HARVARD LAW SCHOOL
LIBRARY

LEARNED HAND.
ALBANY, N. Y.

A COLLECTION

OF

OVERRULED, DENIED, AND DOUBTED

DECISIONS AND DICTA,

BOTH

AMERICAN AND ENGLISH.

BY SIMON GREENLEAF, LL. D.
PROFESSOR AT LAW AT HARVARD UNIVERSITY.

FOURTH EDITION REVISED AND ENLARGED,

BY JOHN TOWNSHEND,
COUNSELOR AT LAW, NEW YORK.

NEW YORK:
JOHN S. VOORHIES, LAW BOOKSELLER, AND PUBLISHER,
NO. 20 NASSAU STREET.
1856.

KF
132
.G73x

TX
G8140
ed4

Entered according to Act of Congress, in the year Eighteen Hundred and Thirty-eight, by
ELISHA HAMMOND,
in the Office of the Clerk of the Southern District of New York.

Entered according to Act of Congress in the year Eighteen Hundred and Fifty-six, by
JOHN S. VOORHIES,
in the Office of the Clerk for the Southern District of New York.

Rec. May 13, 1903.

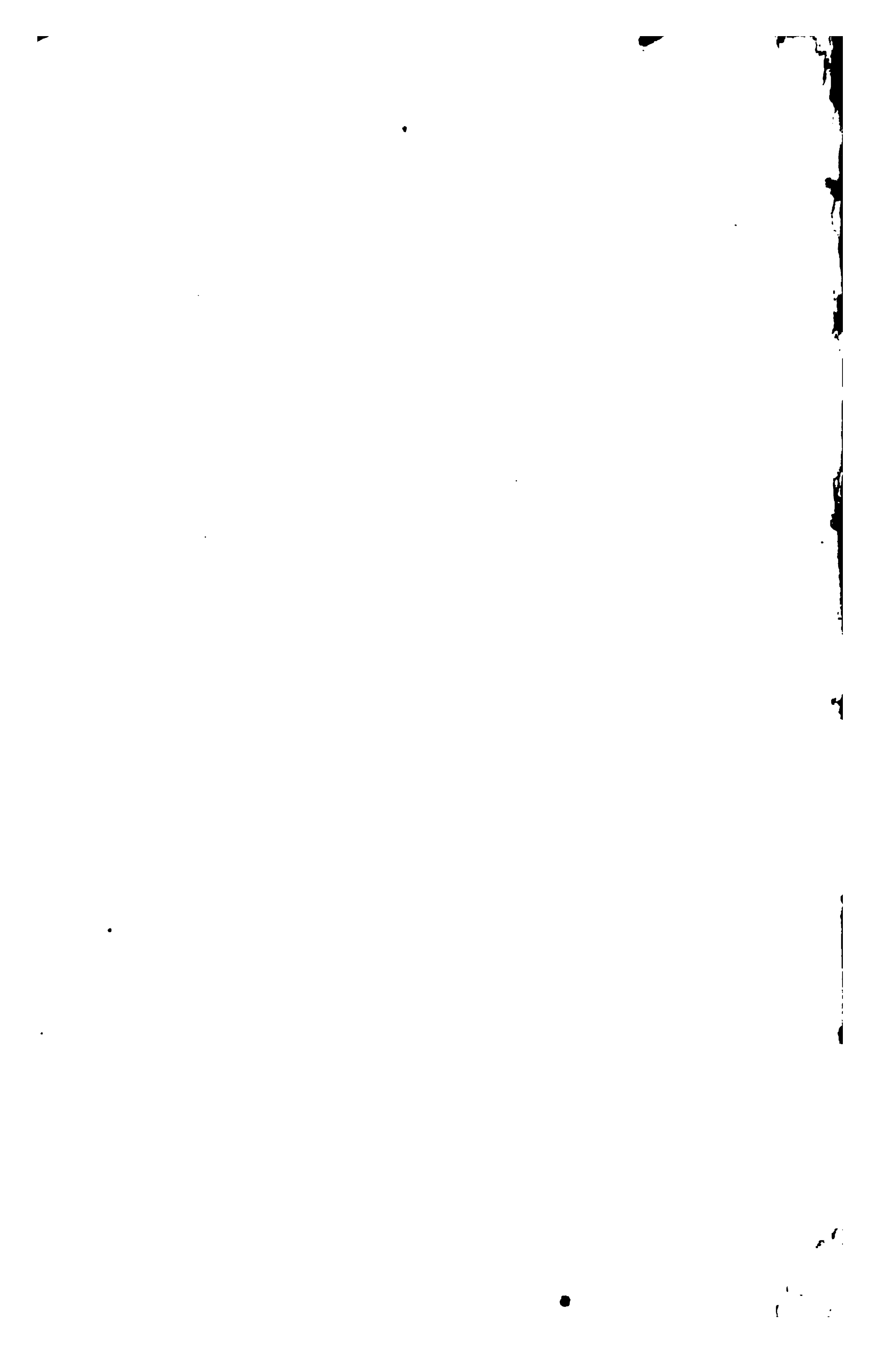
Baker & Godwin, Printers,
1 Spruce Street, N. Y.

INTRODUCTION.

MANY circumstances combine to multiply in modern times the number of overruled cases, beyond the proportion of the increased number of reports; and this renders it more than ever indispensable to the practitioner to be able readily to ascertain of any given decision whether or not it has been overruled, denied, or doubted. To this end is the present volume respectfully submitted to the profession.

It is based upon the collection of overruled cases published by Professor Greenleaf, and comprises all the cases to be found in his work and upwards of fifteen hundred cases added by the present compiler.

The last edition of Professor Greenleaf's work, was published so far back as 1840, and has long since been out of print.



AN ALPHABETICAL INDEX

TO

AMERICAN, ENGLISH, IRISH, SCOTCH,

AND

COLONIAL REPORTS AND REPORTERS.

TOGETHER WITH

THE MANNER IN WHICH THE REFERENCES ARE ABBREVIATED, &c.,

AND SOME OF THE

ABBREVIATED TERMS USED IN THIS WORK.

Reports or Reporters, &c.	Abbreviations.	Vols.	States or Courts.
Abbott on Shipping.	Ab. on Ship.		
Abbott's Practice Reports.	Abbott.	2	N. Y.
Abridgment of Cases in Equity.	Abr. Ca. Eq.	2	Ch.
Acton.	Act.	1	P. C.
Adams on Ejectment.	Ad. on Eject.		
Adams.	Ads.	1	N. H.
Addams.	Add. Eccl.	2	Eccl.
Addison.	Addis.	1	Penn.
Administrator.	Adm'r.		
Adolphus & Ellis.	A. & E.	12	Q. B.
Adolphus & Ellis, N. S.	Q. B., or A. & E. N. S.	16	Q. B.
Aiken.	Aik.	2	Vt.
Alabama Reports, by Minor.	Ala. by M.	1	Ala.
Alabama Reports, N. S.	Ala.	24	Ala.
Alcock.	Alc.	1	R. C.
Alcock & Napier.	Alc. & Nap.	1	K. B.
Aleyn.		1	Q. B.
Allestree.	All.		
American Jurist.	Am. Jur.	28	
American Law Register.	Am. L. Reg.		
American Leading Cases.	Am. Lead. Cas.	2	
American Railway Cases.	Am. Rail. Cas.	2	
Ambler.	Amb.	1	Ch.
Amos & Ferrard on Fixtures.	Amos & Fer. on Fix.		
Anderson.	Anders.	1	C. P.
Andrews.	Andr.	1	K. B.

Reports or Reporters, &c.	Abbreviations.	Vols.	States or Courts.
Angell.		1	R. I.
Anstruther.	Anst.	3	Ex.
Anthon, N. P. C.	Anth. N. P. C.	1	N. Y.
Annaly.	Ann.	1	K. B.
Anonymous.	Anon.		
Appellant.	App't.		
Appendix.	App.		
Appleton (19 and 20 Maine.)	Appl.	2	Me.
Archbold.	Arch.		
Archer.	Arch.	1	Fla.
Arkansas.	Ark.		
Armstrong.	Arm.		
Armstrong & McCartney.	Arm. & McC.	1	N. P.
Arnold.	Arn.	2	C. P.
Arnold & Hodges.	Arn. & Hodg.	1	Q. B. B. C.
Ashe's Tables.	Ash. Tab.	1	K. B. C. P.
Ashmead.	Ashm.	2	Penn.
Assurance.	Ass.		
Assumpsit.	Assump.		
Atcheson.	Atch.	1	K. B.
Atkyns.	Atk.	3	Ch.
Attorney General.	Att. Gen.		
Bacon's Abridgment.	Bac. Abr.		
Bailey.	Bail.	2	S. C.
Bailey (Chancery).	Bail. Ch.	1	S. C.
Baldwin.	Baldw.	1	U. S. 3d C.
Ball & Beatty.	Ball & Be.	2	Ch.
Banco Regis.	B. R.		
Barbour.	Barb.	19	N. Y.
Barbour (Chancery).	Barb. Ch.	3	N. Y.
Barnardiston.	Barnard. Ch.	1	Ch.
Barnardiston.	Barnard.	2	K. B.
Barnes's Cases of Practice.	Barn. Pr.	2	
Barnwall & Adolphus.	B. & Ad.	5	K. B.
Barnwall & Alderson.	B. & Ald.	5	K. B.
Barnwall & Creswell.	B. & C.	10	K. B.
Barr.	Barr.	10	Penn.
Barron & Arnold.	Bar. & Arn.	1	E. C.
Barron & Austin.	Bar. & Aust.	1	E. C.
Batty.	Batt.	1	K. B.
Bay.	Bay.	2	S. C.
Bay (1st, 2d, 3d, 5th, 6th, 7th, 8th, Mo.)	Bay.	7	Mo.
Beatty temp. Hart.	Beat.	1	Ch.
Beavan.	Beav.		R. C.
Bee's Admiralty Reports.	Bee.	1	U. S. Dist. S. C.
Bellewe.	Belle.		Hen. VIII.
Bellewe.	Belle.		Rich. II.
Bell's Cases (Scotch).	Bell's Cas.	2	C. S.
Benloe.	Benl.	1	C. P.
Benloe & Dallison.	Benl. & Dal.	1	C. P.
Berton's Reports (New Brunswick).	Bert.	1	N. B
Bibb.		4	Ky.
Bingham.	Bing.	10	C. P.
Bingham's New Cases.	Bing. N. C.	6	C. P.
Binney.	Binn.	6	Penn.
Blackford.	Blackf.	8	Ind.
Blackstone, H.	H. Bl.	2	C. P.
Blackstone, Sir Wm.	W. Bl.	2	K.B. C.P. & Ch.

Reports or Reporters, &c.	Abbreviations.	Vols.	States or Courts.
Bland (Chancery).	Bla.	3	Md.
Blatchford.	Blatchf. C. C.	1	U. S. 2d C.
Blatchford & Howland.	Blatch. & How.	1	U. S. D. C.
Bligh.	Bli.	3	H. L.
Bligh, N. S.	Bli. N. S.	11	H. L.
Bloomfield.	Bloom.		N.J. Negro cases.
Bosanquet & Puller.	Bos. & P.	5	C. P.
Boswell (Scotch).	Bosw.	1	C. S.
Bott's Poor Laws.	Bott's P. L.		
Bott's Settlement Cases.	Bott's S. C.	3	K. B.
Bradford.	Bradf.	1	Iowa.
Bradford.	Bradf., N. Y.	2	N. Y. Sur.
Branch.	Bran.	1	Florida.
Brayton.	Brayt.	1	Vt.
Breese.	Bree.	1	Ill.
Brevard.	Brev.	3	S. C.
Bridgman's Legal Bibliography.	Bridg. Leg. Bib.		
Bridgman, Sir John.	Bridg. J.	1	C. P.
Bridgman, Sir Orlando.	Bridg. O.	1	C. P.
Brightly.	Bright.	1	Penn. N. P.
Brockenbrough's Reports of Marshall's Decisions.	Brock.	2	U. S. 4th C.
Brockenbrough & Holmes's Cases.	Va. Cas.	1	Va. Cases.
Brockenbrough's Cases.	Va. Cas.	2	Va. Cases.
Broderip & Bingham.	Brod. & B.	3	C. P.
Brooke's New Cases.	Br. N. C.	1	
Brown.	Bro. P. C.	8	H. L.
Brown.	Bro. C. C.	4	Ch.
Browne.		2	Penn.
Brownlow.	Brownl.		
Brownlow & Goldsborough.	Brownl. & G.	1	C. P.
Bruce (Scotch).	Bru.	2	C. S.
Buchanan (Scotch).	Buch.	1	C. S.
Buck.	Buck.	1	B.
Buller's Nisi Prius.	Bull. N. P.		
Bulstrode.	Bulst.	1	K. B.
Bunbury.	Bunb.	1	Ex.
Burrett.	Bur.	1	Wisconsin.
Burrow's Settlement Cases.	Burr. S. C.	1	K. B.
Burrow's Reports.	Burr.	5	K. B.
Busbee.	Bus.	1	N. C. Eq.
Busbee.	Bus.	1	N. C. Law.
Caines.	Cai.	3	N. Y.
Caines's Cases in Error.	Cai. Cas.	2	N. Y.
California.	Cal.	3	Cal.
Call.	Call.	6	Va.
Caldecot's Settlement Cases.	Cald. S. C.	1	
Calthrop.	Calth.	1	K. B.
Calvert on Parties in Equity.	Calv. on Part.		
Camera Scaccari.	Cam. Scac.		
Cameron & Norwood's Conference Reports.	Cam. & Norw.	1	N. C.
Campbell.	Campb.	4	N. P.
Carolina Law Repository.	Car. L. Rep.	2	N. C.
Carrington & Kirwan.	Car. & K.	2	N. P.
Carrington & Marshman.	Car. & M.	1	N. P.
Carrington & Payne.	Car. & P.	9	N. P.
Carrow, Oliver, Bevan, & Lefroy.	Railw. Cas.	1	R. C.
Carrow, Hammerton & Allen.	Car. H. & A.	3	Mag.

Reports or Reporters, &c.	Abbreviations.	Vols.	States or Courts.
Carter.	Cert.	1	C. P.
Carter.	Cart.	2	Ind.
Carthew.	Carth.	1	K. B.
Cary.	Cary.	1	Ch.
Case of the Duchy of Cornwall.			
Cases and Opinions of Eminent Counsel in Law & Equity.	C. O. L. & E.	2	
Cases in Chancery, temp. of Car. II.	Ch. Cas.	3	Ch.
Cases of Practice.	Ca. Pr.	1	K. B.
Cases temp. Finch.	Cas. t. Finch.		
Cases temp. Hardwick.	Cas. t. Hardw.	1	K. B.
Cases temp. Holt.	Cas. t. Holt.	1	K. B. C.P. & Ex.
Cases temp. Talbot.	Cas. t. Talbot.	1	Ch.
Chandler.		4	Wisc.
Chandler's Criminal Trials.	Chand. Cr. T.	2	
Charlton, T. U. P.	T. U. P. Charl.	1	Ga.
Charlton, R. M.	R. M. Charl.	1	Ga.
Cheves.	Chev.	1	S. C.
Chief Baron.	C. B.		
Chief Justice.	C. J.		
Chipman, D.	Chip.	2	Vt.
Chipman, N.	N. Chip.	1	Vt.
Chitty.	Chit.	2	Bail. C.
Chitty's General Practice.	Chit. Gen'l Pr.		
Chitty's Points of Practice Cases.	Chit. R.	2	B. C.
Choice Cases in Chancery.	C. C. C.	1	Ch.
Clark.	H. of L. Ca.	1	H. L.
Clark & Finnelly.	Clark & Fin.	12	H. L.
Clark & Finnelly, N. S.	Clark & Fin. N. S.	2	H. L.
Clarke (Chancery).	Clar. Ch.	1	N. Y.
Clayton.	Clayt.	1	Ass.
Cobb.	Cobb.	4	Ga.
Cockburn & Rowe.	Cock. & R.	1	E. C.
Cocke.	Cocke.	3	Ala.
Code Reporter.	Code R.	3	N. Y.
Code Reports, New Series.	Code R. N. S.	1	N. Y.
Coke.	Co. or Rep.	13	K. B. C. P.
Coke upon Littleton.	Co. Litt.		
Cook & Alcock.	C. & Alc.	1	K. B.
Cooke.	C.	1	C. P.
Cooke.	Coo. Tenn.	1	Tenn.
Cooke, Geo.	C. G.	2	C. P.
Coleman's Cases.	Col. Ca.	1	N. Y.
Coleman & Caines's Cases.	Col. & Cai. Ca.	1	N. Y.
Colles.	Col. P. C.	1	H. L.
Collyer.	Coll.	1	V. C.
Colquit.	Colq.	1	K. B. C. P. 21, Car. II.
Comberbach.	Comb.	1	K. B.
Common Bench.	C. B.		
Comstock.	Comst.	4	N. Y.
Comyns.	Com.	4	K. B. C. P. &c.
Comyn's Digest.	Com. Dig.		
Condensed Chancery.	Cond. R.	35	Eng. Ch.
Condensed Ecclesiastical.	Cond. Eccl.	7	Eng. Ecc.
Condensed Exchequer.	Cond. Exch.	6	Eng. Ex.
Connecticut R., by Day.	Conn.	22	Ct.
Connor & Lawson.	Con. & L.	1	Ch.
Conroy's Custodian R.	Con. Cus. R.	1	
Constitutional Court R. (1817).	Const. R.	2	S. C.

Reports or Reporters, &c.	Abbreviations.	Vols.	States or Courts.
Constitutional R. 1812 to 1816.	Const. R.	2	S. C.
Constitutional R., N. S., by Mills,	Const. N. S.	2	S. C.
Cooper's Points of Practice.	Coop.	1	Ch.
Cooper temp. Cottenham.	Coop. t. C.		
Cooper temp. Brougham.	Coop. t. B.	1	Ch.
Corbett & Daniel.	Corb. & D.	1	E. C.
Cowen.	Cow.	9	N. Y.
Cowper.	Cowp.	1	Q. B.
Coxe, Richard.	Coxe.	1	N. J.
Cox, Samuel.	Cox.	2	Ch.
Cox Crown Cases.	Cox C. C.		
Crabbe.	Crabbe.	1	Dist. Penn.
Craig & Phillips.	Crai. & Phil.	1	Ch.
Cranch. Circuit Court.	Cranch, C. C.	6	U. S. Cir. Ct.
Cranch. Supreme Court.	Cr.	9	U. S. S. C.
Crawford & Dix.	Craw. & D.	1	All the Courts
Crawford & Dix, Circuit Cases.	Craw. & D. C. C.	1	
Creswell R. of Insolvent Debtors.	Cresw.	1	
Croke, Geo. (Cro. Eliz., Cro. Jac., Cro. Car.)	Cro. Eliz, Cro. Jac., Cro. Car.	3	K. B. C. P.
Crompton & Jervis.	Cr. & J.	2	Ex.
Crompton & Meeson.	Cr. & M.	2	Ex.
Crompton, Meeson & Roscoe.	Cr. M. & R.	2	Ex.
Cunningham.	Cunn.	1	K. B.
Curry.	Curry, La. R.	11	La.
Curteis.	Curt.	3	Eccl.
Curtis.	Cur.	1	U. S. 1st C.
Cushing.	Cush.	8	Mass.
Cushman.	Cush.	5	Miss.
Dallas.	Dall.	4	U. S. & Penn.
Dallison.	Dalli.		C. P.
Dalrymple (Scotch).	Dalr.	1	C. S.
Dana.	Dana.	9	Ky.
Daniell.	Dan.	1	Ex.
Danson & Lloyd's Mercantile Cases.	Dan. & Ll.	1	
Davies.	Dav.	1	K. B. & Ex.
Davies.	Dav. D. C.	1	1st District.
Davies Patent Cases.	Dav. Pat. Ca.	1	
Davison & Merivale.	Dav. & Mer.	1	Q. B.
Day.	Day.	5	Ct.
Deacon.	Deac.	4	B.
Deacon & Chitty.	Deac. & Ch.	4	B.
Deas & Anderson (Scotch).	Deas. & And.	5	Sessions.
Dean.	Dean.	2	Vt.
Decisions of Court of Sessions (Fac. Col. Coll. Scotch).	Dec. of Ses.	26	Scotch.
Decisions of Court of Sessions.	Dec. C.	5	Scotch.
Decisions of English Judges, temp. Usurpation.		1	Scotch.
De Gex.	De G.		Vice C.
De Gex & Smale.	De G. & S.		Vice C.
De Gex, MacNaughton & Gordon.	De G. McN. & G.		Vice C.
Denio.	Den.	5	N. Y.
Denison.	Deni.		
Dessaussure.	Dessaus.	4	S. C.
Devereux, Equity.	Dev. Eq.	2	N. C.
Devereux, Law.	Dev.	4	N. C.
Devereux & Battle.	Dev. & Bat.	4	N. C.
Devereux & Battle, Equity.	Dev. & Bat. Ch.	3	N. C.

Reports or Reporters, &c.	Abbreviations.	Vols.	States or Courts.
Dickens.	Dick.	1	Ch.
Dodson.	Dods.	2	Ad.
Domo Procerum.	Dom. Proc.		
Douglas.	Doug.	4	Q. B.
Douglass.	Doug. Mich.	2	Mich.
Douglas's Election Cases.	Doug. E. C.	4	E. C.
Dow.	Dow.	6	H. L.
Dow & Clark.	Dow & C.	2	H. L.
Dowling & Ryland.	D. & R.	9	K. B.
Dowling's Points of Practice Cases.	Dowl. P. C,	9	B. C.
Dowling's Points of Practice, N. S.	Dowl. N. S.	3	B. C.
Dowling & Lowndes.	Dowl. & L.	2	B. C.
Dowling & Ryland.	Dowl. & Ry.	4	M. C.
Drinkwater.	Drink.	1	C. P.
Drury (Irish).	Drury.		Ch.
Drury & Walsh.	Dru. & Wal.	2	Ch.
Drury & Warren.	Dru. & War.	3	Ch.
Dudley.	Dud.	1	Ga.
Dudley, Law and Equity.	Dud. S. C.	1	S. C.
Duer.	Duer.	2	N. Y.
Dunlap, Bell & Murray (Scotch).	Dunl. B. & M.	2	Sessions.
Dunlap, Bell, Murray & Donaldson (Scotch).	Dunl. B. M. & D.		
Durfee.	Dur.	1	R. I.
Duries (Scotch).	Dur.		C. S.
Durnford & East.	T. R. or D. & E.	8	Q. B.
Dwarris on Statutes.	Dwar. on Stat.		
Dyer, J.	Di. or Dy.	1	K. B. C. P. Ex.
Eagle & Younge's Tithe Cases.	Eag. & Yo.		
Eagle's Tithe Cases.	Eag.		
Earl of Coventry's Case.	E. of Cov.		
East.	East.	16	K. B.
Eden temp. Northington.	Eden.	2	Ch.
Edgar (Scotch).	Edg.	1	C. S.
Edwards.	Edw. Adm.	1	Ad.
Edwards (Chancery).	Edw. Ch.	4	N. Y.
Election Cases (Scotch).	Elec. Ca.	1	C. S.
Elchie's Decisions of Court of Sessions.	El.	2	Scotch.
Ellis & Blackburn.	El. & Bl.	3	Q. B.
Emlyn S. State Trials.		10	K. B.
English.	Eng. (Ark.)	6	Ark.
English Common Law.	Eng. C. L.	79	
English Law and Equity.	Eng. L. & E. R., also Eng. R.	30	All the Courts.
Equity Cases Abridged.	Eq. Ca. Abr.		
Espinasse.	Esp. R.	6	N. P.
Evidence.	Ev.		
Exchequer Reports (Welsby, Hurlstone & Gordon).	Exch.	9	Exch.
Executor.	Ex'r.		
Faculty Collection of Decisions.	Fac. Col.		
Fairfield.	Fairf.	3	Me.
Falconer & Fitzherbert.	Falc. & Fitz.	1	E. C.
Falconer (Scotch).	Falc.	3	C. S.
Farresly (7 Mod. R.)	Far.		
Ferguson.	Ferg.	1	Consistory.
Finch.	Fin.	1	Ch.
Fitzgibbons.	Fitzgib.	1	K. B. C. P. Ex. & Ch.
Flanagan & Kelly.	Flan. & K.	1	R. C.

Reports or Reporters, &c.	Abbreviations.	Vols.	States or Courts.
Florida.	Flor.	4	Fla.
Foley's Poor Law Cases.	Fol. P. L.	1	
Forbes (Scotch).	Forb.	1	C. S.
Forrest.	For.	1 part.	Ex.
Fortescue.	Fort.	1	K. B. C. P. Ex. & Ch.
Foster.	Fos.	1	K. B.
Foster.	Foster, N. H.	7	N. H.
Fountain Hall (Scotch).	Fount.		C. S.
Fox & Smith.	F. & S.	1	K. B.
Fraser's Election Cases.	Fr. E. C.	2	E. C.
Freeman.	Freem.	2	K. B. C. P. &c.
Freeman (Chancery).	Freem. Miss.	1	Miss.
Freeman's Chancery Cases.	Freem. Ch.	1	Eng. Ch.
Gale.	Gale.	2	Ex.
Gale & Davison.	Gale & D.	3	Q. B.
Gallison.	Gallis.	2	U. S. 1st C.
Gardenline.	Gard.	2	Mo.
Georgia Reports.	Ga. Rep.	15	Ga.
Georgia Decisions.	Ga. Dec.	1	Ga.
Gibson (Scotch).	Gib.	1	C. S.
Gilbert.	Gilb.	1	Eq. Ex.
Gilbert's Cases in Law and Equity.	Gilb. Ca.	1	Ch. & Ex.
Gill.	Gill.	9	Md.
Gill & Johnson.	Gill. & J.	12	Md.
Gilman.	Ill.	5	Ill.
Gilmer.	Gilm.	1	Va.
Gilmour (Scotch).	Gilm.	1	C. S.
Gilpin.	Gilp.	1	U. S. Dis. Pa.
Gilpin's Opinions of Attorneys-General, U. S.	Gilp. Opin.	2	
Glanville.	Glanv.	1	E. C.
Glascott's Reports.	Glasc.		
Glyn & Jameson.	Glyn & J.	2	B.
Godbolt.	Godb.	1	All the Courts of Bench.
Gouldsborough.	Gould.	1	All the Courts.
Gosford.	Gosf.		C. S.
Gowlan's Points of Practice Cases.	Gowl. Pr.		
Gow's Nisi Prius Cases.	Gow.	1	N. P.
Gow on Partnership.	Gow. on Part.		
Grattan.	Gratt.	11	Va.
Gray.		2	Mass.
Green.	Green.	3	N. J.
Green.	Iowa.	2	Iowa.
Greenleaf.	Greenl.	9	Me.
Green's Chancery.	Green, Ch.	3	N. J.
Griffith's Law Register.	Griff. L. R.	2	
Griswold.	Ohio.	5	Ohio.
Gwillim's Tithe Cases.	Gwil.		
Haggard.	Hagg. Adm.	3	Adm.
Haggard.	Hagg. Eccl.	4	Eccl.
Haggard, Consistory Rep.	Hagg. Cons.	2	Cons. Ct.
Hailes (Scotch).	Hail.		C. S.
Hall.	Hall.	2	N. Y.
Hall's Law Journal.	Hall, L. J.		
Hall & Twells.	Hall & T.	2	Ch.
Halsted.	Halst.	7	N. J.

