as when the obligee appoints the obligor his executor Courts of Chancery will compell a spe-
5 Mod. 62 cific performance towards the creditors of the testator but the executor may withhold from the devisees. It is said by Bacon that where the agreement is not inoperative at C. L.
2 Pow. 17 but by some formal defect no action can lie at C. L. Courts
1 Pow. 245 of Cham. will enforce the specific performance of the contract.
3 Atk 607 By formal defect must be understood not a defect of words in the contract - but contracts made as those just mentioned. Chancery will not decree specific per-
1 F. Bl. 28-159 -formance when adequate remedy may be had at C. L. and
1 Brown. Ch. 341 a plea in abatement a demurrer to the jurisdiction may be thrown in by the defendant in such case. Courts of Chancery may proceed to give
1 Vesey 447 damages in an action which at C. Law could not be sup-
2 Eq. Ca. Ab. 19 ported in damages for the want of evidence de bene esse or dep-
1 Pow. 570 -osition. C. Cham. may give damages also where fraud-

is mixed with damages - as where A. brings an action against B. for breach of covenant (which by L.L. is cognizable and damage liable to be given) and B files a bill of fraud in chancery against A if fraud be not proved the court may give damages. — Courts of Chancery will not in general decree specific performances of contracts respecting personal property. because damages in L.L. are an adequate remedy. But when the ends of justice plainly require specific performance in contracts of personal property C. Chan. will enforce them as if a covenants with B to perform certain acts towards a third person — a friend, heir or the like — also where different installments are due on an obligation or bond and a suit after on every installment is necessary at common law chancery will give out execution for the whole bond at once. But if the agreement or contract be respecting lands or ~~personal property~~ specie it will come under the cognizance of chancery. In case of contract for the conveyance of land if one party be admitted to chancery the other must be also. — the covenanant must be specific and not general - that is the land must be particularly described. — He who brings a bill into chancery to compell specific performance must show that he has performed or is ready to perform his part - or something equivalent - it being a general rule that he who seeks equity must do equity - as where A agrees to

Chancery

1 Bac. Ab. 526
2 Pow. 216
Gilbert. Eq. 227
James B. damages
1 Ves. 447 —
2 Eq. Cas. 19
1 P.W. 570
3 Atk. 383
1 Vern. 189
1 Eq. Cas. Ab. 395
2 Bro. C. 217
1 Vern. 201
3 Atk 383
1 Bac. 526
1 H.Bl. 27 — 8
2 Pow 219
1 Pow 282
2 Pow 219 —
1 H.Bl. 359
1 P.W. 130
1 H Bl. 383
1 Cham. Ca. 302
1 Vern. 87
2 Pow. 19
Salk. 112

Powers of
2 Bro. C. C. 19
1 Ves. Jr. 385
Gilb. Eq. Rep. 188
2 Ves. 35
Ca. Ch. 248
Kim. 287
2 Pow. 26
1 Eq. Cas. Ab. 70
1 Ves. Jr. 385
1 Vern. 210
Pr. Chan. 312
Gilb. Eq. Rep. 70
Salk. 1125 Hob. 88
1 Bl. Rep. 1312
4 T. Rep. 761
1 Ves. Jr. 384 - 1 Vern. 240
2 Atk. 63 - 220 - 610
3 Ves. 340 - 1 Ves. Ch. 261 - 328
2 Ves. 299 - 2 Vern. 276
184 - 2 Ves. Jr. 260 - 2 Ves. 32 - 1 Ves.
1 Ves. Jr. 321

say B 2000 £ on condition that he marry his daughter and settle a jointure of 600 £ upon her within 2 years - but before the 2 years were up the wife dies without having the jointure the court would not decree specific performance. The chancellor may or may not interpose in enforcing specific performances at his discretion but must give the same construction to the law as Courts of Law do. It is a rule in equity concerning contracts and agreements that they must be decreed to be performed on both sides - and in toto or not at all - therefore plaintiff in Equity may by subsequent event be barred of specific performance. - But when the plaintiff has done as much as he could towards performing his part as when the plaintiff was to export and import a cargo and receive freight for the imported cargo only - and there was no goods to import the court decreed specific performance for otherwise the plaintiff must have suffered great loss. This construction may be put upon the law in such cases even in courts of Law — Chancery will not interpose when the contract is discharged by parol. . . . . When there has been an unreasonable delay in the plaintiff by not presenting a bill to chancery it is presumed to be a waiver of his right to a specific performance - and the court will not act upon the bill it can be explained satisfactorily to the chancellor unless

Delays may be so explained as to rebutt the presumption of waiver as where a merchant delays performing his part of the conditions by reason of his capitals being employed in foreign countries to great advantage. But no length of time will prevent the chancery from relieving against fraud - In other cases a court of law will relieve in part, but as to fraud they cannot. Therefore chancery will not presume a waiver in case of fraud - as if the writer of a bond or note unknown to the other party puts 1000 for 2000. &c If the plaintiff has tripled or shown any backwardness in performing his part of the agreement equity will not decree spe. perf. especially if circumstances are altered in the meantime. As to marriage settlement agreements there is a difference between them and all others for in case of this kind Plaintiffs may bring their bills in chancery altho they have not performed the conditions of the agreement. As where the husbands father in consideration of the wifes portion agrees with the wifes father to make a settlement upon his son — Specific performance may be controlled by the husband or wife in case the conditions of the other party are not performed because the husband or wife is not interested for the non performance of the other party neither of them being parties to the agreement. Where agreements cannot be performed according to the words by reason of the act of God the party shall nevertheless perform it as near the intent of

2 Vern. 276-484
2 Pow. 260
1 H. Bl. 521
2 Atk. 610-2 Ves. 82
1 H. Bl. 322-
Viner 186
1 Ch. Ca. 12-4 Mod. 329
1 H. Bl. 384
1 Eq. Ca. Ab. 1000
1 Eq. Ca. Ab. 27
1 Brown. Parl. Cas. 27
5 Viner 538
2 Pow. 260
Pr. Chan. 445
1 Vesey 377
2 Pow. C. 26
1 Pow. 448
2 Pow. 284
1 Eq. Cas. 18

Powell of the agreement as possible. If A binds himself to B
3 Br. Ch. Ca. 589 to make a settlement on B's wife and the issue of her body
2 Bl. R. 751 - 2 Ves. 254 altho the wife dies before the settlement is made yet the child-
2 K. Bl. 581 - 1 Burr 563 - 1 Burr 198 dren shall have the settlement. Where a statute renders
2 Ld. Ca. 352 - 1 Salk. 198 a contract unlawful it is repealed of course. Where a
~~grant to govern~~ covenant made for the conveyance of a state & more is con-
veyed than was specified in the ~~grant~~ covenant or where one enters
1 Amb. 746 into a contract for the conveyance of more estate than
1 P. Wms. 212 he possesses equity will construe the agreement to extend
2 Term. Rep. 253 to as much & no more than he possesses or is legally
1 Coke 99 able to dispose of. Courts of Law & Courts of Equity may
Term. Com. Rem. 25 construe agreements which are literally the same
15 Ves. 389 - 5 Ves. 299 differently. as where a contract is made for an estate
3 Atk. 503 - 1 Ves. Sr. 583 in tail &c where a settlement is made to A for life and
6 Ves. Jr. 30 - 8 Ves. Jr. 516 remainder to the heirs of his body - Courts of Law would
2 Powell 241 - 1 Eq. Ca. Ab. 392 in all cases account this an estate tail but in equity
2 Term Ca. Ab. 347 the father cannot prevent it from descending to the
3 Peere Wms. 327 - 1 Ves. Jr. 258 heir but if it were in tail he might. altho the power
6 Ves. Jr. 293 - of making agreements either executory or written does
Salk. Ca. 276 - 1 Ves. Jr. 336 not make the agreements - the court will rather than
1 Ves. Jr. 349 - 2 Term. construe the agreement litterally regard the real intent
6 Ves. Jr. 258 - 1 Ves. Jr. 258 of the executory agreement. If an agreement be made
3 Ves. Jr. 571 after marriage according to an executory agreement
Salk. 20 before marriage it may be set aside in chancery
but if marriage settlement agreements be made before
marriage they cannot be set aside by chancery

It is a general rule that courts of Equity consider Chancery
that done which ought to be done and at the time 1 Ves. Jr. 339
when it ought to be done – this called "omnipotens sola" 2 Ves. Jr. 629-4 Ves. 710
Executory contracts become fixed him upon the subject
of them (that is upon the property) – the vendor becomes
trustee for the vendee – the vendee has the equitable
title, the vendor the legal title – and in chancery the
vendor is compellable to abandon his legal title and
transfer it to the vendee. If a man binds himself to lay 2 Vern. Jr. 83
out money in real estate and then dies, his heir or 2 Atk. 307
as the case may be his devisee shall take the money as 1 Salk. 154
real estate instead of it going to the executor as part 2 Vern. 536
of personal assets. If a woman articles, with her intended husband to her 1 Ves. 175-196
of real estate before marriage afterwards marries
and dies before a legal conveyance the husband shall 1 H. Bl. 414 220
be tenant by curtesy. – But in case the husband had 2 Vern. 536-585 5
by
received such executory contract with the intended
wife, she could not after her death have dower out or covenanted for the purchase – and
of it – Money thus article to be laid out Pr. Ch. 320
in real estate passes under the denomination of real 1 P.W. 172-3 Ves. 221
estate and not of estate generally – the same is the 2 Vern. Jr. 109
case where any personal estate is articled to be conver-
ted into real estate – but the agreement must be 2 Vern. 225
positive – and not as where A delivers money to B 3 Atk 225
with an agreement that B should lay it out in land
when a purchase could be made – here it is not personal estate

Powers of
3 Atk 265
1 Vern 298

So where money is ordered to be laid out in land or not at the grantees election the election must have been made before the death of the grantor or it will pass under the denomination of personal estate

2 Vs. 639
Salk. 154
1 P. Wms. 344. 414

All the rules under the general rule that a court of chancery considers what ought to be done as done will hold "è converso" - as where an agreement is made to convert land into money or personal estate chancery will decree specific execution and consider the land as personal estate - From what has before been said to be executory agreements it appears that the vendee

2 Ves. 411. 1 Bro. 61
1 Br. Ch. 156
2 Ves. & B. 64

is liable for all the contingencies from the time of the executory agreement - as where an earthquake destroyed a plantation in the West Indies between the time of the executory contract and the time when legal conveyance was made. - Where the executory contract is not one of sale but merely of preemption or refusal the property is not vested in the vendee - he is not

2 Ves. 79
2 Ves. 175

liable for contingencies - Where money by agreement is to be laid out in land he for whom the purchase is made may

3 Ves. 221. n.
3 Atk. 456

if the trustees retain the money - as where a agrees with b to lay out money in real estate for the benefit of b's son - the son may retain personal estate - or

1 Br. Ch. 225
2 Ves. 117
1 P. Wms. 413

where a father agrees with his son to lay out money the son may retain the money. - But this election is confined to the tenant in fee & dies with his person

The rule applies to those contracts only which can be specifically performed — — — The want of mutuality is a decisive objection to a decree of specific performance and so is uncertainty even in courts of law — as where B agrees to sell A certain lands for 1500£ less than ~~£~~ any one else would give A not expressly agreeing thereto — here were two objections to specific performance — viz no mutuality in A's not agreeing to give any sum — and uncertainty in not knowing the exact sum which any one else would give. — But if the agreement was originally mutual no subsequent event will operate against a specific performance — as when an agreement was made for the exchange of an annuity and real estate the annuity ceasing before the first instalment in this case specific performance was decreed — so where the consideration diminished by the falling of stock spec. perf. was decreed. Thus far as to specific performance of executory agreements.

Chancery

2 Pow. 235

2 Vern. 415

1 Eq. Cas. ab 207

2 Ves. & B. 282

1 Atk 10

1 Brun. Ch. 156

Chancery will not allow a party to take advantage of the Penalty of a bond. Where a bill is brought into Chan. for the specific performance of a contract, the non performance of which will incurr a penalty the Plaintiff must waive the penalty or the defendant may demurr — and the plaintiff is enjoined not to make any use of the defendants answer in Chan. for the purpose of recovering the pen. at law.

1 Vern. 60

2 Pow 204

Powers of

2 Br. Ch. 341 — It is a rule in Equity that where the substance
1 Ves. 171 2 Br. 316 — of the contract may be obtained with out the penalty
289 - 304 520 — equity will relieve against it. Chan. regards pen-
— alty as a kind of tenorem ~~at common law~~ &
4 Burr. 2228 — The substance of the contract may be enforced when
— compensation may be made for the breach of con-
Pow. 6. 205 — tract by damages — as is the case with mortgages.
— Where there is no rule of damages according to L.L.
9 Mod. 112 — courts of Equity cannot make compensation to the
2 Pow. 205 — party injured — as where a lessee binds himself in
— a penal bond not to assign his lease - but afterwards does
— assign his lease here no damages can be assessed - Tho
— there be a rule of damages and by reason of inter-
— vening events the conditions cannot be performed
1 Vern. 68-9 — no compensation can be made — as where A agrees
1 S. & L. 387 — on conditions &c. to settle a jointure on B his intended
2 Pow. 205-6 — wife within 2 years after marriage, but before the two
— years are out she died without the jointure.

1 Vern. 420 — Where one party voluntarily stipulates an advan-
Barnard. 481 — tage to the other - the latter will lose it unless he per-
Pr. Ch. 160 — forms the conditions punctually - as where a creditor
1 Vern. 456 — agreed to take 10 £ than his debt if paid at such a time
— if it is not paid at the time Chancery cannot relieve
— against the forfeiture of the whole debt — the penalty here
— being matter of justice. Where Chancery will relieve
— against penalty in favour of the obligee it will enforce

specific execution of the conditions and where Chancery will not relieve it will not enforce specific performance of conditions. — as if A covenant by a penal bond to convey an estate interest within 6 month Chan. will relieve against the penalty. Where the penalty is the substance of the Bond or contract Chancery will not relieve against the penalty. — It was formerly held (and is at present in Courts of law) that the party might at his election perform the conditions or forfeit the penalty in all cases. but the rule at present is that where the penalty appears to be a security for the performance of something collateral so that the enjoyment of this collateral . . . is the object of the agreement a Chancery will relieve against the penalty — But when the penalty or sum to be forfeited is in the nature of ascertained damages. when the penalty is not for security against breach of conditions but only a compensation in case of a breach — as where a tenant binds himself to pay 5 £ or 50 £ for every acre of land he shall plow Chancery will not relieve against this forfeiture for here the obligee has his election whether to forfeit or or not — and chancery will not decree specific performance of the conditions nor restrain from plowing But if he covenants not to plow and binds himself by a penalty Chancery will relieve from the penalty and intercede to prevent plowing &c Meadow.

Chancery

1 T. Rd. 141

1 Br. Ch. 418
3 Bac. 691
1 Pow. 171
Doug. 451
2 Pow. 186
2 Ple. 191
2 Ath. 371
2 Ves. 528

1 T. Rd. 142
4 Bur. 2228
6 Bac. Abr. 417
2 Vern. 119
2 J. R. 32

relieve as to the penalty

4 Bur. 2228

Powers of
1 Bac. 544-5-601
1 Sch. & L. 133. cas. 557
Lawson Rem. 25-6-Stat. 27
1 Ed. 442-2 Pow. 214.
2 Pow. 145—
—225
Thom. Co. Lit. 20
5 Vin 549
2 Pow. 145—
2 Ves. 208
3 Ves. 290
Fitzh. 556
2 Atk 324
2 Ves. 627
Talb. Cas. 41
2 Salk. 449
2 Pow. 145-188
2 Ves 152
1 P.W. 727
5 Ves. 294

The court may determine whether the forfeiture is in the nature of penalty or damages — Where damages are to be assessed courts of chancery make issue to courts of Law that they may be assessed by a jury.

Courts of Equity have the power of setting aside contracts as well as decreeing their specific execution — where it does set them aside it does it specifically It is frequently the case that damages may be obtained in courts of Law for the non performance of contracts where courts of Equity will set aside the contract as in contracts fraudulently obtained. In many cases also where Chancery refuses to decree specific performance it will not give relief or set the contract aside (vide decree) It may be neutral or leave the party to seek remedy at the Law courts — as where a contract is unreasonably hard. This can be no ground for chancery to set aside the contract yet it may be presumptive evidence of fraud — in all such cases unless fraud can be proved the Chancery will not set aside the contract but dismiss the Bill. The same is the case with parole contracts.

It is a general rule that chancery will relieve against agreements obtained by imposed hardships and oppression although unaccompanied with fraud. as where a mortgagee has taken advantage of the embarrassments of the mortgagor. But if the contract be agreed to or ratified the party knowing the extent of his rights or

that the could be relieved Chancery will not vacate the contract. In courts of law coertion if it does not amount to legal duress is not sufficient to set aside agreements but in equity it is otherwise. Contracts may be vacated which are obtained by any undue influence. — ets where a guardian withheld her consent to the marriage of his female ward unless the husband would give up to him the profits of her estate. Filial fear cannot be considered a ground for setting aside contracts unless undue advantage be taken of the filial fear

Equity will relieve against contracts which though not unlawful — yet usurious and oppressive "a fortiori" as contracts upon immoral interest

Where the parties are equally disposed to defraud, — both guilty — particeps criminis Equity will be neutral and dismiss the bill except where positive law determines as where two parties sit down to the gambling table with the determination ~~is~~ each to ruin the other party

Unfairness in the plaintiff will be an objection to a decree in his favour and will in some cases be sufficient ground to set aside the contract for it is a maxim that the plaintiff must come into Chancery with clean hands. Suppression of material facts will be an objection to decree in favour of the one who suppresses facts and is as great an objection as the suggestion of a falsehood. ets where one upon selling a piece of land represented the annual rent to be 90£ which was

Chancery

1 Ves. 118: 639

1 Atk 11

1 Brown Ch. 369

2 Pow. 168

2 Pow. 148

Comyns. 200

2 Pow 150

Talb. 41

1 Ball 98

3 Atk 383

1 Vern 227-229

1 Br. Ch. 440

Br. Ch. 539

5 Viner 553

Powers of

indeed true but by a flood which ran through it, it needed annual repairs to considerable amount.

2 Bro. Ch. 626
2 Pow. 225
1 Vesey 400

Where the Parties act under a misapprehension of facts Equity will ~~[illegible]~~ set aside the contract ~~or dismiss the bill~~ — (ii) If the fact misapprehended be the cause of the agreement it will be set aside — But if a contract be made in consequence of misapprehension of the law Chan. will not interfere — altho there is a case reported to the contrary where upon the death of the

cMeddy 364
2 Pow. ...

2nd of three brothers the two surviving submitted the matter to a schoolmaster to determine to which the deceased's estate ought to belong. upon his answer that land by law descended they divided but afterwards upon a bill presented by the eldest relief was decreed and the whole estate restored to the eldest. Mr Gould thinks this to be an erroneous judgment.

1 Pow. 341
2 Pow 242-10th10.
1 Bram. 738.
1 W. 726-2 Br 200.
1 Pow. 142-10th10
2 Atk 587-592
1 Atk. 10.

Equity courts will not enforce a voluntary agreement and because a court of law will give no sort of relief. — A compromise of a doubtful right is a sufficient consideration to support a decree of specific performance. The case of the schoolmaster will not come under this rule - because here the fact is supposed to be mistaken doubted and not the law. but even where the law is doubted .....

Intoxication is not a sufficient ground for setting aside a contract unless it appears that advantage be taken of

intoxication by the other party – in which case it is fraud Chancery
Defendant may demur to the Plaintiffs plea of intoxication 1 Ves. 19. 3 Bro. 180n
Weakness of understanding, if the party be legally competent is not a sufficient ground for setting aside contracts. but may be a presumption of fraud and 1 Vern. 29 3 P.W. 129
to amount to a ground of relieving for a small degree of fraud 1 Vern. 30
– Agreements which defraud third persons are 2 Vern. 165-176
always set aside in chancery and may be in courts of 1 Eq. ab. 88
law. In this respect courts of equity exercise a most reasonable Salk. 156
power – Where the father of each party in an intended 1 Vern. 348-2 Ves. 75
marriage agree to settle upon the parties when married a 4 Br. P.C. 166-2 Br. 763
certain sum – and the husband or wife by a private contract 1 P. Wms. 5 12-656-7
relinquishes a part to the father of either party – this con- 1 Burn. 95-286
tract is void. Contracts thus made with intent to defraud 2 Vern 176-Ver. 602-475
third persons altho ratified afterwards. are void ab initio. 1 Vern. 486-5 P.W. 175
On the same principle marriage brocage contracts
(that is where one makes a contract for the procurement 1 Burn. 474-5
of a wife) are void – because of fraud to third persons 1 P. Wms. 245
and the wife) – of undue influence made use of – & radically
vicious. – these are at present void at law.
Contracts with heirs apparent for their expectancy 2 Vern. 181
are void in chancery – and this whether the heir be 2 Vern. 111-27
an infant or adult. – because of the tendency to dis- 1 P.W. 310
sipation and vice and to encourage disobedience to 3 P.W. 292-2 Ves. 125
parents. and if the contract be ratified made even after the death
of the ancestor and the inheritance received it may be –

Set-offs

2 Vesey 154

1 P.W. 320

8 V.W. 292

2 Vern. 141 - 2 Pow. 183

avoided if it appear not to be made fairly, rationis freely and under an impression that it can be set aside in chancery. but if made fairly without compulsion and full information as to the extent of his rights it cannot be set aside. Chancery will not enforce contracts which encourage oppression, extortion or immorality — as

2 Pow. 238

2 Pow. 259

when the keeper of Bridewell made a contract alienating the office and profits of it. — the same in the case of Sapster.

Courts of Chancery exercise the power also of

3 Bl. Com. 304

4 Bl. 123

6 T.R. 156

2 H. Bl. 440

1 H. Bl. 657

Cowp. 56

Bl. Com. 120

set-offs. In England this power is by Statute given to courts of Law — in hom. only to courts of chancery. Our Courts of law in action on an agreement consider 1st whether the contract is a good one & 2nd whether it has been discharged but they do not consider another contract held by the other party as going to the discharge of this. In this state the superior court have cognizance of all chancery cases of the amount of between 353 $ & 5333 $ according to the Statute but as the court have established a rule that in case of indefinite amounts, the amount

2 Root. 42

in the declaration shall be the criterion of cognizance — the Statute is almost a dead letter for in almost all bills presented to chancery the party may make up of any amount even less than the real value and recover the whole. Writ of error lies from our chancery to a superior court as from the county court to the superior and from the S.C. to the Supreme court of errors — & no appeal — but in lieu the reverse

The power of Chancery to issue injunctions — Chancery

The object of the prohibitory writ of Chancery is to re- — 3 Bac 172-3
strain a person from doing or committing a thing
which appears to be against equity and conscience.
The injunction is usually issued against the plaintiff in
an action at law to stay further proceedings in law courts
because those equitable grounds are not cognizable there. There
can be no injunction in criminal cases because criminal — 3 Bac. 175
actions are not cognizable in Chancery — actions in — 1 Hov. 16
Chancery are purely civil as to rights to effect which and
wrongs to be redressed. It may issue injunctions to stay — 1 Bro Ch. 57
waste as plowing meadow cutting timber where damages — 3 Bl. Com. 458
at law would be inadequate to the loss or injury sustained — 15 Bl. 59
so where an estate is held for life by A remainder to B the — 3 Mitf. Pl. 124
latter cannot bring an action of waste at law against a third person — 2 Comyns 57; 3 Bl. Com. 24
for damages in case of actual waste, but on which he may. — 1 Vern. 25
so that the remainder man or reversioner is at law liable to — 8 Atk. 94-725
be injured without adequate redress. In case of Mortgages — Ferm. 430
an injunction may be issued against the mortgagor — 2 Com. 51
in favour of the mortgagee prohibiting waste unless it be — 3 Atk 725
applyed to the discharge of the debt for which the mortgage — 1 Bro 75
is made – else the mortgagor might diminish the pledge
to less value than the debt — so an injunction in favour of mortgagor
may be issued against the mortgagee in possession for committing — 97 & 62 L 719 Lr
waste else the mortgagor might not have a ~~certain~~
chance to redeem his pledge in its original state

Injunctions of Injunctions to stay waste may be issued against a
1 Vern. 23 tenant for life without impeachment for waste (that is
2 Shower 69 one who is not liable for waste committed) with remainder
2 Ver. Ch. 89 to the first and every son in tail — prohibitions from
Amb 107 from pulling down the house or other buildings
Salk 161 thereunto belonging unless for the purpose of building
again — but he may fell timber or alter rooms in
2 Vern. 738 a house — the same power may compell him
1 Bl Ch. 484. 1 Dp. 400 to repair waste as well as prevent waste.
Chancery may issue injunctions to stay waste against
2 Comyns 501 him who hath the inheritance at law as tenant of
1 Eqn. ab. 221 the estate. ejection at law will not lie against the tenant
after possibility of issue is extinct —
Injunctions may issue from Chancery to restrain
nuisances — as for obscuring ancient windows — at
2 Ves. 452 L.L. damages may be recovered but as they may be in
1 Bl. Rl. 29 adequate to the injury Chancery has the power of issuing
2 Pow 266 injunctions to prevent the obstruction. - ancient lights
1 Vern. 543 in law signify those that have been erected a long time
extend beyond the memory of man — The right to
such ancient light is founded on prescription & agreement
if the jury find that one has had the enjoyment of lights
for a considerable time they presume an agreement. So
3 Bac. 174 that the lights may not be ancient within the meaning
2 Ves. ab. 139 of the term in law. An injunction may issue also to
6 H 758 prevent building on another's ground

Injunctions

But it must be a nuisance within the meaning of the common law and not a common trespass - it must be continued trespass as where one digs a ditch across another's land - The erecting a pork-house contiguous to another's house is not by the b.l. a nuisance. Any act which in its inception may be a common trespass may become a nuisance by being repeated or continued. Injunctions may be issued also to prevent the plaintiff from proceeding at law -- or to suspend the trial at law - as when the defendant at law makes use of his adversarys answer in Equity Chancery may issue injunctions where many actions are liable to be brought upon the subject by inserting the names of different Plaintiffs at each action or to quiet a person in the peaceable possession of his estate when he has a plain equitable title in cases of numerous actions of ejectment. - To prevent a multiplicity of suits - as in cases of dispute between a number of proprietors concerning the boundaries of their land - here chancery may unite them in one and the same action by a bill in Equity. In the case of Boardman & Seymour in February term 1808 where two of three partners brought an action of account the declaration was quashed because the partners were not all in the suit and therefore another suit might be brought. —

3 Ch. 750
1 J. Ch. 29
3 Ch 21
2 Conny. 52
2 Cha. Ca. 66
76-93-
3 Sac. 174
3. Ch. 261
1 Brown. Ca. 266
1 Vern. 156
2 Ch 282
4 Sac. 174
Mf. 4-104-127-8
1 Vern. 22-30-266
1 Ch 282-
2 Sc 488

Injunctions
1 Sid. 179
1 Ch. 285
3 Atk. Rep. 93

To restrain executors from acting or meddling with the assets when there is a dispute as to the executorship. To restrain one from the publication of writings which another has an exclusive right to publish & vend — and other inventions. There appears to have been much dispute in the celebrated case of Millar & Taylor (4 Burr.) on the subject of publications. 1st Whether by the common law an author had the exclusive right of publishing & vending his works — this was decided in the affirm. 8 Terms 3

Amb. 164
1 T. R. 30
Ambl. 124
1 Ves. 120-275-127
4 Burr. 2303

2nd Whether the author did not abandon his right by once publishing his writings — decided in neg. 7. T. 4.

3 Whether the common law right was taken away by the Statute of Anne. (of which our law of patent right is almost a transcript) allowing the author the exclusive right of publication for 14 years & he be alive for 14 years more — the last point was decided in the neg. 6 T. 5 with Lord Mansfield on the minority.

The End
of Powers of Chancery

Mercantile Law

Nov 25th 1820

The Mercantile Law or Lex Mercatoria as it is sometimes called is that body of customs which has grown up from the customs of merchants & traders & which has been incorporated with the common law. — By an examination into this head it will be found not to be a certain uniform body of law. — It has a more extensive & liberal signification than the common law & is not confined to any particular country or nation but all commercial countries. — It is more properly a commercial law than the common law which is the rule of decision in relation to landed property. — There are customs peculiar to each. The Mercantile law is as much a law in England as the common law & is part of it. — Especially in matters of account. — For instance a bill drawn in Scotland the Mercantile law governs the custom of usage & demand that is necessary to charge when it is payable & at what time, how and in what manner it must be presented — this varies in the two countries. — The allowance of days of grace after the date of the bill is a custom — How

Mercantile law – three days of grace are allowed in Scotland – in other places two days of grace only are allowed. Here it is necessary that the contract be stated as well as alleged in the declaration that Foreign laws are to be proved – except in certain cases where they are well known as that from their intimate connection in the United States. The Mercantile law is to govern the determination of questions & certain contracts or transactions as the law of Scotland in a particular country.

The principal subjects of these letters may be seen under the title are I. Bills of Exchange & Promissory Notes & certain descriptions. 2. Shipping 3. Insurance & Partnership & Bankruptcy. The matter with the mercantile law and Mariners – Salvage & Insurance & Copartnership.

Having given that the mercantile law is almost entirely common law applicable & certain contracts in all commercial countries – Can now distinguish the difference between the mercantile law & the law of England called

it cd. [illegible] no evidence of a debt due a bond &c can be
no evidence of a debt due a bond &c can be
so told and enable the person to whom it
is told or assigned to bring an action against
the obligor in his own name. all that
the assignor can do is to grant to the assign-
ee a power of attorney to collect such bond
with a covenant that the assignee may turn
the avails to his own use — and in this
covenant is implied that he will never do
any thing to impede the collection. The
parties in court are the original parties
to the instrument. Indeed it may now
be a crime or offence to sell a bond to a third
person — so that if one undertakes to turn up
bonds or the like & getting them into his
hands proving particular persons it was an
offence indictable. The chose in action is
& remains the property of him who held the
instrument in the name — he had power to
discharge the obligor. — at common Equity
however will protect the assignee in this
case against the obligee — & if the obligee does without
discharge the obligor the assignee may 35-560
have his action at law against the obligor
for fraudulently obtaining the debt (tho' obligor is bankrupt) bail bond.
done in the case of an action on the case but

20 Mercantile case. The reason why the bill in equity against the drawer, the drawer having notice of the transfer, has the same title as he would have if such action were brought by the indorsee. A mere nominal consideration — such as the mercantile law thinks sufficient in his own case — will support the name of the indorsee against the drawer. There is one case where a nominal consideration is not sufficient, viz. where the drawer is a servant & warrants & has not actually paid the money. Thus in the case of a servant who warrants — Upon the ground that the master has a right to call upon the servant to account & warrant — & may sue him if he refuse to pay the money to the servant. Thus in the case of bankers the mercantile law gives the ~~indorsee~~ holder a right of action where there is no privity of contract at all between the parties. Again another material difference between the mercantile & the common law is that where an instrument is assigned — all the equities that were in the hands of the original drawer or holder, as if there were always an illegal consideration ~~for the note~~ remaining in the indorsee

on the Ship ward of the war - Mercantile Law
cantile law a bill of exchange in the nature
of a bond, and indorsee, is good as the drawer
& the illegality of the consideration cannot
be between them be inquired into except
it be given for a usurious consideration or
for a gambling debt or where the statute de-
clares the instrument void or not void ipso
to all intents & purposes. As the consideration
of a bill of exchange cannot be inquired into
when indorsed so neither can that of a note
paid when indorsed — this then becomes a mer-
cantile instrument. or if it is with a bond for a
note or hand differs not from a bond only that
the latter has a seal which always imports a
consideration & hence the want of consideration
is not pleadable to a bond — but as a seal in
this state is useless our notes of hand have take
of all the properties of the sealed bond when ex-
pressed to be for value received. This read in Eng.
was placed at the bar to give a reason for the in-
crement — & as a mercantile commerce.
again. It is unlawful at Com. Law to raise a con-
tract against one without his consent either ex-
press or implied except where there is some ante-
cedent debt equity or justice. Now by the mer-
cantile law — if drawer a bill of exchange when a

Mercantile law — in case of B — & the drawee refuses to accept the bill is protested — Now D says he will accept the Bill for the honour of the drawer — which he does — he may have an action of indebitatus assumpsit as. the drawer. But if a man goes into a field of Wheat & works for a master without the owners request or knowledge no action will lie as. the owner for such labour. — for the mercantile law a verbal acceptance is sufficient to charge the drawee & will bind him as much as a written acceptance — but a promise in the same words would not make without consideration (as the case made for the drawee & the law no probate to settle drawer in his hands) but the promise made is a action to the stat. of Frauds & Perjuries.

Again at Com. law if you obtain judgment against joint debtors & imprison one only for the execution may be taken out against one — or against the effects of the Defts — & that one remains in the custody of the Sheriff — you cannot then take out execution & levy it upon the other's estate — but it is otherwise by the mercantile law — one debtor may be taken in execution & discharged & then the Plff. at Com. law the discharge of

one joint debtor taken in execution cannot be discharged unless the whole debt is paid — & this is the reason the other debtor cannot be taken. But under cannot this presumption be rebutted in shewing that the debt had not been paid. The ancient idea was that the body in prison were a pledge. It is well established law in England & has been recognized by our Courts — that if the debtor escapes, or he cannot retake him, or will save himself from his bail the debt — but the creditor can take him again — but if the creditor discharges his debtor from prison he cannot retake him — no can the bail be again at Com. law there is a survivorship in all joint property — both real & personal. & that if one joint owner dies the whole property survives to the other. But it is otherwise with joint merchants. A & B are joint merchants & have joint property & dies still that descends to his executor & does not survive to the survivor. & the executor is bound in law with the survivor. However there is even here a survivorship — the right of action & liability is vested survives to the survivor, but the debt does not go to the Executor — but payment of a partnership account to the Executor will be good. — The survivor

Mercantile law — in case of a deficiency of assets to discharge the contract debts incumbent upon the testator, to the private creditors of the deceased partner.

It is not in general true, as before stated, that a promise is good without a consideration but in the mercantile law (at least) a promise may be good without any consideration at all.

Another remarkable characteristic of the mercantile law is that the vendor may stop the goods in transitu where the vendee turns out to be a bankrupt or a worthless person. Thus if one in Boston buys goods of Owen — & pays for it six months the vendor may find him the instant they go at the Boston & Worcester rail road. This is a present title to all property coming into the hands of the assignees

Again by the mercantile law where goods are thrown overboard in a storm & save the rest — the loss shall be averaged among the owners of the goods saved — Thus if one man has three on board — & either is liable & all in the hold — & the worst of them are thrown out — there must be a contribution — so that each owner should bear an equal loss. The reason how a part of the property

down at once in the mercan- & mercantile law
till last year four months & 12 months & a little
more - But at com. law - months are reckoned as
lunar months (i.e. 28 days) & months (i.e. calendar
months) - suppose a contract is to be per-
formed in 3 months from the date - the day
of performance must be within the mer can
tile law - & that is 90 days - i.e. three days -
does dominicum - & the contract cannot be per-
formed that day - By the com. Law the con-
tract must be [illegible] on monday after - But
by the Mercantile law it must be performed on
saturday & cannot be put off till monday. But by Huntington
anyone saturday is all nations - & I dare not know
any judge there when it ought to be performed.
Again at com. Law it is no matter in what
manner notice of non acceptance is given another
it may be done by writing a letter &c - but
in the mercantile law notice must be given in
a particular manner viz by protest. & be-
tween the case of a Bill & the drawer com-
mon notice is sufficient because the com. Law
rule given him a remedy
Lastly if one steals a Bank note or bill of Exchange
& obtains payment & after the owner is remedied
the thief may indorse the bill over & the indorsee shall
hold it against the owner - but in one that where it is not

86 Bills of Exchange — A Bill of Exchange is a Note in writing, addressed by one person to another, requiring the person to whom it is addressed to pay a certain person or order the sum of money therein specified. When the Bill is payable to one or bearer there is no occasion that it be indorsed but will pass by delivery.

The parties to a Bill of Exchange are 3 viz the Drawer — who draws the Bill — becomes the Drawee when the Bill is directed — & the Payee — to whom the Bill is addressed & in favour of whom it is drawn. There are only three parties — there may be more original parties as will be seen by & by. The moment the drawee accepts the Bill directed to him — his name is changed & is called the Acceptor. If the Bill is indorsed the Payee then becomes an Indorser — all subsequent holders are called indorsees.

Usance is an expression of time — sometimes inserted in a Bill — & denotes the time which is the usage & custom of the countries & places in which the Bills are drawn & appointed to be paid after. The length of time is different in different countries — from 14 days to one two or three months after the date of the Bill.

Days of Grace are days given the person from whom

money is due – one & above the Mercantile days of payment expressed in the contract or Bill. – In England & the United States there are three days of grace.

As to promissory note the original parties are only two – the maker & promisee – The maker is sometimes called the Drawer – but incorrectly – as this introduces confusion because the same term is applied to a different party in a Bill of Exchange. For all the law applicable to an acceptor in a Bill of Exchange is applicable to the maker of a note – but the law applicable to a maker is in no manner applicable to a drawer of a Bill of Exchange – except the physical act of drawing – the instrument of promissory note made to one or order is negotiable & like a Bill of Exchange may be indorsed when the promisee puts his name upon the back of the note it begins to assume the shape of a Bill of Exchange – The promisee is the drawer the indorsee is the payee and the maker the acceptor – The note is more transferable by delivery – the indorsee need not fill up the blank indorsement – but may sell the note & another & so to another & the last note may fill up the blank & himself as payee.

38 Bills of Exchange — [redacted] There is no privity of contract between Indorsee and the maker or drawer indorser of such the latter of these persons. 2 Ld Raym. 1562. 1 Salk. 130. Such privity is necessary where there is no privity of contract — except where justice or Equity will raise an implied promise. A Bill of Exchange made payable 2 days after date — does it run at interest? Answer: Bills of Exchange must be presented to the drawee. The drawee of a Bill of Exchange engages by the act of drawing & delivering a Bill that the drawee shall be at liberty (if at his option) at the time of such presentment, to accept the Bill & pay the same when it shall become due & payable according to the tenor — the contract of engagement of the drawee is when the Bill may be presented — and the same rule holds when the Bill is in the hands of the indorsee. — If the Bill is payable at sight it is immediately or within a reasonable time to present the Bill for payment. On the other hand the payee or indorsee contracts or engages by his acceptance of the Bill to pay the same upon presentment & acceptance & upon default of drawee & acceptance & drawee of Bill

notice of the parties concerned - Mercantile Law
is the same all the world over. Decision
is carried into effect by payment.
It is often the case that there are 2 persons
originally concerned on a bill. Suppose I
in London owe B in Scotland £100 &
give him my bill for it - he sends it in London
to get it cashed & draws a bill upon A
in London in favor of B and on the cover -
of it &c. - bill drawer may require him to
endorse it - sometimes only one party - Thus if A draws
a bill on B desiring him to pay £100
which money - bill may be indorsed -
one may draw a bill upon himself, & in-
dorse it. Post bill made payable at sight
or at some day after date there has been
very great dispute in Eng. whether this in-
cludes the day of the date or not. - Thus sup-
pose a bill is drawn payable in one month
from the date - it is said that this includes
the day of the date - but if the bill were
payable in one month from the day of the
date - the day of the date is excluded.
There is really no other difference
in meaning between them - the distinction
is said to have been taken in a case one

Bills of Exchange – Some Lord Chancellor said
Engd, which at once became a dictate that
714 to give effect to the intention – due attention
should be paid to date may mean the same thing. – Both
Inland & Foreign do in the mercantile law exclude
the day of the date. There are in Europe
281 very large cities – nations which reckon from
Fr. 829 according to the old stile & others which
reckon according to the new stile. Between
the old & new stile there are 11 days difference.
I remember days Bills here were calculated
the new stile was adopted in Eng. – The Bills
were drawn on the first stile in a country
where the new stile is adopted when a man
living where the new stile is not adopted shall
take it in one month – it would go to the 12th
of June & here it became payable according to
the method of reckoning as where the drawee lives.
The right of time where the Bill is drawn must
be the criterion & not where it is paid. I have
never seen this laid down by any Judge but by
Beawes one elementary writer except Beawes.
784 When Bills drawn payable at sight or days after
are allowed. The above observations mean
nothing to do with inland Bills of Exchange
but are applicable to Bills in all countries
as well as in Engd – The word foreign means

when applied to Bills of Exchange. Mercantile Law
is not used here as in American Parliance
when we speak of foreign powers we don't mean
any of the states above Union — But when we
speak of foreign Bills of Exchange we never
mean Bills drawn in one of the United States
upon one another as Bills drawn in a foreign na-
tion &c. Foreign Bills are usually issued and
sent in sets — 3 or 4 in a set each of which
specifies the number of the others
are said. — Formerly the Judge appointed
some Attorney in the United States in the
reign of Louis XIV. while that King and his
ally the American against the Britain in
the last war Bills upon foreign merchants
in America had current. When one Bill of
a set had been presented accepted & paid the
remaining Bills of the set were rendered
& in America & pleaded for good Bills — until the
fraud was discovered.

Of the Barony Judge's Court — they are made re-
sponsible in case of improper practice. But
in this country where we have no such Court.
It seems to have been the practice that
a writ — issued & well executed one made, pro-
vided & one or more. This practice was likely
done with in favour of the party before

42 Bill of Exchange — Inquire whether it be decided that promissory notes were negotiable before statute 3 & 4 Ann. Whether the words or order be necessary to a promissory note or bill of exchange. Whether the words value received be necessary in a promissory note or bill of exchange. There are many cases showing that the promise was made to the payee & not to the — the words or order being words of course — & not material — the maker of a note may not promise himself to pay — to pay another but that he promise to pay a third person — & may maintain an action — to the good in his own name — so if a note be given to one Gibbons & another & it is not delivered again to the payee but to the grantee — his heirs & assigns — the grantee after his heirs may sue the grantor when they come of age — the moment the grantee begins to hold also the right of action as the assignee to sue & he may sue in the name of the assignor or in his own name. — Is not the assignee of a note in law & does not seem to me upon the whole that on principle there are any grounds for considering a promissory note non-negotiable. There is indeed

another of 2 cases in the same Hermitage Case
of that Year. A man may promise & owe for
the Debt of a third person — The Case turned
upon Custom & Usage & the Letter of the Act
directs that Creditors compound & come in
& prove & Assignees do this as a part of
their duty — The Commissioners Certificate
remains conclusive, but that may be impeached
upon the Bankrupt's application for relief
within 28 days after the same is filed
after which time it becomes conclusive —
The Certificate allowed — The Petition
dismissed with Costs — Mr. Holroyd argued
& has been decided that in order to make the Com-
missioners sign the Certificate of the Bankrupt
obtaining his Certificate, it is not necessary
that the Bankrupt should be present
at the time of signing — The Petition
dismissed with Costs —
Who may draw a Bill of Exchange — The Acceptor
cannot plead that the Drawer had no Effects
in his hands — Assumpsit declared that
a certain Bill of Exchange was
drawn by the Defendant & accepted by
the Plaintiff & that the Defendant
did not pay the same — Plea that
the Bill was drawn by the Defendant

Bills of Exchange bind themselves. by contracts they may draw a Bill of Exchange. Whether an infant can bind himself by a bill of Exchange is doubtful. — They may bind themselves for necessaries — Necessaries are meat drink schooling &c — this however is not the whole idea of necessaries — the articles must be necessary to him under his then existing circumstances. But the infant is liable only for the true value of the articles & not for the certain sum agreed on. Thus if he buys a coat & agrees to give 50 shillings a yard for it — when all the tradesmen in town are asking no more than 4 dollars a yard — he will only be bound to pay 4 $ a yard. But you can never look into the consideration of a Bill of Exch. the whole must be received or nothing — & it is of a bond. It seems therefore reasonable that the infant should not bind himself by a bill of Exchange — because as the consideration cannot be inquired into — it cannot be determined whether the articles were

1 Lev. necessary nor whether the price was reasonable.

86 But suppose the bill express upon the face of

1 Str. it that they were necessaries. This might be but

40 does not alter it in reality. However in England

there seems to have been one decision as to the case

But the usage here is confined — Mercantile Law
& the latter are as clear as the former.
As to the power of married women to bind
themselves on Bills of Exchange — it depends
upon the validity of their contracts. — Courts
decided she is discharged & the wife's contract
is binding & that the wife was bound, until
by her contract made by herself while liv-
ing apart from her husband, & by articles of agreement having a sep-
arate maintenance. — And of course that she
would be bound in a bill of Exchange. But this
decision has since been shaken — (See [illegible])
so that it must be considered a quaestio vexata.
It is agreed on all hands that if the husband is
banished the realm — the contracts of the wife
during that time are binding upon her, tho to All
they are still man & wife. — There is then 182
no absolute incapacity in a femme covert to 1 E.L.
bind herself for a Bill. So also it is an agreed 9
point that if the husband has abjured the 9 Bl. R.
realm — as a consequence of [illegible] when 1 P.
the British doctrine — so also the contracts
of the wife are good. So also it has been decided
in a late case that where the husband was
transported to Botany Bay the wife should
be bound by her contract. If a man & wife
enter into agreement of [illegible] [illegible]

& Bills of Exchange – will enforce the agreement.
It is said that Ld. Mansfield when he decided that the wife having a separate maintenance living apart from her husband by articles of separation could bind herself by her contract – made new law. – But my Judge thinks I consider the decision perfectly on principle, the fact is the wife is never bound by her

[illegible] contract – First when the marital right of
[illegible] her husband is concerned – & secondly when
Term she cannot be supposed to have acted under the coercion of her husband.

[illegible] It has been decided that the drawee & endor-
[illegible] [illegible] are similar
[illegible] [illegible]
[illegible] [illegible] the same
[illegible] [illegible]
[illegible] [illegible]
[illegible] [illegible]
[illegible] [illegible] against the drawer & [illegible]
[illegible] [illegible] that a bill
[illegible] [illegible] without [illegible]
115 [illegible] that the [illegible]
[illegible] [illegible]
[illegible] [illegible] 1657. [illegible]
[illegible] he cannot maintain an action
[illegible] [illegible]

5 Bills of Exchange - import a consideration
2 Bill cannot be negotiated, unless the inscription
3,0 of there is any turbidity or illegality in the
bill consideration the must be inquired into.
2 4 a Court would think that drawing without a
4th seal is as good as if sealed & so it would be
21-8 in this case. The privilege of Bills of Exchange
is the same as that of Bank Notes there is no
seal & item - & the distinction between the real
parties. - However Bills of Exchange if
after negotiated if wrongly or unduly & con-
cerned in the consideration are liable to be
defeated. - No other turbitude will warrant
3rd. an inquiry into the consideration.
2 6 There must be certain qualities to constitute
2 4th a good bill. - It may be always be a Bill or or-
12 1 der to pay money & money only - a Bill or order
Best 4 for corn or cattle &c is not negotiable - so
2 6. if it is to a note. - Second the credit is made to
depend upon certain events. Thus a draws
a Bill upon B directing B - 3 days after
drawee to pay out of my growing substance. - and if it
could not be paid in 3 days not to pay it at all.
10 to 12. Here was no good bill of Exchange - the last
2 04 was - the drawee did accept the Bill but it
0 6 towards raised the application to Chancery
upon which a suit was brought before the court

[illegible] . . . [illegible] Mercantile law
[illegible] was resolved on the [illegible] to
[illegible] where the drawee was directed [illegible]
[illegible] which might relinquish [illegible] of [illegible]
[illegible] recent in mind — the bill was read a 3d
[illegible] Lawless the drawee was directed
[illegible] it is to run out at [illegible] months 3 Feb.
[illegible] upon as it shall be received. The bill was 20
[illegible] not be good, or the same reason. So 2 Feb.
[illegible] where the drawee was to pay such a sum
[illegible] account of weight it was left not stated. Dorp.
[illegible] however it was said that this decision is not
[illegible] correct because the drawee was not sworn — Dimsdale
[illegible] to pay it out of any particular fund — but
[illegible] only referring to a total source for remu-
[illegible] neration. Anyhow a bill is drawn on the
[illegible] of a ship payable in one month — to be paid
[illegible] as the drawer quarterly shall pay to become due
[illegible] from such a time & such a time — This was the 2d
[illegible] a good bill.

[illegible] to note of hand it is to be observed that they
are good tho the promisor agrees to pay out of
a particular fund. Thus if I promise to pay
another 100£ [illegible] 1545
pay — I undertake that the money shall 2e Esp. d.
[illegible] 24
[illegible] of the accepter. [illegible]

30 Bill of Exchange — or to the amount of the sum received — to be paid out of the money in Exchequer.

Then we have the usual provision for good Bill of Exchange — first that it be payable at the exact time named & not at any subsequent time — and secondly that it be for the payment of money & not for the performance of any thing else — Then we have the provision for the payment of interest — Where the drawee was directed to pay out of the 1st money in a certain 2d Reg. situation when it should become due — Here the money 1563 was to be paid — but because it was not a part of the 2d Exchequer upon a contingency. — That would not make a Bill of Exchange except so far as any subsequent event became so. — Where the drawee was directed to pay so much money upon receipt of money due — the Bill was not to be paid on the events — for because it was payable out of a particular fund — & because the 2d Reg. uncertainty whether it should ever produce 1562 the money — it is not to be paid for 1896 the reason of so much is proper the Bill of Exchange — was not made negotiable. So 1562 a note & place so much of the money & receipt transfer if it should have so much to do, & the

&c. no matter when the time of Mercantile Law
of payment is — if the time must certainly
come — thus a note promising to pay so
much two months after the death of A. B. 2 Ves
Jun. 125
is certain — because there is no
uncertainty — only as to the date, or after
the time must certainly come. — A mere
certainty is said to be sufficient. — However
there are some terms, in many cases the
principle does not apply & cases where
one might have several certainties. Apprehend
such charge here is dependent upon
a contingency of person. Suppose a note
to A. payable — probable credit & reputation
the certainty of his having property at a
future period altho' uncertain. —
We give a Bill Exchange & recite that we owe
for [illegible] which we object from the Bill
when he has paid all his debts. If one
makes a promissory note payable two months
after one of a ship is paid off — the note is ne-
gotiable — [illegible] as it were a moral certain- 2 Ves
ty that the owners would be able to pay the wa- 262
ges of the seamen — but it is said that is of a sub-
stantive nature — However that proceeds upon a par-
ticular act of policy — but it is a note given to public
bodies of men, which has been held to be

52 Bill of Exchange — A. Is note made, and a re-
13 Sept. ceive receipt of the wages due to him from a cer-
tain ship. — of three days after the Letter was a
Please to pay such a one so much out of the proceeds of the
ship in Gibraltar as soon as received — It was held not
to be negotiable. As where the drawee was ad-
vised to pay it to the drawer out of such a ship
the Bill was not negotiable. i.e. in the case
where the Bill is upon the condition that the drawee
is to pay it out of a particular fund — It was objected
because of the uncertainty.
Bill of Lading are not technical instruments
requiring any particular form of words — In
5 Mod. 2 the Master sign Please to deliver more — to as-
364 sign over — if the number &c. I promise
Holt to pay if I shall receive so much — by Shipman to ac-
230 count with B or deliver so much — they were held to
be Bills and it was held unnecessary that it
1696 should be mentioned in the Bill were or not the
— the
1212 time has been when those words were essential
Now they are not. It was held in case of Bill
cited that the omission of those words was
not material. The question here is not
the signing of a Bill as a security
for rent the evidence was fully denied

as to make of no effect those Mercantile laws
now negotiated by [illegible] to be better than
bill of exchange - as the [illegible] of the maker
to distribute the consideration. for if a note
is given & the word value received be omitted
no words can [illegible] - the maker may
or may not demand consideration. - all the
difference when it is not expressed is as to value
received is that there was no consideration. and
therefore the holder cannot [illegible] when the
promisee - but if it were expressed & for
value received the promisee would recover.
the principle is that parole testimony may be
introduced it stands well with the statute
now.

as to the words order in a bill of Exchange
there never seems to have been any question
a opinion that a bill with the word order
not negotiable - so much is true however that
long usage would lead us to conclude so. - for
being the original intention of the Merchant use
of a bill that they should be negotiable such
drafts as want those operative words are not
entitled & is declared on as specialties. however
they may be sufficient as evidence of an
order of some other kind. Bank notes are
negotiable without words payable to order or not

Bills of Exchange — The person (in whose hands) [illegible] made payable (they get it) [illegible] maintain an action ag[st] [illegible] there [illegible] the [illegible] 3 Wilson.

As to Acceptance — This is an engagement on the part of the drawee to pay the bill according to the tenor of the acceptance: if the bill be not accepted recourse must be had against the drawer. — The circumstances which generally amount to an acceptance are that the party to whom addressed binds himself to the payment — after the bill has issued — before it has become due & according to the tenor of it. The common mode (when a bill is accepted) is for the acceptor to write upon the back of it accepted — however if there is a writing upon the back of it by the drawee hardly any thing but negative words will excuse the drawee — Thus it has been decided in our high Court — where the drawee wrote upon the back of the bill I except this bill — that this amounted to an acceptance. The Court said they considered it only bad spelling — excepted instead of accept — So that the drawee has the pledge of his means and the money to pay & in addition to the public reputation of being a bad speller.

An acceptance however must be by the [illegible] or

without the acceptor's name. Mercantile usage
to be proved as it varies — will not suit
to draw on account of the expence. Can
be also one may bind himself by acceptance, as
by a collateral letter. — Indeed a promise to pay
is law and that a man will accept a bill before
drawn may be a good acceptance tho
the bill be not at that time drawn. So where Hand
the drawee said when you will return the Bill I will ac-
cept it, was held a good acceptance. May 26-1800
The acceptance is usually made between the
time of drawing the Bill & the time it falls
due — but it may be accepted after
the time is out — not however without some
imprudence, for an acceptance may according
to the tenor of it cannot be made after the day
is out. — An acceptance is considered as a
general promise to pay.
Acceptance is usually made on the Draught —
but acceptance may be made on another, per-
haps on the drawee — If the drawee does not
accept — or is gone from home & not likely to
return soon — a stranger may accept the Bill —
Bill — & the acceptance binds the acceptor that so
he is considered as if accepted by the drawee — in
the general presumption is that the drawee
has effects in the hands of the drawee. However

"Bill of Exchange — the drawer cannot be compelled to
pay unless the same be accepted. — The drawer pays
256-8 value, has an action against the drawee
if he accepts and pays according to
acceptance.
An acceptance is entered into normally
with the holder — but it varies all the parties
who have right to have advantage of the
acceptance — If the drawee accepts a bill, he
cannot in an action by the holder say
the drawer had no effects in his hands
to be drawn for the payment. — The holder
entitled to the acceptance if made payable
to drawer or order, or bearer — If made
payable to a man and his heirs — If made
payable to a man or order, or bearer
and the drawee accepts generally, he is
liable to the holder, although he has no
effects in his hands. — A man that accepts
bills drawn upon him by his correspondent
in the country, is liable to the holder
although he has no effects in his hands
for the payment of the bill. —
There may be such a thing as an acceptance
before the bill is drawn, and
then on the second or subsequent drawing
of the bill, the drawee is liable to the holder
according to the tenor of his acceptance.
Acceptance may be written on the back
of the bill, or on a piece of paper annexed
to it, sometimes recommended. Upon the
bill is an effect of the drawee, tho' he will
be liable that he will accept the draft

does it this acceptance is acc- Mencon the Case
mentioned with such circumstances would
may induce their consent to take the Bill &
indorse it - the acceptance is binding - but
if it be not attended with such circumstances, Lord
it is not binding. 5 T. R. 4

It is said however that there is a difference be- 1 Atk.
tween a verbal & a written acceptance. But 245
this is not the case - it proves sufficient evidence
to be left to the jury - Chitty 4th Edn. 86-90
Any words manifesting an intention to accept
a bill are - are always to be understood as
acceptances according to the Case - the Drawee
The drawee may accept a bill - not accepted to
pay, but if he avoids doing so he must
expressly state how he intends to act - when
he will find himself subject to the action of
the acceptance - he may accept in such a manner as to bind himself to pay the Bill - as if the Bill 214
were payable at his House - this Bearer
will do. - he may also accept by parol & even 481
without time.

On the Nature of Bills as negotiable Instruments - the principal
law is the same as when Lord Holt presided in the Court of King's Bench - Bank notes 1 Show
& Bills were known & practised in the time of Charles II 33 Car. II
the Drawee altered it little to give effect & validity
accepted it according to its tenor. The holder

58 Bills of Exchange - altered that such a one may receive
it again - the bill was held good notwithstanding. If the drawee wrote I accept the bill
2 Str. it such a one will pay it & it is evident & so was understood
1195 meant of that man, payment - it amounts to
a request of the drawee to so & receive
& if the holder does not call on that man he
must sustain the loss.
Ld Raym The drawee may accept a bill & one of the
271 many & the other half some or several things
to be done & not an acceptance. Qu. Ac-
ceptance may also be conditional - as upon
2 Str 5 the happening of such & such events - where
1182 a ship shall return - or if a ship should re-
2 Bls turn or when goods are sold &c - as soon as
9 the condition is performed or the event hap-
1 Str pens it becomes an acceptance absolute. Qu
648 what amounts to a conditional acceptance & what
Ld R. an absolute acceptance is matter of law
182 to be determined by the court & not by the jury.
I find it to be a rule of law says the book
that when a drawee would accept a bill upon
certain conditions - the conditions must be in
writing with the acceptance. The Am. Law of
Bays here applies - Qu. how far that rule would
286-297 now be introduced to operate against a written
Lord 571 absolute acceptance - or to make the condition

different from what it ought to be, the acceptance
to be on the face of it. — The acceptor can take no
advantage of any verbal condition annexed
to the acceptance.
As to what shall be an acceptance — it was held
by Holt that where the drawee said leave the Bill
with me, & I will accept it — this was a good acceptance.
Lord Raymond says the Judge — the drawee only wanted
to look over his accounts before he determined
but where the drawee said if you will leave the Bill
with me I will look over my accounts & if it was held a
no acceptance. — as to what words will amount
amount to an acceptance — almost any words
if it would are sufficient. However says the Judge
if the drawee should write the word Haystack upon
a bill from it whether this would be considered
an acceptance. I know of a case where the drawee
drawee wrote on the bill a word as foreign as
that — & it was strongly contested — but the case
was taken out of court. This was in a Mayor
ahmotts. — If the drawee writes to another
in whose favour the contents of it is an acceptance
& in Holland desires to draw a bill in favour of B
at 3 m on B in Holland — & writes to B to know if he
would accept a bill so drawn — promising to give
him credit on a house in London. B writes back
to know what house — & in return names the house of

Bill of Exchange – D wrote back that he may draw on him &c. – the Bill was drawn accepted & the money paid. C then writes to D in London & requests him to accept a bill upon the credit of ~~Smith~~ – D writes that he will. In the mean time C fails before the bill was drawn – D then writes & forbids them to draw on him on C's credit. – But C notwithstanding drew the Bill which D refused to pay – & C brought his action on that acceptance & the Court said that D was bound by his acceptance – tho made before the bill was drawn. It was contended that the letter of acceptance by D was a nudum pactum – But the court said a written acceptance could never be a nudum pactum. The presumption of a consideration is too strong to be rebutted.

3 Burr As to the transferrable quality of bills. If a Bill
1516 or note be made payable to A or bearer – They
1 Bl. R are negotiable without any actual indorse-
486 ment. They pass by delivery. As to Bills
Bunb 552 & notes payable to A. B. or order something must be done or written on the Bill or note to show that A. B. did order the payment to another. The usual manner is by indorsing (i.e.) writing his (the payee's) name on the back – It need not however be written on the back – it may be underneath.

2 Indorsements there are two Mercantile Law
kinds — viz Full indorsement & Blank indorsement
The full indorsement is where the indorser
writes on the back in full thus Please to pay the
contents to B & charge the same to — & subscribes the indor-
ser subscribes his name. — In the Blank in-
dorsement the indorser only subscribes his name
on the back without any other words —
which act of putting his name thus — contains
an implied contract that any subsequent
holder may fill up the blank — making the Dorg.
contents payable to himself — Blank indorse- 317-11
ments are most frequent — & indeed almost the 338-0
universal kind in business. After indorse-
ment in blank the bill or note passes by deliv-
ery — not that it must pass by delivery but
that it may. — When the blank indorsement is
filled up it becomes an indorsement & the same
time — The bill or note will not pass by de-
livery — there must be another indorsement
& each indorsement in full entitles an action and
is negotiability — as & such a one is drawn or drawee.
But the indorsee indorses it in blank it passes still free
as in delivery. In a transfer by delivery it is
said that the person making it over does a verbal
party to or security for the payment Thus if exin- 241
dorses in blank B is — gives him it & C — to D & — to E & — to Lord &

of Bill of Exchange - It cannot be sued upon if drawer's
his name is under the bill - Not can Drawer the
same reason. - So it is by the Mercantile Law
but it seems there can be little doubt but they
are liable in another sort of action - an action
at Com. Law - as for money had & received - But
at Com. Law the holder can sue no other, but his
immediate indorser. - There was an implied war-
ranty that the bill should be paid by the Drawer.
but the warranty in case of a more delivery extend-
ed into the indorsee. by those one indorses a
bill in blank (ie) by merely setting his name on the
back - the indorsee presents it for acceptance to
the drawee takes it, but it in his power. The
indorsee may bring trover for the bill - but suppose
he can have no proof that the drawee con-
verted it. - Let the indorser bring the action, his
debtor action be brought in the name of the in-
dorser - & then let the indorsee come in as a wit-
ness - how the has an interest as will exclude
him from testifying. - More probably that he
has interest will not exclude him - He can not
be rejected because one may believe or presume
he has an interest in it. - May be acted upon
your or Attorney & these in such cases may be
admitted. Nothing is more usual than for the
holder of a bill or note & indorse it in blank

& stand in the same predicament for the Mercantile Law
purpose of procuring the acceptance or pay-
ment. In this case it is in the power of the
friend either to fill up the blank space over the 180
indorser's name with an order to pay the contents to Mac.
himself or to give a receipt in it & collect it as 5/5
agent of the indorser — Indeed any indorsee has 1 H. Bl.
his election to take it as indorsee or as agent. 88
A man may indorse a blank note & be liable Bayley
as an indorser for any sum with which it Bussell
may be afterwards filled up. Lanauze
It has been observed that in case of a transfer Ld Kaim
by delivery the holder can sue none but one 2 T. R.
whose name is on the bill — or his immediate 371
indorser. The blank indorser may sue as bear- 8 T. R.
ing a power of attorney — or transferee. — 1 Salk. 125 — 1 Show.
The nature of an indorsement is such that when 65
a bill is once rendered negotiable by the indorse-
ment of the payee — subsequent indorsers can nev- 2 Term
er limit or restrain its negotiability so as to pre- 1006
vent a future indorsee from suing them 1226
here the word order is a necessary & not
mere form. Whether this word is or is not
necessary is a question which has made some li-
tigation in the English & Italian courts. But this
question is now settled. A gave his note to B or order
B assigned it to C without using the word order — C indorsed

Bill of Exchange — indd — 2 counts — For the Defendt.
1st. It was agreed that the words order were not in
5th the indorsement of B — therefore the Court dete-
2 Burr. mined in this case that the words are omitted
1216 officio. — In the case in Comyns the question
there was on a demurrer — The declaration
stating that the indorsement was B &c or order
omitted
upon which was erased the words or order
it was without the words or order — and the
deft demurred for a variance — but the Court
held it was no variance — for this was the legal
operation of the indorsement. A branch of
the law and Judge knows what the law
is more than good pleading. — In another case
a Bill was drawn payable to B or C — Accepted
Bill drawn payable to B or C — Accepted
B indorsed it to D omitting the word or order
D indorsed it to E — & was the acceptor. It
was holden by the Court that the insertion
of these words was not necessary. When
the payee indorses the indorsement may be
restricted — but the restrictive words must be
inserted expressly — as if he direct the drawee
Doug. 630 to pay 15 Sterling — or the within must
be credited to value in account. In the last case
the clerk of the acceptor forged an indorsement
& made the Bill payable at a small place in In-
dorsed it over at the Bank of England. The acceptor

becam indebted — the bill afterwards Lost was made payable to the name of the drawer, & paid — the drawer now being liable to the latter accepted a bill to answer against the Bank — desiring that the Bank would take the bill in endorsement & was refused by the latter — & that the latter accepter had paid the money to the drawer.

The Bill was now ended & this Bank by direction of the Court — on a motion to set aside the nonsuit & the rule to show cause was made absolute & a new trial granted — The Bill returned & recovered.

A Bill in Law is never liable upon any evidence. — But this must being liable as an evidence does affect his right as against the drawer as a subsequent evidence. Every man who purchases any thing knows whether in the case of a bond there is any such thing as an endorsement to the same — & when the transfer is delivered & a valuable order was received when it was so it may have been stolen by the indorser. Thus a bank bill payable to bearer was sent by mail & in its passage was stolen & afterwards came into the hands of a Tavern-keeper — the true owner sent word to the Bank & stopped the payment of it. — & when presented by the Tavern keeper

Bill of Exchange - it was accordingly rejected - Doug. Upon this the Taverner broke brought his action & proved them & recovered.

Rhodes 668-6 If there are two Payees - they are in Partnership - & one of them indorses the Bill it is a good indorsement - It was objected that the case was not within the case of Partnership concerns. (Vid alibi curia.) In those a Bill is drawn in favour of two persons not in partnership - in that case both must indorse & subscribe their names the indorsement of one however will bind him. There is indeed one case where the court held that the indorsement of one should be binding upon both because the drawing of the Bill held out to the world that they were in partnership. This case however was much ridiculed at. The case was A & B drew a Bill payable to their order - then one of them transferred it in his own name & received the money. This decision it is said has however been reversed in the Kings Bench & the Law settled.

Doug. 633 Wickens

If one solely indorses a Bill & marries the husband will be liable as indorser - but a feme covert cannot indorse a Bill. If the executor of a holder of a Bill indorse the Bill he is liable personally to the indorsee. 1 Ves. 45.

The question is whether by the Mercantile Law
mercantile law it is necessary where the le- 10. Ves
gal & the equitable interest is separate - that 515
the suit be brought & maintained by the trustee.
The law in this respect says the Judge is the Carth.
same as the Com. Law. - It has been decided that 5
the cestui que use of a bond may maintain any Rent
action in his own name - Thus where a man 820
on a sick bed being about settling his estate ordered 2 Show.
trees to be cut down & sold for the purpose of rai- 504
sing so much - as a portion for his daughter
The son - who was then standing by said don't order
those trees to be cut down - it will ruin the farm - let them
stand & I will enter into a bond with you to pay my sister
the sum required to be raised - which was done ac-
cordingly. - The man died - who shall sue upon
the bond the executor refuses - The court said the
suit was well brought in the sister name.
This question came up also before the Circuit
Court of the United States in Vermont. A man 2d Cont.
conveyed land to his brother - & he conveyed back 27
to his only daughter at 21 years of age. - The Grant-
or died - his brother refused to convey the land
to the daughter as the Grantor. The action was
brought by the daughter while Judge Chase was
on the Circuit. The case was argued - Judge Chase
doubted whether the action would lie - and ordered

68 Bill of Exchange — the case to be continued till the next term. — The next Term Judge Ellsworth was on the bench — he was clearly of opinion that the action would lie.

Barth. v. Bell came now to be heard upon — (it) part to be in- 1766 clined to one & part to another

As to the engagement of the several parties to a Bill of Exchange when indorsed — they all go upon the ground that the holder draws a duty — that is the condition always implied in an indorsement & an acceptance. The Drawers engagement is to pay & every subsequent holder. — His engagement is made particularly with reference to the drawee — — He engages that the drawee shall accept the bill when duly presented — He likewise engages that the drawee will accept the bill according to the tenor of it — & to pay it at the day of payment. — He engages the Drawee is then & there indebted & indebted as he is liable to pay the accepted. He likewise engages that the drawee is to be found at the place described in the Bill. — If any of these engagements fail the drawer is liable immediately to Bauer an action. And no defence can be made to 1766 the action in case of non delivery — the the drawee

hags it at the day appointed — Mercantile Law
The circumstance of part payment must go in mitigation of damages & not in bar of the action.
If a drawee delivers one a Blank Bill con- Hen. Bl.
taining in the payee & bill it up — the drawee 1 215
will be liable to any amount with which the payee shall fill it up. — If in the mode of the drawee in case the bill is not accepted or not paid to give notice to all the parties on whom he intends to rely for payment. — the object of his giving notice to the drawee is that the drawee may have an opportunity to take his effect out of the hands of the drawee in case. In what manner the notice is to be given will be seen by & by. — This notice is made necessary to prevent any loss that may happen to the drawee — & there is no Chitty.
failure of the drawee then there is no liability to the drawee. & the drawee refuses to accept if the bill is returned to the drawee with certain Days, other formalities — this is giving notice. In case either of non acceptance & non payment — the period when the debt of the drawee is to be considered as contracted — is the moment he draws the bill — & also the debt of the indorsers commences at the time of the indorsement. The debt in such case does not commence a new but revives the old debt

Bills of Exchange - When a bill is indorsed & the
1 Salk payee - a Debtor the indorsee & indorser.
126 if it is a note bill then it is as between eaque
2 Show. subsequent indorsee & indorser. Nothing can
221 discharge the drawer or indorser but the pay-
284 ment of the money — not even a judgment ag.
a prior indorser — a judgment against the
drawer or any prior indorser is no bar of
an action against a subsequent indorser by
the indorsee. The principle of the common
law is that if a man have a bond or security
against several as A B & C being a joint & several
bond - the obligee may sue A & if A do not pay
he may sue B & on the same bond. But a satis-
faction obtained of one is a bar to the action
this is the case with joint & several contracts —
But in actions of wrong viz tort it is otherwise
thus in Assault & Battery a judgment is a bar
6 Mod. whether the judgment is satisfied or not. — The
86 reason of the distinction is that in contract
2 Show. the sum due is certain — but in Assault &
221 Battery the damages are uncertain. — Policy
interferes — The first may say in Assault & Battery
I have sued one who beat me but the damages assessed are too
small I will sue another of them & may be I shall get larger dam-
ages if not so large I can take out execution upon the former judg-
ment. — But the Policy of the law prevents this.

It is a rule of law that where Mercantile Law
a man has two remedies & elect one he
shall not afterwards resort to the other. But
in the Mercantile law it is not so. In Eng.
one may bring debt for rent reserved — or he
may distrain — but he cannot do both. Tho'
a man's beasts get into another's land & do mischief
the latter may bring trespass — or may impound
the beasts — but he shant deprive these beasts
of their liberty — & bring an action against their
master also. — Suppose one comes into a man's
house & takes away his hat — trespass will lie
& trover will lie — but not both — because the
evidence in both actions is the same. This
is the test when one action will bar another
If a man actually take out execution against
one — & upon that execution takes his body & puts
him in Gaol — he cannot proceed to take his
person — For law considers a man in Gaol
in point as good as the dead — and if he be a
joint debtor & let him go out of Gaol again — he
cannot take him again — nor proceed against
the other joint debtor — for it is by the Com. Law. Cont. 2 Bl.
by the Mercantile law if he let one joint debtor 1205
go from Gaol — he may afterwards proceed against
another joint debtor. " " " "
The engagement of the drawer or indorser (vide ante)

The Bill of Exchange – in continuance. The holder in order to make the drawer liable must in case of non acceptance by the drawee give notice to the Drawer & indorser – & that too in the term which the law requires. Where the payment is limited at a certain time after sight it is evident that the holder must present it for acceptance or the time of payment will never come. If the drawee refuse to accept – it is no cause for proceeding against the drawer – he must present it when the day of payment comes.

A great question has arisen in Engl. – A draws a bill upon B in favour of C – C presents the Bill for acceptance – B refuses to accept. Instead of giving the day of payment C gives notice of the non-acceptance & brought his action on the Drawer. The time of payment came – the bill was given for payment – & the drawee paid it – but no notice of this was given to the drawer – It goes on with the suit – the plt never knew that the bill was accepted or paid. A voluntary payment, by the Drawer, after the refusal. The award the drawer brought his action for the recovery of the money so paid. – The not giving notice was contrary to the rules of the merchant the law will not help fools & wizzards – How much ought A to recover of B. A was liable for something

State case in a different view

because the drawer did not accept Mercantile Law
agreeable to the implied engagement of the drawer
& the question is how much. — Holroyd says
Judge Lecon if judgment had been rendered on
the action by the holder ag. the drawer — there
could be no objection in my mind at all — but
that the drawer could recover in this action. It
would not be overhauling the former judgment
to have been determined that if an insurer be sued
on a policy of insurance & a recovery be had —
yet if there afterwards appear any circumstan-
ces to render the payment of the money ineq-
uitable — unjust & unconscientious to retain it, which
on principles of justice the former judgment it may be re-
covered without any hazard at all. Lord Kenyon
stroction was put upon the case of Moses & Macfarlan 1 Bos. 1005
when Burrows reports were brought into this coun-
try. — a Hinsbury man would sue a Windsor man
before a justice of the peace in Hinsbury & recov-
er — then the Windsor man would sue the Hinsbu-
ry before a justice in Windsor & reverse the former
judgment
Bills payable at a certain time after sight must (vide note)
be presented for acceptance or the time will
never come. But when must it be presented for
acceptance. No precise rule upon this subject can
be laid down only this — that it must be done

7 Bill of Exchange - accepted & due & demand of payment.

Bill of Exchange drawn on a merchant in London arrive in the afternoon - the holder hath by right of the next day to present it for acceptance before the day it is due for the payment - at what hour of such a man to it is usual to present it for acceptance before the day of payment due & is not necessary to do generally - & however the holder is such case to present the bill for acceptance before the day of payment & acceptance is refused - he is bound to give notice of the non-acceptance. But if a man send his bill of exchange to get it accepted notice is necessary as between the parties & drawer. - The holder of a bill is bound upon non acceptance to give notice to every preceding party to whom he would resort for indemnification. Here the inquiry is what shall the holder give notice to the drawer or if he intends to look to him for indemnification or in such case notice must be given to the drawer. The answer is that the drawer must have notice that he may in case of non acceptance take the earliest opportunity to take his effects out of the drawees hands. But when must you give notice to the indorser. he is not presumed to have effects in the hands of the drawee, the presumption is

that the indorser perhaps was aware Mercantile Law
dispense notice to his indorser or to some prior ceas-
ding party. In the case in Burrow 2672 where a Burr
bill was drawn payable at a certain number of 2672
days after date - & the holder having presented the
bill for acceptance which was refused - neglected 1 T.R.
to give notice — the court said that the holder ought 713
to suffer for neglecting to give notice of the non ac- 712
ceptance - tho it was not necessary to present the
Bill — or acceptance. His mistake of the law shall
not avail him. - It will never do to plead ignoran-
ce the law to avoid executed contracts. — His brings
to me mind one - the Judge case which occurred
in this state. By our stat. all persons convicted of
Burglary are to be sentenced to Newgate. - Newgate
being out of repair at a certain time the old law
was revived which made the punishment branding
& for the third offence hanging. about this
time a certain old fellow was indicted for Bur-
glary & upon a verdict of the jury against him
he desired to be heard in his own defence by way of
mitigation of punishment. - The court gave con-
sent — he came forward & said it was true he did com
mit Burglary - But says he I did not know that the law was al-
tered as to the mode of punishment - I thought they used to be
put into Newgate for that offence.
& the acceptance varies from an acceptance according

Bill of Exchange - & the tenor of the bill - notice must be given - the same as to non acceptance.

As to the Demand which the holder must make on the Payment - the mercantile law varies from the com. law as to the time of it. The demand must be made at a convenient time - & a convenient day (viz) convenient for payment by the drawee. The demand must be on the last day of payment in such manner & such time that a protest may be made that very day.

Peake 161

whether Days of Grace are allowed on the payment of notes or not is a matter of much discussion & it is said that days of grace are a creature of the mercantile law. & that notes & bills are not creatures of the law - This reasoning seems the judge is very dubious - The fact is that the Mercantile law puts negotiable notes & bills the same footing as bills of Exchange. - & it is the practice to allow days of grace on promissory notes, as well as bills of Exchange most universally. The law is now pretty clearly settled. In the case of Lloyd & Sweet & Lee Doug. 62 it was ruled at Nisi Prius by Lt. Mansfield that days of grace were allowed on promissory notes. That case was afterwards argued & this admitted - but the point was not made. - but the question was afterwards fully settled. See 1 Term Rep. 167 - 4 T.R. 148

Honeywood v Peirs 1 T.R. 192

Doug. 62

In all places there are certain reasonable Law hours of business. - Within such hours the Bill must be presented for payment. Then the drawee is to be found at his place - his store or counting house &c.

In giving that notice which the law requires upon non payment - it is necessary for the holder to be particular & state in his notification that he dont mean to give any credit to the other parties - The notice must contain this declaration - If not then it is not such notice as the law requires This notice must come from the indorsee or holder - & that the notice be sent off by the next Post when the Parties do not live in the same place. But when the Parties live in the same place it is otherwise - notice must be given in a reasonable time. - But what is that reasonable time - This is a question of Law to be tried by the Court - & not by the jury. originally it was to be tried by the Jury. No certain rule can be laid down to ascertain what is reckoned a reasonable time. Many years ago a case came before Judge Keen where notice of the drawee or indorsee of the dishonour of the Bill or note within twenty four hours after 1754. such dishonour was held insufficient. In 1809 the case of Tindal & Brown 1 T.R. 169 the court gave a precedent note & B or order - B indorsed

Bill of Exchange – N.B. – on the Day it became
due on the next day of grace at 12 o'clock the
indorsee left word with the maker that the
note was due – the maker was not at home
the indorsee called the next day & the maker
said he would call that day & take it up. – He
did not call – & on the day after the Bill was
tendered to the indorser who refused to pay
saying he ought to have had notice & for the
latter being no more than 12 minutes
walk from each other. The court held that
the indorsee should have given notice to the
indorser & the dishonour sooner. For they
said they might have thought proper to write
to you. The indorsee insisted that
notice on the second day was in season. This
may be – but as the case was the notice was not
from the indorsee himself – the notice should
come from himself & not from any other
person. No notice need be given to the draw-
er of a bill of the dishonour – provided the
drawee has no effect of his in his hands. – The gen-
1 Str. rule is that notice is required in order to give
405-410 the drawer an opportunity to get his effects
into the drawees hands. But notice must
be given to the indorser whether the drawee has
effects in the hands of the drawee or not

But this question has been of Mercantile Law
settled in the Exch. Court — by those the drawee
can have no effects in the hands of the drawer
but as the case may be he may be damaged
by non acceptance & no notice of their Lords
thus a draft is in favour of B upon C for
the use of D — B was the nominal holder & D
the beneficial one tenant. — B presents the bill & C
for acceptance which is refused — B now sues 2 Ch. R.
as the drawee. — & the defendant had no effects 318-324
in the hands of C the drawee — nor had he legal
notice of non acceptance: but it had effects in
the hands of D the cestui que use. & supposing
the bill had been laid by C presuming that D
had effects in the hands of C — stifled his account
with D without notice of non acceptance (since 15 Ch.
D became a bankrupt. — & said he was endam- 247
aged to the amount of value. — The court evaded
the question whether he could recover on account
the damage — the case was of a plea in the
ground — so that the question has never been
decided.

Inland Bills notice of non acceptance is
necessary but no certain time of notice is re-
quired. But when acceptance is refused &
a foreign bill — the holder must then go &
obtain Notice & give him & indorsers their re-

80 Bills of Exchange - but the question is, if there is no notary public there? then application is to be had to any substantial person in that place & the business to be done in the presence of two or more witnesses - & it is the business of a notary public when such application is made to him to go to the drawee personally & demand acceptance - if refused he then notes the refusal the time presented & his own charges upon the back of the bill. - He then draws up a writing the substance of which is that the bill was presented for acceptance & refused at such a time - & that the holder intends to recover all damages & sustained on the other parties. The demand of the notary is in itself is material & cannot therefore be made by his clerk. His Protest is conclusive evidence Lib. R. in all foreign courts. & must be recorded 76 by the next Post & the person & place thereof the drawee & all the indorsers & whom he would look to, shd. be expressed that the holder may be able to make the person & whom the notice is sent liable to all damages sustained. & it is required that the letter containing the notice be put into the next mail of which due notice Bill. C. 7 must be given - Bankers putting the mail

it may not reach the Drawer — Marsh. Mills Lond.
or the indorsee — How then can the holder 220 — 2 Ex.
sue that the holder intend to look to them? 715
The holder has done his duty — if the Bill is lost
he must recur to the contents unless other proof
can be had.

When a Bill is accepted it must be presented Beawes
for payment. But if the Drawee cannot be 260-1
found at the day of payment the same things
are to be gone thro as if he had refused it — an ex-
press, or plain acceptance not according to the
tenor of the Bill. — The Drawee may accept on-
ly a part — or having accepted a note or whole
payment half — yet it must be pursued the same
way & acceptance & payment were originally used.
If the holder find the Drawee in failing circum- 2 Ld Raym
stances after acceptance it is said he may sue 745
for other security — but this cannot be done. If
the Bill is protested the holder may recover of
the drawer the principal — damages cost in-
terest &c — The cost is that entry which is charged
on the Bill by the Notary. — Now what will be the
damages. You cannot make the actual loss the
rule of damage — remote damage is not Salk 649
considered. & which may in consequence of the Beawes
Law be found in the mercantile — Increase 261
rises by the use — this is not such damage as is contemplated

82 Bills of Exchange. Inland Bills of Exchange are
when the drawing of other commercial transac-
tions. — No recovery can be had for damages
nor is there any need of a protest in case of
non payment — or non acceptance. They are
indeed governed by the principles of the com-
mon law except where regulated by certain statutes
256 & they are drawn & payable drawn
& in the United States it is now settled that
each State is to another a foreign State:
& hence the drawer will not accept on the
account of one but for the honour of the draw-
er — this gives him a right of action against
the drawer — the drawer may accept for
the honour of an indorser but the bill must
first be protested for non acceptance & non payment
This gives him a right of action against the draw-
er. Third persons may accept a bill
honour for the honour of the drawer — or for the hon-
457 our of an indorser — & in such case he is
bound & all subsequent indorsers. — But
after such acceptance for the honour of the
drawer the drawee cannot accept the bill
458-9 the holder may permit him & do it — but this
does not discharge the third person — & one ac-
cepts for the honour of the drawer obtains
a right of action against the drawer only

But if one accepts for the honour Mercantile Law
of an indorser the acceptor is bound by his
acceptance to any holder of the bill. & tho' drawer
& indorser pay the bill the drawer has a right
of action against him but if the drawer refuses Dingwall
payment & the holder resorts to the drawer & com- Dunlop
pells him to pay — the drawer may then have an Doe. v.
action ag.t the acceptor not only for the primordial Blackp.
sum but for damages inherent & ocat. The ac- Peele
ceptor is bound by his acceptance to any holder Doe. v.
of the bill at all events — & the failure of the Hamlet
drawer either after or before the acceptance 88
will not discharge the acceptor. By the com.
law if one breaks his promise he must pay nom-
inal damages at least — tho' no actual damage 1 Wils.
has been sustained. If the drawer has effects of 185
the drawers in his hands & having accepted the
bill refuses payment the drawer has a right of
action ag.t the drawee at least for nominal dam-
ages. The holder of a bill may discharge the
acceptor by parol or by express declaration
in a letter — or by noting acceptance annulled in his
book. — This is a valuable clause to the mercantile
law. I have said nay, Judge Buller that is con- 2 T. R.
ditional acceptance — binding upon the drawer 96
if it if the holder does any thing by which the acts — Marsh
in lieu his assent — but if the holder abides a fair Hunt
Doug.

87 Bill of Exchange - dispute thereon - The question in this case was whether the drawer was discharged by the conditional acceptance he cannot at law. forward - come upon the drawer. It has been Ellis & Wilson said that if the holder has received a part of the money from the acceptor it discharges the indorser as well as the drawer because he has given credit to the acceptor. but it is to be observed that if proper notice of non payment is Wilk. 262 given such drawer or indorser are not discharged by part payment by the acceptor. On the other hand a receipt of part of the money from from the drawer does not discharge the acceptor only pro tanto - but if the drawer has paid the whole it discharges the acceptor. If the holder has received part of the bill from an indorser & afterwards commences an action against the drawer without giving notice of the non payment - he may recover the Thos whole bill of the drawer & then he will be a 62 trustee for the indorser, for what he has received of the indorser. or made him a bill to be endorsed by him - & suppose A gives bond to B - C recovers & B recovers further costs for the same debt - Now was the bond taken in the name of C - & would have received as much - but the bond were assigning

of opinion that payment to the Mercantile Law
and of the drawer was payment to the person 1 Wil.
intended & that the indorsee was therefore 46
not entitled to recover. It was formerly a ques-
tion whether the holder of a bill must not re-
cover of the drawer before he can have an action
against the indorser but it is now settled that
it is not necessary & that a demand taken made of the drawer — Neither
is it necessary to the holder to give notice due
of the preceding ~~parties~~ except the one of whom he
he brings his action — In every indorsee is in 151
the nature of a new drawer & except in the- 4th.
quent holder of a bill the acceptance or payment 441
of non acceptance is not become a present 2 Ken.
account & can sue more than 660
prior parties to the drawer that he may get his 4th.
effects out of the hands of the drawer. 138-9
on the Rights of the parties — Where there Hen.
is an immediate privity of contract between 152
the parties — in the case of the note 1 Wil.
note an indorser & his immediate indorsee 285
the com. law furnishes a remedy for which there Hard.
is a consideration — or special action on the 485
case also lies — in which on the custom of the Lord
chants — which last is the proper action where 125
bills of Exchange & negotiable promissory notes 4th. 680

Bill of Exchange - The com. law merchant on Bill of Exchange & promissory note - are indefeasible attempted & perhaps dict. This principle of contract exists between the drawer & payee of a bill — but whether between the payee & acceptor seems not to be settled.

The mode of declaring by way of assumpsit to the custom of merchants — which was indeed rather & even more necessary in the proceedings were considered [illegible] founded upon
1 Ld Kay 175 custom & not upon general law. — When the
1 Show. 130-570 court had stated the custom they would from that
La Rn. that the right of the Pltf came within the
Sa-5-0 custom. — That the law of merchants seems
Sc Ld. now recognized as part of the law of the land
96 it is only said that according to the custom & liber-
2 Ld Ray 1572 ties made his claim Bill &c - and it is not
necessary even to state a custom as long as the
custom of merchants. But the Pltf must
state that the drawer made his Bill in favour
of & directed it to & his correspondent - and
it is had been indorsed - that must be stated &
indeed all the acts which entitle the Pltf to re-
1 Str. cover. Or in a declaration upon a note it must
82-3 be stated that the maker made his note & &
H. Bl. Bill in favour of a certain payee or order
813 the declaration must be according to the legal

operation (a) that the Bill was Mercantile Law
drawn payable to bearer & not to bearer or
The reason of this is that a Bill made payable
to bearer ~~bearer~~ order must always be indorsed by the
payee — but as the fictitious payee cannot in-
dorse the Bill — it is as if payable to bearer &
it must be declared upon. But if the Pl chuses
to state all the circumstances truly & affirm
that there is no such person as is named payee
of the Bill & declare that some other person
as the acceptor or drawer wrote the name of such
payee upon the Bill for ease of indorsement
then if a verdict is found affirming the fact
and in the declaration the Pl may have judg-
ment. — When the Pl declare upon negotiable
notes they usually refer to the stat. 3 & 4 Ann
which allows them to be declared on the same
as bills of Exchange was formerly seen. But it
is not absolutely necessary to refer to this stat.
a Bill payable to the order of a man may in an
action be declared upon as payable to
him for that is the legal operation of the word.
Where a note is made joint & several the holder
may bring his action against one of the makers
of the note as tho he made the note alone and
if he is not settled he may bring his action against
me of them & state that they jointly & severally

88.

Bill of Exchange made the [illegible] and
drawn [illegible] for [illegible]
592 one. after [illegible] months from
the date hereof — the [illegible] to pay
1595 the sum above mentioned to the order of
[illegible] Esqr. Rec. 592 — Lond. 20 — Feb. 22 — 1595

This was drawn in London upon a note dated
that it was made at the time of the date. Also
a date must be stated — This date of time
is made [illegible] that it was payable
time & time, & the note was made in
London — that declare is that it was
made [illegible] — for a thousand [illegible]
[illegible] pounds. The declaration upon the bill
was [illegible] — it must state [illegible] of
the sum & the time — because the time
differs in different places. Every bill must
be dated at the place where & when it was
made & the time it was to be paid at
— [illegible] — [illegible] Solvatte Pecunia. [illegible]
[illegible] or [illegible] it is sufficient that the
1680. made the note [illegible] [illegible]
326 [illegible] — or if it is not made [illegible]
[illegible] the note — [illegible] [illegible]
he made the note [illegible] [illegible]
The bill was [illegible] & it was [illegible] of

the master [illegible] [illegible] [illegible]
that that it was drawn by the master [illegible]
the same as it had in fact been drawn
by the master in this case — But the subscrip-
tion is alledged it must be stated that it was 224
drawn & subscribed by authority of the mas-
ter. — It must be stated that the drawer of
the Bill delivered it to the payee. For till was
payable after sight it must in an action a-
gainst the acceptor be stated that it was pre-
sented for acceptance & that it was accept-
ed — or if the drawee could not be found —
must be stated accordingly & the facts of the case
are — & the action is when the Bill payable 864
after date is not according that it should be 5th
presented — if it were not till it was presented
no payment it may be so stated. In the ac-
tion is against the acceptor the plaintiff must
state that the Bill was accepted according
to the tenor & that it was. This is
agreed not that it is necessary to state, but
if there are two several indorsements it
is usual to state to the whole amount.
Upon that there may recover. Several
indorsements may either all need not be stated
to have been made before any suit. But
in the action is brought by an indorsee the in-

60 Bill of Exchange - Acceptance of the Bill must be stated. If the Bill is drawn payable at a certain time after sight, the acceptance must be dated, else the Action cannot be maintained - for it is then uncertain when the Bill is to be due. But there is a case in which it is held that the indorsee may sue the Acceptor of the Bill, tho' the acceptance be undated, because there can be no uncertainty. For as well - for they might as well have sued that declares it was dated on the 2nd the Bill. If it is said that when the action is brought against the indorser a Protest must be produced, and that the manner in which notice was given must be stated - But now by the statute of Anne notice is an incident of right - it is not necessary to state the manner of giving the notice - that it is said will be void on demurrer. Formerly in an action against the indorser of a Bill that fact must have been made out at the Trial. But now it is not necessary for the Plaintiff to prove the acceptance of the Bill - Suppose a Bill is refused acceptance, can it be indorsed over, so as to give an action against the drawer? Cannot for it is negotiable till

is at an end — for the whole Mercantile Law
we may have a remedy against his in-
dorser by a com. law action.
If a Bill in the course of circulation comes
into the hand of an indorser he cannot
maintain an action as indorsee agt. his last
indorser — because as the court said every
indorser is liable to pay the Bill to the in- 4 T.R.
dorsee — but according to the facts appearing 2 T.
upon the record the Plff by his statement hath
entitled himself — for he is holden to pay the
Bill to the Defendant rather than the Defdt
him. Patter. Denial of Payment — a Bill is Lud.
indorsed to A. to pay to indorsee or indorser he can- 125
not maintain an action as indorsee agt. Lamb
the acceptor. after going thro all the pleas 209
& shewn how the Plff came by the Bill & a 120 Bay
right to recover of the Defdt — it is customary 568
to raise a promise made by the Defdt to pay 1 Salk
Bank if necessary & state there was a promi- 2
-se. I should think any pleader it would
be sufficient on principle & even better rules
to state that the Defdt became liable to pay
& then the law implies a promise. The rea-
son why I think it made better not to state
a promise is that if an express promise is
stated it does not appear whether the Bill

Bills of Exchange - when on the more liability of the drawer or upon any actual promise to him I know it has been said that non assumpsit would not form an issue if a promise were not laid - but I conceive that non assumpsit may be considered as denying the liability stated. Many instruments given on good consideration are not negotiable - for they cannot be assigned nor declared upon as such - if a Bill or note is not negotiable the Payee may bring an action at Guildhall ag. the Drawer or maker & use the Bill or note merely in evidence of the debt. A Bill or note given to a payee is presumptive evidence that the drawer owes him but it is not conclusive evidence of it. I hardly know any Judge here what would be done under our law if a note were given as an accommodation note. (ie) if the maker of the note merely lent his name to the Payee - for as one note precludes the debt from shewing a want of consideration the payee must recover. However should a case arise I expect some law would be made upon the subject. I should have no hesitation to say Judge Reeve in permitting the debt to shew the truth. If a negotiable instrument is transferred without

1 Str. 649

1 Str. 174

indorsement the person from whom Mercantile Law
forbids is not liable to any action from
any holder of it by the Mercantile Law.
But at Common Law the holder of the Bill if
he cannot recover the Bill may maintain
an action of Assumpsit against
the very person from whom he had the
Bill without indorsement. This action
can be maintained only between the
immediate transferor & transferee & not
by any one where there has been an inter-
mediate holder. This is an action merely
to recover the consideration which was
paid for the Bill whether that were good
Debone or in money. But the deft may show
that the holder of the Bill did not use due
diligence to obtain the money of the parties
appearing upon the Bill & such proof will be
a prevent a recovery. The holder of a Bill
may proceed against the drawer & indor-
sers all at once & may proceed to judgment
but if any one of them pays the debt he can
take out execution only for the costs & if he
should take out execution for more he will
be guilty of contempt of court & treated ac-
cordingly. In case any indorser of a Bill and
an acceptor recovered judgment against him

1 Vol. 120
2 Vol. 115
3 Vol. 515

Bill of Exchange - took him in Execution & imprisoned him. He was discharged by the Lords act - (an act for the liberation of Debtors) the Indorsee then sued the drawer & recovered on the Bill. The drawer knew not the acceptor & it was contended that the acceptor having been taken in execution at the suit of the indorsee had paid it. But the Court held that tho it were a payment of the debt as it respects the indorsee it was no discharge of the action brought by the drawer.

Non assumpsit is the general issue to all these actions. It is now settled that the holder of a bill after having several of the parties bound to him & one of them becomes a Bankrupt & the holder comes in under the commission & obtains a share in the dividend. The same holder may then prove his debt under the commission of another party to the Bill & he might in this way obtain his whole debt. Thus if he holds a Bill to the acceptor & comes a Bankrupt & proves his debt & gains 10/ on the Pound — he may then resort & apply to the Drawer & if he has become bankrupt may prove his whole debt — & if the last pays 10/ on the pound he would obtain the whole.

to the Proof. — whatever is Mercantile law
necessary to be alleged must be proved un- 1 Lil Ray
less from the situation of the Parties it is 247
admitted. & there are special indorsements & Hi
the hand writing of the indorsee must be pro- 946
ved. But if the Def. is willing to resign it he 1 Bos
may strike out any blank indorsements — 1357
otherwise he may fill them up & prove the 1 Black.
hand writing. — In an action ag. the acceptor 900
by any holder except the drawee it is not
necessary to prove the hand writing of the draw-
er. For if any person has been guilty of neg-
ligence it is the acceptor rather than the Lloyd
holder. for the acceptor is more likely than 188
the holder to have knowledge of the hand writ-
ing of the drawer. In this respect it makes
no diff. whether the acceptance was by writing
or parole. But where there has been an
agreement to accept this cannot be ex-
cept applies where it is made to the drawer hand
(the drawee)
for if he should have a forged bill he must take
it. and therefore he has a right to question
whether the (bill) presented is the real bill of
the drawer. The hand writing of the ac-
ceptor must be proved. — Bill payable to
bearer — no hand writing except that of the
acceptor need be proved. If there have been

206 Bill of Exchange - several [illegible] indorsement
the holder may file a bill &c.
15 T.R. save the trouble of proving them. The
652 hand writing of the payee which the payee
indorsee must always be proved - (it is in question by indorsee to accepter)
if the indorsement was in blank still his hand
must be proved but in such case the hands
of the intermediate indorsees need not
Cowp. Peake Ev. be they are stated in the declaration. If
220 the acceptance was conditional - proof
must be made that the event happened upon which the acceptance was to become absolute. If a bill payable to order
Sugd. was indorsed in blank - or if it is payable
185 to bearer it is transferable by delivery. and
1 Hen. Bl. therefore the holder may be called upon to
show that he gave a good & bona fide consid-
2 Selw. eration - he had no knowledge of it having
174 been stolen or any names forged upon it. In
1 Atk. an action as an indorsee the proof is in
424 every respect the same as in an action a-
2 Burr gainst the acceptor - substituting the indorsee for
675 the acceptor. In all these cases the mere
Sel. Nisi liability of itself does not lay the foun-
378 dation for an action. Before the holder has
given notice of non payment to the endorsers
& the drawer - or to some member of their

& same may be said of the Mercantile Law
shall be used be named or accepted of
the Cashier of the drawer. But if an in-
dorser & pay himself and indorse with
the amount of the Bill & the holder —
the person who pays may then compell
the drawer — or indeed any indorser prior
to himself to reimburse the money.
In an action by the indorser against the
acceptor — he must prove that the drawer (or) acceptor
accepted the Bill (& that may be
him that he had effects of the drawer in the
hands) & that the acceptor 18
received the Bill when, perhaps he ob-
tained that the drawer or some one 18
paid it — the action lies. But the acceptor
may show that he had no effects in his
hands — where it happens that the acceptor
is obliged to pay the Bill tho he has not effects
of the drawer in his hands ## & whether
his action as the drawer be must prove
the hand writing of the drawer & also that
he had no effects of the drawer in his hands
& that he has paid the Bill or that he has
been taken in execution which, says the
Ld. But if the action is brought by the an
acceptor for the honour of the drawer he need

208 Bill of Exchange - not proved that he had no effects of the drawer in his hands - & the drawer is entitled to notice of dishonour whether he has effects in the drawee's hands or not.

In all those cases where actions are brought for non-acceptance, or non-payment the protest may be produced & then it is conclusive evidence of what is set forth & the hand writing of the notary cannot be disputed. And according to the practice of the Exchequer in order to prove the declarations - that they were used to be received & the Exchequer Chamber has never acknowledged the hand writing of a notary public that his name is indorsed upon it by his own hand - he cannot be permitted to swear that he is not dead & that his name was forged upon the bill. If a man indorses for an apprentice or servant - the hand writing of such person must be proved & this notwithstanding it is

2 Atk 1051

12 Mod 521

proved. - And it is necessary that the express authority of the servant not approved should be proved & that he acted in such business. And it has even been held that where the servant

had been [illegible] sworn at - Mercantile [illegible]

afterwards fraudulently signed a Bill [illegible]

[illegible] the Master because it was [illegible]

[illegible] he was in his business. [illegible]

[illegible] the def. had notice of non-acceptance

or non payment - it is sufficient [illegible] letter

[illegible] that [illegible] the [illegible]

[illegible] - for that is [illegible]

[illegible]. In an action upon common [illegible] 18

Bill as the acceptor [illegible] the case goes by default - it seems [illegible]

[illegible] to have been clearly settled that [illegible]

the [illegible] action of the note or Bill as alleged [illegible]

[illegible] of the [illegible] within the [illegible] is sufficient - [illegible] 29

in the case [illegible] - which was an

action upon a bill [illegible] when the

[illegible] no evidence of acceptance

of such [illegible] a very strong case. ~~The~~ The

[illegible] there might have been a [illegible]

[illegible] acceptance & that [illegible] judg-

ment by default the def. had admitted the

[illegible] & that the [illegible] pro-

ducing the bill [illegible]

had been [illegible].

As to the Illegality of Consideration - It was at [illegible]

[illegible] that ~~[illegible]~~ the consideration [illegible]

[illegible] in negotiable in-

struments only between the immediate parties

10 Bills of Exchange — & that illegality of consid-
4 T.R. eration will not vitiate the instrument
254 in any other case. But when the consider-
4 Burr ations are made unlawful (& void held contrary & immoral) by stat. as that
2082 of usury & gaming — it can never be recover-
1 H.Bl. of the hands of even a receiver of the in-
605 strument is given for such consideration
3 T.R. If a person sells goods with the intention
418 & knows that these goods are to be smuggled
Doug. he can recover nothing ... if a merchant
641 a citizen of our own country sell goods to
another citizen of our own country knowing
3 T.R. that they were for such illegal traffic he
454 could not recover for them — there would
2 Str. be an illegal consideration. The reason and
1155 the statute of usury and those on contract a-
rise from the construction of the words of said
statute the security shall be void to all intents & purposes —
Doug. — But an indorsee may upon those usurious
736 & gaming notes recover of his immediate in-
dorser. So on the other hand if an instrument
were good in its creation — yet if the plff recei-
ved it from the deft on an illegal consideration
or indeed for no consideration at all he cannot
recover upon it — no recovery can be had when
3 T.R. it is the deft that pleads it in bar.
81 A bill may be indorsed over after it is due but

then there is a [illegible] that Mercantile Law [illegible] [illegible] has been [illegible] and such illegal-ity [illegible] the [illegible] which will discharge the note or bill in the hands of the [illegible] may be [illegible] [illegible] a recovery — [illegible] [illegible] a note to B & B after having received the money [illegible] after the time of payment of the note was [illegible] endorsed it to C who commenced an action upon it against A & A was allowed to show that he had paid the money to B [illegible] [illegible] from recovering [illegible] [illegible] [illegible] [illegible] [illegible] mentioned Lord Kenyon [illegible] [illegible] as the general rule & [illegible] his opinion given in concurrence with the Court [illegible] [illegible] [illegible] of the note [illegible] [illegible] [illegible] [illegible] have [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] Bank Notes — they are cash [illegible] [illegible] [illegible] denomination will [illegible] [illegible] a will [illegible] [illegible] may be maintained [illegible] [illegible] if they have not [illegible] [illegible] [illegible] circulation. [illegible] [illegible] [illegible] — [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] But according to [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] the consideration [illegible] [illegible] [illegible] [illegible] [illegible]. The [illegible] [illegible] [illegible] [illegible] [illegible]. The [illegible] [illegible] that [illegible] [illegible] [illegible] — The question then was — [illegible]

102 Bills of Exchange - when a tender. It was adjudged that if it never been determined that Bank
Bo. 258 Bills were a tender at all event. Mr. Justice
Bloom 18 objection was made at the time or after, that
526 the tender of Bank notes - it might be good.
Peake Add Bank Bills are not an object tender -
88-190 due - nor can it be considered in like
Holden they are bills of the United States or some
of Bank of individual Body as the State where
Dallas the tender is made question of weight
20 & doubtful. Lord Mansfield strongly inclined to
29-32 consider Bank Bills as money in the last
instance - on Summary. The Jury that took
was to have had liberty to take advantage of more advantageous
if such could take good advantage
in order to have money. Verdict against
the Assured. The Jury therefore discharged.
We have not yet any act upon the
subject upon which we may ground
1 Bl. 1 and Drafts or Checks on Banks - They are
Comm. inter usual made payable to bearer drawn
142 on Banks merely as on the town to bearer the
Str Bank to whom they are drawn are they bound
215 to compleat bills of exchange. The custom
- is taking one of them must within reasonable
15 time present it to the Bank or Banker or it

and the Defendant to avoid Payment of the Debt
demanded in the Declaration is a Bill of Exchange
I think that the Judge there is in the right for
I have known cases where Accounts have been
was held to be kept exact in a Court of Equity 116 12 15
& that has since been denied to be Law. Mr Barnes
I have not but that case may be distinguished 42
by its particular circumstances.
These Instruments are always Drawn & Dated
but are different from notes payable on demand
they
Time to run until written to demand. - They need
not be paid till a demand is made & they are 7 H 7.
like due bills in this respect - that an Ac- 225
tion will not lie till a demand has been made 5 Bac
or in other words they are not due till de- 15 C
manded. But a note made payable on
demand is due from the time it is drawn made.
If there drafts are not paid notice must
be given to the drawer in order to charge him.
but if they are not presented in reasonable time
time and are not paid the holder cannot
hold. The drawer of a Bill of Exchange has
discounted - no presentment is necessary but
a protest must be made. Sir said that if 65
the drawer is a Merchant . . . Mr Dean &
the drawer & friends could have said that Esp. D.
it was in the Debtor's power to give notice where a man could be found

Bills of Exchange – The Bill of Exchange was accepted for the Defendant's accommodation & was an action against the Drawer for the payment & need not aver that the Plaintiff had received Value which the Drawer has not satisfied him under the Bill which was given the Bill payable & accepted when regularly executed.

Value

Taking the Bill in payment of a debt due is a suspension of the right of action for the debt

Bill

Bill – The Defendant cannot plead in Abatement that the Bill was drawn & accepted in Virginia & the Plaintiff resides in Maryland which the Court overrule.

Defendant

Defendant has a right to plead in Abatement that the Bill was drawn & accepted in Virginia & the Plaintiff resides in Maryland which the Court overrule.

Plaintiff

Plaintiff has a right to plead in Abatement that the Bill was drawn & accepted in Virginia & the Plaintiff resides in Maryland which the Court overrule.

I have omitted one material thing the Judge should have pointed out the Law in a more plain and distinct manner. The question respects Bail Pleading & Practice Law.

Now the principle we have seen is that the Law orders the taking of Bail upon a Capias ad respondendum – But the Statute of Virginia provides that the Defendant shall not be compelled to find Bail where it appears upon Oath that he shall

not attempt to take up the cases Mercantile Law
from the final result of the whole in that if
the acceptor knew that the house was debtor
or if he did not know that such credit had giv-
en authority to the drawer to draw upon him Beam
he is bound to pay the bill — & that the bill 128
is the same as if made payable to bearer & that the
the name of the house is indorsement of it is a 285
mere nullity. — The cases were extremely ab-
sided in the House of Lords. Of the twelve judges
(all is their opinion which decides — the opinion
of the other judges being unanimous no more than
common civil justice pure — justice Heath and
Lord Chancellor Thurlow dissented. The argu-
ments of these were extremely powerful and
convincing — But the arguments of the other
nine judges carry full conviction. They are
well worth reading. The liability of the drawer
of such a bill had been before established and
an indorser & indorsee are in the same relation
as in the other cases.
as to the proceedings after judgment to obtain
again — The Com. Law allows a man to take
out executions of different kinds against his
judgment debtor — as a capias ad satisfaciendum on
which the body of the debtor is taken. a fieri facias
by which his goods & chattels & his land may be taken

106 Bill of Exchange — and be void, & then an Order
for which he petition & pray the aid of this Court
and an Extent or Extendi facias — by which his body
goods & chattels & lands may be taken. The
Sheriff cannot intromit & then one can not take
a man in person & body after some time.
may be agreed between them. But then may
make some alteration after some time
done in time — the original debt. But Executors
ancestors virtue of the writ shall not
pay executors — & so if the Prince may discharge
may be done by those debts — but the officer
cannot come & take the body of the
debtor, neither demand of him any property
Debt & the debt. But if the debtor does not pay
the debt or exhibit property the officer may
take his body — & the officer after he has taken
the body discovers sufficient personal estate
during the execution he may retain the debt
or take it — and if the debtor shall exhibit
such property the officer is obliged to do it. If the
officer return no personal estate then if not
sufficient personal estate he may then take
the body & the debtor is responsible for
the whole of the debt — and if any property the
creditor cannot take it without making a de-
mand of the party & then he dies seized

about taking it & have it sold—after the Lord
Town edition & take his fee or his hand—but
the officer cannot take it and without order
from the creditor.

The officer takes property not belonging to
the debtor he is answerable to the true owner
of the property. But if the creditor per-
mitted it out of him he must repay the dam-
ages to the officer. If a man is imprisoned the
creditor may take a note of him or the sheriff
that is not bound because he was taken by
imprisonment— We see there that the imprison-
ment pays the debt— & that if the debtor is
released the creditor can no more proceed against
him— But in this way the debtor may be discharged
& liable notwithstanding his property taken
for the same debt & be even be imprisoned.
It is true that if a debtor were ill treated while
in prison in order to make him right an ob-
ligation it might amount to damages and a-
void the imprisonment. The Com. Law, from
the subject of imprisoning a man for
debt is barbarous. For there is no one obliged
to maintain him & nothing but the humane
& tender heart of his fellow creature.
The law now in being. & Scotland in all the
states— for the relief of imprisoned debtors are

108 Bill of Exchange — sum cannot be reduced. Bond. The sum is not to defeat creditors — but it is to secure good debtors against starving. According to the Statute of the Fourteen & the having given four days notice to the creditor that he may attend & contest the oath will mean that he is not worth five pounds or that he is not able to pay the debt if it is in left than five pounds he shall be discharged unless the creditor will advance money with the keeper for his support. But if the debtor is discharged it is only his body that is discharged & tho his body can not be taken again for the same debt yet if he acquires property that may be taken. The County Court determine the weekly allowance which the creditor must defray with the keeper. The Eng. by several Statutes from the 32 Geo II to the 5th Geo III have made provision for the relief of those debtors very similar to ours provided the debt does not exceed £40 & 5 Geo c now by that 5 Geo III the sum is extended to £60

There been a great question in some of the States — whether the Legislatures of the respective States could make laws to relieve debtors by acts of insolvency upon contracts with foreigners because the treaty said there should be no lawful impediments &c. Laws

said that it was an export — Mercantile Law
Lex loci law — The Question came before the
district Court of the United States in a cause
in which I was engaged & it was decided by
Judge Chase that the United States had such
power — & the question has not as I know as
yet been agitated. The strange principle
of the Com. Law which allowed the com-
mon a man & perhaps starving him in
prison if he was unable to pay his debts
did not contemplate the present com-
mercial state of the world — But it was
then supposed that any man could pay
his debts if he would.

Nott William Murray was in 1756 created
Baron of Mansfield in the County of Nottingham
& was afterwards called Lord Mansfield
Lee Burrow Rep 1st 196 —

Insurance Law Observations

Insurance – Take it to be the usage in the trade
to insure ships – that the insurer
must be interested in the ship
insured. – and all documents where the insur-
ed has no interest, either direct or immediate
regarded as wagers – according to Pratt
These wagers, which are the cause of all
the mischief complained of – are by that
statute to be void. & disp. – & indeed it is
impossible to bring the insurer & insured
within the letter of the statute and
avoid rendering policies – that are not wagers
nor are wagers, policies in the ordinary
sense, useful. Insurers are driven to
assume a character in which – & must take
the risk of many things which – never happen
& are never known to happen – although
In disp. they commonly understand the
risk, from which they mean to secure, the
wagering policies. They also sometimes
insure the same interest at the same time,
in the name of different insurers at the same
wagering premium – & sometimes a sum
the real loss or wager – is that ever made

mention the [illegible] [illegible] [illegible] [illegible] will [illegible] that left other [illegible] [illegible] [illegible]. It would [illegible] [illegible] where one [illegible] [illegible] [illegible] [illegible] that [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] — [illegible] both [illegible] [illegible] [illegible] [illegible] that [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

Of Fraud — [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] the contract. [illegible] [illegible] [illegible] man [illegible] [illegible] [illegible] [illegible] a contract [illegible] & a [illegible] [illegible] [illegible] [illegible] [illegible] & be [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] — the fraud is void [illegible] [illegible] the fraud be in the consideration of a contract as if one in selling another a horse - tell ~~[illegible]~~ him a thousand false stories - about his being a good - a good race &c - The contract is not void but the remedy lies in damages. In [illegible] cases it is true [illegible] will [illegible] contract [illegible] the [illegible] - but in general they will not make contracts concerning personal property void ab initio - But it is otherwise as to fraud in policies of insurance. The least fraud here either by concealing the circumstances of the [illegible] [illegible] [illegible] [illegible] will vacate the contract. [illegible] [illegible] must be [illegible] with

Insurance - the Society's integrity. The amount
insured is more critical to real estate than
the efficiency of the fire - he is not able to
say if the insurance will soon be declined to
have a claim, & reach which time
would not be paid - & while the
was insured & the insurance company
is - it is a settled point. This was the
ability with the insurance company
to pay the claim or the amount.
was insured by the Society - he received
a call - to a certain time - but from
the time it was paid - it was a certain
term - he is a very good man - but
the main point was, what did they
he cannot use the - he can not
see cas. rep. How & a term to be? - from the time when
in Phil. Chap. 7 the insurance he can maintain and from
Pa. in Feb. 1810. to the difference between 2 to 8 - & to 8 per
v. Phillips. he cannot recover the whole sum, for 8 the
he to recover the sum back. But such stand
in the measure the sum insured
paid & united
as I have known many insured from
decrease practice that company, after
the insured - not in the right to sum insured

[illegible] the question [illegible] Mercantile Law

[illegible]

[illegible]

[illegible] these [illegible]

[illegible]

[illegible]

& commercial [illegible]

generally [illegible] that

the property [illegible]

[illegible]. It seems that nobody [illegible] 1 Ves.

the principle that such contracts were [illegible] 30

in the [illegible] And other opinions [illegible]

Lord Hardwicke & Lord Mansfield. In a more §–

late case Justice Buller who [illegible] 1 Bos. & P.

he had conversed with Lord Mansfield on the 354

subject but could never obtain his [illegible]

[illegible] whether an alien enemy may

have his property insured – but he turned the

question on the ground of expediency – holding

it to be expedient that enemies' property must

be insured – that this view [illegible]

[illegible] may have been correct in holding it to be ex-

pedient [illegible]

[illegible]

[illegible] – [illegible] make [illegible] the com-

[illegible]

[illegible] helping their enemies

Insurance - Where it was said that [illegible]
[illegible] - that the insurance
[illegible] - and where the property
[illegible] - would discharge the
insurance & entitle the assured
to recover. But what
is remarkable the cases cited in support
that are limited & the time within which
But suppose in case an alien enemy insured
the property insured is lost - can the alien
enemy support his action & recover the sum
insured - the gen. principle in other cases
is that an alien enemy cannot support an
action - it would be acting - abetting &
assisting the enemy to allow this principle
How would it be after the war was over? If the
insurance was at the time illegal then it
could be binding. The case was an alien
enemy was insured before the war declared
& when left being insured by the insured the
question arose whether he could maintain
his action. It was said that he could
not before recovering the insurable value
he might - from time to time - & when
looking at the case proved it did not support
the principle. Alien enemy

1 Bos & P. 34

2 T.R. 85

that an alien enemy may sue Merchants Law
& indorsed — but it does not follow that an alien
enemy may maintain an action after the
war is over & peace established
as the Courts may judge proper & we have
not decided about this idea & so no decision
on it — The Common Law Merchant — & the
Law of Nations does not seem to be altered by
commissions & letters of marque & reprisal
and it does not establish the Principle that
an alien enemy's property will not be liable
& immediate.

as. Defendant in partnership with an alien enemy
the Defs. have — & so are ready to pay the Judge C.K.
with interest permitted them to maintain C.S
action on their share & receive — but how they
going with the terms of the action I don't
know — for in such cases the action is to be brot
in both their names.

as. What persons may insure — the Defs. have
a right — per that — the interest of the
Plaintiff is not a bar to their recovery
upon the Policy — any individual may
insure — but no one can insure except
the Royal Exchange & London
Assurance Company — Does not this con-
tract be void — as we might argue

Insurance - [illegible] [illegible] association or
company - &c This freak is expired those
who were insured & meant to sue - & for this reason
that the companies were created with enormous
capital & all other companies prohibited from
insuring - but to prevent a monopoly to these
two companies & their influence, the remaining
[illegible] [illegible] [illegible] the [illegible] [illegible]
individuals [illegible] [illegible] they did before
individually however they [illegible] [illegible] this statute
by embarking a joint capital but having
the business managed by one individual only
each one sharing in the profit & loss. A ques-
tion of this kind then came up - a [illegible] [illegible]
a joint capital & transacted business in the
name of one - [illegible] [illegible] a [illegible]
of the name insured [illegible] an action against
[illegible] for his proportionable part. But the court
would not sustain the action - it was founded
2 Hen. Bl. on an illegal contract - & the court would
378 not stoop to declare it void - & the rule is potior
est conditio defendentis. - The parties were re-
garded as being in equal fault - & the law leaves
them as in a state of nature - to help themselves
in their own way - like gamblers when they
have paid or promised to pay - but where the
parties are not considered on an equal footing

as in case of [illegible] — the [illegible] Mercantile Law
having paid enormous interest was reco-
vered back so much as he paid above the prin-
cipal & legal interest — tho in fact the borrower
may be as much in fault or more than the
lender — So where one's sister had money to be
[illegible] another [illegible] occurred where [illegible]
in the same manner as before agreed to di-
vide the profits — & having paid the
whole to willing [illegible] delivered the
money to [illegible] to pay over &c — & got the money for the
benefit — & brought an action as to recov- 8
er it and the court said no — I doubt the prin- [illegible]
ciple of this decision says Judge Reeve — the [illegible]
lent is to hold money in his [illegible] which he
could not in good conscience retain — &
it was certainly a very great rogue.

[illegible] The Subjects of Marine Insurance —
Merchandize [illegible] goods [illegible]
[illegible] — Ships & [illegible] are included
[illegible] &c — & freight [illegible]
a vessel [illegible] goods &c
Bottomry [illegible] more [illegible] explained [illegible]
[illegible] where one lends money [illegible]
trade receiving interest [illegible]
[illegible] ship — [illegible]
[illegible] money exceed 5 percent.

are the laws of war. The law merchant
is a contract entered into with the law of
the country which is made it may be in
legal contemplation the second law in con-
junction with the law of nature. But the
former must be such as contrary to
immoral - legal & good faith & encourage
mischief from the law of nation have
been settled in this in the case of Pirates &
Slave trade &c. but their principles have
by no means the law of nations
decided & the question whether if the nations
would all agree to it - it would be either on the
whole to encourage contrary to good faith
the laws of nature & humanity.
No insurance upon goods to be exported from
a country at war with any country in alli-
ance with the laws are not void if the
voyage is legal where the insurance is made
The laws of Holland & the Hanse towns
& the usage of insurance upon foreign laws
are void if the voyage is made against the laws
of the country where the insurance is made.
In other cases where the policy is void
& the assured has received the premium
which is to be returned & back. — By the general law

Lecd
23
2 mo.
1795

126 Insurance of nations not neutral nations are al-
lowed to carry on the trade as usual & insure the
countries at war with each other — but illicit trade
will subject them to capture & condemnation
on the high seas. That contraband articles con-
sist of arms — ammunition & warlike stores of
every kind — & naval stores are so too. There
seem no doubt on the subject when these were
but I apprehend the [illegible] lately — little
[illegible] things exported to the [illegible] for the
purpose of [illegible] in their [illegible] [equipping their navy] [illegible] not
be considered contraband. Pitch, tar, deals, hemp,
cordage, masts, [illegible] & in short every thing
for the purpose of fitting out [illegible] [illegible]
an army. — Policies are not considered as void
when such articles are insured on the ground
of the trade being against the laws of the in-
surer's country — but as being against the estab-
lished law of nations — as to provisions these are
not in ordinary cases contraband & hence they
are so [illegible] when they are [illegible] — as where
a port is blockaded. Policies of insurance upon any
goods or vessels to be carried to blockaded ports
is not binding. — [illegible] of blockading
[illegible] the [illegible] has been adopted in Europe ac-
cording to [illegible] [war] [illegible] pretended to blockade all
the ports in a kingdom or when a whole coast

to declare a proclamation with the Illuminati & Jure
to be in force in Denmark. Their very
title implies a notable nation. - That Blackade
which is considered illegal by the law nation
is an actual blockade - with ships of other
Governments entering & evacuating
their ports are entitled to trade
peaceably & innocence when goods not
prohibited & pleased as neutral blockade
merely according to the rules established
which are binding - for the general rule is that
nations at war may trade with neutrals
unless prohibited by treaty - but only against
ordinance of country is not valid but the in-
juries are liable for loss occasioned & private
property is liable. The property real
& personal of subjects of the enemy
may be seized - Ships, vessels & cargoes
belonging to the enemy are liable to seizure
& confiscation - Ships of one country bound to
that country & engaged in carrying the trade
of their enemy & all goods & effects
belonging to their enemy on board such
vessels may be seized & confiscated
by the law of nations - Ships & goods
belonging to persons who are subjects or citizens
of a hostile country are lawful prize except
those which have been allowed to proceed
on their voyage on account of the dangers
of the sea - Ships & goods belonging to
subjects of a friendly power may be seized
as prize if they are found trading with
the enemy in violation of the laws of nations
& of the country to which they belong -
Ships & goods belonging to subjects of a
friendly power may be seized as prize if they
are found carrying to the enemy articles
contraband of war - Ships & goods belonging
to subjects of a friendly power may be seized
as prize if they are found carrying the
dispatches of the enemy - Ships & goods
belonging to subjects of a friendly power may
be seized as prize if they are found carrying
troops in the service of the enemy - Ships
& goods belonging to subjects of a friendly
power may be seized as prize if they are
found attempting to break a lawful blockade
- Ships & goods belonging to subjects of a
friendly power may be seized as prize if they
are found resisting the search of a lawful
cruiser - Ships & goods belonging to subjects
of a friendly power may be seized as prize
if they are found with false papers
concealing their real character - Ships
& goods belonging to subjects of a friendly
power may be seized as prize if they are
found with simulated papers - Ships
& goods belonging to subjects of a friendly
power may be seized as prize if they are
found with double papers - Ships & goods
belonging to subjects of a friendly power may
be seized as prize if they are found with
spoliated papers - Ships & goods belonging
to subjects of a friendly power may be seized
as prize if they are found with papers
obtained by fraud - Ships & goods belonging
to subjects of a friendly power may be seized
as prize if they are found with papers
obtained by force - Ships & goods belonging
to subjects of a friendly power may be seized
as prize if they are found with papers
obtained by duress - Ships & goods belonging
to subjects of a friendly power may be seized
as prize if they are found with papers
obtained by undue influence - Ships
& goods belonging to subjects of a friendly
power may be seized as prize if they are
found with papers obtained by misrepresentation
- Ships & goods belonging to subjects of a
friendly power may be seized as prize if they
are found with papers obtained by concealment
- Ships & goods belonging to subjects of a
friendly power may be seized as prize if they
are found with papers obtained by mistake
- Ships & goods belonging to subjects of a
friendly power may be seized as prize if they
are found with papers obtained by accident
- Ships & goods belonging to subjects of a
friendly power may be seized as prize if they
are found with papers obtained by negligence
- Ships & goods belonging to subjects of a
friendly power may be seized as prize if they
are found with papers obtained by carelessness
- Ships & goods belonging to subjects of a
friendly power may be seized as prize if they
are found with papers obtained by inadvertence
- Ships & goods belonging to subjects of a
friendly power may be seized as prize if they
are found with papers obtained by oversight
- Ships & goods belonging to subjects of a
friendly power may be seized as prize if they
are found with papers obtained by omission
- Ships & goods belonging to subjects of a
friendly power may be seized as prize if they
are found with papers obtained by commission
- Ships & goods belonging to subjects of a
friendly power may be seized as prize if they
are found with papers obtained by act of God
- Ships & goods belonging to subjects of a
friendly power may be seized as prize if they
are found with papers obtained by act of nature
- Ships & goods belonging to subjects of a
friendly power may be seized as prize if they
are found with papers obtained by act of war
- Ships & goods belonging to subjects of a
friendly power may be seized as prize if they
are found with papers obtained by act of peace
- Ships & goods belonging to subjects of a
friendly power may be seized as prize if they
are found with papers obtained by act of

Innocence or malice ought to be the criterion of the punishment of the offence, as well in the law of nations - but it is not. - There are some moral principles in it - but on the whole it is a compact which is authorized by custom between nations. -

Of 3 cases taken in entering a port actually blockaded - the question when ought the Court to condemn upon the fact of knowledge in the part owner. - In the decision of a particular the blockade & subsequent capture will not render the ship good - until the part owner either knew or had the opportunity of knowing that such blockade was declared before the capture. It is not presumed that he knew it merely because it was so - but even then if he is notified by implication as in the case of information of the fact & thereby attempts to enter the port is captured the owners are discharged. But if having no credible information he sails directly into the port while the blockade is kept up & not till then is good. In the case of a general embargo - even by a belligerent - it is immaterial whether the owner knew the voyage to be at the time or not -

Insurance – [illegible] [illegible] [illegible] [illegible] [illegible] the land was [illegible]. [illegible] [illegible] the [illegible]. [illegible] [illegible] would not be [illegible] [illegible] in the [illegible] states.