Reports or Reporters, &c.	Abbreviations.	Vols.	States or Courts.
Halsted. Chancery.	Halst. Ch.	2	N. J.
Hammond.	Hamm.	9	Ohio.
Hanmer's R. of L. Kenyon.	Hanm.	2	K. B.
Harcase's Decisions (Scotch).	Harc. Dec.		C. S.
Hardin.	Hard.	1	Ky.
Hardres.	Hardr.	1	U. B.
Hardwicke.	Hardw. Cas.	1	K. B. temp. Hardw.
Hare.	Hare.	3	V. C.
Hare & Wallace.	Lead. Cas.	3	
Hargrave, F. State Trials.	Hargr. St. Tr.	11	K. B.
Harrington.	Harring. Del.	4	Del.
Harrington.	Harring. Mich.	1	Mich.
Harrington's Chancery.	Harring. Mich. Ch.	1	Mich.
Harris.	Pa. St.	4	Penn.
Harris & Gill.	Har. & G.	2	Md.
Harris & Johnson.	Har. & J.	7	Md.
Harris & McHenry.	Har. & McH.	4	Md.
Harrison.	Har.	4	N. J.
Harrison & Wollaston.	Har. & Wol.	2	Q. B. & B. C.
Harper, Equity.	Harp. Eq.	1	S. C.
Harper's Law.	Harp.	1	S. C.
Hawks.	Hawks.	4	N. C.
Hayes.	Hay.	1	Ex.
Hayes & Jones.	Hay. & J.	1	Ex.
Haywood.	Hayw.	2	N. C.
Haywood.	3, 4. & C. Hay.	3	Tenn.
Heath.	Heath.	1	Me.
Henning & Munford.	Hen. & M.	4	Va.
Hetley.	Het.	1	C. P.
Heywood.	Heyw.	3	Tenn.
Hill.	Hill.	7	N. Y.
Hill.	Hill.	3	S. C.
Hill (Chancery).	Hill.	2	S. C.
Hobart.	Hob.	1	K. B.
Hodges.	Hodg.	3	C. P.
Hoffman.	Hoff.	1	N. Y.
Hog (Scotch).	Hog.	1	C. S.
Hogan temp. M'Mahon.	Hog.	2	R. C.
Hogue.	Hogue.	1	Florida.
Holt.	Holt.	1	N. P.
Holt.	Cas. temp. Holt.		K. B. C. P. & Ex.
Home (Scotch).	Home.	8	C. S.
Hopkins (Chancery).	Hopk. Ch.	1	N. Y.
Hopkinson's Admiralty Decisions.	Hopk. Adm.	1	U. S. D. C.
Horn & Hurlstone.	H. & H.	1	Ex.
House of Lords Cases.	H. of L. Ca.	3	H. L.
Hovenden's Supplement to Vesey, jr.	Hov. Supp.	2	
Howard. Irish.	How. Ire.		
Howard.	How.	17	U. S. S. C.
Howard.	How. Miss.	7	Miss.
Howard's Practice Reports.	Pr. R.	11	N. Y.
Howell, T. B. & T. J., State Trials.	Howell, St. Tr.	34	K. B.
Hudson & Brooke.	Hud. & Br.	2	K. B.
Hughes.	Hugh.	1	Ky.
Humphrey.	Humph.	11	Tenn.
Hurlstone & Wolmsley.	Hurl. & W.	1	Ex.
Hutton.	Hut.	1	C. P.
Illinois.	Ill.	15	Ill.

Reports or Reporters, &c.	Abbreviations.	Vols.	States or Courts.
Iredell.	Ired.	13	N. C.
Iredell, Equity.	Ired. Eq.	8	N. C.
Irish Term Reports, same as Ridgway, Lapp, & Schoales.	Ir. T. R.		
Jacob.	Jacob.	1	Ch.
Jacob & Walker.	Jacob & W.	2	Ch.
Jebb & Burke.	Jebb & B.	1	Q. B.
Jebb & Symes.	Jebb & S.	2	Q. B.
Jebb's Crown Cases.	Jebb. C. C.	1	C. C.
Jefferson.	Jeff.	1	Va.
Jenkins, David, 8 Centuries of Reports.	Jenk. Cent.	1	Ex. Ch.
Johnson.	Johns.	20	N. Y.
Johnson's Cases.	Johns. Cas.	3	N. Y.
Johnson's Chancery.	Johns. Ch.	7	N. Y.
Jones.	Jon.	2	Ex.
Jones.	Jones, Penn.	2	Penn.
Jones & La Touche.	Jones & La T.	2	Ch.
Jones, Sir Thomas.	T. Jones.	1	K. B. C. B.
Jones, Sir William.	W. Jones.	1	K. B. C. P.
Jones & Carey.	Jon. & C.	1	Ex.
Jurist (American).	Jur. Am.		
Jurist (English).	Jur. Eng.	2	Eng.
Jurist (London).	Jur.	9	Lond.
Jurist (Scotch).	Jur. Sc.	2	Scotch.
Kames.	Kam.		C. S.
Kames's Remarkable Decisions (Scotch).	Kam. R. D.		C. S.
Kames's Select Decisions (Scotch).	Kam. S. D.		C. S.
Keble.	Keb.	1	R. C.
Keene.	Keene.	2	K. B.
Keilwey.	Keilw.	1	Eng.
Kelly.	Geo. R.	3	Ga.
Kelly & Cobb.	Kelly & C.	2	Ga.
Kelyng, Sir John.	Kel. J.	1	K. B.
Kelyng, William.	Kel. W., 2d.	1	Ch.
Kent's Commentaries.	Kent Com.		
Kentucky Decisions.	Ken. Dec.	1	Ky.
Kenyon, by Hanmer.	Keny.	2	K. B.
Kernan.	Ker.	2	N. Y.
Kerr's Reports.	Kerr.	1	N. B.
Kilkerran's Decisions (Scotch).	Kilk.		C. S.
King, Reports temp.	K. C. R.		Ch.
Kirby.	Kir.	1	Conn.
Knapp.	Kn.	3	P. C.
Knapp & Ombler.	Kn. & O.	1	E. C.
Lane.	La.	1	Ex.
Latch.	Lat.	1	K. B.
Lauder (Scotch).	Lau.	2	C. S.
Law Journal, 1823–1844.		11	All the Courts.
Law Journal Reports, New Series.	L. J. R. N. S.		Q. B., Ex., C. P., Eq., or M. C.
Law Recorder.	L. R.	8	
Law Recorder, N. Series.	L. R. N. S.		
Law Reporter.	L. R.		
Lawrence.	Law.	1	Ohio.
Leading Cases.	H. & W.	3	

Reports or Reporters, &c.	Abbreviations.	Vols.	States or Courts.
Leading Cases in Admiralty.	Lead. Cas. Adm.	1	
Leach.	Leach.	2	K. B.
Legal Examiner.	Leg. Exam.		
Legal Observer.	Leg. Obs.	29	London.
Legal Observer.	Leg. Obs.	12	N. Y.
Lee, Cases temp. Hardwicke.	Lee Cas. t. Hard.	1	
Leigh.	Leigh.	11	Va.
Leonard.	Leon.	1	K. B. C. P. Ex.
Levinz.	Lev.	3	K. B. C. P.
Lewin's Crown Cases.	Lew. C. C.	2	
Ley.	Ley.	1	K. B. C. P. Ex. &c.
Lilly.	Lil.	1	Assize.
Littell.	Litt.	5	Ky.
Littell's Select Cases.	Litt. Sel. Ca.	1	Ky.
Littleton.	Lit.	1	C. P. Ex.
Lloyd & Goold, temp. Plunkett.	Ll. & Goo. t. Plunk.	1	Ch.
Lloyd & Goold, temp. Sugden.	Ll. & Goo. t. Sug.	1	Ch.
Lloyd & Welsley's Mercantile Cases.	Ll. & W.	1	
Lockwood, Reversed Cases.	Lockw. R. C.	1	N. Y.
Lofft.	Lofft.	1	Q. B.
Long Quinto (Year Book, part 10).	L. 5.		
Longfield & Townsend.	Long. & Towns.	1	Ex.
Louisiana Annual Reports.	La. Ann. R.	8	La.
Louisiana Law Journal.	La. L. J.	1	
Louisiana Reports.	Lou. R.	19	La.
Loundes, Maxwell & Pollock.	L. M. & P.	2	Bail.
Lucas (10 Modern).	Luc.		
Luder's Election Cases.	Lud. E. C.	3	E. C.
Lutwyche.	Lutw.	2	C. P.
McLean & Robinson.	Macl. & Rob.	1	H. L.
Maddock.	Madd. R.	6	V. C.
Magruder.	Ma. R.	1	Md.
Maine.	Me.	36	Me.
Manning.	Man. Mich.	1	Mich.
Manning & Granger.	Man. & Gr.	7	C. P.
Manning & Ryland.	Man. & R.	5	K. B.
Manning & Ryland.	Man. & R.	2	M. C.
Manning, Granger & Scott.	C. B., or M. G. & S.	9	C. B.
March's New Cases.	Mar. N. C.	1	
Marriott.	Marr.	1	Adm.
Marshall.	Marsh.	2	C. P.
Marshall, A. K.	A. K. Marsh.	3	Ky.
Marshall, J. J.	J. J. Marsh.	7	Ky.
Martin.	Mart. N. C.	1	N. C.
Martin.	Mart. La.	12	La.
Martin, N. S.	Mart. N. S.	8	La.
Martin & Yerger.	Mart. & Yerg.	1	Tenn.
Maryland.	Md.	6	Md.
Maryland Chancery.	Ma. Ch.	2	Md.
Massachusetts Reports.	Mass.	17	Mass.
Mason.	Mason.	5	U. S. 1st C.
Mathews' Presumptive Evidence.	Math. Pres. Ev.		
Matson.	Mat.	1	Conn.
Maule & Selwyn.	M. & S.	6	K. B.
Maynard (1 Year Book, Edw. II.).	Mayn.		
McCleland.	McCl.	1	Ex.
McCleland & Younge.	McCl. & Y.	1	Ex.
McCord.	McC.	4	S. C.
McCord (Chancery).	McC. Ch.	2	S. C.

Reports or Reporters, &c.	Abbreviations.	Vols.	States or Courts.
McCook.	Mc C.	1	Ohio.
McFarland (Scotch Jury Court).	McFar.		
McLean.		5	U. S. 7th C.
McMullan.	McMul.	2	S. C.
McMullan (Chancery).	McMul. Ch.	1	S. C.
McNaughton & Gordon.	McN. & G.		
Meigs.	Meigs.	1	Tenn.
Meeson & Welsby.	M. & W.	16	Ex.
Merivale.	Mer.	3	Ch.
Metcalf.	Met.	13	Mass.
Miles.	Miles.	2	Penn.
Miller.	Mill.	5	La.
Miller.	Mill.	3	
Mills, Constitutional.	Mills C.	2	N. C.
Minor.	Ala. by M.	1	Ala.
Missouri Reports.	Mo. R.	18	Mo.
Modern Cases, per Farresly.	Mod. Cas. per Far.		
Modern Cases at Law & Equity.	Mod. Cas. L. & E.		
Modern Reports.	Mod.	12	K. B. C. P. Ex. & Ch.
Molloy temp. Hart.	Moll.	2	Ch.
Monroe.	Monr.	7	Ky.
Monroe, B.	B. Monr.	13	Ky.
Montague.	Mont.	1	B.
Montague & Ayrton.	Mont. & Ayrt.	3	B.
Montague & Bligh.	Mont. & Bl.	1	B.
Montague and Chitty.	Mont. & Ch.	1	B.
Montague, Deacon & De Gex.	Mont. D. & D.	2	B.
Montague & McArthur.	Mont. & McA.	1	B.
Monthly Law Magazine.	Mon. L. M.	9	
Monthly Law Reporter.	Mon. Law R.		
Morgan's Vade Mecum.	Morgan, V. M.		
Morrison's Dictionary of Court of Session Decisions (Scotch).	Mor. Dic.		
Moody.	Cr. Cas. Resvd.		
Moody & Malkin.	Mo. & M.	2	N. P.
Moody & Robinson.	Mo. & R.	2	N. P.
Moody's Crown Cases Reserved.	Mo. C. C. R.	2	C. C.
Moore.	Mo.	1	K. B. C. P. Ex.
Moore, A.	Mo. A.	1	C. P.
Moore, E. T.	Mo. E. T.	3	P. C.
Moore, E. T., East India Appeals.		2	P. C.
Moore, J. B.	Mo. J. B.	12	C. P.
Moore, Sir Francis.	Mo. Sir F.		K. B. C. P. Ex. & Ch.
Moore & Payne.	Mo. & P.	5	C. P.
Moore & Scott.	Mo. & S.	4	C. P.
Morris.	Mor.	1	Iowa.
Mosely.	Mos.	1	Ch.
Munford.	Munf.	6	Va.
Murphey.	Murph.	3	N. C.
Murphy & Hurlstone.	Mur. & H.	1	Ex.
Murray (Scotch).	Mur.	4	Jury Court.
Mutual.	Mut.		
Mylne & Craig.	Myl. & Cr.	5	Ch.
Mylne & Keen.	Myl. & K.	3	Ch.
Nelson.	Nel.	1	Ch.
Neville & Manning.	Nev. & M.	6	Q. B.
Neville & Manning.	N. & M.	3	M. C.

Reports or Reporters, &c.	Abbreviations.	Vols.	States or Courts.
Neville & Perry.	Nev. & P.	3	Q. B.
Neville & Perry.	N. & P.	1	M. C.
New Benloe.	New Benl.	1	K. B. C. P. Ex.
New Hampshire.	N. H. R.	15	N. H.
New Jersey.	N. J.	1	N. J.
New Reports (4 and 5 Bosanquet & Puller).	N. R.		
New York, Caines' Term Reports.			
Nicholl, Hare & Carrow.	Railw.	2	R. C.
Nolan.	Nol.	1	M. C.
North Carolina Law Repository.	N. C. L. Rep.	2	N. C.
North Carolina (Taylor's) Term R.	N. C. T.	1	
Northington's Reports (see Eden).		2	
Nott & McCord.	N. & McC.	2	S. C.
Noy.	Noy.	1	K. B. C. P.
Ohio.	Ohio.	22	O.
Oliver, Beavan & Lefroy.	Oliver, B. & L.		R. R. C.
Ormond.	Orm.	1	Ala.
Overton.	Overt.	2	Tenn.
Owen.	Owen.	1	K. B. C. P.
Paige (Chancery R.).	Paige.	11	N. Y.
Paine.		1	U. S. 2d C.
Palmer.	Palm.	1	K. B. C. P.
Parker.	Park.	1	Ex.
Parsons (Chancery).	Pars. Ch.		Penn.
Parsons. Select Equity Cases.	Pars. S. E. C.	2	Penn.
Peake's Additional Cases.	Peake's Ad. Cas.		
Peake's Nisi Prius Cases.	Peake's Cas.	2	N. P.
Peck.	Peck.	1	Tenn.
Peck.	Peck.	5	Ill.
Peckwell.	Peckw.	2	E. C.
Peere Williams.	P. Wms.	3	Ch.
Pennington.	Penning.	2	N. J.
Pennsylvania Law Journal.	Penn. L. J.	4	Penn.
Pennsylvania Reports, by Rawle, Penrose & Watts.	Penn. R.	3	Penn.
Pennsylvania State Reports.	Penn. S. R.	22	Penn.
Penrose & Watts (see Pennsylvania Reports).	Pen. & W.	1	Penn.
Perry & Davison.	P. & Dav.	4	Q. B.
Perry & Knapp.	Per. & K.	1	E. C.
Peters's Admiralty.	Pet. Adm.	2	District, Pa.
Peters's Circuit Court.	Pet. C. C.	1	U. S. 3d C.
Peters's Condensed.	Pet. Cond.	6	U. S. S. C.
Peters's Reports.	Pet.	16	U. S. S. C.
Petersdorff's Abridgment.	Petersd.		
Phillimore.	Phillim.	3	Eccl.
Phillips.	Phil.	2	Ch.
Phillips on Evidence.	Phill. Ev.		
Pickering's Reports.	Pick.	24	Mass.
Piggott & Rodwell.	Pigg. & R.	1	C. P.
Pike.	Pike.	5	Ark.
Plowden.	Plow.	2	K. B. C. P. Ex.
Pleading.	Pl.		
Pollexfen.	Poll.	1	K. B. C. P. Ex. & Ch.
Popham.	Pop.	1	K. B. C. P. & Ch.
Porter.	Port.	9	Ala.

Reports or Reporters, &c.	Abbreviations.	Vols.	States or Courts.
Porter.	Port.	1	Ind.
Practical Register.	Pr. R.	1	C. P.
Practice Reports. (See Howard's Practice Reports.)			
Precedents in Chancery.	Prec. Ch.	1	Ch.
Price.	Price.	13	Ex.
Pyke's R. (L. Canada.)	Pyke.	1	K. B.
Queen's Bench Reports.	Q. B.	16	
Randolph.	Rand.	1	Miss.
Randolph.	Rand.	6	Va.
Rawle.	Rawle.	5	Penn.
Rawle, Penrose & Watts.	Pennsyl.	2	Penn.
Raymond, Lord.	Ld. Raym.	3	K. B. C. P.
Raymond, Sir T.	T. Raym.	1	K. B. C. P. Ex.
Redington.	Red.	5	Me.
Regina.	Reg.		
Reports in Chancery.	Rep. Ch.	3	
Reports temp. Finch.	Rep. t. Finch.	1	Ch.
Reports temp. Hardwicke.	Rep. t. Hardw.	1	K. B.
Reports temp. Holt.	Rep. t. Holt.	1	K.B.C.P.Ch.&c.
Reports temp. Q. Anne (11 Mod).		5	
Revised Statutes.	R. S.		
Rice.	Rice.	1	S. C.
Rice, Equity.	Rice, Eq.	1	S. C.
Richardson, Equity.	Rich. Eq.	3	S. C.
Richardson, Law.	Rich. L.	4	S. C.
Richardson & Woodbury.	Rich. & W.	1	N. H.
Ridgeway, temp. Hardwicke.	Ridgew.	1	K. B. Ch.
Ridgway, Lapp & Schoales (Irish Term Reports).	Ridg. L. & S.	1	K. B.
Ridgway's Appeal Cases.	Ridg. Ap. C.	3	P. C.
Riley.	Riley.	1	S. C.
Riley (Chancery).	Riley, Ch.	1	S. C.
Robards.	Rob.	2	Ala.
Robinson.	Rob. Adm.	6	Ad.
Robinson.	Rob. Va.	2	Va.
Robinson.	Rob. La.	12	La.
Robinson, jun.	W. Rob.	1	Ad.
Robinson's Appeal Cases.	Rob. Ap. Ca.	3	H. L.
Robertson's Appeal Cases.	Robt. Ap. Ca.	1	H. L.
Rogers's City Hall Recorder.	Rog. Rec.	6	N. Y.
Rolle.	Rol.	1	K. B.
Rolle's Abridgement.	Rol. Abr.		
Root.	Root.	2	Conn.
Rose's Bankruptcy Cases.	Rose.	2	Bank.
Ruffin (bound with vol. i. of Hawkes).	Ruff.	1	N. C.
Russel, temp. Eldon.	Russ.	5	Ch.
Russell & Mylne.	Russ. & Myl.	2	Ch.
Russell & Ryan's Crown Cases.	Russ. & Ry.	1	C. C.
Ryan & Moody.	Ry. & Mo.	1	N. P.
Salkeld.	Salk.	3	K. B. C. P. Ch. & Ex.
Salmon, Abridgment of State Trials.	Salm. Abr. St. T.	1	
Salmon, State Trials.	Salm. St. Tr.	5	K. B.
Sandford.	Sand.	5	N. Y.
Sandford (Chancery).	Sand. Ch.	4	N. Y.
Saunders.	Saund.	2	K. B.

Reports or Reporters, &c.	Abbreviations.	Vols.	States or Courts.
Sausse & Scully, temp. O'Laghlen.	Saus. & Scul.	1	R. C.
Saville.	Sav.	1	C. P. Ex.
Sayer.	Say.	1	K. B.
Saxton (Chancery).	Saxt.	1	N. J.
Scammon.	Scam.	4	Ill.
Schoales & Lefroy.	Sch. & Lef.	2	Ch.
Scott.	Scott.	8	C. P.
Scott's New Reports.	Scott, N. R.	7	C. P.
Selden.	Sel.	4	N. Y.
Select Cases in Chancery.	S. C. C.	1	
Sergeant & Rawle.	S. & R.	17	Penn.
Sessions Cases.	Sess. Ca.	2	K. B.
Settlement Cases.	Sett. Ca.	1	K. B.
Shaw.	Shaw.	2	Vt.
Shaw, Dunlap, Bell, & Murray (Scotch).	Shaw, D. & B.	18	Sessions.
Shaw's Appeal Cases.	Shaw, Ap. Ca.	2	H. L.
Shaw's Criminal Cases (Scotch).	Shaw, Crim. Ca.		
Shaw & Dunlap (Scotch).	S. & D.		C. S.
Shaw & McLean's Appeal Cases.	Shaw & McLean.	3	H. L.
Shepley.	Shepl.	8	Me.
Sheppard.	Shep.	3	Ala.
Shower.	Show.	2	K. B.
Shower's Parliamentary Cases.	Show. Parl. Ca.	1	H. L.
Siderfin.	Sid.	1	K. B. C. P. Ex.
Simons.	Sim.	12	V. C.
Simons & Stuart.	Sim. & Stu.	2	V. C.
Skinner.	Skin.	1	K. B.
Slade.	Slade.	1	Vt.
Smedes & Marshall.	Sme. & M.	14	Miss.
Smedes & Marshall (Chancery).	Sme. & M. Ch.	1	Miss.
Smith, E. D.	Smith.	1	N. Y.
Smith, J. P.	Smith, J. P.	3	Q. B.
Smith & Bates.	Am. Rail. Cas.	2	
Smith & Batty.	Smith & B.	1	K. B.
Smith.	Smith.	1	Ind.
Smith's Leading Cases.	Sm. Lead. Ca.	2	
Smith's Manuscript Reports.	Sm. MS.	16	N. H.
Smith's Mercantile Law.	Smith's Merch. Law.		
Smyth.		1	C. P.
Southard.	South.	2	N. J.
South Carolina Reports.	S. C. R.	2	
Speer.	Sp.	2	S. C.
Speer (Chancery).	Sp. Ch.	1	S. C.
Spencer.	Spen.	1	N. J.
Spottiswoode (Scotch).	Spottis.		C. S.
Stanton.	11 & 13 Ohio.	3	Ohio.
Star Chamber Cases.	Star Ch. Ca.		
Starkie's Nisi Prius Reports.	Stark. N. P.	3	N. P.
Statute.	Stat.		
State Trials. See Howell, Salmon, Emlyn, Hargrave & Jardine.	St. Tr.		
Stewart.	Stew.	1	Ala.
Stewart (Nova Scotia and Halifax).	Stew.	1	Ad.
Stewart & Porter.	Stew. & P.	5	Ala.
Story.	Story.	3	U. S. 1st C.
Strange.	Stra.	2	K. B. C. P. Ch. & Ex.
Strange (Madras).	Stran.	2	
Stringfellow.	String.	3	Mo.
Strobhart.	Strob.	5	S. C.

Reports or Reporters, &c.	Abbreviations.	Vols.	States or Courts.
Strobhart (Chancery).	Strob. Ch.	4	S. C.
Stuart (Lower Canada).	Stuart.	1	K. B. &c.
Style.	Sty.	1	U. B.
Sugden on Powers.	Sug. Pow.		
Sumner.	Sumn.	3	U. S. 1st C.
Supplement.	Supp.		
Swan.	Swan.	2	Tenn.
Swanston.	Swanst.	3	Ch.
Swinton (Scotch).	Swint.	2	Justiciary.
Syme (Scotch).	Syme.	1	Justiciary.
Tamlyn.	Tam.	1	R. C.
Taunton.	Taunt.	8	C. P.
Taylor.	Tayl.	1	N. C.
Term Reports (same as Durnford & East).	T. R.		
Texas.	Tex.	13	Tex.
Thatcher's Criminal Reports.	Tha. C. R.	1	Mass.
Title.	Tit.		
Tothill.	Toth.	1	Ch.
Townsend's 2d Book of Judgments.	Towns. Judg.	1	
Treatise.	Tr.		
Turner & Phillips.	Turn. & Ph.	1	Ch.
Turner & Russell, temp. Eldon.	Turn. & Rus.	1	Ch.
Tyler.	Tyl.	2	Vt.
Tyng.	1 Mass.	1	Mass.
Tyrwhitt.	Tyrw.	5	Ex.
Tyrwhitt & Granger.	Tyrw. & Gr.	1	Ex.
United States.	U. S		
Van Ness, Prize Cases.	V. Ness.	1	Dist. of N. Y.
Vaughan.	Vaugh.	1	C. P.
Vaux.	Vaux.	1	Rec. Ct. Phil.
Ventris.	Vent.	1	K. B. C. P. Ch.
Vermont.	Verm. and Vt.	26	Vt.
Vernon.	Vern.	2	Ch.
Vernon & Scriven.	Vern. & S.	1	K. B.
Vesey, jun.	Ves. jun.	20	Ch.
Vesey, sen.	Ves. sen.	3	Ch.
Vesey & Beames.	Ves. & B.	3	Ch.
Viner's Abridgment.	Vin. Abr.		
Virginia Cases.	Va. Ca.	2	Va.
Virginia (see Gilman).	Va.		
Walker.	Walk. Miss.	1	Miss.
Walker (Chancery).	Walk. Mich.	1	Mich.
Wallace, J. B.	Wall.	1	U. S. 3d C.
Wallace, J. W.	Wall. jun.	1	U. S. 3d C.
Wallace & Hare.	Lead. Cases.	2	
Wallis, by Lyne.	Wal. by L.	1	Ch.
Warden.	War.	1	Ohio.
Ware.	Ware.	1	Dist. of Me.
Washburn.	Washb.	4	Vt.
Washington.	Wash. C. C.	4	U. S. 3d C.
Washington.	Wash. Va.	2	Va.
Watts.	Watts.	10	Penn.
Watts & Sergeant.	W. & S.	9	Penn.
Webster's Trial.	Web. Tr.	1	Mass.
Webster's Report on Patents.	Webst. Pat. Ca.	1	
Welch.	Welch.	1	R. C.