But there are some [illegible] [illegible] not in-surable [illegible] there be no [illegible] in the [illegible] [illegible] of the [illegible] [illegible] the wages of the master & mariners. [illegible] the [illegible] [illegible] [illegible] [illegible] [illegible] the seamen lose their wages – It is therefore upon a principle of policy that they cannot be insured – It would [illegible] all their exertion

7 C.R. to save the vessel – [illegible] if their wages were sure

157 they might be induced to leave the vessel in difficult [illegible] – [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] – it would be nothing to them if they were sure of getting [illegible] [illegible] & [illegible] [illegible]

[illegible] a [illegible] [illegible] the [illegible] [illegible] [illegible] arrived at

[illegible] [illegible], then it [illegible] [illegible] on the shore for

[illegible] the convenience of the [illegible] [illegible] [illegible] [illegible]

[illegible] erected to secure the [illegible] from the [illegible] may be insured

Another subject of insurance is freight – This in some countries is not a subject of insurance But in Eng. & here & most other countries it is [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] there be an [illegible] [illegible] [illegible] – [illegible] at least [illegible] [illegible] the [illegible] [illegible] [illegible] the [illegible] [illegible] [illegible] [illegible]

Where a Underwriter pleads a Honourable Loss
by a voluntary Stranding to prevent a greater Loss
after which case the Owners of the Ves-
sel admissible as Salvage, can make
no Demand to the Amount of Loss by
Contribution, in the Policy that it is
expressed. Where we have a Policy
& Insurance is according to the Value of Goods
Double Insurance is sometimes made out of
Covetousness — Thus suppose a man in Stockholm
has property in London which he cannot
come at sometimes he knows not when — he
may insure them in London & have them
insured when the vessel sets out & in the mean
time he may insure them himself at St. Mark.
The insured in such case runs in case of loss
receive double satisfaction — & he may sue
either of the Underwriters & recover the whole
in which case that Underwriter who paid the
whole may sue the other & contribute
his share. There is a singular Point in the Mer-
cantile Law — The Common Law would not allow
this because there is no privity of contract. If
one gets his Effects insured in Stockholm &
without the knowledge of them insures gets the
same property insured in Philadelphia — he may
in case of loss sue the Underwriters & recover the whole

153 Insurance — & the Hartford insurers may come upon the Philadelphia insurers to contribute for the loss — the the latter insurers know nothing of the former insurance at the time to pay the Mercantile due — but disregard the demand now — or next & never introduce. It seems to be a principle of the Mercantile law and custom, now settled — & average will be set — and a ship & both the latter & merchandize bear a proper. This mode of average is not applicable here exactly. A long ago when stores with it seem that where each of the underwriters agreed & his name the sum he insured — as there were ten underwriters & the sum insured 10 the name of the eight first amounted to the policy insured — the two last on account lost were discharged. However the rule is otherwise now.

4 & the Risk to be insured against — all risks may be & sometimes are insured against in one & the same policy. Perils of the sea — fire — a part of the risk ends at the Lakes — & it is & so with that other risk is insured — & the insurer is not insured as. when such risk happened — in consequence of the negligence or misconduct of the insured or his agents — as captains & mariners &c — the risk or part of it at the time of the occurrence

Insurance – [illegible]
that [illegible] the
[illegible] [illegible]
2 C. no matter [illegible] the [illegible] was [illegible]
[illegible] [illegible]
[illegible]
entirely [illegible] from the [illegible]. It seems
to me [illegible] that the [illegible]
consistent with the principles of the mercantile
9 Ves. law [illegible] correct altho' it is [illegible] against the
[illegible] greater [illegible] that the [illegible]
[illegible] – the [illegible] that
[illegible]
Where there [illegible] a cargo of sugar
were [illegible] – and particular
[illegible] average [illegible] general average or contribution
155 [illegible]
general [illegible] – the insurers
are liable for the gen. loss &c.
By the word total as used when speaking of total loss – it is not to be understood the same
as in other parts of the mercantile law. But
a loss has always been considered total when
the loss is so great that the salvage for what is
2 [illegible] saved is not so much as the freight – thus
[illegible] if a cargo be worth [illegible] the
the loss must amount to [illegible] be a total loss

The question then arose whether a
[illegible] there [illegible]. He said that such
an entry of the weight was not in the
nature of the word in common parlance
but in a mercantile view it was true when
the allowance did not amount to the weight. If
the thing specifically remain the same
notwithstanding the number it is true are discharged
in case there are, [illegible]
However that is considered by some may judge
there have made it out. The counsel
against case denied that position - and said
if the words were so much in use that they
were good or nothing it should be consider-
ed a thing by the the domestic specification
named. It strikes my mind as my judgment
that this is debarring from certainty.
The owners of Waters are liable in the negli-
gence - The Lighter however may insure
against the villainy of the Watermen, but if the
owners of water misse the ship to go over when
she is ready & sue accordingly they will be
liable & have no insurance against loss
by [illegible]. But how it is to be determined when
the [illegible] was [illegible] & [illegible] another
ship may have passed a sea which keeps un-
injured & the sea in a moderate degree

Insurance — In such case it is evident that the insurer
must bear the loss — but if ship carpenters &c were
called on board before the vessel sailed & declared
her to be not sea worthy — here the insurers are
not liable. Further in case of gross negligence, &
wilful misconduct of the master — it is [illegible]
to the owners of the goods. Barratry of the captain,
1 [illegible] with the knowledge of the owners of the ship
225 tho without the consent of the owners of the goods,
is not barratry, & therefore the owner of the
goods must come against him, & not against
the insurers — 8 East Rep. 126-32. The owners
and masters are liable for embezzlement
by the mariners. It is also assumed here that if
the master is liable the insurers are dis-
charged. — It is not until a third party has [illegible]
the insurers are liable — & the master is discharg-
ed. — This is different from common rules
1 East The com. carrier is liable for robbery on their
[illegible] ones, & so is [illegible] [illegible] [illegible] &c — and
258 so of Packet-Agreements. Tavern keepers are
liable for goods taken at their inn, while the traveller [illegible]
There is no pretence of blame in [illegible] [illegible]. But
it is entirely arising from these rules [illegible] [illegible]
[illegible]. [illegible] says they really are [illegible] are liable
is because of their [illegible] [illegible] the [illegible]
[illegible]. The rule is now settled [illegible] [illegible] or

Marryatt Dec

1838

Marshall on Insur.

167

Insurance – a policy to be made – in case
of loss the case the loss will fall upon the insurers
&c unless there be gross negligence in the master
who carries the goods – other wise it is the owners
risk. But the the insurers are still liable
&c if the goods are damaged by the usage of the
trade in certain climates – Rob or keep back &c &c
by degrees – or are robb on board a prize – the
insurers will be charged with the loss – and
have to recover it back again of assured –
Now if in the usage of the trade Planters
load for their vessels with sugar &c &c and it runs
out by little & little, or if the trade has been
cut up the damage by salt water &c &c
with the waters. Should not be paid for
but a peice or two – due to the ordinary course
it was the usage of all traders &c the insurers let-
Doug. the by little &c was objected here that there was
Mollis no usage – there had not been instances enough to
remyway establish a usage – however the court held that
the loss fell upon the insurers – The insurers
did not go upon the ground of an immemorial
usage but upon the certainty of the usage like cat
gave
of the Duration of Risks upon the Ship the words
of the policy are that the ship was to sail with
convoy from Jamaica to Virginia &c

the

and consists of Iron Lord. Mercantile Lace
& Worsted. – When the words are Iron Lord & in
any article of dress above the waist they
broke ground – or veil to that the hat is
left – the veil upon the ground. – But in
one break ground – or veil till it does not go
the rail – as it having taken to the mouth of the
narrow tied anomony with my left return
to the rail, – put it underneath within
here of the collar, after it will support the
veil. The veil is in velvet in order to
make the corners stand up for the veil
will fall while there is the veil
on it to draw it – with gathered drawing
must there be before the corners are all hanging with
the may be spread with? There is no fine drawn 545
up when the letter is, the veil – it must not be with
an underneath line. If the is ironed for a 547
particular age – the iron will be used to the.
after all things are given up & corrections. the 562
crown. But they are often ironed after
one iron – Ribbons. the veil are taken
down & ring the ribbons & back again –
the first is after the veil has been in ring the
when with the hat is done & the veil on the crown
was found right? If it has to commence with
with after wires. There are the more difficult

Insurance – Any judge here in this case – the outward bound risk continues twenty four hours after arrival – & the ships upon which they are insured – & in case of loss the mercantile law if there were a storm in the bay extending the risk & continuance till 24 hours after arrival – & till the ship were moored in safety.

Berkeley. If in the Elementary writers on contracts the bounds of time & place commence immediately after the words in writing – Is not material whether the bounds upon the margin after provided, it be upon the face hereof.

15 K. Lord Thus a vessel was insured for voyage & had been moored in safety more than 24 hours – are the insurers discharged? The cause of her being not entered before was moored. but the court said the words were decisive. But a ship was insured to remain 6 two days before the six months were out she run upon a rock. The mariners by their assistance pumping &c kept her up till the third day – & then she went – vessel & cargo lost – the loss fell upon the owners & not on the insurers. But a vessel was moored in safety & before the 24 hours were out was ordered off & performed Quarantine – & the vessel is lost while on Quarantine it is said the insurers are not discharged. This case does not

[illegible] - the [illegible] [illegible] [illegible] [illegible] will not [illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible] [illegible] the policy is [illegible].

[illegible] the Dublin [illegible] [illegible] - [illegible]

[illegible] [illegible] change [illegible] [illegible]

[illegible] - these give [illegible] [illegible]

[illegible]

the [illegible] any deviation [illegible] Mercantile Law.
The [illegible] there [illegible]
be considered — [illegible]
[illegible] in order [illegible]
there [illegible]
or intended [illegible] decision
[illegible] the [illegible] deviate [illegible]
In another case where there was no [illegible] against deviation — letters of mark were taken [illegible] the
purpose of [illegible] be
they were taken with these letters of mark [illegible]
[illegible] therefore these let-
ters of mark were not legal — They did not intend
to make any use of these letters of mark [illegible]
[illegible] & there was nothing [illegible] these
two cases except that in the former case they [illegible]
letters of mark — & in the latter case [illegible]
[illegible] letters [illegible] not [illegible]
[illegible] I think [illegible] the latter [illegible]
case was decided [illegible] 326
[illegible]
of [illegible] Policies — They are [illegible] open & valued.
An Open policy is where the amount of interest [illegible]
[illegible] be determined
[illegible] A Valued policy is where the amount of in-
terest is fixed [illegible] in the policy.
There can be no difference in these two kinds of in-

Insurance - surance except where the interest
ought to be in the party insured at the
time & when the loss happens. But sup-
pose the policy is effected - the ship insured against
when between the time & interest & the premium
how shall it be determined whether the insured
had any interest in the goods - ship - freight &c
had no interest the policy - must be void, &
then no action can be brought & then there was no
interest - & that however may be proved under
the general issue. Thus where one had insured money but
a bill of lading stated that the goods
did belong to a certain person & that the
policy was void - But the valuation by the pol-
icy is always prima facie evidence of the
interest & the party claiming it is not necessary
policy must show there is an interest. But in
a valued policy if the real value be short of
the estimated value even will be no defence
the deficiency unless it were merely colorable.
as if the master in which the insurance
is made, fraudulently & agent suppress circum-
stances, which ought to be known to
the parties before the underwriter
in such case always look & in the bottom of
a fair description of the circumstances of the risque
so how worthy, may look at the premium - and
in such case the Brok is remedy against the

the Party pleading ought to have immediate benefit of the premium to have been received. If any subject in that country is due to the premium – he will not however be compelled against the insurer in an action on the premium – but it does seem that he may the insurer may sue the insured for the premium – when the insurance is made by the broker this question has not been decided but it is determined that he may. The maxim that one ought to be his own insurer is applicable here. But the broker must have had authority to effect insurance in order to entitle him to the premium. This authority must be express or implied – if implied it must arise from his usual dealings with the insured. But if the broker in such case should neglect to insure – the maxim is general that the insurer can never be allowed to recover in a suit – but there is different if in the Mercantile law there is a broker he does not comply with the request – he will be liable to the merchant for any loss that happens to the goods – Suppose the broker has effects in his hands belonging to the merchant he must comply with the request to insure & the merchant have money in my hands belonging to a man in Virginia – he is my creditor

Insurance- a man & one with another order
insured for £ 1000 agreed that
should pay it according to the rec. demn
in no manner bound to pay it over to my next
door neighbour - the property is insured
him from trouble & not insurance. The
mercantile law very much altered. —
The negligence where the property is obliged &
get insured is where both the parties have
effect or regard to the value, there such
kind of law is - or some & that never given him
notice that it would not continue & he
insured, the third sect is where the broker
actually undertakes & has insured or by ac-
cepting some bargain or property as a con-
sideration for the premium - or by taking
a bill of exchange if any & indorsing
a person in his name upon as the premium.
If the attempt does insured & pays the
the premium & upon an interest that
more would insure - the broker ought
back. Under it is assured that if the
ass. may cease insurable & in an action by
negligence to do - he is liable - as if he had
paid & take the insurance for the property
insured & which the property was in. for
the premium or undertook or insurance & he
will insure the property & neglects it

as where an agent is employed by a Merchant Lecc
the latter undertaking is to be entitled to the
benefit of the property. But the broker in this
case may avail himself of the mistake of the broke
servant who in the name of the first has ins
made all insurances. In the
ordinary course of business, & without
the knowledge of the assured, & without
any fraud in the assured, the broker Doug.
is liable to pay. Upon the Shade-
same principle broker is not at liberty to Et al
instructions & answer - will not always suffice
back a letter that he has received insurance
& when the policy is made - says he has
no policy - he cannot & answer no insurance
& if the agent is not left in time to procure
him - but if he is left he is not answerable
for the insurance - unless on his
neglect & delay to procure insurance. Lee. Sup-
pose the broker agent in any particular case is not obliged to in
due insurance & does nothing about insurance till he hears of the
arrival & then demands of the assurers - will he be entitled to.
Better case published he would not be liable in such circ. & therefore would
not be right.
In most policies the name of the assured is
the goods are & insurance is made for
eg. in such a case the goods may be in the
ship & there may be another & therefore it is

60 Insurance – Part of the goods were the property of a friend of the Insured which is not material and may therefore be omitted. The name of the master is often inserted – for instance if the name is not at liberty & he may take an assignment – But the name of the Insurer cannot be [illegible] in the Policy. & in this case the name may change more than once – But if the name of the master in the last case be inserted to deceive the insurers or induce them upon confidence in that master to insure – & insure at a lower premium on that account. the insurer will be discharged if in fact the master was not the original intent the insurer under the master named. Thus if goods be noted on board a good master & the insured represent to the insurers as intending to send them under that good master & they are sent under a bad master the insurers will be discharged. This case proves how strong the [illegible] are against concealment in insurance.

Where there is no need of particularity such the case of insurance – for it is enough to say in the declaration of insurance – There are numerous cases of this nature – that specific objects called [illegible]

422

and a mark [illegible] [illegible]
except by the usage of particular trade — Also
Buttons & [illegible] [illegible] beads are considered
as goods. Bills [illegible] as has before been observed — not
covered unless [illegible] named — but as [illegible] clothes goods
these must be specifically named in the policy & so
must the ship's provisions. Goods to be kept upon part of
the upper deck must be specifically named or they
will not be covered by the policy. It is most [illegible] if you
ship coin bullion &c — to insure [illegible] they are [illegible]
included under the word goods &c — But the quan-
tity of coin, Bullion &c must be made known
to the insurers — or the policy is vacated. It
has been a question whether insurance upon a
ship when loaded — would not include the cargo
but it is now settled ~~that~~ they are distinct.
It is necessary that the place of departure and
place of destination be truly described in the
policy — if not the policy is void altho the un-
derwriters know already — And so if a blank be
left in policy for the insured to insert the
name of the place it is nevertheless void — but
this is otherwise agreed by other writers [illegible]
tle case. So if one writes a note & signs his name
& it leaves a blank place for the obligee to insert
the amount — he will be bound by whatever sum
the obligee shall insert — and so also in deeds

The [illegible] [illegible] Mercantile Law
between the cases [illegible]. The insurance [illegible]
[illegible] [illegible] without certain
evidence of the [illegible], in the latter case the
intention was collected from the [illegible]
-er she had actually [illegible] out, for instance
to [illegible] the insurers are discharged if the ship
sails on a different voyage from that insured
as if [illegible] a [illegible] [illegible] at the same
time deviate &c. — or where the insurance was
at & from [illegible] [illegible] in [illegible] & [illegible] months
[illegible] the [illegible] got [illegible] there then [illegible] the
[illegible] business [illegible] very lucrative & [illegible]
proceeded to the Banks of Newfoundland &c. The old
insurers are discharged. A voyage was in-
sured from [illegible] [illegible] intent to [illegible] & [illegible]
[illegible] — if [illegible] [illegible] the same & also
the [illegible], what the insurers are liable.
The intention was to go directly from [illegible] to [illegible]
[illegible] & [illegible] [illegible] [illegible] — the
insurers are liable [illegible] the vessel [illegible]
[illegible] — thus it is a customary thing in Eng. for ves-
sels that go to [illegible] from London to [illegible] from
[illegible] [illegible] which they [illegible] the [illegible]
[illegible] on the [illegible] coast & [illegible] [illegible]
[illegible] Lisbon. Now if the [illegible] is ~~[illegible]~~ insured from [illegible]
[illegible] [illegible] — I am very much inclined to think

Insurance [illegible] that the [illegible]
would be [illegible]; the [illegible]
the way [illegible] the same [illegible] the poli[cy]
of may have been [illegible] – for nothing
else was intended but to [illegible] the [illegible]
duties [illegible] & violate the [illegible] memorandum.
[illegible] a [illegible] the [illegible]
[illegible] & the [illegible] – & there are
two courses [illegible] – sometimes [illegible]
taken & sometimes [illegible]
on the [illegible] & the master takes
which [illegible]
[illegible] the insurer [illegible] be liable for [illegible]
Park. [illegible] one way or the other – but if the insured
62 had directed him to go one way & not the other &
the [illegible] then the insurers
are discharged

The [illegible]
[illegible] but there are [illegible] which may
not be covered by [illegible] they be
cause the [illegible] & the [illegible]
[illegible] – & the [illegible]
[illegible] – [illegible]
of the goods be [illegible] the [illegible]
[illegible] which are insured [illegible] com-
mon & insert the [illegible] which makes
the [illegible] the insurers extend [illegible]

Wollumne – [illegible]

[illegible]

Col [illegible]

700 [illegible]

Days [illegible]

Banks [illegible]

[illegible]

Banks [illegible]

926 [illegible]

[illegible]

Neutral

52

from the rule is it must be decided upon the face of the judgment that the proof
any was entered whether in order to
charge the assignee—if it must appear
that I was made a party—Ditto 84
Assignees bankrupt—do if the words "Notice"
were considered in answer to the petition
which was once done—when notice
should be given—it is not specified "Notice"
Assignees was entered—and it was agreed
that the bill should be read a third time
to which purpose
the counsel for the plaintiff—and
the bill—the petitioning creditor
petitioner—to call witnesses—but
not allowed—the petitioning creditor
will be entitled to costs—but
a question arose whether
a person entitled to a share
of the estate of the bankrupt—
were the assignees of the bankrupt—
to which purpose
a motion was made

Insurance – whether the law [illegible] nations [illegible]
[illegible] agreed [illegible]
[illegible]
[illegible]
[illegible]
[illegible] the [illegible] and
the arguments on each side. [illegible]
[illegible] that there [illegible] doubt
on the subject by any writer until the [illegible]
armed neutrality [illegible] about the be-
ginning of our revolutionary war. The [illegible]
[illegible] agreed among them-
selves [illegible] the principle that free ships
would make free goods. [illegible]
the [illegible] will be [illegible]. [illegible]
[illegible]
[illegible] but [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
that no neutral nation has a right to pub-
lish [illegible] instruments
8th [illegible] of war – ammunition arms &c – [illegible]
26 judge [illegible] they have a right if they can
at there & sell their arms &c – but if they are
caught in that business, they are lawful prize. [illegible]

on a certain man called a Mercantile Law
that should do away with one of those
more than ordinary [illegible] and
said contrary — how it is to be known
whether a party has made a fraudulent
or not — The fact is there can be
no fraud unless the party be insolvent. If
that be the case it is a question for
the jury how far it is considered in
fact as to the debtor's intention at
the time of making such payment —
sometimes a party is allowed to pay
one creditor in preference to another
and is permitted to do — therefore
there is often but little ground
in fact. I have never in the course
of my practice had a case similar
to this before, & never expect to
have another — I therefore according to
the principle of the Italian law merchant
have to the best of my recollection
[illegible] and in favour of the
plaintiff — the question for the
jury is the weight of evidence
that is already before them — the parties are

From these remarks it is evident that
the Spanish claim to the whole coast
during the present war is unfounded
and the English claim to a considerable part
of it is established by the taking
upon by the Spaniards.
During the period when the coast
was in possession of the Spaniards
all the vessels found there were
seized and carried into port — but
this is the only instance that can be produced
of any British vessel being taken
on free ships free goods.
Most of the arguments on either side
have been anticipated — it is agreed
that an armed ship under the protection
of a neutral flag is liable to capture
when found with enemy property
on board — but it is said that
the same rule does not apply to
unarmed vessels — that they are
protected as much as the property
would be if found in the enemy's country.
Another argument in favour of the right of search
is that if the enemy's property could be

Insurance — must not search [illegible]
whether or not [illegible] commenced
their [illegible].

Besides — as we said in a section [illegible]
the existence [illegible]
[illegible] of treaties. There is one instance
[illegible] is [illegible] since a
treaty between Eng. & Russia — provided that
the [illegible] are seized wherein it is
[illegible] stipulated that the merchandise [illegible]
enemy shall not be [illegible] and the [illegible]
here acknowledged is that we will [illegible]
[illegible] simpli-
Vattel city [illegible] the [illegible]
III-6-7 of the nation itself. But the very existence
Sect. 14 of such a treaty goes upon the ground that
merchandise [illegible] under
enemy [illegible].

During the late war between Eng. & Spain the
latter [illegible] the same [illegible].

It is in the interest of ~~[illegible]~~ [illegible] nations [illegible]
the principle of [illegible]
[illegible] — but the time will come [illegible]
when we shall be [illegible]. We are
now the second commercial nation [illegible] the
world [illegible] commerce
[illegible]

maritime law must in case of war between the Low
Countries and which must come under
the head of war, will need
ing.
another ground of according a passing on neu
ral & belligerent vessels in the
sailing under documents — and on suspicion
visit & search — means of — where it is true
may be forged and shipped to the vessel — but
the probability of this is not the interest will be
against it. Hence the want of these documents
is more conclusive that the party did not
wish with them — in case of condemnation
wants them it only turns the burden of proof
upon the owners — he may have lost
them by accident — or had them taken from
him — for it often the case that two nations
are in war — the one upon finding a vessel
goes aboard & takes away her papers & the atte
dance with her — & hinders no papers on board
her. If there are treaties between nations
which do away with — in case of war
&c. Belligerent often have a right to stop
visit & search neutral — a breach of this
right would be a cause of war. There are no
express rules — but the usage of nations
is to go by — and the law of nations

 Insurance — [illegible]

[illegible]

& the [illegible]

Sch. are not [illegible]. [illegible]

[illegible] material [illegible] the [illegible]

[illegible] [illegible] — yet the

insured [illegible] ought to

inform the insurer & in default thereof the

policy will be void.

3 Representation — this is [illegible]

the property insured & not [illegible] within

the policy. & it may be either a false re-

presentation of a fact or a concealment of a

fact — in either case the policy is void. The

insured are bound to represent truly to the

insurer every material fact relating to the

state of the property insured — otherwise it will

have the same effect as a false representation.

Any fraud or concealment or indeed any thing

short of the most open & uncovered dealing — he

will vacate the policy. A representation is not

in the nature of a warranty — A warranty is

contained in the policy — but any statement or re-

presentation either written upon or annexed to

in the policy is no warranty but a representation.

A warranty is a condition — [illegible]

[illegible] precedent — but a representation

is a condition of the risk. If there [illegible] may be [illegible] & yet innocent, but what is [illegible] & especially to the injury of the insurers it vacates the policy. It is very proper that [illegible] here that one man should not suffer by reason of another man's mistake. Thus in a [illegible] [illegible] was insured — the insured had been assured that the vessel had actually sailed from [illegible] port in the month of December, but [illegible] the fact was she had sailed the 24th of Nov. & the policy was [illegible] — The insurers were mistaken & not [illegible]. And it makes no difference in such case whether the fact is connected with the risk misrepresented or concealed or not — for every misrepresentation or concealment, whether by mistake or fraud vitiates the policy ab initio — thus if the insured [illegible] and that [illegible] is taken & [illegible] the [illegible] — tho' the risk is not taken but the [illegible]wards [illegible] — yet the insurers are discharged & there can be no recovery any more than if he had actually been taken. But suppose there is no fraud — either by lying or mistaking — if the insured, from certain facts (not knowing whether they are true or not) is induced to believe in [illegible] — this also vitiates the policy. There is a [illegible] which has been very [illegible]

184 Insurance — Subsequent voyage — In this case it
was held that the insurer were [illegible] liable —
[illegible] because of this — there was no representation
[illegible] any thing more than [illegible] that the ship was
[illegible] expected to leave the port [illegible] in [illegible] to
[illegible] the contrary — whereas [illegible] the court not
[illegible] till [illegible] — [illegible] same [illegible]
that the [illegible] the ground that there
was [illegible] of the [illegible]
[illegible]
[illegible] or [illegible] that some thing shall
be done — but a representation is a matter
of [illegible].
A [illegible] shall be [illegible]
[illegible] — there are a number of underwriters
each [illegible]
[illegible]
Doug. [illegible]
24 [illegible]
[illegible] the ground of [illegible]
then [illegible] — [illegible] & the insurer [illegible] the
[illegible] — [illegible]
there must [illegible]
Any agreement therefore between the insured &
Doug. the first underwriter that the other underwriters
187 shall not be liable in case of loss [illegible]
will vitiate the policy as to all the rest

Insurance — where the [illegible] [illegible]
[illegible] on the coast of [illegible] on such a day —
[illegible] whereas [illegible] time [illegible] [illegible] [illegible]
[illegible] [illegible] the coast the same day [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] — & the [illegible] [illegible]
that [illegible] [illegible] [illegible] [illegible] nothing
[illegible] — [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] the [illegible] [illegible]
[illegible] [illegible] the [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
257 [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] & the [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
Doug. the [illegible] [illegible] [illegible] [illegible] the [illegible]
the [illegible] [illegible] the [illegible]
[illegible] [illegible] [illegible] [illegible]
2 Marsh. As if the insured had [illegible] that a certain [illegible]
170 [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]

the agent of the insured had a Mercantile Law
received a letter stating that the ship was in
company with a ship which was known to be
of the enemy & that the ship from the date be-
-ing had complained of her leaking — the contents
of the letter were not communicated — however the
the vessel arrived there safe — but was afterwards 118
taken by a French privateer — yet the insurers
were held to be discharged — because a supposition
that the master of the ship ought
to be a sufficient warrant of any matter alleged
as the cause of detention — if new & unheard of by
the insurer the insured must give notice —
so also the insurer himself must tell the truth 3 Burr
as if he had heard of the arrival of the insured vessel 1909
&c — in such case the policy is void and therefore
money is to be restored. There are such however which
the material need not be disclosed by the insured
Thus if a war have been carried on with a partic-
ular nation for sometime the insured need not
tell the insurer of it — they are supposed to know
that — but the case is different if war was expected
daily to be declared & the insured upon going
to the coffee house early in the morning before
the news had been spread & the thing was was
already declared — for if he on insurance office
& gets his vessel insured without making that known

Insurance – the words mean the same thing – shall that a warehouse & goods at such & such a place insured mean not to be insured – thus if one gets his wheat insured from London to Boston – it would be idle for him to tell the length of the voyage – & it will not excuse the hot in the the insurer – might have, his ignorance, even under an impression that Boston lay to the South of Spain. – The insurer need not state the manner – from wch it should arise – how dangerous thunder & lightning to the ships are known to be. – There is one kind of danger he ever to which the property insured may be exposed & which the insurer is not liable & always. that is the nature of the article insured, & this the insurer ought I want to know where the principle is he may be more liable in the same than another – & he need not state – the price of the article is a matter to be held secret – the object may otherwise be defeated. in practice we see what the rule is for we often see the 9 June 1905 insurer in the policy name the ship & the voyage – & the words "and that it may be sufficient if the insured states only what he may think proper" – however if the proves bad it is a breach of the implied warranty

on the sea coast. Mercantile Law
of Imperial Measure - The Law of the
Land to be observed with the Court of the Admiralty
to meet. &c. &c. &c. &c. &c. &c. &c.
according to Law. - and the Court shall be open
until 6 o'clock Summer Time - and shall remain
open one hour after the Sun Goes
down. The Court is empowered to
punish with fine and imprisonment
persons acting contrary to the Law
of the Sea. The Court is empowered
to issue Warrants in any part of
the Realm. The Court shall have
power to issue Writs of Subpoena
to any part of the Realm. The Court
shall have power to issue Writs of
Habeas Corpus - The Court shall have
power to issue Writs of Mandamus
- The Court shall have power to
issue Writs of Prohibition - The Court
shall have power to issue Writs of
Certiorari - The Admiralty Court shall
not have Authority over Lands
or Houses. The Court shall have
all Rights and Privileges of the
Queen's Bench Division. There shall be
no Appeal from the Decision of the Court 669
the Court shall have Power to Commit for Contempt
&c. and shall make such Rules as to the 221
Manner of Proceedings as may be
with the Ship - Master - Crew &c. &c. &c.

Insurance - recover against the [illegible] [illegible]
[illegible] than the [illegible] the ship [illegible] the [illegible]
[illegible] seaworthy - but [illegible] [illegible]
the [illegible] the ship [illegible] [illegible]

4 T.R. Damage [illegible] [illegible] underwriter
210 [illegible] without [illegible] - the insurer [illegible]
such case are not liable
4th the warranty that the ship shall not be
changed - necessity will always warrant the
changing of the ship - as it may be [illegible]
1 T.R. [illegible] - & the goods may be [illegible] -
211 In this case the expense of loading & reloading
[illegible] the salvage [illegible] the insurers.
Where however the words of the policy are
this or that [illegible] the [illegible] [illegible]
[illegible] be [illegible]
5th In the implied warranty that the ship shall
be navigated [illegible] & [illegible] the [illegible]
8 T.R. [illegible] [illegible]
102 [illegible] [illegible]
[illegible]
But the insured has no [illegible] to Deviate -
[illegible] a [illegible] departure from
the course [illegible] in the policy. Therefore
[illegible] become necessary - it [illegible]
[illegible] the [illegible] [illegible]
[illegible] done - [illegible] &c.

192

Insurance – [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] —

7 Bro. [illegible]

parlan. [illegible]

459 [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] The [illegible]

[illegible] they are [illegible]

[illegible]

the [illegible] – then they are [illegible]

[illegible]

[illegible] in the [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

16

Insurance – By the [illegible] the insurer is liable to
the insured for a loss on the goods insured
of the ship, – but it is provided that the
insured may abandon to the insurer & call
on them for the whole sum insured. In which case the
insurer may abandon to the insured the ship
safe – But if the voyage is only broken up on
account of the ship, the insurer is only liable
for freight then due & is not liable for all.
Sometimes there may be a total loss of the ship &
not of the cargo – the cargo may be stowed on
the same or other vessel – but if there is no
ship or vessel to go to, the voyage is
determined & all saved – but if the goods are taken on board
another ship & carried to the port of destination
it is only a partial loss – so where a vessel
was actually fired – But if the vessel is
recovered & can be repaired, & the voyage
& time can be made when the expence of the
repel, shall be considered in the total loss. This
must be left upon circumstances – as the
length of the voyage – the state of the vessel
At the insurer may at the time insure & the
vessel afterwards arrives it shall be void
But the insurer is never discharged from
the risk insured unless the voyage is end &

188 Insurance — contd &c. 4. Detention of kings, princes or people

[illegible] in [illegible] the [illegible] are [illegible]

one year [illegible] [illegible] [illegible] [illegible]

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

and in that case the insurers are liable, [illegible] de-

tention [illegible] [illegible] [illegible] is not [illegible] more

[illegible] than [illegible] under this term it ought

to be reckoned. [illegible] [illegible] Venice & Genoa

were the principal commercial countries in the

Mediterranean — & were frequently at war with each

other but were then at peace — Venice could not

supply [illegible] [illegible] with provisions —

they were in a starving condition — a Genoa ship

came into Venice loaded with corn — but bound to

[illegible] [illegible] — when the [illegible] [illegible] [illegible]

[illegible] out from Venice & actually captured [illegible]

the corn — but they gave a full price to the

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

[illegible] — [illegible] [illegible] [illegible] [illegible] [illegible] de-

tention — or arrest — however it [illegible] [illegible] con-

sidered [illegible] [illegible] [illegible] [illegible]

[illegible] but on the ground of their carrying enemy's prop-

176 erty it is a capture & not properly a detention.

But if the arrest be on the ground of unlawful

[illegible] [illegible] [illegible] — [illegible] [illegible]

cargo [illegible] [illegible] — it is a detention & there

can be no inquiry whether the embargo is legal or not

Barratry & in the policy of Mercantile Lives
[illegible] & [illegible] the [illegible] -
[illegible] trade - the [illegible]
without the consent & knowledge of the Assured
& the usual warranties - the assured
the insurer were liable - because by the
employing more seamen than were requisite
[illegible] the usual [illegible] from other parts under
[illegible] trade & the Crown of the Kingdom. 1752
The declaration stated all these facts and that
the defendants in the year aforesaid upon the
[illegible] the said Ship [illegible] voyage in a seaman like
manner & the barratry of the master before the
voyage ended [illegible] the insurers - & that the
plaintiffs assigned & made over the
policy to the plaintiffs - of the
returning from the voyage during which time
[illegible] the said ship [illegible] for a consi-
derable time [illegible] - the loss [illegible]
insured

to stop arrum from Averas & Contributions - All
who are concerned in the property remaining after
[illegible] of a certain kind are to contribute each some
proportional part towards the loss - this is
called general contribution - if the masters of the
Ship weight anchors & cables to the
[illegible] in order to entitle the owners to
contribution that the loss occasioned in the

Insurance [illegible]

Insurance [illegible]
Genl. Av. [illegible] & bring all the parties [illegible] the same
220 & make a [illegible] contribution [illegible]
[illegible] the value [illegible] — the [illegible]
estimated by the parties [illegible] — [illegible]
[illegible] each person [illegible] the same
[illegible] his property — [illegible]
[illegible]
goods &c.

Salvage [illegible] means an allowance made for saving the property [illegible] — The [illegible] salvage [illegible] in the [illegible] — This allowance [illegible] sometimes more & sometimes less — according to the danger & difficulty of saving. — Rule in different countries also sometimes [illegible] what is [illegible] — [illegible] all this is regulated by Eng. statute which are there binding nowhere else.

[illegible] that right which the insurer [illegible]

Abandon — [illegible] the property [illegible] the insurers [illegible] — The insured [illegible] — [illegible] certain [illegible] the insurer may [illegible] Total Loss

The insurer must ave certain [illegible] Mercantile acc-
knowledge or act of the insurer receiving the
property if any remain — or entire with a con
versation with the insurer & tells him that his
interest is abandoned, & the voyage is frustrated — Well I accept
it, & do the best you can with the remaining pro [illegible]
perty with your own [illegible] The law will take no ackn[illegible]
ment. It is sufficient if notice of abandonment be
must be given to the insurer. The [illegible]
insured is not [illegible] the whole.
Thus suppose the vessel is loaded with indigo
cotton & sugar — the indigo & cotton may be lost
or [illegible] & the sugar be saved — the indigo &
cotton cannot be abandoned without the sugar
if however these articles had been insured in se
parate policies — as distinct things — or if distinctly
valued in the same policy then this would be in the
nature of a distinct [illegible] & then the insured may ab
andon one without the other. The abandon-
ment must be absolute & not conditional —
Hence the insurer may after abandonment
[illegible] for the goods — even the bread [illegible]
of the insured, if [illegible] is deemed sufficient to
transfer the property to the insurer. If there
are several insurers they are tenants in com
mon of the property after abandonment — no one
[illegible] being [illegible] to priority of [illegible]

Insurance - for [illegible] the last [illegible]
not [illegible] - the [illegible]
[illegible]
[illegible] - many were [illegible] - [illegible] &
[illegible] - [illegible]
[illegible]
[illegible] [illegible]
38 were under the [illegible] - &
in many cases the compensation was greater
than the [illegible] This
[illegible] [illegible] that if the [illegible] be abandoned & [illegible]
207 arrive safe - the abandonment is void. This
[illegible] is not true [illegible]
[illegible] [illegible] that the
report is universally believed - or if the [illegible]
[illegible] abandonment is received or [illegible] to
[illegible] [illegible] the abandonment is not void [illegible]
bind the insurer. The insured [illegible] agent - [illegible]
the mariners [illegible] & [illegible] to-
ward saving the property which is [illegible] before
abandonment. After abandonment the master
& mariners become the agents of the insurers
The [illegible] is a great [illegible] - he may
procure another [illegible]
[illegible] [illegible]
[illegible] [illegible] might
Law. insure the [illegible] the goods &

These will be covered by the Policy [illegible] Lead. The sailors are bound to exert themselves to [illegible] save the property — for which they are paid [illegible] or not — They are paid wages, & this depends upon the [illegible] — this [illegible] may be [illegible] — arising from [illegible] or a [illegible] — The sailor who is [illegible] his wages [illegible] the matter [illegible] however [illegible] it is seldom that sailors are deprived of their wages — The disgrace [illegible] when the master is liable [illegible] should be [illegible] generally to allow wages.

[illegible] Adjustment of Loss — when the notice is received & the loss total no proof of loss is necessary but when the loss is partial either in a [illegible] or open policy — The insured & insurer agree if they can as to the quantum — & the insurer sets down & write under the policy — loss adjusted at so much — In all large commercial places Merchants have so much confidence in each other that they submit matters of such a nature to a Chamber of Commerce. The [illegible] insurer is always [illegible] to have [illegible] [illegible] — But where the policy is [illegible] — But how is the value to be ascertained

From time to time the value of the goods at the time of destruction of the prime cost & interest ought to be ascertained by a valuation after the rate of the day, like which time the insurance is computed by the estimated value at the time of the prime cost. But how is the prime cost to be ascertained? Suppose a piece of cloth damaged & will not sell for more than 10/- whereas it cost when sound 20/- the goods have been damaged one fifth — one fifth of the prime cost is 6£ — ten per cent then would be 4£ again as much the prime cost is 60£ - it sell at the best selling price at 50£ - & if it had not been damaged it would have sold for 70£ - it is damaged then one half — one half of the prime cost is 35£ - this therefore is the loss. The rule is in estimating the loss — to take from an aliquot part of the prime cost as corresponds with the loss or damage sustained. When the adjustment is made it is common for the insurers to certify & sign the adjustment on the policy & the insured is credited & paid the insurance without going into the Court again.

At the Office of Return of Premium — an Act

at in the book it is mentioned, but the Court
is of opinion that there is no such
rule as that contended for, and
that the Jury may find a verdict
for the Defendant in such case if
they think proper so to do. The
Court is not satisfied with the
verdict in this case, but as the
Jury have found the Defendant
not guilty, the Court will not
grant a new trial. Rule discharged.

Lowry v Bourdieu
Doug. 451
Marsh. 550

Insurance - This day Judge Lee & I met at Lloyd's Coffee House to receive the insured & read the deeds. For the deed to entitle the insured to recover - I suppose you will be satisfied if they relate it will go & will a letter by you will give them the deeds.

Lowry Bourdieu Doyle. Lowry says he is not to have the deeds - he says he is to have the deeds - he says he will receive back the money & if he will not return the money - the law does not direct us - however as I judge I receive & receive it may not be so - it is reasonable that if the contract is executory the premium ought to be returned.

Sat. 2 Feb. Upon the same grounds the premium on insurance within the Act, &c. &c. cannot be recovered if captain at sea during taken a prize as it should not have been insured - it turned out to be no prize the vessel & cargo was neutral & acquitted - the premium was not returned. When the policy is void absolute without the fraud or fault or crime of the insured the premium is to be returned - except where both parties are in equal fault - here the deeds did not arrive - the premium cannot be received - the law is the assured stood to run risk either party

Lowry the Policy is void for non compliance with warranty & no fraud the premium is to be returned for no risk is run - as in case of wager & not

with money – [illegible] Mansfield Lord
became to mistake the case – If the voyage is not
over – the insured is entitled to return of
premium – But if not the question
whether [illegible] – Post obligatio the ven-
dor is the person bound – by which the [illegible]
is meant – Now if the ship comes safe
home [illegible] – The damage of the insured according to the rate
is – shall be a total loss will entitle him to
recover the premium upon the first case cited
the money it was decided according to the rule that
the premium could be returned. The cases
being here have in one case admitted this idea.
But in a late case this question was brought
in the court of K.B. – It was held that the premium
should not be returned – There was in this case
run – & it was to more good luck that the ship
discovered – The insured could not come into court
with clean hands & have leave to demand the
premium. Therefore says Judge Heath
the court in the first case decided with great
knicks. It is agreed rule that if the risk never
commenced the premium is to be returned, pro-
vided the risk be run in the insured. But if the
risk is run, & the voyage
begun as [illegible] there no risk – run the

Insurance- Insurance is to be effected. Insurers
the underwriter is a wager upon the illegal contract
the insured - or one dealing with the owner, knowing
the insurance is void & returned. However
very many cases there are very few cases of in-
stances, that are not insured with
the insurer. There may be illegality
in the insurer without fraud - The insurer may
know the illegality of the insurance & the insurance
have the insurer can not recover - & yet the in-
sured cannot recover the premium - the law
leaves them in statu quo. This is a principle
of public utility. But in ordinary cases illegality
by the insured the insurer
may recover, not being able to avoid the re-
bill, refuse to return or pay the premium
till the risk is at an end. The rule
is that if the risk has once begun & run there
can be no abatement of the premium the
insurer is liable to the whole. To avoid this
court have in some cases allowed insured to make
abatement. Wager policy is in fact void
Where if there be a declaration the risk certain
will declaration - or if the insurance be upon
ship and the ship be in port there the insured
cannot recover. Here there can be
no abatement of the premium because the

with land in America. But Mercantile Law
applies as well to inland trade from London to
Manchester as to foreign trade. There is no
doubt at London & Liverpool - The cases are at
the Assizes - but in going to the Assizes a Jury is taken - capture not known & cases against - none
there is to be an application to the Admiralty
Here the Court undertake to make out the case
- one witness only & can settle the matter
If there are two different voyages in the case
it is clear that there ought to be an apportionment
but as the voyage is different to make out a distinct
voyage - I do not know how - in my own mind
I cannot conceive of there being a distinct voyage.
So that in the gen. Mercantile law voyage here
it is of some importance - but I think sink it is
to depend upon the case of the Insurer, since
Salvors a Jury was taken at Newport & they
were that the Court of Newyork were protected
by the policy - if we were to say we must
ensure against a double capture the premium
would be enormous. A vessel was insured from
London to Jamaica home - to sail with convoy - she
had to go to Portsmouth & join convoy. Voyage & Risk
were joined the policy valid but in case of capture
& ransom - but what was to be the Voyage
the sailing after the ship had been ransomed

Insurance

In Eng. it may retain ½ per cent. Mercantile Law
However it is not adopted to retain even the
where the contract was upon an illegal trade. The
Courts of law have in general the same juris-
diction in matters of dispute between the parties
here & in Scotland. Equity however has jurisdic-
tion in certain cases — The actions of Arrestment & Brojan
in the real action — sometimes the action at
lower & civil law — as where the policy is broke
almost all disputes of this kind however are
settled by the parties themselves. The long
practice of referring matters of arbitration or Vide ante
Chancery, or common law — has introduced into
most policies a clause — providing that if any
dispute shall arise it shall be referred from
time to time — But as long as the parties will not consent & leave it
to arbitration — & as long as either party
or his agent may refuse to submit & appeal to Jurisdic-
tion — the Court, at any time, however long that
he may refuse to the reference & award. — It
now settled that he is not obliged to submit to a Burn
arbitration & that therefore the clause in the 1062
policy is become useless. The agreement Hill
to submit does not bind either party — either in 129
Chancery or Law — The jurisdiction of either court
is ousted by such an agreement.

Insurance — as to Bottomry & the Respondentia Bonds

where a merchant had not such interest in the
ship as subject to average — it is usual for
any merchant to take up money — & borrow it
upon the ship — & that not upon the cargo — giving so
much interest for the use — & the ship answering
the nature of this contract in case part of the
ship is lost — the lender of the money loses all.
Hence it is usual for the lender to take 20 — 30 or 40
per cent for the use of the money — the principal not being within the stat. of Usury. If the ship
goes safe & comes safe — he has all the agreed for
the principal and the interest & the profit — &
for this the ship is in the nature of a pledge — but
the Borrower is also personally liable for the
money if the ship never arrives — The Lender
who is the person that lends the money upon it is
called a Bottomry Bond — and if the Bottom of the ship
or keel were a pledge — it would be security for the money.
The principles of Bottomry Bonds are the same as
the case of an insurance (ie) if the Borrower is
guilty of any illegal conduct it shall be liable
to the ship is not known.

Respondentia Bonds are of a similar nature — only
personal goods on board are a pledge instead of
the ship — & the risk also is more personal goods.
This contract also is without the aid of Usury

[illegible] Bottomry [illegible] Lucc
of him & there is no risk more - as if the ve
cannot need arrive the day & [illegible] the [illegible] &
is entitled & must in the mean time demand &
the original interest. The [illegible] risk is the same [illegible]
notices - the [illegible] must be paid as well, 632
there is a total loss - or what the law calls a
total. - Bottomry [illegible] are [illegible] [illegible] by
men - except when the vessel is taken by
the ship - who always in [illegible] power
to [illegible] even the interest of the owner
taken money - for the use of the ship - must
a repair be - the master has no more & some
other - and [illegible] the money borrowed [illegible] him.
owner because he can punish them, but 633
them liberty the ship - because he can [illegible]
ments any more [illegible] - he cannot keep [illegible]
the ship in [illegible]. [illegible] cannot [illegible] 634
on Bottomry & the subject is proper [illegible]
This is stated & [illegible] & there may be [illegible]
bottomry [illegible]. & the master [illegible] to be [illegible]
the ship's [illegible] - the lender can recover
only the [illegible] & legal interest. & if the
vessel arrive safe - the risk immediately ceases [illegible]
& if the money is not immediately paid - no more 635
than legal interest can be received from the time
of the arrival.

Continued of Chapter Thirty

[illegible] of the [illegible] mercantile laws
[illegible]
in the [illegible] of the [illegible].

The master who [illegible] necessaries [illegible] extent
is no doubt personally liable — but the owners 643
are liable also wherever they are on the
face of the Earth — and it makes no odds if the master
had been supplied with money for the 570
purpose & had embezzled it.

As to the ~~law merchant~~ maritime law in regard to Mariners
The rule is that if any man creates an open debate on board — he shall be put on shore & lose one half of his wages — he is allowed an appeal however to the admiralty court — this appeal [illegible] is much like the appeal from a certain justice who when a man was convicted of stealing before him & wanted to appeal to the county court — "Well" then said he I would put on the [illegible] across his back [illegible] & then he might appeal if he chose. It is made a capital offence triable in the admiralty court to conspire against the master & force him to go to another port from that of his destination.

It is the duty of mariners to stay on board until they are discharged by the master or owners — and this is generally not till the cargo is discharged & the tackling of the ship [illegible] stowed. They are to act the part of a porter occasionally but are

258

[illegible] [illegible] – [illegible] [illegible] [illegible] paid.

2 Sum They are entitled to their wages [illegible], [illegible]

728 [illegible] – & any agreement to the contrary is

not binding. – Hence it is [illegible] in the [illegible]

1 Sid that it is [illegible] that the master shall not be obli-

179 ged to pay the men [illegible] wages until the return

8 Bar of the vessel. [illegible] the [illegible] – the [illegible]

1844 mariners are [illegible]. Indeed they are liable

to lose them if they [illegible] [illegible] rebellion or cri-

minal conduct. [illegible] [illegible] and if they [illegible] in

due time – their wages shall be allowed them.

[illegible] they are absent when the ship is ready

[illegible] – & the [illegible] [illegible] [illegible] [illegible]

[illegible] their wages

[illegible] the [illegible] [illegible] [illegible] [illegible] [illegible]. [illegible]

[illegible] the [illegible] [illegible]. By the [illegible]

[illegible] [illegible] [illegible] – the [illegible]

[illegible] & the [illegible] or surviving – [illegible]

by the [illegible] [illegible]. [illegible] [illegible] [illegible]

[illegible] – [illegible] [illegible] – [illegible]

of real [illegible] – [illegible] [illegible] [illegible]

[illegible] [illegible] – the [illegible] [illegible]

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

[illegible] [illegible] – The rights & duties of collecting

the company debt [illegible] [illegible] & [illegible] the li-

abilities to [illegible] the company debts – The ex-

ecutor [illegible] [illegible] cannot be joined in one

the same action either at the Mercantile Law
side. - There is a material difference between the
former & the present - The judgment against the ex-
ecutor is not like the judgment against an heir
in our right - he cannot assign the good-
will of the trade - the debts remain the same. The
survivor therefore is entitled to the goods - not so
with regard to the partners of a trading co - for the
debts may be recovered from the survivor - but
it does not follow that the executor of one mer-
chant can maintain the debts of the company
Payment to the executor may in many cases be pro-
per the account may be accounted for to the sur-
vivor - As it grants to the survivor & to the execu-
tor of the last survivor - Where all
must be brought in the name of all the
partners & not the name of the survivor - as in the
case of debts - But in case the survivor is bank-
rupt - can you recover upon the decree -
In Eng. the court of chancery - upon a Bill filed & pro-
that purpose - will restrain the assignees 265
of the bankrupt - from the property - debts in
such case shall the executor stand still & see
the bankrupt collecting the company debts
during his own life & receive the money -
& afterwards bring a suit? - upon a distri-
bution the assignees by the decree they will be entitled

Co-partnership — The executor shall be allowed to collect the common debt.

[illegible] The [illegible] [illegible] [illegible] passed [illegible] [illegible] after the contract is executed — the common law is ignorant — As if a man sells a horse & delivers the possession immediately it is impossible to recover it at Com. Law — ~~and~~ If there be no fraud — But by the Mercantile law if a man after having parted with goods — by contract executed finds that the circumstances of the vendee are altered & he is likely to lose the value — he may — tho' he allowed credit for six months — stop the goods in transitu — he has a prior right to attachment — But by the Com. Law he is remediless [illegible] [illegible] till the time comes — he is as mere [illegible] a creditor as any other — & no more. — he takes [illegible] equal chance with the rest. The mercantile law does not [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] principles of policy.

The question has of late been much controverted whether if a bill of lading delivered to an assignee [illegible]
[illegible] the owner [illegible] the consignee [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] — [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] the delivery [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible]

for this property both joint & separate will be sold
sooner & cheaper than either joint or private - & a sale may be made
when the estate of either or both - when the debts
have been paid & a dividend to each, made
debts - but when they are incumbered at
present this cannot be done - the before mentioned rule
must obtain. However, when it is the case
that a private debt is collected out of the
joint effects & a joint debt out of the
private effects of the partners, the
partner injured may be directed
so - but in this case the creditor who was
cognizant of the debt & did not
remedy which debt is injurious the most
have been directed. & in the joint & separate
case & merchants in Boston are allowed to
the private debts of either - only one moiety of
them - & so - as when a debt is made to the
partnership one dollar must be paid & if it is
not sufficient to discharge the debt - the more
must be levied upon & one dollar & so on until the
debt be discharged. But the master will have
regard the most convenient way to levy upon & sell
property to raise the amount of the debt and
return a mandate as by the usual law of the no-
tice to the private estate of the other partner.
Several merchants came into an agreement

270

Factorage – one month at the time of the death of the
principle in the country – if the factor shall be-
fore the account settlement each party may
have an equal share of the profits accumulated
with the capital at the time received. But
it has been decided that a factor cannot charge a
Bill of Exchange as an allowance in the account
with the principle unless he was authorized
to do it by a written power – the latter must be
proved to make good the allowance – (2d Com. Dig. 208)
Holle Factor Difference & Account 2 – a factor cannot charge the
Fact. 4 principle with any loss sustained by the
Factor 5 insolvency of the debtor to whom he sold
goods on credit unless he was authorized
Abbott 401 by the principle to do so – without such authority
Holt 22 and in the absence of any usage to the contrary
Com. J. he is responsible for the principle – but if a merchant
308 & knowledge of the usage of trade or
Dorth. other circumstances may warrant the factor
143 he should not only make a good but receive a pre-
Bal mium to the party communicated to him who may
87 make such false representation – Abbott has
decided that where a factor debauches a trade
by custom by running goods in which he is
warned the hazard is at his peril – Still
not being disputed – he was allowed to charge
Com. J. the duties & his principal recovered – This may
25 perhaps seem severe but it is very ne-

tional doctrine & principle & an Mercantile Law
abominable practice – If the principal is ex. f.
accustomed the act done by the Factor then 265
clearly ought to bind the parties – even in cases Contrary
where the factor is exceeding the usual Factorage
but a contract with the Factor for goods
not his is void. The sale of goods to a Factor known
to be such will bind the principal but a Fac- 1 T. R.
tor cannot pledge them for his own debt. 181
Where a factor is employed to sell – & even having
a commission for that purpose & empowered
to receive the price, the principal is not liable
if it is not paid, except that receiving the
money will enable him to recover it against 2 Ves.
the factor – & to examine into the extent of 684
commission – but here the principal has dis-
missed the Factor. If the Factor does not
believe it commission – he may retain
till paid & sue upon it & if he com-
promise them & pay – action at Com. Law is
settled viz. Where a Factor was directed from
time to time to sell & he was told that
where a Factor is employed from time to the
principal may at any time revoke the Factors 2 Ves.
power, the latter not knowing of it 230
Factor may [illegible] & bind his principal
but if a Factor sell – the next day after [illegible] 18

Factorage - Where a Factor sells Goods consigned to him in his own name & sells them as his own property - the person employing him is not at all accountable to the purchaser for more than the Factor has received for them. Factor has a lien upon the goods for their full value, & may retain them for any balance due to him on account of the sale. Factor is entitled to his commission & all charges paid & incurred by him in the course of the sale. Factor may sell goods at such time & in such manner as he thinks proper, & may depart from the express directions of his principal, if he acts honestly & reasonably. Factor is not bound to disclose the name of his principal to the purchaser, but if he does so, the principal may be sued by the purchaser. Factor is not entitled to any compensation for his services, if he has been guilty of misconduct in the course of his employment. Factor is not entitled to any compensation for his services, if he has been guilty of misconduct in the course of his employment.

Of Practice in Connecticut

and first as to the jurisdiction of our courts of law in civil causes — Single magistrates — as justices of the peace have original cognizance of all civil causes in which the title of land is not concerned if the matter in demand does not exceed 5 dollars by 207
or all actions on note or bond given for money 202
only & ~~concerning~~ by two arbitrators where the demand 216
does not exceed 85 dollars. But an appeal lies to
the next County Court if the sum demanded exceeds 20 of
7 dollars — except in actions on note &c for money &c 7 Day 305
(when ~~&~~ indorsed ones not) coll. 1 Am. 68
But an arbitration note for more than 15 dollars & 1 Root
not exceeding 85 dollars tho vouched just sufficient 30
not cognizable by a single magistrate if it is not 126
for money only but submitted by an application.
award. If for more than seven dollars appeal must
lie to Superior. 1 Swift
Neither a note &c for more than 85 dollars but indorsed down 159
below the sum it being for money only & vouched 5 Root
sufficient is within his jurisdiction Swift - decisions & practice 289
with ways. Payne v Payne - Kirby 189, 191
In analogy to the rule in case of appeals from 66
County Courts &c just I should deem that a note &c 1 Swift
for more than 15 dollars & not exceeding 85 dollars 108
none only & indorsed ~~upon~~ is not within no jurisdiction

Jurisdiction of Justices - Civil cases - Trial by Jury - Appeal
1 Root 229-236 Writs, proceedings &c to authorize arrest & imprisonment
Lib 38 applicable to Debt - Damages, should the plaintiff
2 Root 226 recover, should the damages demanded are - Criminal matters.
Stat. - 2 Proceedings in action brought before a Justice
- or an injury claimed - Deft pleads title - the Justice
cannot try the cause - Deft recognized with one
Stat. or more sureties in a sum not exceeding $67 Lab
225-6 & summons his plea at the next County Court in the
1 Dev. 68 County in which the land lies & objects to all dama-
R.L. 62 ges &c - Deft shall bring record &c. into Ct - The
2 Root 354-355 Justice must then certify the whole record &c. to C.C.
344-5-458 Deft cannot in this case alter his plea in the C.C.
Stat. If he does not summon his plea in the C.C. the default
426 shall be recorded & a scire facias issue from the C.C.
2 Root 301 on his recognizance. If he does summon his plea & dis-
prove his title - judgment goes against him for
treble damages & costs. If he refuses to be thus recog-
Stat. nized before the Justice - his plea shall abate & on
426 proof of the breach, judgment must be against
1 Root him. If the deft pleads the gen. issue & relies upon
410-458 his title in evidence - the Justice may determine the
548 — cause as in other cases.
2 Rev. 240 Proceedings brought for obstructing or raising the
140. 68 waters of a river & tried before a Justice Deft pleads
Stat. 20 a right to do the act - appeal lies to the C.C. & thence to Supl.

Duty 5 s. 6 d. paid on every appeal from Com. Practice
a justice – it must be paid at the time of taking the 149 s.
appeal. subsequent payment not sufficient. Error 2 Hoot
can the record the justice be contradicted by rec 11–12
the fact. 2 justice may take a confession of judg-stat
ment for a debt – with or without suit to the amount 2–18
of seventy dollars – to be taken only from the defendant's right
thereon – Record is made of the confession & execu- 108
tion may issue – Record must express the particu-hist.
lar debt or duty – as bond note book &c. In this 152
case both are only allowed for the justice, see un- 256
less there was an antecedent process, & then must have
appeared by the record. Stat 2 Geo. 1 c. 13 s. 9 Hoot
before the award. If in an action before a justice 218–222
a recognizance is taken in more than 15 dollars & the R.L. 503
original judgment exceeds that sum a writ of error
will not lie upon it before the justice – but it may be
before the Circ. Court. Indeed no action will lie upon it before 1 Call 89
a justice. Error will not lie to reverse the judgment
before the justice? & indeed in all cases before him, may not exceed
except against a garnishee where the sum demanded
exceeds 15 dollars. Stat 2 Geo. 1 c. 13 s. 9 Hoot
writ of error regularly from a court in which a hab.
[illegible] has been rendered to the purpose of reversing 220
the judgment into fleet – as eg. an Executor – garnishee
special bail &c. The writ lies in some cases pending
a suit & before judgment – viz. 2 abatement or a nonsuit.

Jurisdiction of Courts. — Either the superior court
Virb. court by which the indictment was found or in
220 which the original suit is depending & necessary
only from that court & which it is returnable — ex-
Holcroft cepting in cases where Justices &c. the sum is not
252 more than 15 dollars — or a judgment rendered by a
Stat. Justice — In that case it is signed & issued by the Justice
270 but returnable to the county court. If a Justice re-
hearing rendered judgment in any cause dies
or is removed before execution granted or satisfied
the Clerk on the judgment — and if the debt or dam-
Stat. 29 ages do not exceed 35 dollars the action may be brot
N.L. before another Justice as original — if it exceeds that
298 sum before the County Court — But it must be brot
Lev. 109 within 5 years from the death or removal.
1 Ro. 201 A Justice cannot try a cause only in the town in which
Bac. Abr. he dwells — except where there is no Justice in the
Stat. 6 Town in which the cause is to be tried who is qual-
142 ified & determine it — but if it otherwise in crim-
2 Root inal cases. But the Governor Lieut Gov. Assist-
357 & Judges of the Supreme Court may respectively
execute the office of a Justice throughout the State.
Stat. But when acting as single magistrates they have
247 no other judicial power than Justices — the powers
differ the same as the Justices' matter.
Appeals from Justices must be entered in the Clerk
of the C.C. before the second opening. May appeal

antes of appellant will be excepted from. Practice
such is the practice Clerk's Office
The several Courts of Com. Pleas - or County Courts
have original jurisdiction of all civil causes at
law not cognizable by a single magistrate &c.
that all civil actions not thus cognizable are
regularly commenced in these courts
& all civil actions except on bond or note (where
true) in which the title of land is not in question
if the matter in demand or amount the
value of 15 dollars but does not exceed the value
of 30 dollars - & of all actions on bond or note given
for money only & vouched by two witnesses if the
sum demanded exceed 30 dol. they have final
as well as original jurisdiction except that their
judgment may be reviewed by writ of Error
But an appeal to the superior Ct. lies from their
judgment regularly in all cases in which the
title of land is in question & in all cases in which
the value of the matter in dispute exceeds the
value of 30 dolls except in actions on note &c
given for money only & vouched by two witnesses
In an action to trespass on land demanding not
more than 30 Dolls no appeal lies unless title &c
pleaded - Evidence of title under gen. issue not sufft.
But it has been decided that the right of appeal
does not depend upon the sum demanded as damages

Juris diction of Courts – except where the damages are
R.L.585 presumptive – as in case of tort – & where in case of
1 Root contract the damages cannot be ascertained
148-518 without introducing evidence extrinsic. The
rule is that if it appears from the record that
according to the rules for ascertaining damages
judgment cannot be rendered for a greater sum
1 Root than 30 dolls – the title of land not being in ques-
525 tion) no appeal lies. It granted it will operate to
1 Day 95-6 the judgment rendered in the sub. court in
Kirb. 88-90 which case may be corrected. Thus suit in back
1 Root 502 debt where stated declaration 30 dolls demanded $ 87
147-238 & on note or bond for 20 dolls. judgment dis-
276-518 missed by the court exceptio 1 Root 525 – 2 Root
2 Ro. 574-2 – 570 – 577. – So the the plff in back-debt declares
1 Root on a debt of more than 30 dolls & demands more
518 but it appears from his own book on over that
1 Root 96 no more is due – plff by placing it on the record
Kirb. 278 in his objection to the appeal in the County Court may
1 Root prevent an appeal. So an action on an arbi-
27-238 tration note for more than 30 dolls if it appears
1 Root 95-6 from the record that neither the matter in con-
troversy nor the award exceeded 30 dolls no ap-
peal lies – Tho if the note is for more than 30 dolls
1 Root ~~no appeal lies~~ the case is prima facie appealable
125 So an action on a note or bond for more than 30 $
Kirb. 88 given for money only & vouched by two witnesses

if one is dead or becomes interested an Error Appeal lies & R.S.O. In an action upon a Hist. Sec. Co.
receipt qua an officer for not executing an exe- 14 Q.B.
cution no appeal lies whatever the sum de- 1 Pr. 326
manded is - Ed Laws if it is for not executing mesne proc. -
except where the action is brought before 38 J.P. 90
a justice for not executing an execution and 14 Q.B. 101
judgment confessed before him for more than Hist. Sec.
seven dollars - So in an action on a receipt Hist. 1867
by an officer as a recognizance of bail given 14 Q.B. 101
taken in execution - Laws if taken & received Hist. 1867
upon attachment. So on judgment rendered Hist.
upon an award of arbitrators. Because it not 14 Q.B. 97
appealable by the stat. no agreement of the parties Hist.
can give an appeal lies in the Court appealed to can make it so - C.L. Ch. 3, 7-8
except an agreement to increase the damages by a 14 Q.B. 97
recognizance. No appeal lies from a judgment Hist.
by default unless there was a hearing on damages Hist.
- The Act is not otherwise confined to Civil
Court - for in that case he can be heard in the Court
appealed to only in damages. But on judgment 100
upon nil dicit appeal lies - Def. in court & the 54 C.
defts may plead & defend in the court to which &c. 14 Q.B.
the appeal lies from the County Court in a qui tam Hist.
prosecution for a crime. So it is in Lower Canada in 405
effect a criminal proceeding - 4 L.C. 265 ——— Civ. Code
No appeal lies from an adjourned Court. Next day 866

Jurisdiction of Courts – appeal may be taken from a
Hobart 260 final judgment on a plea in abatement without waiting
Smith 269 for judgment in chief. but if the defendant
H. L. 901 in the court appealed to costs shall be awarded against him on the judgment on the plea in abatement
364 & execution issue tho he should prevail in the superior
Hobart 86 court & he cannot alter the condition. The appeal
Stat. 28 must be taken during that term in which judg-
Edw. 6 ment is rendered. It may be taken at any time
during the term in ~~which judgment is rendered~~
but it is proper to move to it immediately after
verdict – or on any time before the court after judgment
H. L. 900 & therein execution may issue, & notwithstanding appeal it is said it not supersedeas – appeal to the
Hobart superior court must be entered in the docket before
86 the second morning of the court or the appellant must
Stat. 25 advance the whole costs of the term, containing if
he cannot enter appeal after the jury are discharged. on appeal dismissing the judgment appealed
from – unless the court otherwise order & costs given then & further against the plaintiff
H. L. 900 execution & further proceedings on the judgments
is suspended till the appeal is finally determined
Hobart 86 but if the appellant does not enter before the jury
Smith 269 are discharged – the appellee may enter a motion &
have the judgment affirmed with additional
costs. or he may sue on the bond. The judgment

rendered in the court above is a distinct Conn. Practice
substantial judgment except in cases of appeal- Stat 119
lee entering. Duty of one dollar pay able on Mo. 475
every appeal from the county court. If not en- Mo. 11-2
tered y appeal is void— It must be paid at the Kirb. 51
time of taking the appeal or the appeal will a- Stat 150
bate— Qu. can the record of the court be contradicted
to prove the fact. It has been decided that an indict Root
for quarrel is within the Stat. as to appeals & at 56
course appealable from the County & the Sup. Court 515
Either party may appeal if the bill recovers any thing Mo. 570
less than his whole demands— Even if the judgment Kirb.
is altogether in one's favour— he cannot— & both Root
may appeal & if either does it is sufficient. 515. 56
If appeal is claimed where it ought to be allowed or a Dagg
writ lies— but if allowed & the court above do not grant
it— Qu. will error lie immediately on the allowance
of the appeal? I should think not say 4th Cowen as
advantage may be taken in the court of appeals &c.
If a cause is not appealable & motion to an appeal is Root
made objections may be made & the motion in the 515-502
court in which &c & the appeal may be aborted. In the 161
court to which &c. & if a verdict is given against Kirb.
him in the latter judgment may be arrested— & Mo. 525
the cause eliminated by the court ex officio— &
writ of error lies if judgment is against him in the court
above. For the Equitable jurisdiction of Ct. see Powr. of Chancy

Jurisdiction of courts. The Superior Court has no original
Stat. jurisdiction in civil causes properly so called. It
1715-385 has indeed original jurisdiction when a suit is brot
1 Rev. 314-15 ag. an officer upon the statute for not executing an
2 Rev. 451 execution issued by itself. — a deduction may be brought
1 Hoot. 90. at Com. Law & the County Court — & this is the usual
practice — an action upon a statute however is not prop-
Stat. 28 erly a civil suit. — The Court also issues writs of error
Swift & writs returnable & itself to enforce its own judgments
87 But this is a judicial & not an original writ & it gen-
erally grows out of the appellate jurisdiction of the Court
It has appellate jurisdiction of many causes de-
termined in the County Courts (explained ante)
1 Swift Its appellate jurisdiction of causes decided by City
97 Courts is generally the same as of those decided
Stat. C by County Courts. & and an appeal lies to this Court
1854 from every sentence order or decree of the Courts of
Probate. For its equitable jurisdiction see Court
of Chancery.

It has jurisdiction of all writs of error both for
Stat. the reversal of judgments rendered by County &
151-2 or simple magistrates in civil (& criminal) cases
1 Swift 97 & of decrees in Chancery, issued by the Co. Courts. When
on reversal the cause comes into this Court
1 Hoot for trial he must do it in that term in which
85 the judgment or reversal is rendered. Its jurisdiction
Stat. 347 in cases of divorce — mandamus prohibition and

habeas corpus are treated of under Comm. Practice
their respective titles. error & liberty may ap- Ld Raym 50
peal from a judgment on a plea in abatement
where an appeal is by law allowed without pro-
ceeding to final judgment in the court below
and if on such a plea judgment is rendered against
him he cannot when appeal from final judgment
take any advantage in the court appealed to of
his plea in abatement

The Supreme Court of Errors has jurisdiction (in all
respects final) of all writs of error brought for the
reversal of any judgment or decree of the inferior Stat.
court in matters at law or Equity - where the 1806
error complained of is apparent on the record
but has no cognizance of errors in fact

The General Assembly has cognizance by petition of cases
in which no other court can grant relief provi-
ded the matter in demand exceeds 25 £.
etc. to the Proceedings by which civil rights are en-
forced in our Courts of Justice. ——
An action or suit is defined to be the lawful de- 3 Bl. C. 116
mand of one's right. The first stage of a suit in Comm. Com. 88
is the writ & declaration which issue together Stat. 22
The Writ consists of all that precedes the statement of
the plt's claim - of the signature - the certificate of the Stat. 88
duty paid & the recognizance where there is one - the date

Judicial proceedings. - i common & the writ & declaration
Stat. 24. The process contained in our writs is of two kinds - 1st
24 H. 188 by Summons & 2dly by Attachment. By Process is
3 Bl. 279 meant the means of compelling the Def to appear in
2 Ho. 88 court or enforcing him to trial. In comm. on
the declaration issues with the writ it is not necess-
ary to entitle the Plff to judgment that the Def should
7 T. R. appear - does in Eng. by stat. 12 Geo. 1 a common ap-
Tidd 127 pearance may be entered per com. bail filed in the Def
by Plff. This process contained in the original writ
3 Bl. C. is called the Original or Mesne process - is contradistin-
27 guished from Final - or process of execution. In Eng.
273-280 There is a process distinct from the original writ
274 Tidd when the writ is a Praecipe - does when a Bill is
filed. filed. In Eng. a writ ag. two & declaration ag. one
only is required in case of tort - 1 Bos. & Pul. 29
The writ must be signed by a magistrate as a justice of
Tidd 34 peace & by the clerk of the court & which it is
2 Saund 46 returnable & must describe the court & which &c &
the time & place of its return. Of course process ag.
187 a garnishee on a judgment rendered by a single
Stat. 45 magistrate must be signed by him even where re-
24. 216 turnable. It commands the officer to summon Defendant
2 Ho. 84 & directs to summon & cause notice to - Plff & Defendant
89 & to attach his estate & person & have him & estate
before the court &c. It is regularly directed to the
Sheriff & the County in which the Def resides - his deputy

or other constable of the town in which the com. Practice
Constables have in general the same power with Stat. 20
in their respective towns as sheriffs in their counties & only
of constable chosen & sworn in one year & re-chosen H. 388-4
may serve process before he is sworn a second time Ro. 30.
It may be directed to a sheriff only or constable only. 68-4
and a writ directed to the sheriff may be served by the 68-5
his deputy tho not named - even a special deputy.
Hob. 240 - Comyn. 103 - 1 Bac. 110-834 - Salk 12-95-6 - Holt 221 - Hoo 12-15
Bl. R. 382 - 4 in Eng. - Ordinarily the writ can be di-
rected to no other than one of the above officers -
but if such officer cannot be had without great charge
& inconvenience - it may be directed to the magis-
trate to an indifferent person - but the name of
the person must be inserted by the magistrate with
hand and the reason of such direction must ap-
pear in the writ. Such direction usual in what
cases & when the time of service is expiring - & when the Stat. 24
sheriff &c. are interested &c - Query must the reason be inser- Ro. 284
ted by the magistrate himself? so it seems to Stat. 1 Geo. 18
but the constant practice is otherwise - By new statutes
no writ may be directed to an indifferent person unless
there are two or more cities described of diff. counties
except where in case of attachment Pff or his agent Stat. 4
or attorney shall make affidavit that he verily believes
Pff is in danger of losing &c unless - affidavit to be in-
dorsed on the writ. The indifferent person need not Ro. 284-5

Writ make recite the writ in his return — Ld. Raym. Process — special deputy — Str. 1174 Stat. 8 Geo. 2 c. 24 s. 1 Bott 428 That the indifferent person is coman-law protection does not disqualify him — so — as the sheriff & constable. The 23 H. 6 c. 9 Stat. 8 Geo. 2 c. 24 s. 1 certificate of the magistrate as to the receiver of the nothing — & an indiff. person is conclusive. Holden 88 Bott 285 one by the sup. Court that a direction to the sheriff or an indifferent person was ill. — but yet a direction to the sheriff and an indifferent person would be good and govern as to the last branch the rule. If the return of a writ directed to an indifferent person is altered from one time — a time to another the writ 2 Bott 360 will abate — the necessity might exist at one time not at another. A writ as a town may be directed to an inhabitant of the town as an indiff. 88 person. A writ directed to a minor as an indiff. 2 Ro. 815 person will abate. A constable having begun service within the limits of his town — as by attaching property — may go into another to complete it. (see 1 Ro. 807 case as to Blake v. Nanney 6 C.) — Post Service." A writ as the clerk of the town of [illegible] may be directed to a constable of the town of B — & if the main service in the town of B it is good but he cannot serve it in Stat. the town also. All writs of elegit attachments 85, 87 sheriff's sales disputed or in stakes except in these two cases shall abate. A deputy sheriff cannot 4 Co. 93 receive serve a writ or act upon the sheriff — since

he acts. to the sheriff, under his authority - Comm. Practice
ity - But one deputy may duly execute more than not
a writ for or upon another - so a sheriff may serve 2 Tid
for or upon his deputy Each Writs in Debt &c
writs must be signed by a magistrate - as a Justice &c
clerk of the Courts &c. But a justice can issue ori- 18
ginal civil process only thro' out the County in which he
he dwells. By Stat 1804 - he may issue into any adj- 24
joining County such process if returnable into his 673
own County (Vermont) - so of subpoenas in civil
He may issue criminal process & bring a delin-
quent before himself - & process of execution in civil 24-173
cases throut the State - so he may issue a recog-herb.
nizance called for in criminal cases in the first case thro 18
the State. A Justice may sign a writ in favour of the 2 Rev. 1878
Town in which he lives & of course & subscribe as Plff. Vid 145
against it. Clerks of the County & Sup. Courts can Stat. 24
sign writs returnable to their respective courts 1 Rev. 30
but one other. A Recording & issue writs of error must 27
be signed by a Judge of the Court to which it is return-
able - not to be issued without probable cause shown
for error. Formerly the Clerk of the Sup. Court could
issue mesne process returnable to the Sup. Court
into any part of the State - & were now since there is a
Clerk in each County & But the Clerks of both the Stat. 24
Sup. & County Courts may clearly issue process, re- 129-131
turnable to their respective Courts [illegible]

Writ of Error - Where there is neither law nor
They may also issue writs of error unto inferior
criminal courts returnable before themselves
in any part of the state (as in term time and
vacation of the court. Formerly judges of the county
court & justices of the peace could not issue ori-
2 Dall ginal civil process out of their respective courts
182 afterwards they were enabled by stat. & since such
Stat process into any part of the state is returnable &
247 their own court. Now by a late stat. they are au-
204 thorized & issue process in all civil matters to be
served in any part of the state whether returnable
before own or some other court.
24 Jan 1820 The present Chief Justice of the supreme court
420 & now the judges & justices of the County Courts in sup
can in all civil cases issue mesne original or final
process that will run thro the state. Jurisdiction
2 Dall The writ describes the place in which the suit
97 shall be tried in which the plt shall recover. These
Stat. 112 in ordinary cases are the only necessary additions
but where the office of civil character of the action
plt is the inducement & the action - it must be added.
as in case of an Executor or Heir &c. - In Mesne Pleadings
in all writs in civil cases there must be paid a
duty at the time of their issuing. - If returnable
Stat. before a single Magistrate - 1st cent - if before Cir.
149 24 cents - if not exceeding one Doll. - if exceeding One Doll

on petition of an adversary nature of the Com. Practice
Gen. after mesne process. Bail must be of the city
must be certified on the writ in order to the delivery 1 Rast
by the magistrate signing. Attorney with 505
Corp. may be stood from the record without a
plea. The writ cannot be amended by inserting 505
the certificate even the bail below, that the party
in court. and a writ once filed with a certificate
can not be converted into a writ of summons
unless there is a further certificate of the payment 506
of a second duty. If the court may be office 150
dismiss it for want of such. The same matter 2 Ro. 526
are applicable on civil actions. but upon
public prosecutions. a Ca. indemnifies officers
Gen. recorded by the Supreme Court that the
bill may take advantage of the want of a certifi-
cate of duty paid by writ error after judgment
& dec. Com. Dig. Ca. Ch. (A).
On such writ of attachment the party must give
sufficient security to prosecute his action & effect & 1 Ro. 524
answer all damages in case he make no plea 1 Ro. 568
good. The security is to be taken at the office where
party resides for prosecution is. The 505
security is called a bond for prosecution & given 506
by way of recognizance acknowledged & entered
into. Bail before the commencement of the action 505
is. Before the bail is perfected & given by

Writ of Precept - not trading there - & motion - bond
obtained by - in case of the recognizance entered as security
for the party to attend & for any damage occa-
sioned by the attachment - or only as the costs and
decided - I believe however the old practice that it is
a security for costs only - & the statute is
silent, but when security for costs only.
But it has been decided that this recognizance
is effectual to all intents & for costs (Burr. Sam. 98.
and the same practice is to receive this recognizance
166 This decision was founded on usage - and the court
said that the recognizance was a security for costs only
& between the object of the bond & the security costs
that practice is right. For the plff is liable for
costs without it - And if the object is to furnish a
security for the costs attached the proceedings
of the deft, is defeated. The latter conceive that
the general was the object & practice.
Hood Grey & Hood
166 one plff security is sufficient - a new bond may
be ordered on motion & the court direct the writ
to remain. It has been lately decided that a bond
for prosecution on a plaintiff was not good & that
it must state - because it could not be taken & the
defence, costs, expences, damages,
according to usage and a prosecution must be tak-
en in all cases from proceedings by attachment
as the deft may if ultimately arrested, bring an

a puisne civil action is better to proceed from. practice
& summons – Here the rule is the same in other
cases of summons – Bond to prosecution must be
given by some substantial inhabitant of this state
in every case in which a writ issues in favour of
one who is not an inhabitant of this state – even
tho the process is by summons. & the bond is not
given in the above cases the writ may be abated.
the bond for prosecution is to be given by some substan-
tial inhabitant on the issuing of any writ if it ap-
pears to the satisfaction of the magistrate signing that the pltf. the one
inhabitant is unable to response the costs that may
be recovered. But in the last case says Mr Goodell I
conceive says Mr Bond the writ cannot be abated
in the court to which it is returned. for want of a
bond – for the signature & seal before is conclusive
evidence that the fact of the pltfs inability & they
costs did not appear to the magistrate. But in
this case the pltf is on motion by defts & proof of
his inability in the court to which the writ is re-
turned compellable to give bond for prosecution
with sufficient surety or be non suited – & if his in-
ability accrues after the writ issues. But such
motion should be made in a reasonable time
it is possible – objection after the jury was impannelled
& try the cause decided to be too late. If the secu-
rity taken is apparently sufficient at the time – the

Writ &c the magistrate is not responsible on ib pro-
Ro. 168 ceedings in writ. — If the defendant recd — & this
rule holds even tho' sole bond is taken. So
on writ of replevin if the security is apparently
sufficient altho' he is not liable — Except when false
1 Root bond is taken. So this case if D'ft is not credibly
165-8 of ability & pros the magistrate is ab all events
56-261 This cannot be apparently sufficient — or if taken
Stat. the creditor's security away (ie) the property at-
560 tached & leave him as if nothing had been attach-
ed — The Stat. requires security & prosecute &c & to
Stat. satisfy & answer such damages demands & duty &c
162 On every writ of error bond with surety must be
R.L given that P'ft shall prosecute &c & answer &c
410-11 the bill's bond not good. Even party appealing
Stat. from the judgment of one court to another must
28-30 give bond & for prosecution with security — Ap'tal-
1 Root lant's bond not sufft — Formerly not required on
208 appeals from a justice. — The appellant and sure-
ties are bound that the former shall prosecute his ap-
peal & effect &c by this is not meant that unless
appellant prosecute the bond is forfeited — but that
R.L. it is if he does not proceed in the appeal — for the
300 appeal destroys the judgment. & the appellant does
2 Hill prosecute his appeal & tho' the surety is liable for
1'8 costs Attorneys are not placed by the appellate &c for all
the costs before & after the appeal — Defendant may

on an appeal & the defendt is liable only Comm. Practice
to the costs subsequent to the appeal (Ld.) but
he is liable for costs only - & not for them if collect-
able from appellant. Is it necessary to appellee to
take out execution & have a non est returned as R.L. 500
to appellant personal property. Lord said (1 Roscoe 815) 2 Saund.
that non est inventus is not necessary to subject
the bondsman, or the plff to cost. Then these cases
will lie on the recognizance - or suppose debt -
it has been held (1 Roscoe 815) that the return of non
est invent. is not necessary to subject plff to bondsman
on an appeal (Ld. The proceedings in the same in
the other case of bonds to prosecute) - the non est R.L. 505
as to the principal personal property the surety is 1 Roscoe
liable. The imprisonment of the principal on the 815-6
execution will not discharge the bondsmen. Indeed
nothing but payment of the costs discharges him
The giving of special bail does not exonerate the
defendt bondsman on appeal. nor does the bond on
appeal when the plff appeals discharge the bonds-
man to prosecution on the original process. Bonds- 1 Roscoe
man to plff on appeal is liable for costs if defendt succeeds 814
and plff dies before the return of the execution. So held 30
Suppose a recovery & plff appeals & dies when plff 1 Ro. 760
prevails. - Bonds for prosecution are not written obli-
gations to the Sheriff, as is Bail - (see post bail) 2 Sm. 175
Death of plff before judgt discharges bond for prosecution 1 Ro. 250

writ of error - or judgment in favor of the appellant
Rood is final as to the land man on trial appeal the on
460 a new trial judgment is given to the other to an-
102-3 to - to 2 Jo. phase if the first judgment is reversed by
Ld. 356 writ of error.

tit. 28 In transitory actions to be tried in the superior
chap. or county courts the writ is to be made returnable
R.L. 304 in that county in which the pltff or dft dwells
No. 30-1 This rule holds in actions ag. officers & com. Land
Vol. 584 upon receipt of executions - but where they are com-
No. 90 plained of under the Statute the writ must be to
Vol. 6 a trial court & which the execution is returnable
178 & of original writ - tho it may be in a different
county to give the superior. & either party dwells in
stat. 26 where the title of land is concerned the writ must
chapt be returnable to some court in that county in which
1st the land lies.

Equity in action may be brought in the county in
which the pltff or dft dwells as in common actions
but before single magistrates must be proceeded
in the town in which the pltff or dft dwells except
where there is no magistrate in the town who can
stat legally try the cause then the pltff may sue before
26 a magistrate in one of the towns next adjoining thus
But a writ of error to the sup. court must be re-
Vol 6 turnable in the county in which the judgment com-
379-5 plained of was rendered - & citation to appellee

In transitory actions in Eng. the venue Comm. Practice
may be changed on motion for reasonable cause. Salk.
& of course & never by bleo. 1 Bac. Abr. 20 - 1 Mac. 85- 660-670
7 Mod. 85 - 2 Bl. 294 - Hen. 84. Stat.
of the time & return - Writs returnable the first 25
mid & returned the first day in every term R. L.
the day next succeeding the last day of the term 393
till writs & petitions returnable the superior 1 Root
Court - must be returned & the clerk before the de- 568
cond opening of the Court. Later returns are how-
ever allowable if consented to by the parties - &
without consent under extraordinary circum- R. L
stances - as if an accident befall the officer on 393
his way to the office - or if he is suddenly taken
sick not before the & him. Writs returnable &
the county or superior must be made return- 1 Root
able & the term next following the date & there 65-6
is an intervening - Sometimes an
exception to this rule - (See Rules post) 541
of & Service — Of Process there are two kinds Stat. 84
viz summons & attachment.
When the Process is a Summons service is made by a copy 185
reading the writ in the ears - hearing or leaving
an attested copy with him or at the place of his then
usual abode. Service on husband & wife are se- 474-475
veral one copy is sufficient. If the officer make
service by reading & makes service by reading

Process &c. — The leaving of a copy which must
Bac. Ab. be true will not abate the writ. Service made
Abate by attorney not specially
authorized. Quere if he may not avow the dep.
he may abate the writ. &c. But it has been decided
that such acknowledgement of service is sufficient
& will not be void. — It has been decided that
petition must be served in duplicate — Else abates
writ. — Lately decided to the contrary. — That
error may be cured by reading — Stat. 34 Edward
180 in petition in nature of writ of error if the de-
fendant out of the state — service is made in leaving
copy with his attorney here. If no person resides
180 out of the state is to be within it a summons
served upon him is read in a copy is sufficient
to bind him to trial

Stat. 24 Attachment are regulable & used by attaching the
Geo. 180 property or body of the defendant — (At the Com. Law re-
1 Root lating to arrests see the right of bail is well set-
Hard. tled that service by reading a copy is sufficient
2 Root to hold the def. to trial — It is not usual for a plaintiff
180-186 to the the officer may be liable to action. The officer
Conn. 180 has no right to take defendant body if he can find
Kd. 400 real estate sufficient to answer the demand &
Stat. 84 which he knows & believes & ought — real estate
does not mean right. But the officer cannot be
liable & will not be entitled to take personal estate

if he is doubtful to whom it belongs — Comm Practice 5
Humphrey v Hobbies 6 B. & Ald. 1803. (2 East Com. Law 650 V. 2 b. 65)
the officer in such case may summon a jury 648
to ascertain to whom it belongs - & if he does not 2 Hal 108
he takes at his peril) Def. would
have no cause of complaint to the taking of pro 1 Bl. 400
body - unless it be tendered personal property to the
officer. It has been decided by the Supr. Court that the
officer having to keep the body is bound before arrest 90
commitment & accept personal property if tendered & to discharge the body. Com. Dig. Obl. upon such tender
take the prop & another person undertaking it to be prod. at day & Def
escapes? & the officer take the property so tendered & shall
he is liable & the def. to take imprisonment - 6 120 7
& arrest on final process. decided contrary by R.S. 400
Court of Errors - but he then that the officer may break Hal. 582
The officer can not take both the property & the body R.S. 400
he may not break the outer door of dwelling house to execut
make an arrest - an inner door he may. Kirby 345 - 2 Hal 82
The debtor land is also liable to be taken by attach-
ment - but the officer is not bound to take land after
he has arrested the body - above recited in Supr. 190
Civil Code as to the 14th section of the act relative to debt. R.S. 365
recited by the 14th section of the body may be
made by an assistant of the officer in his company Comp.
not entered it may be entered by night - 18th Feb. 1804 - R. vol 64
& property real or personal is attached. the officer

Precept to serve - must leave with the sheriff or at his
Stat. 45 usual place of abode if within this state a true
c 21 sect copy of the writ - with a description of the prop
190 erty attached. If real estate is attached the
officer must also leave a like copy at the
Town Clerk's office within seven days next after
Stat. 85 attaching the estate & before the time for serving
the writ has expired - whereupon it is holden
against any other creditor or bona fide purcha
ser. But the omission of this copy will not a-
bate the suit. — It is intended merely to give no
tice to other creditors - & purchasers. Personal
estate attached is not holden & to respond the judg-
ment either to the debtor or any other unless
Stat. 85 execution is taken out & levied upon it within
c 40. sixty days after final judgment & the lien is lost
1890 except where it is under a prior incumbrance
Stat. & then it is not holden unless execution is taken
40 out & levied within sixty days after the incum-
brance is removed. So also the lien on real estate
is lost unless execution is levied upon it & the levy
& appraisal is recorded within 3 months except
Stat. 35 in the case of a prior incumbrance in which
c 40 case the proceedings must be completed within
1890 3 months after the incumbrance removed. It has been
lately decided that the officer cannot attach real
estate without entering upon it. 1 Gray July 1853

& a person in custody of an officer on mesne process
dies a arrest in one cause - delivering to the
officer an attachment against the same person
another cause is a good arrest. Where personal estate
chattels are attached the officer replevying the same
there into his custody & holds them to the same
purpose & keeping execution in force there. But the
same return them to the person whose goods
they were till 60 days after final judgment. Within
that time execution must be levied or the lien
is lost. The officer may however & frequently
does deliver the property to a receiptor (as above)
& some individual who gives a receipt to the
property & promises to redeliver it to the officer
at a time certain or on demand. But the officer
may take the receipt at his own risque - it is not
bound to do it in any case - same practice on Exec.
The receiptsman is not bound by a promise to de-
liver the property after the expiration of 60 days
from final judgment - even if he promises to de-
liver on demand he is not liable until demand
be made within 60 days & except in both cases
where the goods are under a prior incumbrance
In other case the trust remains till the expira-
tion of 60 days - after the incumbrance is removed
& then the promise to redeliver on demand can
demand be made within sixty days & the receiptman

Process issue to attach the property &c
Lib 404 of the deft — & on return is liable & him in trover
No 484 & an action on such receipt it is not necessary
that the affidavit be in the declaration that the
24 judgment & execution remain unsatisfied
sible property within the state proceeding
in & a person out of the state may be attached
& the attachment & it will have the same effect
Stat (2d. must not the action in the district & bro-
2 — the county in which the property # Even if the
Colo. the, 2d also live out of the state — & invisible
180 property as also to give the action only the effect
may be attached. (in how) Visible property belonging
& an absent or absconding debtor is not exempted
from — service is made by leaving a copy of the
Stat. attachment with the attorney agent factor or
98 trustee in whose hands the property is &
hereby the service alone is effectual under the absent
Mont debtor is an inhabitant of this state in how
587 case? in 1st in which county must the deft
Stat. at his last or usual abode in the state. The mid
50 in the same where invisible property or debts
No 58 due the absconding debtor is attached. But in all
cases where the deft. is out of the state at the time
of the action commenced & does not return before
the first day of the term the writ must be continued
to the next term & if at the second term the

Edmunds
vs the exrs
of Young's
Exrs — in
Ct. London
Cass Court 1817

def does not appear by answer or otherwise. Practice
may & it appears probable that a has had no Stat
notice of the suit - the court may continue the 25
action to the term next following & postpone C.L.
& which time if he does not appear judgment 3305-4
is to be rendered by default. / But in all such
cases execution is stayed ~~[illegible]~~
till the def. gives with the clerk a bond in a sum Stat.
to be the amount recovered & with one or more 25
sureties to be bound to the pl. - that he will recov 1 Rev.
or the def. be receive or annulled the judg- 3355-6
ment by suit to be brot within twelve months Rev.
after entering up the first judgment. & no 26
bond is taken the judgment is erroneous. See Hen. 6
decided that the judgment was void - decision 1 Rev. 3356
since denied. The Stat. provides that real es-
tate taken upon such execution shall not be al- Stat. 25
ienated till after the expiration of the 12 months
or after a new trial had on a suit brought within
twelve months. By a late statute if action is brot
as to all but a the State (stands) before a single
magistrate - & there is no appearance on the
day - the action shall be adjourned to a term not
less than 2 months & not exceeding 3 months & 4 "
then without special notice alledged the re-
turn shall come to hand. Judgment is rendered
by the magistrate against the absent defendant the

Proceedings in error - writ of error must be issued within 20 years after judgment rendered - writ must be signed by the magistrate who rendered the original judgment - unless he is removed by death or otherwise before the writ of error is sued out - in which case it may be signed by any other magistrate. And where the demand in the writ of error does not exceed 15 dollars it must be made returnable before the magistrate who rendered the original judgment or if he is dead or removed then before another magistrate - but if the demand exceeds 15 dollars it must be made returnable to the district court in which the suit or debt in the writ of error is laid. In actions on joint securities or contracts if all the debtors are not inhabitants of this state or else upon them all are - if sufficient effects cannot be found. In this case the writ is not discontinued or void - but if any of the debtors are arrested by the original judgment they may be relieved by Habeas Corpus. But if one of the debtors die after the judgment is rendered - the writ of error abates. If any of the debtors die after the writ of error is issued - the writ of error abates upon them if no scire facias is necessary - the cause must be continued one term at least after the death of the debtor before the writ of error will be abated by the death of the debtor. But if no continued judgment is entered

If the writ is under the seal of a corporation, it must be sealed — the latter should be called the writ sheet — with but it is not called the writ does not state the time is allowed to cite him

The officer (warrant) may not break the outer door or window of dwelling house to arrest his body or take his property — may break inner doors. Comyn. Dig. Pleader 3 B. 20. Bacon Abridg. 783 — Hob. 62 — Esp. 604-5 — Debt may be discharged in the court — arrest on Sunday or privilege by the court that is bail — protection — by one stat. 29 Car. II. c. 7 — any civil process — Esp. 605 — Stat. 5 Geo. 2 c. 27 — all persons whose business is principally only to diminish his estate family & his own goods. If any other person or persons other goods are in it — the outer door may be broke open & the inner opened to take him or his goods. Where a person under an illegal arrest at the suit of one is duly served with process at the suit of another — the latter service is good — Esp. 605 Esp. 606 Bacon if any collusion.

A Deputy sheriff can not serve process for or when his principal the sheriff is under his authority, in either case — but the sheriff may serve or act when his deputy Bacon Abridg. vol. 4th 1805 — 1 Bac 258 so doubtless one deputy may serve or act for another when sheriff — coroner — gaoler or other officers are disabled — service is made & sworn to & a copy left with the clerk or other of the selectmen — or committee men

Process & service – In Eng. a prisoner in custody for an
4 Mass. 27 offence cannot be served with civil process with-
Stat. 70 out leave of the Court or one of the judges. (Au. in Com.
cit.) the Time for making service – In suits in the
Com. Pl. Court or Circuit Ct. the time of giving no-
Stat. 24 tice in ordinary cases is 12 days – i.e. the process
Com. 55 must be served on the def.t 12 days inclusive before
the day of the Court's sitting – In suits before Jus-
155-6 tice magistrates six days inclusive. But in
Stat. suits ag. towns, districts, incorporations, & other com-
16 munities – the writ before a single magistrate –
Kirby service must be made 12 days before the day of
120 the Court's sitting. And in suit by foreign at-
tachment before whatever court returnable
must be served by leaving a copy with the gar-
Stat. 1 nishee (and as the case may be) at the place of
158 the def.t's last usual abode – 14 days at least
Com. 189 before the sitting of the Court. So in suits ag.
Stat. 6 officers for not executing a writ or for not retur-
155 ning it – or for making a false return the time
Com. 80 of legal notice is 14 days. This rule holds as I
understand & conceive only in cases of complaints
under the Stat. & not in the ordinary cases of
suits at Com. Law – i.e. on officers receipts – that the
latter are com. law suits. vid. Kirby 90 & Stat. 54
Qu. whether it does not hold as to suits at Com. Law
Judge Reeve informs that the superior Court have

considered the Sheriff's Officers as not executing process & that they may have their remedy. In all these cases the day on which the writ is issued is included in the computation of the time & that on which the writ is returned. Where service is made on the Defendant allowed to arrest - it must be completed before the evening twilight is gone & while there is light sufficient to enable the person to read the process. Certain protections both to persons & property are not within the above rules as to length of notice — They may be sent by Certificate, through the agency of a Warrant issued on a written complaint made to a Magistrate 1 Hart 456. If process they are brought in the form of civil actions as in many cases they are the usual notice in other cases is necessary (unless sufficient cause is shewn) at the time the writ returned & the Defendant appears in person or by Attorney unless within any of the above rules & is sufficient that reasonable notice is given and if in the opinion of the Court the notice is thought too short - the Court in its discretion will continue the cause or postpone the trial 1 Hart 174
One day can not take advantage of a defective service when it exists. 1 Hart 405

Bail is of two kinds - to the Action & special Bail

Bail 8 Bl. C. 290 Tidd 101

When the party of the 4th is arrested under a capias ad respondendum it is the duty of the officer who makes the arrest to inform the party that he may be discharged out of custody by entering bail according to the practice of the court in which the writ is returnable. This is called taking bail to the sheriff. — At the time when bail is offered the officer must reputably commit the defendant to the custody of the marshal or keeper of the prison to which he is directed. — But a defendant arrested on mesne process (that is, process issued in the course of a suit, before judgment) cannot be committed in discharge without a written warrant signed by a magistrate. (See 1 Tidd 94 and 100. pl. 100-103 of law.) A warrant directed to the proper officer, declaring the cause of commitment, and requiring him to receive the defendant into his custody, is called a mittimus. A mittimus is necessary because the officer has no right to commit without it. — After commitment the defendant according to practice may put in bail (which is called putting in bail above) — i.e. if the bail enter into a recognizance in the sum sworn to (or 8 Bl. C. 290 Tidd 101 Tidd 108 8 Bl. C. 290 taken at random in other cases of debt) — but by statute 23 Geo. 2. c. 24. the officer who takes bail is not liable to any action for the escape of the defendant, if bail be perfected (that is, acknowledged) before the return of the writ. — Bail is an ancient custom of the common law. To bail — or admit to bail — a person arrested is to release him from confinement — on his giving sufficient security to appear at the return of the writ, and to answer the plaintiff's demand. The plaintiff has a right to the body of the defendant on mesne process issued in the ultimate right to take it in execution after judgment; and therefore the defendant's person

the taking in execution the purpose of comm. Process
answered by certificate in place of holding to bail
him in custody of the sheriff – security given 200
The security given is called a bail bond – the de-
fendants are called bail. – The bail undertaking 100
must consist of one or more substantial inhabi-
tants of this state sufficient ability to respond the 58-9
judgment that may be rendered. The bail bond 2 days
is conditioned for the appearance of the defe before 100
the court to which the writ is returnable. This 11 Feb 2-9
bond being given the def must be immediately 2 Wis 91
discharged from arrest. If the officer refuses to
take sufficient bail when tendered he is liable to
the def – for false imprisonment. If tendered be- 120
fore commitment &c. to take imprisonment
Cowles – 1 Bac 206 – 2 Wils 313 – 1 Com. 480 – 5 Ch. 512 – Prac. 196 41
If Deft is committed by virtue of bail – he
can be retained on the attachment no longer
than five days after the rising of the court unless
further cause is not given upon him within the
5 days – the party must be discharged on pay- 1 Bac 206
ment of the costs. When the Pltf in the Execution
is dead during pendency of the relation no 4 Bac 170
further subsequent administration – the def.
may be discharged if the court from which the
execution issued is in term time. The officer
may discharge before the return of bail

Bail – if he appear or surrender in due time in the
Bail execution – the office [illegible] By the surrender
&c in discharge of the office – by having arrested the
Bail not obliged to keep him in custody – the sole
88 use of bail to arrest – But the office ought
to have been a bail – the surrender given in
discharge of bail – the surrender in discharge
of bail – in the latter case the bail
cannot be discharged by the office but upon his
duly appearance & that he is responsible & may be
88 90 committed notwithstanding the bail – and
Doc 1663 that a bail is not to be required, unless
[illegible] 2 Str. 1145 – Doc 1663 – 89

Bail in error. If the office take insufficient bail they
may have bail the 1st on motion – the same upon the
Bail in error in the exchequer chamber. But upon it being
88 proved there is a will the office may be
forced from the writ of error. But bail in the body of it
88 cannot on the latter rule except bail above the
Bail above specified in the bail bond in 50 l
88-240 the latter 100 l. Doc 1681-2 – Comyns 281-2
281 Doc 1681, 240. If under accident it appear that the office
having a capias ad satisfaciendum
88 at the time the writ was returned bail
were in the office – Bail
" a time on motion in the principal action
because the [illegible] was not
surrendered in the office. Upon [illegible]

Bail. If there the bail having refused & accepted an assignment of the bond — does the office to whom escape — it is a good plea to the latter that he has sufficient bail — or bail apparently sufficient & assigned & assigned — & the case turns upon the question whether the bail were duly &c. Is it necessary to the office to plead that he offered & assigned & it did the Plaintiff to demand it. The stat. provides that no recovery shall be had against the sheriff unless it be had against the principal & bail — or shall prove to be the bail-bond — which seems plainly that it is the duty of the sheriff. & that pleading a recovering & assign would be sufficient. But if the officer having received judgment on the bail bond. dies a scire facias by his executor is not barred by the statute saying the original debt & costs. The executor may still recover on the scire facia. The officer has a distinct remedy against the principal & bail to the same cause of action (ie) while a suit is pending against the principal cannot be arrested again for the same cause — if he is the court will discharge him. Formerly if the bail were arrested on the original action the could not afterwards arrest the principal for the same cause — 2 Str. 1150 — 2 Wil. 181 but now in Engl. in debt on judgment &c &

1 Roots 54 — 1 Salk. 98 — Stat. 3 — 1 Roots 254 — 2 Salk. 606 — 1 Str. 2 Salk. 606 — 2 Salk. 606 — 1 Str. 2 Salk. 606

cannot be arrested if he ~~was arrested~~ the Comm. Pleas cannot
warranted in the original action Str. 82-1039-Carth 98-2 Salk 556
The the conditions of the bail bond are that if the Def. shall
not abscond at the time & place & get his own ab- Hist.
-pearance dies not & cause work & labour & cap. 82
the court. For by the stat. the bail are made lia- 434
ble only in case of the principal's decease & that
return of non est inventus upon the execution 1 Ld
& then debt is not surrendered in court if it 2 Ld
shall be lawful for the said State or any of- Stat.
ficer & have like diligence & have his body &c 5
when & if the debt is surrendered on the execution 2 Ld 4
before non est returned the bail are discd. Ld Ayrb
however the principal makes a confession, it 382
not surrendered either in court or on the execu- 5 Ld
tion & non est return is returned the bail are liable. R. L.
Their liability extends to debt and costs. The return 85
of non est must be made to the Sheriff & Coroner
both as to the personal estate & notary & real
estate - for the bill is not obliged to accept of real
estate in discharge as instead of the body. Stat. 29
The proper action to be brought on the bail-bond after Ld. 85
recovery of the debt - two - from the words of the stat. con. 75-5
it seems that a scire facias will lie. Hisky 385-2a. Va. 28-1-89
In Engl. the action must be brought in that county in
which the original action was brot - C.P. 12-2d 367-1825
8 Wil 345 - 2 Bl. R. 858 - not necessary in Comm.

Bail Indeed an actual [illegible] of the principal, for
Suff the execution is not necessary to [illegible] the bail.
174 For it is the duty of the officer holding the execution
6 L. 85 to make diligent search for him & if by the use of
Kirb. due diligence the officer cannot take him the
382-4 bail are liable — [illegible] not liable. But it has
been determined in a case in which the principal
Kirb. 382 shut himself up in an inner room & by threats
2 Ca. 75 prevented the officer from taking him — that the
bail were liable — suff[t] avoidance.
174 The return of non est inventus must be fairly
R.L. 387 made or the bail are not liable — If the plff by
Kirb. artifice procures such a return to be made unne-
383-4 cessarily for the purpose of subjecting the bail
[illegible] 809 they are discharged. But it clearly is not necessa-
434 ry for the officer in order to subject the bail to delay
R.L. 387 the return till the expiration of sixty days for the
2 Ca. 75 purpose of finding the principal — All that the law
1 Bac requires is that he act fairly & reasonably. If the
2.67 principal dies before non est returned the bail
1 Roll. 336 are saved — either [illegible] bail to the sheriff [illegible]
Hut. 47 may be discharged — 1st by an actual surrender
of the def. body, in Court either by his bail or him-
self. 1 Bac 2?8 — 1 Roll. 337 — R.L. 380 — 2 Ca. 75. — Secondly
by a surrender of his body or [illegible] a tender of suf-
2 Ca. 75 ficient personal security on the execution before
non est inv. returned — or by his being in a situation

in which he might be taken by the use Comm. Practice
of due diligence to his death (1 Hawk. P.C. 1). Thirdly if he
is will be seen hereafter by the jury engaging in
ing thereof dies. Fourthly by his accepting a
plea without special bail for the word in the fourthly & eight
fifthly by his obtaining final judgment & sixthly 15 & 16
by the criminal's death (1 Hawk. P.C.).
Where appearance in court without a surrender
or a without hearing does not discharge the
bail (Dr. Dav. Hutton's Case). But if he
rendered in court it is necessary for the better, the
bail that the surrender be entered on the record
for no other than record evidence is admissible to prove
the fact. (Cro. Jac. 6 - Hob. 210 - Cro. Car. 202 -
Hawk. P.C. 82. On such surrender the party
must move the court that the def. be committed
the sheriff's custody - Otherwise he may go at large
& the bail lose the benefit of the arrest. But if not
the def. after the court or officer before the def. is
custody? It is not the practice. If the principal
in custody for a crime the bail may bring him
up by habeas corpus & surrender him. When the
def. whose body has been attached appears in court
& does not enter special bail he must bail in the
B.R. requires it in due term of the court & if the party
accept a plea not containing these words - the
def. may be discharged for want of bail.

Bail - Defendant ruled to bail to abide event of
2 Root 316 the action & to plead issuable & not to
31 plead the Judg. But if the Defendant is allowed to
Bail. plead special matter in the original action - he is not
Ante 281 entitled on a new trial being granted to be
again committed to custody again. Because he is not entitled on the
new trial to plead special bail - for that is given
merely & wrested for being taken with execution
The act has annexed the duty of surrendering him-
self at the return of the writ - & on obtaining judg-
ment in new trial relates back to the time
& he is brought in to that time & there body
has been attached & remains continued
in custody - no special bail to be given & therefore
2 Root 101 prevail - Right cannot in the 1st Court because
the def. placed in custody & give special bail
he has waived that right by submitting to plea.
Same rule prevails in Mass. if the def. prevailed
in chief & the def. had arrested he there
would be the same evidence & waiver. Defendant
regularly the same rule would obtain on a new
trial granted by setting aside a verdict
on the first trial (see the cases)

Bail. 2 appearance of the Defendant at the day in court. The
Ante 8. Bail to that. Court the def. may enter a common ap-
pearance for him. The def. by giving a recognizance
2 Root 318 - 2 Kent 36 [illegible]
3 Bin 202. The def. [illegible] to enter his appearance

not in general appear by attorney. but Com. Practice
now by stat. Westm. 2 may. Tidal 114 - 2 Lil 128 a
Rep. 244 - Carth. 83 - Corporation aggregate must ed. 14
appear by attorney. But the Lords Court has held
cited that an attorney may not appear for a Town
Bl. 2 which determined by a vote of the Town - or by one that is
assent authorized by vote & retain an attorney Salk 85
Infants & Lun. must appear by guardian or next friend Hob. 52
Wood by imparlance - vid Tit. Husband & Wife - Parsons Lindwood book
Sheriff cannot appear by attorney 2 Sa
Of a Special Bail - when a deft who has been ar- Hal. 85
rested is brot into court by an officer or person - & Bail
ioned into court by his bail - or by his own action 200
but yet he may be committed & recover bail
which he is discharged only by entry - & the bail 2 Sa 1
& the deft are become discharged. This is called Tidal
in Com. Bail above or bail to the action - deft is not 151
remunerated but is not allowed Special unless to it. Hal. 30
Special bail - if the pltf require it.
Special Bail according to stat. must consist
of two sufficient - but this common & accepted now-
a. & the pltf does not except the sureties offered the Hal. 30
court decides upon their sufficiency by inquiring of
witnesses. In Com. Special bail is given in open
court only - by the deft entering into a recog-
nizance in sufficient sum that the def shall 30
abide the final judgment. The recognizance is made

Bail special = payable, & the pr. &c. in the recog. &c. viz. that the bail do render & render the body of the principal to prison, or else that they do pay the sum mentioned in the recognizance to the king. 1 Hawk. P.C. 127. 2 Hawk. P.C. 91. In Eng. it may be taken before a judge in common out of court. If the recognizance is forfeited, the special bail are entitled to notice of the writ, may render the principal & discharge themselves. But it is forfeited no otherwise than by the principal's non-appearance & return of non est inventus on the execution against the bail. 2 Hawk. P.C. 98. 2 Hawk. P.C. 98. to appearance. In Eng. the bail's liability is discharged by surrendering the principal before the return of the writ against them. Tidd 241-2 Hawk. P.C. 2 Hawk. P.C. 3 Bac. Abr. 74 - 2 Str. 1176 - 1 Bac. Abr. 216-220.

In Eng. an attorney of the court cannot be special bail - to bail & maintenance & champerty. 1 Bac. Abr. 183 Dougl. 450 a. 1860 - Hawk. P.C. - Lever in com.

In Eng. bail to the action (i.e. special bail here) have a right to break into his house - as much as he can break open the outer door. 2 Hawk P.C. 120 & a right to break open the outer door. And they may break & enter the house of a stranger in which he resides to take him. Id. the outer door being open. Qu. if it necessary that the entry & arrest? - So not the same rule as to bail & mesne process. Qu. whether special bail recognized in one suit can take their principal

by virtue of the said piece in writing. Comm. Practice
Decided that they may by rule of the Court of K.B. 387
Kings Bench direct a Capias ad Satisfaciendum
also issued in Comm. Law office having made an Ibid. 87
arrest only by an escape-warrant which is 2 Wils. 29
retained in another suit. In the nature & use 2 St. Shorts
of a bail piece see 1 Mod. 291 - 2 Keb. 872. 875. - 5 Dall
merely an entry or memorandum of the proceedings in setting the suit to Special Bail.
If final judgment is rendered ag. the def. the
rule is - that on the principal's surrender & R. L. 187
return of mesne process the special bail are Ibid. 8
bound like bail to appearance to satisfy the
whole judgment debt & damages & costs. The usual rule
& most proper action ag. the special bail is scire 175
facias - it being founded on matter of record. Ibid. 878
& the scire facias ag. the Bail & principal may be brought
On the scire facias the judgment recovered ag. Ibid. 39
the principal is affirmed against the Bail with
additional costs. But the scire facias or other 99
process on the recognizance must be sued out & served on the
the bail within twelve months after the final judg- 175
ment. But as bail to the sheriff are subject to about
the same limitations. It has been decided that 880
the 12 months are calendar months & not lunar 2 St. 124
months. Gen. rule of the Com. Pleas. contra. R. L. 242 - 2 Bl. 1141 - Ch. 165
The year to be reckoned from the day on which judgment was rendered.

Bail special - against the principal may approve other
4 Bac Abr 436 wise than by the record - So no entry on the record
is made in our practice of the appearance day on
which judgment is rendered - but judgment being
entered as of the last day of the term. A special
bail is given in the Court and an exoneretur
taken - The scire facias or other process must be sued
out on the bail within twelve months after judg-
ment rendered in that Court. The judgment in
the Court below in this case is not final within
the meaning of the limitation clause in the statute,
for it is destroyed by the appeal. In consequence
of the limitation - execution must be taken out
&c. the principal must surrender within
90 days after. and it must be taken out in such
season as that the return may be duly made &
notice be given before the 4th day of
Stat. 23 Geo. II. ch. 26 sec. 7 term. But such execution may be taken out at any time until
it will admit of due diligence - & take the principal
Stat. 23 Geo. II. ch. 26 sec. 7 Suits on bonds or recognizances to pay rents
Bac. Abr. 365- are not within the limitation. of recognizance
366 for the prosecution of an appeal by debt are not
exonerate the special bail - In this case both bail
men are liable if duly prosecuted. the debt & costs and
Stat. 23 Geo. II. ch. 26 sec. 8 the special bail on the return of non est - or die &
Bil. 20 damages only. Under our stat. special bail and
bail to the action may on suits commenced or prosecuted

ag. them & before satisfaction maintain Comm. Practice
no action against their Principal. and a bond
& indemnity is given that may do them main-
tain action upon it as soon as they become
liable pd on the principal's account & return 30 Feb
& non attion & before suit brought thereon 21-105
(viz: to save harmless) with it is reasonable that
that they are indemnified & Sett action thereon
lieth - except in Eng. debt & letter way. & final judg-
ment is given in favour of the special debt & costs
are of course discharged - as bail & the principal pd
be if there were no special debt. and on er
roneous judgment the remedy is writ of error
but the effect of a final judgment is altered
deemed a final judgment within this rule - as
a judgm. it in the Exchequer chd & reversed in Cam. Err
& error - is a ~~time~~ judgment in the Exchequer chd & affirmed
in Cam. Err. bail may be charged on the judgment
on writ of error. Com. Dig. Bail C. 4. & 5. & 6. & 7.
mon. in prosecution of appeal by Stat. 24 Geo. judg-
ment in favour of dft. discharged as in case of
reversal is mutual in favour either Plaintiff shall
the same rule & time & diligence in prosecution. Com.
Dig. Bail. Ibid. Every judgment in which shall be
reversed by the dft in the Exchequer Cham-
ber & appeal removed in the H. of Lords
by a writ of Mistake & not appealed from dismissed

Bail special — special bail are also required to be
Com. Dig. bail to arrest by a writ indorsed with the
Bac. Abr. Exchequer practice by an
Vol. 7 the execution before mentioned & by
Rolle Abr. being in a situation in which he might be
266 less able to pay the debt — or by his death before such
Lutw. return made. Special bail may be discharged
Prac. on motion if the writ was sued out in the wrong
2 Vol. 5-6 county &c. & by consent of the parties
in writing &c.

Time & Pleading — The defendant having appeared & where it is necessary given
Com. Dig. special bail — & been time to declare & he
Pleader makes his declaration which in form comprises the
A. 1. next stage of the proceedings. In Eng. the first
2 Vol. 7 proceeding after bail & the notice produced in the
Tidd's writing of the declaration — which was indorsed on
Pr. C. B. the writ commanding & telling the time within
405 which he was to appear & put in bail. By the
Bla. Com. practice of the Courts of Exchequer, Common Pleas
& King's Bench a declaration may be delivered
de bene esse before the bail is put in, but
by Default — if the defendant do not appear at the return
of the writ & the bail put in three days notice
Stat. 13 is called in court — & if bail & make default
& service of this declaration is good. In the bail
the docket is called on the last day of Term &

d[efendan]t &c. more than a year by time — Com. Practice
set a letter, & have this cause entered
called but no d[efendan]t appeared — Judg-
ment is entered as in such case upon
motion & the record duly proved. Actual
damages shall be assessed in like manner
as before the return day, & more or less
than such shall the d[efendan]t be ruled to pay,
by the court discretion. The d[efendan]t cannot
have any execution against the d[efendan]t till
the third day of the term. In the n. Comm
it is not usual to call the docket-
therefore judgment is not rendered unless
demanded by the d[efendan]t till the cause comes
to trial — unless the d[efendan]t moves that the
cause may be called. By a rule of both courts
however the d[efendan]t may, at any time before
judgment by default — notwithstanding any appearance
for the d[efendan]t by his attorney will declare in
person that in his belief there is a reasonable
defence & unless the court will order
a d[efendan]t the costs — this is a special delay of
proceedings where there is no defence. After de-
claration must be entered in the court for
many purposes — as for the purpose of moving for
damages — on which motion or inquiry
hearing is had — & the amount of damages shall
only be ascertained, & not the fact of recovery
or judgment. Lord Raymond 1274 — 1 Salk 405

Defence & Pleading — But after a default [illegible]
[illegible] in actions [illegible] the [illegible] of money [illegible]
[illegible] there [illegible] a [illegible] in damages.
[illegible] judgment by default or when demurrer [illegible]-
[illegible] are [illegible] to the court — in Eng. by a writ
[illegible] of inquiry & the jury [illegible] in damages
Doug. [illegible] in damages [illegible] the [illegible]. But [illegible]
[illegible] has been dispensed with in certain cases
4 T.R. in Eng. — as in actions on bills of exchange [illegible]
326 - [illegible] - 410 - 1 H. Bl. 252 - 528 - 541 - 7 T.R. 470 - 4 T.R. 275 - [illegible] 184
[illegible] - Doug. 301. In Eng. a defendant [illegible] by default admit-
[illegible] nothing more than that the plt is entitled to re-
cover some thing. 4 T.R. 302 - Doug. 302 - [illegible] 65 - But if
the default suffered where the damages are cer-
tain & no hearing in damages is moved
by the plt judgment goes against [illegible]
[illegible] for the whole sum demanded. [illegible] these
[illegible] circumstances the deft [illegible] by default
admits that he is liable to the amount demand-
ed — as in cases [illegible] & [illegible] cases [illegible]
tract. But if a hearing in damages is moved
4 T.R. the default admits [illegible] nothing
302 more than that the plt has cause of action &
Doug. he must prove [illegible] what amount he has [illegible] in
302 [illegible] damages [illegible] that the default here admits
nothing more than the plt title to recover some-
thing as in Eng. — This is [illegible] made, [illegible]

hearing in damages judgment by com. practice
in the case of mutual [illegible] before the dam-
ages are ascertained — not a motion requisite.
for nonsuit — the defendt admits a liability for
the amount of the demand — but by the nature
of the obligation — except in case of dilatori-
ness by indorsements [illegible] were no motions
made for a hearing in damages — here the
court ascertain the damage by inspecting the R. L
writings, & practice the indorsements C. S
& any. hence rule where damages cannot
be ascertained by reference to some standard.
as in action on obligations or collateral articles
there the court inquire & give by the nature of
the writing. the articles. the motion must
contract the indorsements from. but if such
motion is made & the default the dft may
in term. prove payments not interlocuted
by pltf. (Accurin Eng. C.P. 302-3). In Eng. there be-
ing no motion for a hearing in damages but
a jury of inquiry — the rules which regulate
the amount of damages on a default are some-
what different from ours — there — if the damages
are precise the default admits only a cause
of action. but on an obligation for money it dft C.P.
admits that dft is liable & the whole issue is de
termining the instruments admissible.

Defence & Pleading. of Nonsuits. If the plt after

Nonsuit. the return of the writ is guilty of any delays or

3 Bl. C. defaults against the rules of law or of the Court

295-6 he is adjudged not to pursue his action & becomes

nonsuit — as if he omits to procure bonds for prose-

[illegible] cution when ordered by the Court and give over

5,1 when ordered or his decl. &c. The plt

Ibid. may also voluntarily suffer a nonsuit before or

173 after defence made — ~~by permitting himself~~ by

permitting himself to be three times publickly cal-

led & not answering — but this must be done

before the verdict is delivered to the clerk. But

[illegible] if the jury are returned for a 2d or third conside-

5,4 ration he may become nonsuit before the 2d

verdict delivered to the clerk. In these cases

deft on motion has judgment for costs whether

he has made defence or not — not without motion.

Ibid. Motion must be made in the term in which

209 the nonsuit is suffered. In Eng it is common for

the Judge to order the ~~plt~~ to be nonsuit while

the cause is on trial — if his declaration does

not state or his evidence does not prove a

cause of action. But the plt is not obliged to

[illegible] submit to the order — on being called he may ap-

[illegible] pear & then the cause must be tried by the jury.

[illegible] [illegible] nonsuit order-

ed without any evidence. [illegible] nonsuit

suffered under an order of the Court Comm. Pleas
the 7th it did not lie in Court to the Supreme Court
of error, it could not be removed in Comm. Pleas
after Judgment was rendered in Comm. Pleas 206
cause.

Retraxit — Such a one may be rendered 206
against the Pltf upon a retraxit after demur-
rer & the demur made. A retraxit is a total dis-
mission of the suit in the nature of a voluntary renuncia- 206
tion of it in Court. After a retraxit the Pltf
cannot sue the same Deft for the 206
same cause. Redress in Comm. Pl. may with-
draw in any stage of the suit in action of mur-
der & battery - upon the Deft's default - 207
upon the return of a retraxit or dis- 206
mission - no after action can be maintained for the re-
storance of damages the retraxit bars it. After retraxit the Deft must move for
Judgment to set it be arrested the first 206
day of the next term after the same term
in which the retraxit is entered - if omitted
to move for it then it is then at the return of the
writ or within three terms publickly called the en-
try made in the Practice is No appearance - after 207
which the cause is out of court - and may be rendered so
that the writ cannot be revived without a new suit for the

Demurrer & Rejoinder. If it is — title of the Term may be cited, pray now to be read. In both cases the pleadings are entered upon the Roll & are read in three times, until called at the common-law & entered at the end of the Term.