Reports or Reporters, &c.	Abbreviations.	Vols.	States or Courts.
Welsby, Hurlstone & Gordon.	Ex., or Welsb. H. & G.	9	Ex.
Wendell.	Wend.	26	N. Y.
West.	West.	1	H. L.
West, temp. Hardwicke.	West.	1	Ch.
Weston.	12th Vt.	3	Vt.
Wharton.	Whart.	6	Penn.
Wharton, State Trials.	Whar. St. Tr.	1	
Wheaton.	Wheat.	12	U. S. S. C.
Wheeler (Criminal Cases).	Wheel. C. C.	1	N. Y.
White & Tudor's Leading Cases.	White & T. L. C.	3	
Whittelsey (Chancery).		1	N. Y.
Wight's Election Cases (Scotch).		1	
Wightwick.	Wightw.	1	Ex.
Wilcox.	10th Ohio.	1	Ohio.
Wilcox Condensed Ohio Reports.	Wilc. C. R.	1	
Wilson.	Wils.	3	K. B. & C. P.
Wilson.	Wils. Ex.	1	Ex.
Wilson & Shaw.	Wils. & S.	7	H. L.
Wilson's Chancery Cases.	Wils. Ch.	2	Ch.
Willes.	Willes.	1	C. P. Ex. Ch. &c.
Williams.	1 Mass.	1	Mass.
Willmore, Willaston & Davison.	W. W. & D.	1	Q. B. B. C.
Willmore, Wollaston & Hodges.	W. W. & H.	2	Q. B. B. & B. C.
Winch.	Win.	1	C. P.
Wollaston's Practice Cases.	Wol. P. C.		
Woodbury and Minot.	Woodb. & M.	3	U. S. 1st C.
Woodeson's Lectures.	Woodes.		
Wright.	Wri.	1	Ohio.
Wyatt's Practical Register.	Wyatt, Pr. Reg.		
Wythe (Chancery).	Wythe.	1	Va.
Year-Books.	Yr. Bk.	10	K. B. C. P. Ex. Ass.
Year-Books, Selected Law Cases from.	Yr. Bk. S. L. C.	1	
Yeates.	Yeates.	4	Pa.
Yeates's Select Cases.	Y. S. Ca.	1*	N. Y.
Yelverton.	Yelv.	1	K. B.
Yerger.	Yerg.	10	Tenn.
Younge.	You.	1	Ex.
Younge & Collyer.	Y. & Col. Exch.	4	Ex.
Younge & Collyer.	Y. & Col. Ch.	2	V. C.
Younge & Jervis.	Y. & Jer.	3	Ex.
Zabriskie.	Zab.	3	N. J.

CASES OVERRULED,

DENIED AND DOUBTED, &c.

ARRANGED ALPHABETICALLY BY THE PLAINTIFF'S NAME.

A.

ABBEY v. PETCH, 8 Mees. and Wels. 419; 10 Law Jour. N. S. Ex. 226.

"My brother Alderson in the case of *Fruster v. Lee* (10 M. & W. 709; 12 Law J. Rep. N. S. Ex. 321) says: I certainly was much impressed with Mr. Kelly's argument at the trial against the decision in *Abbey v. Petch.*" Ridgway v. Stafford, 20 Law J. Rep. N. S. Ex, 226; 4 Eng. R. 454.

ABBOT v. PLUMBE, 1 Doug. 216; cited 7 T. R. 267; 2 East, 187; and 1 Phil. Ev. 464, 5.

That the execution of every attested instrument whether sealed or not, ought to be proved by the subscribing witness, if he can be produced; and that an acknowledgment of the obligor of a bond, admitting that he executed it, will not dispense with the testimony of the subscribing witness.

Relaxed in New York as to negotiable paper. Hall v. Phelps, 2 John. R. 451; (16 ib. 201); Fitchorn v. Boyer, 5 Watts, 159.

ABBOT v. SEBOR, 3 Johns. Cas. 39.

S. P. as in Juhel v. Church, (post).

ABBOT ON SHIPPING.

An omission in Abridgment of the Factor's Act. 6 G. 4 c. 94; of the words "*as a security for any money or negotiable instrument.*" See Taylor v. Kymer, 3 B. & Ald. 337.—Also 4 Leg. Exam. 339, 340.

ABBOT ON SHIPPING, 4, 5.

Opposed to Andrews v. Durant, 1 Kernan, 44.

ABBOT ON SHIPPING, 5 ed. p. 50.

Explained, Duncan v. Tindal, 22 Law J. R. N. S. C. P. 137; 17 Jur. 347, 20 E. L. & E. R. 227.

ABBOT ON SHIPPING, Am. Ed. p. 68.

Says that the note (p. 97) *Jus aures cendi inter mercatores locum non habit* was not written by Lord Tenterden, but that seems not to be the case from a note of my brother Shee, p. 97 c. 3, 7 Ed. Buckley v. Barber, 1 Eng. R. 509; 15 Jur. 63.

ABBOT v. SMITH, 2 Bl. 497.

It was said that one partner who hath been sued, and obliged to pay damages incurred by the whole firm, may maintain an action against the rest for contribution.

Denied in Gow on Part. 3d ed. p. 79. Sadler v. Hickson, K. B. Hil. 1834, cited in Smith on Merch. Law. p. 16, n.

ABBY v. BUXTON, Carth. 136.

S. P. as in Rogers v. Mayhoe, (post).

ABEEL v. RADCLIFFE, 15 Johns. R. 505.

Said to be a doubtful authority, Holsman v. Abrams, 2 Duer, 435.

ABEL v. HEATHCOTE, 4 Bro. C. C. 278; 2 Ves. Jun. 98.

That a power to exchange will authorize a partition.

Doubted by Ld. Eldon in 11 Ves. Jun. 467; 4 Bro. C. C. 277, by Belt. See Sug. on Pow. p. 273, (Am. ed.)

ABRAHAM v. BUXTON, 1 Paige's Ch. R. 236.

Reversed in 3 Wend. 538.

ABRAM v. CUNNINGHAM, 2 Lev. 182: T. Jones, 72: 1 Wms. Exrs. 367:

That if administration be granted on the concealment of a will, and afterwards a will appear, inasmuch as the grant was void from its commencement, all acts performed by the administrator in that character shall be equally void.

Denied in Kittridge v. Folsom, Ex'r., 8 N. H. R. 98.

ABRAHAM v. PLESTORO, 1 Paige, 236.

Reversed in S. C. 3 Wend. 538.

ACEBAL v. LEVY, 10 Bing. 376.

Overruled in Hoadley v. M'Laine, 10 Bing. 482. See Brown v. Bellows, 4 Pick. 179.

ACHESON v. MILLER, 18 Ohio R. 1.

Overruled, Acheson v. Miller, 22 Ohio R. 203.

ACHERLY v. VERNON, 1 P. Wms. 173.

Doubted in Ellis v. Ellis, 1 Scho. & Lef. 5.

ACKER v. LEDYARD, 8 Barb. 514.

Reversed, 4 Selden 62.

ACKERMAN v. FINCH, 15 Wend. 652.

Explained, Bates v. Relyea, 23 Wend. 336.

ADAMS v. BROUGHTON, 2 Strange, 1078; 6 Bac. Ab. tit. Trover; Let. A. p. 679.

If the plaintiff in an action of trover has recovered damages for the conversion of the goods, the property thereof vests in the defendant, who, as damages to the value have been recovered against him, is to be considered as a purchaser.

Denied in Hepburn v. Sewell, 5 Har. & J. 212.—"Judgment and its fruit, to wit, the payment of the amount thereof, must both concur, to vest the right of property in the defendant."

ADAMS v. FREEMAN, 12 Johns. R. 408.

Dictum overruled, Allen v. Crofoot, 5 Wend. 506; Van Brunt v. Schenck, 13 Johns. R. 414; Dumont v. Smith, 4 Den. 319.

ADAMS v. JEFFRIES, 12 Ohio R. 253.

Overruled, Robb v. Irwin, 15 Ohio R. 689, 715; Snevely v. Lowe, 18 ib. 368.

ADAMS v. KELLOGG, Kirby's R. 195.

That a feme covert could devise her real estate to her husband.

Overruled in Fitch v. Brainard, 2 Day's R. 163.

ADAMS v. LELAND, 7 Pick. 64.

"The contents of the deed cannot be proved by the affidavit of the party."

Denied. See 8 Amer. Jurist, 30, (July 1832):—"But if, as the authorities show, he may prove the loss, why not the contents?"

ADAMS v. LINGARD, Peake's N. P. Ca. 117.

That the indorser of a bill of exchange may be admitted as a witness to invalidate it.

Denied in Churchill v. Suter, 4 Mass. R. 156. See also Warren v. Merry, 3 Mass. R. 27; Parker v. Lovejoy, ib. 565.

ADAMS v. MEREDEW, 2 Y. & J. 417.

Overruled in S. C. 3 Y. & J. 219.

ADAMS v. WILSON, 10 Mo. R. 341.

Overruled in Johnson v. Steamboat Lehigh, 13 Mo. R. 539.

ADAMS ON EJECTM., citing Doe v. Jeffries, K. B. M. T. 1814, MS.

Denied in Den v. Snowhill, 1 Green R. 23.—Ewing.

ADAMS ON EJECTM., 312.

See, Roe v. Doe, ex dem. Humphreys. (post).

ADDINGTON v. ALLEN, 7 Wend. 9.

Reversed in 11 Wend. 374, upon technical grounds.

ADEY v. ARNOLD, 16 Jur. 1123; 15 E. L. & E. R. 278.

Explained in Jenkins v. Robertson, 22 Law J. R. N. S. Ch. 874; 19 E. L. & E. R. 550.

ADLINGTON v. CANN, 3 Atk. 141, 154.

Overruled *per* Thompson, B. 3 Anstr. 941.

AFRICAN COMPANY v. BULL, 1 Show. 132; Gilb. 238.

That where a policy is subscribed by several, and the goods not equal in value to the whole sums subscribed, the underwriters shall be liable in the order in which they subscribed, and the remaining underwriters be discharged.

Overruled, See Marshall on Ins. 116 et seq. Newbury v. Reed, 1 Bl. 416.

AIKEN'S PRACTICAL FORMS.

The form of a decree assigning property to widow, disapproved. Phelps v. Phelps, 1 Vt. R. 76.

AINSLEE v. MARTIN, 9 Mass. R. 454.

That a person born in Massachusetts Bay before the Declaration of Independence, is considered as born within the allegiance of the Commonwealth of Massachusetts, the lawful successor; although before July, 1776, he removed into Canada and had never returned.

Denied by Chan. Kent, in 2 Com. p. 39 to 41—citing Gardner v. Ward, and Kilham v. Ward, 2 Mass. 236, 244, note; and the case of Phipps, 2 Pick. 394, note.

ALBANS v. BEAUCLERK, 2 Atk. 635.

Said not to be correctly reported. 2 Russ. 262; (3 Cond. R. 106).

ALBANY DUTCH CHURCH v. BRADFORD, 8 Cowen, 457.

Reversed in 8 Cow. 457.

ALBANY STREET, MATTER OF, 11 Wend. 149.

Qualified, Embury v. Conner, 3 Coms. 511.

ALCHORNE v. GOMME, 2 Bing. 54.

Doubted in Pope v. Biggs, 9 B. & C. 245.—Parke.

ALCINBROOK v. HALL, 2 Wills. 309.

Overruled in Clayton v. Dilly, 4 Taunt. 165; see Faikney v. Reynolds, (post).

ALDEN v. GREGORY, 2 Eden, 280.

Length of time being no bar in cases of fraud.

Doubted in Byrne v. Frere, 2 Moll. 176; Johnson v. Johnson, 5 Ala. R. N. S. 99.

ALDERMAN v. FRENCH, 1 Pick. 1.

S. P. as in Jackson v. Stetson, (post).

ALDERSON v. BUCKTON, 1 Str. 192.

Where the consequential damage (in trespass) is of such a nature as to constitute by itself a separate ground of action, the party is entitled to full costs without any certificate.

Denied in Daubney v. Cooper, 10 B. & C. 830, by Lord Tenterden, C. J. who says,—"I certainly was not aware of that case, nor can I consider it as good law. It has never been quoted or acted upon by the court."

ALEXANDER—See *ex parte* Alexander.

ALEXANDER v. COMBER, 1 H. Bl. 20.

The observation of Wilson, J. that where the sale is *not immediate*, it is not within the statute of frauds.

Overruled in Rondeau v. Wyatt, 2 H. Bl. 63.

ALEXANDER v. GIBSON, 2 Camp. 556—Ellenborough.

"The party is not to set up so much of a witness's testimony as makes for him, and to reject or disprove such part as is of a contrary tendency. But if a witness is called, and gives evidence against the party calling him, I think he may be contradicted by other witnesses on the same side, and that in this manner his evidence may be entirely repudiated."

Overruled in Bradley v. Ricardo, 8 Bing. 57:—*Held*, that a party being surprised by a statement of his own witness, calls other witnesses to contradict him as to a particular fact, the whole of the testimony of the contradicted witness is not, therefore, to be repudiated by the judge—it is for the jury to say whether his evidence is to be entirely repudiated or not. The correct rule is laid down in Bul. N. P., namely, that a party cannot be permitted to produce general evidence to discredit his own witness; but it would be monstrous if the whole of his testimony were to be struck out because a subsequent witness sets him right as to a single fact which he may have stated incorrectly. See also Friendlander v. Priestly, 4 B. & Ad. 193.

ALEXANDER v. GREENE, 3 Hill, 9.

Reversed in 7 Hill 533, and see Wells v. The Steam Navigation Company, 2 Coms. 204.

ALEYN'S REPORTS.

Denied by Dolben, J. (2 Show. 164). "Mistaken in several cases, as to the very resolutions of the court."

ALLAN v. BOWER, 3 Bro. Ch. Ca. 149.

There was a paper found signed by *Bower* deceased, saying it was reasonable to grant plaintiff a lease, on account of the improvements he had made: which Lord Thurlow seemed to think satisfied the statute of frauds.

Doubted. The general grounds of this opinion in this case (and in Tawney v. Crowther) are questioned by Lord Redesdale in Clinan v. Cooke, 1 Sch. and Lefr. 33, 37.

ALLAN v. ADLINGTON, 7 Wend. 9.

Reversed in Adlington v. Allan, 11 Wend. 374 for error in instructions to the jury; but the principle of the action seems to be affirmed. *Held*, that in *case* for a *fraudulent representation*, by means of which goods are sold on credit and a loss ensues, the declaration should contain an averment that the representation was made *with the intent to deceive and defraud:* otherwise it will be bad even *after verdict.*

ALLEN v. IMLETT, Holt's R. 641.

Opposed to Allen v. Imlett, 9 Taunt. 263; 2 J. B. Moore, 240. S. C.

ALLEN v. MERCHANT'S BANK, 15 Wend. 482.

Reversed in 22 Wend. 215.

ALLEN v. PELL, 4 Wend. 505.

Explained in Whitbeck v. Skinner, 7 Hill, 53.

ALLEN v. RIVINGTON, 2 Saund. 111.

Where it appeared by the record of a special verdict that the plaintiff the lessee in ejectment, had possession prior to the ouster, and no title was found for the defendant, it was held that the plaintiff was without question entitled to recover.

Denied in 2 Saund. 111 note, and in Doe v. Billyard, 3 M. & Ry. 112 note.

ALLEN v. RISTON, 2 G. & J. R. 86.

Doubted. It seems to follow the cases of Nugent v. Gifford (post) See Field v. Schieffelin, 7 J. Ch. R. 157, and Petrie v. Clark, 11 S. & R. 377.

ALLEN v. SEWALL, 2 Wend. 327.

Reversed in Sewall v. Allen, 6 Wend. 335; deciding that a *steamboat company* are not common carriers of bank bills, unless such is part of their *ordinary business;* although their act of incorporation made them liable as such and they were incorporated for the transportation of *goods, wares, and merchandise.*

ALLEN v. SUYDAM, 18 Wend. 368.

Reversed in 20 Wend. 321.

ALLESBROOK v. ROACH, 1 Esp. 351.

The *jury* were allowed by Ld. Kenyon to decide the genuineness of a bill of exchange, by comparing it with other signatures admitted to be the defendant's.

Opposed to the prior case of Bookbard v. Woodley, cited in Peake's N. P. C. 21, n. and to the subsequent case of Da Costa v. Pym, Peake's Ev. App. lxxii, where Ld. Kenyon cites with approbation the rule of Bookbard v. Woodley.

ALLEY v. THE PEOPLE, 1 Gilman, 109.

Overruled in part, Mr. Farlan v. The People, 13 Ill. 9; Sans v. The People, 3 Gilman, 327; Crisman v. The People, *ib.* 351; Passfield v. The People, *ib.* 406.

ALLINGHAM v. FLOWER, 2 Bos. & Pul. 246.

Held in Birn v. Bond, 6 Taunt. 554, to be inconsistent with prior cases, and overruled. See How v. Lacy, 1 Taunt. 119.

ALLISON v. CATLEY, 1 B. & M. 1025.

Doubted. Geils v. Dickenson, 17 Jur. 423; 20 E. L. & E. R. 11, 19.

ALSTON v. MECHANIC'S MUT. INS. CO., 1 Hill, 510.

Reversed in 4 Hill, 329.

ALSTON v. STATE BANK, 4 Eng. (Ark.) R. 460.

Explained in Wood v. Wylds, 6 Eng. (Ark.) R. 754.

AMBLER'S REPORTS.

Questioned in the preface to Eden's Reports and in 1 Kent's Com. 460.

AMBROSE v. HOPWOOD, 2 Taunt. 61.

If a bill be accepted to be paid at a particular banking house, the declaration must state that it was presented there for payment.

Overruled in Fenton v. Goundry, 13 East, 459. See also Callaghan v. Aylett, 2 Campb. 549.

AMERICAN INS. CO. v. CENTER, 4 Wend. 45.

It was said "In this country the right of the master to sell must necessarily be more extensive (than in England): if there be 'a technical total loss' he may sell, if he thinks his owner will elect to abandon."

Doubted. See Hall v. Franklin Ins. Co., 9 Pick. 466: *Held,* that to authorize the master to make sale of the vessel, it must be a case of "necessity which leaves no alternative; which prescribes the law for itself, and puts the party in a positive state of compulsion to act." Freeman v. East India Co., 5 B. & Ald. 617. This English and Massachusetts rule seems "the one best supported by reason and authority." 3 Kent Com. 173, n. (c.) Schooner Tilton, 5 Mason, 481.

AMERICAN INS. CO. v. OGDEN, 15 Wend. 532.

Reversed in 20 Wend. 287.

AMES v. WEBBER, 11 Wend. 186.

Explained in 6 Hill, 74.

AMORY v. FRANCIS, 16 Mass. R. 308.

A creditor holding a mortgage for less value than his debt, is entitled to have allowed the difference between his debt and the value of the property mortgaged.

Opposed to Moses v. Ranlet, 2 N. H. R. 488; Findlay v. Hosmer, 2 Conn. R. 350.

ANDERSON v. ANDERSON, 2 Mylne & Keene, 427.

A testator bequeathed leasehold property to his daughter for her own and sole use free of control of any present husband, or any husband to come. The daughter was unmarried at the date of the will, and at the death of the testator. She married without a settlement, and, having shortly afterwards separated from her husband, she filed a bill against him, claiming to be entitled to the leasehold property bequeathed to her separate use:—*Held,* that she was so entitled; and a conveyance to the plaintiff, to her sole and separate use, was directed accordingly.

Overruled in Massy v. Parker, 2 Mylne and Keene, 174. See 2 Kent Com. 165 n. (a.)

ANDERSON v. LEMON, 4 Sand. 552.

Reversed in 4 Selden, 236.

ANDERSON v. MAY, 2 B. & P. 237.

Explained in Colling v. Treweek, 6 B. & C. 394 :—" From the report of that case in 3 Esp. 167, it may be collected that the bill delivered was not made at the same time with the copy; the one produced was *not a copy* of the other, but a duplicate original, the two having been copied from the books of the plaintiff.

ANDERSON v. RAPELYE, 9 Paige, 483.

Reversed in 4 Hill, 472.

ANDERSON v. ROBERTS, 3 Johns. Ch. R. 371.

Reversed in 18 J. R. 515.

ANDREW v. HANCOCK, 1 Bro. & B. 37; Spragg v. Hammond, 2 ib. 59.

Unless the tenant deducts the rent from the current year, he can neither deduct nor recover it.

Doubted in Comyn Land. & Ten. 230. n. (f.)

ANDREW v. N. Y. BIBLE SOC., 4 Sand. 156.

Reversed in 4 Selden, 559.

ANDREWS v. BEECHER, 1 John. Cas. 411; Wardell v. Eden, 1 J. R. 531. n. (a); Littlefield v. Storey, 3 J. R. 421.

A release from the obligee, after the assignment of a bond with notice, was considered a nullity, even where the action is brought in the name of the releasor.

Denied in Bulkley v. Landon, 3 Conn. R. 76, 83.

ANDREWS v. BROWN, Prec. in Ch. 385.

Overruled. See Jones v. Scott, 1 Rus. & M. 255. (4 Cond. R. 421).

ANDREW v. DIETERICH, 14 Wend. 31.

Questioned Peabody v. Fenton, 3 Barb. Ch. R. 451.

ANDREWS v. FRANKLIN, 1 Str. 24.

" To pay within two months after a ship is paid off" is good in a promissory note; and negotiable.

Doubted in 3 Kent Com. 75 n. (d).

ANDREWS v. SOLOMON, 1 Pet. R. 356.

Professional confidence does not apply to clerks in the office.

Opposed to Taylor v. Foster, 2 C. & P. 195. But see Levy v. Pope, 1 Mo. & M. 410.

ANON. Banbury 41.

Denied in Jackson v. Campbell, 5 Wend. 578; "Banbury's cases are not of very high authority."

ANON. Cited in Bristow v. Waddington, 5 Bos. & Pul. 360.

Questioned in Powell v. Saunders, 5 Taunt. 28.

ANON. 1 Bulstr. 184.

Where it is said that an umpirage would be vitiated by the arbitrator's joining in it.

This case is said to be "an error of the reporter." Soulsby v. Hodgson, 3 Burr. 1474.

ANON. 2 Cai. 261.

Overruled, Jackson v. Smith 6 Cow. 39.

ANON. 2 Ch. Ca. 19.

Denied by Gibson, C. J. in Lightly v. Shorb, 3 Pen. R. 451. "Not only is the authenticity of the report questionable, as not having been taken by the reporter himself, but the principle of the case has been repudiated by every writer since."

ANON. 1 Comyn, 150.

That an executor may traverse the devise of an executorship to another. Also, that payment to an executor having probate, if the probate is afterwards repealed, does not discharge the party against the legal executor.

Denied in Allen v. Dundas, 3 Term R. 130, 131, by Buller, J. who says this case "carries its own death wound on the face of it."

ANON. Cowp. 128.

In debt on judgment exceeding £10 in the whole, though the original debt was less than £10 it was said defendant could not be holden to special bail.

Overruled in Lewis v. Pottle, 4 Term R. 570.

ANON. 2 Atk. 1; Dormer v. Fortescue, ib. 282.

The mere pendency of a bill in chancery against the claimant is not sufficient to take the debt out of the statute of limitations.

Opposed. Anon. 1 Vern. 73, but this seems at variance with the better authorities of Hurdre v. Caladen, 1 Ch. R. 214; Craddock v. Marsh, ib. 205; Peerer v. Bellamy, ib. cited in 2 Vern. 504; Lake v. Hays, 1 Atk. 282; and 2 Atk. 1.

ANON. 2 East, P. C. 697, 1 Leach, 415 (n.)

A porter was intrusted with a bundle to carry to W.; and the woman went with him. He ran away with the bundle in going; and Holt, C. J. told the jury that if they thought the porter opened the bundle and took out the goods, it was felony; and he thought that the fact stated was evidence of it.

ANON. 2 East, P. C. 697, 1 Leach, 415 (n.)—continued.

Doubted by Mr. East, ib. "A different ground for the determination is suggested in another MS. (2 MS. 233) viz., that all the circumstances showing that the porter took the bundle at the first, with an intent to steal it.

ANON. 1 Freeman, 450. pl. 612.

Overruled, Hayes v. Bickerstaff, Vaugh. 122. Dudley v. Folliott, 3 Term R. 584.

ANON. 2 Freem. 105.

Overruled, *it seems*, in Wollet v. Harris, 5 Madd. 452; Vezey v. Jamesson, 1 S. & Stu. 69; Bagwell v. Dry, 1 P. Wms. 700; Pring v. Pring, 2 Vern. 99; also Math. on Pres. Ev. 171 note (b).

ANON. 2 Freem. 192.

Overruled by Clifford v. Lewis, 6 Madd. 33.

ANON. Godb. 2 pl. 2 Moor, 54 pl. 157.

Overruled in Young v. Radford, 1 Brownl. 129.

ANON. Godb. 10 pl. 14.

Overruled in Bond v. Richardson, Sav. 96; Cro. Eliz. 142; S. C. 1 Freem. 526; Jenk. 58 in Marg.; Bridgm. 91; 7 Mod. 231; 10 Mod 147.

ANON. Godb. 157 pl. 213.

Overruled in Chancellor v. Thomas, Yelv. 143; 1 Brownl. 142. S. C.

ANON. Hardr. 485.

Overruled in Rabourg v. Peyton, 2 Wheat. 385.

ANON. 4 Hen. & Munf. 476.

Overruled. See Ramsey v. Barboro, 12 Sme. & M. 298.

ANON. 1 Lev. 68.

Where Bridgman is made to say that imprisonment by the King's writ will not be duress to avoid a deed, though the arrest be without cause of action, &c. "This must be a mistake." Parsons, C. J., 6 Mass. 512.

ANON. 1 Ld. Raym. 739.

It was ruled by Holt, that "if a ship be bound for the East Indies, and from thence to return to England, and on her return she is taken by enemies, the mariners shall have their wages, for the voyage to the East Indies, and for half the time that she stayed there to unlade and no more."

Denied in Bronde v. Haven, 1 Gilpin, 601, 2.—Hopkinson.

ANON. 12 Mod. 408.

Similar to the case of The Cynthia (post).

Denied in Bronde v. Haven, 1 Gilpin, 592.

ANON. 12 Mod. 620.

"Holt, Ch. J. 'A judge of nisi prius upon trial of a writ of inquiry, is only an assistant to the sheriff, and has no judicial power; and if the parties come to an agreement there, the way to make it effectual is, to bring it to him to sign, and afterwards move above to have it made a rule of court."

Overruled in Ellsworth v. Thompson, 13 Wend. 658; and Savage, Ch. J. says, "Rather than admit such a proposition, it would be more reasonable to suppose there must be some mistake in the report of the case, particularly where the only authority for such a proposition is found in an anonymous case, published by an anonymous reporter—in a book of no authority and very small repute."

ANON. Moseley, 96.

Overruled in Elliot v. Merryman, Barn. Ch. R. 78; 2 Atk. 41; Ambler 189. n. 676; 6 Ves. Jr. 654. n.

ANON. Moseley's R. 96.

"If an estate is devised to trustees to be sold for the payment of debts the purchaser need not concern himself to see the money applied; but it is otherwise, if the debts are particularly specified; but if lands are charged with the payment of debts and legacies, the estate remains, charged in whosesoever hands it comes."