Issue is made up, as in the case of the Demurrer made & joined as in the different kinds of Issues — the Issues & Pleadings

as to the Time of making defence — or Pleadings is, what in term. a.d. Plea. is called the Plea are to be made heard & determined before the Term is expired & the time in every case limited before that time. The proviso in the Statute of Jeofails that the rule & the words and that they shall be made & entered only before the rising of the Court in the Term in which the Issue is joined. In the Superior Courts of Record the Issues are made & entered on the Roll by the Officers of the Court & the Secondary. Plea in abatement which is to the merit or to the substance in which many are not with-in the rule — nor Issue in abatement to the Writ or Process. Plea in the action in the superior Courts to be made according to the rule by the Opening of the Court in the morning of the third day before the Term is to become week by the month the day before the Term is begun. This rule is not to be

strictly regarded in practice since the Com. Pleas
new organization of the superior court a rule
is made in every term and those causes will
be continued to peremptory in rotation.
If to summon & attorn (Mich) it was ever settled
whenever the deft appears that he may
enter his plea & he shall have liberty & calls it
in action on the court in its discretion may
oblige him to pay costs - & the Pff is to have a
reasonable time allowed to making answer to
it - & the court exercise a discretion to certain
extent in allowing alteration. But after the
deft has pleaded & issue & judgment have been
rendered upon it in any court he cannot alter
plea & the declaration - as general issue in Ld.
appeal to Supr. deft cannot demur in Supr. C.
& on appeal from justices of the county court
but it is agreed rule that the deft on appeal
may in the court appointed to change his plea
made in the court below - as of course & without
costs - generally - Deft changing plea &c in the
term in this case. He cannot however go back in
the order of pleading - as from a plea to the action
to a dilatory plea - or the latter are waived by
joining issue - (Mich 18 Geo. 3.) - nor can he change
a plea of title in trespass on appeal. The rule
however not done in the Supr. where appeals &

247
Kirby 89

Defence & Pleading – as to the change of the plea made below that it must be done by the opening of the court in the morning of the three days the term being one week – & of the fourth day's limpse This rule is never strictly observed & non allowed of course in the superior court & cannot be continued by the rule to plead in succession. The rule as to changing in the court appealed to the plea made below depends on usage. & it is changed freely in the court appealed to & the plea made below there is no need of pleading it de novo in the court appealed to. as to the alteration of the plea under the stat. in the court below 2 Rev. Code it was originally made it was decided 2 Hayw that the deft may alter or add a plea the trial has begun. It is a question – or misplending & the stat. says whatever &c. & an application made 1 Hawk in the County court & a plea in abatement 361 may be altered in the superior court. But the court will not allow deft to alter in any case by making a new plea when it is inapplicable to the action. The deft has been allowed 1 Hawk to alter by plea of & issue after a demurrer 367 argued & the court delivered the opinion for 2 Hayw judgment. & has been decided by the sup. court 205 that pleas in abate may be altered.

The issue being closed the cause comes to Trial

Regularly matters of Law are to be determined by the court & matters of fact to be tried by the jury. Sometimes of law are however often involved in issues in fact — especially in the generality in which action. On the other hand issues in fact may by agreement of both parties be closed & tried by the court without such agreement. Issues in law are real ways determined by the court. After a trial sworn to the jury the court will not stop the hearing & continue the cause without the consent of both parties. But courts do not in giving the charge to the jury direct them to find — nor give any opinion upon — the fact or law. But R. L. if dissatisfied with the verdict they may in civil cases return the jury for a second & third time. Or in criminal not to a fourth. This may also be done in Eng. but it is not usual — as the judge directs the jury in the first instance after the cause is committed & the jury may then hear the argument & evidence can be heard.

The party who take the affirmative of an issue in fact first exhibits his evidence & his counsel open & close the argument. After the deft has entered upon his defence — the pltf having closed his evidence it is discretionary in the judge in Eng. whether the pltf into evidence on a collateral point

Practice
Stat. 2
342
Ibid
26-7
Court
25-45
Not a matter of right — cause not after heard by jury — post
Act 27
R. L.
96-153
179-416
Sh. 118
Act. 28
Court
571
Court
604

Issue & Trial – not to be confounded with the Pleadings – Part 604 – Either against the merits of the principal question – or not. In either case the counsel for the party taking the exception opens & closes the argument. On motions & interlocutory questions only one counsel can be heard on each side – without leave of the Court. By stat. only one counsel is allowed to argue a cause even on the Stat. 36 merits unless the demand is above £4 8 – or the title of land concerned – This rule not regarded R.L. much in practice. If a person is unfortunately 241-451 made deft to prevent his testifying there are Ency. 420 two modes in which the husband may be dis- Bac. Ab. cussed at the trial first: there is no evidence 285 him the court will on motion expunge his 1 Root name & permit him to testify – 2d. if some slight 489- evidence against him – he may in motion be 2 Root 1 deft first & on his testifying be 232-420 Bill of exceptions Demurrer to evidence & the like. Pleadings – In chancery the very same Trial & Court of Judgment.

Stil. The Verdict is the finding of the jury on the issue 377 closed & there. Regularly every issue should be found affirmatively or negatively in the terms of it. It is not sufficient for the jury that 1 Root they find for the pltf. or that they find all the 571 material facts stated. But if they find in terms

the substance of the issue the verdict is void & bad
is good (tho' contra 4 E. 2. 1st) — The court may direct
after the verdict & make it formal where the sub-
stance of the issue is found. The Constable
who would then the judgment may be for want
while they are deliberating when the cause
is ready judgment be arrested or this cause.
For diff kinds of writs of Error see Plea
writs of Error — For damages see Int. Int. Int.
& the jury give more damages than are demand-
ed — the Def may remit the excess & take judg-
ment for the rest. (Interest when recovered by way of damages
& several damages where there are several Defts
&c. see Int. Int. & Admlty Pract. 458 — Int. 575 — 420
Courts may remand or supersede execution or stay
or writ issued improvidently.
Costs (Costs) — at Com. Law no costs were allowed
to either party. But the Def when un-
successful was amerced for false clamor and
the Pltf when judgment passed against him for
unjust detention of the Def right. Now in Eq.
costs are allowed & the prevailing party in most
cases by several statutes — the first of which is
that of Gloucester 6 Edw. I. Costs are regularly
allowed in Comm. & the Ecclesiastical Courts in all
civil actions & suits in some cases
but they are never taxed for the Pltf in error

Verdict & Costs on the writ in Error – the Writ of Error
Hopkins accordingly believing judgment is entered – as the
Libels insufficiency of the declaration.
Thirdly if the Def in Ejectment will & exhibit
his Book account – & be offered by the Pltf
at the trial being an action upon the case to
recover the Book Debt – which he might have
exhibited in the former action & prevailed there
can have no costs unless he shews to the Court
that he had no knowledge of the former suit
or was unavoidably hindered from at the time
exhibiting his account.
Fourthly On Appeal from Verdict & Judgment
Judgment is discontinued or mistake of the
Clerk – no costs – like writ of Error. but recover
if the mistake occasioned by the fraud or the
negligence of the Defendt
But Plaintiff may sue out Writ in action of Trespass
Assault & Battery & Imprisonment in the case out
of the Inferior County Courts if the damages
found by the Jury assessed & given under the 40
shall recover no more costs than damages
unless the title or inheritance or interest of
a Freehold or Freehold estate in the principal matter
be in question. & unless the Court shall certify
under the Seal of the Court – in which case the
Pltf in such suit shall have full costs – & prevent

trivial practice and Rule to that effect
not necessary & the defendant will recover costs 58 Geo
but the Plaintiff may recover damages in case a writ
been sustained & held Doctrine of the case 2 Bos & P
founded on contract. This Court is an exception 1 Bos & P
action or 40£ – Execution delivered 8 Feb 4 Geo 3 56
writ for – damages 11£ 7s 11d not allowed Com. Dig
Whenever defendant appears from a judgment on
Scire in abatement & does not plead the plea
in the court should be cast shall be taxed against
him upon the judgment on the plea in abate- 2 Tid
ment & execution shall issue for them however 22
the cause may finally issue – & discontinue 2 Burr 969
trivial exception. Costs cannot be recovered
taxed & awarded by the Statute 4 Geo 3 Chap 16 Geo
ment he recovers no costs which accrued before 3 Burr. 89
the amendment except in writ Error &c – R. L. 301
fieri facias. Writ of Error from Probate Court, Book
of mines the decree being affirmed costs 325
were taxed against the mines. Qu. should not the
costs have been taxed against the Executors Mr Rose
in motion in arrest of judgment & a repleader should
be awarded full costs are taxed on the final 373
judgment. It is an action against several
one defendant obtains a verdict & the Plt proceeds
against the others – the former is entitled Costs
but he can have only one attorney's fee taxed and 486

costs only on the hearing of the issue in fact
Stat. 1 & the costs are fixed in the writ in which
Geo. 2. c. 27. s. 6. the summons issued & travel cost are due
after such return – even if the witness were
here – then there would be but one fee taxed
as both travel & attendance are meant
cover'd if two or more writs received in a suit on-
ly one fee is taxed – & travel & attendance for
one only. On petition for new trial if the
respondent is cited & appears at the term to
which the petition is returned & the petition
itself is addressed to the court at another term
2 Tot. the respondent is entitled to costs. He is in court
81 under the citation tho the petition is not re-
gularly before it. In qui tam prosecutions
Ib. 86 the deft if acquitted is intitled to costs as in
civil actions. On judgment by default the
magistrate can tax costs only as in com-
Mass. mon law unless there was an antecedent process by
256-262 where the suit must appear on the record
Mass. 108 & justify the taxation of any additional costs
Costs are regularly taxed in court by the jus-
Sheriff. tices – the 25 Geo. 2. c. 27. s. 2. directs they may be taxed
25 out of court. On judgment upon plea in abate-
ment costs are taxed in the C.C. only at the
second day of the term – because the Stat. pro-
vides that no plea in abatement shall be received

The attorney of the prevailing party from practice
has a lien upon the costs & may require the Ex. 684
officer holding the execution or the adverse Dowell
party not to pay them & his client - Bl. Com. 821 - 2 Bl. 440.
but this lien is subject to any equitable claim of
the adverse party - as if a set-off. Hen. Bl. 24-128-217-65
The mode ascertaining is by rule of court at the discre-
tion of the court. 2 Salk. 555 - 1 Ld. Raym. 734 - ordinary item
of costs to 5th Anne ch. .

To the mode of setting aside judgment see Arrest
of Judgm. - New trial &c. - and Execution see "Execution"
"Execution" - Court may remand a supersedeas ex- 1 Bac. 663
cution, or other writ improvidently issued. 4 Bac. 663
As to amendments the allowed before the record 3 Bl. 407
are made up. they anciently at Comm. Law were 1 Bac. 489
resolutely not permitted afterwards except in a certain way
the terms in which the act received Construction. 3 Bl. 407
and according to the practice which commenced Lord Mansfield
about the 18 Edward & continued a long time - but of
even the slightest & plainest mistake would not 3 Bl. 410
nearly be rectified after the record was inrolled - but 5 Bac.
& the terms in which present amendments are
more liberally allowed in Eng. at Comm. Law. and
when practice requires it they are permitted 3 Bl. C.
at any time while the suit is pending before & 407
final judgment but not afterwards. But now in Eng.
all formal mistakes are in general curable by statute. and

amendments - who are numerous - The statute of Jeofails is that c 14 Edw. III. stat. 1. c. 6 - 4 Hen. 4 c. 7 - 9 Hen. 5 c. 4 - 8 Hen. 6 c. 12 - Lauer 16-18. These Jeofails relate in general to artificial & formal notations Hob. statutes defects & mistakes. Hob. 96 - 101-2 Hob. 18 - Trail. 614 - 8 Coke 155 b 159 a - 4 The terms used are Latin - false spelling - misnomer - & the date are terms exp. in the statute - want of proper signature &c We have two statutes on this subject - The 1st provides that in all pleading judgment or proceeding shall be stated duplicitas dec or reversed - for any kind of circumstantial Stat. error mistake or defect if the person & the cause are rightly understood by the Court. This provision however in the general rogue did not 21. form any special application in practice. Mere imperfection & special defects are probably as to pleading & amendment but not matter. exception. 4 Co. 44 Stat. also provides that a writ, plea or declaration - judgment if amended in terms of Deft 22 the Deft shall have liberty to amend his writ on payment of costs & the time of the amendment. This stat. extended & formal defects only 3 & 4 It has been decided that a motion to amend under 5-6 this statute was unnecessary by one now settled 24 Geo. 2 enacted in 1730 - the general practice of amending

any stage of the proceedings before the
record and any error or mistake in
the writ declaration pleadings or other proceedings
the record in civil causes may be amended
at the discretion of the court. This act differs from
the old in several particulars. First under this
statute making a record is necessary first it
was formerly - Secondly under the 8th geo. 2d
it was that the writ only was amendable - Under the
new act both the record and writ may be amended
Thirdly the old amendment could be made till after
judgment as the 8th & 9th in abatement only
Under the new amendments may be made at
any time before the 8th even before plea made by
either party at any time afterwards. The amend-
ment under the 8th & 9th was confined absolutely to
pay the legal costs - Under the new the allowance
is still at the discretion of the court. The sup. Court allow the
taxable costs as the writ & pleadings do not
uniformly with the court. The sup. Court allow the
taxable costs as the writ & pleadings do not
uniformly. The com. Pleas in Lancaster county
very seldom allow any. 5th Under the old statute
formal defect only were amendable - Under the
new every species of defect may be amended ex-
cept when the proceeding is commenced by capias or
the writ and declaration must be endorsed. 6th Under
2d Geo. 2d it was required that the

Amendment — the nature of the action. Replevin lies
2 Salk 654 the writ is not abatable and — the amendment pro-
posed could not cure it — in fact judgt cannot
(He has been allowed to write the Memorandum
amended & will make out a blank writ of Error —
in Trin. Term 1803 — Mich. 44 G. 3. B. R. permitted a declara-
tion de amended after judgment upon demurrer
that it was insufficient — Dic. 2 Wils 207 — 11 Rich 2 — 5 —
Willes 395 — Str. 82 — 1 Barn. 309 — 2 Barn. 210 — Salk 45 Dougl. 104 — 316 — 458
Str. 21 Replication amended after verdict — 2 Salk 649 — Hob 87 —
Str. 182 — 2 Barn. Mich. 14 G. 2. B. R. Special Writ of Error
may be amended by amending the
Show. 331 record in C. B. 4 Mod 41 Post 261 — Writ of Error mis-
Str. 43 -recites the Court below amenable before plea.
Not. 364 Writ of Error regularly not amendable in Eng.
1 Com. Dig. Salk 49 — Carth. 510 — 2 Barn. 202 — 5 Mod. 16 — 60 — Writ of
error in Com. is in form an original writ Lex in
Eng. 366 appx. After an amendment the Writ
Hob 5-6 after an amendments are made. For from the
time of amendment it is considered as a new
writ. But when a party has leave to amend he
may amend at once all amendable defects. The
record of notice not amendable on writ of Error —
Mod 41 which is the same written minutes by which
15 a make the amendment. As in the Exchequer by bill
the minutes of the Clerk are amended.

after the term is past when there is no Common Pleas
while a writ of error from during the term No. 52
proceedings in chancery are amendable at any
time. Defendant demurred in this case after trial 220 H 4
expunged the entry. The statute of amendments extends
only to common pleas writs and pleas in no other
tribunals, not even in a case like this where the
writ was issued in a suit commenced before the
statute of amendments between civil & criminal cases 220 H 5
&c. If the statement of claim contained fact will make the H. L.
record good it may be amended. Thus where the 504
declaration in the writ is defective it may be amended
by a statement of the truth will make it good
as misnomer, misdescription &c. But if the
statement will not make the writ & the impos-
sible to amend. A bringing in true the 220 H
the indictment which is void is irregular here 220
can be no amendment for the indictment or a writ
or it is the same cause. So if the return of ser- H. L.
vice is insufficient when the cause of it not being 504
existent is not the writ may be amended by the fact
upon the truth. But where the writ is void it is im- 220
possible in the nature of the thing to make it good
by any alteration - writ there be no signature of a
Magistrate - or a certificate of the service - no di-
rection to an officer &c.

In some instances a verdict may be amended

Amendment - by the Court - in a declaration containing several counts - no evidence is given on the last & the jury find a general verdict in the 4th it may be amended in the judge's minutes & entered on those counts only on which the evidence applied - Secus if any evidence was given on the bad counts - here a venire de novo must issue. So a mistake by the clerk in entering a verdict may be amended - as in the damages 2 mine &c. 4 Co. 119ª - 1 Bac. 101 - Cro. E. 112 - 6ª Co. 85 - 4 Co. 54 - 2 Co. 32. - Where a special verdict may be amended - as where a circumstance deemed by the Court material & already proved is omitted - 1 Co. 57 B-5 - 12 Co. 134 - 1 Bac. 101 - Salk 47-8 - 4 Co. 52 Cro. E. 144. But in a criminal case a verdict whether general or special cannot be amended - Salk 53 - 1 Bac. 101 - Ld. Raym. 141 - 2 Hawk. P.C. 466 - 8 Mod. 279

Public Wrongs

The rule of law under this title are so simple that it can not be described much more concisely upon the subject than in the elementary writers. — The principles are more various. — They partake more of the nature of ethics than any other in the whole course of law. That branch of ~~public~~ wrongs denominated criminal law crown law or pleas of the crown, for they all mean the same) includes all crimes and misdemeanors. Crimes & misdemeanors have no definite distinction. — The terms are used the most part used indiscriminately for public offences — and are usually considered synonimous — except that the word crime signifies an offence of a higher kind and misdemeanor an offence of a lower or less kind. Crimes or misdemeanors consist in the commission of some act prohibited by law or the omission of some act enjoined or commanded by law. Public wrongs differ from private or civil injuries in that the former consist of an infraction or violation of some public right in which the community are equally interested & which ~~are~~ is inherent

in a necessary subordination peace & existence of society. A civil or private injury is a violation or infraction of a private right — or the rights of an individual. — It is said by Blackstone that every public wrong includes in it some private wrong or civil injury. But it will be found that this is incorrect. Public wrongs may in some cases include private wrongs & it is by no means always so. A public nuisance may not be injurious to a single individual & so it stands the injury is individual or no individuals are liable to be injured therefore it is for this reason a public nuisance. In all cases where public wrongs include civil injuries it is the object of the law to give a two fold remedy. Thus in case of assault & battery — as the act done is considered a breach of the peace as well as an injury to the person & entitles a remedy is given to the individual for the injury the individual sustains & the offender is liable in case of a public prosecution for a breach of the peace. Tho there was in fact but one act yet there were two distinct wrongs or offences. Between the act itself and the abuse there is a manifest distinction. The act

or the contract is the thing directly the Public Wrong
done transacted — The offence is the more
character which the law ascribes to that act
as one act may constitute two or more distinct injuries or offences — so one entire offence may consist of two or more acts — or a continuation of acts. Thus in assault & battery a man cannot be prosecuted for each stroke separately which he gave or not — we have seen already that where the public wrong includes a civil or private injury — the law affords a two-fold remedy. This is true in most cases but not in all. Generally if the public offence amounts to Felony the private remedy is merged in the public remedy or punishment. The doctrine of merger in crimes amounting to felony is bad reason assigned for it. In a late case which came on before the Council (Arrondo) alledged for reason that if a private remedy were allowed there would be a inducement for the person injured to prosecute publicly & bring the guilty to public punishment. But surely the principal object is the reparation of the injury — the offence would be punished as an example to others. The only true rational foundation for the doctrine

4 Blackstone 5=6
Fel. Rep. 55
161
Bacon Abridgment 55, 57

it that the public inconvenient remedy
it impossible to an individual to obtain
satisfaction or reparation for the injury
done him. A private remedy can never
lay at least except by acts of the plaintiff's property
but being worth a greater or all the pecuniary
dir. property, or real service, cannot these
are taken away by public authority no pecu-
niary remains. The individual
aliens take remedy not in such
case it will be taking a much greater
public interest which the law will not
be done. But if an individual is im-
mediately a stranger or alien not amounting
treason the law a civil remedy.
So then the doctrine of necessity can never
extend. It is true in the case of murder
treason no private remedy is allowed
because there is no other person in such
case to seek a remedy. It will extend
exception into the law to allow the relation
of married person to institute a civil suit
for a pecuniary remedy as well as criminally
in obtaining the deficiency. Perjury
suits are often brought where perjury and most other cases where there is
necessarily private parties. There are

tual sovereign in this state where ev-
ery citizen is a part of the sovereign
& ~~in this state~~ — but it is destroying or im-
barring public magazines in time of peace, &
the other is murder. the external- 285
ment was made a civil age by the civil
or the purpose of carrying the idea, private
remedy, to prevent further that could ever
deem it. — The case mentioned by Mr. Madison Barbarie
ornaments & pecuniary injury of nations, & clearly
beyond limits obtained a perfect Bonu-
ght are active on the side against on but
the court would not enquire the motive — be-
cause it would be no more moral than im-
prisoning a debtor, assignment.
or the right of inflicting punishment, or
certain cases if it could be exercised under
the law of nature. If men have agreed that
individuals in a state of nature are inexpe-
dient with the right of inflicting punishments
to carry into execution. But when they
individuals in the state society it was found
expedient to transfer this right to the com-
munity at large. They from that moment ceased
to be their own judge and avenger. With
this experience it is not consistent society that they
should retain a right, punishment

as the sense & existence of society requires. This idea of government being founded upon compact may in general be sufficient to authorize punishments in most cases but not in all. The punishment of certain crimes, as ~~offences against the municipal laws~~ cannot be authorized in this way. Real ~~wars~~ called murder, manslaughter, ~~or~~ wounding the individual never should prevent the right of punishing. Therefore could not the same right. An individual is not liable to capital punishment the necessity of which ~~is~~ such punishment — nor can he, in strictness in taking away his own life, be said to commit suicide or murder himself. It may be proper to state briefly elementary principles, all that precede cannot be settled that no one can ever seriously advocate the contrary opinion. Burlemaqui has treated this subject as well as any I have ever read — but not withstanding all that is said & theories written on the subject there is but one principle which can be considered as the only true foundation of the right of inflicting punishments is necessity & expediency (which when applied to government are the same thing) We talk much of a state of nature but no such state has ever existed it is merely ideal & entered into only in theorizing. — The end or final cause of punishment is the pre

prevention of crimes - vindictive Public Wrongs
punishment are not upon the same
The law proposes three objects to the prevention
of crimes. The first is that the punishment
be such shall have a tendency to reform the
offender - or secondly such as shall deprive
him of the power of committing another offence
or thirdly such as shall deter others from
committing like offences.

As to What persons are liable to punishment - Actus
Generally all persons are liable except such reus
as are expressly exempted. All executed which
are prohibited are upon punishment are re-
garded to the single consideration of a vicious
or defective will. Every person has power in
in contemplation of law to do a certain act
but not will & will to do such act, the maxim
is vana est vana nisi mens sit rea. This maxim
does not apply to civil suits - for here if an Actus
injury sustained by another in the prin-
ciple & intention, & the law does not re- reus
gard the intent with which it was done
but if constitute a crime there must be
always a criminal intent.

The Law considers a defect or want of will -
first where there is a defect or want of under-
standing - Hence infants under the age of

discretion or as it is sometimes called
the capacity of distinguishing between good
& evil - and the application of presumption
of the want of such discretion applies
alike to every crime whatever. It is a gen-
eral rule that if the offence is made to con-
sist in the omission of an act an infant
is not liable criminally till the age of
discretion. An infant is always supposed
to be under the care, protection, & restraint
of a parent, guardian or master, & therefore
may not have the means or the power to do
what the law requires. He is not supposed to
be master of his own acts. Thus in Eng. a
man forbids persons delivering coals at his door
& in some cases obliged to, keep the road
opposite their land in repair & an action
will not lie against a person for neglect
but an infant at any age is not
liable for such neglect.

The age of legal discretion is fourteen - an
infant at that age is as liable as an adult
for all his crimes except treason & murder
Under the age of fourteen the presumption is al-
ways in favour of the infant - that at that
time persons are not of discretion - that
presumption may be rebutted, but the age of four-
teen is considered to even [illegible] age the pre-

Pleas of the Crown

exemption is for the benefit of the mistaken
& the rule is laid down by Blackstone — & see 4 Bl. Com
and D. accordingly that an infant un- 23
der fourteen is not liable to capital offences. & 1 Hawk
offences not capital the rule is laid down by 2
Blackstone is peremptory that infants under 14 not 1 Hawk
liable at all criminalities — & this seems to be the 37-38-6
true rule. & upon the same reason that infants 1 Hawk
& idiots are exempted from answering for their actions 42
even — deaf & dumb men can never be convicted 1 Hawk
for their crimes committed while insane. & a 10-4 Bac
lunatic commits a crime in a lucid interval 1 Hawk
he is as liable as any other person. 2

It seems to have been anciently formerly held 4 Bl. C.
as persons that are deaf & dumb want the 24
principal organs of sense by which their understandings may be improved they were excused 36-39
by reason of their want of will. But it has been 1 Hawk
settled in the present King's reign that if his 1 St
understanding in other things can receive & com- 2 Hawk
municate ideas by signs — his deafness & dumbness 462
shall not excuse him. If the offender becomes 4 Bl. C.
insane after the commission of a crime & before 324
arrest he cannot be arrested — & after arrest & 1 Hawk
before conviction he cannot be tried — & after con- 2
viction & before judgment pronounced — judgment 4 Bl. C.
cannot be rendered — & after judgment rendered 23-24

before execution execution must be had
1 Hale & in all these cases it is a question of fact to be
10-34-37c tried by the jury whether he is insane or not.
He who incites a mad man to do an unlawful
act is in the principles of morality as well as of
1 Hale law not an accessary but a principal. The mad
617 man is but an instrument employed in the exe-
Kelyng cution of his intent. Tho' such a man is liable
58 as principal he is not liable at all to as the
4 Bl. C. mad man cannot be punished at all & as the pun-
85 ishment of the accessary relates chiefly to that of the prin-
cipal — if the principal is excused the accessary
is excused also
Lunacy, want of will arising from intoxication
Hawk is by the common law no excuse. - Lord Coke says that
19c intoxication instead of being an alleviation of
4 Bl. C. the offence is an aggravation of the offence —
125 the offender becomes a "voluntarius daemon." — But
1 Hale says Mr Chandler conceives that a habitual de-
32 bility produced by frequent intoxication would
Hawk in many cases excuse the offender — such intox
c 1 s ication is not in contemplation of doing any un-
lawful act. A man may by imprudently plun-
4 Bl. C. 24 ging into a cold bath or untiring his usual
course of diet be led to do an unlawful
act involuntary — & the same may be the
case with drunkenness. Punishment of offences

committed during intoxication how- Public Wrongs
ever it must be excused if grounded more on
policy than in strict justice. Where intox-
ication is not voluntary if the case of threat of
another person or not committed during
such intoxication are excusable – for he
is not answerable in such case for want
of understanding – thus far as to a defect will
arising from defect of understanding.
The second case of a defect of will is where the
crime is not done voluntarily but by mistake 1 Hale
or accident – where the will is neutral – this is 39
excusable – but if a man come voluntarily 1 Hawk
drunk an unlawful act done by accident or 5
mistake is not excusable as he is not ex- 4 Blacke
cusable for the latter and more than for the 124
former – or in other words it is liable as all Keling
the consequences ensuing ~~accidentally~~ from an 125
unlawful act. or ignorance or mistake in
point of fact will excuse him who commits
a forfeiture act. Thus if a man in the night
breaks open his neighbours house thinking it
to be his own he is not liable criminaliter but
yet he is liable to the civil injury to the house.
But no man can allege ignorance of law in
excuse for crime. He is always deemed to know
what the law is & the presumption of law is also

know the law is to stray the rebutter
It is matter of policy that ignorance of law
Hawk cannot be given in evidence in excuse. —
c 45 The difficulty of proving the affirmative which
Rac. is always to be proved renders it almost im-
Abr 8 possible to ascertain the fact. There is a
1 Bur material difference between a mistake or
55 ignorance of a fact & ignorance of the law
1 Hale In the one case the will does not concur with
42-3 the act for the man did not know that he
1 Hawk was breaking his neighbours house — In the
c 5-11 other case the will concurs with the act
4 Bl. for he knew he was breaking his neighbours
59 house but did not know that it was unlaw-
ful.
4 Bl. C. The third class of cases is where the defect
2-8 want of will arises from necessity or compul-
1 Hale sion. Thus a woman doing an unlawful
46 act by the coercion or even in the company
Hawking of her husband is excused by the law in both
81-c cases. Even in treason. Married women
1 Hal are not however excused for all crimes done
65 under the coercion of her husband. For theft
4 Bl. & burglary she is excused — but for treason mur-
28-29 der robbery & other crimes against the laws
Locke & nature she is liable. So it is said by Bracton
71 Fortescue Regiam & Coke but see the

reason for the distinction between Public Wrongs
Burglary & robbery. It seems to me very
that the one is as much an offence malum
& and against the laws of nature as the
other. The reason which Blackstone gives why
murder treason & felony &c is not executable
in a married woman can not receive
no manner be supported. Treason is not
even if it be an offence malum in se — because in
a state of nature there is no such things as
treason — Treason can be no more than an
offence mala prohibita. The true foundation
says Mr Gould, conceive to be that in all mi-
nor or inferior offences the law considers her 28.3
obedience & submission to the will & command 230
of her husband as a paramount duty & that 242
of obedience to the law — but in the larger of- 29.42
fences her obedience to the law withstands & bears
the husbands command as a paramount duty &
coercion can never be an excuse for man slaugh-
ter by the wife. But except in these kinds are bound
criminal & the relation of husband & wife as
neither a child or servant can be excused for 3 Inst.
obeying an act by the command of the parent 84
or master, & another reason is assigned in
that called Duress, terminal where bodily harm
or death is threatened — Thus a subject taken

2 Hal. 1 Hawk. 80 1 Hale 481 1 Hawk. 82 1 Hale 481 2 Hal. P. C. 81 1 Hale 481 1 Hawk. 82

[illegible] where one may be compelled to come as to prevent [illegible] or be compelled to join to resist this will appear from the natural reason since no one has a right to kill an innocent upon any cause in the world.

Another species of necessity or compulsion is where an officer in executing his office breaches the peace cannot do his duty without using violence to the persons of the rioters the law will uphold or excuse him in using whatever force is necessary to suppress riots where resistance is made. The acts of the officer are considered as the acts of the law — he is not in fact the author of the violence but only the instrument with which it is done.

Compulsion may be pleaded in excuse of many crimes whether a man have right to steal and to prevent his starving. By the common law no such necessity will ever excuse or justify stealing — Indeed there would be very little occasion for the common law always to make provision to the contrary to prevent such necessity.

If two or more persons may be concerned in the commission of an unlawful act yet there may be different degrees of guilt in

the parties concerned the law on Public Crimes
establishes two kinds of offences - viz principal
and accessory. The principal is of two kinds
also viz of the first and of the second degree — 1,126.
A principal of the first degree is he who is the 84
actual perpetrator of the crime. A principal 1 Hale
of the second degree is he who is present 615
aiding & abetting the actual perpetration thereof.
Elementary writers do not seem to be all agreed 97
in this distinction but it seems to be agreed that 1 Hawk.
this distinction is not material — But the 441
distinction between principal & accessory is 2 58-326
always very material. Formerly he who is present Dyer
aided & abetted the perpetration was considered 197
as an accessory only but he is now considered 2 Hawk.
as a principal of the second degree. It is es- 52 s
sential to constitute the offence of the princi- 1 Hale
pal of the first degree that he be present 46,
It need not however be actual presence
or standing by - but a more constructive one - Foster
nee or mutual aid seems to be required — 850
nor need he be within sight or hearing of the Dyer
actual perpetration — Thus if one stand at the 197
side of the house watching while the other is inside or robbing
primarily — or if one is one side of the house 5 30
and the other on the other side - in both cases
he shall be taken in either case in accordance with the assistance

accessories and abettors as principals of the second
degree - and to the punishment of principals of the second
principal of the second degree it is not necessary
that the actual perpetration should be proved, but may be
proved by evidence that the principal of the first degree
was present aiding, assisting, abetting, or encouraging the
commission of the crime. This distinction is
as well in reason as it stands authorized by
at common law. But even a constructive
presence is not always necessary to constitute a principal in the second degree, as in the case of
aiding the first degree. Thus if one procures, counsels
or assists another to commit a murder, and
he actually does it, he is a principal of the first
degree - so if one lays a trap or digs a pitfall
for another with an intent to destroy such person and he is
killed in consequence, he is a principal of the first degree.
But it is indispensably necessary to constitute
a principal of the second degree that he
should be aiding & abetting the actual perpetration
and hence it is if the verdict of the jury find
that the offender was
rendered because he may have been prevented
by some accident, person
who is not the chief actor
in the perpetration may be present at the time
but one who is in some way concerned therein

either before or after the act. 4 Bl. Com. Public Wrongs
is indispensably necessary to a principal of
the second degree that he be present at the
indispensably necessary to an accessory that
he is not present, for if he were present he
would be a principal of the second degree 4 Bl
There are some offences which do not admit 1 Hale
of the distinction of principal & accessory — 81-2
In general there may be principal & accessa- 1 Hale
ry in all felonies. In high treason the atro- 87
city of the crime will not admit of principal & Bac
& accessary but all that are concerned in it 365
are principals — Any the very intending to kill 1 Hawk
the K. ing is high treason & constitutes a crime 58
of the first degree — but there must always be 1 Hawk
some overt act before an intent of this kind 48.9-10
can be punished. It is a general rule that 12 Coke
whatever will make an accessory in felony 81-2
will regularly make a principal in high Bac
treason. This rule however does not extend to 396
accessary after the act. In petit treason mur- 1 Hawk
der & all premeditated felonies there may be 441
principal & accessary — But in sudden affray 4 Bl C.
& being there can be no accessaries. In com- 36-101
premeditated felony there may be accessaries 1 Hale
after the act. It is a maxim in law that the 615
guilt of the accessory must follow that of the principal

The law will not stoop to discriminate between principal & accessary in petit Larceny

Accessories and there are the, mitigated by the ac-
1 Hawk. cessory can never be greater than that of the
152 principal. Thus if a servant kill his master
c Hawk in petit treason — but if he instigates another
145 person to kill his master the actual perpe-
trator is guilty of murder only & of course the
servants crime can be no greater, and it would
have been greater had he killed his master him-
c Hawk self.
145 Accessaries are of two kinds viz accessaries
made before the fact & accessaries after the fact
6 Co 52 An accessary before the fact is one who procures
Hawk counsels or commands another to commit a
145 crime himself being absent when the act is
done. He who aids another in the com-
Hawk mission of an unlawful act is accessary
4, 45 & all that ensues upon the commission of
Foster that act. Thus if A command B to beat C
850 & B by beating kills him — A is accessary to it —
4 Bl. C if A command B to poison A & B deals him
87 so that he dies — A is accessary to it. For the pur-
c Hawk pose of rendering one accessary it is necessary
46 that felony should actually have been com-
c East 5 mitted. It seems however in modern times &c
6 Dav 81 a misdemeanor & attempt one to commit a felony
La Ray & the offender is liable to punishment the same.
1577 — 2 Hawk 1 — 2 Hal 101 — If one retracts after

having solicited and procured commit Public wrong
a crime before the crime is committed
he is not accessory to the crime — because the
act is not done in pursuance of his criminal
final command — & if the act is not done as
till he cannot possibly be an accessory. but if done
in either case he is guilty of a misdemeanor. 2 Hawk
or — for this offence was complete before he re-called
the act & an offence once complete can never 4/95
be palliated or extenuated afterwards by the 4 Geo
tender. after the command is given & before 53
the unlawful act is done the law waits on
the ground of policy & justice gives a locus
penitentiæ before the die is cast. Felonies
created by statute as well as those at com. law each
admit of accessories & principals altho the 24
stat. is altogether silent in regard to accessories. Hawk
ries — & in general stat. felonies have all the 34
incidents of com. law felonies.
The bare concealing of an intended felony does 2 Hawk
not make one an accessory but is a misprision 447
of felony — a misdemeanor and punishable 4 Bl. C.
as such — indeed the concealing of an intended felony 121
being does not come within the description
of an accessory. and it is a general rule that
all persons who are present at the time of the
commission of an unlawful act & do not en

Accessories also are all in their power to prevent the act are guilty of a misdemeanor. The law does not require impossibilities & a man is not bound to expose himself to imminent danger of bodily harm to prevent such act
Hawk & if a man is not in the opinion of the jury
442 competent to prevent the commission of it &
115-6 he is excused & in the case of infants they are excused tho they are competent to — because it would be an offence of omission
Thus far as to accessories before the fact — an accessory after the fact is one who receives relieves comforts & assists a felon knowing him to be such. This rule if traced to the full extent would include many cases not accessories — as common act of charity — as the
Hawk giving one food to prevent his starving or clothing
448 or indeed receiving him into his house, previ-
304-305 ous public process against him be not hin-
Fielding dered are always justifiable. But if one by any
45-47 act prevents public justice from being executed
Hale & a felon — as by furnishing him with the
68 means of escape or concealment he is accounted an accessory after the fact. The same is the case if one furnishes a felon or other prisoner with instruments by which to escape from prison. Buying or receiving stolen goods

did not at common law make one an Principle Without
accessory, for it could not come under the Public
terms receiving receiving concealing &c
It was only a misdemeanor — But by the Statute
Stat 5 Geo. I the offence of receiving
or buying stolen goods knowing them to be so
such, makes one an accessory before the Fact 885
after the Fact. The Stat. of Comm. makes such person
an principal & not an accessory. To make 485
an accessory after the fact it is necessary that the Felon
be convict before the principal be attainted
Thus if one robbs a man & wounds him and another shoots
before the death of the person, & after the fact 451
with the delinquent — the assistant is no accessory Vide
Hale
If a married woman may be 20-622
excused for abetting her husband & cases but
this indulgence is not extended to any other Husband
kindred or natural relations not even to the 451
husband against the wife. This rule is founded
on the coercion of the husband to which the 4
law always supposes the wife to be subject & 1 Hal. C
not on the relation of husband & wife. If one 35-0
indicted & attainted in the indictment the accessory
as, as & two principals — proof that the principal 5 no-2
or was accessory & — one principal is sufficient & Vide
to support the indictment. But suppose Gould 119
the thief is called & he does not appear at the

Accessories principals when rules of Evidence
Black. 4 Com. 36 relaxing against the offender the
80 strict principles of construction.
Black. If it a general rule of the Com Law that access-
455-6 aries are to suffer the same punishment as
Leach their principals. But as to accessaries after
18 the fact they are allowed the benefit of the Clergy
4 Bl. C. 39. By the stat. Com. Law the accessary could
40-823-4 not be tried till after the principal was at-
tainted unless he were tried at the same
time with the principal - But the stat. reform
2 Hal. C. the accessary may be proceeded against in some
622-4 case before the principal. Serjeant Hawkins
2 Hawk. & Blackstone say down the rule as if they may
455 be indicted as accessaries before the principal
Leach is attainted - but as to the former it is incorrect
19-85. the Law is they may be indicted as principals
for a misdemeanor before the principals are
Hawk attainted of felony.
452 If the principal is tried & acquitted the accessary
Hawk cannot be tried - The guilt of the
43 accessary is such is altogether relative & altered
& Hale that of the principal. But tho the clear proof
119 the principal & have attainder discharges the
accessary yet the accessary cannot avail him-
self of the death or pardon of the principal at
the bar attainted - It is not so settled by the Com. Law

that the principal is actually convicted Public Wrongs
ried in order to effect the accessory but it is
essential that he be legally convicted for even
tho' the principal confess the fact in open
court before attainder (ie) before fully pronounced which
discharges the accessory & the reason is because
the verdict whereby the principal is convicted cannot
be given in evidence till judgment is
is passed thereon (ie) till he is attainted. But
the conviction has been allowed to the time when
which if the accessory is then acquitted allows him
him to be indicted as principal in the felony as
in misdemeanor. If one be acquitted upon being
an indictment as principal he may in a
subsequent indictment be found guilty as an
accessory after the fact — not vice versa he can be
indicted as accessory before the fact or not. Quere
remarkable matter of doubt. But says M. Foster
I could never see any reason for doing it on this
subject to counselling advising &c is no more
the actual commission than the giving con-
certed relief. Says that he is not guilty as a principal
& principal is not guilty as accessory when
he is indicted & that on the indictment as principal
an accessory that the principal may be

Felonies without benefit of clergy that he cannot be attainted
Forfeiture of the term may be inquired after judgment in
365 for real but cannot be tried by the 12 after attainder
Mackalley's case it is necessary to state that the principal
461-2 committed the act for which he was convicted
Foster The the principal is attainted executed get
121-365 min the accessory continuance both the fact &
Mackl. the law upon which the principal was con-
464-6 victed. — The record of the proceedings against
Clerke the principal are not conclusive against the
118 accessory. The same indulgence is extended
to Mackl. to the accessory when he is tried with the
461-4 principal.

Thus far as to crimes & misdemeanors in general
and Felonies — The term includes a
more class of offences — and is according to
the original acceptation or signification of
the word any offence occasioning a total for-
feiture of goods & lands or both. The term
being did not originally denote any offence
or crime but only the penal consequence of
24-5 certain crimes, & hence the term felony
& Staff word — whatever occasioned a forfeiture of the
15 lands or goods was a felony — Hence arose
4 Bl. 98 divers — And according to the more usual
94-5-8 it is not only what are in modern times
called felonies, & therefore not called felony

second [illegible] idea seems to be that Murder
is a capital crime. Then a thief is hanged
& being not a capital crime — homicide is
by clergy read — but arson & sacrilege not
capital crimes. Seems therefore to mean
especially a capital offence & not capital punish-
ment & must be read as parallel to [illegible]
all of one nature. In the New Testament
are some places which are capital & others
are not, & it was said with reference
to both of them — as thereby a person
otherwise could neither preach or read
more. All felonies which are capital work
a forfeiture of goods & chattels but simple
felonies not capital were by
a forfeiture of goods. In the case of
an idiot a forfeiture of lands is in case of
suicide — in those may have committed against
whom judgment & execution & attainder is pro-
nounced — but goods & chattels are in either
not capital included & forfeited. Neither treason
& felony is become an [illegible] not capital [illegible]
crime & murder an [illegible] capital [illegible]
crime is not known [illegible] [illegible] [illegible]
and implies a capital offence — & capital [illegible]
means [illegible] [illegible] [illegible]

Felonies treason are extended, ~~capital~~ and there
Lib. fore it a stat. may create a new felony, or make
295 that the act is guilty of such a crime is a rule in
the true construction of law, that no statute
2 Inst. shall be construed with such strictness as pre-
324 judice to the subject. But as the words of the
stat. prohibit any act & call the commission of such
act felony, it is intended that it shall be punished
Hal. capitally. But if the stat. prohibit any act
P.C. under the penalty of a forfeiture of all the of-
1 Hawk fender's property — the offence is not felony but
168- only a misdemeanor — no it is punished at the
common law. Crimes which in England are denom-
inated felonies — or such as are attended with for-
feiture of property — are in this state also
denominated felony. tho no forfeiture shall
accrue. But statute does not alter the provi-
sions of the com. law as to offences — but how
a definite mode of punishment specifically
4 H.C. pointed out & carried into execution. Anciently
of S. in England there is a species of pardon called
587 benefit of clergy — which exempted criminal
& freed him from the punishment provided
280 by their statutes. This prevents the forfeiture
of lands but not of goods & chattels — the reason
280 is because no lands can be forfeited until
attainder — but the benefit of clergy is now

attainment always be prayed before Public Evangs judgment — it must attainder prayed & regularly proved after conviction.

It cannot be necessary to go all the round now used & above hand to detail at length all the particulars relating to the benefit of clergy, the clergy called clergyable offences — because no part of the subject is applicable to the state not being at this state in the United & have noted. It is sufficient to give a short sketch of its origin and progress. The ascendency of the Pope of Rome was anciently over the temporal government of England — that he as an ecclesiastical or spiritual person claimed the right of punishing all his clergy or clerks in orders. Temporal courts as the Sheriff had no jurisdiction over this class of people — but they were liable to punishment only before an ecclesiastical court. However it seems that the courts of Common Law in Eng. would not give up the right of punishing the most atrocious crimes such as were made in 12 Edw. 2 the Com. law would then allow the inflicting of punishment upon foreigners, that were officers under the Pope for such crimes — & 25 Edw. 3. c. 22. 1 Hale P.C. 366-374 would they give up the right of punishing below clergy. Thus the benefit of clergy is allowed in cases of petty larceny or misdemeanors — It seems that assemblies

Benefit of clergy was first taken away from
stand except in capital offences. This exemption of the
42d clergy was certainly allowed at common law by the
stat 25 Edward 3. when the clergy had multiplied
so that it was difficult to distinguish them from
the laity & as the learning was chiefly confined
& that the clergy at that time had special pardon
42d was extended to all those who could read Latin
that is but those were extended to numerous & many
[illegible] those were not capable. By the statute
of 1 & 2 Ph & M. c. 4 & 5 Ann. c. 6 it
was extended & made indiscriminable
by in all clergyable offences & this whether the
[illegible] criminal was or not. This distinction however
still existed & exists at this day. That common
law person who can read is entitled to clergy
for once & there takes advantage of the benefit
of clergy are to be burnt in the hand or else
that which is imprisoned a year or [illegible] in the
42d pillory - in some other inferior punishment
[illegible] by way of commutation - But clergymen
of peers & peeresses are entitled to the benefit
Ends clergy in all clergyable offences without any
56 kind of commutation by way of commutation
. This was decided in the great question of the
Duchess of Kingston by the high council & house
[illegible] of Lords in the year

are intitled to the benefit of Clergy any Lay Person
once pays it is with Peers & Commoners — but the
Clerk
clergy & Clerks in orders are intitled to it as often 2d
as they commit Clergyable offences. 11 Hen 6 c.

The benefit of clergy where once prayed & granted 21
answers to a pardon nothing to the advance 21
to which it is annexed but to all Clergyable offences 1 Hale
since & before that time committed. Benefit of 230
clergy is allowed in all crimes which expressly 4 Bl. 3
by Statute are taken away by Statute. — The privilege of the 652
clergy was formerly strictly confined to an
ordained and called a Sacerdotary plea
but this practice was now gone out of use
because as the offences was allowed & taken away 1 Hale
wantage of this privilege after conviction in all 381
cases where it could before conviction & so 2 Hale
might be acquitted & other matter — not being 652
allowed to take advantage of the privilege since
it was found extremely dangerous & was discontinued.

Statute 18 Eliz. c. 7 takes away the benefit of Clergy from
divers offences denominated felonies. — Another class of offences repeals, par-
ticularly enumerated, that by Statute is called

Homicide

and is at the time it meets the killing of any human
creature — unlawfully unwilling. of Homicide 1st
There are three kinds viz. Justifiable, excusable & felonious

Homicide - Justifiable Homicide consists in the
Law Killing of a human creature but under
such circumstances that the law annexes
no blame guilt & the act of killing - & hence
it is not necessarily a crime punished & pun-
ishable it can not be a crime. —

Justifiable homicide is of several kinds
1st that which is occasioned by necessity - as
where a sheriff executes the sentence of the
law - he acts in obedience of a command
the law into execution - he commits no crime
nor is guilty punishable of the act. But a com-
mission is justifiable homicide of this kind
the law must actually require it to be done
& not only that it is required to be done by
some or his authority which in law is the same
as if he himself had commanded it —
2dly where he kills a man that is actually attempting
to murder a third person the slayer may be guilty of murder & the case may be
stated so he does not act under the command of
the law if he does it otherwise than the law
requires - as if another person kills another
person that is attempting the is accessary guilty of murder
3dly. The sheriff or officer must also in the man-
ner prescribed by law - he must in doing it
not go beyond the sentence of the law - wherein
he acts without authority - thus if the court

of things be such as ought to be done by Public Officers
& the Office behind him — the Officer & Public
guilty of murder — and to the purpose of ex-
cuse the Officer in executing a man the Pub.
sentence must have been passed by a Court
of competent jurisdiction. Whereas both the
the sheriff & officer & the judges who passed the
sentence are guilty of murder. — for the Statute
which proceeded de bono non judice. But not
if the jury find an offence & the court having
cognizance of the offence pass such a judgment
& direct such punishment as is not by law
annexed to the offence (as if they give Death) for
the parties may & not the officers therefore are guil-
ty of murder — for the sheriff & the court having
a right to pass such judgment) is bound by
the mandate of the court — Thus if the jury
upon an indictment for a breach of the peace en-
ter find the defendant guilty — & the court pass
judgment of death upon him the judges & Bar
are liable as murderers & the sheriff ex-
cused

Secondly Homicide is justifiable in certain cases
as when committed for the advancement
of public justice — as if an officer in arresting
one in pursuance of a civil or criminal pro-
cess is assaulted & resists & may lawfully kill —

Homicide - or the any Degree of the same
-tion to prevent the recurrence - Death of man
by Law may be committed by Act done in
Self-defence, & this is true, not only when
the Life of the Party killed is taken
by the Party killing in the very Act
of Self-defence, but also when the Act
is done in the Heat of Blood in the
same sort of Case, & the Necessity of the
Case will justify the Party killing -
& where a Person who attempts to arrest
or attempts to detain any Person
or Persons who attempt to arrest
or attempt to detain any person
might lawfully be killed in such Case -
Thus may one well be justified
in killing another in the attempt to ar-
rest him upon a Capias - Thus the
Law proceeds upon the ground that the Party
to be arrested is in such case to suffer
Death - So all Persons acting upon a Warrant
or Authority of Law are to be considered
as attempting to arrest, & may be killed
in the attempt - So, in case a Bailiff
or Peace-Officer in the Discharge of his Office
& Duty is killed by the Party to be arrested
by the Party resisting - & the Party killing
is guilty of Murder - & the Law

and where the object will warrant Public Officers
the authority of the law to use it the question
whether the prisoner is civil or criminal. to
obtain the object & prevent one from escaping
from prison - will be justified in killing if
necessary either the person escaping or the pur-
suer. 494

Thirdly homicide is justifiable when done to
prevent any heinous & atrocious crime 581
and the general rule is that where a crime Foster
in itself capital is endeavoured to be committ- 273-4
ed by force it is lawful to repel that force 271-5
by the death of the party attempting. Thus killing
if one attempts to kill another a third person 857
as well as the one assailed may be justified in Hawk
killing the assailant. But this rule applies 108-9
only to cases where the crime attempted to be 4 Bl. C.
done - is attended with actual force & natural 180
as in arson case the law deems it done with Hawk
force - thus a libel is in law deemed to be done 485-6
with force but no one will be justified in kil-
ling a man to prevent a libel - a settled
a man a right to kill one who attempts
to break into his house - or trespass upon his land
or break open his house in the day time - But
if he does he is only guilty of manslaughter &
not of murder - for such cases the law allows [illegible]

Homicide If a forcible attempt is made upon the
Estbank person of another - tho not with an intent to kill
280 or commit a capital offence the person so at-
Estbank tacked kills his assailant - it is homicide de se
279 excusable & excusable but not justifiable. or
Hawkins a man may lawfully use any degree of force
280 to resist or prevent a violation of his wife by
The books lay it down as a rule that the hus-
Estbank band or parent may do the same to resist
274 any attempt when the wife or child. But says
the Council know not how a distinction can be made
Keling it is laid down. The fact is not only the hus-
157 band & parent are justifiable in endeavouring to
Hawk prevent any other person - a stranger - but the rule is
108-9 any concurrence it is where the attempt upon
Hale the wife or child is not capital & in that
478 case the husband or parent is excusable for
killing the assailant only in self defence - while
a stranger would not be excusable & as in such
the situation of the husband or parent is more
eligible.

It seems to have been the old opinion that
a justification could be specially pleaded
Hawk to an indictment - but as the law is now it
105 seems not to be pleaded but given in evi-
Hale dence under the general issue - & it would be
478 a denial of all the material allegations in

precedly preceded it would be convict-public it may
exist as a misdemeanor at the general law. & has
since it seems been agreed also that no murder
can be committed except upon the commission of
this is not the universal opinion but it seems to be
& the better opinion. It is enacted by 1&2
Geo. 4. cap. 38. that every punishable act is not pun-
ished at all
Homicide is the second species of felonious
or Excusable — which tho it differed anciently
in point of guilt & punishment from justi-
fiable homicide differs now in every kind
degree — or only nominally — that, forfeiture
punishment attached to it. The true principle of
difference between these is that one is caused by 151
duty the other not — one is right & the other is
wrong. Excusable homicide is of two kinds. 1st
Per infortunium — or by mis- 151
adventure & secondly se defendendo 111
se — defence which is voluntary & done
with malice & under circumstances which
in law constitute an excuse.
Homicide by misadventure is where one
doing a lawful act — without intention & tak-
ing any precaution — accidentally & unfortu-
nately kills another — as if one in the act 252
about his ordinary business & the mode of using it

Homicide - kills one who attempts by — if one is riding a horse & another wishing to injure him, pulls the rider off & kills him — the rule commonly laid down by murderers & the one who killed the horse is guilty of manslaughter Hawkins says he could the thing case is often stopped by way of example - I do not see on the subject why a thing should die with the killing - the killing here is supposed like the instrument that kills — Blackstone says the that the case is precisely the same as if one were in a boat & another by pushing the boat accidentally & their person accidentally caused his death the person in the boat had no agency or intentionality in his death at all. - The act in doing which the death was occasioned must be unlawful & usual to make the homicide excusable. Thus a person may not arrest a child & death ensue he is excusable - so parties may correct their servants & scholars moderately, & justify his provocation - the rule is that they may inflict moderate & reasonable punishment - What punishment is extravagant, & cruel - punishment exceeds all manner of reason - & if done with an instrument likely to kill endanger life it is manslaughter & murder in the case may

For such circumstances will arise - Public Hist
times were a particular spirit of deliberate feeling
existed & still exists where a duel ended fatally 24-5
one of the parties was tried as for murder 1 Hale
he died & was held the murder, since the
act was done while the death accidentally ensued
in consequence of the duel - it greatly ex-
tenuated the offence - it greatly ex-
tenuated the offence of murder - still in
this country it was considered malice 4 Bl. C
but not to those malicious degrees 201
which would carry correctly - for all the cases
of constructive murder manslaughter will
be found of that kind - Thus the exportation abroad
from England is malum prohibitum & not a mal-
ical positive crime - wherefore if one in endea-
vouring to export it - should with a dark stormy Foste
knock down a man & thereby his skull - what he 258
die - the crime would be the same as if doing a law- 201
ful act - But if the unlawful act were the express Hale
death ensuing upon that act accidentally - is man- 1 Hawk
slaughter - & if the unlawful act were a felony Hob.
the accidental death of a person in consequence 134
thereof would be murder. Thus if a man in shoot- 1 Hawk
ing his neighbours horse should accidentally kill 112
the horse or any other person the crime would be
manslaughter - But if he in shooting his neighbours
dog kill one of his servants it would be deemed it

Homicide – by accident kill the person intended
murder. If a man with an unlawful & mali-
cious intent to injure another or do him bodily
1 Hawk harm – as beat him that he die – it is nothomi-
116 cide of misadventure but murder – because the
1 Hale act of beating & the doing other bodily harm tends
60 & is unlawful – tho a very small degree of it
295 will often terminate ultimately in the death of
killing another – it may occasion violence & the decease
117 occasion the death which is the same thing as if
the violence were the immediate cause of the death
1 Hale If the homicide arises upon any unlawful act
438 which naturally tends to bloodshed – it is not ex-
Foster cusable – & the law is the same if the act were
260 an idle one – as throwing a stone at a dog not
1 Hawk likely to hit – But if death accidentally happens
112 in consequence of some lawful act & by
Foster fault or any reasonable caution not observed
263 to deem the crime homicide & to make it amount
184-5 Homicide in self-defence – is where one in
being a sudden affray kills his adversary in his own
128 defence – This also is a species of homicide
Foste- excusable but not justifiable. To constitute excu-
278 sable homicide-in-self-defence it must appear
1 Hawk that the killing of his assailant was the only pro-
104 bable means of preserving life or avoiding great
115 bodily harm – The word probable as well as proba-

means of escaping &c is used in the Public Wrongs
books - but says Ch Gould it seems to me incorrect
& homicide is, necessary or the slayer & evade
death it is justifiable & a fortiori it is excusable. It is not to be understood that a man must
kill in self defence every time he is assaulted - it
must appear that great bodily harm was in-
tended & would otherwise have been inflicted
Thus if the assailant is a weak man & has no in-
strument by which he can take advantage of his
adversary who is a strong man - the latter can
in no manner be excused for killing the former
The law shows a degree of indulgence to the judg-
ment of the slayer in this respect - It is not ex-
pected that he can deliberate with a great deal
of accuracy or correctness - he can however never
be excused on the principle of having in his
power - this must be left for the law & ju- Parties
ry - It is many times difficult says Ch Gould to distin- 477
guish between what the law term manslaughter & Rulings
one degree of excusable homicide - but the true 57
criterion between them seems to be this - when State
both parties are actually fighting or combating 18
at the time when the mortal stroke is given the 4 Bl. C.
slayer is then guilty of manslaughter. But if the 184
slayer had not known & so as to have time to re-
flect on the unlawfulness of the fighting & afterwards

Homicide – being classified as either excusable or justifiable
3 Bac homicide & every homicide is presumed to be malicious
Abr unless excused by circumstances. This rule does
1 Hawk. not proceed on the principle that it is lawful to deprive
116 one of his fellow creatures of life, but that the circum-
Hawk stances of heat of passion & sudden provocation
440 are such as the law has not thought proper to define
Kelyng with any degree of certainty – & according to some opinions
58-61 it is immaterial in such case whether the ass-
Foster sailant or his antagonist is killed – but says
276-8 the proper test to be now settled that the party
295 who assaults can never be excused for killing his
Hawk antagonist during the affray, & also if the
113 assailant with malice prepense absents an-
125 other with an intention to kill him – and
Kelyng when finding his antagonist superior in strength
58 tries to decline the combat & finding it unavoi-
123-9 dable kills the other – he is guilty of murder
Hawk & thus screen oneself from hazard of life – as in
23-2 duelling – doing so one finding the other ag-
112 ainst whom he is engaged – it is murder that
Hawk endeavoured to decline the combat – & that on the
440 ground of malice prepense – the more fear a
442 man has of another's intent to kill him or
Kelyng endeavour that he may have liberty to kill him
12 other – the more care each has to preserve
431 deliberate purpose, evidence & deadly harm

Nor can one according to the true principle bring
either of them [illegible] otherwise [illegible]
able to kill him. The rule in regard to homi-
cide in consequence of a [illegible] the agreement being
[illegible] is not to be understood to apply [illegible]
where the agreement to fight & the execution of that
agreement are one continued act of passion — 1 Hale
where the challenge is [illegible] by an immediate 112
consummation — it is manslaughter & not mur-
der — & it is the same as where there is no agree-
ment — the agreement makes no difference — 1 Hale
where the parties do not have time to cool [illegible]
before the execution. In a duel the seconds Hawk
within the rules are guilty of murder also. Ac-
cording to some opinions the seconds of both the
parties are guilty of murder but Hale [illegible] 443
thinks it not to be clear that the seconds of the per-
son killed are guilty of murder — It is however a
misdemeanor. Acts which constitute an ex-
cuse in the [illegible] [illegible] [illegible] to the civil
& natural relation of the party killing — Hawk
Thus the husband is excused in killing one who [illegible]
is found in the act of [illegible] with his wife [illegible]
would excuse [illegible] in doing the same — so a man [illegible]
he may be excused for killing one [illegible] [illegible]
[illegible] in defence of his child [illegible]
In all these cases the killing may be excused

Homicide - under the same circumstances and on
1 H.C. the same principles as the person actually killed
81 dies it in felonious - Even a stranger may
Hale interfere in all these cases where a capital
455 felony is attempted & be justified in killing
Ld Raym a rescue to prevent murther. The killing of any
458 person who attempts to commit any murder - Either manslaughter the person was resisting
lawful or not - provided it were done in the heat of
it - And the gen. rule is that the officer is justifiable in executing any process & being directed & the same is void on the face of it - because
1 Hale the officer has no means of knowing whether the
2, 58 the process is legal or not.
1 Hawk Whatever a private man may lawfully do in any
100-115 these circumstances the peace officer may do in imper-
1 Hawk fect that whether a private man has an in-
285 sufficient - if such dies in endeavouring to the
Hawk same punishment. It is said by Lord Coke
108-35 that excusable homicide was anciently pun-
1 Hawk ished with death. - But this has by later writers
114 been denied - the authorities which Lord Coke cites
1 Hale do by no means support this idea. - I must say
425 the could that the more considered the case
Hawk stands. Lee - Co. says Sergeant Hawkins. And
282 it is known that Hawk was concerned in the
2 H.C. 88 in framing the statute of 43 Eliz.

But a pardon & writ of restitution Public Wrongs
was as of course granted & that there was no
actual forfeiture. Of late however it has become
the practice in such case to direct the jury to
bring in a verdict of acquitted - & been inclined
to think that Lord Coke was the
judge who first introduced this practice - It was
he I think who said & directed the jury to bring in a
verdict of acquittal & they did so accordingly. But why is
it says he should that any punishment of guilt H.P.C.
should ever have been attached to this crime if 188
it is excusable - this term seems to preclude the 1 Hawk
idea of guilt - & emphasis says he should treat the 115
only sense in which it can be considered as prop- 114
erly used is - that the slayer shall be excused 2 Hawk
from the punishment annexed generally to man- 84
slaughter & murder - & a total forfeiture Forfeit
of property annexed upon conviction it would 285
come under the denomination of felonies relin
& it seems to have been anciently called - 45
but as there is no forfeiture now - it is not a felony
felony - the offender is more strictly pardoned 46
titled to pardon & restitution of goods - & altho' Foster
the judge directs a general verdict of acquittal 288
in excusable homicide there are no accessories 2 Hawk
because it is no felony. 1 Hale - 615 - 447
Murder as to justifiable & excusable homicide

Homicide – Felonious homicide is the killing any human creature without justification or excuse
4 Bl. C. 189 & may either be the killing of one's self or another.