Doubted in Gardner et al. v. Gardner et al., 4 Mason's R. 215. Judge Story remarks "From this brief note it is not perhaps easy to decide what is the real meaning of the latter clause; whether that the charge being legacies, as well as debts, the purchaser must look to the application of the purchase-money, a doctrine that cannot now be maintained."

ANON. cited by Richards C. B. in Campbell v. Tweemlow, 1 Price, 83.

Ld. Kenyon is reported to have refused to admit a woman as a witness for the prosecutor, whom he had in court represented as his wife; but on hearing the objection to her competency taken, denied his marriage with her.

Overruled in Bathews v. Galindo, 4 Bing. 610.

ANON. 1 Salk. 86, 88.

The rule there laid down is incorrect. Bayley v. Buckland, 1 Exch. 1; 16 Law J. N. S. Ex. 204; 11 Jur. 564.

ANON. 1 Salk. 126. pl. 6.

This is probably the same case with 1 Salk. 127. pl. 9. and is overruled. See Lambert v. Pack, (post).

ANON. 1 Salk. 126, and S. C. reported as Lambert v. Oaks, Holt's R. 177.

Mistaken report as it appears from 1 Ld. Raym. 443, and note in Salk.; and see Ld. Mansfield's observations in Heylin v. Adamson, 2 Burr. 869; 2 Kenyon's R. 379. Chit. on Bills, p. 530. n. †.

ANON. 1 Salk. 278.

The statute of limitations may be given in evidence upon *nil debet.*

Denied by Parsons, C. J. in Pearsall v. Dwight, 2 Mass. 87; Lindo v. Gardiner, 1 Cranch, 344; ib. 465; app. 1 Morg. V. M. 220.

ANON. 2 Salk. 413. pl. 2. 4.

Lease for a year, and so from year to year *quamdiu*, &c. adjudged to be a lease for two years, and afterwards at will.

Denied in Birch v. Wright, 1 Term R. 380, where these are called "loose notes, jumbled together with others, and not to be relied upon."

ANON. 2 Salk. 642.

Overruled in Taylor v. Eastwood, 1 East, 216.

ANON. Sav. 70. pl. 145.

Overruled in Doe v. Redfern, 12 East, 113.

ANON. Ventris, 264.

There the plaintiff set forth that the defendant *malitiose crimen fellonia imposuit;* without mentioning any particular felony; and it was held well enough.

Denied in Yundt v. Yundt, 12 Serg. & R. 427—Gibson, J. But in Whiting v. Smith, 13 Pick. 369, it was said, "this case has ever been and still is recognized in the English Courts as good law."—Morton, J. citing Com. Dig. Action on the Case for defamation, D. 4.; 2 B. & C. 283, S. C.; 3 D. & R. 519.

ANON. 1 Vern. 105.

"I can by no means admit the latitude in the anon. case, 1 Vern. 105. or rather that note of a case." Per Lord Hardwicke, in Dormer v. Fortesque, 3 Atk. 129.

ANON. 2 Wils. 135.

Overruled in Rose v. Rowcroft, 4 Campb. 245—Gibbs,—S. P. Dixon v. Evans 6 T. R. 59: *Held*, that where the petitioning creditor's debt is a bill drawn by the bankrupt, and indorsed to the petitioning creditor, evidence must be adduced that it was indorsed before the suing out of the commission.

ANSCOMB v. SHORE, 1 Camp. 290.

In an action by a tenant claiming a right of common over a piece of waste land, against the owner of an adjoining close, for not repairing an intervening fence; the landlord under whom the tenant holds cannot be admitted to prove the right.

Contrary was ruled in Doddington v. Hudson, 1 Bing. 257, in respect to an action by the landlord for an injury to the reversion: the tenant was rejected as a witness.

ANSON v. LEE, 4 Sim. 404.

"There is some error in the judgment." Sugden on Powers, 403 n. 1.

ANTHOINE v. COIT, 2 Hall, 40; Marquand v. Webb, 16 Johns. 89; Osgood v. Manhattan Ins. Co., 3 Cowen, 612; Davis v. Darrord, 12 Wend. 64.

The court will grant a new trial for the cause that improper evidence was admitted, although in the opinion of the court the other evidence was sufficient to uphold the verdict.

Doubted. Crary v. Sprague, 12 Wend. 41.

ANTHONY, *ex parte*, 5 Ark. R. 363.

Overruled in *Carnall* v. *Crawford Co.*, 6 Eng. (Ark.) R. 604.
Explained in Miller v. Heard, 1 Eng. (Ark.) R. 73.

ANTHONY PASQUIN.

Libels published by the plaintiff, were admitted in evidence by Lord Kenyon, in bar of the action.

Denied in Finnerty v. Tipper, 2 Camp. 72, by Sir James Mansfield, who admitted similar evidence in mitigation saying that "the decision of Ld. Kenyon was incorrect in point of form, though it was correct in point of justice." In Child v. Homer, 13 Pick. 503, it was held, that distinct and independent libels could not be set off or be given in evidence in mitigation of damages; but libels which are a part of a connected and continued controversy are admissible in evidence as explanatory of the meaning of the libels complained of, and of the occasion of writing them, in mitigation of damages.

APPLETON v. BOYD, 7 Mass. R. 131.

That a witness shall not be required, without his consent, to testify against his pecuniary interest.

Overruled in Bull v. Loveland, 10 Pick. R. 14; Devoll v. Brownell, 5 ib. 448; Taney v. Kemp, 4 H. & J. 348; Stoddart v. Manning, 2 H. & G. 147; Baird v. Cochran, 4 S. & R. 397.

APPLETON v. BOYD, *supra*. Also S. P. as in Hurd v. West, (post).
Denied in Gibblehouse v. Strong, 3 Rawle, 451.

ARCHBISHOP OF CANTERBURY v. KEMP, Cro. El. 539.

Contradicted by Crogate's case 8 Rep. 67; See also Cockerell v. Armstrong, 2 Com. 582.; Jones v. Kitchen, 1 Bos. & Pull. 79.

ARCHBISHOP OF CANTERBURY v. WELLS, 1 Salk. 315.
The first proposition in this case has been questioned. *The People* v. *Dunlap*, 13 Johns. R. 437, but was sanctioned in *Corry* v. *Williams*, 9 Mass. 114; *Stewart* v. *Trea'r of Champaigne*, 4 Ohio R. 102.

ARCHBISHOP OF DUBLIN v. BRUERTON, 3 Dyer n. (b).
A Dean and Chapter may surrender to the King without the consent of the Bishop, and the corporation will be dissolved thereby.
Denied in the Corporation of Colchester v. Seaber, 3 Burr. 1866.
See Slee v. Bloom, 19 Johns. 456; Wilde v. Jenkins, 4 Paige Ch. R. 481.

ARCHBOLD'S PRACTICE, 250; 1 Str. 532; 7 T. R. 473.
That a *nolle prosequi* may be entered at any time before judgment, so far as the assessment of damages is concerned and without leave of the court.
Denied in New York, in Love v. Humphrey, 9 Wend. 501, 2, and Backus v. Richardson, 5 Johns. 476; it must be entered before the issuing of the writ of inquiry.

ARDEN v. PATTERSON, 5 Johns. Ch. R. 44.
Doubted, it seems, 2 Story's Com. on Equity, 314. See Thallhimer, v. Brinkerhoff, 3 Cowen, 623.

ARESON v. ARESON, 5 Hill, 410.
Reversed, 3 Den. 458.

ARGLASSE v. MUSCHAMP.
See Fryer v. Bernard, (post).

ARMISTEAD v. DANGERFIELD, 3 Mumford, 22.
"Where a testator speaks of children generally, he is to be understood as referring to those, either living at the time of making the testament, or at his death, as circumstances to be collected from his will, may justify."
Denied in Haskins v. Spiller, 1 Dana's R. 72.

ARMISTEAD v. PHILPOT, Doug. 231.
If plaintiff cannot find sufficient effects to satisfy his judgment, the court will order the sheriff to retain, for plaintiff's use, money levied in another action, at the suit of the defendant.

ARMISTEAD v. PHILPOT. Doug. 231.—continued.

Overruled in Fieldhouse v. Croft, 4 East, 510, see Turner v. Fendall, 1 Cranch, 117. But in New York the doctrine of Armistead v. Philpot was admitted in Ball v. Ryers, 3 Caines, 84; See 1 Pick. 271.

ARMSTRONG v. HUSTON, 8 Ohio R. 552.

"Without intending to overrule or impair the force of that decision, we are not prepared to extend it to any case where it is not strictly in point." Burchard Ch. J. Bohart v. Atkinson, 14 Ohio, R. 236.

ARNOLD v. CAMP, 12 Johns. 409.

Overruled in Cole v. Sackett, 1 Hill, 516.

ARNOLD v. SANFORD, 14 John. R. 417.

Judgment of reversal, for error in fact, is *revocatur.* Dewitt v. Post, 11 John. R. 460.

Explained in Camp v. Bennett, 16 Wend. 48.—"The judgment of *revocatur* was directed solely upon the authority of Dewitt v. Post, which was a case of error in fact in the same court, and not, like the case then before the court, a case of error in fact in an inferior court. "The judgments of inferior courts are to be *reversed*, whether the error be one of fact or of law."

ARNOLD v. TALLMADGE, 19 Wend. 527.

Overruled in Pearce v. Hitchcock, 2 Coms. 388.

ARNOT v. Post, 6 Hill, 65.

Reversed, 2 Den. 344.

ARNOT v. REDFERN.

See Guiness v. Carroll, (post).

ARTAXA v. SMALLPIECE, 1 Esp. R. 23.

Overruled in Cock v. Taylor, 13 East, 399. *Held*, that if a Master of a ship contracts by the bill of lading with the shippers to deliver goods to their assigns, he or they paying freight for the same; if the purchaser of the goods take them, this is evidence of a new agreement by him to pay the freight due for the carriage.

ASCOUGH'S CASE.—See Rawlin's case.

ASH'S LEGATEES v. ASH'S EXECUTORS, 1 Bay's R. 304.

Doubted in Smith v. Smith, 1 M'C. Ch. R. 148. Nott, J. though not satisfied with that decision; but it has been acted upon as a law for 30 years, and ought not to be questioned.

ASHBROKE v. SNAPE, Cro. Eliz. 240; ib. 194.

Assumpsit lies upon an express promise to pay money due by bond. Denied in Buckingham v. Costendine, Cro. Jac. 214.

ASHBY v. WHITE, 2 Ld. Raym. 928; 1 Bro. Parl. Cas. 49. 1st ed.

Officers appointed to receive the votes of qualified electors, are liable *civiliter* for willfully denying any elector his right to vote.

In New York, the Supreme Court held, that there must be malice express or implied on the part of the officers. Jenkins v. Waldron, 11 John. R. 120, citing Harman v. Tappenden et al.; 1 East, 555. Drewry v. Coulton, ib. 563, note; 1 N. H. R. 88. But see Bridge v. Lincoln, 14 Mass. 367.

ASHLEY v. HARRISON, Peake, 194.

Doubted in Lumly v. Gye, 22 Law J. R. N. S .Q. B. 463; 17 Jur. 827; 1 El. & Bl. 216; 20 E. L. & E. R. 169.

ASHMAN v. GOLDNEY, 2 Stark. Cas. 414, and Blacket v. Wier, 3 B. & C. 385.

Denied in Gregory v. Dodge, 14 Wend. 603. Nelson, J.—"are directly opposed to the case of Marquand v. Webb, (16 John. 89,)" "In the recent case of Ripley v. Thompson, 12 Moore, 55, the two cases above referred to, seem to have been overruled, though it does not appear from the report they were cited on the argument. The decision there is in conformity to the principle of the decision of the Supreme Court in Marquand v. Webb. The co-partner who was offered as a witness for the plaintiff, was rejected on the ground that he was interested in procuring a verdict against the defendants, it having been shown that he himself was *prima facie* individually holden for the entire demand; and if collected of them, he would be liable only to contribute his share as partner."

ASHMOLE v. WAINWRIGHT, 2 Q. B. Rep. 837.

Doubted by Pollock, C. B. in Parker v. The Bristol & Exeter Railway Co., 7 Eng. R. 528; 20 Law J. Rep. N. S. Exch. 442.

ASHTON v. POYNTER, 2 Dowl. Pr. R. 651.

Overruled in Jupp v. Grayson, 3 Dowl. Pr. R. 199; and held, that where a mixed case of law and fact is referred to a non-legal arbitrator, and he decides absolutely upon them without raising any question upon his award, his decision is final, and the court will not entertain a motion for reviewing such decision, either as to the facts or the law. See also Ching v. Ching, 6 Ves. Jr. 282.

ASHTON v. SHEERMAN, Holt, 309.

"An executor is not liable to pay for funeral expenses unless he contracts for them."

Overruled in Rogers v. Price, 3 Y. & J. 28. *Held*, "that an executor who has assets sufficient for that purpose, is liable, upon an implied

ASHTON v. SHEERMAN, Holt, 309—continued.

promise, to pay for a funeral, suitable to the degree of his testator, furnished by the direction of a third person."

ASLIN v. PARKIN, 2 Burr. 665.

After a judgment by default against the casual ejector, trespass for mesne profits may be brought either in the name of the fictitious plaintiff, or in that of his lessor.

In such an action the judgment in ejectment is evidence of the plaintiff's title and possession from the date of the demise in the declaration in ejectment.

The costs of the ejectment may be recovered as damages.

Smith's Lead. Cases. 268. n. remarks thus:

"See Goodtitle v. Tombs, 3 Wils. 118. Although Aslin v. Parkin decides that trespass for mesne profits may be brought, after a judgment by default, in the name of the fictitious plaintiff, still, if it be sought to recover profits antecedent to the day of the demise laid in the previous ejectment, the action should be brought in the name of the real plaintiff; for the title of the fictitious plaintiff exists, of course, only in the proceedings in ejectment, from which it appears to have commenced with the demise there laid. So, if the action be brought against an occupier *antecedent* to the ejectment, for as to him the record of the ejectment is no evidence. Decosta v. Atkins, B. N. P. 87. See Hunter v. Britts, 3 Camp. 456; Denn v. White, 7 T. R. 112. Nor will it be evidence in trespass for mesne profits against a person who entered *subsequently* to the ejectment, *unless* it be proved that he came in *under* the defendant in ejectment, so as to make him privy to the judgment. Doe v. Harvey, 8 Bingh. 242. But if he came in *under* the defendant in ejectment it will be in evidence. Doe v. Whitcombe, 8 Bingh. 46.

It is stated in Aslin v. Parkin, that "the tenant is concluded by the judgment, and cannot controvert the title;" and this was long considered in practice as *literally* true, although Vooght v. Winch, 2 B. & A. 662; Outram v. Morewood, 3 East, 365; Stafford v. Clarke, 2 Bingh. 381; Hooper v. Hooper, M'Clell. & Young, 509; and Bowman v. Rostrom, 2 Ad. & Ell. 295; show clearly that a judgment is, generally speaking, no estoppel, unless pleaded as such. However, it has been lately decided that there is no difference in that respect between a judgment in ejectment and one in any other action. Doe v. Huddart, 1 Cr. M. and Rosc. 316.

In Aslin v. Parkin, the cost of the previous ejectment (where judgment, as will be remembered, went by default) were included in the declaration in the action of trespass for mesne profits as special damage. See Doe v. Davis, 1 Esp. 358; Brooke v. Bridges, 7 B. M. 471. In Nowell v. Roake, 7 B. & C. 404, an ejectment was brought in the Common Pleas, and judgment given for the defendant, which was reversed on error. The plaintiff brought trespass for mesne profits, in the King's Bench, and recovered the costs in error, *as between attorney and client*, although the Court of Error itself could not have given costs; Bell v. Potts, 5 East, 49; Wyrie v. Stapleton, Str. 615. If the ejectment was defended, the *taxed* costs are re-

ASLIN v. PARKIN, 2 Burr. 665—continued.

coverable as damages in this action; Doe v. Davis, Symonds v. Page, 1 C. & J. 29; but no *extra* costs are so. Doe v. Davis, 1 Esp. 358; Brooke v. Bridges, 7 B. M. 471; Doe v. Hare, 2 Dowl. Pr. C. 245.

In estimating the damages, the jury are also allowed to take into consideration the trouble and inconvenience sustained by the plaintiff, in consequence of the defendant's trespasses, over and above the mere rent of the premises, so as completely to compensate him for the injury he has sustained. Goodtitle v. Tombs, 3 Wils. 121. This action could not formerly have been brought against, or by, an executor or administrator, the rule *actio personalis moritur cum persona* being applicable to it. But by 3 & 4 W. 4, c. 42, s. 3, it now may, provided it be brought within six months after the defendant shall have taken administration on himself, and provided the trespasses were committed within six months before the death of the trespasser; and by the same section it may be brought by an executor, provided the trespasses were committed within six months before the death, and the action be commenced within a year after the death. By the same statute, money may be paid into court, in such an action, under a judge's order.

When the action is brought, as in Aslin v. Parkin, in the name of a fictitious plaintiff, the court will stay proceedings until security be given for the defendant's costs, otherwise he would have no means of recovering them: B. N. P. 89.

It is remarked in Aslin v. Parkin, that as to the length of time the defendant has been in possession, the judgment in ejectment proves nothing; the consent rule, however, where there is one, may be put in, and will show the defendant to have been in possession at the time of the service of the declaration in ejectment. Doe v. Gibbs, 2 C. & P. 615."

ASSIEVEDO v. CAMBRIDGE, 10 Mod. 77.

Approving of a wager policy.

Denied, Amory v. Gilman, 2 Mass. Rep. 1.

ASTLEY v. REYNOLDS, 2 Stra. R. 916.

An action was sustained to recover back money extorted by a pawnbroker, for the redemption of plate; notwithstanding it was objected that payment was voluntary.

Overruled in Knibbs v. Hall. 1 Esp. 84, Ld. Kenyon.; Hall v. Schultz, 4 John. R. 240, Spencer, J. But in Chase v. Dwinal, 7 Greenl. R. 138, Weston, J. says, "His lordship does not advert to the case of Astley v. Reynolds; and subsequently in Cartwright v. Rowley, (2 Esp. 723), he refers with approbation to an action within his recollection, for money had and received, brought against the steward of a manor, to recover money paid for producing at a trial some deeds and court rolls, for which he had charged extravagantly. It was urged that the payment was voluntary; but it appeared that the party could not do without the

ASTLEY v. REYNOLDS, 2 Stra. R. 916—continued.

deeds, and that the money was paid through the urgency of the case, the action was sustained." Money illegally or wrongfully exacted; and payments thus coerced are not to be deemed voluntary, but extorted and compulsory; *ib. and cases cited*, see Harmony v. Bingham, 2 Kernan, 110.

ASTLEY v. WELDON, 2 Bos. & P. 354.

Opposed in Pierce v. Fuller, 8 Mass. 223.

ASTOR v. L'AMOREUX, 4 Sand. 524.

Reversed, 4 Selden, 107.

ASTOR v. MILLER, 2 Paige, 68.

Reversed, 5 Wend. 603.

ASTOR v. WHITEHALL, Cro. Eliz. 57.

Doubted in Carris v. Ingalls, 12 Wend. 73. Nelson—"The report of that case is very obscure, and it is difficult to understand precisely the opinion of the judges upon the point, except that nothing was definitely determined."

ATKINS v. BARNWELL.

See Atkins v. Hill (post.)

ATKIN v. BARWICK, 1 Stra. 165; 10 Mod. 431; Fortese. 353.

"The case of "Atkin v. Barwick" has often been questioned, and it has been generally agreed that the case cannot be supported on the reasoning of the judges who decided it. * * * Lord Mansfield said of that case, that 'the judgment seemed to be right, but the reasons wrong.' Harman v. Fisher, Cowp. 125. Lord Kenyon acquiesced in this view of the case, Neate v. Ball, 2 East, 124. * * * Further as to Atkin v. Barwick, see Alderson v. Temple, 4 Burr. 2339, where Lord Mansfield says, 'the honesty of the case inclined the court to the judgment which they gave. The reason given turns upon a subtlety.' See also Richardson v. Goss, 3 B & P. 119; Ash v. Putnam, 1 Hill, 309, and Lawes on Charter Parties, 544--550. Although Atkin v. Barwick seems never to have been overruled, it would be difficult, I think, to support it upon any principle without altering some of the facts." Per Bronson, J., in Berly v. Taylor, 5 Hill, 581.

ATKINS v. HILL, and Hawks v. Saunders, Cowp. 284, 289.

That an action of assumpsit lay at law against an executor, on his express promise to pay a legacy, in consideration of assets received, sufficient to pay all the debts and legacies.

ATKINS v. HILL, etc.—continued.

Shaken by Deeks v. Strutt, 5 T. R. 600; 8 ib. 593: but Kent, C. J. in Beecker v. Beecker, 7 Johns. 104, says, "that there never was any settled course of decisions against the action; and when the devise, or terre-tenant, affirms the trust, by accepting of the land, and promising to pay, the cases come within the principle of the cases decided by Ld. Mansfield; for it is a contract founded upon a valuable consideration." See 18 Johns. 429.

ATKINS v. HILL, Cowp. 288, 9; Hawkes v. Saunders, Cowp. 290; Trueman v. Fenton, Cowp. 544; Atkins v. Barnwell, 2 East, 505; Lee v. Muggeridge, 5 Taunt. 36.

That a moral obligation is alone a sufficient consideration to support a contract.

Opposed in Cook v. Bradley, 7 Conn. 64; Mills v. Wyman, 3 Pick. 207; Smith v. Ware, 13 John. 257. 289; Edwards v. Davis, 16 ib. 283, n.—3 Bos. & Pul. 249. note.

ATKINS' REPORTS. *Temp. Hardwicke.*

———"is a book which of late has often been questioned." 2 Woodd. Lect. 362. "It was the misfortune of Lord Hardwicke, and of the public in general, to have many of his determinations published in an incorrect and slovenly way." Per Buller, J. in Lickbarrow v. Mason, 6 East, 29 in note. "Extremely inaccurate." Per Mansfield, C. J. 5 Taunt. 64.

"It is well known the reports of Atkins abound in mistakes." Martin v. Price, 2 Richardson Eq. R. 438.

ATKINSON v. JORDAN, 5 Ohio R. 294.

Changed by statute. Swan's Stat. 717, s. 68; Swift v. Holdridge, 10 Ohio R. 230; Mitchell v. Gazzam, 12 ib. 315; Bancroft v. Blizard, 13 ib. 30.

ATTORNEY GENERAL, v. ANDREW, Hard. 23.

Doubted in Giles v. Grover, 1 Clark & Fin. R. 82. 196.—Patteson.

ATTORNEY GENERAL v. BAXTER, 1 Vern. 248.

Was reversed in the House of Lords the year after the revolution (1688). See Moggridge v. Thackwell, 7 Ves. 76; Robertson v. Bullions, 9 Barb. 107.

ATTORNEY GENERAL v. BOWLES, 2 Ves. 547; 3 Atk. 806.

"The authority of this case has been shaken; and it is one of Ld. Hardwicke's decisions that I cannot entirely concur in." Per Sir P. Arden in Attorney General v. Whitechurch, 3 Ves. Jr. 141. And see Belt's Supplement to Ves. 404. S. P.

ATTORNEY GENERAL v. BROWN, 1 Swanst. 265.

Said to be weakened by Attorney General v. Hulis, 2 Sim. & S. 77. See Attorney General v. Eastlake, 17 Jur. 801; 21 Eng. R. 46.

ATTORNEY GENERAL v. BULPIT, 9 Price, 4; S. P. Wyld's case. 6 C. & P. 380.

In the Exchequer, the rule is inflexible, that if a witness remain in court after an order made for the witness to withdraw, he shall not afterwards be allowed to be examined.

Opposed to Parker v. M'William, 6 Bing. 683; R. v. Colley, Moo. & Malk. 329. Bayley and Holroyd, J's. S. P. State v. Sparrow, 2 Murph. 487.

ATTORNEY GENERAL v. CLEAVER, 18 Ves. 220.

Ld. Eldon appeared to think that there was no instance of an injunction to restrain a nuisance without a trial.

Overruled in Earl of Ripon v. Hobart, 3 M. & K. 169 (8 Cond. R. 331).

ATTORNEY GENERAL v. GOV. & CO. of C. W. W. Fitz. 196.

Opposed in Steel v. Smith, 1 B. & Ald. 94.

ATTORNEY GENERAL, ex rel. GOLDSMITH'S CO. v. HALL, Fitzgibbon's R. 314.

Better reported in 2 Eq. Cas. Abr. n. See also 1 Tamlyn, (5 Cond. R. 468. n.)

ATTORNEY GENERAL v. HEELIS, 2 Sim. & Stu. 76.

Contains some general doctrines which Ld. Eldon would not have subscribed to in its full extent. Atto. Gen. v. Mayor, &c. Galway, 1 Moll. Ch. R. 110.

ATTORNEY GENERAL, v. JONES, 3 Price, 368.

Held, by three judges against Wood, B. that a voluntary deed, assigning leasehold and personal estate, under which the grantor was entitled for life, with a power of revocation, and which he confirmed by his will, was a testamentary instrument within the stamp-act.

Denied in Sugd. on Pow. 275, n (1).

ATTORNEY GENERAL v. PEARSON, 3 Mer. 411, 87 Sim. 290.

"It could not, however, be tolerated in this country to adopt, to their extent the principles laid down in the cases of Attorney General v. Pearson, and Attorney General v. Shore." Smith v. Nelson, 18 Vt. R. 554.

Mr. Justice Story remarks upon the doctrines laid down in *Attorney General* v. *Pearson*, and *Attorney General* v. *Shore* that "no such doctrine has as yet been ever promulgated in America, and from the peculiar circumstances of the country, and the diversities of religious opinions, it is is improbable that it ever will be. 2 *Stor. Eq.* 1191. *a. n.* See Robertson v. Bullions, 9 Barb. 129.

ATTORNEY GENERAL v. SHORE, in note to Attorney General v. Pearson.

See Attorney General v. Pearson (ante).

AUBURN PLANK ROAD CO. v. DOUGLAS, 12 Barb. 553.

Reversed, April, 1854.

AUSTIN v. SAWYER, 9 Cowen, 39.

Denied in Whitaker v. Brown, 8 Wend. 492, where Sutherland, J. says, "The question as to the declarations of the vendor, does not appear to have been raised," &c. "The reporter, therefore, has fallen into an error, when he declares in his marginal note, that the case overrules the case of Hurd v. West, 7 Cowen, 752."

AUSTIN v. WHITE, Cro. El. 214.

Charge of having had a contagious disorder held good.

Denied in Carslake v. Mapledoram, 2 Term R. 473.

AVERILLO v. ROGERS.

Rejected as authority in Dailey v. James, 1 Dana Ken. R. 529.

AVESON v. LORD KINNARD, 6 East, 188.

Doubted in White v. Holman, 3 Fairf. R. 157, Weston, C. J. after stating the peculiar circumstances of that case, observes, "In our opinion no general principle can be extracted from a case, so peculiar in its character."

AVERY v. STEWART, 2 Conn. 69.

That if a note payable in collateral articles falls due on Sunday, payment should be made on Monday.

Denied in S. C. by two Judges. Per Savage, C. J. in 8 Cowen, 30.

AYER v. ADEN, Yelv. 44.

Misreported. See Cro. Jac. 73; Moor, 757; Wilbraham v. Snow, 2 Saund. 47.

AYLETT v. JEWELL, 2 Bl. R. 1299; Willes, 487.

Overruled in Knightly v. Birch, 2 M. & Selw. 533.

AYMAR V. ASTOR, 6 Cowen, 266.

Overruled in Allen v. Sewall, 2 Wend. 327; and Sewall v. Allen, 6 Wend. 335. S. C. *Held*, that steamboat proprietors were not liable as common carriers in respect to bank bills unless the carriage of such bills, was a part of their business; however, in general there is no distinction between carriers by land and by water; and see McArthur v. Hurlbut 21 Wend. 109.

B.

BACK v. ANDREWS.

See Butler's & Baker's case, and Winchester's case (post).

BACK v. KETT, Jac. 534.

Tends to support the position that "all my estate which I shall die possessed of," is the same as "all my estates, which, being now mine, shall be mine till my decease; "in other words, "all my estate on which my will can operate."

Denied in Churchman v. Ireland, 1 Russ. & Myl. 250. (4 Cond. Eng. Ch.R. 412.)

BACK v. OWEN, 5 Term R. 409.

"There was no judgment however in that case." Ld. Ellenborough, 10 East, 364.

BACKSTER'S CASE, cited in Cro. Jac. 430.

Charge of having had a contagious disorder, held actionable.

Denied in Carslake v. Mapledoram, 2 T. R. 473.

BACHUS' ADM. v. M'COY, 3. Ham. (Ohio) R. 211.

S. P. as in Kingdon v. Nottle (post).

BACON v. BROWN.

See Haywood v. Lomax (post).

BACON'S ABR. EJECT.

See Roe v. Doe, ex. dem. Humphreys (post).

BACON'S ABR. (tit. Leases, (C) p. 13).

That if a husband seized of lands, in right of his wife, makes a lease thereof by indenture, or deed-poll, reserving rent, that is a good lease for the whole term, unless the wife, by some act after the husband's death, shows her dissent thereto; for if she accepts rent that becomes due after his death, the lease thereby becomes absolute and unavoidable.

Doubted by Thompson, J. in Jackson v. Holloway, 7 Johns. 85.

6 BACON'S ABR. TRESPASS, (C) pl. 3. p. 566.

"That the disseisee of land cannot maintain an action of trespass *quare clausum fregit*, for an injury done thereto, betwixt the time of disseisin, and his re-entry."

Denied in Dewey v. Osborn, 4 Cowen, 538:—"if it be of the disseisor as well as strangers, clearly it is not law." 8 Cowen, 222, and 2 Rolle Abr. Trespass (T) pl. 5.

BACON v. PAGE, 1 Conn. R. 404.

That the plaintiff should declare on a contract according to its *legal effect* and not on the *evidence* of the contract.

Opposed in Okie v. Spencer, 2 Whart. R. 253, 260.—Herrick v. Bennett, 8 John. 374.

BACON v. WALLER, 1 Rolle Rep. 387; 3 Bulstr. 204; Co. Lit. 46. b.

That "from the date," and from the day of the date," mean both the same thing, and that both are exclusive.

Agreed that they both mean the same thing; but resolved that, "from may mean inclusive, or exclusive, according to the subject matter; and that it should be so construed as to effectuate the deeds of parties, not to destroy them. Pugh. v. Duke of Leeds, Cowp. 714; see Presbrey v. Williams, 15 Mass. 193.

If a note be payable in certain days from the date, the day of the date is exclusive. Henry v. Jones, 8 Mass. 453.

BADGER v. PHINNEY, 15 Mass. R. 359.

It was held that replevin lies for goods unlawfully detained, though there was no tortious taking.

Decided differently in Marshall v. Davis, 1 Wend. 109; Gardner v. Campbell, 15 Johns. 402; Meary v. Head, 1 Mason, 322. See Baker v. Fales (post).

BAGE v. BROUMEL, 3 Lev. 99.

Overruled in Kightly v. Birch, 10 East, 533, Ld. Ellenborough, C. J. saying "that the case referred to had had its day, and that it was time it should cease."

BAGG'S CASE, 2d resolution, 11 Rep. 99.

From the second resolution in this case has been collected that a corporation has no power of amotion, unless given by charter or prescription.

But this position is denied in Rex. v. Richardson, 1 Burr. 539, where it is holden that the power of amotion for good cause is incident to every corporation, as much as the practice of making by-laws. See also Lord Bruce's case, 2 Str. 819.

BAGLEY v. MOLLARD, 1 Rus. & Myl. 581.

Whenever the general description of *children* in a will would include legitimate children, it cannot also be extended to illegitimate children.

Doubted in 4 Kent Com. 413. n. (c). See also Beachroft v. Beachroft, 1 Madd. 234; Cooley et al. v. Dewey et al., 4 Pick. 93.

BAGOTT v. ORR, 2 B. & P. 472.

Prima facie every subject has a right to take fish found upon the seashore between high and low water mark; but such general right may be abridged by the existence of an exclusive right in some individual.

Overruled in Blundell v. Catterall, 5 B. & Ald. 267.

BAGSHAW v. SPENCER, 1 Ves. 142; 2 Atk. 346.

Denied in Wright v. Pearson, 1 Eden R. 129 note. See 4 Kent Com. 218, 219.

BAILEY v. BUNNING, 1 Sid. 271; 1 Lev. 173.

Denied in Cooper v. Chitty, 1 Burr. 35, Ld. Mansfield; "Siderfin does not seem to know what the court was going upon." Bolland, B. (3 Tyrwh. R. 715, 734) "It must be admitted the report is imperfect in some particulars, but as to the grounds of the judgment Siderfin agrees with Levinz; and it is material to observe, that in the report of Philips v. Thompson, in C. B. by Levinz, in his third volume, 193, the judges in noticing Bailey v. Bunning, stated that that was decided solely in excuse of the bailiff, who ought to be excused for executing the writ, and not on the ground that the goods were bound by the writ; and it must not be lost sight of in estimating the weight to be given to the reports in the third volume, that they are reports of cases determined during the time that Levinz was a judge of the Court of Common Pleas, and of others which were decided after he was removed from the bench. It appears, therefore, that Bailey v. Bunning may be relied on as an authority, that in the case of an officer an act would be lawful, which if done by an ordinary person would be an unlawful taking, and subject the doer to an action of trover."

BAILEY v. CULVERWELL, 2 Mann. & Ry. 566. note. (See Com. Dig Biens, D. 3).

The general doctrine that the property in chattels passes by a contract of sale to a vendee without delivery is questioned.

Denied in Dixon v. Gates, 5 B. & Ad. 313.—Parke:—"But I apprehend the rule is correct as confined to a bargain for a special chattel."

BAILEY v. NICKOLS, 2 Root, 407.

Held, that the law implies a warranty that the thing sold is what it is held out to be; and if it is not, the seller must make good the damage, whether he knew of any defect or not.

Contrary to Pickering v. Dowson, 4 Taunt. 779; Emerson v. Brigham, 10 Mass. 197; 3 Campb. 154; Cro. Jac. 4.

BAINBRIDGE v. NEILSON, 10 East, 345.

An offer to abandon a ship, though rightly made at the time, may yet be defeated by the subsequent events; the principle is, that no artificial

BAINBRIDGE v. NEILSON, 110 East, 345—continued.

reasoning shall turn that into a total loss, which in fact is but partial. An abandonment being this, that the assured having had notice of circumstances, which, if true, entitled him to treat the adventure as a total loss, he, in contemplation of those circumstances, casts a desperate risk on the underwriter, who is to save himself as well as he can. "The principle is a general one, and is this: (said Ld. Ellenborough in Patterson v. Ritchie, 4 M. & S. 397) I have a right of action for non-payment of money; the party pays me before action brought; that takes away my right of action."

Doubted in Smith v. Robertson, 2 Dow. 474—Lord Eldon. "But notwithstanding those doubts, the rule as laid down in Bainbridge v. Neilson was adopted and acted upon in the two subsequent cases of Patterson v. Ritchie, 4 M. & S. 393, and Brotherson v. Barber, 5 M. & S. 418. We consider the point to have been well settled, and the rule established by these authorities." Per Ld. Tenterden, C. J. in Naylor v. Taylor, 9 B. & C 718. See also Peele v. Suffolk Ins. Co. (post). But in the U. S. in general, there is a difference between the courts of this country and those of England, in respect to the right of abandonment. "With us, an abandonment once rightfully made, is conclusive between the parties, and the rights flowing from it are not divested by any subsequent events, which change the situation of the property, and make that, which was a total loss at the time of abandonment, a partial loss only. And the right of abandonment is to be decided by the actual state of facts at the time of the abandonment, and not merely by the information of the assured; and consequently, if the facts do not then warrant it, no prior or subsequent events will give it any greater efficacy." Per Story, J. in Peele v. The Merchants' Ins. Co., 3 Mason, 27. *and cases cited.* But see the later case in Peele v. Suff. Ins. Co. (post), and also 3 Kent Com. 324, n. (c).

BAINES v. BAKER, 3 Atk.

Another case which was cited is Baines v. Baker, cited from Ambler, and reported as an anonymous case in the third volume of Atkyns. Both the reports are extremely jejune and bad. Soltan v. De Held, 9 Eng. R. 115; 21 L. J. R. N. S. Ch. 153.

BAKER v. ARNOLD, 1 Caines' R. 258.

Explained in Brandt v. Klein, 17 John. R. 338. By the court:—"The case of Baker et al. v. Arnold, 1 Caines' R. 25, is not an authority either way, on the question as to what facts an attorney or counsel may testify, when called on as a witness."

BAKER v. BERISFORD, 1 Sid. 76.

Ld. Kenyon spoke slightly of this case, in Cutts v. Vernon, 3 D. & E. 589.

BAKER v. CHILDS, 2 Vern. 61.

Denied in 1 Eq. Cas. Abr. 62. pl. where it is said "that upon looking into the register's minutes, it appeared that the court made no decree in it; but it was, by consent, referred to Mr. Serjt. Rawlinson for his arbitration." And Sutherland, J, in Martin v. Dwelly, 6 Wend. 15: "It is altogether too loose and bald a case to be entitled to any consideration."

BAKER v. FALES, 16 Mass. 147; Badger v. Phinney, 15 ib. 359.

As to the right to maintain replevin in cases of wrongful detention. Opposed to Thompson v. Button, 15 Johns. 401 (post).

BAKER v. HOAG, 3 Barb. 203.

Overruled in 7 Barb. 113; 3 Selden, 155.

BAKER v. KEEN, 2 Stark. N. P. Cas. 501.

Doubted in Shelton v. Shringett, 11 Com. B. R. 452; 20 E. L. & E. R. 282.

BAKER v. MARYLAND, State of, (1806) cited in 5 H. & J. 234.

Denied in Queen v. The State, 5 H. & J. 232, 234:—"In the case of Bâker v. The State of Maryland the propriety of allowing a bill of exceptions in a criminal case was not considered by the court; it passed *sub silentio*, and therefore is not an authority in this case."

BALBI v. BATLEY, 6 Taunt. 25; 1 Marsh. 424; Humphries v. Winslowe, 6 Taunt. 531; 2 Marsh. 231; M'Taggart v. Ellice, 2 J. B. Moore, 326; 4 Bing. 114; Lewis v. Gompertz, 2 Cr. & Jerv. 352; 1 D. P. C. 319; Woolley v. Escudier, 2 Mo. & Scott, 356.

Opposed in Bradshaw v. Saddington, 7 East, 94; 3 Smith, 117 and Mammat v. Mathew, 4 Mo. & Scott, 357, and cases cited p. 357 n. (c). An affidavit stating that defendant "was justly indebted to the plaintiff in 100*l*., upon and by virtue of a certain bill of exchange drawn by the defendant, and long since due and unpaid;" without stating in what character the bill was due to the plaintiff, whether as payee or indorsee; and it was held sufficient.

BALDWIN v. COLE, 6 Mod. 202.

A demand and refusal is in itself a conversion.
Denied in Irish v. Cloyes et al. 8 Verm. R. 30.

BALLANCE v. SAMUEL, 3 Scammon, 381.

Overruled in part in Taylor v. Davis, 11 Ill. 10.

BALLOU v. TALBOT, 16 Mass. 461.

Doubted in Roberts v. Butler, 14 Vt. R. 202.

BALMAIN v. SHORE, 9 Ves. 500.

S. P. as in Thornton v. Dixon (post).

BALMANNO v. LUMLEY, 1 Vesey & Beame, 224.

Corrected in Bonner v. Johnstone, 1 Merivale R. 372, and see Hartford v. Purrier, 2 Maddock Ch. R. 532, 533. note.

BALME v. HUTTON, 2 Tyr. 17; 2 C. & J. 19; 2 Y. & J. 101.

Reversed in S. C. 3 M. & Scott, 1; 9 Bing. 471; 1 C. & M. 262; 2 Tyr. 620. *Held*, where the sheriff seized the goods of a defendant under a *fi. fa.* and sold and delivered them to the judgment creditor, in satisfaction of the debt, after a secret act of bankruptcy committed by the defendant, but before the issuing of a commission against him:—*Held*, that the seizure and sale of the goods was a wrongful conversion, for which the sheriff was liable in an action of trover at the suit of the assignees subsequently chosen.

BANBURY.

"Banbury's cases are not of very high authority." Jackson v. Campbell, 5 Wend. 578.

BANDAL'S CASE, Noy, 21.

Appears to consider the execution of a writ of inquiry as a judicial act.

Denied in Tillotson v. Cheetham, 2 John. R. 72, 3.—Kent, C. J.—"Noy's Reports are of no credit; they being according to Mr. Hargrave, only loose notes, compiled from his papers, by Serjeant Size, and imposed upon the world as genuine. But the case itself is solitary and anomalous, and cannot be law."

BANK COMMISSIONERS v. ST. LAWRENCE BANK, 8 Barb. 436.

Reversed, 3 Selden, 513.

BANK of AMERICA v. WOODWORTH, 18 John. R. 315.

Reversed in Woodworth v. Bank of America, 19 John. R. 391; deciding that if no place of payment be named in the note, the holder must make a demand of the maker personally, or at his *residence*.

BANK OF AUBURN v. AIKIN, 18 Johns. 137.

Overruled in Bank of Auburn v. Weed, 13 John. 300.

BANK OF GENESEE v. FIELD, 19 Wend. 643.

Overruled in Miller v. McCagg, 4 Hill, 35.

BANK OF LIMESTONE v. PENICK, 5 Mon. R. 25. 31.

Any alteration, however immaterial, in a promissory note, if made by the promisee without consent, renders the note a nullity.

Doubted. See Hunt v. Adams, 6 Mass. 522; Nichols v. Johnson, 10 Conn. 197; 2 Phil. Ev. 6, 7; Smith v. Crocker, 5 Mass. 538; Hatch v. Hatch, 9 ib. 397; Saunderson v. M'Cullom, 4 J. B. Moore, 5; Tappan v. Ely, 15 Wend. 362.

BANK OF MONROE, *ex parte* 7 Hill, 177.
Questioned in People v. Ransom, 2 Coms. 490.

BANK OF NIAGARA v. McCRACKEN.
See Hendricks v. Judah (post).

BANK OF ORLEANS v. SMITH, 3 Hill, 560.
The doctrine put forth in this case said to have been disapproved of in the Court of Appeals. See Com. Bank of Penn. v. Union Bank of New York, 1 Kernan, 213.

BANK OF SALINA v. HENRY, 1 Hill, 555.
Reversed in 5 Hill, 523.

BANKS v. SUTTON, 2 P. Wms. 700.
Sir Jos. Jekyll, ruled, that a widow should be endowed of an equity of redemption, though the mortgage was made in fee before the marriage, upon her paying a third of the mortgage money, or keeping down a third of the interest.
Overruled in Chaplin v. Chaplin, 3 P. Wms. 229; D'Arcy v. Blake, 1 Scho. & Lef. 387.

BANK OF UNITED STATES v. SHULTZ, 2 Ohio R. 506.
Qualified in 42 Ohio Laws, 52, s. 2.

BANK OF WASHINGTON v. TRIPLET, 1 Pet. 31.
Qualified in Trask v. Martin, 1 Smith, 511.

BANKS v. WALKER, 3 Barb. Ch. 438.
Overruled in McCarthy v. Marsh, 1 Selden, 363.

BAPTIST ASSOCIATION v. HART, 4 Wh. R. 1.
In respect to a gift for charitable purposes.
Doubted it seems in The Orphan Asylum v. M'Cartee, 9 Cowen, 437, in respect to the principles there advanced. See also 2 Kent Com. 286 *et seq.* and p. 287 n. (b).

BAPTIST SOCIETY v. WILTON, 2 N. H. R. 508–510.
The rights reserved by charter for the support of the ministry, and for the support of schools, are regarded simply as appropriations in aid of the respective towns, and subject to their unqualified control and disposition: and therefore liable to be sold, and converted into other funds, at the discretion of the town.
Opposed to Burk v. Whitney, 1 Chip. R. 369; Lampson & Barnum v. New Haven, 2 Verm. R. 14; Williams v. Goddard, 8 ib. 492.

BARBER v. BARBER, 18 Ves. 280; S. P. as in Martin v. Heathcote (post).
Denied in M'Clellan v. Crafton, 6 Greenl. 346.

BARBER v. FLETCHER, 1 Doug. 305.

A represention made to the first underwriters, extends to all others.

Doubted in Marsden v. Reid, 3 East, 572. And see Bell v. Carstairs, 14 East, 374; 2 Camp. 544; 4 Taunt. 869.

BARBER v. SUTTON, cited 1 Compt. 55.

Where the plaintiff having sold 60 comb of rye, to the defendant, to be delivered before Michaelmas, and having delivered 50 comb, brought his action for the part delivered, held by Hale C. B. that though the agreement was entire, the several deliveries made several contracts.

Denied in M'Milan v. Vanderlip, 12 Johns. 165; Spencer, J. saying "it was a very unreasonable decision."

BARCLAY v. GOOCH, 2 Esp. 571.

Doubted and shaken since Taylor v. Higgins, 3 East, 196. See also Maxwell v. Jameson, 2 B. & A. 51.

BARCLAY v. LUCAS, 1 D. & E. 291, n.

Bond for fidelity of banker's clerk. Plea, introduction of new partner into the firm; and held bad, for that the bond was to the house, and not to the persons of the partners.

"The propriety of this decision has been very much questioned." Per Mansfield, C. J. in Weston v. Barton, 4 Taunt. 673. see Ld. Arlington v. Merrick, 2 Saund. 411, Williams' ed.note (5).

BARÇROFT'S CASE, Aleyne, 22.

Doubted in Story on Bailment, 339.

BAREWELL v. BROOKS, H. 24 G. 3, B. R.

Overruled in Marshall v. Rutton, 8 T. R. 545.

BARHAM'S CASE, 4 Co. R. 20.

The decision in that case held not applicable to cases in the present age, Logan v. Steele, 1 Bibb, Ken. R. 594.

BARKER v. DIXIE, Cases *temp.* Hardwicke, 264.

Ld. Hardwicke, (civil case) refused to permit the plaintiff's wife to be examined, though with the consent of the defendant.

Overruled in Pedley v. Wellesley, 3 C. & P. 558, it would seem, though the case was not cited.

BARKER v. PRENTISS, 6 Mass. R. 430.

Parsons, C. J. states the law to be, that as between the original parties, parol evidence may be received to contradict a written simple contract; and to show that there existed limitations and conditions, not reduced to writing.

Overruled in Cunningham v. Wardwell. 3 Fairf. R. 470, and *cases cited* —Weston, C. J. See Hunt v. Adams, 6 Mass. 519; 7 ib. 518.

BARKER v. SUTTON, Comyn Dig. tit. Action F. 2.

Overruled in M'Millyn v. Vanderlip, 12 Johns. 165. See Champlin v. Rowley, 18 Wend. 194, n.

BARLOW v. VOWEL, 1 Skin. 586.

If a witness has acquired an interest in the subject matter, for the mere purpose of depriving the party to the suit of the benefit of his testimony, this ought not to exclude him from giving evidence.

Limited in Phil. Ev. 146, (4th Am. Ed.) to cases of fraud on the part of the witness. But see ib. n. (a) and cases cited.

BARNADISTON'S REPORTS, B. R.

Ld. Mansfield in dispraise, 2 Burr. 386.

"Not much authority." Doug. 333, n.

"Of still less authority than 10 Mod." Doug. 689.

"A bad reporter," per Ld. Kenyon, 1 East, 642, n.

Lord Lyndhurst.—"Barnadiston, Mr. Preston! I fear that is a book of no great authority; I recollect, in my younger days, it was said of Barnadiston, that he was accustomed to slumber over his note-book, and the wags in his rear took the opportunity of scribbling nonsense in it."

Mr. Preston.—"There are some cases in Barnadiston which, in my experience, and having had frequent occasion to compare that reporter's cases with the same cases elsewhere, I have found to be the only sensible and intelligent reports, and I trust I shall show your Lordship that it may be said of Barnadiston, *non omnibus dormio.*"

C. B. Alexander used to praise him highly. Gres. Eq. Ev. 301, n.

BARNADISTON'S CHANCERY CASES.

Lord Eldon said (1 Bligh's R. 538):—"I am old enough to remember Lord Mansfield, who practiced under Lord Hardwicke, by whom all these cases were decided, state his opinion of these reports, for he knew the man. I take the liberty of saying that in that book there are reports of very great authority."

BARNES' NOTES.

"Many of the cases reported in that book are not law." Per Heath, J. in Borrowdale v. Hichener, 3 B. & P. 245.

Buller, J. said (1 B. & P. 333, 4) he "has indeed in general reported the practice of the court with accuracy."

"It will be recollected that Barnes, to say the least of him, is a very loose reporter." 3 Ohio, R. 29.

BARNES v. HEDLEY, 1 Camp. R. 157.

If money is lent at usurious interest, a subsequent contract to repay the principle with legal interest is void under 12 Anne, c. 16, s. 1.

Overruled in 2 Taunt. 184; Wright v. Wheeler, Peake's Cas. 175. Selw. N. P. 568. See also, Peake's Cas. b. 179, n.

BARNES v. TROMPOWSKY, 7 T. R. 267.

That the subscribing witnesses are agreed upon between the parties to be the only witnesses to prove the instrument.

Denied in Hall v. Phelps, 2 Johns. 451; Abbot v. Plumbe, Doug. 206; Jackson v. Burton, 11 Johns. 64, and Homer v. Wallis, 11 Mass. 64.

BARNUM v. HEMPSTEAD, 7 Paige, 568.

Overruled in Darling v. Rogers, 22 Wend. 483.

BAROUGH v. WHITE, 4 B. & C. 325.—2 Phil. Ev. 19.

A negotiable note payable on demand is a continuing security, and is not overdue without evidence of payment having been demanded and refused.

Opposed in Sylvester v. Crapo, 15 Pick. 92.

BARRERA v. ALPUENTE, 6 Mart. Lou. R. 69. N. S.

The laws of the domicil of origin govern the state and condition of the minor in whatever country he removes: as a person born in Louisiana will be of age at 21, although removed to Spain where minority does not cease until 25.

Denied. See Kent Com. 232, n. and cases cited.

BARRET v. GLUBB, Bac. Abr. Simony, A.

Inaccurately reported, and some of its expressions doubted. Greenwood v. Bishop of London, 5 Taunt. 727.

BARRET v. REED, 2 Ohio R. 484.

Johnson v. Stedman, 3 Ohio R. 94; Elred v. Sexton, 5 ib. 215.

BARROW v. RHINELANDER, 1 Johns. Ch. R. 550; 3 Johns. C. 614.

Reversed in 17 Johns. 538.

BARRY v. BUSH, 1 Term R. 691.

The administrator was held to be precluded from denying that he had assets, because by the terms of the submission he had bound himself to pay, or the arbitrator had ordered him to do so.

Overruled in Pearson v. Henry, 5 Term R. 6; and Grace v. Sutton, 5 Watts, 542; Hoare v. Muloy, 2 Yeates, 161.

BARTLEOT v. HARSKEW, Peak. 7.

S. P. as in Hodges v. Windham (post).

BARTLETT v. CROZIER, 15 Johns. 250.

Reversed, 14 Wend. 671.

BARTLETT v. HARLOW, 12 Mass. 348.

The intimations referred to by Jackson, J., in his opinion in the case of Bartlett v. Harlow, 12 Mass. 348, as found in Coke, Coke Littleton,

BARTLETT v. HARLOW, 12 Mass. 348—continued.
and Viner's Abridgment, are wholly unsatisfactory. Smith v. Benson, 9 Vt. R. 140.

BARTLETT v. KNIGHT, 1 Mass. 401.
That a judgment of a court of another of the United States is not in all cases conclusive evidence of a debt, in action brought thereon in Massachusetts.
Overruled in Bissel v. Briggs, 9 Mass. 462; where it is holden that in such action of debt nothing is open to inquiry except the jurisdiction.

BARTLETT v. PENTLAND, 1 B. & Ad. 704.
In part overruled, Re Emery, 20 Law J. R. N. S. C. P. 31; 1 Eng. R. 357.

BARTO v. ABBE, 16 Ohio R. 408.
Altered by statute, 47 Ohio Laws, 38, s. 1.

BARWELL v. BROOKS, 24 G. 3.
Overruled in Marshall v. Rutton, 8 T. R. 545:—*Held*, that a feme covert cannot contract and be sued as a feme sole, though she live apart from her husband and have a separate maintenance secured by deed.

BASS v. CLIVE, 3 M & S. 283.
Before applying to the court to compel the party to give security for costs, application should be made to the party.
Overruled in Baillie v. De Barnales, 1 B. & Ald. 331. But Adams v. Brown, 9 Bing. 81, upholds the former case, as the better practice.

BASS v. MAITLAND, 8 J. B. Moore, 44.
Doubted in King v. Packwood, 2 Dowl. Pr. R. 570:—Held, that where a demand is made of money, pursuant to the master's *allocatur*, by or under the authority of a power of attorney, a copy of the power must be left with the defendant, in order to bring him into contempt for non-payment.

BATES v. COOPER, 5 Ohio R. 115.
See Moorhead v. Little Miami R. R. Co. 17 Ohio R. 340.

BATES v. TYMASON, 13 Wend. 303.
Reversed in Tymason v. Bates, 14 Wend. 671.

BAWDEROCK v. MACKALLER, Cro. Car. 330.
Overruled in Lloyd v. Williams, 3 Wils. 262.

BAWDS v. AMHERST, 1 Eq. Ca. Abr. 21.

Lord Chan. Cowper said, "he knew of no case where an agreement, though wrote by the party himself, should bind, if not signed, or in part executed by him."