Self-Murder is in law termed a felo de se & 2 Hawk. 102-3 in common parlance a suicide. A felo de se is one who deliberately puts an end to his own life – or commits any unlawful malicious act the immediate consequence of which is his own death. If one request another to kill him & the other does it the former is not a felo de se but the latter is a murderer because the request is void. Any person who is a felo de se must have 1 Hale P.C. 411-2 been of sound discretion – one not mentally 4 Bl. C. 189 incapable is not a felo de se. There is no legal fault in these acts. Although the coroners & sheriffs have the authority as if one hanged himself to take his goods & chattels It is not strictly proper to say that self murder is attended with any penal consequence whatever it alone & the very attempt be it ever so 1 Hale P.C. 412 unsuccessful is punishable at the suit of the king. Statutes have been passed for the purpose of deterring others from the commission of the like act & the statutes require that they should have 4 Bl. C. 189 an ignominious burial – in the highway & be impaled &c. & all his goods & chattels & lands are not forfeited because there are no children

In all the cases cited in Chitty Public Wrongs
have come within my knowledge in this State
the jury have universally returned a verdict
of Guilty — Having to go out on Bench & one
writers says that they must necessarily have Know-
ledge in mind & consent that is no Data Book —
For does not take place de lege de mente & corpore? — A verdict, plead
of this kind cannot in property form, in fact in
because if he were insane he was not liable &c.
but says the jurors if one should be prevented
as before &c — for verdict of Guilty &c not in
& know nothing & present a conflict of opin-
ery in this State as well as in England.
The next species of felonious homicide is that of
killing another man without justification
or excuse, & either with or without malice
voluntary or involuntary. The concomitance
with or without malice create two divisions
the one called Manslaughter — the other Murder
— the specific difference between them being
that the former is without malice in law — Man-
ment of law & the latter with malice. — Malice
in law differs in signification from malice as Foster
used in common conversation — Malice in law
is not — spite & malevolence — but it is any unlaw-
ful or wicked motive indicative of a depraved
& malignant heart.

366

Homicide – Manslaughter is the unlawful killing
1 Hale of another person with malice either
476 express or implied – & may be either voluntary
4 Bl. C. or involuntary – (ii) intentional or unin-
191 tentional. Manslaughter admits of no ac-
cessories before the fact – because the act is
Foster supposed to be unpremeditated. but there may
295 be accessories after the fact as well in this as in any
other crime.

As to voluntary manslaughter if two persons
Foster upon a sudden quarrel fight & one kills the
290 other – it is manslaughter of the voluntary kind
Kelyng and so it is if upon a challenge or one side and
115 acceptance on the other – they go aside immed-
154-5 iately & one by lighting kills the other. But if
Foster after the challenge & acceptance sufficient time
151-5 intervene for the passions to subside & in these
2 Hawk circumstances murder. So upon a sudden quarrel or fight a
562-8 third person attempts to part the combatants &
1 Hawk is killed in the attempt – it is murder if the person
127-9 killing knew or was informed of the purpose he in-
Foster tervened – & did not know his object it is man-
272-310 slaughter. Every man has a right to prevent
Kelyng any felony if it is his duty & prevent it possible all vio-
66-7 lence & this kind. – And where the parties are
114-5 attempting to kill each other the crime of killing
either person would be the same as killing another

If a person is greatly provoked by an Public Prosecutor
other man, & attack as by pulling a one upon killing
his nose - a spitting in his face - & immediately 155-6
kills him - the killing is manslaughter & not Black
murder - but if sufficient time had elapsed 240
for the passion to subside & it is murder - & recollect Black
this murder if it is indispensibly necessary that 125
there be malice aforethought & malice express Foster
or what Blackstone calls it, deliberate purpose. 204-5
Kill. But this it is true in general that if one 5. 6
be provoked by some great indignity & kill him
in to excite this provocation the crime is only Black
manslaughter - yet this is not universal for 454-455
if the manner of executing his revenge mani- killing
fest a set deliberate purpose of killing - it will 8.
be murder the same immediately and in the Black
heat of passion. as where the keeper of the Park 196
found a boy stealing wood in the park - & tied him killing
to a horse's tail & set the horse a running so that 187
the boy was killed - it was held to be murder & not Black
manslaughter. If a man find another in the 480
act of adultery with his wife & kill him on the very
spot - it is not murder but manslaughter. But 212
tho it is not murder to one under the impulse 2 Hale
of strong passion provoked by the misconduct of the 301-2
other - & kill him - yet bare words however insult-
ing contemptuous or provoking - or opprobrious gestures

Homicide – a breach of engagement – a treating
in kind – are never sufficient to make the
Hale. crime of killing a human creature. Especially
200 if the manner in which the instrument
Hawk. the violence
1 Hawk. with which it is done manifestly endangers
124-5 life – but if he only undertake to inflict moderate
Keling chastisement or retaliation, & unawares
1864 more pt death accidentally ensue, the crime
Foster is nothing more than manslaughter. If
316 child dies in playing & boys sports that
Kelyn & upon a sudden affray between adult
55-60-4 friends & acquaintances & kills him
156 it is only manslaughter – This rule may
12 Coke 87 Bull N Prius 20 generally speaking – The fact is if the interposer
& de-
Foster fendant or bystander is accidentally occasioned
265 the death of B it is manslaughter only but if
the manner of interposing & defending is such
as manifests an intention to kill it is murder.
Where domestic duty or natural relations
interpose in encounters as one is a weak-
1 Hale ness or a parent – homicide may be excusable
192 in self defence – for it arises from the appearance
194 necessity – but where there is no necessity & homi-
cide is occasioned by a sudden act of passion
it is manslaughter.

265 In involuntary manslaughter – This is the

term denotes it unintentional homicide. Public Wrongs
but differs from homicide by misadventure Coke
in the entring upon an unlawful act which
makes him as guilty of murder Foster
adventure ensues upon a lawful act are
act merely malum prohibitum - so if one
occasions the death of another by an act
malum prohibitum - the rule is the same as
if the actor had used the utmost precaution
after but homicide by misadventure. Thus
if a person be unqualified to kill game &
shooting at some hell & person it is only
homicide by misad. venture. & man kills
dangerous & rash act one accidentally kills
another it is manslaughter. But the homicide Foster
accidentally ensues upon an unlawful act is in 2d - 292
general homicide by misadventure yet if the act dis. 74
unlawful per se - actually considered - be done in an unlawful
unlawful manner & death accidentally ensues it is
it is manslaughter - thus if one where a building &c
in a city throws down stones or stone into the
street where people are continually passing - here Foster
guilty of manslaughter even tho he cried out 262
watch-ware well as at the culprit to warn - so if one
discharge a gun in time of common recreation
at another & kills him accidentally - it is manslaugh-
ter - tho the discharging of a gun in such for is lawful

Homicide – but the involuntary homicide committed
2 Hale on an unlawful act is manslaughter in general
192 but it is not to be understood of that involuntary
1 Hale homicide upon every unlawful act is but man-
292 slaughter – as the unlawful act is nothing more
than a civil trespass involuntary homicide en-
sue upon that act is murder only but
being if the act is a felony – then the killing
111–114 is murder.
Page a slaughter is a felony – but being a clergyable
91 offence is not capital in the first in the case
blond. but the statute to take all the goods & chattels
45 (& land also) & by way of commutation is burn-
2 Hale. ed in the hand
193–201 as to the manner of allowing the benefit of the
387 clergy – anciently the ordinary or bishop (where one of
the clergy were indicted) demanded his clerick
& the king's court – & if he could read he was of
course entitled to the privilege. this practice
continued till the stat. 4 H. 4 was enacted
whereby all persons clerical or not were excluded
in all clergyable offence allowed the benefit
of clergy once whether could read or not. because
once happened in the case of a king's clerk only
the jury could while holding was challenged where
upon the conviction of a man in murdering the
knight of the king was urged & the prisoner

the Bonds standing by - a line in Public Records
some ancient date when neither he
& read & reinvate - whose his not reading
Judge Tellis acknowledging in open Court the Sen-
ence - as is usual on such occasions & it is some
Light at noonlight - to which the Bishop replied Light
The Chief Justice said the Bishop Begone out of
Court if ever you come in again with such a claim you will be
miserable out of time. The Legislature of the Colonial office
never came into court again to trial, because
but used to send some one of an inferior city
in Connecticut voluntary manslaughter is
punished with fourteen years gaol & whipping
whipping & burning in the hand - But it has
been decided that involuntary manslaughter
is not within the statute - therefore such
punishable as misdemeanors at Com. Law.
There have been instances of very aggravated cases
of involuntary manslaughter in this state.
The third species of felonious homicide is
denominated Murder - which anciently
was a secret homicide
a killing - But now it is according to the
definition of Lord Coke where a person of sound
memory & discretion unlawfully killeth any
reasonable creature in being & under the king's
peace with malice aforethought either expressed

Homicide – This is the definition of Lord Coke as it stands in the Penal Code & adopted by the Supreme Court of this State in which nothing shall appear to be – that is in the following a precise, logical definition. If the redundancies were pruned off – so that it would read thus – Murder is the unlawful killing of any reasonable creature with malice aforethought either express or implied the definition would be left objectionable. The difference between voluntary manslaughter & murder is that the former is committed upon a sudden impulse of passion, none & revenge & the latter from a wicked & deliberate intention to kill – In the former there is no malice but in the latter malice prepense forms a necessary ingredient

But the definition of Lord Coke as it must be done by a person of sound memory & discretion. The reasonable ground is an unnecessary part of the definition – It is implied as matter of course that a person not of sound memory & discretion is in no manner subject to any kind of punishment – for there can be no criminal intent where there is a want of will – & an contemplation of law insane persons have no will.

The definition further requires the person unlawfully kill. The unlawfulness of the action

arises from the want of qualification, Public Wrongs
or excuse. There must also be an actual
killing – to an assault merely the acts and 4 Bl C.
intention to kill is no murder – accidently done 196
even if it is said an assault with evil intention
merely was punishable with death. To con-
stitute murder the killing need not neces-
sarily be directly – as by a blow or stroke or the Hawk
discharge of a gun – but any act the probable 118
consequence of which may be eventually in the
death – is murder if committed wilfully & 834
with deliberate intent to kill – Thus he who Leach
puts poison in one's way – or sets a trap – or 141
pitfall – or intends by the force of mechanical 4 Bl C.
powers in other way to kill – & death ensues 196
is an quilty of murder as if he had done it
directly by his own hands. Leach reports
says the Gould is a very high authority he
was a good reporter – & I always cite him 1 Hale
when I can find a case in point. — 451-2
The case of the son who by carrying his Father 4 Bl C.
out of doors & exposing him to the cold morning 197
of a cold morning – was held to be murder Thomas 1 Hawk
direct & terrible act. – to relieve a woman car- 118
ried her child into the woods – & covered up with
leaves with an intention to have it die – & left
struck it & killed it. it was held to be murder.

Homicide – to shew a person may be guilty of murder
1 Hawk where the immediate act of destruction is done
3–118 by another – As if one incites a mad man to kill
Kelyng another – or by duress of imprisonment, or procures
58 a third person to testify against or accuse another
1 Hale falsely a thing to be executed – It is murder in
481–6 both cases. Whether the giving false testimony
442–467 against another with an intent to procure him
– Bl. C. convicted & executed – tho he be not in fact executed
96 – is a question not yet settled judicially. It is agreed
Foster by Foster & Blackstone that this offence was ancient-
132 ly capital – but as there has been no case wherein
Leach it has been punished capitally – the modern
44 law to avoid the danger of deterring witnesses from
Hawk testifying in criminal cases – had not p. v. whether
180 offence capitally. The only ground of difference from
as in B.C. other cases of ineffectually endeavouring to procure
270 another's death is the intervention of law – This
seems to the ground to rest – But upon the Gospel I
imagine it does not differ from the procuring
one man to kill another – & tho' if ineffectual it is at
Stat. Com. Law not capital. But Stat. enacts that if any
295 person rise up by false oath wilfully & of purpose to take away any man's life such offender
shall be put to death. This makes the crime of
bearing false witness greater than at Com. Law –
it does not appear that the person accused of

such take ter. ... would be acte- Public Wrongs
ally condemned & executed in order to make the
presence of such a thing a matter of murder. Hawk
If a physician administer such medicine as 151
a surgeon make use of in application to any chance-
take away the life of a patient - it is only mis-
taken by misadventure - If barbers call bleed-
ers if the physician or surgeon be not a mur-
derer - if the draper - & distiller accidentally killing
another in exercising of medicine & same
administered by ignorance - but negligence and
this seems of late the very practice. Quin
says he very proper & known a quack, as being
a quack. But a quack in administering a rem-
edy does not do what the law permits - the
law does not prohibit Quackery - nor make
it penal - for that the rule is prescribed by
all the modern authorities.
So person can be adjudged in law to have kil-
led another unless the death happen within
a year and a day after the injury done or
cause of death administered. for it becomes
more & more uncertain the more time inter-
venes betw the cause & death administered & the
death see. Instance. cases of third & one
other cause - the law has fixed a certain day
in computing the time the day on which the in-

homicide - very wounds must be received within
March reckoned the first day. If the death happen
Hil within a year & a day or within the year &
Trin day after the mortal cause of death was received
26 - it is matter of evidence for the jury whether
Hale the wounds or weather the death was occasioned by
19 that cause. 4th The deceased did die within the
year & day - It is no excuse to the prisoner that
Kelyng he could not have had proper care & attention had been
241 bestowed upon him. He can never avail himself of
Hale the neglect of others in not using the best means
428 & cure - But if one gives another a mortal
Hawk wound - & such applications are made that life
II 9 is destroyed - the person inflicting the wound is not
guilty of murder. 5th A person be indicted for one
species of killing - he cannot be convicted by evi-
dence of a totally different species of killing.
Thus if one be indicted of poisoning another
person that the jury will not on that the
indictment - If one be indicted for shooting
with a view killing another - & the evidence be
Hale that he struck him & beat - & if one be indict-
231 ed for shooting - with a view killing or poisoning
with another - evidence that he did intend him will
6 not support the indictment. But where the
Hale evidence varies only in circumstance - as
181 if the indictment be for killing with one axe

& the evidence of killing with a Public Nuisance
clerk. & the matters are united together as one
misprision — one of the first degree & the other of
& the second degree — the one for striking dead or
any killing & the other for standing by — aiding &
assisting &c — evidence that the latter struck a blow
but not killed & the former stood by aiding & as-
sisting will support the indictment. It is plead
laid down as a general rule in all cases of
case — that in an indictment for murder it suffices
must be stated that the offender gave the mortal
wound or blow — & that it is indispensable
ble — but says the good of appears that rule
can admit any but those cases where the murder
der is done with actual force & violence & not by
means of starving & poisoning. Thus see 1 Hawk
the killing. &c. But the definition requires 121
that the person killed be a reasonable creature in rerum
being & under the King's peace — Tho the definition 455
requires that the person killed be under the
peace yet says the general allegiance & subjection are
not in the rule — & any person therefore except
alien enemies whom it is the duty of Englishmen
to kill — is a person under the peace — 1 Hawk
But the person killed must have been living 121
in the killing of an unborn infant is not mur- 1 Hale
der but a misprision. the unborn infant is 433

domicile - for many civil purposes deemed in law
3 Inst 50 to be in esse - but in other purposes it is otherwise
Bract 135 But if the child be born alive & dies with the
Of Murder of a Child 310
3 Inst 50 actual separation before the birth - it seems by the
better opinion to be murder - Lord Hale however
1 Hawk 80 says it is not murder. Lord Hale & the case
1 Hale 421 differs in criminal law from other Lawyers
2 Hale 413 is always on the side of mercy in the offender
198 He was a very high authority especially in
Hale criminal law. The death of the child must
433 double, & happen within a year & a day from
the time of the injury received to be murder
The definitive requires also that the person
1 Hawk killed be a reasonable creature - by the epi-
121 thet reasonable capable of life - Lord Coke about
Coke Inst meaned that kind of reason which every discre-
17 tionate man from least - & not the faculty
1 Hale of reason whereby distinguish subject lunatics
429 servants from others. If one counsel
433 another to kill an unborn child - & it is done
that the child dies after the birth in consequence
he that counsels it an accessary & here the Court
But says the Gould there one species of statutory
murder distinct from all others - they differ
however only as respects the rule of evidence
The Stat. 21 Jam. I provides that where a woman
being with child which when born would be

a bastard endeavour privately to Public Wrongs
conceal it birth & death by privately burying
of the she shall be deemed guilty of murder 3 Inst
unless she can prove by one witness or more 685
that it was born dead. a similar Statute was 1 Hal
enacted in this State but was lately repealed 681
by these Statutes throw the burden of proof 2 Hawk
upon the criminal - & would if rigorously 610
carried into execution operate with great Keling
severity. However in Eng. where while one 52.
Statute was in force the courts in putting
a judicial construction upon them have
at least required some presumptive proof
that the child was alive before sentence of
death could be pronounced. Our legislature
says she would act very wisely in repeal-
ing this Statute. We have a new Statute how-
ever prescribing an ignominious punish- 1 Stat
ment for concealing the birth & death of an 502-3
illegitimate child — the mother is to sit on the
pillory one hour with a rope round her neck
and be imprisoned at the discretion of the
court.

Having pursued the definition of Lord Coke thus
far says the good it remains to enquire what
is meant by malice aforethought express or implied — Mal-
lice is the grand criterion to distinguish murder

domicide - from all other kinds of homicide —
4 Bl. C. By malice is not meant spite or malevolence
198 but is any evil design — the dictate of an evil
Foster depraved & wicked mind. — The court & not
256 the jury are to determine what constitutes
being malice — but the jury are to ascertain the
126 facts circumstances which go to make
out the malice - & that this is a mixed question
as to what is malice — but as to the
amount of malice the facts being given is
Ld Ray. matter of law — so in the case of libel the
1495 circumstances under which the words were
& Str. spoken being found by the jury the court
778 are regularly to determine whether or no
Hawk. they were spoken with malice. so in the
306 § 7 Mercantile law a Bill of Exchange being dis-
honored the court & not the jury are to deter-
5
207 mine what is a reasonable time within
which to give notice of the dishonor. so all
574 these cases the court in charging the jury
are to tell them whether upon finding certain
facts, they are & ought to find the prisoner guilty or not.
Malice express is either express or implied
Malice express is where one with a deliberate &
formed design to kill some particular individ-
ual does actually kill that individual in

execution of his design. Thus formal duelling Hawk's
threats - former quarrel - lying in wait or in
ambush with a design to kill - circumstances 1 Hawk
ces it like these are deemed of a more heinous 200
nature. So where one kills another in consequence 261
quence of an act indicating enmity & evil, Hawk
meaning - as by shooting a ball into a crowd 121-2
of people - not aiming at any particular indi-
vidual - it is in both cases malice express 129-130
So if one kills another in a deliberate pre-
concerted duel it is malice express & it is no
defence that the deceased first commenced 1 Hawk
the quarrel or took the first fire - or that the 124
prisoner accepted the challenge reluctantly, 1 Hale
or did not intend to kill - only to wound - in 445
all these cases the homicide is murder by 451
express malice. The seconds & the principals
are also guilty of murder by express malice
The giving of a challenge is at Com. Law a high 2 East
misdemeanor - & so the Statutes of this State & 581
of New-York have made it - but there was no need
of these Statutes for the purpose of making it a 2 East
high handed misdemeanor. If a person upon 755
no provocation or upon a very slight provocation 1 Hawk
strikes sub & kills another it is malice express. 124
Blackstone calls this malice implied but Hawk-
ins - express - & so the Court think very correctly.

Homicide – Blackstone, 200 [illegible] to a
[illegible] distinction is very conspicuous – & in the
Hawk distinction between malice express & malice im-
116 plied is very obscure & almost unintelligible.
relying Ld Abe if one upon a sudden & great provocation
12 kill another but in a manner & circumstances
Hale manifesting express malice & a deliberate in-
254 tent to kill he is guilty of murder by malice ex-
273-4 press. Or where a park keeper fired a gun to a
horse's tail so that the horse by running killed his
relying Ld if when a sudden quarrel a stranger one kills
56 his antagonist but under such circumstances
Hawk as show that he was master of his passions – &
128 not in a sudden rage. – he is guilty of murder
by malice express. But where it is merely a sud-
den act of revenge – & the person is influenced by
violent passions it is only manslaughter.
Chauvelin Implied is where one kills another in cir-
cumstances of some unlawful act – intending it ei-
ther entirely or principally to some other pur-
Hawk pose than the killing of the person slain. Thus
122-6 if one in shooting at a bird kill a man with intent to kill
Hale it be killing some or some other person the
200-1 law implies malice. So if a ball be discharged
relying at one & another & kills them it is malice ex-
1-4 press tho he does not kill whom he intended – or
his object was to commit a felony either & the same kill

Sec more – if poison be exposed to the Public Wrong
surprize & precaution are – & can't be, it seems
thereby it is malice implied. But the intended
act attempted else done must be a felony or else
the crime of killing will be in a more culpable
shade than where malice express else found
& implied malice differently from any definition
I have seen. Express malice ~~in the first~~ Hawk
seems to me to be that which in point of fact 126
concurs with the act of killing. But implied mal- 1 Coke
lice I take to be that which concurs with the act 81
not in point of fact but by imputation of Law 1 Hale
as if one should give poison to a woman with in- 426
tent to procure an abortion & the woman herself 441
should thereby die – or if one give a poisoned ap- 467
ple to his wife with intent to poison her & the Forster
wife the apple to her child whereby the child 261
died in both cases the malice is implied because
he was not influenced by any intent to destroy Leach
the child – but by legal imputation malice is 115
implied. If a man kills an officer in the pur- Forster
suit of escaping an arrest it is said to be mur- 99 135
der implied – because his only object is to escape 308
It is no excuse for the prisoner that the process
of arrest is erroneous – for a process not erroneous
upon the face of it is not void – indeed if the pro-
cess were void the prisoner cannot avail himself

Homicide of it because the officer is never bound to
show his warrant or even to make known the
1 Hawk cause of arrest until the arrest is made,
120-130 and it is no excuse that the party did not
Blake know the sheriffs object. There is however
66-8 a distinction to be observed between a public
Foster officer & a private person specially authori-
137 zed, for the latter is never bound
911-2 not to show his warrant - but a private
318 person must show his warrant before he can
proceed to all lengths in making an arrest.
But it is not to be understood that a private per-
son making an arrest without showing his
warrant may be actually killed - on the other
hand it may be murder to kill him. It has
been lately settled by the court of Kings Bench
in England - that where one is indicted for
killing an officer the prosecutor is not bound
4 Bl. to allege in the indictment or to show that the
866 arrest was attempted to be made by an officer
2 Russ This is a matter which can always be ascertain-
488 ed by the evidence - & if the will - to avail himself
& 4C of the advantage of proving that he was not an
Blak officer. All homicide is primâ facie malicious
67 & - is prima facie murder. If there is any thing which
will have a tendency to mitigate the punishment
the offender must show it for on him lies the onus probandi

& the prisoner cannot be heard the Public Prosecutor has no power to make out — & proof being the prosecutor can only disprove the killing. 6 & 7, it is not incumbent on him to show under what particular circumstances the act was done. Every unlawful 255
is murder unless justified by the permission of 4. Bl. C
the law or by the circumstances of the case — or 221
unless excused by misadventure or self defence 2 Hawk.
or unless alleviated into manslaughter by it's 48.8-9
being the involuntary consequence of some un 651
lawful intention act. 1. Hale
at Com. Law this was a chargeable offence — but 25
by the Stat. 23 Hen. VIII — 1 Edw. VI — 4 & 5 Philip
& Mary — principals & accessories before the fact
are ousted of clergy — accessories after the fact
are still allowed the benefit of clergy. for that fact
both at Com law & by our Stat Principals & accessories 520
are before the act are punished with death. 2. Hale
The sentence of the court in such case is that 163
the prisoner be hanged by the neck till dead. If a wo- 4 Blac.
man condemned to death pleads pregnancy 394-5
execution shall be respited until she be de- 2 Hawk.
livered. Pregnancy however is no excuse for 658
not bleeding — that is not delay judgment since
no conviction — a respite however can be 478
read but only once for this cause. The execution
of a condemned felon is never complete till he is dead

Homicide – I have mentioned in the discussion
tion my opinion on this subject among the
common people. and it seems like the general
Hale opinion among them that if a man be
408 harnessed & upon being set upon or the rope is broken
Hale during the should receive – he shall be absolut lib-
412 erty. But my Lord there is no foundation
Hale for such a motion as this – he is as liable to be
208 hanged again immediately as ever he was. & this
Foster is the duty of the office.
1st There is a species of murder my Lord distinct from that just now considered on account
Ed VI of it's great attrocity. This species of murder is called
c. Petit Treason – and murder in the [illegible] pre-
141 vate allegiance – & this is what renders it more
Hale heinous ordinarily known. maliciously & privy attempt of the wife to kill her husband were pun-
208 ished as petty treason – but at this day nothing
Stat. but the wife actually killing her husband or the
25 Edw III servant his master – or an ecclesiastical per-
c. 2 son his superior – or prelate – these are the only
161 three cases in which petty treason may be com-
182 mitted – But the killing of a master by a woman
servant & the killing of a husband by his wife
2 Hawk. can never be petty treason only the killing of
c. 31 s. 5 them such circumstances as is done by any other
person or slave to another person is the same murder

The crime of petit treason arose out Public Wrongs
of the relative situation of the parties &c. Hale
the act done. Petty treason is alleged murder 685-1
or but the term are not convertible - murder Hawk
not always petty treason - murder is the genus 133-4
& petty treason the species. If a wife after being 2 Roll.
divorced a mensa et thoro kill her husband or 203
divorced she is a traitor - it is petty treason, for
the relation & subordinate style is not by such divorce
totally ceased. - But if a woman divorced a vinculo
matrimonii killeth him so divorced it is murder
only. If a wife procures one to kill her hus-
band - she is accessory not to petty treason but 5 Rep.
to murder - because the crime of the accessory is 142
less than of the principal & the principal in Hawk
this case is only guilty of murder. On the oth- 32
er hand if a stranger procures the wife to kill
her husband the stranger is accessory to the petty
treason. The statute of 25 Edward III provided on-
ly for servants who killed their masters & mist-
resses who killed their mistresses - In putting 1 Hawk.
a construction upon this statute however it has 86
been extended to the killing of masters - & this Hawk
case is cited as an exception to the general 132
& municipal law that penal statutes should
be construed strictly. It is said also that the mur- Lake
dering of a man by his servant after the relation 96

582

Homicide - of murder, express or determined but in
a free presence of malice conceived during the
203 time of his being servant is petty treason.
blood. This says Mr Hood is contrary the stat. Ed-
200 ward — more to than in the former case re-
garding the mistress, i. — The murdering of
the father by the child is not petty treason unless
by a reasonable construction the child can be
considered a servant to the father. A child
as such is not regularly a servant — it will
be remembered that we could treat under the
Ind. 334 title of Parent & Child that a child
becomes emancipated at the age of twenty one — or
1 Hale by marriage or by entering into the king's service
330 as a soldier — and in general by entering into
1 Hawk any engagement inconsistent with the con-
131-2 tinual attendance upon the son. But if a child
be under 21 years of age at home in his father's
service the killing of his father in such case
would be petty treason — But if over 21 — he become
1 Hawk a servant either by contract express or imp-
183 lied — he is as capable of committing petty treason
4 Bl. C. as any body. Petty treason was originally a
203-4 clergyable felony but by stat. 12 Henry VII c. 7 was
ousted of clergy, & was by stat 23 Henry VIII — 35 & 36 H. 8
of Edw. 6 has been extended to aiders abettors and
counsellors & accessories after the fact

The punishment annexed to the crime by the 25 H. 8 of petit treason is that males shall be drawn to the gallows on a hurdle & executed - & that females shall be drawn on a hurdle & burnt - The 30 & 31 Geo. III. however enacts that they shall be hanged instead of being burnt. Even in indictment for petit treason the offender may be acquitted of that & convicted of murder or of manslaughter 2 Hal. C.

Arson is the wilful & malicious burning of the dwelling house or out-house of another. Not only the dwelling house of another but all other buildings within the curtilage or homestall of the dwelling house are subject of arson - as barns stables in which house is also a barn filled with corn is a sub ject of arson although the roof not within the curtilage. Stack of corn are not actually a sub ject of arson - but now in some of these cases fires have been specially provided for by statute 28 But the burning of a frame of a house is not arson & but it does not come within the meaning of the act. 221 unless - a house-frame is not a house - for a house is some building &c. If arson is a sub ject of felony & the burning of a person willfully & maliciously in arson because a person is always in the house - & may be considered as dwelling in the house as an occupier. It is said in almost all the elementary writers that the burning

Wilson - a new one house in Green & another was
erected. it burnt in consequence. but was rebuilt in
377 a very incorrect view of the fire. also
2 Feb one can be quite of it was by burning of Green
221 house. It is true that if another house is burnt
Leach in consequence he is guilty of arson - but the law
249 wing of our own house constituted respect the
Latter offence. It is also not only when knowingly but
116 if inference from circumstances that the burning
Hacob did was done is not arson. It has been de-
cided that where one seizes of fire in one room
Bro. & it soon burnt the house - in such circum-
377 stances would inform another building on
338 first fire is primarily - he was guilty of one of-
fence but was liable only in a civil action. So
Sol: where one had the possession of a house for years
holding in a city & burned it with intent to destroy an
29 other's house did not burn it - it was held not
liable to the person. The modern case of the
115 It was been called in the course of the present
Law is that where one in the possession of a house
270 made an agreement for a lease & he but no
270 lease had actually been sent - while he was
208 holding burnt the house - it was not person
one not of a tenant from year to year who
in the time of a term not actually ended
mine at the end of each year - a new notice

But the indict. ought to aver that the Public Prison
house in the county aforesaid is a publick
high way at com. law - and so the
ground of the burning of the house was
laid because it endangered other houses - &
however neither in any case of the wounding
& hurting is the person to be named in
the indictment for it may be done
He must be indicted for the misdemeanor
By the other hand if a Landlord burns his
house while in the possession of his tenant
the the Landlord having the reversion it is
error. Hence a reversioner or remainder man
may be guilty of arson in burning the premises
in the possession of an immediate tenant.
In com. The offence of arson is regulated in
a great measure by statute - according this
stat. our law of arson is the same as at com. law
But stat. declares that if any person shall
wilfully & feloniously burn any stack of
corn, house barn house stable or other
house schoolhouse dwelling house barn
or out house shop or vessel & the like mans
person shall be lost or endangered thereby he
or she shall be guilty of arson. And the use the
stat. be not within the protection of the main-
sion house. For our stat. makes the burning

Foster 115
2 Bl. C. 22.

Stat. 09 Geo 4 c. 31 s. 6

Arson — if a thief or robber [illegible] with design to
get away the goods [illegible] [illegible] [illegible] would
never [illegible] the offence [illegible] — & therefore not
to be charged in the indictment as the offender
in arson. Thus [illegible] the intent is essential.
As to what is burning within the meaning of the
definition. It is now settled that a bare intent
1 Hawk. or actual attempt to burn a house &c is not
67 arson — but an actual burning of any part
Hale of a house be it ever so small a part is arson.
570 [illegible] one set fire to a house & it is instantly
2 East. [illegible] or that it goes out of itself — or [illegible]
1015 [illegible] without doing [illegible] — it is arson. Even
the burning of a single shingle or any part
[illegible] is arson.

Blount. But the burning must be Malicious & not by ac-
475 cident or negligence. — Accident or negligence
1 Hawk. however will be no excuse in a civil action
67 for the damages to the injured party. The case
1 Hale ~~would be the same~~ as if one shoot wantonly from
569 a gun & it accidentally lodge upon a building
so that it be consumed. If one with intent to
1 Hawk. burn the house of A actually burns the house
67 of B & not that of A — it is arson. [illegible]
2 Hawk. intended to burn that of B & a mere [illegible]
18 — for the [illegible] not [illegible]. The crime
4 Black. [illegible] arson is by the common law punishable with death.

it was not even excepted at the Old Public Houses
(sic) when murder first was. It was on the Statute of
Mertog and long after the Clergy Act which that
was repealed by the 8 Eliz. & revived by an Explan-
ation Act 43 Eliz. which expressly de-
nied it the benefit before the 1st but not
those after that. — The punishment was
not death if prejudice or hazard should
from it befall any one in consequence — The
latter part says the Gould is certainly to
sue for inflicting so high a punishment as
death. What shall be said the prejudice or
hazard done like a Lyon's hair is done
from the head — or if one shall threaten
jumping out of the window it may be
said to be a prejudice in consequence of the
threats &c. It is difficult to find limits within
the Statute may not be construed to extend. In-
deed says the Gould I should wonder our Courts
would give any construction at all otherwise
than that nothing should be hazard'd one jot
except some very great corporeal hurt appa-
rently endangered &c. Another Statute enacts
that if one wilfully & maliciously burns or de-
stroys any Stable House &c not exceed-
ing one acre &c — he shall be convicted in the
[illegible] if it shall not exceed [illegible] acres — and

Arson - for the second offence he is to be confined in
Newgate for any limited period not less than
a term of years at the discretion of the Court. — This is intended only to prevent murder - but if a female is convicted she is not to be confined in a separate but in a common dark room or cell in the county in which she is convicted for the same period

4 Blk. 224 Burglary is the offence of breaking into the mansion house of another in the night season with intent to commit a felony. This definition of Lord Coke says the Court is by no means strictly
Hawk. 1. 39 bound to the same strictness and adopted by Hawkins
162 It is not necessary to constitute Burglary that the
Russ. 555 building broken into be a mansion house & any person - or the breaking into a church or through the wall of a city is Burglary. Lord Coke indeed says a church is a mansion house for it is the mansion house of God. The fact of the necessity of
4 Blk. 225 the building being a mansion house exists in the case of a private individual's dwelling
Hawk. 1. 39 c. 58 § 1 house, but even where the building broken into is in strictness - the intention of the word mansion is explained - any other word equivalent thereto is
Leach 117 sufficient. The term mansion house includes all
120 out houses - yard & fences of the mansion house
is within the curtilage or precincts. 4th Mason

courtledge is that portion of ground which
is inclosed within the mansion house by one continuous
wall or fence - as directly connected with it & ap-
purtenant. Hence if any part of the premises be divided
by a road from the mansion house & not adjoining to it
it does not form part of the curtilage. So if
there is a building on the premises which is used for
trade - it is not a part of the curtilage. Although so-
many of lodging of the person in the principal dwelling
house & another room of the house & passage leading
to it the person also may lodge in that room so
not under cover of the same roof as the dwelling
house but in a separate building. They are deemed in law
to be two separate mansion houses. So persons
that a mansion house is one in which some
person dwells or lodges - & one house in which
one lodges is deemed a mansion house - but where
it can stay & one house & other not lodge there for
it is not a dwelling (it) is not a
mansion house. Hence a house occupied by
a not a mansion house. If the room appointed to
the purpose within the curtilage of the
mansion house were occupied by strangers
but if the owner of the mansion house have a part
also within the curtilage - this building is not a distinct
dwelling - because - it is not privileged as the
one inside the gates within the curtilage
of the mansion house - it is covered from the rain

Burglary - It is not necessary to the offence of
Foster breaking a house as subject of burglary that any
73 one be in the house at the time the outer com-
mitted. A house in which a family ordinarily
Hale resides but having left it for a time with intent
P.C. to return speedily - as within a week - two weeks
561 or a month is a subject of burglary. The right
Kelyng of protection is not abandoned by such a tem-
46-52 porary absence. The house of a corporation
Foster is within the meaning of the rule - provided no
73 any of the officers of the corporation or any body
Leach else lives (ie) lodges in it - as a Bank &c.
Jan. 1789 It has been decided & seems to be settled that
Kelyng where a house is hired for the purpose of
46 receiving a family to live in it & part of the
Hawk. household goods are carried into it before the
P.C. family itself removes & any one shall sleep in
Foster it - the house is a subject of burglary. He
73 who hired it had taken possession of it as his
Hale mansion house by removing a part of the goods
562 into it. But a tent or booth in which one
164 may lodge or a temporary or occasional abode is
Hawk. not considered a house within the meaning
220 of the rule - it is a place not more than a room
or with a covered top. - The place where one sleeps
or is not a mansion house unless it be in a house
or else. also within the curtilage or the house and

says the Gen. Sessions can further which would have extended the law that far — further that. indeed than the rule of construction of criminal law will warrant. Any dwelling house or any building wherein goods wares & merchandize are deposited — are by the stat. words of the statute — & it is not necessary that the shop or store be occupied in the same person. The courts in construing this statute have gone far — They have not only construed it literally but have carried it to an extent which no rule of construction will give. I hope this — They have decided that a school-house — a barn or a cooper shop & in the last session of the superior court that a Bloomery shop attached to the building containing the furnace or under the same roof there being in the shop no goods wares or merchandize except a decanter or two & some glasses for the use of the workmen — a desk with a ten dollar counterfeit bill & three cents — were all subject to burglary.

The Com. law require that the house be the mansion house of another — It is therefore requisite to mention the name of the owner of the mansion house in the indictment — and [illegible] if the house is described in the indictment as the house of — proof that it was the house of B will not support the indictment.

Burglary – The definition also requires that the
breaking be in the night time – Formerly all
the time between sunset & sunrise was
deemed night for the purpose of subjecting one
to be convicted of burglary. But now it includes the time
that between the evening & morning twilight only
so far it is held above a week that if there be
sufficient day light or twilight existing at the
commencement of the act alone that the circumstance
that a man cannot be easily discovered by it is not
burglary – but it must be day light & not moon-light
The definition requires also that there be not
only a breaking but an entry – a breaking
without an entry or an entry without a
breaking is not burglary – but it is not nec-
essary that the breaking & entry be both at
the same time – one may be on one night
& the other on another night. The breaking nec-
essary constituted by law is not only a burglar or
breaking open of a door or window – but a more
picking of a lock – raising a casement – taking out
a pane – lifting a latch or the removal of any kind
of fastening is a breaking within the meaning
of the law. And entry by a chimney the[re] is
no actual breach is burglary – because as the
day – it is as much a breach as the removal of
[illegible] admits

But a breach of the Statute is within Public Wrongs
the mischief - it is indictable, & civiliter it makes [illegible] &c Ford 105
is not a breaking within the meaning of Def.
Hence if one enter into a house in the night with-
out breaking in - or breaks in - in a day time, 1 Hawk. 86
in the night breaks chests trunks &c it is not dwelling
glary. But if one breaks an inner door this is
a breaking within the meaning of the Act. Hence 2 Hawk.
if one enters a house by an open door or win- 260-2
dow & breaks an inner door from one room to 1 Hawk
another it is burglary. This differs from the 1
law of breaking doors in civil cases as settled 4 Bl. C.
in the case of Lee & Gansel (Cowp. 1). And accor- 226
ding to the weight of authorities if one assault relin
or attacks a house with a view to enter & com- 3
mit Burglary - & on the doors being shewn by reluctant
the owner - neither in - it is within the mean- 262
ing of the law a breaking & entry. The authori- 1 Bac
ties however are not all agreed upon this point. 583
Whether one having entered into a house lawfully
by - or with the owners consent & may break out a
the house without committing burglary is a
Com. Law an unsettled question. But the Act
12 Anne. makes the entering in the night with
felonious intent & subsequent breaking out Bur-
glary. - This is like breaking out of prison
by which no one could escape & at the
Com. Law was not a single thing in itself

Burglary – it seems to be that the ... Hale this recovery. Hawk 2 – Hale 552 – 3 Inst. 22 – 16 But the definition requires that there should Rel. be an Entry — it is no matter whether the 2 entry be procured by fraud or by force – the one Bac. is as much burglary as the other. So if one de 635 let into a house by the prisoner's procurement Hel. in order to rob it. The breaking and entering an 67 inner door may also be burglary – as if a ser- vant open the door into his master's room with Cas. a felonious intent – or if the servant enter the room of another in the same house with a felonious intent it is burglary. – Where the room of a lodger is in such case broken open – it is not considered as the mansion house of the Lodger Cases but of the owner. If a servant in a house con- Hawk spire with another & let him into the house 2 P.C. the consent of the servant with a subsequent 25 entry of the person with a felonious intent to make them both guilty of Burglary said 881 was ~~cited~~ decided at the Old Bailey. The Foste- least entry of a man's body – or any part of the 108 body – as of a hook to draw out goods – or any 1 Hawk instrument to threaten or intimidate the own- 61 er – is an entry within the meaning of the law Rel. 5th and it has been said that if it be only let- ted into a lock it is burglary – the true rea-

modately construed. But now Public Houses by a declaration in 1785 the indictment in such cases must be so penned in all matters as to each house. And in another case that having thro' a hole in the door with a knife-gimblet or wimble - or 1 Hawk that the shifting left upon the door - it was after 162 staining. & it was decided at the old bailey and affirmed by the twelve judges. It is further observed that if one be indicted for breaking, entering & stealing goods he may be acquitted of breaking & entering & convicted of stealing upon the same indictment - so burglary is mixed but 80 one of a grand or petit larceny.

But the description requires that the house was 1 Hale entered be not such mansion as commonly 331 is not inhabited & occupied - if it be there being [illegible] only - or a dwelling house the house 80-6 The intent however cannot always be ascertained and one may in fact break & enter the house of another 6 & yet the evidence of that is not good. But it 43 makes no difference whether the felony intended 2 Bl. C. was committed - if a felony is committed or one 220 created by that. The definition does not require 1 Hale 556 that a felony be actually committed (it) aside from the burglary. Foster 109 - 1 Hawk 130 - Hale 560

Peter acquitted on an indictment for breaking & entering a house & stealing the money of A - another

Burglary indictment charging time with the intent to break & enter & stealing the money of C. cannot be supported. The stealing is no part of the burglary — the crime of burglary is complete without theft & hence burglary is not a mixed larceny.

1 Hale. 548 2 Hic. 162 Burglary is a felony at com. law — but at com. law it was clergyable — 1 Edw. 6. c. 12. 1 Edw. 6. c. 12 1 Mar. Sess. 2. c. 10 & 4 & 5 Will. & Mar. c. 24 took away the privilege of clergy — 1 Edw. 6. c. 12 — & 4 & 5 Will. & Mar. c. 24 restored it —

In com. law the punishment attached to the crime of Burglary is similar to that of arson — Male for the first offence are to be confined in the State pen. not exceeding 3 years & to hard labour — for the second offence not exceeding 6 years — & for the third offence for life. He must actually have been convicted of one offence before he can be sentenced for 6 years — & he must actually have been convicted of the second offence before he can be sentenced for life — For it is a rule of Municipal law that where there is an accumulated punishment on a second offence the offender cannot be liable to the accumulated punishment until he has been actually convicted of the offence before. But see Tit. 30. c. 11 § 1 it declares that if the offender in the perpetration

be guilty of any person who shall be found in the public highway or other place with any offensive weapon or instrument with a felonious intent to break into any dwelling house or other building with any felonious intent to commit any felony therein, or to assault any person with intent to rob him, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail for not more than one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment. Such offense may be charged in an indictment or information in substantially the following form: The people of the State of California against A. B. On the first day of January, A. D. 1880, at the county of Placer, State aforesaid, and before the finding of this indictment, with a felonious intent to commit a felony therein, did break and enter a certain building, to wit, a dwelling house, the property of one C. D., and then and there being, with a felonious intent to commit a felony therein, to wit, grand larceny, did assault one C. D., a human being, with a deadly weapon, to wit, a gun, with intent him, the said C. D., then and there feloniously to rob, against the peace and dignity of the people of the State of California. Dated, etc. Signed, E. F., District Attorney. 59

Burglary in the first degree. Burglary in the first degree is the breaking and entering the dwelling house of another in the night time, with intent to commit some felony therein, whether the felonious intent be executed or not. — Mun. Law Vol 3d

Larceny — is the unlawful taking and carrying away the personal property of another, with a felonious intent to deprive the owner thereof. Larceny is of two kinds — grand and petit —

Larceny – Simple larceny is plain theft unac-
companied with circumstances of violence
or terror or surreptitious conveyance
to distinguish from other species of offences
of kindred Larceny is the felonious taking & carrying
away of the personal goods of another
of two kinds or degrees – Grand & petit larceny
Formerly the value of the goods stolen exceed twelve
pence it is grand larceny – but if the value
does not exceed it is petit larceny. The
only difference between them consists in the
different rules of the good common law respect-
ing the nature of the offence – hence all
the rules of law applicable to one are applic-
able to the other – but the punishments are
different & will be treated of hereafter – Grand
Larceny here observe you should that if above 12 pence
be stolen at several times in company – the va-
lue cannot be aggregated between them so
upon the offence of each & petit larceny (if the)
value amount cannot be aggregated for the purpose of
aggrading the guilt – on the other hand if one
steals under the value of 12 pence at each of
several times – they cannot be united as to make
the offence amount to grand larceny – even an indef-
inite number of petit larcenies cannot amount to
constitute grand larceny. The taking must be

what the law deems a taking — as Public Money
must be proved the defendant either actual
or constructive possession. Thus Holmes
does not use it, but states every time one
finds a treasure — so that if the parties shar-
ed with the ~~finder~~ finder is not guilty of larceny
If one finds & secretes property & trusts to get it
at last in the end sense in which it can
be ascertained it. The law of larceny has undergone a great change since Hawkins & Black-
stone wrote. The late decisions are totally in-
reconcilable with what is said above in these
authorities. A constructive possession is a
present right of possession — as where one goods
are in the hands of a depositary — the finder
must convert against the declaration of
bailee. Lord Mansfield said that every finding in-
duced a trespass — there are many cases in-
deed where the taking is accompanied with an
act of trespass — but suppose it not good. com-
pel them to run one with a declaration in
trover. Is it a suspension of delivery from the plaint.
true owner & endeavor them with interest
till them away &c — it is not necessary in either
case. These examples however are not law now
The carrier who converts goods entrusted

Larceny – the taking or obtaining of one's goods – there
is no trespass if the taking may be justified
by the owner – Thus if a man sells goods and
takes cash & then wishes to repent & take
back the goods & refuses to return the cash
when the man above was entitled to the goods
back that is not larceny as obtaining of goods was
by consent – Where one obtains goods by false
pretences with intent to defraud he is guilty
of larceny – As where one obtains goods
by false pretences as to his means or credit &
so with intent to defraud – Where one obtains
goods by false pretences as to a past fact
or event or else – But in an absence of the pretence
the intention will not
avail in the person who obtains it – As the
purchase of property the title of the owner
of which is void – Where in the majority
of cases – the question turns on the
above. But if one applies to another to buy
goods & the owner sells the goods to him – This
is the latter did intend to pay when the goods
were without paying for them it is no larceny – It is
only an act of swindling for which he is not
liable. All the difference between the two
cases is that in the one case a purchaser was
obtained with an original intent to steal & in the
other a purchase was made with an original
intent to steal. In the former case the stolen
property only is transferred. The owner of the

property continuing in the bail. Public Proceedings. — But in the latter case the vendee, tho' with all right & title to the goods, forever — vest right of pledging in transitu
retains remain on which a constructive possession can attach. Now where the bailment is countermandable there is no need of an original expression intent & fraud in the purpose of making the bailee guilty of larceny. If one obtains goods under the authority of law or by virtue of law as in case of an attachment or replevin - he is guilty of larceny if he took out the process within felonious intent & fraud — so also if goods are taken on an execution upon a judgment obtained by fraud practiced upon the court with intent 1 Hawk to steal it is larceny — for a judgment obtained by fraud is void & the court will set aside on motion without error taken. I take it now the general rule that where the delivery of goods is a delivery to certain special purposes & is countermandable at any time by the owner so that he has a present right of possession — an embezzlement in the case of larceny. Several cases have been decided in the present reign which abundantly confirm this rule. A watch maker & whom a watch was delivered to clean — undertook to exercise it & carried

Larceny & was held to be guilty of Larceny - In this case it was not pretended that there was any original intent to steal. The watch was bought for the watch maker. In another case clothes were delivered to a Landlord to wash the Landlord then was held to be guilty of Larceny. - In another case where a delivered 153-6 a manteau & 6 Guineas & 6 for the purpose of getting it changed the latter run away with them he was held to be guilty of Larceny & where the owner of goods when going a journey delivered goods & another person to carry the latter embezzled them - he was adjudged guilty of Theft. How these cases can be reconciled with the Leach 241 rule that there must be a trespass to make a Larceny. The examples of the Bailee is also 1 Hawk 140 metaphysically explained & it. In the case of goods 1 Hawk delivered for one purpose & were applied to 384 other not to be larceny - but the twelve judges afterwards held otherwise. I conceive therefore they should hold in the case of a Landlord he would come the same footing as to a Larceny. What is remarkable is in the case of the Bailee a felony denied. Where goods are originally delivered to one by the true owner as before observed - altho' they be converted to

an embezzlement by the bailee. Public Warrant
is larceny. Under the rule as it formerly was
if a carrier when a bale of goods & taken part of
them away it was held to be theft & so where a
same principle if in carrying some the trunk be 230
pierced & part thereon took. And the reason was 1 Hawk
is that the carrier has no property in the thing 155
carried — But Lord Raymond (?) he has a special property
in the thing carried. — Blackstone makes a different 8
& simpler reason — he says because the animo furandi Leach
is manifest — and Hawkins has a still more simple 241
nice reason — that is because the possession of part is a
possession of every. It is perfectly clear that if the
carrier having received the goods & the place bailed
& destination there take them away animo fu- 81
randi it is larceny — & that tho there were no ori- 1 Hale
ginal intent to steal — because the bailment 504 5
is dispensed & property determined & he is a stran- 230
ger before he takes them away animo furandi. 1 Hawk
so it is if the bailee takes the goods out of 155
their place from that & destination & then take
them away animo furandi — or if he converts them — Leach
or if the bailee after destination. If one sells a 88
horse to another & the latter on delivery imme- 401
diately goes away with him any subsequent act of 485.
cannot make this larceny. No general property re- 502
mains in the vendor according to the terms of the contract

Larceny If a person hires a horse & rides it immediately rides him away & afterwards converts him to his own use — it is not a taking within the meaning of the rule — It is to be implied however that he did not take him originally with an intent to steal him. But how is this reconcileable with the case of the watchmaker — & the guineas — The difference depend upon the consideration altho' the bailment was obtained with an intent to steal originally. Secondly If the bailee according

Salk. 282 — Leach 215 — 358-401 — 7 T.R. 9 — 4 Bl. C 230 — 1 Hale 504

mend the bailment immediately & in the one case he has a right of possession in the other not. If the horse is let for a month or a week the bailee has a right of possession during the continuance of the bailment — There is no constructive possession in the bailor during the term — Hence if any one takes the horse from the bailee the bailee cannot maintain trespass for the original taking but he may have trover for detention after demand From these cases these principles result First where according to the terms of the bailment the bailor has no right to command the delivery at the time of the conversion — that conversion cannot be considered larceny unless the bailment was obtained with an intent to steal originally. Secondly If the bailee according

to the terms of the Bailment had a Public Wrongs
right decounter manet the detinement at the
time the conversion took place so that he has
a constructive possession - that conversion is
a taking within the meaning of the distinction
Thirdly if the bailee originally obtained the goods
with an intent to steal subsequently - a subsequent
conversion by the bailee will be a taking within
the meaning of the distinction. These three
rules regarding bailees present us with a sym-
thetical view of all the cases where under a
voluntary delivery by the owner the bailee may
be guilty of larceny. The bare non delivery of
goods by the bailee by the bailee is not of compe
evidence of a felonious intent - even in those cases
where the taking was animo furandi. The act 1 Hal. P.C.
of his is always a misfeazance & not a non fea- 220
sance - So trover however a detainer is evidence
of conversion - & so a detainer may be evidence of
a felonious intent but not conclusive. A distinction is
taken between a servant embezzling his mas-
ters goods with which he is intrusted & a bailee 1 Hale
The rule as to servants is that if the servant runs 504
away with goods entrusted with him he is not 1 Hal. C.
guilty of a felonious taking. But by the Stat. 21 Geo II c 30
a servant of the age of 18 & not an apprentice is li- 1 Russ
able as a felon if the amount stolen be 40 shillings or more &c
53

Larceny - Hist says the Jewd since these modern decisions I doubt whether it is the question should arise in Eng. now - the Eng. Courts would say that at com. Law the servant would notwithstanding see no material distinction between this case & that of the bailee: He holds the watch in the character of a servant & the owner may counteract the detriment at any moment. But at com. law if servant not having the actual possession but merely the care & oversight of his master's goods runs away with them he is guilty of a felonious taking - as in the case of a Pophs. Butler taking his master's plate - the actual 84 as well as constructive possession being con- 1 Hale sidered as in the master. The same rule will 505-6 apply to a shepherd whose business is to take 1 Hawk. care of the sheep entrusted with him - drive. 156 them from one place to another or keep them in his master's land or in the common

1 Hawk 156-7 If goods are stolen by one man & afterwards are stolen from the thief by another - the last thief is guilty of a felonious taking & that too from the original owner. Because the owner is supposed to have a constructive possession 1 Hawk at the time of the second theft. If one steals 186-7 goods in the night & carries them in- 2 Bac. 478 to the county & he is guilty of a felonious

taking in either County but can - Public Wrongs
not be prosecuted for the same theft in both 1 Hawk
Every step he takes is a repetition of the same 69
taking. Lord say, the Jewel Concerns that
the trial will not. Make when goods are taken
with a felonious intent in one Sovereign State
& carried into another - as if goods were sto-
len in Holland & carried to Eng. - or stolen in
New Jersey & brought into Connecticut. However
desirable it would there have been in this State
a course of decision the other way. & hence
it is we in this State are continually trying
horse stealers who in the bordering States,
having stole horses like this State - & sold
it out of such fellows - In one case of this
kind says the Jewel I have been concerned -
It seems to me impossible for us in this
State to have cognizance of an offence committed
in another State - against the laws of the
latter. How our Courts can know judicially the
criminal code of another State I cannot con-
ceive. In some States horse stealing is capitally
punished - in others with a fine or imprisonment.
Our County Court - where the crime of horse
stealing is cognizable have, when the question
has been made before them that they felt them-
selves bound by former decisions. This question was

Larceny brought in the second count of the indictment before Judge Patterson & Judge Lecie. The transaction with which the prisoner was charged took place somewhere on the Spanish Main. Upon evidence offered to prove the facts & objection made thereto the court . . . . . .

If the wife of the owner of goods delivers the goods of her husband to another she does this not commit a felonious taking within the meaning of the definition. This rule says Mr. C. is founded in the unity of the persons of husband & wife. It is accounted a delivery from the husband himself. And it is impossible that the wife be guilty of theft from her husband because of their relation to the owner.

Leach 49

But a servant may be guilty of stealing from his master — or a child his father. How far as to what is a taking — But

The definition requires that there be as well a carrying away as a taking. And the rule is that

1 Hawk. 140-1 & Russ. 215 Foster 123 Hal. P. C. 507

the least removal from the place in which the goods were found by the thief is a carrying away within the meaning of the definition. As if the thief be detected while leading him out of pasture & he then dies — it is a carrying away. So where the thief got the horse & brings down the yard & the owner then seized

do where the goods were merely taken. Public Wrongs
not of a breach of peace upon the Kings. - do where Larceny
one takes a ring out of a closet, can that it amy 220
is for mair. But it has been decided that the
writing of a bill of lading on one end is not 229
being written the meaning of the definition.
The definition adds no more than the taking can
never more be felonious. Larceny cannot be com-
mitted unless there be a felonious intent - an an-
imus furandi. But one may be guilty of a trespass
or a breach of the peace tho there be no felonious in-
tent. It is impossible to give a definitely
& precise what will & what will not be evi-
dence of a felonious intent. If a servant takes his
masters horse from the pasture & returns him the
same night - it is not ~~theft~~ a felonious taking -
so if one takes his neighbours plough or cart for 1 Hale
a day or 2 & return it again it is not a felonious 509
taking. What is a felonious intent is always mat- 1 Hal. C
ter of fact & not matter of law. The ordinary badge 282
or evidence of a felonious intent is the private
or clandestine taking. A clandestine taking is by no
means conclusive evidence of a felonious intent
but presumptive only. If one take the personal Larceny
goods of another without his servant or against 208
his will the law presumes a felonious intent
& this presumption will stand & be conclusive until

Larceny - rebutted by other evidence - or unskilled
attorney appear. A common law presumption
may always be rebutted but a presumption is-
which is one can never be rebutted.

But the subject of larceny must be the possession
of some person. Things real or accessory to
the realty therefore are not subject of larceny
Fleet (Most real property cannot from
p 1 it nature be carried away. The trees shrubs
Com while growing are even great object upon the
295-512 trees leaves of the realty - the fixtures &
Kent. till severed are not subject of larceny the
18th they may be carried away. But if they be sever-
Leach ed by one act at one time & be carried away
138 at another time & by a distinct act it is larceny
2 Hale because the time between the two acts convers
256 the goods is turned into a personal property.
1 Hale But if they be severed & carried away by one
670 continued act they cannot be said to be per-
1 Hawk sonal property at the instant of the larce-
141 ny. Fruit severed & thrown away & afterwards
2 East. seen on land & picked up may be larceny &
699 it makes no difference whether the fruit is se-
2 Hale vered by the thief or the owner - or a stranger.
288 It has never been settled till late if [illegible] that
Leach - wool taken directly from sheep is larceny or not
Mich 33 & the fleece is now held
81 This case will be taken much more as one of

The law of larceny was anciently (Public Wrongs
made with undoubted reference to the Camp. 2 Bac
The Soldiers had no real estate nor any thing 460
adhering to the freehold - but provisions, clothes 1 Hawk
and property the taking of such articles the 1 c
law of larceny was originally intended to operate. 4 B.C.
& would seem to be a strange doctrine that the 232-3
law of larceny should not extend to things savour-
ing of the realty - but upon that idea the Lect Dr.
can be accounted for. At Com Law also the 3,
taking of a charter or deed of land is not Lar- Leach
ceny because it was thought to savour of the 8
realty. It is to be observed however that Tro- 1 Hale
ver will lie for a deed & hence it seems the 66-570
intrinsically a personal chattel. Serjeant
Hawkins gives the reason why a charter or deed 3 Coke.
is not a subject of larceny - it is because as 68a
any other action is not maintainable for it 1 Hawk
The general rule is that the good taken 1 c
must have some intrinsic value. Upon this 2 Bac
reason it is that a note or bond or bill or Ex- 270
change is not a subject of larceny — The barter Cont. 1 Hale
the ink & paper is not considered as of any value 66-7
Deeds are called executed contracts &c bonds &c on-
ly executory contracts. How could not all of these
answer the purposes of money in the camp &
were they not used as such. By the 2 Geo 2 chap

Larceny - in action are made subjects of larceny.
2 Bac. Abr. We have a similar rule in the case (Bk. 6 ch. 8
2 Bl. another rule is that nothing shall be the subject of Lar-
Com. 393 ceny unless some one had property in such
Foster 311 as for the detention requires that the
Cro. Car. 544 goods belong to another. There can be no Lar-
1 Hale 507 ceny unless there be a civil wrong - or private
511 injury. Hence wild animals - fera naturae not
1 Hawk. being tame or confined - tho of intrinsic value
c. 33 § 4 are not subject of larceny - as deer in an open
forest - fish in an open river or so if a man take
a wild fowl perching upon the tree of B it is no
larceny. But animals originally fera naturae
may become subject of larceny - by taking
them & confining them - provided they are
of intrinsic value. And to determine when
animals feroe naturae are of intrinsic value
2 Bl. C. the gen. rule is that if one reclaims or con-
393 fines an animal which feroe naturae used to
4 Bl. C. is deemed valuable within the meaning
230-6 of the rule - (indeed it is universally true)
1 Hawk. On the other hand such animals tho reclaimed
146 or confined are not in general the subject of
5 Inst. larceny if they feroe naturae used to
109 it reclaimed or confined and so bears &
2 Bl. C. in other countries are not valuable within the
406 rule. But a civil action of trover will lie for them

the law deem them of sufficient Public Wrong, value, or their nature, &c. at time Book 4 2 Bl. Com. Law valuable within the meaning of 24 & 25 Vict. c. 96 s. 5 the rule that it is not felony to steal any thing of value — This seems to be an exception to the rule on account of the high value at which shot men reckon the hare animal. For the rule that no animals are the subject of larceny but such as are valuable whether they are ferae naturae or not, applies to animals domitae naturae, or tame animals — For a horse or a mule, 29 tho not fit for food are nevertheless valuable 1 Hale & subjects of larceny. There are however some 511 animals domesticated and yet not deemed valuable — at their description are dogs & cats — these 236 are not therefore subject of larceny — tho tres- pass or trover will lie for them. Oats all good 1 Bl. 6 are at com. law subject of larceny — it is perfect 234 to steal that money in each may be a subject 408 larceny. But it has been determined in the con- struction of the Stat. 10 & 11 Will. 3 by which the benefit of clergy is excluded from all who steal goods wares & merchandizes from shops &c — that steal- 1 Hawk. ing money is not larceny. Goods of which no 24 one is owner at the time of the taking are not 1 Hale regularly subject of larceny. But if there be an 512 owner tho he be unknown — the title being as 1 Bl. c. Lord Coke says in rubbish or in rubio — the goods 295 are a subject of larceny. as Treasure trove Waifs Estrays &c

Larceny – and the indictment will be good. The
Dyer 73 it charges the prisoner with having the
299 the goods of some one unknown. There is no
1 Hawk need of the owners being known except for the
124 purpose of proving that the goods did not
1 Hale belong to the prisoner. There may be great
299 danger in convicting one where the owner
3 Inst. is not known on this very ground. Indeed it
249 is said by Lord Hale that unless the property
2 Rol. be known to be the property of some other person
580 they are regularly to be presumed to be the pris-
2 Bl. C. oners – where however the prisoner can be proved
852 are not his own it is sufficient. Goods in custom
1 Hawk as Examiners or officers are subject to Lar-
135 ceny as this is by the corporation in their
1 Hale so a servant upon a deadly – This is sel-
505 dom charged to be the property of any one
1 Hawk. it was when cast upon the sea. The taking a-
135 way of a dead body is not cannot be larceny
2 Ch. but a misdemeanour is a very high misdemeanour. The
738 act is considered by mankind as carrying a very
atrocious & enormity & deadly appli-
cation to the relations. It is said that one may
commit Larceny by taking his own goods –
by taking from from a pawnbroker or other
bailee who is liable to them civilliter. So
if a master rob his servant with a view to

against the bailee upon the [illegible] Public Wrong
like a Boy — Larceny — this name is very [illegible]
from definition of Larceny I know it may be
said that the Bailee has a special property & so
may be considered as owner — but he is 10
not considered as owner as the Bailor. he as
all the rest of mankind he is owner it is true.
If one steals a horse from the owner has
no right to him during that time. but if
one delays cloth with a Taylor to be made in
a garment - the owner has a temporary right
to take away the cloth at any time - except that
after it is made the Taylor has a lien upon it
till paid for. The bailee in the act of the mas-
ter in robbing his servant in such case is a
shameful act of fraud upon the public.
If the goods at first are bailed & he & a stranger
steal them; from B - The thief may be indicted
for stealing stolen goods from B. the Bailee
& so in all cases of Bailment where the Bai-
lee has the right of possession as agt. all others
except the owner. There has been some question
in the books says Mr Goodal whether one indict-
ed for Larceny & when that indictment & spe-
cial verdict found showing a mere act of Ver-
sheft - (whether the) judgment can be rendered
agt. the defendt for the trespass. But it seems now to be

Larceny settled that this cannot be done. where the judgments are generically the same tho of a distinct species - something like this may be done - as where one is indicted for murder he may be convicted of manslaughter - or where one is indicted for petty Treason he may be convicted of murder. Here the punishments are generically the same but there is in treason & Larceny a difference in the nature of the offences — a generical difference.