Denied in Higdon v. Thomas, 1 Maryland R. 148.—Dorsey, J.:—"If received with the meaning usually ascribed to it, viz. that a formal signature is necessary, is contradicted by Lemayne v. Stanley, 3 Lev. 1; Knight v. Crockford, 1 Esp. R. 190; Saunderson v. Jackson, 2 B. & P. 238, and Ogilvie v. Foljambe, 3 Meriv. 52; and is denied to be law by Lord Hardwicke, in Welford v. Beazely, 3 Atk. 503; and its repudiation has been sanctioned by all subsequent writers upon the subject."

BAXTER v. BROWN, 7 Mann. & Grang. 198.

Distinguished in Myers v. Perigal, 17 Jur. 145; 22 Law J. R. N. S. Ch. 431; 17 E. L. & E. R. 115.

BAXTER v. PENNIMAN, 8 Mass. R. 134.

Denied in Peck v. Bottsford, 7 Conn. R. 180; by Daggett, J.—"So far as that opinion regards an acknowledgment *by* an executor or administrator, the case did not call for it, and it was entirely *obiter*."

BAY v. FREAZIER, 1 BAY, 66.

Held, that where a bond had been assigned for value received, making its contents payable to the assignee or order, the assignee might maintain an action against the assignor, as on a bill of exchange drawn on the bond.

Overruled in Walker v. Scott, referred to in Twitty ads. Todd, 1 Nott & M'Cord, 261; Pratt & Moore v. Thomas, 2 Hill's R. 656; Benton v. Gibson, 1 Hill, 56; Wilson v. Mullen, 3 M'C. 236; Parker v. Kennedy, 1 Bay, 398.

BAYARD v. HOFFMAN, 4 Johns. Ch. R. 450.

A creditor may be entitled to the aid of the chancellor to subject *a chose in action* to the satisfaction of a judgment; and that a donee of such an interest might at common law have been subjected to a liability for its value.

Denied in Doyle v. Sleeper, 1 Dana, 534, 5. Buford v. Buford, 1 Bibb, 305.

BAYARD v. MALCOLM, 1 Johns. R. 453.

Reversed in S. C. 2 Johns. R. 550.

BAYLEY v. BUNNING, 1 Sid. 272.

Ld. Mansfield said this case was best reported in Levinz: and that "Siderfin does not seem to know what the court was going upon." 1 Burr. 35. See also 3 Lev. 19?.

BAYLEY ON BILLS, 163.

That a bill is *prima facie* evidence of money had and received by the drawer to the use of the holder, or of money paid by such holder to the use of the drawer.

Doubted in 2 Phill. Ev. 15, and 2 Stark. Ev. p. 184, 5. But in Wild v. Fisher, 4 Pick. 421, held, that in an action by indorsee against the maker the note was evidence under the money count.

BAYLEY v. MERRILL, Cro. Jac. 196.

The plaintiff, a carrier, was injured by giving credit to the false affirmation of the defendant, that a quantity of madder, which weighed twenty-two hundred, was only of the weight of eight hundred pounds, for which it was held that no action could be sustained.

Overruled in Bean v. Herrick, 3 Fairf. R. 262. See Palsey v. Freeman (post). Tapp v. Lee (post). Turner v. Harvey, Jacob's R. 178.

BAYNHAM v. MATTHEWS, 2 Str. 871.

Denied in Robinson v. Raley, 1 Burr. 321—Dennison, J.; and in Hedges v. Sandon, 2 Term R. 459, overruled.

BAYNER v. DOWDY, 1 Murphy, 279.

Overruled in Pipkin v. Wyans, 2 Deve. R. 403.

BEACH v. HOTCHKISS, 2 Conn. 425.

That when there are more than two partners, the action of account render will not lie.

Denied in Whelen v. Watmough, 15 S. & R. 156—Duncan.

BEACHCROFT v. BEACHCROFT, 1 Madd. 430.

Doubted in Re. Overhill's Trusts, 17 Jur. 342; 22 Law J. R. N. S. Ch. 485; 17 E. L. & E. R. 326.

BEAL v. BECK, 3 H. & M'H. R. 342.

Doubted in Drummond v. Prestman, 12 Wheat. R. 522, 523: "The report is very brief and unsatisfactory; there is no argument of counsel, or other means of determining on what the decision turned."

BEALY v. SHAW, 6 East, 208.

Limited in Ingraham v. Hutchinson, 2 Conn. 596, 597, in respect to the words of Ld. Ellenborough, that "20 years' exclusive enjoyment of the water, *in any particular manner*, affords a conclusive presumption of right, in the party so enjoying it."

BEAN v. MORGAN, 4 M'Cord R. 148.

Decision was founded on what is said in Clancey on the rights of *married women*, pp. 12 and 13, to the point "that a voluntary residence of the husband abroad without an intention of returning would be an answer to the plea of coverture."

Denied in Boyce v. Owens, 1 Hill's R. 11.—"The decision was right; but on the ground assumed in the decision it certainly is against the current of authority in England."

BEAR v. SNIDER, 11 Wend. 592.

Contradicted in Dunham v. Osborne, 1 Paige, 634; Renolds v. Renolds, 5 Paige, 161; Safford v. Safford, 7 Paige, 259; and Matter of Cregier, 1 Barb. Ch. 559.

BEARCROFT v. The Hundreds of BARNHAM & STONE, &c. Sayer's R. 235.

An amendment allowed which introduced a new transaction, although the time for suing a new action has expired.

Denied in Farm. & Mech. Bank v. Israel, 6 S. & R. 295; 4 Yeates, 507.

BEATTY v. PERKINS, 6 Wend. 382.

Dissented from in Chipman v. Bates, 15 Vt. R. 60.

BEAUCHAMP v. BORRET, Peake, 109.

Annuity rescinded after two payments, and the purchaser was allowed to recover back the whole purchase money, and interest.

Denied per Lord Ellenborough in Hicks v. Hicks, 3 East, 12.

BEAUCHAMP v. CASH, 1 Dowl. & R. N. P. 3.

Not followed, Mellersh v. Rippen, 11 Eng. R. 600; 16 Jur. 366; 21 Law J. R. N. S. Ex. 222.

BEAUMONT v. MEREDITH, 3 V. & B. 180.

Explained in Calv. on Parties in Eq. 28, 29. (47, 48).

BEAUMONT v. MOUNTAIN, 4 Mo. & Sc. 177.

An act private in its nature, requires proof, though by the usual clause it be declared public.

Overruled in Woodward v. Cotton, 6 C. & P. 491; 1 Cr. M. & R. 44.

BECK v. BURN, 7 Beav. 433.

"I cannot subscribe to the authority of that case."—Kindersley V. C. Parker v. Sowerby, 17 Jur. 752; 1 Drewry, 480; 22 Law J. R. N. S. Ch. 942; 21 Eng. R. 43.

BECK v. EVANS, 16 East, 244.

The notice of a carrier, although in its terms it is made to extend to any goods of what nature or kind soever, cannot be indefinite, but must be construed with reference to the subject matter, and to cases where the party has no means of knowing of what nature the goods are. It cannot apply to goods of a large bulk and known quality, where the value must be obvious.

Overruled in Marsh v. Horne, 5 B. & C. 322. The mere knowledge of the value did not take the case out of the general rule. See the observations of Mr. Justice Story on Bailm. p. 364. See also 2 Phil. Ev. 78 n. (8).

BECK v. FOUSHEE, 1 Leigh R. 64.

Overruled in Carthane et al. v. Clarke, 5 Leigh R. 275 and 280, so far as it expresses an opinion in accordance with Cowper v. Towers (infra): "The opinion expressed by Judge Green on that point, was not that of the court."

BECK v. WELSH, 1 Wils. 276.

Tenant in tail mortgages for years, becomes bankrupt, and dies without suffering a common recovery: *Held*, that his assignee shall have the estate clear of the mortgage.

Powell calls this an anomalous case in the law of bankruptcy.—Mortg. 255; and it is contradicted by Pye v. Daubuz, 3 Bro. Ch. Rep. 595.

BECK v. YOUNG, 2 Dowl. Pr. Cas. 462.

Overruled in S. C. 3 ib. 280.

BECKMAN v. LEGRAINE, Anstr. 359.

Denied in De Marneffe v. Jackson, 13 Price, 603, as inconsistent with the present practice.

BEDFORD v. BRADFORD, 8 Mo. R. 233.

Overruled Marvin v. Bates, 13 Mo. R. 217; Fackler v. Fackler, 14 ib. 431.

BEEKMAN v. BEMUS, 7 Cowen, 29.

Reversed in Bemus v. Beekman, 3 Wend. 667: *Held*, that in *replevin*, if a plea of *non cepit* is pled, a verdict for the plaintiff determines nothing but the taking, although a plea of property be also pled; both issues must be found for the plaintiff, or he cannot recover.

BEEKMAN v. BOND, 19 Wend. 144.

Overruled in Smith v. Acker, 23 Wend. 653.

BEEKMAN v. FROST, 1 Johns. Ch. R. 288.

Reversed in 18 Johns. 554.

BEEKMAN v. SATTERLEE, 5 Cow. 519.

Questioned in Jackson v. Brooks, 14 Wend. 649.

BELITHER v. GIBBS, 4 Burr. 2117.

That bail should not be required in debt on judgment, when by reason of the smallness of the sum it could not be required, in the original action, by Sta. 12 G. 1. c. 29.

Overruled in Lewis v. Pottle, 4 T. R. 570.

BELL v. CARSTAIRS, 14 East, 385.—Ellenborough.

That there was *no warranty of documentation.*

Doubted. See Pipon v. Cope, 1 Cowp. 434, n.; and Smith's Mer. L. p. 236. (Am. ed. p. 142) n. (q).

BELL v. LEGGETT, 2 Sand. 450.

Reversed, 3 Selden, 176.

BELL v. MORRISON, 1 Pet. R. 371.

Held, that an acknowledgment of one partner after the dissolution of the partnership, was not sufficient to take it out of the statute.

Opposed in Greenleaf v. Quincy, 3 Fairf. R. 11, and cases cited by Weston, C. J.

Dissented from in Willis v. Hill, 2 Dev. & Bat. 234.

BELL v. PHYN, 7 Ves. 453. See Thornton v. Dixon (post).

BELL v. REED, 4 Binn. 127.

Doubted in Hart v. Allen, 2 Watts, 118.—Gibson: "I confess that I am unable to comprehend the relevancy, or feel the force of Mr. J. Breckenridge's remarks in Bell v. Reed, that 'where the owner insures his ship, he remains his own carrier; and the undertaking of the *third* person is that the ship shall perform the voyage safely. But it is implied in the undertaking, that the owner, the carrier, shall provide a sufficient vessel; and where the insurance is on goods, it is implied that they shall be taken on board of a sufficient vessel.'"

BELL v. WARDELL, Willes, 204.

Ch. J. Willes said, that "the general replication of *de injuria sua propria*, &c. was bad, when it puts several distinct points in issue; whereas the end and use of special pleading is to reduce matters to a single point."

Overruled in Selby v. Bardons, 3 B. & Ad. 2.—Patteson and Parke; Ld. Tenterden dissenting.

BELLASIS v. BURBRICK, cited in 2 Salk. 413, pl. 2.

That a lease for a year, and so from year to year, during pleasure of the parties, was a lease for two years, and afterwards at will only.

Denied per Buller, J. in Birch v. Wright, 1 D. & E. 380. It is better reported in Lutw. 213.

BENJAMIN v. PORTEUS, 2 H. Bl. 590; R. v. Phipps, B. N. P. 289; and see 8 Greenl. 443.

Eyre, C. J., laid it down, that the exception as to the admission of agents to testify, was not confined to mere agents and brokers, but that every man who makes a contract for another, comes within the description.

Overruled in Edmonds v. Lowe, 8 B. & C. 408; and see 3 Fairf. 201.

BENNET'S CASE, Cro. Eliz. 9.

Overruled in Manser's Case, 2 Co. 3, a. S. C. 4 Leon. 62.

BENNETT v. AMERICAN ART UNION, 5 Sand. 614.

Overruled in part, People v. American Art Union, 3 Selden, 240.

BENNETT v. FARNELL, 2 Cowp. 130.

Ld. Ellenborough held that a bill of exchange payable to a fictitious person or his order, is in effect void.

Opposed in Allen v. Hunter, Peake's Cases, 146, and cases cited.

BENNETT v. INGERSOLL, 24 Wend. 113.

Overruled in Wood v. Randall, 5 Hill, 264.

BENNETT v. MOITA, 7 Taunt. 258.

That case has been much modified (Rodrigues v. Melhuish, 28 Eng. L. & E. R. 477), and partly overruled by Hammond v. Rogers, 7 Moore Priv. C. C. 160. (ib).

BENNETT v. READ, 4 Gwill. 1272.

Distinguished and reconciled in Blackburn v. Jepson, 3 Swans. R. 152.

BENSON v. PARRY, cited 2 D. & E. 52.

"Long since overruled." Per Vice Chancellor in Ex parte Henson, 1 Madd. Rep. 112.

BEREMAN v. XEZIA BANK, 4 West. Law Journ. 500.

Altered by statute, 48 Ohio Laws, 26.

BERRE v. WHITE, Bridg. by Ban. 94.

Denied in Sug. on Pow. p. 410, 411 (Lond. ed.), and p. 222 (Am. ed.)

BERRY v. THOMPSON, 3 Johns. Ch. R. 395.

Reversed in 17 Johns. 436.

BERTHON v. LOUGHMAN, 2 Stark. N. P. 288.

Holroyd, J. permitted a witness, who was conversant with the business of insurance, to give his opinion as a matter of judgment, whether the communication of particular facts would have enhanced the premium.

Denied in Durnell v. Bederly, 1 Holt's N. P. C. 283; also 7 Wend. 79. See 1 Phil. Ev. 899.

BERTIE v. LD. CHESTERFIELD, 9 Mod. 31.

"A case in 9 Mod. with respect to which I may say there are no reports upon which less reliance can be placed;" and the case was disregarded. In the goods of C. Spitty, 16 Jur. 92; 9 Eng. R. 572.

BESSEY v. WINDHAM, 6 Queens' B. Rep. 166.

Overruled in White v. Morris, 11 Eng. Rep. 515; 21 Law J. R. N. S. C. P. 105; 16 Jur. 500.

BESTOR v. POWELL.

See Hunter v. Gilham (post).

BESWICK v. SWINDELLS, 5 B. & Ad. 914; 3 N. & M. 159.

Was affirmed on error in Ex. 5 N. & M. 378.

BETTISON v. FARRINGTON, 3 P. Wms. 363.

Subsequent cases appear to question the doctrine of this case on both its points. Per Ld. Eldon in the Princess of Wales v. Earl of Liverpool, 1 Swanst. R. 114, 121. See Hardman v. Ellames, 2 M. & K. 759 (8 Cond. Ch. R. 215.)

BETTS v. JACKSON, ex. d. Brown, 9 Cowen, 208.

Reversed in 6 Wend. 173.

BETTS v. KIMPTON, 2 B. & Adol. 273.

The administrator of a husband who has survived his wife, and died without taking out administration of her effects, could not recover her choses in action. For that purpose administration must be taken out to the wife.

Overruled, *it seems*, in Fielder v. Hanger, 3 Hagg. E. C. R. 769: Administration *de bonis non* to a *feme covert* granted to the representatives of the husband, an appearance having been given and administration prayed by the next of kin of the wife. The court directing that though the modern practice had been otherwise, such grants should for the future pass to the husband's representatives, unless cause to the contrary was shown.

BETTS v. MITCHELL, 10 Mod. 316.

Held, that an executor could not join promises to the testator, with a count on a promissory note to himself, *as executor*, for a debt of the testator, payable to the plaintiff or order.

Overruled in Partridge et ux. v. Court, 5 Price, 412; King v. Thom, 1 T. R. 487.

BEVERLEY v. BROOKE, 2 Leigh, 426.

Doubted in Conrad v. Harrison et al., 4 Leigh R. 540: Carr, J.—"In that case the decisions of Chan. Kent (1 John. Ch. 447; 5 ib. 235, 241, 2) now cited, so powerful in their reasoning, seemed to have escaped both the bar and the bench."

BEVERLEY'S CASE, 4 Co. Rep. 123.

Res. 1. That every deed, feoffment, or grant, which any man *non compos mentis* makes, is avoidable, and yet shall not be avoided by himself, because it is a maxim in law that no man of full age shall be in any plea to be pleaded by him, received by the law to stultify himself, &c.

Denied in Harrison v. Lemon, 2 Blackf. 51: *Held*, that drunkenness is not of itself sufficient to avoid the deed, unless it is shown to amount to an absolute privation of understanding at the time, similar to cases of idiocy or insanity. See also Mitchell v. Kingman, 5 Pick. 431; Barrett v. Buxton, 2 Aik. 167; Prentice v. Achorn, 2 Paige Ch. R. 30; Samuel v. Marshall, 3 Leigh, 567. See also Ball v. Mannin, 8 Bligh's R. 1.

BEXWELL v. CHRISTIE, Cowp. R. 395.

Private bidding, by or on behalf the vendor, is a fraud.

Doubted. 1 Sug. Vend. p. 24 *et seq.* Wheeler v. Collier, 1 M. & M. 123. Mr. Sugden remarks (p. 29):—"The strong leaning of the courts, however, is at present against the validity of a sale where even a single puffer is employed, although after the decisions to the contrary upon this point, which are daily acted upon, it would be difficult to come to such a conclusion, except in the House of Lords."

BEYNON v. GOLLINS, 2 Bro. Ch. Ca. 323; 2 Dick. 697.

This case has been supposed to warrant the position that feme covert executrix shall not be answerable to creditors at law, after the coverture, for waste done by the husband during coverture.

But the contrary is ruled in Adair v. Shaw, 1 Sch. & Lefr. 243, 259, by Lord Redesdale, who says "the note in Brown is clearly erroneous in many points; and the note in Mr. Dickens' book is directly contrary and equally erroneous, according to my recollection of the case."

BICKERDIKE v. BOLLMAN, 1 Term R. 405.

Considered in Lafitte v. Slatter, 6 Bing. 623, as an excepted case and not to be extended.

BIDDEFORD v. ONSLOW, 3 Lev. 209.

The note of the reporter, that the plaintiff (lessor) during the term, could not have maintained trespass, is denied in Starr v. Jackson, 11 Mass. 519.

BIDWELL v. COTTON, Hob. 216.

Overruled, Barber v. Fox, 2 Saund. 137; Porter v. Bille, 1 Freem. 125.

BIGELOW v. BIGELOW, 4 Ohio, 147.

Personal actions once suspended are always suspended.

Denied in Hall v. Pratt, 5 Ohio R. 85.

BIGGS v. LAWRENCE, 3 Term R. 454.

Held, that where A had ordered goods of B, to be delivered to C, an acknowledgment in the handwriting of C of the delivery, was evidence against A.

Overruled by Ld. Kenyon, 7 Term R. 688; and Mr. Starkie, Ev. p. 25 n. (k), says, "The case is wrongly abstracted in the marginal note; the agent was not employed to *buy* goods."

BILLINGSLEY v. WILLS, 3 Atk. 219.

Commented on, Westwood v. Southey, 10 Eng. R. 246; 16 Jur. 400.

BINDSTEAD v. COLEMAN, Bund. 65.

Ld. Redesdale thought there was no great dependence to be had on this case, it being uncertain whether what the Chief Baron is there made to say, was said in the case before the court, or not. 1 Sch. & Lefr. 34.

BINGLEY v. MALLISON, 3 Dougl. 333.

S. P. as in Anon. 2 Wils. 135.

BINNS v. M'CORKLE, 2 Browne's R. 90.

That uttering slanderous words, either oral or written, may be justified by pleading that he had heard what he uttered, if the repetition was without malice.

Doubted in Williams v. Greenwate, 3 Dana, 434; Fidman v. Ainslie, 28 Eng. R. 567.

BIRCH v. CREW, cited 5 B. & A. 332. Abbot.

S. P. as in Goodtitle d. Revett v. Braham (post).

BIRCH v. EARL of LIVERPOOL, 9 B. & C. 392.

If a person hire a carriage at a stipulated price *per annum;* and according to custom, the hirer may dissolve the contract at any time by payment of one year's hire. *Held*, that this was within the statute.

Opposed in Donnellan v. Read, 3 B. & Adol. 399. *Held*, that the 29 Car. 2, c. 3, s. 4, does not require an agreement to be in writing, one part of which is to be performed within a year, and the other not. In Smith Mer. Law (Law L. Phila.), p. 176, n. (h), it is said, "The word agreement, in the same section, has been frequently construed to mean all that is to be done on *both sides*, a meaning which Donnellan v. Read denies to it. See Wain v. Warlters, 5 East, 10; Saunders v. Wakefield, 4 B. & A. 595."

BIRD v. DENTON, 2 Dev. 180.

Overruled in West v. Tilghman, 9 Iredell R. 163.

BIRD v. RANDALL, 3 Burr. 1853.

I am aware that in Bird v. Randall, Ld. Mansfield is reported to have said that a former recovery need not be pleaded, but will be a bar when given in evidence. I cannot, however, accede to that; for the very first thing I learned in the study of the law, was, that a judgment recovered must be pleaded." Per Abbott, C. J. in Vooght v. Winch, 2 Barn. & Ald. 662.

BIRDSALL v. PHILLIPS, 17 Wend. 464.

Overruled in effect in Prindle v. Anderson, 19 Wend. 391; Morewood v. Hollister, 2 Selden, 309.

BIRDSALL v. PIXLEY, 3 Wend. 425.

As to remedy by attachment for not producing papers to enable a party to declare as ordered by the court.

Overruled in S. C. 4 Wend. R. 196.

BIRI v. BARLOW, Doug. 162; Peake's L. Ev. 358.

In an action for *crim. con.*, the defendant's admission is not sufficient evidence of the fact of marriage.

Doubted it seems, 2 Stark. Ev. 251 (6 Am. ed.); 8 S. & R. 159; Rigg v. Curgenvan, 2 Wils. 39; 2 Phil. Ev. 210, 211 (7 Lond. ed.)

BIRK v. KIRKSHAW, 2 East, 458, and Ilderton v. Atkinson, 7 Term R. 480.

Overruled in Townsend v. Downing, 14 East, 565; Jones v. Brooke, 4 Taunt. 464; Scott v. M'Lellan, 2 Greenl. R. 199; Hubbley v. Brown, 16 John. 70.

BIRKS v. TRIPPETT, 1 Saund. 33.

That a sum due by award was not a debt or duty.

Overruled. Lawes on Assumpsit, 190 (235).

BIRLEY v. GLADSTONE, 3 M. & Selw. R. 205.

Whether the owner of the ship was entitled to detain the cargo, not for freight generally, but for dead freight, that is, for the freight of goods not laden: *held*, that he was not.

Denied in the Schooner Volunteer and Cargo, 1 Sumner, 551, 577.

BIRMINGHAM v. KIRWAN, 2 Scho. & Lef. 447.

Although Ld. Redesdale is made to say in Birmingham v. Kirwan, that he saw no distinction between the right to dower and other rights, the law has certainly seen and marked very clearly such a distinction. Power v. Sheil, 1Moll. Ch. R. 312.

BIRT v. KERSHAW, 2 East, 458.

An indorser was admitted for defendant, to prove payment of a note.

Overruled in Edmonds v. Lowe, 8 B. & C. 407; Bagnall v. Andrews, 7 Bing. 217. See Shuttleworth v. Stephens (post).

BISBEE v. HALL, 3 Ohio R. 465.

See Reynolds v. Com'rs of Stark Co., 5 Ohio R. 204; Loring v. Melendy, 11 ib. 355; Boyd v. Talbert, 12 ib. 212; Northern Bank of Kentucky v. Roosa, 13 ib. 334.

BISBEY v. SHAW, 15 Barb. 578.

Reversed, 2 Kernan, 67.

BISCOE v. KENNEDY and Wife, 2 Wils. 127.

Doubted in Johnson v. Driver, 1 Dowl. Pr. R. 127.—Littledale.

BISHOP v. CHAMBRE, 4 Dans. & Ll. R. 83; M. & M. 116; 3 C. & P. 53.

That a bill or note though inadmissible in evidence as a security by a material alteration, might nevertheless be looked at by a jury for collateral purposes, viz. in proof of a common count in a declaration.

Overruled in Jardine v. Payne, 1 B. & Ad. 671. See Sutton v. Toomer, 7 B. & C. 416; Sweeting v. Halse, 9 ib. 365; Bank of America v. Woodworth, 18 Johns. R. 391.

BISHOP v. CONE, 3 N. H. R. 513.

Overruled, Gibson v. Bailey, 9 N. H. R. 177; Cavis v. Robertson, ib. 528.

BISHOP of LONDON v. FYTCHE, Dom. Proc. 1783.

That a general resignation bond from the incumbent to the patron is void.

Doubted per Ld. Kenyon in Bagshaw v. Bossely, 4 D. & E. 81, 82. See also Partridge v. Whiston, 4 D. & E. 359.

BISSELL v. HALL, 11 Johns. 168.

S. P. as in Hubbell v. Coudrey (post).

BIZE v. DICKASON, 1 S. & R. 285.

S. P. as in Grove v. Dubois (post).

BIXBY v. BENNETT, See Robinson v. Bates (post).

BLACK v. MARVIN, 2 Penn. 138.

That the interest of a co-partner is paramount to a release.

Opposed, Wilson v. Hirst, 4 B. & Ad. 76. 1 Phil. Ev. 154 (8th Lond. ed.)

BLACKBURN v. MACKEY, 1 C. & P. 1.

Disapproved, Shelton v. Springett, 11 Com. Bench R. 452; 20 E. L. & E. R. 283.

BLACKBURN v. OGLE, 8 Price, 526.

The certificate of a bankrupt does not destroy the debt, and he *may be held to bail* on the demand revived by a subsequent promise.

Overruled in Peers v. Gadderer, 1 B. & C. 116.

BLACKENHAGEN v. BLUNDELL, 2 B. & Ald. 417.

A note payable to one *or* other of two persons, is not a good promissory note within the statute.

Doubted. See Walrad v. Petrie, 4 Wend. 576.

BLACKETT v. WIER, 3 B. & C. 385.

Denied in 14 Wend. 603. See Ashman v. Goldney (ante).

BLACKSTONE'S COMMENTARIES.

"I am always sorry to hear Mr. Justice Blackstone's Commentaries cited as an authority; he would have been sorry himself to hear the book so cited: he did not consider it such." Per Ld. Redesdale in Shannon v. Shannon, 1 Sch. & Lefr. 327.

BLACKSTONE'S COMMENTARIES, Lee, ed. & anno.

Law Mag. for 1832, No. 17, after repeating what Ld. Kenyon said in respect to Plowden's Treatise on Usury (see post)—"regrets that it is not the last. Mr. Thos. Lee, editor and anno. of Bl. Com. has advocated irreligion, but fortunately both his dishonesty and irreligion is so obscure and nonsensical as to render his lucubrations innocuous."

2 BLACK. COM. 347.

In respect to an alien's right to take real property by grant.

Denied in Governeur's Heirs v. Robertson, 11 Wheat. 351 to 354.

3 BLACK. COM. 145. 147.

That replevin lies only in the case of an unlawful distress.

Denied in Pangburn v. Patridge, 7 Johns. 143.

3 BLACK. COM. 146.

Replevin is founded solely on a taking by distress.

Denied in Shannon v. Shannon, 1 Sch. & L. 324. "It lies upon any taking, and not merely upon a distress."

3 BLACK. COM. 166.

That a future event cannot be warranted, as, that a horse shall be sound two years hence.

Overruled. See Liddard v. Kain, 2 Bing. 183; Eden v. Parkinson, Dougl. 705; and Mr. Coleridge, note in 3 Black. Com. 166.

4 BLACKSTONE'S COM. 181.

"The rule as laid down by Sir Wm. Blackstone, that the law will not" suffer any crime to be prevented by death unless the same, if committed, would be punished by death, is incorrect. Gray v. Combs, 7 Marshall, Ken. R. 478.

BLACKSTONE'S (WM.) REPORTS.

"Not very accurate." Per Ld. Mansfield, Doug. 92. n.

BLACKWELL v. HARPER, 2 Atk. 92.

That in a suit for pirating prints, held that the date need not appear on the original print. Best, C. J. in 4 Bing. 235, says, "better reported in 1 Barnadiston, 214, and the decision is denied and overruled."

BLACKWELL v. NASH, 1 Str. 535.

Doubted in Goodison v. Nunn, 4 T. R. 764. See Johnson v. Read, 9 Mass. 78.

BLAKE v. FOSTER, 2 Ball & B. 565, 575, *et seq.*

Reversed in House of Lords (1823); Math. Pres. Ev. 333, note (d.)

BLAKELY v. GRANT, 6 Mass. 386.—Parsons.

A copy of the protest of a foreign bill should be given or offered to the drawer, or due diligence used to furnish him with this notice, before he can be charged, if when the bill was drawn his connection with the drawee was such as gave him a right to draw.

Denied in Lenox v. Leverett, 10 Mass, 1; Wells v. Whitehead, 15 Wend. 530. (Chit. on B. 498. n. (y).) But see Chit. on B. 8th Am. ed. p. 498.

BLAKEWAY v. EARL OF STAFFORD, 2 Eq. Ca. Abr. 579.

Doubted per Ld. Redesdale, 1 Sch. & Lefr. 199; better reported in 2 P. Wms. 373.

BLANCHARD v. GOSS, 2 N. H. R. 491.

Trespass not sustained where an execution was issued by a justice of peace against the body of the debtor, in a case where by law no such execution could issue.

Opposed, Green v. Morse, 5 Greenl. R. 291. See Pierson v. Gale, 8 Verm. R. 509.

BLANCHARD v. MYERS, 9 Johns. 66.

The court on the authority of Willes R. 271 held, that the execution having *begun to be executed* before the suing out of the certiorari, the certiorari was not a supersedeas, and the officer might proceed.

Overruled in The *People on the rel.* of Gould v. The Judges of the C. P. of N. Y., 1 Wend. 81 (7 Cow. 417, 490).

BLAND v. ANSLEY, 2 New Rep. 331; Upton v. Curtis, 1 Bing. 210; 1 Phill. Ev. 64 (7 London ed.); 5 Mon. 164.

The sheriff takes goods of A. B. on execution against A. B.; the latter cannot be a witness for the sheriff to prove the goods his property.

Doubted by Park, J. in Martin v. Jackson, 1 C. & P. 17; See Lothrop v. Muzzy, 5 Greenl. 450; and Lampton v. Lampton, 6 Mon. R. 164.

BLAND v. HASLERIG, 2 Ventr. 151.

Overruled in Whitcomb v. Whiting, Doug. 651.

BLAND v. SWAFFORD, Peake N. P. C. 60.

Ld. Kenyon held, that a plaintiff could not maintain an action against a witness, unless he suffered the cause to be called and was nonsuited.

Doubted in Barrow v. Humphreys, 3 B. & Ald. 398. Overruled in Mullett v. Hunt, 1 Cr. & M. 752.

BLASDALE v. HEWITT, 3 Caines' R. 137.

Overruled in Bennett v. Hurd, 3 Johns. 438; Teel v. Fonda, 4 ib. 304.

BLATCH v. ANKER, Cowp. 66.

An examined copy of a writ returned and filed, and of the indorsement thereon, on which writ is indorsed, apparently by the sheriff's authority, the name of the bailiff employed to make the levy, is evidence to prove who was the bailiff so employed by the sheriff, evidence not being added that the indorsement of the bailiff's name on the writ itself was made by the sheriff's authority.

Overruled in Hill v. Middlesex (Sheriff), 7 Taunt. 8; Holt, 217.

BLEECKER v. BOND, 3 Wash. C. C. R. 531; Evans v. Hettick, 3 Wash. C. C. R. 408.

Held, that the deposition of a witness living without the district and more than 100 miles from Philadelphia could not be admitted; it not having been taken upon a commission.

Overruled. Pettibone v. Derringer, 4 Wash. C. C. R. 215, 219, and in Petapsco Ins. Co. v. Southgate, 5 Pet. R. 604.

BLICK'S CASE, 4 C. & P. 377.

Whatever is evidence against the principal, is *prima facie* evidence of his guilt, as against the accessory, to prove the felony.

Overruled in *Turner's case*, 1 Moody C. C. 347.

BLIN v. CAMPBELL, 14 Johns. 432.

If the injury be attributable to negligence, though it were immediate, the party injured has an election, either to treat the negligence of the defendant as the cause of the action and to declare in case, or to consider the act itself as the injury and to declare in trespass. (1 Chit. Pl. 127.)

BLIN v. CAMPBELL, 14 Johns. 432—continued.
Denied in Gates v. Miles, 3 Conn. R. 64:—The case is "founded on the erroneous proposition of Chitty, which he has since corrected."

BLISS v. LONG, Wright R. 351.
Overruled in Wagers v. Dickey, 17 Ohio R. 439.

BLOODGOOD v. BRUEN, 4 Sand. 427.
Reversed in 4 Selden, 362.

BLOODGOOD v. M. & F. R. R. Co., 14 Wend. 54.
Reversed in S. C. 18 Wend. 9.

BLOOM v. GOODNER.
See The People v. Peck (post).

BLOT v. BOICEAU, 1 Sand. 111.
Reversed in 3 Coms. 78.

BLOXSOME v. WILLIAMS, 3 B. & C. 232.
Was the case of a *private* sale of a horse, and an action brought upon a warranty, and to recover back the price; upon objection that the purchase was made on a *Sunday*, Mr. Justice Bayley expressed a doubt, whether the statute applied to *private* sales, such as were not open breaches of the *Sunday*.
Overruled in Fennell v. Riddler, 5 B. & C. 406; Smith v. Sparrow, 4 Bing. 84: *Held*, that no action lies on a contract entered into on a Sunday.

BLYTH v. ARCHBOLD.
See Israel v. Argent (post).

BOARDMAN v. DEFOREST, 5 Conn. R. 1.
Presumption of payment from lapse of time was applied to a judgment.
Denied in Smith v. Miller, 14 Wend. 191; but the principle of the Connecticut case is adopted by statute in New York. (2 R. S. 301. s. 46.)

BOARDMAN v. GORE, 15 Mass. R. 336.
Denied in Boody v. Keating, 4 Greenl. R. 164.

BODENHAM v. PURCHAS, 2 B. & Ald. 39.
"Much narrowed by the case of Simpson v. Ingraham, 2 B. & C. 65." Per Taunton J. in 2 Dowl. Pr. C. 515.

BODKINS v. TAYLOR, 14 Ohio R. 489.
Qualified in Rohrer v. Morning Star, 18 Ohio R. 579.

BOEHM v. CAMPBELL, 8 Taunt. 639.
Doubted in Morley v. Boothby, 3 Bing. 113.

BOGGS v. BARD, 1 Rawle, 102.
Overruled in Klive v. Guthart, 2 Pen. R. 490, 493, *et seq.*

BOHANAN v. PETERSON, 9 Wend. 503.
Overruled in Stage v. Stevens, 1 Den. 267.

BORLOIN v. EDWARDS.
See Key v. Collins (post).

BOLIN et al. v. HUFFNAGLE, 1 Rawle.
As to the right to stop goods in transitu.
Opposed in Coates v. Railton, 6 B. & C. 422, *it seems;* and by Stubbs v. Lund, 7 Mass. 453.

BOLTON (Duke of) v. WILLIAMS, 2 Ves. jr. 145.
A *feme covert* separated *a mensa et thoro*, can sue and be sued without joining the husband.
Denied in Lewis v. Lee, 3 B. & C. 291. But see Dean v. Richmond, 5 Pick. 461.

BOND v. KENT, 2 Vern. R. 281.
Doubted in Mackreth v. Symons, 15 Ves. 329, but see Mackreth v. Symons (post).

BOND v. WARD, 7 Mass. 129.
That hay in a cock or barn is not liable to attachment.
Overruled in Campbell v. Johnson, 11 Mass. 184.

BONHAM'S CASE, 8 Co. 118.
When a statute is made against common right and reason, the common law will render the statute void.
Overruled. See 1 Black. Com. 41. n. But see Bowman v. Middleton, 1 Bay, 252; and Dwarris on Statutes, p. 642 *et seq.*

BONHAM'S CASE, 8 Rep. 121 a.
Ld. Coke here said that the cause of committment by the censors of the College of Physicians was traversable. But this is denied by Ld. Holt, for that persons constituted with power to fine and imprison are thereby made judges of record, &c. Groenvelt v. Burwell, 1 Com. Rep. 79, 80.

BONNER v. The PROPRIETORS of the KENNEBEC PURCHASE, 7 Mass. 745.
— Explained in Wells v. Prince, 9 Mass. 508, and by Mellen, C. J. in 5 Greenl. 157.

BOODEN v. ELLIS, 4 Mass. 115.

Denied in Selden v. Beale, 3 Greenl. R. 182—Mellen, C. J.: "The case seems to have received but little consideration; and the language is so general, that, if adopted as it stands, it would go to far abolish all the distinctions as to the different classes and forms of actions."

BOORMAN v. JENKINS, 12 Wend. 566.

Overruled in part in Waring v. Mason, 18 Wend. 425.

BOOSEY v. PURDAY, 4 Exch. 145.

Overruled in Boosey v. Jeffreys, 15 Jur. 540; 4 Eng. R. 479.

BOOTHBY v. VERNON, 9 Mod. 147.

Denied in Park on Dower, p. 65, *et seq.*

BOOTH, GEORGE.

"His treatise on Real Actions, from the want of a treatise of the kind, is even cited as an authoritative compilation; though, perhaps, not always satisfactory in its depth and extent of useful learning, and is still less remarkable for the clearness and elegance of its method. But the laborious diligence of the author entitles him to applause." 3 Wood. 26. "So little did Booth understand of principles." 3 Black. Com. 298 note.—"A very imperfect work." Note to North's Study of the Laws, p. 76.

BOOTH, JAMES.

Was a conveyancer; and Buller, J. (4 Ves. 322.) said "No man in his line of the profession possessed greater ability."

BOSON v. SANFORD, 3 Lev. 258; 3 Mod. 320; 2 Salk. 440, 1; Show. 29; ib. 478.

Ld. Ellenborough said, "This case has been shaken to its foundation in the main points which it assumed to determine." 3 East, 69. See Abbot v. Smith, 2 Bl. R. 947; Rice v. Shute, 5 Burr. 2613; 5 T. R. 651.

BOSTICK v. RUTHERFORD, 4 Hawks, 83.

S. P. as in Johnston v. Martin (post).

Doubted in M'Rae v. Oneal, 2 Dev. R. 169.

BOSTOCK v. SAUNDERS, 3 Wils. 484; S. C. 2 Bl. R. 912 (2 H. Pl. C. 116).

That the informer in case of search under a warrant for stolen goods, if the goods are not there he cannot justify in trespass.

Overruled in Beatty v. Perkins, 6 Wend. 382; Cooper v. Booth, 3 Esp. R. 135.

BOTTOMLY v. BROOK, 1 Term R. 621.

That an equitable demand can be set off at law.

Denied by Littledale, J. in 4 B. & Ad. 752. "I think Bottomly v. Brook, 1 T. R. 621, was not properly decided, that under the statutes of set-off the court can only notice an interest at law."

BOTTOMLY v. BROOK, and Rudge v. Birch. Referred to in Winch v. Keele, 1 T. R. 619.

These cases may be considered of doubtful authority. Bauerman v. Radenius, 7 T. R. 663; Wake v. Tinkler, 16 East, 36; Tucker v. Tucker, 4 B. & Adol. 745; 24 E. C. L. 151. At any rate the courts have not been inclined to extend the doctrine laid down in them. Adams v. Bliss, 16 Vt. R. 42.

BOUDINOT v. BRADFORD, 2 Dall. 268.

Denied by Yeates, J. in 1 Binn. 580:—"The opinion attributed to the court, I recollect, fell from the Ch. Justice; it was a sudden answer to a point made by Mr. I.; but there was no decision of the kind by the court." See also p. 584, and 3 Binn. 561.—Tilghman.

BOURS v. TUCKERMAN, 7 Johns. 528.

Overruled in Sanford v. Meech, 12 Wend. 147.

BOUTELLE v. COWDIN, 9 Mass. R. 254.

Explained in Pembroke v. Stetson, 5 Pick. 506. "We cannot believe it was intended by the court to lay down the proposition, that the contributors for a valuable object, being indulged with credit instead of making immediate payment, their promise being made to a party capable of receiving it and compellable by law to apply the proceeds of the fund according to the original intent of the contributors, is void for want of consideration. And Mellen, C. J. (6 Greenl. 446.)—"We would add that we cannot believe such a proposition to be law."

BOWCHER v. NOIDSTROM, 1 Taunt. 568.

"Although there was a pilot on board, the pilot does not represent the ship, and that the master was still answerable for every trespass."

Doubted, see Sproul v. Hemmingway, 14 Pick. 1; Aldrich v. Simmons, 1 Stark. 210; where the master was not on board at the time of the accident, he was held not liable. Snell v. Rich, 1 John. 305. Neither, it seems, if on board. The Portsmouth, 6 Rob. R. 317.

BOWEN v. BELL, 19 John. 390. Lowther v. Crummie, 8 Cow. 87.

Opposed in Snell v. Loucks, 11 John. R. 69; Pickert v. Dexter, 12 Wend. 153.

BOWEN v. NEWELL, 5 Sand. 326.
Reversed, 4 Selden, 190.

BOWER v. TAYLOR, cited 7 Taunt. 574.
Overruled in Touissant v. Hartopp, 7 Taunt. 571.

BOWERS v. HURD, 10 Mass. R. 427.

Overruled in Amherst Academy v. Cowls, 6 Pick. 434.—Parker, C. J.: "The intimations in regard to the conclusiveness of the admission of 'value received' are not supported in their full extent by the authorities." Although the consideration is expressly admitted in a written promise, it may be denied and proved not to have existed, in a suit between the original parties.

The same court, however, in the subsequent case of Hill v. Buckminster, 5 Pick. 390, have expressly overruled the doctrine upon which the case of Bowers v. Hurd was decided; although Ch. J. Parker takes occasion to say that case was decided right, but should have been placed on other ground; but he does not state on what ground it should have been placed. And Ch. J. Parker, in a subsequent case, Amherst Academy v. Cowles, 6 Pick. 427, repeats what is said in Hill v. Buckminster. Smith v. Kettridge, 21 Vt. R. 248.

BOWERS v. JEWELL, 2 N. H. R. 543.
The effect of an alteration of a note.
Doubted in Bailey v. Taylor, 11 Conn. 540. See 1 Phil. Ev. 477, n.

BOWES v. HOWE, 5 Taunt. 30.

In an action on a note by the payee or bearer, against the maker, if the place of payment is embodied in the note, it is a condition precedent that it should be presented for payment at that place; and an omission to aver such presentment in the declaration is fatal, and judgment will for that cause be arrested.

Denied in Wolcott v. Van Santwood, 17 Johns. R. 253, 254; Baldwin v. Farnsworth, 1 Fairf. R. 414; Ruggles v. Patten, 8 Mass. 480.

BOWLES v. LANGWORTHY, 5 Term R. 366.

Decided on the authority of King v. Middlezoy (post); and cannot be supported, unless upon the principle suggested in 2 Phil. Ev. p. 334 note (7 Lond. ed).

BOWMAN v. STARK, 6 N. H. R. 459.
Limited in Whittier v. Varney, 10 N. H. R. 301.

BOWNE vs. POTTER, 17 Wend. 164.

Overruled, Sparrow v. Kingman, 1 Coms. 242.

BOWRING v. STEVENS, 2 C. & P. 327.

The vendor of a lease of a public house stated that his returns had averaged £300 a month; and Abbott, Ch. J., said, "The question is whether, on the whole of the evidence, the jury are satisfied that the defendant practiced a fraud and deceit on the plaintiffs; and the court refused a new trial.

Opposed in Cross v. Peters, 1 Greenl. R. 389; and see 2 Kent. Com. 485, 6.

BOYD v. HAWKINS, 2 Dev. Eq. R. 195.

In part disapproved, Boyd v. Hawkins, 2 Dev. Eq. R. 329.

BOYD v. HEINZELMANN, 1 Ves. & Beame, 381.

Overruled by Mills v. Fry, 3 Ves. & Beame, 9; Anon. 2 Maddock Rep. 395.

BOYER v. BLACKWELL, 1 Stark. R. 426.

That as the purchaser had taken contiguous lots in confidence of having both, he has an option to open the biddings as to the one, if the other were taken from him.

Doubted in Casamajor v. Strade, 2 M. & K. 706 (8 Cond. R. 199).

BOYFIELD v. BROWN, 2 Stra. 1065.

Overruled in Mason v. Skurray, cited in Park on Ins. p. 160.

BOYNTON v. WILLARD, 10 Pick. 166.

Doubted in Amer. Jurist, No. 1019, Jan. 1834.

BOZON v. WILLIAMS, 3 Y. & J. 475.

In a bill by assignees of a bankrupt, a plea that the suit had been instituted without the consent of the creditors, or of the commissioners as required by the statutes 3 Geo. II. c. 30, and the 6 Geo. IV. c. 16, was allowed, chiefly on the ground of a similar plea having been allowed in the Court of Chancery in Ocklestone v. Benson, 2 Sim. & Stu. 265.

Overruled in Jones v. Yates, cited in 2 Y. & J. (*Mem. at the beginning*), where it was said, "that, if the Master of the Rolls and the Vice Chancellor continued of the opinion then entertained by them, the rule would, for the future, be different in the Court of Chancery."

BRACTON.

"Neither Bracton nor Granville are to be cited as authorities, but rather as ornaments to discourse."—Plowden, 357.

"Bracton seems to have been great authority with Staundforde; for it appears from the reports, that he ventured to cite and argue from this father of the English law upon the bench. I was astonished to find Fitzherbert inform us, that it was agreed by the whole court in 35 Hen. VI. that Bracton was never for an author in our law. It was a pleasure to find that the Year Book had given no warrant for this opinion. The readers of Abridgments have been long aspersing the reputation of Bracton with more success than authority." 4 Reeve's Hist. 570.

BRACTON, L. 1, ch. 12, sec. 6.

"All rivers and ports are public," &c. &c.

In the case of Morgan v. Reading, 3 Sme. & M. on page 400, Ch. J. Sharkey, says, "In reference to riparian rights, the English decisions have not followed the doctrine of Bracton;" and he refers to Ball v. Herbert, 3 Durn. & E. 253, as a leading case, and to other authorities.

BRADBURY v. REYNEL, Cro. Eliz.

An executor *de son tort* remains liable, though he has delivered the effects of the intestate to the administrator.

Opposed Anon. 7 Mod. 31. Keble v. Osbaston, cited 11 Mod. 39 n.

BRADFORD v. THE MINISTER, ELDERS, &c. OF THE DUTCH CHURCH IN ALBANY.

Reversed in 8 Cowen, 457.

BRADHURST v. THE COLUMBIAN INS. CO., 9 Johns. R. 9.

If a ship, in a case of extremity, and to avoid impending danger, be voluntarily run ashore, and happen to be destroyed and lost by the act of running her ashore, there shall be no contribution.

Overruled in Caze v. Reilly, 3 Wash. C. C. R. 298; Gray v. Wain, 2 S. & R. 229. But see Scudder v. Bradford, 14 Pick. 13; the principle of which seems to be, that if by the voluntary sacrifice of the ship, the cargo is rescued from the peril impending, the latter shall contribute; but it must appear to have been rescued by that *means*, and not *tanquam ex incendio*.

BRADSHAW v. ROGERS, 20 Johns. R. 103.

Reversed in Rogers v. Bradshaw, 20 Johns. R. 735.

BRADLEY v. BAXTER, 15 Barb. 122.

Overruled, Barto v. Himrod, 4 Selden, 482.

BRADLEY v. JONES, 2 Ire. Eq. R. 245.

Partly overruled. Swain v. Rascoe, 3 Ire. Law R. 200.

BRADLEY'S LESSEE v. BRADLEY, 4 Dall. 112.

Yeates, J. in 4 Binn. 157, says, "That case is reported erroneously."

BRADSHAW v. CALLAGHAM, 5 Johns. 80.

Reversed, 8 Johns. 558.

BRADSHAW v. ROGERS, 20 Johns. 103.

Reversed, 20 Johns. 735.

BRADSTREET v. WEEKS, 1 Johns. Ch. 206.

Reversed; see Reporters' Note.

BRADT v. KOON, 4 Cowen, 416.

Better reported as to the facts in The People v. N. York C. P., 13 Wend. 653, by Ch. J. Savage.

BRADWELL v. WEEKS, 1 Johns. Ch. R. 206.

Reversed in 13 Johns. 1,—and decided that if an alien dies in this State intestate without issue during a war with his native country, leaving personal property, his relations, abroad, though next of kin, being alien enemies resident in the country of the enemy, are not entitled to distributive shares of his property, but the whole will go to his next of kin residing in this State, against the decree of the Chancellor.

BRANDRAM v. WHARTON, 1 B. & Ald. 463.

The authority of Whitcomb v. Whiting (2 Doug. 652) was questioned in respect to payment made by one joint party liable, as a payment for all, and enures to the benefit of all.

Doubted in Sigourney v. Drury, 14 Pick., where it was decided that payment of interest by one of the makers of a joint and several promissory note, was sufficient to take the case out of the statute of limitations, even in respect to a mere surety. See Whitcomb v. Whiting (post).

BRANT v. FOWLER, 7 Cow. 562.

Overruled in Wilson v. Abrahams, 1 Hill, 207.

BRASON v. DEAN, 3 Mod. 39.

Overruled in Brewster v. Ketchell, 1 Salk. 198. See also 2 Eq. Ca. Abr. 26; 3 Bro. P. C. 401.

BRECKBILL v. TURNPIKE CO., 3 Dall. 496.

That an action of *assumpsit* would not lie against a corporation. Overruled in Chestnut Hill Turnpike Co. v. Butler, 4 S. & R. 16.

BRECKENRIDGE'S ADM'R v. MELLON'S ADM'R, 1 How. 273.

In Woodward v. Fisher, 11 Sme. & M. 315; Sharkey, Ch. J. says, "An intimation was thrown out on this question in Breckenridge's Adm'r v. Mellon's Adm'r, but it was left rather in doubt." And see Barnes v. Jarnigan, 12 Sme. & M. 110.

BREED v. EATON, 10 Mass. R. 21—1 Phil. Insu. 211.

Denied in Riggin v. Petapsco Ins. Co., 7 Har. & J. 289—Dorsey, J. as to Mr. Philips' classing this case "as though it turned on deviation."

BRENNAN v. CAMENT, Bul. N. P. 45. 3 Selw. N. P. 1163. Sayer, 224.

Much shaken by the reasoning of Ld. Eldon in Cowill v. Simpson, 16 Ves. jr. 275, and of Gibbs, Ch. J. 2 Marsh. Rep. 339, Hutton v. Bragg; and see *Ex parte* Lewis, Gallis. 488.

BRENT'S CASE, Dyer, 340 a.; 2 Leon. 14.

"Leonard's is by far the best report of the case." Sug. p. 15 (n. 6.)

BRERETON v. HULL, 1 Denio, 75.

Disapproved, Curyl v. Russell, 18 Barb. 429.

BRETT v. BEALES, M. & M. 421.

Doubted in Woodward v. Cotton, 4 Tyrw. R. 689, 694—Ld. Lyndhurst—"The case of Brett v. Beales must have been misunderstood, or, from something equivocal which appears in its terms, is misreported."

"Has been much misconceived. It is certainly not well reported."—Lyndhurst, C. B.; Woodward v. Cotton, 1 C. M. & R., 47.

BRETT v. RIGDEN, Plowd. 344.

It is said to have been determined in the 39 Hen. VI. 18, that if a man devise a certain estate, and have nothing in it at the time, but purchase it afterward, it shall pass; because, it must be taken that his intent was to purchase it, and were it not to pass, the will would be void.

Denied by Lord Holt in Bunker v. Cook, 11 Mod. 278; S. C. Fitzg. 225, as being not even the *dictum* of a judge, but an assertion of counsel, and unwarranted by the book cited for it; in which he is supported by Ch. J. Trevor in Arthur v. Bokenham, 11 Mod, 163; Girard et al. v. The City of Philadelphia, 4 Rawle, 335.—Gibson.

BREWSTER v. CAPPER, 1 Wils. 261; 1 Bl. Rep. 51.

Overruled in Doughty v. Lascelles, 4 D. & E. 520; see 7 D. & E. 447. n.

BREWSTER v. POWER, 10 Paige, 562.

Dictum disapproved, Wait v. Day, 4 Den. 439.

BRICKWOOD v. FANSHAW, Show. 96.

That stat. 3 Jac. I. c. 7, and 2 Geo. II. c. 23, respecting the delivery of a bill of his fees, by an attorney, do not extend to business done in the inferior courts.

Overruled in Clark v. Donovan, 5 D. & E. 694.

BRIDGE v. ABBOTT, 3 Bro. C. C. 224.

Doubted in Price v. Strange, 6 Madd. 159; but confirmed in Palin v. Hills, 1 M. & K. 470 (7 Cond. 132). Ld. Chan.:—"I cannot, for the first time, overrule such an authority as that of Bridge v. Abbott, without any one case and with scarcely one *dictum* the other way,—an authority worthy of all acceptation on all accounts, for the learned, most pains-taking, and most candid judge who decided it,—an authority never yet noticed but to be approved, when it has been brought under the deliberate consideration of the court."

BRIG SARAH ANN, 2 Sumner, 211.

Questioned, Bradley v. Arnold, 16 Vt. R. 387.

BRIGGS v. CRICK, 5 Esp. R. 99.

That a former proprietor of a horse, who had sold with a warranty, was competent to prove the soundness without a release.

Overruled in Biss v. Mountain, 1 Mo. & R. 302, where Mr. Jus. Alderson was of opinion, that as the effect of a verdict would be to relieve the witness from an action at the suit of the defendant, to whom he had sold and warranted the horse, he was incompetent to give evidence on defendant's behalf. See Hale v. Smith, 6 Greenl. 416; except his interest is balanced. 3 Fairf. 371.