95-7 All simple larceny whether petit or Grand
237-8 is at Com. Law a felony - Grand Larceny is a
2 Hawk capital offence but is within the privilege of
489 clergy - except in a few instances. Serjeant Hawkins says that the offender is ipso facto subject to forfeiture - & himself to be whipped &c - Black-
1 Hawk stone says the offender is to be whipped &
146 says also that there is no forfeiture of lands
2 Bl. c. ertly - However Blackstone says in a former
237 Chapter that Larceny is a felony without benefit
95-7 of forfeiture of property

In Comm. as in Eng. now - there is no distinction as to punishment between petit & Grand Larceny
No simple Larceny is now a capital offence. By our Stat. however there are different degrees of punishment according to the nature of the offence

or neither according to the amount Public Prosecutor
of goods so stolen. All larceny is grand
stat. punished by fine & imprisonment
& may be exceed 5 yrs & therein addition
to the above fine the offender is to be
whipped not exceeding 15 stripes. If the
value of the goods stolen is under 5s & not
exceeds 40 shillings & the offender
refuse to pay or be unable to pay the fine stat.
as above he is to be whipped not exceeding 5s
15 stripes. If the value be eightpence & not
to be punished by fine only. But stat. also
enables the party injured to bring his action
against & recover treble damages. Or he
may bring a civil action in which case
he is to recover value & damages. Where the
value does not exceed 40 shill. the offence
is punishable by a single magistrate. If over
40 shill. the county court has cognizance
There must also be a doubt what is the
value of the goods stolen. In such case much
must depend upon the discretion of the
magistrate who issues the process.
Larceny as before observed is either simple
or mixed — simple Larceny has been considered

Larceny. Mixed Larceny has all the properties of simple larceny and is also accompanied with the aggravation of taking
1 Hawk from one house or person — or both. In
151 the one case the goods are taken simply
4 Blc. by stealth — in the other they are taken from
280 one person or house & herein consists the
specific difference.

And Larceny from the house all that can be said of it is that it is an aggravation of the crime of simple stealing — it is rather an aggravation in the degree of guilt, than an offence of a different kind. It is indeed indeed that when the offence is accompanied with a breaking of the house it is a different offence — different in the nature of it is Burglary. But it is to be remarked that larceny does not amount to burglary.

1 Hawk. Theft does not enter into the description or constitution of Burglary. It is incorrectly
Colling says 1 Coroll. remains & we that when an
81 open is accompanied with breaking it ceases
Foster it is Burglary. All compound larceny from
78 a house does not distinguished from simple
Leach larceny. But now by several statutes & par-
510 ceny from the person is in particular cases
stiled & larceny. Larceny from the house or shop
that is not at all distinguished from simple larceny

Mixed larceny of the second kind. Public Prosecutor
may be committed by privately taking goods [illegible]
from one person or by other violent as- 271
sault — The latter is called Robbery & the Male
former Theft viz. The theft is 529
privately taking away one's property from the person
or home. Law — & which there are two grades 256
If the value of goods is more than Rs. 1/-
more than twelve rupees it is a capital of 500
Larceny — clergyable formerly at Com. Law but Forfeit
& the 18 & 2 the privilege of clergy is taken
away. If the value is no more than twelve
rupees it is still a clergyable felony at Comm.
upon a violent theft called Robbery —
Robbery is the felonious & malicious taking
of goods or money from the person or in the [illegible] 186
presence of another by violence or putting the party 241
in fear of bodily harm. And to the purpose
of committing the felony the violence
is altogether immaterial. To constitute
Robbery there must be an actual taking. An
attempt & pos was formerly holden to be not- 14, 5
bery. but it has been holden that a mere
attempt & not is not robbery the felony
midemeanor. The Stat. 7 Geo II makes such person
attempting to rob a felony not capital but punishes 22-251
it by transportation for seven years & forfeiture

120 Larceny — The taking is required to be from the
Hawk possession of another — The law however does not
148 require that the taking should be from the actual
manual possession of another — for if one
Hawk take goods in the owner's presence & violence
538 or by exciting fear of it is robbery — the law does
2 Str 481 or of any one else has not the same personal pos-
1015 session of them. as if he thereafter & into the
Cartlidate the owner of a horse standing by him
145 or at a fair & so take him away — or by fa-
Hawk king a drove of cattle by threatening or in-
148 timidating the driver — it is not necessary
that the horse or the cattle be in the corpo-
real or manual possession of another. So
also if one thro the instrumentality of fear
excited in me take goods from my servant
in my presence it is from me & herein with-
Hawk. in the meaning of the law for in such
148 case the possession of the servant is the pos-
session of the master.
The taking is and must be forcible — but it
is not necessary that ~~there should be~~ actual
violence should be used in the taking. All
that is required by the epithet forcible is that
the taking should be against the will of
him who has the goods — He who obtains a delivery from
me by exciting fear or terror in my mind

a guilty of a forcible taking with Violence
in the meaning of the law. He extorts from Ethel
one. But a taking which is not either
directly from the person of the owner nor
in his presence is not within the defi-
nition of Robbery. As if one third assist
hunting of Robbery by one in ambush a-
gainst a traveller his goods & escapes & they
& the other takes it is not Robbery. The years 1815
or three were excited. It is laid down in
most of the books that if several persons
combine & rob & enter upon the project
some sharing from the rest without their
knowledge or consent & rob B they are
all guilty of robbing B because (as it is said)
of the intent to rob B — I can hardly
think this can be right. He could be law Hale
draw from combining & aiding to rob B 585
those do not know of it by the application 587
Under the law of Scotland analogous cases would
would seem to confirm my opinion. It 506
A & B combine to burn one house & B burns
the house alone A separating commits a
Robbery upon D — B can not be guilty of the
Robbery. I should say no. I. that the case
is not excluded if it was intended
The offence of Robbery is consummated by the

222

Larceny act of [illegible] — [illegible]
Robbery Attended [illegible] in [illegible]
the project [illegible]
3 Inst [illegible] violence [illegible] the [illegible]
60-9 be evidence that there was [illegible]
1 Hawkins — but there is [illegible]
141 [illegible] penitentiar after the offence [illegible]
Leach plete — the offence cannot be [illegible]
124 any subsequent act.
[illegible] This taking as the definition [illegible]
[illegible] be by violence or putting in fear. It would seem
1 Hawk by some of the books that violence & fear
[illegible] were both necessary to make robbery — but
[illegible] the fact is violence alone without fear or
[illegible] fear without violence is sufficient to make
[illegible] robbery. By violence is meant some act —
69-70 hence threatening with violence is not violence
but it is putting in fear. The putting one in
fear by threats or gestures is sufficient. Vio-
lence or putting in fear is the grand crite-
rion to distinguish this kind of larceny
from all others. The word violence implies
Hawk something more than a mere act of taking.
[illegible] Every overt act is in law deemed as done
Foster with force (ie) the law implies force in all
128 overt acts — But violence [illegible]
has a different meaning. [illegible]

424 Larceny – putting in fear – It is a settled
Robbery rule that so much force or such threat-
Forcibly ening either by words or gesture as may
128 excite reasonable apprehension or dan-
Fear, ger or violence – is sufficient, putting
20 in fear within the definition. This is
What always a question of fact to be tried by
142 the jury. Such threatening also as is like
ly according to common experience to ex-
cite an apprehension of danger to one's
character or good name is a putting in fear.
The system of robbery has been brought to great refinement in
the streets of London. Every method has
Fear been resorted to to evade the law of Robbery
199 but in vain. A young nobleman meeting
257 one of the brothers of the Lord declared he
Force would accuse him of the unnatural crime
190 of incest if he did not deliver his money.
2 W.P. The money was delivered & the young noble-
528-9 man was held to be guilty of Robbery. —
Fear For the purpose of exciting fear there is no
204 need of actual violence – Threats or gesture
What as by holding a dagger in a threatening posture
189 are sufficient. So also if by threats one is
Who compelled to sell property to another person
245 under it is Robbery. Such a contract

a man who was in Bristol & had bought some
of the goods in the bill in the usual course of business
Evidence that there was no intention to
But whether the goods were not to be sold 4 Bl. C.
the owner did not with his consent with them 241
as it were without – would not this be
the case? A case is reported in Keling
which was decided by himself where goods Kelin
were taken by equal fraud without violence 26
& right & with intent to steal. The court
held it to be robbery. I should say, so
I should think that this was not robbery & that too be-
cause it is simple larceny. There is no vi-
olence or putting in fear such as the law
contemplates
It is not necessary to insert in the indictment 70
that the act was done by putting in fear 4 Bl. C.
is sufficient to say that it was done with vi- 243
olence. So says Mr Gould I think that Baker Leach
a putting in fear without averring the act to be 204
done with violence would be sufficient. And
where the offence is laid to have been committed
by putting in fear it is not necessary to prove
actual fear – for threats as was yesterday 66– 204-6
stated under such circumstances as are cal- Forter
culated to excite fear are sufficient & such 128
how the indictment is framed. In these cases

Larceny
Robbery

was suddenly knocked down & in this dense less state had money stolen from his pocket Hawk as there was no previous notice there could
149 be no actual fear — for he was not at that time no object of fear & was taken that the indictment was good tho stealing in fear
Hawk only was alledged. Where a thief taking
256 goods without violence or putting in fear
Hawk is larceny merely or robbery. Snatching
150-149 this said by Hawkins not to be robbery. If one
Dyer snatches another's hat from his head — it is not
224 a taking done privately — nor is it done by violence
taking or putting in fear such as to be necessary in robbery & should a prosecutor swear that this might be considered a simple larceny.
It must be a simple larceny if there is no taking
from the person & upon this ground & go they
did in subtracting it to be simple larceny. The
taking is under such circumstances as does
not amount to a taking from the person. If
it is not larceny from the person it can be a lar
ceny upon the table & vice versa. Lord Chief
Leach Hawkins decided that an indictment for
52 Robbery in the high way is not supported by evidence of robbery in a dwelling house — but if
504 the offence had been laid to have been committed in the dwelling house it would be

mitted in order to avoid a plea of Autrefois
the indictment — & the reason of the old
reverse is that in the former case the
plea of autrefois acquit the prisoner of the of-
fence — in the latter case the offence is laid
by way of venue — & public highway cannot be laid by way of venue.

49 Geo 3 c 129 s 4 Robbery is defined a violent taking by force & B.C.
within the precincts of the Royal Palaces & 24 Geo II c 45
Westminster Hall which words are declaratory.

By 7 & 8 Geo 4 c 29 s 11 Robbery is punishable by
Transportation for life or not less than 7 years & for the
third offence as in simple larceny & a female as before
described. But when the Statute provides that
if the offender commit violence or force or
is armed with instruments indicating
violent intentions or be guilty of personal ill-treat
hence he shall be confined in a penal gaol for 84-5
life or the first offence the same effect nearly
attends the construction as was observed in
the case of burglary.

Forgery

Forgery is the Crimen falsi of the Roman law 4 Bl.C.
& is the fraudulent making or alteration of 247
a writing to the prejudice of another's right.
For many a great many writings were not subject

alone in making an alteration at Oxford [illegible]
amounting to as it is made a bond in B's
name & subscribed B's name to it - or altering
a writing already executed. It will not be found true however that every alteration 886
of a writing amounts to forgery - it must
be of a certain description. Stone is ind- 567
-icted & tried a trial & he said, & read the - May
writing indorsed a legacy & it is forgery. [illegible]
making a false instrument. (Cantr. Dyer. 281 b)
In this example it cannot be forgery until
the Testator has signed it - because till then
it is no will. It does not import the will 536
till executed. So if one writes an obligation
over another's name it is forgery. - This spe- 567
-cies of forgery is very much practised. The
fraudulent subscribing of another's name
to an instrument already made or a made
forgery - that if one only makes the mark seem
of another with a fraudulent intent it is 61
forgery. It is not necessary to constitute
forgery that the writing be effected at
the time of the forgery provided it were given Leach
mine - thus if one makes his will & while 108
it is ambulatory (ie) during the life of the Tes- 591
-tator it is forgery & after it & the offender may still
be prosecuted before the death of the Testator. 98

480

Forgery — The instrument is not complete
1 Hawk. P.C. 256 If an indictment be found at Leicester upon
an indictment which inserts another name
3 Inst. 169 not known by the grand jury — it is no
191 alteration but is as if the latter as making
2 Hawk. P.C. Every alteration in a writing does not amount
66 to an alteration which the law of forgery
12 Mod. 559 contemplates. The general rule is that a mere
498 ideal alteration of a writing in a material
1 Hawk. P.C. part is such an alteration only as the taking
56 or omitting of some circumstance which does
2 Bac. Abr. inserts the name of one instead of that of B.
556 or 1000 instead of 100. The distinction be-
Moor 619 tween material & immaterial alteration
is not well taken in the books. Suppose
an alteration be made in a note or bond
by the party for the obligee — it does not tend
to the prejudice of another's right — the only
injury is to him — for the rule is that if an
alteration be made by the party claiming
any in an immaterial part the bond &c is
void — If the alteration be made by the ob-
ligee or him who is bound it is no injury to
the bond — & so it is if made in an immate-
rial part — & since it seems it is no forgery
it is said that one may be guilty of forgery
by making & executing a deed in his own name

[illegible] [illegible] it is true Public Records
thus it was made a record [illegible] & Mr. [illegible] Hawk.
afterwards was directed to be entered 6846
[illegible] & antedate it — so that the writer after
person whom the title of it should have been made
declared to be void it is upon — the blank Mr
is false, [illegible] [illegible] [illegible] one has signed and
affidavit exchange for an indorsement
upon it in order that it is discovered it is false
[illegible] at the back. The indorsement is not
[illegible] one the writing upon the back of the deed
will the name of the person — that giveing to
commence with such an indorsement
[illegible] an instrument by the expres
ai ee in & in the presence of the person in
whose name it made [illegible] right person
name to [illegible] put
[illegible] is not guilty of forgery. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
name is subscribed need not be present at the
signing. — However the signing is in the Hawk
absence of the person — there must be a power 807
of attorney in writing. But no verbal power
of attorney will do in this state. Neither
can the principal make such signing good by
[illegible] afterwards. This is as the ma
thing [illegible]
[illegible] is made a fraudulent marking. There are

Forgery — many cases where an alteration amounts to fraud not within the meaning of the legislature. As if the lessee of a term alter the word "heirs" into "executors" — it operates only as to himself — the interest is left undisturbed & of course not forgery. So in cases in which the alteration does not affect the interest of the party whose name is forged in what sense & know not — the party may perhaps be a gainer by it rather.

Cooke 11 — the alteration in a deed not amounting to forgery still it would vacate the note & the creditor might sue.

Espinasse 224 — if it was in a material or immaterial part. A non-clearance cannot regularly amount to forgery tho' the intent be fraudulent. Thus if one employed to draw a will inserts a false legacy — for which he is not directed & it is forgery — but if he omits to insert a legacy which he is directed to insert it is no forgery. Tho' it were omitted with a fraudulent intent.

Nov. 101 — If however the omission materially alters the limitation of another estate it is forgery — thus if an estate be given to A for life with remainder to B in fee — the omission of the terms is forgery. The omission amounts to a positive revocation to B an estate by the act of it — for the postponement of B's estate amounts to an accelerated. It appears to me a void deed

Forgery case wherein it would be difficult to determine who would have been injured by it if it were executed. Whether it be forged instrument shd be published—

Str. nor. Proved & known as the instrument

74 but if proved it may make a presumption of a fraudulent intent.— When one forges an instrument in the name of another & uses it in the world—having never produced it but it may be many years ago and he dies it may be made use of to support a fictitious payee—& so inventing the name of such payee after the fact done it currency. The question arose in the

82-216 or not the jury were to give—& were directed to be forgery.— This may be a case for the public prosecutor—The case of uttering cannot be disputed.

The intimation claimed & expressed may be set out in the indictment in words & figures precisely as they are.—It may must be recited—& the general rule is that the least variation between the recital & the instrument itself when produced is fatal. Should however immaterial words

The law on this subject is well Public Records
established by Lord Hampshire in 1703. 229.
A in reading a forged instrument the least
misrecital or misspelling of words in such
that one word is not contented in another 198
is misspelling – it is not latent – it is not dif-
misrecital – as in reading the word un- 231
derstood – this be left out – so in reading under-
stood – this being no word in the Eng. language but
indeed there are many cases where two 260
distinct words have the same pronunciation and
but are spelt differently – as see – & sea – hair & hare
& air &c – yet a variance must be fatal. Leach 6 – if
when an indictment charges one with the
crime of forgery – & afterwards the forged doc-
ument is proved to be an instrument that
is the indictment will not be supported. If
with the instrument, mentioned in the count
some words omitted, as if a deed or
instrument is said to purport to be what it ap-
pears to be upon the face of it. Thus if the instru-
ment is described to be a promissory note
& it appears when produced to be a bill of Ex-
change it is a fatal variance

At Com. Law forgery was no felony – it was punish-
ished by fine & imprisonment. The stat. 5 Eliz. 14
made forgery in almost all cases a capital offence

Forgery – And this is almost the only offence
known where no pardon is granted. – Of course
116 extreme importance have laser instru-
ments become. – Hence the kind of
consecrated first principle not to pardon for
forgery.

In com. forgery is punished the immediate
Boundary – & double damages allowed to the
injured party – The offender is made incap-
able of evidence in any court of law – which
also follows as a consequence at com. Law.
Under our Stat. no instrument can be
said to be forged unless it is a writing capa-
ble of Evidence – There are the words of the Stat.
However it is agreed among the judges
that there is no difference between our
Stat. forgery & Stat. at com. Law.
The only difference is with respect to the
2nd mentioned. The word alter is not in
our Stat. so that the instrument is changed
with making & not with altering – and altering
& changing may all go that altering & mak-
ing must be considered as the same. The
word alter is perhaps at com. Law more ex-
tensive than the Stat. making the alteration
making void, erasing or razing. Forgery is
therefore divided into 2 parts as follows

I promise to pay B or good & lawful Bank bills
or current money of Connecticut value
received — signed A. — B examines & at
sight it is in consideration of goods
delivered — B before he delivers the
note according to the covenant erases
the word note — in consequence of which
no recovery could be had ag. A the promi-
sor by the assignee — for it was an alter-
ation made by the assignee — The note was not
negotiable — it was not given to B or order
(bearer)
on indictment for forgery & at
B's trial this question arises & is re-
served in the opinion of the court. — Had
it been a forgery & found can A the promi-
sor be admitted as a witness to prove the fact.
The obligee altering his own note only which
would in ordinary case would not amount
to forgery — the alteration would only go to make
the instrument void it being in an immate-
rial part to the obligation — because it does
not injure another right. and tho the assignee
after the alteration it could not be forgery.
But in this case the alteration was made af-
ter a covenant to assign & after it became the
equitable property of the assignee. Now therefore
the injury to the assignee as he can not recover upon it

Forgery and the question was whether that the alteration was made with a fraudulent intent. If had there been a power to avoid the securities a forgery within the meaning of the definition — If a fraudulent alteration of a writing to the prejudice of another right. But where is it not a destruction of the instrument & not an alteration. What if he had erased the name of the obligor — What if he had erased the whole note? will it do to say by way of argument that the assignee was liable to be defeated & that other assignees after him would be liable to be defeated — The same argument will apply if the note had been altered before assignment as to the admissibility of the promissors testimony — the authorities are against it aside from the authorities says Mr Coxe I should say upon principle that he ought to be admitted.

Perjury

4 Bl. C. Perjury is defined to be the swearing wil-
12 fully absolutely & falsely in a matter ma-
838 terial to the issue or point in question with
164 an oath lawfully administered in some
Court judicial proceedings. The false swearing
818-9 is required to be wilful & intentional — for
Talk where we by surprise mistakes it is not perjury
515 The word wilful have seems to be used in the same

time &c. a word intent – indeed Public Money's the same as the word willing or willingly in the 4th Stat. – If the false swearing must be 1st in the course of a judicial proceeding – or 2dly in some proceeding relative to a publication 5th or protection. The oath must also be adm.d. minister.d by some officer qualified and 68.9 required such oath. It is immaterial Hob. 62 whether the court in which the oath is taken is a court of record – or not a court of rec.d. record. The other courts are deemed superior 96 record – than courts of Com. Law. Courts of 609. Chancery – Ecclesiastical courts – Military & Mar. courts or courts of Admiralty & 1650. the courts of the Universities – are none of these courts of Com. Law. But in any of 58 these courts Perjury may be committed as here. There is a very different distinction 107 tion between these courts. – All our courts of law are courts of record – Courts of Chancery 810 Probate courts – courts of single magistrates of law are all courts of record. But still 8204 the oath must be in some judicial proceeding. Hob. 134 – or if one tells lies & makes oath of a thing capable of a remedy before a Magistrate it cannot be perjury 1 Hawk 109 & it is of any thing or extra judicial oath.

Perjury – It is the duty of the magistrate to whom such application is made to administer the
167 oath – Perjury in Ecclesiastical Courts
If it is not essential however that the oath
be administered in a court of justice
during a trial. Perjury may be com-
7 & 8 W. mitted under an oath & any application or
915 deposition – Even tho the affidavit or
deposition were never confirmed – it is
Hawk. sufficient that it were taken with a view
230-1 to be used. In the case of perjury committed
3 Inst upon the affidavit is different.
84 Perjury is confined to such wilful acts as
3 Inst affirm or deny some matter of fact – It is
166 not predicable of a promissory oath – The
oath at office is no perjury. But Per-
jury is predicable of any false oath ma-
terial to the point in question – The judg-
ment upon that point may not affect the
judgment upon the principal point in
Hawk issue. Perjury may be committed by a
230 false oath in any interlocutory question
Co. 6 as by swearing that the bail is worth ma-
46 ny sufficient – when he knows not a word
at all of it – or knows to the contrary – or if
upon the voir dire he swears he is not in-
terested.

if he has been sworn that he — Public Interest
juror is not prejudiced & impartial
with — thence a juror — not be up sworn 1 Hawk
& testify the truth of any fact that 52 2
determine according to the testimony of 12 R.S.P.
others can not in that capacity commit 330
perjury. But a party in a civil action 2 Hill
allowed his oath in any matter relative to 470
exculpation may commit perjury and 2 Ld.
as any other person. The Defendant in 60
chancery is always under oath. In some 2 Leb.
the answer of the respondent is not under 452
oath except when required by the Bill
or where a discovery is sought. Here
therefore his answer may be rebutted by
other testimony. Parties are also admit
ted to their oath in cases of the action
of ejectment & Replevin &c. or mistake or libel.
misapprehension of the adverse party thereof &
conclusion is not perjury & upon the same 2 Leb.
principle if a witness explains or corrects 6 16
himself — that he intended to testify in such & such
a manner but a wrong inference would 2 Z
be made, but it is not perjury. It is said 3 Mod.
not to be material whether the matter sworn Ram. 89
to be true or not true if the witness did not 2 Z. 65
know it to be true. — he testifies to what he Hawk.
Qu.

Perjury – the word in the indictment may
the word is extra and perhaps
right to be omitted. I have only
I have understood that the information or
220 action must be obtained. and when
I shall have begun to declare to the Grand Jury
my knowledge of any offence the matter
given in charge to them that the oath was not
legally administered – but if not objected
then in confirmation of the opinion. Indictment
221 is in many cases should have that
it had a warning not to give false evidence
given upon such oath and the crime of perjury.
the witness may
225 be sentenced until the next term
word that before any information against
230 as much influence before a grand jury
should give an absolute opinion of man
guilty or not – indictment to contain
Lord Kenyon has more than one charge
235 to the same. The word deliberately
ought to be used in the indictment.
58 The false swearing must also be material
to the point in question, & the false
swearing is immaterial – it is also necessary
that it should appear to the court & jury
240 – that the oath was taken

a dispute may arise whether Public Money
such a one was on the road as mere
[illegible] whether he rode on such a [illegible]
[illegible] is more probable not
circumstances. But if the testimonial the Coy
servant handed to A B expressly or
otherwise the damages it is [illegible] that
[illegible] in a Battery — all that is in
[illegible] whether the Coy did plaintiff
[illegible] — or the circumstances in
[illegible] — may alter the amount
of damages. If the testimonial is such as
like Windows the jury have reason to credit
[illegible] — they [illegible]
perjury. This is with that certain
[illegible] upon them was
[illegible] the witness if was [illegible]
jury — Knowing they testimony in this case
are immaterial — this [illegible] evidence prove
the jury to believe that the sheep were the
[illegible]. & doubt against the Good character the
testimony is minute as — & also conclude them
& prove the identity of the sheep. But these are
mere circumstances in the action of [illegible]
[illegible] — immaterial that proof is not
produced at time. — whether the Coy [illegible]
the testimonial a deed or not. [illegible]

Perjury however may be good ~~but~~ cause
Hawk. was ~~de~~ but strong enough — and that
680 false swearing as to the ~~in~~ ornament
& wounding may amount to perjury. — The rule
145 of damages in ~~a~~ battery is in
proportion to the ~~in~~ punishment &c.
2 Ld Ray. It is not essential ~~to~~ there in any degree
258-§89 the evidence is material to the point in ques-
tion — much less ~~to~~ those that it is decisive
1 Saund. of the issue in order to convict one of per-
225 n jury. It is sufficient on the prosecution
285 however to show that the evidence was ma-
terial to the point in question; and let
the purpose of showing this it is necessary
that the record be produced to show the point
cited in issue — but it is not necessary to go any
468 further into the merits of the case. Hence
685 the Court alone without the judgment &
good evidence to show more the question was
in the case a verdict cannot be pro-
duced in evidence till judgment is ren-
dered but here it is otherwise. The cause
in which the Perjury was committed must
be set forth or described in the indictment
Hawk. 70 It is not enough to say that in ~~the~~ a cause
Hawk. between such parties at such a time &c
285 that a certain oath was then & there

that the nature of the action Public Wrongs
must be set forth. It is not necessary 1 Leon
under it to conclude contrary to the form 211
of the statute. to be credited by one Lord — 1 Leon
contra also it not necessary that one Judge 250
be accused injured by the testimony. The 8 Coke
crime consists in the abuse of judicial 845
proceedings.

It has been decided 1 Ry. that the word
Wilful is not absolutely necessary to be in-
serted in the indictment — other words
tantamount may suffice & please. Wrongfully
in an indictment for murder the word
can not be omitted. It has been holden that
in an indictment for perjury the words Leon
falsely & maliciously are sufficient — for if one 69
swears falsely & maliciously — it necessarily does not
implies that he does it wilfully intended — particularly 95
for the purpose of convicting one of perjury there
it is a rule of law that there must be two 3d
witnesses at least — otherwise it is no more 2 Dr.
than oath eg. oath Circumstantial ev- 605
idence is in general sufficient to prove
any fact — But it is now settled that cir-
cumstantial evidence of the fact of the Cal.
deft's having taken an oath — or been sworn 471
cannot be admitted — it is not sufficient to convict

Perjury — Perjury is an offence which cannot in its nature be committed by two jointly and therefore two cannot be joined in the indictment — So it is a rule in criminal as well as in civil cases that two persons cannot be joined as defts where the act complained of could not have been committed jointly. — So it is in Perjury. All acts committed by violence may have been committed by two persons jointly — But in case of Perjury there is no actual violence — So Subornation of Perjury — an offence which consists in the procuring of another to commit perjury is an act that may be done jointly & therefore two persons may be indicted jointly.

Subornation of Perjury

Subornation of Perjury is the offence of procuring another to commit perjury. The perjury must be actually committed or else unsuccessful attempts or endeavours to procure another to commit perjury is not subornation of perjury but is at Com. Law a misdemeanor. Perjury and subornation of Perjury is said were punished at Com. Law — at first Capitally

afterwards the offender was Public Whipp'd
banished the Empire being first cut out
& afterwards a forfeiture of goods &c.
Now by the Stat. 5 Eliz. & Geo II the are Public.
punished by fine & imprisonment and 138
with inability to give evidence in any
Court of Justice. The legal infamy in the 5 Eliz.
consequence of the perjury (ie) of the convic- 36:5
tion of perjury. — They cannot testify nor
be a jury. When the perjury is committed Dyer
in making oath to a false deposition or 229
affidavit — the indictment is much the 1 Ld. K.
same as in forgery — The deposition must 257
be set out in words & figures — & the least 14th
variance will render the instrument in 660
admissable — the least variance destroys
the prosecution or indictment (ie) if one
word by misspelling be converted into another
Under the stat. Perjury & subornation of
perjury are punished by a forfeiture or
more properly a penalty of 6/. 8 & imprison-
ment in Newgate 6 months if a male
& if a female in a common Gaol. The offen-
der is disqualified to take an oath in any Stat
court of record — & says Lord Coke Stephen 330-
the whole com. law consequences will follow 340
and in case of inability [illegible] the Sine he is dead

Perjury in the Pillory one hour. The affirmation of a Quaker when false is punished the same as Perjury. But that contains one other provision — If any Quaker person rite wilfully & of purpose & take away any man's life such offender shall be held & deemed

295 a murderer & suffer accordingly —

I have never seen brought in evidence against the Quaker in these cases, together all the minor offences. These are useful persons & their affirmations in other cases — because they are regulated by principle & we must suppose the principle has induced them considered. — I mean remain & trial —

The Courts of Criminal Jurisdiction in this State

The highest Court of original criminal jurisdiction is the Superior Court — In other States their highest ordinary court is usually called the Supreme Court.

The Superior Court has cognizance of all offences punishable with death — loss of limb — banishment — imprisonment in Newgate & the offence of adultery — and of all these except imprisonment in Newgate has exclusive jurisdiction.

In one instance of contempt and Public Nuisance
in a Record the jurisdiction of the Inferior
Court is not exclusive & that is
the same of Forestalling — the County
Court has concurrent cognizance of that
offence. We have no such punishment
as Pillory & Tumbrel in Georgia to be consid-
ered in — Anything more could be said
this idea was borrowed from the Common Law
& is a loose expression — the Act contains
nothing on which it can attach. There
is but one offence punishable with Pil-
lory & that is Perjury. Libel is an offence triable in
the Superior Court & the County Court —
This & Forestalling are the only two cases
where the jurisdiction of the Superior &
County Courts are concurrent. The
Superior Court has cognizance of the
high crimes & misdemeanors. The line of demar-
kation or distinction between high crimes
& misdemeanors says the Govr is not well
known. Those crimes which amount in
the attempt to commit a criminal act
are deemed misdemeanors & are within
the cognizance of the Inferior Court — As
an instance, Libel although it amounts
to Perjury the Superior Court has concurrent jurisdiction

courts of criminal jurisdiction — of offences
1 Geo. 3 ch. 21 sec. 8 against religion — as blasphemy.

Stat. 18 Geo. 3 ch. 8 sec. 4 the Court of Common Pleas — the statute provides that the court shall hold pleas of all offences and misdemeanors committed within Upper Canada & also of all persons & things recognizable by a single magistrate of the said — over this class & under the others their jurisdiction is exclusive. — The ordinary cases of their jurisdiction are breaches of the peace — libel — riot &c. — From see that court there is no appeal to the Exch. Court in criminal cases.

Justices of the peace & single magistrates have cognizance of all offences — of which the penalty does not exceed seven dollars except in the case where the amount of the goods stolen does not exceed 10 shills. If the penalty is recoverable a justice of the peace has no jurisdiction — the penalty must be limited. That is the only instance where a corporal punishment is peremptorily provided by stat. — There are many cases where it is left as an alternative if the offender can not pay the penalty. One stat. also provides that a single magistrate shall have cognizance of all breaches of

The peace unless the offence be Public Wrongs
aggravated by some circumstance of high-
handed violence — & in such case he is to
be recognized to appear before the Courts
inmt & commence such prosecutions. Here
the single magistrate acts only as in court
of Session. Single magistrates also act
as a court of inquiry in all criminal Stat.
cases above their jurisdictions & in these 1st
cases it is their proper province & in- 158
quire whether the party accused is to be bound 10th
over to have his trial in a superior Court. 258
Appeal lies to the Com. Pleas from a Justice 9th
of the peace in all criminal cases whatever
except in trial cases or accepting bail cases
tried by Stat. : as drunkenness, profaneness, Sab-
bath breaking — selling lottery tickets &c.
In criminal cases the jurisdiction of the
Justice of the peace is not confined to the town
in which he lives. It is otherwise in civil
cases. The case may be removed & the
town may be interested — & no civil action
can be applied to bring the suit — as by being Book
related to one of the parties — I have known 35th
one case by which the whole where all the justices
of one town were related to one of the parties, in
all offences are triable in Com. as in Eng. all

Bail - ~~in the Court~~ in the county where the
Hawk. offence was committed. — The offence is
P.C. there dead. — We have no ~~case~~ on the sub-
Ruling ject — but one count are decided. Ency.
78-90 Eng. practice. This rule however does
Dougl. not hold as a qui tam action — (as to the
760 locality of the offence — person may bring
Hawk a qui tam action in the county where
401 either of the parties live — tho the offence
were committed in abroad the accounty.

as to Bail in Criminal Cases —

This subject is interesting in practice &
short & summary. When one is arrested
Bl. C. & brought before a magistrate charged with
296 a crime or offence not cognizable by him
Stat. he is to inquire into the facts charged and
112-120 discover whether or not he ought to be bail
& trial. But in such case the magistrate
has no right to examine the prisoner him-
self as to his being guilty or not — he has no
4 Blac right to resort to any evidence but such
287. as is admissable in any court of justice.
296 The practice therefore of pressing ques-
2 Str 1115 Hawk tions to the prisoner which prevail more
or less in every state is reprehensible
When inquiry the magistrate finds that
the offence charged has not been committed

or that the charges against the Public Prosecutor are groundless – he is to be discharged but when there appears evidence of the prisoner even the slightest doubt either presumptive – it seems to be agreed that the duty of the magistrate is to commit the prisoner to gaol or permit him to bail him in the sense here used is delivering up the person of the prisoner over to his sureties who become his keepers on their giving security that he shall appear before the court having cognizance of the offence & the bail have a right to seek & right to confine him. – There are some offences which are not bailable. Here the prisoner is to be committed to gaol – there to remain till a court of competent jurisdiction shall set. — It is in general true that in all offences under 7 or below a felony the offender is entitled to bail unless bail is expressly prohibited by 4 & 5 Vict. – Indeed Blackstone says that all bailable offences at common law were generally bailable, even in felony itself, except such as were committed by persons outlawed or excommunicated or such as had abjured the realm or were approvers or appellees except those charged with having committed homicide by lying in wait or upon the statute Westm. 1st (3 Edw. 1st) bail is denied in case of treason & in many other felonies.

1 Hale 96

2 Hale 96

2 Hale 98

Ch. Talbot

Bail – Under these Statutes the gen. rule is that
the Bail is taken away in all cases of felony
or on suspicion – or where he is notoriously
guilty. These Statutes never have been
construed to extend to the Kings Bench
in England. This court or any of the Judges
in vacation may admit any person to
Bail charged with having committed
crime whatever. – These Statutes extend
only to Justices of the peace & Sheriffs but
the Judges of the Kings Bench may
admit to Bail in the case of treason where Bail is
prohibited by the Statute. There are some
specific recommendations in the Statutes
where his health would be much
affected by confinement
in Prison. 2 Black. 295–1755–6

But it has been lately held that where
(The offence)
a Court of competent jurisdiction, he cannot be admitted to
Bail – under the circumstances. This
general rule however is dispensed with in all
crimes bailable by the Kings Bench except
capital crimes – & that for a contempt
in open court. It is a general rule that he who
is charged with the offence or has cognizance of
the offence of which the offender is accused
may in some case admit such offender to Bail

true it is not will not admit Bail where
such a Case is bail where the Act gives Clear
right to bail unless there are some special
circumstances in the Prisoners Case Quaere
Hence may it should a Court of Superior Jurisdiction
Court or any of its Judges in Vacation may
in any Case admit a Prisoner to Bail—but
this will rather be governed by the rule
as in Eng.—It is that there must be some special
circumstances in favour of the person
making application for Bail.—The Chief
Justice also said he who makes the arrest cannot
admit to Bail in criminal Cases. In
Eng. however the Sheriff may take Bail in criminal
cases by virtue of his power & act in
a Judicial capacity. But in this State the
Sheriff cannot act as a Judicial officer
therefore cannot in no case admit to
Bail. Bail is to be taken by the magistrate
before whom the Offender is brought in the
first instance (if where the offender is Bailable
—or in a capital crime if it may be Bailable then
by the magistrate has prescribed the Recognizance
amount of the Bond the Sheriff may take the Bond & in this case he acts
as an executive officer. Bail in criminal cases
is taken at Chambers, however in this State

Bail — If the offence is cognizable by the Superior court the bail is taken by the treasurer of the State. — If the offence is cognizable by the court of com. pleas — the bail is taken by the treasurer of the county. If by a single magistrate it is taken in the name of the town treasurer where the offence is tried. —

Bail. 29, Hawk. 2. 42 Hale 2. 141 Hale 2. 125 Hawk. 2. 43-206 Hale 2. 129 Hawk. 2. 90 Hoar Litch. dam. 1809

It is a rule of the Com. Law that if the officer or magistrate take an insufficient bail & the prisoner does not abscond — the goods of such officer are forfeited. Four sureties are there required in the greater cognizable offences — & two in the less offence. In misdemeanors two sureties are sufficient in any case. In Hawk. we find bail where the allegation is entitled "bail" — or "arraign bail" where bail is proper. In com. law a misdemeanor or punishable by fine & imprisonment the party injured may have his action on the case for damages. It has been decided by one Supreme Court on application for habeas corpus that if the principal in the offence is bailed & is not present after trial & hear the verdict — the bail is forfeited — I should apprehend myself that the true rule would be that where the sentence

with the crime which is corporal Public Opinion punishment & it is necessary that the prisoner be present in Court to hear the verdict but where the punishment is merely a fine the prisoner need not be present to hear the verdict - & of course no capitas or writ of Error in the former case the latter can be no part of the sentence for the corporal punishment but in the latter case it is otherwise. I have lately found that in the inferior offences in which England the prisoner may plead by Counsel. 59
This proves that no need of the prisoners presence in Court. When a prisoner is prosecuted for an offence & is acquitted of that offence but is proved on trial to have committed a different crime from that with which he is charged - he is not to be discharged but it is the duty of the Court to retain him till an indictment be framed for the crime of which he is guilty & pass sentence upon him.

Wills

In Eng no wills are ever read in either side in criminal proceedings except where specially provided for by Statute. Both are not read for the prisoner where he is acquitted because it would be making the King responsible for the conduct of the prosecution.

Chalk Lewd 165 21-165

Costs — neither are they taxed, in the high ac-
tion, the defendant where he is found guilty be-
cause that is considered as being a favourable
word against the king.

86th Under our law the taking of costs in de-
fence of the prisoner in case of acquittal
is allowed. — The state here in its corporate
political capacity prosecutes. It is provided
by statute however in certain cases that if the
prosecution be discontinued by any subject
or blameable conduct in the prisoner he
shall pay the costs of prosecution to be as-
sessed. But if he be acquitted & no unlaw-
ful or blameable conduct appeared in
the prosecution he is to be ac-
quitted without costs. When the prisoner
is unable to pay the costs — the expence of
prosecution is to be reimbursed out of the
state treasury. If the prisoner were tried
by the superior court or in the county
court. Ibid. But if tried by a single magistrate
at the assizes the law the costs in like manner
as in the former case the treasury of the county in which the
prosecution is performed. On the other
hand where the costs is awarded & paid
by the state treasury in the one case &
the county treasury in the other

Superior court February session – 1800

4 & 5 present the chief justice
2 & 6 — 16 Cannon } the judges
Fair & Smith
assault & battery – Lewis pltf. Dabb defendant

Gould for defendant made a plea in general issue moved to strike out the part of the plea in justification and required the court to direct the jury to find accordingly.

By the court (Chief Justice absent) Gentlemen of the jury – the counsel for the defendant have produced testimony in order to prove the assault & battery. It is the province of the jury to judge of the weight of this testimony & you are to judge – but it is the opinion of the court that the assault & battery is no justification for the battery committed.

Hamilton – Jackson vs Minor – The words laid in the declaration is a libel – and a libel is actionable of itself – Minor – says he did not say those words – but if he did they are not libelous – Gould moved that the court should direct the jury that if they believed the words were spoken they were not libelous – then the plaintiff joined in the issue by tendering a similitude. Dabb produced evidence under the general issue to prove the truth of the words – Smith, Gould for plaintiff offered testimony to prove the good character of the plaintiff. Gould for defendant objected to the testimony on the ground that the character was not put in issue by the pleadings – The only evidence to prove the good character of the plaintiff in such case has been admitted – never to go beyond general character. That kind of

admitted after objection made by the other party. Exception
[illegible] point. Enclosed in that case
rejected a witness [illegible]

Smith (Justice) I am confident that witness [illegible]
admitted to prove the good character of the plaintiff
received to the other [illegible] with an idea that
a precedent in other evidence of this kind would [illegible]
the objection in the other [illegible] We see no reason why in
this case the witness should not be admitted.

Edmund (Justice) I remember no case where a witness
on the same [illegible] under consideration has been admitted
and it would [illegible] the introduction of [illegible]
[illegible] and [illegible] would [illegible] that
the evidence ought not to be received.

Whitehead (Justice) I am unwilling to [illegible]
[illegible] decision as I am that we have before [illegible]
[illegible] of a similar kind with the objection
[illegible] the witness [illegible]

Ejectment - [illegible] and action [illegible]
[illegible] - and after [illegible] appeared in evidence that the [illegible]
[illegible] [illegible] in addition to the [illegible]
who was a niece of [illegible] - called the [illegible]
[illegible] on the [illegible] We accordingly will dispense
[illegible] and we will [illegible]
[illegible] that it will [illegible]

It appeared in the meantime that on the 2nd
on the 2 Dec. 1802 Hiscocks executed a deed to Wilson of the
land in question — & delivered it to Ben Davis & said
words to this effect "I deliver you this deed as my act
but if I should call for it you must give it."

[illegible] that this was a good delivery
[illegible] Ill
devises were void & in particular that they
might be revoked. The 31 Hen. 8 c. 5 (statute of wills)
requires all devises of land to be in writing
in the presence of three credible witnesses who must
sign & attest the devise — this deed required the
[illegible] witnesses & is therefore a devise. And
stat. 29 Car. 2 c. 3 requires all devises to be by writing
the words "devise" are omitted, all the solemnities therefore
for the execution of a will of devise in this shape are dispensed
with & wanted at Com. Law. before the stat. 29 Car. 2.
as to the title by deed the principle point is whether the
delivery of the deed were good or not. If it were no de-
livered as an escrow — or a deed delivered as an escrow is
never countermanded — it was an effectual delivery & good
delivery is such a delivery as [illegible] the
the power of the executor. [illegible] Here the deed is countermandable by the express [illegible] analogous to a will or nuncupative will, or [illegible] even
in the case of an escrow the second delivery alters the relation
back to the first delivery and the whole would be from
the last delivery; but the first delivery here was not [illegible]

[illegible] by the testator to keep it right was the same with a depositary - or many others from wch a power is [illegible] at the testators discretion. The principle in this is more true or better established than that a power is at an end when the principal dies - & of course devises & testaments are revoked.

Lord [illegible] on motion for a new trial, [illegible] in an ejectment, that an [illegible] revoking a devise required the same solemnities as the devise itself - not [illegible] any statute other here in England requiring the same solemnities to attend a revocation of a devise - yet the courts in Great Britain & here have uniformly decided that an instrument revoking or rebutting a devise should have the same number of witnesses & the same solemnities as a devise itself & a revocation can be effected without three witnesses it can be effected without two - without one may even by parol, for at Com. Law before the Statute of Frauds devises were made by parol & were revocable by parol the Statute of Frauds requires a devise to be in writing but said nothing as to the mode of revoking a devise. The Eng. Statute of Frauds, [illegible] being [illegible] in this State. The mode of revoking devises remains as at Com. Law. but it has been repeatedly decided in this State that a parol revocation will not operate against a legal devise. 1811 S. & R. that the court in pursuance of the same principle have [illegible] to the English decision [illegible]

with regard to the alteration [illegible] we [illegible] [illegible] will now give their opinion [illegible]

But if the court should be of opinion that we have not made out title [illegible] we may [illegible] title of deed. The deed was delivered as an [illegible] an escrow. To constitute a delivery as an escrow it is not necessary that the first delivery be absolute, unconditional or uncountermandable. Deed delivered to [illegible] the [illegible] to be given to the [illegible] are escrow [illegible] the other party may withdraw his deed [illegible] a subsequent deed. [illegible] grantee [illegible] that the deed is countermandable [illegible] that we contend that the deed delivered to [illegible] an escrow to take effect at the death of the grantor. The power of attorney instead of ceasing at the death of the grantor does not [illegible] till his death. The power of attorney [illegible] commence [illegible] an executor immediately upon the death of the principal. [illegible] the deed [illegible] livered to the grantee or not. [illegible] the deed, provided it be not delivered up. [illegible] be considered as a donatio [illegible]

Daggett for def. It has been sufficiently proved on the other side that the first deed was not [illegible] revoked — and in addition to what is said with the latter deed it appears that the acknowledgment [illegible] that it was [illegible] before a justice [illegible] the receipt his certificate of delivery [illegible]

showing it to be a legal devise. It seems that the case relied upon by the counsel in the argument against

[illegible] It does not appear that the intention of the testator to devise the estate in question was clear – this rendering the devise & deliveries the void by Wright upon such conditions make it appear that he had not arrived at his mind on the subject. But every delivery of a deed must be accompanied with an intent to pass an estate or it is not the grantor's deed.

[illegible] according to the party. Gentlemen one court have critically attended & considered the case now to be committed to you. The evidence has been laid before you & the Council have very ingeniously argued the case – The pltf. claim title in two ways – first by devise & secondly by deed – whether either of the titles are sufficient or not is matter of law upon which the court have made up their opinion and the title by deed the court are of opinion that the legal question shall go to Jas Wells Griffith [illegible] to whom the deed was made void & being decided therefore that the estate pass under the deed it is not necessary at present to say whether it would pass by the devise or not – two questions are therefore to be left to you for your consideration & being in one or the other

[illegible] — [illegible] and proved in evidence a written [illegible] the defendant [illegible] which promised to pay [illegible] on demand, [illegible] and that the writing proved in evidence was a [illegible] and that the writing proved in evidence was a specialty and ought to have been declared on as such according to the law & declaring on a common count for [illegible]. The court says the decided last term upon a motion where an action was brought on a due bill. The defendant pleaded non assumpsit & a blank declaration on a common note & [illegible] — the court [illegible] decided that a due bill was a specialty and well declared on in that form.

J. Smith for plt. Denied that the action brought was [illegible] — the criterion of a special agt. is not that a contract is reduced to writing but that the terms of the contract & the agreement to be stated in the declaration. In this case the plt. does not merely state that the def. became indebted & in consideration thereof promised &c but states how he became indebted & that he actually did promise &c.

Court says he understood that to a writing is not a specialty according to the sense in which the term is used in this state. (2) that if it is not such a writing as by our law must be declared on as being in writing. & specialty as the term is in the state used is an instrument the consideration of which is [illegible] [illegible] the [illegible] but here the consideration — of the term [illegible] the writing, [illegible] stated

Smith (Justice) due law on the subject proved from the
other com. law. Notes, I have made yesterday
and are to be declared on such. I am unwilling to depart
this law, even rather from the com. law to encourage
the terms of the contract are expressed in the writing
— the declaration that the judgment entered was
fraudulent, & void as to the creditors. Therefore I would
take the writing out of the consideration & specialty and
the action in this form will lie.

Edmonds (Justice) dissented. I have some doubt on the
question. I am inclined to think that where there
is a written instrument, it ought to be declared upon
as being in writing for the consideration of terms, the
contract cannot be altered at all events that it
can never be pleaded in bar of another action on the same
cause.

Mitchell (Smith, Justice) I am of opinion that the evidence may
be admitted as evidence — & that I cannot specially.
Smith then offered testimony to prove [illegible] that
[illegible] on the bill objected to the evidence because the defts
had pleaded the general issue. It does not appear to the point.
by the decision by the uniform custom in this state and
by all the judicial decisions it appears that, payment can
never be given in evidence under the gen. issue in actions of
special [illegible] — to which Smith & Mitchell ac-
cepted — but [illegible] against
[illegible] Ord. 578

Fresh's Trover — Gilbert v. Bone — Bone and others
that had come in distress, carriage of the ship by Water
— Ship was to be delivered for the use of the land in
which the distress was — Bone was a poor man and was
unable to pay the charges — Bone in order to get
the goods delivered to him — in order to get
possession of the goods — which in fact belonged to
plaintiff — Bone was the owner. Gilbert the owner of the
ship got Bone by virtue of an attachment against
Bone took the goods — and sworn removed them
out of the town. Even in the right to seize
the distress — the distress must be kept by the
sheriff and conveyed home — upon which the distress must
be sold within four days.
Bacon & the pltf insisted that the leaving the distress
in the possession of the tenant was tantamount to
a sale, & vested under the statute 21 Jac. —
under which statute the selling of personal estate
leaving the same in the possession of the vendor is a legal
presumption of fraudulent conveyance in order to obtain
credit.
Lord, for deft said that the Courts had not extended
the construction of these statutes so far as to
make the leaving of personal estate in the possession of
the vendor a legal presumption of fraudulent conveyance
the court directed in Strode v. Blackburn that cattle may be
purchased in order to let in the possession of the vendor on
account of the bad travelling & they conveying them away

were not there to be heard in the first instance before a reasonable number of persons in the Court, within the county. If the Writ be issued that no one can be found in any Office where the proceedings of grand juries may not always be recalled by the circumstances, &c &c. In this case there are many reasons why the Writ should not be issued.

Verdict of guilty upon the Indictment — Execution not to be awarded for one calendar month — The Petition — The various actions of the Privy Council upon it — The execution upon the 2nd time ordered to be done — The execution was ultimately done on the 11th — Four days before the execution the execution was ordered to be done on the 11th — but on the 7th the execution was ordered to be done on the 11th — It appeared that the Jailor had done all that was required of him — but the Privy Council were not satisfied, for a reasonable time had elapsed after the demand before the execution — The Jailor was told that the Petitioner was not to be executed on the 11th — but was ordered to be executed on the 12th — This was ordered — [illegible] a reasonable time after the [illegible]

[illegible] to [illegible] to [illegible] in the [illegible]
to [illegible]. The ground of the motion was that
unreasonable cost was allowed — the adverse
party had no opportunity to object — at the time
[illegible] was taxed. [illegible] when ascertained — the adverse
party not being then called in or to object —
it would be introducing a bad principle. —

Additional - circ. term - 1811 Supreme - Hartford

The writ was [illegible] The [illegible] were [illegible]
The original proprietors [illegible] the [illegible] of
Waterbury town had [illegible] road [illegible] de
clared road [illegible] the [illegible] adjoining [illegible] the
individuals - The [illegible] land [illegible] on [illegible] part of the
road [illegible] which [illegible] & [illegible] that [illegible] had
had [illegible] on [illegible] for the [illegible] of a
road. The original proprietors [illegible] brought [illegible] ac-
tion of Ejectment - & for argument alledged that it had
a number of [illegible] & that the
proprietors by selling their land [illegible] of the
way did not [illegible] the reservation &c of
the road adjoining. - Here the Court [illegible] to the
[illegible] by Judge Hall the presiding Judge - It was
decided by Judge Hall - about three years ago in
New London county - & Vid. The heirs of Levitt vs. Hart that
the original proprietors had no right to reserve to
a highway & the [illegible] adjoining. The Court
the Court [illegible] - The rule to be
by this decision he would not proceed further in the
argument he had expected the Honorable Judge Brainerd
who [illegible] he did not recollect of any case where the
decision [illegible] had been [illegible]
Levitt vs. Brainerd appealing - Trumbull absent
[illegible] - [illegible] [illegible] [illegible] [illegible] [illegible]
upon the whole the case - without leaving them
to bring in a verdict for [illegible] [illegible]

[illegible] Wednesday – Enos & Violet – Tuesday
at the last term – a Jew of the name of Israel was
sworn & gave the [illegible] – all the most
[illegible] – a distillery was at-
tached by Gillet the officer – at being the property
of Hart – the distillery was [illegible] the dwelling
barn – Enos took the distillery from the Barn
clandestinely – upon which the officer immediately
[illegible] Enos the last term – but
judgment was given to the contrary – The distillery
was delivered to the owner after the Land of
one thousand – there was [illegible] the attach-
ment given & [illegible] – [illegible] Enos now brought [illegible] re-
plevin the officer for taking the distillery from
the place – The jury on the last occasion
there was a hundred [illegible] – upon which
being placed – shew that the said Enos
was a man of public notoriety – the [illegible]

And by the [illegible] [illegible] – [illegible] [illegible] &
[illegible] – whether the sale was or was not a mat-
ter of public notoriety – or whether the deft. knew or did
not know it was sold is totally immaterial. The
continuing in possession of personal property by the
vendee after the sale – is not an evidence of fraud
merely but it is a fraud per se – and
the only question that can now arise is whether
deft did or did not continue in possession.
Verdict & judgment for deft. —— ——

New Hartford – vs. Norton – Assumpsit indeb. – issue & tri-
Norton had adopted Abigail Canning as his daughter
it was agreed by the parents that they would never take
her away unless by the consent of Norton. – Norton
was an inhabitant of the town of Bristol – Abigail
went to New Hartford for her health – while she was
there she was taken sick & was thrown upon the town
for support – or rather the town did defray her expen-
ses – tho not obliged to. – This action was brought agt. Nor-
ton – for reimbursement of expenses to the town. –
Parol testimony was offered to the [illegible] [illegible] time
[illegible] whether [illegible] – When these two questions
arose – first whether the contract of adoption was
or was not within the Stat. of frauds & perjuries – and
the second was whether supposing that Norton did actu-
ally adopt Abigail as his daughter the deft ought to be
liable for her expenses in the character of a father.

B. [illegible] for the deft said that [illegible] Pl^ff were no-
[illegible] the settlement & assumption - there was a [illegible]
tee of the civil law exclusively. - and by the
civil law there could be no relation except in two
ways either by the writing of the Emperor - or the au-
thority of a magistrate - & these must be certified in
writing. Again the deft cannot be liable in the char-
acter of master - because there was no indenture - the
com. law requires that the relation ~~[illegible]~~ should be contrac-
ted by indenture alone. But supposing the deft were
eventually liable for the expenses incurred by her sick-
ness - the pltf have no right to maintain their action
they were under no obligation to support her - she having
gained no settlement in the town of [illegible] - the
action should have been brought against the town of [illegible]
[illegible] in the first instance - & then let the town of [illegible]
come upon the deft.
[illegible] for the deft said in reply - that no express contract
was necessary in case of a relation created between the
[illegible] - it is agreed that the verbal
promise of the father not to take her away was in part
executed before the stat. of frauds would attach - & part ex-
ecution will always prevent the stat. of frauds from
attaching at all. But suppose there was no contract at
all - the taking this young lady into the deft's family and
providing for her - & considering - not in the character of ser-
vant merely but in the character of a child or ward

holder and the words that the action could be
brought there as to a person [illegible] residence
of the people - and the same was brought
to recover damages for an assault by where the
guardian is not in a situation to sue in her own
name as the case - See 3 Ch. Rep. - Where it appeared
that a devise in trust for the children
of A. B. to be paid to them - but where a mar-
riage with her consent took place after the
devise that the husband should not be entitled
should receive for their benefit - because he could
the word that is but adopted them - his own. The
case therefore is reversable in point.
Chief Jus. in charge to the jury - the question should
be reserved for the court of Errors - but it is the opin-
ion of this court that if the relation of Parte father and
adopted child existed at the time the injury was in-
curred - a verdict ought to be given for the plff - bearing
the jury found that the relation never did exist - or having
existed did cease at the time the injury was done
to any person whatever - then a verdict ought to be
found for the def. - an adopted child is a child as to
both the parents - in contemplation of law as a natural child
this being the case any order - or law - or any thing
providing necessaries for the child in the absence of the
father or adopted father - may have an action for reim-
bursement of expenses for such necessaries.
verdict for plaintiff

[illegible] from the county court.

Two bridges on the Broad River road were washed away & reduced. They were built by the Franklin Company under a special [illegible] with the [illegible] were in the act of the road & were to be built by the town according to [illegible] of petition was brought by the Franklin Company against the town of Norfolk before the county commissioners, praying that an order might issue to the town to build the bridges aforesaid - & the commissioners ordered & directed the bridges to be built - Upon the trial evidence was offered by the town that the road was not on the travelled road & that it would make no difference - The evidence was objected - because the road was laid out & the commissioners had power to direct where the road should be made & the location - The court ruled the evidence inadmissible & ordered the bridges were built - The bridges were - & the town - The road had been made over the place where it was originally laid by the commissioners instead of over the old bridge. On the trial the plaintiffs contended that the alteration was only as to the particular [illegible] but in point of locality

on the merit of the question Benedict & Gould, might argue that tho' a consideration of some sort was given for the land – yet the circumstances attending the conveyance were indicative of fraud & unless it the original conveyance was fraudulent no after transaction between the parties would make it void. It appears by the testimony that the consideration was inadequate – & that Brace trusted to the honour of Catlin as to further consideration. This being established – the fraud in the conveyance takes the whole out of the stat. of limitation. – Otherwise 15 years peaceable possession would give the deft a title – However it is doubtful whether – had there been no fraud – the deft could have acquired title by exercising ~~such~~ so few acts of ownership as appears by the testimony

But Bacon & Catlin for the deft said that the stat. of limitation always run where there was an adverse possession. If the deft. had gone on and turned out Brace neck & heel – it is clear the possession would be adverse & the stat. of limitation would run – But the deft. acted more upon the principles of humanity – he entered peaceably, took a deed & has ever since maintained peaceable possession by the consent – the act – or licence of Brace – (See Root rep.) where the one built a house upon the latter's land under his licence & held 15 years possession, gave him an indefeasible title – & a similar case in Root – If a man sells land to another the grantee after 15 years poss. may hold up all the world

The stat. is a beneficial one – it tends to prevent men in their profession. But it is contended that the covenant was fraudulent – that the consideration was inadequate – it is admitted that £2 had been paid for it – that there were a number of acres of the land – but it is to be observed that the land was at that time of small value – one of the jurors whom I see on this bench – is acquainted with the vast rise in the value of land for 20 years past – it has increased to ten times & twenty times its value then. The spot of land is not large – the Settler could almost cover it if he should lie down upon it.

Swift C.J. in delivering the opinion of the court said that if a man enters into another land under a license the stat. does not run in his favour – But the fraudulent transaction here is sufficient itself to keep the stat from running in favour of the Defendt

Verdict for the Defendt

Supreme Court Hackensack Dec. 1809

Washington. — Ejectment — Northern v. Metcalf

It was admitted that the deft was in possession

The Pltf claimed the land in question by virtue

of an execution levied on the 2d of the year

1805 — These executions were taken out against

Job Doan who it is was admitted formerly owned

the land. The Deft claimed the land by virtue of

a deed made on the 10th of May 1805 — prior to the

levy of the execution — It appeared in evidence

that on the evening of the third of May 1805 Doan

being considerably involved in debt made an deed

of all his real estate & a bill of sale of all his

personal estate to one Ely Gribbett — the next

morning at six o'clock he went to the town clerks

had his deed recorded — enjoining on the town clerk

not to disclose it in fact of consequence. Doan as

it appeared considered his indorsers as the most

worthy of his creditors — He repeatedly told them

that if any property was left after satisfying Mr

Gribbett — they should be paid first — He often said

that he hoped there would be property enough to

pay the whole of his debts. — Doan continued in

the possession of the latter a while —

Joseph Ely the Deft — argued that the circumstances

of the conveyance exhibited manifest badges

of fraud — The Grantee made a general sale of

all the cases the remainder to the heir at the sale — If the sale were [illegible] void

Strong & Norman contra — argued that it was no fraudulent conveyance the debts of Strong stated to be the highest are applicable and especial property and personal property — In the case of Hetmore & Wetmore — it appeared some evidence that all the property real & personal was conveyed to one Wade at Boston — the deeds were lodged with the town clerk & not recorded — & that the witness knowledge of the Wade who was mother in law of the grantor — The Sup. Court would not set aside the conveyance — It appeared in trial that the grantor & Wade about the value of the land — & in that case counsel for the Defendant was prevented from giving in testimony that Wade went upon the ground of a settlement with a view to defraud creditors — & that the conveyance was void as to them — The doctrine of the Supreme Court is to be understood that upon the question of fraud in conveyance evidence of [illegible] is admissible [illegible] the [illegible]

The Court charged the jury — that [illegible] the circumstances of the case that the deed of conveyance from [illegible] was fraudulent they must find a verdict for the plff & such a sum in damages as they thought reasonable reckoning the rents & profits from the time the action accrued till the date of the writ. If they found that the conveyance was intended originally for a security of Doane's debt — the court are of opinion that the deed was fraudulent — but if they found it was intended as a bona fide sale — then the deed was good.

Verdict & judgment for plff 185 Dolls damages

Petition for a new trial.

Case — Pratt & Williams. Thursday — 18[illegible]

This was an action for damages for an infringement of a comb machine — the plff claimed his patent by virtue of a transfer from Phineas Pratt. — The Plff produced the original deed of transfer from said Phineas Pratt — On back of this deed it was indorsed — Thus — recorded in the office of department of State at such a date — in such a volume signed Charles [illegible] Clerk — An objection was made to the introduction of this deed —

Daggett for Deft said that the laws of the United States require that every deed of transfer of [illegible]

of Secretary of State. — Here is no sufficient [illegible]
certificate [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
that [illegible] [illegible] [illegible] — [illegible] [illegible] that
[illegible] [illegible] [illegible] [illegible] [illegible] certify [illegible]
[illegible] — The [illegible] [illegible] [illegible] [illegible] that
a mere certificate of [illegible] [illegible] [illegible]
state — [illegible] [illegible] [illegible] [illegible] is not suf-
ficient — The secretary of state [illegible] certify
that he [illegible] clerk. and [illegible] are legal evi-
dence [illegible] that [illegible] [illegible] is clerk in the dep-
artment of state. yet the case does not amount
to [illegible] [illegible] [illegible] — The laws of the United States
do not recognize [illegible] such officer as clerk — [illegible]
[illegible] [illegible] [illegible] [illegible] the [illegible] of the clerk.
Ingersoll [illegible] the [illegible] said that of a [illegible] clerk
it was true — the secretary of state [illegible] [illegible]
[illegible] — because the laws [illegible] [illegible] state — as well
as the [illegible] of another state cannot [illegible]
be known — but the laws of the United States
are here known [illegible] — The laws of the
United States provide that [illegible] [illegible] [illegible] shall
be appointed whose duty it shall be [illegible] [illegible]
By the court — [illegible] [illegible] [illegible] [illegible]
Had the certificate been [illegible] [illegible] [illegible] it
would be admissible. but as [illegible] [illegible] [illegible]
to be inadmissible.

Motion to a continuance — the former [illegible] said — case had been continued in like circumstances, it was [illegible] its surprise. The [illegible] said that precedent ought to have little weight in determining matters of this kind — continuance are usually grounded upon the peculiar circumstances of each case.

By the Court — It seems to be immaterial whether this evidence is material. It is undoubtedly customary in the circuit courts to [illegible] continuance & we are therefore the more willing to grant a continuance.

Motion that costs be taxed in [illegible] of the def[illegible]. The former said the pltff had not been able to [illegible] — he procured as soon a certificate as he could and the Deft [illegible] but these [illegible] years [illegible] the title deed of transfer is not a good one. The Deft [illegible] that it was [illegible] the [illegible] — the pltff could have obtained better evidence.

Ejectment — Haviley & Bissel — [illegible]

Bissel conveyed to [illegible] lands under the firm of [illegible] & took back notes of hand & a mortgage of the land [illegible] by [illegible] — [illegible] became [illegible] — [illegible] within [illegible] private settlement [illegible]

Webster to [illegible] had he [illegible] made any remarks to him
in the morning when he was interrupted &c
&c &c — However the impression upon my mind
was that Webster would never have rattled down
the hill — Catlin as I said gave no advice nor direct-
ions what I should do when the scene — I was
in impression that he himself had not engaged [illegible]
to serve with the company. — On this point except
the first object — it was a matter which Webster could
be certain — it was not a matter of opinions — on which
we could [illegible] as this [illegible] or Shakespeare. Dagget
in my [illegible] said it was altogether customary for writers
to testify as to their belief, & he never knew any other
mode before. G. Clements Justice doubted the propriety
of such expression — Clements Justice could he state to
the writer might testify as to their belief &c. and so then
the question however ought to be had & how whether they
did & have the [illegible] not whether they in fact were
that & [illegible] Mr Catlin could in order more
easily & more truly as to their belief — (it was here
it was more matter of opinion — but where the fact
was to be ascertained by the writer — it was a
matter of opinion — There seems to be a distinction
to be observed on this case where the writer may
& testify in his remarks & terms as not at all.
In Fredly testimony & evidence should be given
when judge does & says by no other [illegible]

Gentlemen of the Jury — He admitted the land was originally owned by the Defts — that he gave a deed of it to Webster & Catlin merchants in company — that the land was mortgaged back again by a deed executed by Webster — to Webster & Catlin merchants in company — & that the Plt in no event has any interest. Now the law is so that a conveyance of real estate is not within the scope of a copartnership transaction. — If Catlin took any part of the land by virtue of the deed from Bissel & Webster & Catlin — Webster could not convey it back by the mortgage unless under a special authority which is not contended for in this case — The general authority of being a merchant in company is not sufficient. The court are of opinion that there is upon the face of the deed from Bissel & Webster & Catlin to them a presumption of assent on the part of Catlin — & that the property did vest & become his property unless a determining dissent to the purchase. The first inquiry then is whether Catlin after he heard of the purchase did dissent or not — If you find that he did dissent then you are also to find for the Plt in a verdict for the Plt — but on the contrary if you find that he did not dissent then there arises another inquiry. And that is — whether there was on the part of the Plt an actual notice or what the law deems an adverse holding — for one tenant in com-

To determine this you will have recourse to the facts to prove subsequent assertions — the act of Catlin may be equivalent to express dissent as the case may be

to no bring an return of [illegible] upon
another until there is a verdict [illegible]
bring the whole cause to a final
will not warrant [illegible] — [illegible]
[illegible] — [illegible]
[illegible] that he claims a right
to the [illegible] — Non. Suited.

Note the Plaintiff has [illegible]

Account or Book Debt — [illegible]
Left proof upon the account — & then pleaded that
the Plt & Def had an [illegible] made an arrangement — that the Plt should bring [illegible]
timber and the Shipwright in a certain time to cut
a dock — & that the def should pay so much for
& so much in money &c
The timber as it appeared was all brought but not
the dock cut — The Plts charge as it appeared upon
the [illegible] — The timber delivered —
Demurrer to the plea —
Mr Hosmer, for Plt had nothing to more in
addition to arguments to bring Book debt to their
wages — that they had entered into a special agreement
&c — to pay the [illegible]
[illegible] — [illegible]

from that of seamen bringing back debts for their wages — This was an indenture entered into by the parties — that was an act of the Legislature containing conditions which the seamen were obliged to subscribe to — This agreement contained a complete release — & the plt should have brought his action upon it. See Bac. Ab. 1st Debt — Fla. Rep. 3-133 — 2 Johns 54 —

Judge in Debt. —

petition for a new trial — Strong &c.

The Deft stated that new testimony had been discovered — Witnesses were produced — The Respondent objected — because they were the same witnesses as were produced on the former trial. If true they can now testify what on the former trial they did not testify — but they might have testified all this at the former trial as well as now.

Petition not granted.

April 2nd 1810 — Before C. J. Thomas — Plum v. Bulwer.

This was an action on the case — stating that the Deft so negligently managed his team that the cart ran upon & broke the Plff chaise — It appeared in evidence that the Plff as he was going up a hill in Meriden met the Deffts team (yoke of oxen & horses) & left walking without the head breadth of his cart (being loaded with wood) — The band on the left side of the cart was slack — the Plff attempted to turn that way but his carriage ran back as the team — but not so far back as the middle of the path — the other side of the path was a bank equally steep — but the fence within six feet of the path — the team could not turn out

No time was alledged when the injury happened — Huntington said it was matter of substance — motion & amend allowed without costs — granted — It was admitted that case was the proper remedy & also that insanity of Deft was no excuse —
Issue Not guilty — Judgt pro Deft —
Clarke & Hearne pro Quer — Whittlesey & Huntington pro Deft

Middlesex County — Superior Court 31st July 1810
Swift Ch. J. Trumbull & Brainerd Js.

Pratt & Williams } Trespass on the Case —
The Plff brought his action upon the 5th Section of the Stat. of U.S. respecting patents — The Plff declared that he had made valuable improvements upon the machine for making combs — sawing the teeth with a smaller circular saw — pointing them — & polishing the combs — & in the method of bringing the combs upon the saws — That the defendant in violation of the Plff's patent had used & improved a similar kind of machine &c The Deft relied upon evidence that all the improvements alledged to have been made by the Plff & for which he had obtained a patent were known & in use before the Plff obtained his Patent or used himself (Note The Plff was assignee of Phin. Pratt patentee)

The Pltf offered Rich. Pratt the patentee as a witness to show wn he made improvements &c Objd to as incompetent by the Defts Counsel — did not you see the present Pltf go to Glastenbury for the purpose of discovering how a McIntyre's machine was constructed — Obj'd to by Thomas & Ingersoll, for Pltf. — He cannot be inquired of how he obtained a knowledge of similar improvements The question ought to be whether or not he (Rich Pratt) knew of similar improvement — Daggett & Clarke contra since that the inquiry was proper — The means one has of obtaining knowledge must be shown or it is impossible in many cases to show knowledge — and altho' Swift & Dispenting - it is sufficient to inquire whether the Patentee had knowledge without showing how he obtained that knowledge — — Doane was called the Defts to relate what he heard the Pltf say — Doane was about to declare that he heard the Pltf say - that he (the Pltf) went to Glastenbury to get some combs pointed — that he intended to get sight of the pointing machine — that he got into the shop while the workmen were at Dinner & saw the whole of it — Thomas objected - & relied upon the decision of the Court just made — Said he was unanimously admitted ——

Whitney was called by Defts & proved that ivory dust was had been for a long time used in polishing Ivory — He was about to state that he heard Mr Reed say he (Reed)

had not been done before – Ch. Jus. Hommer
This is hearsay testimony – it is not the best that
could be had – Nor the patent should have been
produced – Let not our admitted practice
disappear ——

Hommer argued said that the Secretary of State
& Attorney General have decided that Pratt had made
an improvement upon the comb machine & that
this improvement was a valuable one – & that
the decision was conclusive – Lee non allocatur
for the Court in charging the jury said that the
patent & instance secured to the patentee all
the discovery or improvement he had made
but that this patent was no evidence & a fortiori
not conclusive evidence that any new discovery or
improvement had been made – or that such dis-
covery or improvement if made was valuable.

Verdict & Judgt for Deft

Mather & Pratt } Motion to enter up judgt vacating Pratt's Patent – granted –
This was a writ of Error from a Justice of peace
Bonds of prosecution & costs upon the writ of Error were
not certified in the hand writing of the Judge who signed
the writ of Error – plea in abatement for this defect
was ruled & a Respondeas ouster awarded — a Justice of
the peace may amend the record if he has minutes to
amend by – Ld Mansfield —

Hungerford v. Wolley } writ of Error —

Hungerford was the Captain of a Militia Company in Eastbadenon — Wolley was sued for a subject of Military duty — Hungerford distrains & sells, for the fine of Eleven — the goods distrained were sold at auction — Wolley brings his action of trespass before Spencer justice of peace — stating that he was exempt from Military duty — Deft pleaded the jurisdiction of the justice — states that the Captain Hol. had exclusive cognizance of the question whether exempt or not. that they had held he was not an exempt — which was conclusive upon demurrer this plea was overruled & a replication & Gen. issue pleaded — The Court found that the deft was guilty, on the ground that deft was an exempt — and now Hungerford brought his writ of Error — the plea to the jurisdiction of J. did not traverse the allegation that he was an exempt — Spencer J. — all to the first declared that Military officers had sole jurisdiction of the question when an excuse was sufficient per this power does not extend to cases where the cause of the exemption was permanent — Here the deft may say he is not a subject of Military duty the Act extends to such only as are subject to Military duty —

Page &c

Broadbeck's Dec't on judgment in Mayor Court

Def't prayed oyer &c the record & proceedings &c in which it appeared that the parties were present & were heard - that Broadbeck was the Plff - (action Trespass) that he was non suited upon appeal to this Court - that a bill of cost was taxed as Broadbeck & paid - rendered thereupon - The Def't then pleaded that prosecuted the action without lawful authority to appear therein & concluded with a verification - The Plff replied & traversed the allegation that the suit was carried on without competent authority & concluded to the Country - Def't demurred specially assigning for cause that the Plff had traversed a negative &c -

Holmes in support of the Demurrer said that tho a party might take upon himself the burden of proving the negative or throw it upon the other party in some special cases - yet this was within the gen. rule that the party leading the issue to the Country must deny a fact - & not affirm what is denied by the other party (vide Doct) - That it was competent for the Def't in this case to deny the authority of appearance of in the first action - the record of the Court in Mayr. being only prima facie evidence of authority of appearance - Vide Rodgers & Eden 15 M. 62

Whittlesey for Pltff. – admit that this case was within the general rule that a party may take upon himself the burden of proving the negative – tho he very much doubted whether the Court ought to consider the plea of the Deft a negative plea – At any rate admitting it to be a negative plea – it is faulty – when the Deft prayed oyer of the record & pleaded I take it – the record &c becomes a part of the Declaration that the presumption is that the parties had authority to appear – Indeed I apprehend conclusive of that fact If so it is equivalent to an allegation in the Dec. that the parties had a right to appear – The plea of the Deft then upon this view of the case would be no more than a traverse of particular facts in the declaration – without introduction of new matter. The consequence is that the plea of the deft is bad – It should have concluded to the country – The Deft has demurred – but it is a special demurrer & reaches the first defect upon the record.

I take it says he the record of the Mayr. Court is conclusive that the parties did appear by competent authority – Anderton's case – Stellata Cum. Bro. R. 581 & this tho the judgment of a court in one State be not considered a domestic judgment in another.

Swift in delivering the opinion of the court said that this case must be governed by that in Term Reports

the question whether the judgt in Mich. was conclusive - Held to be considered domestic could not in here — that the plff should have left the pleadings open to be ~~[illegible]~~ denied by the Deft & therefore judgt for Deft

Pleadings amended & the case continued —

Sup. Ct. Court December Term Middlesex

Present — Mitchell Pres. Trumbull & F. C. Smith Js.
Churchill & Watson — Actions of Trespass —

This was an action of Trespass — the ac name annexed to the action on the writ — the Declaration also that the Defr took away the Masts out of the Plffs vessel & appropriated it to his own use — whereby the Plffs was obstructed in building his vessel & hindered & delayed for three months & his damages 1000 $ — The Plff offered testimony to show some special damage occasioned by the obstruction & delay — Daggett & Clarke for Defr objected — If I undertake to deliver at the shipyard in Middletown timber a quantity of rigging for a vessel by such a time & fail whereby the vessel is hindered & obstructed by the ice — it has been decided over & over again that the Court cannot go into an inquiry of this special damage — it is too remote — much less in this case where the special damage is stated so generally The Plff does not allege how much he lost by the obstruction & delay — nor in fact whether any — If he would prove that vessels did not sell so well after delayed so long — this should have been alleged — even if he had alleged special damage with sufficient certainty — I trust this Court would not go into the inquiry — Actions of Trespass per quod

[illegible] [illegible] are [illegible] [illegible] brought by the [illegible] [illegible] [illegible] [illegible] [illegible] — & so [illegible] [illegible] [illegible] [illegible] [illegible] — [illegible] for [illegible] [illegible] [illegible] [illegible] — but [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] a [illegible] [illegible] quod the diff [illegible] the [illegible] of the [illegible] — [illegible] per quod are [illegible] to the [illegible] [illegible]. —

(Question by Trumbull) Do you know of any case where in the action of trover you must have a per quod — in this action there is no name — the taking is alledged to be with force — but the action concludes in trover — "appropriated to his own use" are the words — Broomer & Huntington in [illegible] — I trust that a trover may be laid with a per quod as well as trespass — for the reason we have no cases is the [illegible] [illegible] because. Trover came in the place of the old action of Detinue which was brought for the specific thing. — But in the action of trespass in per quod it is frequently the [illegible] [illegible] damage proved — both by our [illegible] & the English law (vid Peaper [illegible] 62 [illegible]) — & [illegible] the [illegible] [illegible] the [illegible] [illegible] employed & the Def [illegible] the [illegible] objection that is now [illegible] [illegible] [illegible] admitted testimony to show special damage

J. C. Smith I think I would not admit the testimony. The value of the thing — the interest. & Presumptive damages,

to the case was [illegible] for the want of damages & should be unwilling to extend the rule of damages further —

Ironmonger J. I would also exclude the testimony — If one were in any case under such action [illegible] special damage, we cannot here because the declaration is deficient in alledging the special damage —

Mitchell Ch. Just. I have no doubt but in cases of this kind special damage may be given in evidence where special damage is properly & sufficiently alledged in the declaration but this is not the case here & I would therefore exclude the testimony. — Verdict for Plff £20 & motion for a new trial filed — question reserved for the opinion of the whole court — On appeal from the Supreme Court of Errors this judgment was reversed — the case was remanded & a verdict found for £5. &

Coleman vs } Superior court July Term 1811
Wolcot } Action of ~~Covenant broken~~ case

The Defendant had covenanted to procure to the Plff & another certain lands in Virginia for such a sum of money – it was an indenture of two parts – the consideration money had been paid – the Plffs partner failed & became a bankrupt & then gave a general release of the covenant to Wolcot – On the first trial of this case it became necessary to prove that the indenture was lost by time & accident. – The Plff himself was by the court admitted to testify as to this fact – The cause was carried up to the whole courts by motion for a new trial & a new trial granted on the ground that the Plff could not testify as to the loss –

Hosmer for Plff was about to read the Deposition of – – – to that a writing therein contained was on a certain trial in Mass was permitted by the Deft to be read as a true copy of the indenture –

Gould & Dagget for Deft objected – because they said it was not competent to introduce a copy until the loss of the original was proved – per curiam admitted – This was therefore offered now as a copy – but objected to – because the loss ought to be proved first – & so said the court. – – The Plff in order to prove the loss in

produced which ~~[illegible]~~ to show that the Inventor had been seen in the possession of the Patentee & the Defendant had refused to deliver it up — on which ~~[illegible]~~ application a Rule Nisi —

On hearing the testimony is insufficient to prove a Trespass —

Motion to enlarge for the purpose of giving the Defendant opportunity to file a bill in the nature against the Defendant to compell him to deliver up the Specification to be used in this action — Per Cur. rejected

Motion to postpone the cause for a day or two for the counsel to consult on the propriety of amending the Declaration ~~[illegible]~~ Withdrawn —

Nisi Prius } Trespass
Mann & al } The Defendant in his declaration stated that he was possessed of a pasture lot & lying in Middletown that the Defendants had by means of their mill dam flowed the water back upon his pasture &c — The Defendants claimed a right so to do by immemorial usage. — The dam had been newly erected within six or seven years — made tight & higher than before. — For about ten years previous that dam had been worn & washed away so as to leave the pasture good — & before the erection of the new dam the pasture had not been flowed in the summer time except when

a shower of rain had lately fallen - & that was said not to injure the pasture. -

Daggett for Plff said that the Defts could not claim immemorial usage - nor grant - because the Plff had for more than fifteen years next previous to the erection of the new dam - by a free and uninterrupted possession ~~for~~ acquired a complete title

The Jury found a verdict for Dft -

The court returned the Jury for a reconsideration & among other things told them that the question was whether the Defts had used the water - or flowed the water as it had always been flowed & used -

The Jury again found a verdict for Deft which was accepted. —

. Vide at the next term a similar action between the same parties was tried & upon a return of the Jury for a second consideration they bring in a verdict for Plff —

December Term Haddam 1811

Court — Reeve. P.J. Baldwin & Ingersol Js.

Edwards vs. Hocking — Book Debt

This was an action on book to goods delivered Defr while in the absence of Defr — The Plff claimed that she had furnished necessaries &c & the question was whether they were necessaries — The Cause with the evidence was committed to the jury by Judge Reeve — Gentlemen of Jury said he If you find that the goods were necessaries delivered to the Defr & with a view to be paid for them & they have not been paid for then you will find for the Plff — But if you find that the goods were not delivered or if delivered were not delivered with a view to be paid for — or if delivered with a view to be paid were actually paid for — then you will for the Defr

Verdict for Defr accepted per Curr.

Churchill vs White — Assault & Battery

In this case the Defr was charged with beating the Plff with a hoe — It appeared in evidence that the Defr with a hoe on his shoulder went to the Plff in Plffs shipyard in Chatham — that after some altercation the Plff stepped back & took up a rake 6 or 8 feet long — doubled it holding the two ends in his right hand — in a threatning posture — ordering him the

Dft drove him to the Pff ground – Dft released among it was not Pff ground but his own. – Pff then threw over the bite of the rope apparently with intention said to entangle & take from Dft his hoe – Dft disengaged his hoe & immediately struck the Pff upon the head with the blade of the hoe & brought him quite senseless to the ground – for this beating this action was brought –

Whittlesey for Dft offered testimony to show that Pff had previously to the Battery offered a premium to any one who would take his (Dft's) life –

Cosmer for Pff objected & this Court improper to show any threats except such as were made immediately preceding the affray & cited Talbridge's trial & a criminal case at Hartford –

Whittlesey said the evidence was proper in order to show what Dft had reason or might have had reason to expect from Pff when the affray began & when the rope was held in a threatening posture

By the Court – The testimony is inadmissable the threats do not appear from the statement of the counsel to have any reference to the affray that happened – there was no connection between them – Pff did not go away from his ordinary business to find Dft nor did he have any instrument calculated & put those threats in execution –

Verdict & Judgment for Pff 500 $ damages

Daniel White v. Ebⁿ Churchill - Trespass Quare clausum, &c.

In this case the Plff charged the Deft with having taken away grain that was upon a Black-

It appeared that Robinson & Ames, formerly owned a piece of ground containing about 26 acres - In the year 1798 Robinson & Ames sold to the Plff 14 acres from the East end - bounded on the North by - - - on the East by the highway on the South by highway & on the West by our own land - The point in dispute seemed to be what direction the west line should run - It was in proof that there had been a hedge or mud fence running across the lot in a line not parrallel with the west line - nor East line - nor perpendicular to the North & South lines - but which left about 14 acres to the East of it. - The Deft in the year 1809 purchased the remaining part of the 26 acre lot & same bounded on the East by Daniel White's land The Deft claimed that Plff's west line must be parrallel with his East line - no' a butter's lying mentioned in the deed to Plff - The Plff claimed the land as far West as the hedge or mud fence & so far it was proved the Plff had been in possession from the date of his deed - The deed from Robinson & Ames to Plff covering a Deft explained the land from which the grain was taken was produced by Deft -

Whitlesey for Pltf objected to the evidence — Pltf had had an undisturbed possession of this land for 11 years & more previous to the time of the deed from Hobart & Dod'd from which Pltf are in possession only in 1809 The deed therefore as to this land is void & conveys no title.

Hornor for Defts said that the deed is void as to part: the whole must be void in toto. But it cannot be void in toto because the Grantors were in possession part of the land — But if it were void in toto as to Defts title yet it may be so far valid as a license & color & to prove

By the Court The deed is void as to Defts legal title to that part which Pltf had been in possession of — but yet it is so far valid as to give Defts a license & color (&c) provided the deed aforesaid covers the land —

Whitlesey for Pltf offered testimony to show that the Grantors of Pltf had at the time of the deed given but the Pltf in possession of the land by metes & bounds as far as the hedge fence —

Hornor objected — any parol contract respecting land is void — the metes & bounds are not described in the deed — the fact that the Grantors of the Pltf had at the time the deed was given gone round the lots & shown the Pltf the boundaries — this fact may be shown

by parol evidence to the purpose of enlarging the land claimed by the Plff within the description of the deed -

The witness who was introduced swore that two or three years after the deed was given to Plff he was in conversation with the Grantor of Plff - the Grantor among other things told him that White (the Plff) had improved just where he (the Grantor) intended &c (White) should. Hosmer objected & said this was not the testimony the Court adjudged to be admissable - this is testimony of a fact that happened two or three years after the deed was given - Per Curr. It is admissable not to give the Plff title but to give him licence to improve -

Hosmer for Defd offered the Grantors as witnesses to show that nothing was said by Grantor at the time the deed was given limiting the extent of the land - nor pointing out the meets & bounds -

Whittlesey for Plff objected - these men are interested The Court have already said that Defts deed by which he pretended to claim the land in question was void & if the Plff would have our western line ~~limited~~ parallel to our Eastern - a space is left between which no one but the Grantors can claim - & this is the very land in dispute so that the witnesses by testifying against the Plff will establish the title with themselves

Hosmer in reply said that if the witnesses be examined

[illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] the [illegible] piece of land - they would be
estopped by their covenant from claiming it as
as the Dep.ts - the grantee therefore could not
hold the land - I sell B. a piece of land
that I have not the possession of nor any title
& afterwards obtain title, possession it is not com-
petent for me to say I had not title at the time
I executed the deed - I am estopped -
The Court were divided & much doubt & regret
where though the witnesses were not liable - It
could be satisfied says Judge Reeve that the tes-
timony of these witnesses would not as to establish
title in themselves I should be willing to admit
it - the appears to me to have an interest - Lenote
whole the court said they would let the witnesses
testify & if the testimony proved to be material they
said they would consider of it further & correct it
if necessary - Division was for admitting - No Noting
was said afterwards on the subject & it is presumed the
evidence was of small consequence -
Reeve. B.J. said in charging the Jury that if nothing
else were to govern the course of the West line but
the deed - the court were of the opinion that it
must be parrallell to the East line - but if the Jury
had other evidence to judge none it might alter
the case - But further - from the evidence

gave leave to the Pltf to withdraw a juror on the part of the Pltf & that the Pltf might have a new trial upon the payment of 40/ costs to the Defendt and that the Defendt should have a right to bring a writ of error upon the record & that the verdict be entered for the Pltf —

Verdict for Pltf 40/. & damages — costs

Watson v Churchill — action of Slander

This was an action for saying of the Pltf he had stolen my Span — He is a Thief &c — at a former court the Defendt had recovered of the Pltf a verdict for £5.15.0 for taking the Span here reversed — The Defendt offered a certified copy of the record & verdict to prove that the Span was Defendts —

Clark & Daggett — Pltf objected — this verdict is no evidence of property — Defendt may have had only a special property in it —

Per Curiam inadmissible — Whether the Span was Pltfs or Defts is immaterial — The record also proves no more than this — that the Defendt had a right of property as against the Pltf — but not property

Verd. 4/10 & costs

Webb & Wife & al. — This was a petition to redeem land mortgaged by the petitioner & by which all appears & Ely & al. — The Petitioner claimed by virtue of an execution The Petition stated that such & such land was levied upon — appraisers appointed & sworn — the appraisal of the land — the amount of the mortgage debt — by which it appeared that the mortgage debt & interest amounted to more than the whole value of the land The Petition stated further that the appraisers went on to ascertain the rent & profit received by the respondents (they having been in possession about 5 years) & the betterments made on the premises — The betterments ($500) being added to the ~~appraised value~~ mortgage debt ($9.000) ~~($8.900)~~ & the rents & profits ($1.950) being added to the appraised value $8.900 — it appeared that there was an equity of redemption to the value of $600 & upwards set off on the execution — Respondents demurred — Daggett for respondent said the appraisers had not power to appraise rent & profits (or betterments) it was not within the scope of their duty Horner (contra) relied upon the case of Pendleton & others in 1 Day's rep. — But besides in this case nothing could be set off under the execution & accordingly abandoned & demurrer The court said that the estimating of rents, profits & betterments was not conclusive

Superior Court July Term Middletown 1812.

Court { Script J.
Trumbull
Smith

East Haddam vs Haddam — Assumpsit

This was an action to recover the support of a Pauper — The father or mother of the Pauper was a negro born in Lexington. The mother was a slave of the Venerable Bride in Lyme — East Haddam claimed that the settlement of the Pauper was in Haddam — & of course ought to provide for the support. This depended upon what place the parents had a settlement — The weight of the testimony was that both the father had a settlement in Haddam — Incidental testimony was introduced showing that they were never married & since the Pauper's mother was of the general reputation of their being & living as man & wife. The witnesses differed — The witnesses differed also as to the settlement or place of residence of more —

Script J. to the Jury — Gentlemen if you find that the father had a settlement in Haddam — that he was married to Mercy — & that the Pauper was the issue of that marriage you must have a verdict — & you are to presume a marriage if they held a general reputation of man & wife

but if they were not married yet if Pierce had by residence gained a settlement in Middletown the same. The illegitimate will follow the settlement of the mother — and the Court are clear in opinion that an Indian or mulatto born in this State may gain a settlement by residence. They are not aliens nor denizens — nor is any act of naturalization necessary to make them citizens.

Verdict & Judgt for Pltf.

Newberry & Buckley vs. Ejectment
Pltf claimed land in Middletown & title by the Will of an executor — General Issue was pleaded — The Execution having been read it appeared that six owners of a certain lot of ground were duly appointed sworn — & the land appraised — but there not appearing enough to satisfy the Execution the Indorsement run on thus — Then levied on an acre & a half &c — & requested the appraisers aforesaid to appraise the same — which was done & set off on Execution in full —

The Defts produced a deed from Jerusha Bartlett in trust &c for the benefit of Execution — & to which Pltf objected saying it was fraudulent — A defeazance or bond to reconvey was also produced by Deft

[illegible] bearing date with the deed — [illegible] that the deed was not executed — Whitney in argument said that a mere absolute deed given by a man in failing circumstances to his creditor for the more security of his debt & not in satisfaction of the debt was in law a trust & nothing more & could never be valid — (Northern & Metcalf) Trumbull Just. do you not conceive there may be a difference between a mere agreement at the time of the execution of the deed that there should be a defeazance executed immediately & an agreement that there shall be one executed at a future time — a mere agreement at the time that a defeazance shall be immediately executed may perhaps be good as between the parties & an agreement that it should afterwards be done may not — I do not see how far this distinction will affect third persons — but if it does affect them the defeazance is not executed

Sheriff's proceedings on an execution vid
upon the defendants goods & rec'd the
the residue of the term —
Howard vs Hall — and that the defendants
were not in point of fact executed at the time
of the deed — yet the Court made a distinction
between agreements & covenants & held that
upon the third person — the doctrine of relation
attached & made void the deed — And it is held
that the circumstances are not recorded — there is
no determination in any case which explains
& reconciles that & a multiplicity of such
intents & purposes
Perkins. The deed is indefeasible on both points
the debtor should have executed at the
same time the deed was & recorded also.
The Court however recommended to the jury to find for the plaintiff
Howard. The allegation of fraud was
directed to the execution — the statute directs
that the officer should keep in execution —
there appears to be no distinct objection
to — The object is that the debtor may not
avoid it by secret conveyance before the ap-
point the abscondence — the return of the
warrant was that he could not — it appears
that after the levy the officer did not apply
to the debtor to point but took the same

[illegible] citizen [illegible] naturalized
in this point the Court decided against the
case cannot [illegible] on a motion
for a new trial that court [illegible] overruled
& refused the [illegible]
the question was reserved for the
opinion of the Court in Banco Regis.

Denny's Appeal from Probate
before
In 1795 the Legislature of Maryland
Mr Denny called his family except Elizabeth
came over to America from Eng. — At that
time Elizabeth was at some school — She
soon followed & came over in 1796 — after the
treaty of peace with Great Britain — Mr
Denny died in 1805 leaving real & personal
estate which was distributed among his heirs — The only
point for decision is whether Elizabeth
Denny was entitled — The appellant claimed
on the ground that she was born
while her father was an alien — The Court
decided that the [illegible]
[illegible] in America & [illegible]
[illegible] in may be descendable devisable alienable
&c &c. At the treaty of peace between Great Britain &
America Mr Denny could not have been a British subject
— he was an American citizen — and being such

It will readily be seen that Elizabeth of the
age of [illegible] could not claim under
[illegible] the Treaty —
the words mentioned for the heirs
of American citizens (or) heirs that are English born
but further it is the opinion of the Court that
Elizabeth is not an american citizen — She
Elizabeth might have been in fact prevented
from coming to this country with her father
yet whether she was prevented or was not is a fact
not to be considered any more than if she had always
remained single — & she being only a potential heir
shall not claim any rights which she would
not if she were single — tho she might in
certain cases claim [illegible]
[illegible] —

Pratt & al. vs Pratt } Writ of Error from Justice Hill Taylors

This was an action of trespass brought by Pratt against Duff for entering upon the Presbyterian Meetinghouse of which the Pltff. alledged that they were seized & possessed — The trespass was charged to have been done on a certain Sunday during public worship — That the house was devoted to public worship &c —
The Deft in the Court below demurred — Judgt

was in the court below rendered for Plff – Deft brings this writ of Error – & for cause argues (Daggett & Clark Counsel) that trespass would not lie for entering a pew vi & armis – it must be case – see Term Reports

Per Cur. It is true that trespass will not lie in ordinary cases where a meetinghouse is built by a religious ~~the~~ society for public worship & the pews are distributed yearly to accommodate the people – but here the Plff alledge that they were seized & possessed of the pew – Meetinghouses are frequently built & owned by individuals – as such & not in a corporate capacity – they may own the fee simple Upon the face of this writ it appears that the Plff did own the fee simple

Swift dissenting said that it did appear that this house was dedicated to public worship & that too at the time of the trespass complained of. Property in this situation could not be considered so absolutely under the control of Plff as to allow them this action – the pew was to be regulated by the people who attend public worship there –

Judgt affirmed

Superior Court December Term 1811

Court { Mitchell Ch. Just. / Baldwin / Ingersol }

[illegible] & [illegible] } ~~[illegible]~~ Account

offered [illegible] & pltf Dane [illegible]
[illegible] [illegible] & [illegible] —
the [illegible] [illegible] [illegible] —
— the [illegible] [illegible] [illegible] Dane
Dane [illegible] the [illegible] indorsed the bill
[illegible] — [illegible]
indorsed it to [illegible] the Pltf — [illegible]
entered the [illegible] at the [illegible]
[illegible] Dane & [illegible]
[illegible] offered to enter [illegible] — in the [illegible]
Dane — he was refused by the [illegible]
because Dane already [illegible] at the [illegible]
The Deposition [illegible]
[illegible] — Depo [illegible] —
It will not support the [illegible] of action
because it [illegible] any privity of con-
tract between the Pltf & Deft — [illegible]
[illegible] — without the action of account
cannot be supported — [illegible] Court
admissable — verdict for Pltf — accepted
auditors appointed — motion for new trial [illegible]
after report of auditors in [illegible]

Whittlesey [illegible] that he was [illegible]
[illegible] that [illegible]
[illegible]
[illegible] when the command [illegible]
[illegible] upon the [illegible]
and no [illegible] — there [illegible] no written
[illegible] the same [illegible] made [illegible]
a mere oral command — [illegible] the
[illegible] the sheriff that the notice [illegible]
not constituted an arrest — there [illegible]
[illegible] the command [illegible]
[illegible] a legal order
[illegible] said that the
evidence [illegible] inadmissible, &
that the [illegible]
[illegible] the justice's order [illegible]
arrest.

Mitchel among other things said that supposing the sheriff might go over the head of the justice & say that it was no [illegible] — it would be ~~[illegible]~~ [illegible] [illegible] —

In his charge to the jury he said that no words spoken by the Pltff could justify the sheriff in striking him — unless they were accompanied by an assault —

Verdict Guilty — 12½ cents damages & 12½ co

[illegible] — Judgment [illegible]
[illegible] — [illegible]
[illegible] — [illegible]
[illegible] — [illegible]
[illegible] — [illegible]
[illegible] — [illegible]
[illegible] — [illegible]
[illegible] — [illegible]
[illegible] — [illegible]

Wm Hall &c
James Stewart &c Case stated

In action on bond to the Pltf as Sheriff
of Berks county for breach of condition
it appeared that the defendant Stewart
Barbadoes Jr. Esqr came into the Court of
Common Pleas to the first of September
Term last & there acknowledged a judgment
by Warrant of Attorney that it was agreed by the
Pltf & Defdt that the cause should proceed to Judg-
ment — that objection on the ground that no
parole testimony could be admitted to con-
trol or vary the operation of a written contract
Mitchell Dallas said that in a Case of error
on the Common Pleas — a question arose as
to the construction of the Act — the Court had
power to hear & determine & to reverse modify
or affirm — the Master decided by the

[illegible] — [illegible]

the [illegible] [illegible] [illegible] amount of the [illegible] [illegible] [illegible] — [illegible] true that Deft offered to prove by parol testimony that the parties agreed that the [illegible] [illegible] [illegible] — the Pltf objected — the Court admitted the testimony — In tot. cur. in Com. Banco.

The Court admitted the testimony — It is a very every practice to admit parol ~~testimony~~ testimony in actions for the breach of covenants — to show that the parties accorded & agreed that such & such acts should be a performance — Verdict & Judg^t for Plff —

Interest was allowed on the Ballance after it became due

Russell & al v Mann — Case on Covenant &c

Plff claimed by virtue of a quitclaim deed from ~~Henshaw~~ Waddington. ~~Henshaw~~ Waddington claimed by a warranty from Henshaw. The Plff offered the deposition of Henshaw — Deft objected — he is interested in his covenant of warranty. Daggett for Plff said that the covenant of warranty extended not to the Plff — there was a quitclaim — but Am. contra — the deposition is inadmissible —

Hodgson v Hall — [illegible]

Testator devised [illegible] and the residue
of his property [illegible] his debts were paid & his
personal property was not sufficient to pay his
debts — The Court of Probate ordered the sale of
the real property by the Administrator - cum test. an.
& pay debts - & left the personal property to go to
the Widow - Plt being heir at law
[illegible] and the Plaintiff
appeal from the Court of Probate - brought this
action of Ejectment - The point in dispute
was a matter of law - Whether in this action
the Judgment of the Court of Probate could be
set aside - or whether the Plff's only redress was
by appeal from Probate -
And upon the construction of the will whether
the words rest & residue after debts paid &c was to
be construed a charge upon the real being real
estate - or whether the personal property given
by the will was the proper fund for payment of
Debts —

The court in charging the Jury said the Court
of Probate had competent jurisdiction to determine
out of what fund the debts should be paid - it was
a judicial act & not ministerial -

Verdict & Judt for Deft -

Achilles H. Elliot
vs
Wallace Hawley

Young & Penfield & Com. Leave to Replevy from the Court

The Proprietors of Pownal Common field in Chatham had supported a bridge leading over a stream, leading to the common field & out of repair - It was proved that the Proprietors had for time immemorial until 1819 maintained the Bridge - they then refused & discontinued repairing by which the Plff claimed he was obstructed & hindered from passing into the common field & then by a circuitous route. - Penfield was clerk of the Common field - Plff was a proprietor -

Def offered one of the Proprietors to testify as to the agreement of Plff to maintain the Bridge at his own charge - & prove that the Plff said it was of little consequence to him &c -

Plff objected - Strong for Plff said that the witness offered was party in the suit & directly interested in the event of the suit - The corporation of Chatham is not like town & societies - the latter are associations for public purposes circumscribed by local limits - The former only for private purposes & is like Banks & Turnpike companies - Court on reflection said that the proprietors of Common fields were more like town & societies & if so Plff lost the suit - The witness was then admitted &c

[illegible] and that if there was any collusion on the part of the proprietor of the common land & tenant in the trial the court were at liberty after the jury had actually retired to omit receiving the verdict & repair instead to chambers — Verdict set aside & motion for a nonsuit — qu[ere] re[ported] per Sup. Ct. Bank.

Rupel vs }
Adams } motion in arrest of judgment —

Action on the case for flowing Pl[ain]t[iff]'s meadow —

Three or four of the jurors pending the trial went and inspected the meadow — One of the D[efendan]t's hired men showed them the boundaries — These facts were stated by Def[endan]t in his motion — verdict being for Def[endan]t —

Per the court — let judgt be arrested — It is to be presumed that there was improper conversation between the hired man & the jurors as well as improper conduct on the part of jury in going to inspect the locus in quo

White vs Cook — Book Debt

The first article of the set was a bill of parcel for leather — it was proved that White had furnished the Defft with the leather to make up into shoes & dispose of them to the best advantage — the Defft to take one half the profits & pay off the other half —

Defft objected to this charge because it was not a proper article of book debt — but must be recovered in an action of account —

Per Curr. Let this article be struck out — The debt did not accrue at the delivery of the hides — but the Defft was entitled to receive & account for the profits. —

Hall Demurrer
Knight & Dyer

Knight Clerk to Mark the Def in Error brought an
action of Trespass &c. — Plaintiff declared &
issue was joined — Cause came on to be tried —
The jurors were sworn & Trial — The jurors
the evidence Counsel addressed to the Jury
when the Def. Counsel moved to have the Jury
discharged for misbehaviour in the Plaintiff
the Def. Counsel pray'd was pronounced there more Testimony
the Def objected that the Justice declared he would hear no
more testimony whatever & immediately pronounced for
the Def. which is Bill of Exceptions — Error in the Court
Error — & the Court misdirect Error — Whether by the peace Offr.
& the Constables upon the Defendant part a Bill just &
should be pronounced — especially where the action is not
sustainable as they have done. — Demurrer
Joinder in Demurrer

Cook Bull vs Crooke Writ of Error
Crooke Crooke Bull, John Bull brought his action on the Case
against Crooke in the Court. Plaintiff declares
demanding 3.3.4 as a penalty for obstructing the highway
from the Public path & travel to Bettys Meeting house &
11.6.6 for repairing the wall & gate with any actual
reparation — The Def. having been found guilty by the Jury
& judgment there upon the action was brought — he brings
this Error — The jurors having been sworn & heard
the evidence the Bill of Exceptions & prays the same may be
in the Bill of Exceptions which was agreed & have been done

more than a year previous to the service of the writ
but within a year from its date - That was the only mis-
nomer attempted to be proved - The Deft objected -
the court admitted the testimony - Bill of Exceptions was
filed - The Jury found a verdict for quiet & for the
Pltff to recover the penalty & but one cause to replication
The Deft moved in arrest of Judgt & stated that the
plaint was misnomer - the word and between the words
three dollars and the word forty four cents was omitted - & the
word Treasury used for the word Treasurer -
& that the Pltff had brought the action in his own name
& in the name of the Treasurer of the State of Connecticut
when it should have been in the Pltffs name & the treasurer
of the town of Saybrook -
Cross: the Deft now brought his writ of Error
Daggett & Clarke for Pltff in Error said it had been determined
that the statute of limitations extended to Qui tam actions
& of course this action is saved if the service of the writ &
not the date & the commencement of the suit - for the
words of the statute made & exhibited - mean no more than
that the suit shall be commenced
And as to the misrecital - the condition & recital
run are uniform - that is the parts recited of the
statute in the words - said or aforesaid in reciting a subsi-
quent statute he shall be holden & considered recital words & sentences
and as if the subsequent there is a manifest inconsistency
in giving the treasurer of the state the penalty &

made payable to the town

Swift in Deft in Error said the Statute of limitation was never intended to apply to qui tam actions - it had reference only to proceedings by grandjurors - the words inf. & prosecution mean the doings of the grandjurors & are restrictive -

[illegible] The English law has in modern times been much relaxed -

Smith for pl. I believe the Court decisions on this subject have been uniform throughout -

Hosmer - There are many reasons why they should be relaxed - especially in this country

As to the incongruity which Mr Daggett complains of perhaps it would have been better to have joined both the Atty & the State at large or the treasurer of the town - but this is no cause for arresting judgt -

Per Curiam Manifest Error - The words made [illegible] which is next to an information or a complaint to a justice [illegible] - yet there seems to be the same reason for the state's proceeding by such qui tam actions - We believe the Stat. may be so construed as to include them - If a man [illegible] act against a penal statute & immediately goes out of the state leaving property - his action would not be within the statute of limitation. He may be brought up after the expiration [illegible] when he comes into this state - but otherwise if he have been in this state a sufficient time after the commission [illegible] to remove the presumption that he intended to [illegible]

Where a party undertakes to recite a statute in hac verba, when he does not recite it he shall be holden to an exact recital & he ties himself up to the stat. recited - & the least variation will be fatal - On these two exceptions the court reverse the judgt without enquiring into the other —

In estimating damages the Deft objected to the Jurors who were in the Court below because the Deft below should have demurred to the declaration —

Judgt said that as the Deft before the Justices had pleaded & issue he could not before the County Court go back to a demurrer & of this opinion was the Court — Moreover the Deft in Error there objected for another ground — that the County Court had not jurisdiction of the matter because they could not recover judgt for more than 8.34/. But the Court allowed costs from the beginning

& Plaintiff could not recover costs

Superior Court Dec. Term 1813

Court v. Mitchell Crumbull & Ingersol

State } This was an Indictment & Indictment
v. } charged it have been committed with
Mitchell Crumbull & Ingersol } one Watson Wright on the 21st day of June 1806 — On the
trial the Attorney for the State offered testimony to show
the crime charged — & the time when &c — The counsel for
the Prisoner objected — & stated that this was within the
Statute of Limitations — This was a prosecution upon a
penal Statute — & prosecutions upon a penal Statute — or
for crimes & whereby any forfeiture accrues to any public treasury
are limited to a year — no forfeiture accrues in this case
but it is a prosecution on a penal Statute & not within the
exceptions — & by the Court — Let the testimony be admitted
The witness then testified that on or about the 21st day &
the witness was acquainted with Mr Wright & knew &c — The
Attorney for the State offered a witness to prove that Campbell
was seen with Mr Wright indeed &c at another time viz
a year & a half —
Hopkins for Prisoner objected — & said that the Indictment
charged the prisoner with only one offence — & this offence
now offered to be proved could not conduce in any
manner to prove an offence on the 21st of June 1806 — It is
true according to the determination of the Court we had
the Prosecutor cannot confined to the day stated in the Indictment
but may prove any one offence within 20 or 30 years

The rule is the same in Trespass - If a man is charged with only one trespass in a declaration the Pltf may prove any one trespass within three years but he must prove two trespasses even under the allegation & diem incerta — And the reason why a recovery in such action will bar another action for another different trespass within the same three years is because nothing appears by which you can determine which trespass was proved in the first action —

So if a complaint for breach of Bail Bath — if the declaration charges a man with a breach of one Bail Bath you cannot prove him guilty of the breach of another Bail Bath also — you may take either of them but not both

So if a man is charged with passing counterfeit money on a particular day — you cannot prove that he passed the same on that day & also on another day — you may prove one but not both

Trumbull. Could not know of a case of this kind in Hartford County & this execution was taken & prevailed

Mr Hosmer for the State — said that the proof in the present case could not be limited to an offence committed at one time — All the acts of that sort which we may prove constitute in contemplation of law but one offence tho the parts of it were transacted at different times — Many times offences must be proved by circumstantial evidence — strongest evidence if the rule is thus strict it is impossible to convict any one on such evidence &c — By the Court in admirable

The Prosecutor then offered to enter a Nolle Pros. if the Court would discharge the Jury —
Mr Staples said the Jury could not be discharged — the might enter a Nolle Pros but the Jury must acquit the Prisoner & cause them have their own & make deliverance &c. & of this opinion was the Court. (See Says Rep.)
Mr Bowne then went on with the trial — He offered Witness to prove the marriage of Betsey Wright — he could identify her call the maiden name of Mrs Wright — Mr Bowne then called another witness to prove that Mr Isb. Wright & Betsey went away from the witnesses house together & came back together — lived afterwards as man & wife — Objected to by Prosecutor — inadmissable Mr Bowne asked the Court to give their opinion & give on the sufficiency of the testimony relative to the marriage in their charge to the Jury — The Court charged the Jury that if they found there was no evidence of a marriage of Betsey Wright they must find a verdict for the Prisoner — & that the opinion of the Court was that there was no such evidence
The Jury found a verdict of Not Guilty without leaving their boxes! —

Superior Court Middle County July Term 1844

Crown { Webb / Bowness / Baldwin

State vs Betsey Wright — Indictment

The Indictments charges the Prisoner to have been committed at the aforesaid Term in eleven distinct counts.

Staples for the Prisoner moves to quash all but one & states that by the Compiled Law Sec. 17 you cannot charge a person with more than one distinct Felony in one indictment - that if murder & robbery were a felony —

Thomas for the prosecution said that Robbery was no Felony — it was not known as a public offence in England - & our Statute in using those words did not make it necessarily a Felony - indeed he did not know Felony - therefore the Compiled Statute applies only to Felonies cannot apply here

Staples in reply said that every charge the punishment of which was Imprisonment was a Felony

By the Court - Let the indictment stand as it is

Proof exhibited to support one count cannot be applied to support another may be looked with proof on another count in making up the verdict - but there can be but one verdict - one judgment & one punishment.

Mr Hanmer then offered a certificate of the Parson of
St. Brides of the record made by Mr S. Backus of
"the Marriage of James Wright with a person-name"
"forgot — the year was not mentioned but only 29th Nov.
Clarke objected & said it was not admissable because
the record was never made agreeable to the statute
Hanmer said it was admissable as far as it went
he acknowledged it did not itself prove the marriage but would help with other testimony to make
out the marriage —
Clarke in reply said the Prosecutor could not
both enter a record in other way, by parole testimony
the marriage must be proved by a certificate or by parole
testimony or by both but you cannot mend a defective record by parole
By the Court — The certificate is inadmissible — By
our practice it has never been considered necessary
to produce higher proof than the record of the marriage — that is sufficient if complete — but
a defective record as this is not admissible

Writ of Error

In an original action was brought on an office
receipt & an execution claiming that the Defr
was an officer that received an execution from the Plff
that never returned the same nor returned the execution
A plea in abatement was put in &c.

That the service was not made 14 days before the return
day & this there was a demurrer & the Court held
the plea insufficient & ordered a respondeas ouster &
the parties went on & trial the Plff obtained judgt. Defr
the Defr brings this writ of Error - & to the Court

Manifest Error

Higgins vs Steven Writ of Error

This was an action of Trover brought in the
County Court in which there were two or three
Counts - the article trovered appeared to be the same in
all the counts
the alleged to be different & the value of the articles in
each count under $20. - the parties went on to trial & Not the whole amounted to 100 $ the damages were laid 100 $
judgt went ag. the Defr - Defr moved for an appeal - it
was objected to - & the Court refused & grant an appeal
The Defr brought this writ of Error & by the Court

Manifest Error

Index

Deeds

Deception
Decimal III 62
Declaimer Lerone Jumi
Declaration III 197
Determine

Declined

Detinue

Decortication
Deviation III 189-9
Devises III 135-I 158

Decrease

Digest

Dilapidation

Dilatory pleas

Diminution of security III 23

Diocese

Disability plea to

Disabling
Discharge of, joint debtor III 82-5
Disbelievers

Discontinuance, Action II 296

Discontinuance

Discovery

Discretion

Disfiguring

Disguise

Dismembering

Disqualification

Dispensa

Dishonesty

Dissection

Dissent
Dissent I 145

Distraining

Distress

Distribution of intest.

Distringas

Disturbance of Commonin
of Common & Way

Divisional

Divine law

Divorce a vinc. matr.
a mens & thor.

Docket II 290
Documents III 181

Dogs

Donatio causa mortis I-97-179

Denis Stat. de

Double vouchers
apparance III 188

Dower II 135-I 101

Draughts III 102

Drawback
Drawer Drawee III 66
Drunkenness III 92

Duelling II 575

Duebills III 103

Dum fuit

Duplicity
Duration III 150

Durante minoritate

Execution of
Executor - 4th 66-229
Executor de son tort -

Action executory

Writ of execution

Executory contract
Conveyance - III - 14
deed - I 145
devise

Exemption

Exigi facias

Ex officio
Ex parte
Ex post facto laws I-2-15-5
Expiring servitude

misfeasance

malfeasance

misfeasance

Extra-judicial
Extraordinary
Extortion
Eye
Ejectment III 270
Easterage III 239
Fair
False imprisonment

action

verdict

False crimen

Forma
Fee
Fee tail
Feoffment
Fee simple III 14
Fee tail III 113

Felonious Homicide III 198

Felony III 318-338-I 86
Feme Covert III 45-66-82-333-I-86
Feme covert

Freehold
Feoffee to uses I 42
Feoffor
Feudatory
Feudum Novum
Antiquum
Fiction
Fictitious Payee - III 1845
Fieri facias
Filiation
Final judgment

Fine
Fine & de Mercury I 145-160
Fines & forfeiture - I 121
Fire negligence of
Fire office
Fishery

Fish pond
Fitzherbert
Fleet
Forcible injuries
Forcible entry & detainer
Foreclosure
Foreign Att'y III 40
  does he practice II 28
  Notice - III 82
  judgment III 172
  attachment III 270
Forest
Forfeiture I 38

Forgery III 92
Formedon
Formedon defined II 90
Fornication
Fortescue - III 130
Framlingham
Franchise
Franklin
Fraud & Perjury II 28
Fraud what constitutes III 142-III

Fraud & Perjury I. 60

Freehold - III 115. 82 - I 82
Freeholder & Conveyancer II 5-I 50
171. 514
Free mine - free grant &c III 176
Freehold

Freight &c abeyance
Freight - III 180-225
French Inst
Fruit
Fruits
  particular III 48
Funeral expenses
Furandi animus
Future freehold in I 144-5

Gage
Gambling III 40-48-150-119
Game
Gaolers
Gavelkind
General Commerce
  Fund
  impairment
  fine
  legacy
  Stat.
  Will
  verdict

Hour hand [illegible] III 11

Hour bell

Hue & cry

Hundred

Husband [illegible] Ch III 150

Hanger

Hanging

Herald

Husband & wife

Hurricane &c III 140

Hypothecation

Identity III 144-5

Idiot I 305-I-40
Index Librorum I 1[illegible] -203
Citizen III 196-201

Jeofail II 306

Jews

Ignorance of law &c III 75-326

Illegal condition
Illegality III 99
Imbezzling

Imparlance

Impeachment of judges III 75

Implication I 64

Implied condition
contract III 31-2
warranty III 180

Impossible condition III 166 I 43-4
Impost upon ships rel. of III 18
Imposition

Imprisonment for debt

[illegible] III 7

Incendiary

Incest

Inclosure

Incorporeal hereditament I 90

Incumbrance

Index Expurgatorius

Indefeasible

Indemnity

Indictment I 57

Indifferent persons III 255-6

Individuals

Indorsement III 28 36-42-60-47-281

Intamous crime

England III 14-31-32-33-I 30-170

under terror none III 8
Crime none except Other murder III 8

Interest

Interpolation I 63

Interpolation

Allen Lands-Leu
Herzog III 5.6

Meine

Metaphysic
Migration
Militair
Milch
Mine
Minen I 1

Misdemeanors III 3.5-240
Misdemeanors
Mistress
Mischief
Mittel
Mittel
Mittel - I 55

Mittel
Monat
Mittel
Mittel III 26
Mixed

Mob III 146
Mobile mass

Monarchy

Minor landtraders III 8
Mint

Mark
Mark - III 25
Mark
Mark
Mortgage III-1-108-170

Mountain
Mountain road
Mouth
Movable
Mouthpiece
Mulatto Brigs
Municipal Laws 1-1
Murder III 359-365

Mutiny III. 5
Mile
Mutiny
National Debt
National Law
National

Naturalization
Nature and Art

Prerogatives Index

Hope

Orphans recognizance

Original entries - I 65 &c

Portions

Pope Jane Baker

Possession actual right to - I 107

institution

Induction

Induction

Possessory actions

Penalties notwithstanding

Petition

Pipe Office

Penal Statute

Powers - I - 25 - 72

Power of Chancery III - 1

Power of Attorney I - 99

Precipe III - 234

Precipe quod reddat III - 245

Premunire

Precedence I - 6

Precedents

Precedent Petitions

Precentor

Pre-emption

Pregnancy plea of - II - 350

Premium III - 1, 1 - 156 - 25 - 214 - 5

Premium

Premium of sales

Prerogatives Index

Description

Presentation

Presentment - 4 Bac. Abr. 61 Jan. III - 58 - 78 - 81

Presumption of

Pressing

Presumption I - 52

Presumptive evid.

Prelimitee Letters Patent

Prevention

Price

Priest

Primer seisin

Primogeniture

Principal & accessory

Principal & Accessary III - 308 f

challenge

Prior

Priority of Debts

Prison

Private Acts III 165 - 188

Private acts I - 19 - I - 52

minime

Privilege III - 36

Privileged Pleading I - 10

Privies

Privelege

Priority of interest III 81-2-8
Privy verdict
Probable
Probate of Wills
Process — III 335

Proclamation
Procuration
Profert in curia
Profits — III 154
Prohibition
Promises extn. Limitation 0-2
Promissory notes III 3-10-0-6
Promulgation
Proof 85
Property real
personal
Prosecution malicious
of offenders
III 159-288-9
Protection of Children
Protector
Protest of Bills III 3-8-80
Protestant

Protestation
Proving wills
Provision
Proviso I-61
Proxies
Public Wrongs III 55-I-64
Statutes I-9-I-52

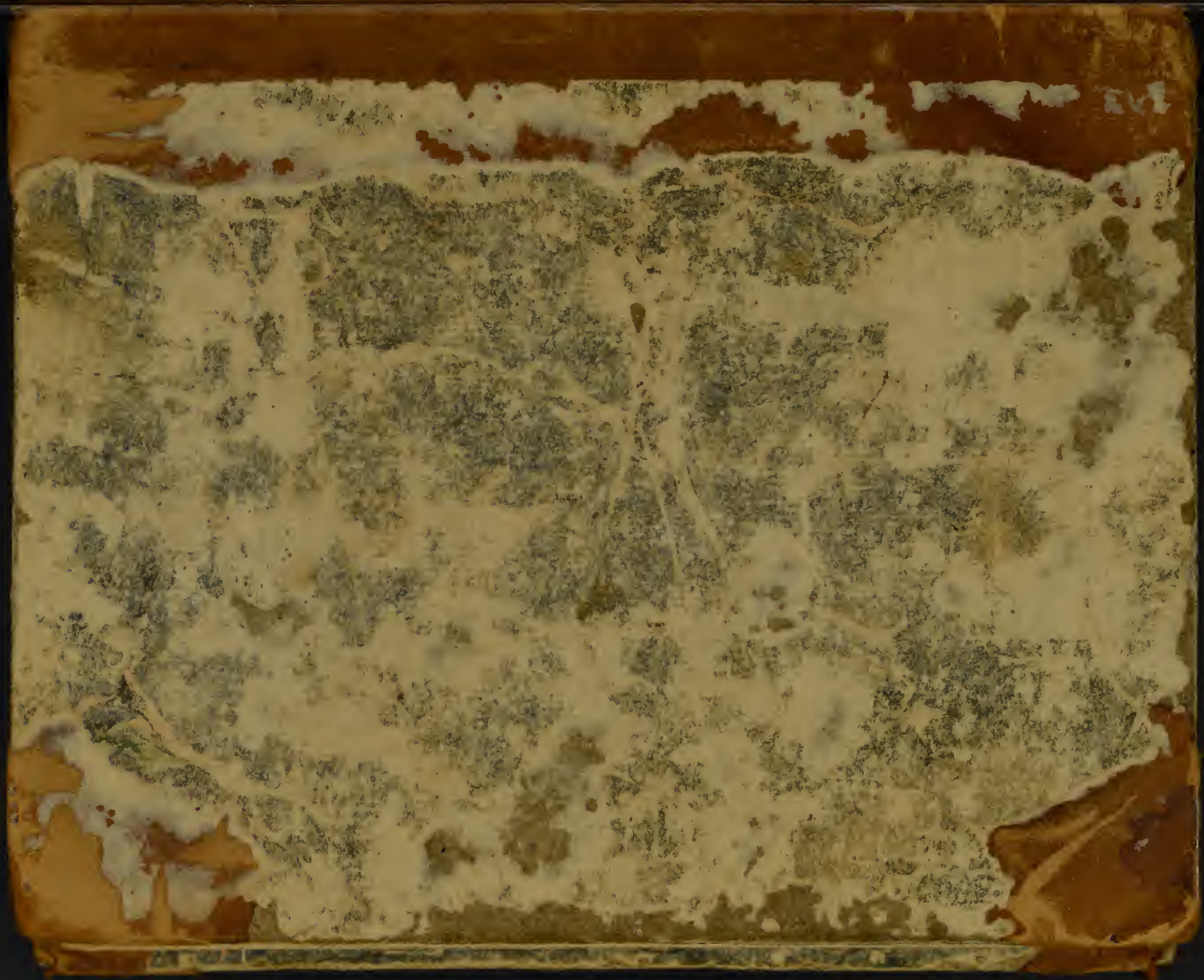
Publication

Puis dean. cont.
Puisne justices
Pulling Down Houses
Punishments I 3-9-37-44-45-
accumulative III 306
Put under ore
Purchase

Purchase first
Purgation III 2
pursuit of remedies
Putting on Law
III 348-I-24
Qualification

Qualified Property
Qualified fees
Quantum Meruit

Tenant
Term
Testament
Testator
Testify
Testimony
Theft
Thief
Thing
Third
Threat
Throw
Tide
Timber
Time
Title
Tithe
Tithing
Tithingman
Tolerate
Tongue
Tool
Tort
Town
Trade
Tradesman



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LAW
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