BRILL v. FLAGLER, 23 Wend. 354.

Overruled, Dunlap v. Snyder, 17 Barb., 561.

BRISBANE v. PRATT, 4 Denio, 63.

Overruled, Seeley v. Engell, 17 Barb. 530.

"I think that case was erroneously decided and should not be followed. See James v. Chalmers, 2 Selden, 209." T. R. Strong, J., Smith v. Schanck, 18 Barb. 345.

Commented on and questioned, James v. Chalmers, 2 Selden, 209.

BRISTOW v. WRIGHT, Dougl. 665.

In an action against the sheriff for taking goods without leaving a year's rent, the declaration need not state the particulars of the demise, but if it does, and they are not proved as stated, there shall be a nonsuit.

Doubted in Gould's Pl. p. 164, note (28). But see Smith's Lead. Cases, p. 328.

BRITTAIN v. KINNARD, 1 Brod. & B. 432.

There is room to doubt whether this case can be supported. Bronson, J. *Ex parte* Clapper, 3 Hill, 460, cited Brodhead v. McConnell, 3 Barb. 185.

BRITTAM, or BRITTANE v. CHARNOCK, 2 Mod. 286 ; 1 Freem. 248.

Overruled. See Ram on Assets, 69 (4th Am. ed.)

BRITTON.

The text of Britton has been greatly corrupted and mutilated. Hence the remark of Montague, Ch. J., that the book contains many errors. Plowd. 58, arg. Wingate, in his edition of 573 pages (or 287 folios) 12mo. has given a list of 650 corrections or substituted readings. Burrill's Law Dict., Tit. Britton.

BRITTON v. TURNER, 6 N. H. R. 493.

That the performance of the whole labor is a condition precedent, and the right to recover any thing dependent upon it—that the contract being entire, there can be no apportionment—and that there being an express contract, no other can be implied, even upon the subsequent performance of service, is not properly applicable to a contract where a *beneficial service has been actually performed* :—the common understanding in the community being that the hired laborer shall be entitled to compensation for the labor he performs, though he do not continue the entire term ; and the contract must be supposed to have been made with reference to such understanding, unless there be an express stipulation to the contrary.

Opposed Stark v. Parker, 2 Pick. 267 ; Faxon v. Mansfield, 2 Mass. 147 ; M'Millen v. Vanderlip, 12 Johns. 165 ; Jennings v. Camp, 13 ib. 94 ; Reab v. Moor, 19 ib. 337 ; Lantry v. Parks, 8 Cowen, 63 ; Sinclair v. Bowles, 9 B. & C. 92 ; Mead v. Degolyer, 16 Wend. 632 ; Champlin v. Rowley, 13 ib. 258 ; Morgan v. Birnie, 9 Bing. 672 ; Patmore v. Colburn, 1 C. M. & Ros. 65 ; Huffman v. Bulmer, 2 C. & P. 510 ; Turner v Robinson, 6 ib. 15 ; but see Oxendale v. Wetherell, 9 B. & C. 386 ; Chapel v. Hicks, 2 C. & P. 214 ; Cutler v. Close, 5 ib. 337.—Tindal.

BROADWAITE v. BLACKERBY, Comb. 465; 12 Mod. 163.

Denied per Buller, J., in Lane v. Wheat, 1 Doug. 313 n.; see Comerford v. Price, 1 Doug. 312.

BROCK v. COPELAND, 1 Esp. R. 203.

Ld. Kenyon ruled that a man had a right to keep a dog, used to bite, for the defense of his own premises; and no action would lie for an injury to the plaintiff in incautiously going into the defendant's yard after the gate was shut.

Distinguished from the case of Bird v. Holbrook, 4 Bing. R. 628, where it was held to be unlawful to set spring-guns.

BROCKAWAY v. CLARK, 6 Ohio R. 51.

See Rams v. Scott, 13 Ohio R. 115; Shelton v. Gill, 11 ib. 418; Commercial Bank v. Reed, ib. 498; Spalding v. Bank of Muskingum, 12 ib. 544; Graham v. Cooper, 17 ib. 605; 46 Ohio Laws, 55, s. 1.

BROCKLEBANK v. MOORE, cited 2 Stark. Ev. n. (n).

That a continuing guaranty is countermandable by parol.

Doubted. See Goss v. Lord Nugent, 5 B. and Adol. 66.

BROCKWAY v. THE PEOPLE, 2 Hill, 558.

Overruled, The People v. Erwin, 4 Den. 129.

BRODIE v. PAUL, 1 Ves. jun. 133.

Buller, J., said, that the same rule prevailed at law as in equity on the subject of part performance taking a case out of the statute.

Denied by Ld Eldon in Cooth v. Jackson, 6 Ves. 29; Kent, C. J., in Jackson v. Pierce, 2 Johns. R. 221; Kidder v. Hunt, 1 Pick. 328. Money expended by the plaintiff in execution of such contract may be recovered. So, the plaintiff recovered for trees cut down and carried away; the contract being executed. Teal v. Auty, 2 B. & B. 99.

BRODIE v. WHITFIELD, 2 Eng. R. 514.

Overruled, Wilson v. Dean, 5 Eng. R. 308.

BROGRAVE v. WINDER, 2 Ves. jun. 634.

Overruled in Cripps v. Wolcott, 4 Mad. 11. See Home v. Pillans, 2 M. & K. 15.

BROMAGHAN v. CLAPP, 5 Cowen, 297.

Reversed in Clapp v. Bromagham, 9 Cowen, 351.

BROOKBARD v. WOODLEY, Peake's C. 20. n. (b). cited in 2 Stark. Ev. 374 : 1 Phill. Ev. 490 *et seq.*

Evidence by *comparison of hands* is not admissible.

Denied in Lyon v. Lyman, 9 Conn. R. 61 *et seq.* See also notes to 1 Phill. Ev. 490 *et seq.* in notes.

BROOK v. SMITH, 1 Salk. 280.

Condemnation in foreign attachment, after action brought by the creditor against the trustee, cannot be given in evidence by the latter, under *non assumpsit.*

Contradicted by Savage's case, 1 Salk. 291.

BROOKE ABR. tit. Corporation, pl. 43 ; 22 Ass. pl. 67.

That an action of trespass will not lie against a corporation aggregate ; because *capias* and *exigent,* which are the proper process in an action of trespass do not lie against a corporation.

Denied in White v. City Council, 1 Hill's R. 570.

BROOKER v. COFFIN, 5 Johns. R. 188.

To charge a female with being a common prostitute is not actionable.

Opposed, Miller v. Parish, 8 Pick. 364 ; Woodbury v. Thompson, 2 N. H. R. 194 ; Frisbie v. Fowler, 2 Conn. 707.

BROOKES v. COOKE, 1 Show. 57.

That an executor cannot have an action *de jure suo proprio* for an escape of one in execution on a judgment obtained by him as executor.

Overruled in Bonafous v. Walker, 2 D. & E. 126.

BROOKING v. JENNING, 1 Mod. 174, 5.

Ch. J. Vaughan is reported to have said, "When an infant executor comes of age, the power of an executor *durante minore ætate* ceaseth ; and the next executor is then liable to *all* actions : if the *former* executor wasted, the *new* one hath his remedy against him ; but he is not liable to other men's suits ;" in which Atkins, J. is said to have concurred.

Denied in Thomas v. Riegel et al., 5 Rawle, 283 :—"In Freeman, 150, where the case is also reported, no mention is made of such opinion having been expressed by Ch. J. Vaughan." But see Jewett v. Jewett, 5 Mass. 275 ; 12 ib. 570.

BROOKS v. BROOKS, Poph. 126.

That in feoffments and grants, a party not named in the premises should not take by the habendum. But where a grant was to J. T. (the *cestui*

BROOKS v. BROOKS, Poph. 126—continued.

que trust) habendum to G. B. the trustee, the words of grant to J. T. were rejected as surplusage, and G. B. took by the habendum. Spyve v. Topham, 3 East, 115. See also Fisher v. Wigg, 1 P. Wms. 17.

BROOKS v. BRYCE, 21 Wend. 14.

Reversed, 26 Wend. 367.

BROOKS v. LOUIS. INS. CO., 16 Mart. R. 64.

Overruled in 17 Mart. R. 530. S. C.

BROOKS v. PARSONS, 1 D. and L. 691.

May now be considered as overruled.—Martin B., Humphreys v. Pearce, 7 Exch. R. 696; 14 Eng. R. 495.

BROOKS v. ROGERS, 1 H. Bl. 640.

A drew a bill of exchange in favor of C, who indorsed it to D; and before it became due, A became bankrupt and obtained his certificate. Payment being refused, C paid it to D, and was permitted in this action to recover it of A., notwithstanding his bankruptcy.

Overruled by Ld. Loughborough in *Ex parte* Seddon, and doubted in Cowley v. Dunlop, 7 D. & E. 565. See also Buckler v. Buttivant, 3 East, 71.

BROOKS v. WHITE, 1 Bos. & Pul. N. S. 330.

See Vaise v. Delival (post).

BROOK'S ABR. tit. Prop. 37, cites 47 Edw. III. 24.

That the ownership of bees is only *ratione soli.*

Doubted in Ross on Vendors, p. 176, 7:—"I think this passage in Brook will hardly be vouched to prove that a man cannot have a property in fish inclosed in a pond; though it will be as good an authority for that purpose, as to prove that the property of *all bees* must be *ratione soli.*"

BROOKS'S CASE, Poph. 126.

Overruled in Fisher v. Wigg, 1 P. Wms. 17.

BROOM v. DAVIS, 7 East, 480, in note.

Assumpsit for erecting a booth. The defendant proved that the booth fell down owing to bad materials and bad workmanship, and that the

BROOM v. DAVIS, 7 East, 480, in note—continued.

plaintiff was fully apprised of both. Buller, J., ruled that this was no defence to the action, especially as a particular sum was specified, and part of it paid; the remedy being by a cross action.

Overruled in Poulton v. Lattimore, 9 B & C. 259; Allen v. Cameron, 1 Cr. & Mee. 837; Taft v. Inhab. Montague, 14 Mass. 282. See also Smith's C. M. L. 313.

BROOME v. WOODTON.

See Higgins (post).

BROUGHAM & COOPER'S REPORTS.

Their authority questioned in 15 vol. Law Mag. p. 146.

BROUGHTON v. BBOUGHTON, 2 Ves. 12.

Ld. Kenyon as stated in Carey v. Askew, 8 Ves. 402, thought it wrong, but not to be disturbed. Sug. on Pow. 166. n. (1).

BROUGHTON v. HARPER, 2 Ld. Raym. 752.

Denied by Mr. Phillipps in his late and very excellent edition (8th Lond.), where he says:—"The note of this case is very short; and it is not stated for what reason the wife was considered incompetent on the second trial. The objection against her competency on the first trial was on the ground of interest; and, although at that time this ground of incompetency was not accurately defined, it is now clearly settled that such an objection could not be supported, and that it was properly overruled on the first trial. These authorities, therefore, it is evident do not support The case of The King v. Inhabitants of Cliviger, to the extent to which that case has gone; they certainly do not lead to the conclusion, that husbands and wives are not permitted to give any evidence, in collateral cases, that has *a tendency to criminate.*" (See Phil. Ev. 163 to 168.)

BROUWER v. HARBECK, 1 Duer, 114.

Reversed, April, 1854.

BROWN—See *Ex parte* Brown.

BROWN, *In re*, 2 Story, 502.

Questioned in Bowen v. Newell, 4 Selden, 194.

BROWN'S CASE, 1 Ventr. 243; 1 Phill. Ev. 78; and 2 Stark. Ev. 402, 403.

It is said by Ld. Hale, that had the woman lived with her husband *de*

BROWN'S CASE, 1 Ventr. 243, etc.—continued.

facto any considerable time, and assented to the marriage, by a free cohabitation, she should not have been admitted as a witness against her husband; although such husband had taken her away and married her contrary to her will.

Doubted in 4 Bl. Com. 269; 1 East's P. C. 454, Wakefield's case, 2 Russ. 605; 2 Stark. Ev. 402 n. (2d ed).

BROWN v. ALLEN, Vern. 31.

Doubted, it seems, by Ld. Hardwicke in Lewin v. Lewin, 2 Ves. 415; and Gibson, C. J. in 3 Pen. R. 386, says, "is reported in Vern. 31, briefly and unsatisfactorily."

BROWN v. BARRY, 3 Dall. R. 365.

S. P. as in Read v. Adams (post).

BROWN v. BETTS, 13 Wend. 29.

Disapproved in Birdsall v. Phillips, 17 Wend. 464; and see Morewood v. Hollister, 2 Selden, 309.

BROWN v. BYRNE, 3 El. & B. 703; S. C. 26 Eng. R. 247.

"The marginal note of that case in Ellis & Blackburn is not correct." Alderson, B.; Cuthbert v. Cummings, 29 Eng. R. 458.

BROWN v. DAUKES, Cro. El. 11.

The words "thou art a pillory knave," held actionable.
Contradicted by Smith's case, Cro. El. 31.

BROWN v. DUNCAN, 10 B. & C. 93.

A distinction is drawn between cases in which the contract violates a law designed for the protection of the public, and those in which it violates a law merely designed for the protection of the revenue; in the former cases only is the contract void.

Doubted. See De Begnis v. Armistead, 10 Bing. 107; Laughton v. Hughes, 1 M. & S. 596.—"What is done in contravention of the provisions of an act of parliament cannot be made the subject of an action." See also Duvergier v. Fellows, 10 B. & C. 826; Little v. Poole, 9 B. & C. 192. And a penalty implies a prohibition. See judgment of Tindal, C. J. in De Begnis v. Armistead (supra).

BROWN v. FARRAN, 3 Ohio R. 151.

See Chesnut v. Shane, 16 Ohio R. 599.

BROWN v. GILLIES, 1 Chit. R. 372.

The rule for the allowance of bail was discharged, with costs to be paid by defendant, on an affidavit that the bail had perjured himself, on his justification, in swearing that an action, in which he had been bail, had been compromised.

Overruled in Eaglefield v. Stephens, 2 Dowl. Pr. R. 438.

BROWN v. HENCHMAN, 9 Johns. 75.

Denied in Teroy v. Fargo, 10 Johns. 114 (3 Wend. 390), the Court saying "that in making the former decision they did not advert to an amendment of that section of the act for the better securing of debts, &c., made in 1810."

BROWN v. HICKS, 1 Ark. R. 240.

Restricted to the particular state of facts disclosed by that case. Hemphill v. Hamilton, 6 Eng. Ark. R. 425.

BROWN v. KIMBALL, 25 Wend. 259.

Is not to be considered as settling the law beyond the particular facts of that case. Northrop v. Wright, 7 Hill, 476.

BROWN v. LONDON, 1 Ventr. 152; 1 Lev. 298; 1 Mod. 285.

That indebitatus assumpsit would not lie upon the acceptance of a bill of exchange.

Contradicted by Heylin v. Adamson, 2 Burr. 674; Bishop v. Young, 2 B. & P. 78.

BROWN v. LOW.

See Harvey v. Chamberlain (post).

BROWN v. PHILPOT, 2 M. & R. 285.

Disapproved in Smith v. Braine. 3 Eng. R. 379; 15 Jur. 287.

BROWN v. POCOCK, 2 Russ. & Mylne, 210.

Reversed on appeal in S. C. 2 Myl. & K. 189.

BROWN v. QUILTER, Amb. R. 719.

Where the lessee has covenanted to repair (accident by fire excepted), and the house having been burned, the lessor being insured, and *having received the insurance money*, has neglected to rebuild, an injunction has

BROWN v. QUILTER, Amb. R. 719—continued.

been granted against an action at law by the lessor for the rent, till the house should be rebuilt.

Overruled in Hare v. Groves, 3 Anst. 687; Holtzapffell v. Baker, 18 Ves. 115. See the note in Mr. Eden's valuable ed. of Ld. Northington's decisions, vol. 11, p. 219. See also Leed v. Cheetham, 1 Sim. 146.

BROWN v. SCOTT et al., 1 Dall. 146.

That arbitrators in distinct suits have a right to consolidate.

Overruled in Groff v. Musser et al., 3 S. & R. 262.

BROWN v. SMITH, 1 N. H. R. 38.

Overruled in Kimball v. Adams, 3 N. H. R. 183.

BROWN v. THE STATE OF MARYLAND.

Said to stand by itself, and not to reach any case except just such an one as itself. Crow v. The State of Mo., 14 Mo. R. 338.

BROWN v. TIERNEY, 1 Taunt. 517.

If a ship be warranted free of capture or seizure in port or ports, capture by an enemy's ship while the vessel insured is lying in an open road outside of an harbor, is not within the warranty.

Mansfield, C. J. in Levy v. Vaughan, 4 Taunt. 387, said this case was very much shaken by the case of Dalgleish v. Brooke, 15 East, 306.

BROWN v. WOTTON, Cro. Jac. 73.

A judgment and execution in behalf of a person concerned in the same trespass, were a bar.

Overruled in Sheldon v. Kibbe, 3 Conn. 214.

BROWN v. WOTTON, Cro. Jac. 73; Yelv. 67; Moore, 762.

The action was trover for certain plate; and the defendant pleaded a judgment against J. S. and had him in execution for the damages. The plaintiff demurred; and judgment for the defendant; the court holding that the damages being uncertain, and having been reduced to certainty by the recovery in the first suit, this took away the action against the defendant in the subsequent suit.

Overruled in Livingston v. Bishop, 1 Johns. R. 290 (8 Cow. 44), where it is clearly shown, that the bringing separate actions for a joint trespass and separate recoveries, the plaintiff may elect *de melioribus damnis*, since there can be but one satisfaction. The plaintiff having made one election shall not resort to another judgment; at the same time the *property* in

BROWN v. WOTTON, Cro. Jac. 73, etc.—continued.

the article is not changed without satisfaction. See Sheldon v. Kibbe, 3 Conn. 114; Bard v. Fisk, 8 Blackf. 482.

BROWNING v. HANFORD, 7 Hill, 120.

Reversed, 5 Den. 586.

BROWNING v. WRIGHT, 1 Bos. & Pul. 21.

The dictum of Ld. Eldon, who says that the words "grant, bargain, sell, enfeoff, and confirm" import a covenant in law:—

Admitted, as applied to an estate for years; but denied in his own application of them to a deed in fee. Per Kent, C. J. in Frost v. Raymond, 2 Caines' 195. See authorities there cited; and Gratz v. Ewalt, 2 Bin. 95.

BROWN'S REPORTS (Chancery).

"These cases are generally considered as too shortly taken; and that may be accounted for by the brief manner in which Ld. Thurlow pronounced his decrees, seldom giving his reasons for his decisions." Bridg. Leg. Bib. 40.

BROWN'S APPEAL, 1 Dall. 311.

Doubted in Sterret's Appeal, 2 Penn. R. 421: "There is some omission of the facts of that case."

BRO. REPLEADER, 6.

"Debt v. A. B. nuper de Bristol," &c. denied to be law. 1 Str. 312.

BRUNDELL v. PRICE, Finch, 365.

"From the reports in which they [the above case] are found, and the position they affirm, they are not entitled to any great attention." Per Sir W. Grant, in Richards v. Cil, 10 Ves. 580, and see Paget v. Paget.

BRUNDRIDGE v. WHITCOMB, 1 D. Ch. 180.

Overruled in Leavenworth v. Lapham, 5 Vt. Rep. 204. See Adams v. Bliss, 16 Vt. R. 42.

BRYAN v. HORSEMAN, 4 East, 599.

"The cases on the statute of limitations have gone an enormous length. There has never been such another case as that cited." Per Mansfield, C. J. in Mucklow v. St. George, 4 Taunt. 613.

BRYAN v. LEWIS, 1 Ryan & M. 384.

Overruled in Hebblewhite v. McMorine, 5 M. & W. 462.

"In the absence of any legislative prohibition, I concur with Maule,

BRYAN v. LEWIS, 1 Ryan. & M. 384—continued.

Baron, in Hebblewhite v. McMorine, that the doctrine laid down in Bryan v. Lewis is against all law, and against all commercial convenience." Vanderpoel, J. in Stanton v. Small, 3 Sand. 238.

BRYANT v. RITTERBUSH, 2 N. H. R. 212.

Limited, Cochrane v. Wheeler, 7 N. H. R. 202.

BUCHANAN v. OCEAN INS. CO., 6 Cowen R., 318.

S. P. as in Juhel v. Church (post).

BUCKLAND v. TANKARD, 5 Term R. 578.

Which was a suit by an indorsee against an acceptor, and the defendant called the drawer, who had also indorsed it in blank, and proposed to prove by him that the plaintiff had no interest in the bill, as the drawer had put it into his hands merely to receive payment from the acceptor. Lord Kenyon rejected him at the trial on the ground of interest: This opinion was affirmed by the court.

Overruled in Birt v. Kershaw, 2 East, 461; Phill. p. 55; Stark. p. 301; Ridley v. Taylor, 13 East, 175; Gregory v. Dodge, 14 Wend. 605, 6, and 13 Mass. 210. See opinion of Senator Tracey in Gregory v. Dodge, dissenting.

BUCKLE v. ALLEO, 2 Vern. 37.

Doubted in Rush v. Higgs, 4 Ves. 643. Ld. Eldon:—"The case in Vernon is very singular. How can there be a bill against all the creditors? Has that case ever been followed?"

BUCKLE v. MITCHELL, 18 Ves. 110; 1 Mad. Ch. 271.

That a voluntary conveyance, however free from actual fraud, is by 27 Eliz. fraudulent and void against a subsequent purchaser for a valuable consideration, though the purchaser had notice of the prior voluntary conveyance.

Denied in Cathcart v. Robinson, 5 Pet. 266—Marshall, J. Way v. Lyon, 2 Black. R. 76; see Villers v. Beaumont, 1 Vern. 100, where the grantor at an ale-house, voluntarily, on a little scrap of paper under his hand and seal settled an estate upon his cousins: *Held*, that the Court will not loose the fetters he has voluntarily put upon himself; he must lie down under his own folly. The case of Aundell v. Phillpot, 2 Vern. 69; Clavering v. Clavering, ib. 473; Burgett, 1 Ohio R. 478; Bunn v. Winthrop, 1 Johns. Ch. 329; Souverby v. Arden, ib. 240; Randall v. Phillips, 3 Mason, 378—all tend to show that the legal title is suffered to remain where it is found; and in cases where persons claim under title purely voluntary if there is no fraud, the one having the eldest title has the estate at law, and will hold against subsequent grantees, both at law and in equity.

BUCKLER v. ANGEL, 1 Lev. 164; 1 Ld. Raym. 124.

Doubted. Mr. Lawes (Tr. on Assump. p. 88 :)—" There are several different reports of the case cited; and it seems to be uncertain what the ultimate determination of the court was." See his observations. See also 3 Mass. R. 160; 4 ib. 451, and Candler v. Rossiter, 10 Wend. 487.

BUCKNELL v. BLENHORN, 5 Hare, 131.

Doubted and dissented from, Collard v. Sampson, 22 Law J. R. N. S. Ch. 729; 17 Jur. 569, 641; 21 Eng. R. 352.

BUCKWORTH v. THIRKELL, 4 Dougl. 323.

Doubted in Co. Litt. 241 a. note (4); Doe v. Hutton, 3 B. & P. 653, —Ld. Alvanley; Sug. on Powers, 35; Am. ed. (21). But see Moody v. King, 2 Bing. 447, and cases cited. Best, C. J. said, " Whatever conveyancers might have thought of the case when it was first decided, they have since (40 years) considered it as having settled the law, and it would be productive of much confusion to unsettle it again."

BUCKWORTH v. THIRKELL, 3 Bos. & Pull. 652 n.

Kent's Commentaries, volume iv. (6 ed.), p. 48 [49], note d, is as follows: The cases of Sammes v. Payne, 1 Leon. 167; Goldsb. 81; Flavill v. Ventrice, Viner's Abr. vol. ix. 217; F. pl. 1; Sumner v. Partridge, 2 Atk. 47, and Buckworth v. Thirkell, 3 Bos. & Pull. 652 *n.* are ably reviewed by Mr. Park [Park on Dower], and the latter case, though decided by the King's Bench in the time of Lord Mansfield, after two successive arguments, is strongly condemned as being repugnant to settled distinctions on this abstruse branch of law. [Effect of conditional limitation on dower.]

BUCKWALTER v. THE U. STATES, 11 S. & R. 193.

Duncan, J.—" Statutes of Amendment do not extend to penal actions." Doubted in Spicer v. Rees, 5 Rawle's R. 123.

BUDDLE v. WILLSON, 6 T. R. 369.

In an action of the case on the custom of the realm against a carrier, defendant may plead in abatement non-joinder of partners.

Overruled in Anson v. Waterhouse, 2 Chit. R. 1; Govett v. Radnidge, 3 East, 70.

BUFFUM v. TILTON, 17 Pick. 510.

Questioned, Morrow v. Huntoon, 25 Verm. (2 Deane) 14.

BUFKIN v. EDMUNDS, Cro. Eliz. 527.

That a previous demand of arrears of a rent charge was necessary to the maintenance of an action of debt to recover it.

Denied in Boyer v. Ake, 3 Pen. R. 464, by Kennedy, J.

BULKLEY v. KETELTAS, 4 Sand. 450.

Reversed 2 Selden, 384.

BULKLEY v. LANDON. See Thomas v. Dening.

BULL v. PALMER, 2 Lev. 165.

Overruled in Henshall v. Roberts, 5 East, 150; Bollard v. Spencer, 7 T. R. 358. See 1 Ld. Raym. 437. And denied in Kline v. Guthart, 1 Pen. R. 493, 4.—Gibson, C. J.:—"There is, indeed, a series of recent English decisions on this subject, arranged in 1 Saund. on Plead. and Ev. 496, which like many others, lessens, if it does not extinguish, our regret at the act which prohibits the reading of British precedents, subsequent to the date of our Independence, as authority in our courts. It may be safely affirmed that the recent decisions of the English judges have done more to unsettle the law in the United States, than have all the American decisions together. The archtype of the series alluded to, is the apochryphal case of Bull v. Palmer, just mentioned, the principle of which has been extended in Cowell v. Watts, 6 East, 405, to an action for the price of goods sold by the executor; yet if a bond had been taken for the price, it could have been recovered, according to Hosier v. Arundel, 3 B. & P. 7, and two cases still later, only by the obligee in his own right; and thus is the mere evidence of the debt and not the nature of it, made the criterion of the right! In fact, the difference in this respect, between a bond and a note, is expressly recognized in Partridge v. Court, 5 Price, 512. It requires but another step to authorize an executor to enter into trade with the assets, and contract responsibilities in a representative character. Into such miserable inconsistencies do they fall, who forsake the beaten paths of the common law.

BULL. N. P. 5.

It is sufficient to prove the substance of the words.

Overruled. Rex v. Berry, 4 T. R. 218.—2 Phil. Ev. 236 *n.* (4)

BULL. N. P. 26.

That in an action for criminal conversation, damages are properly increased or diminished by the rank or quality of the plaintiff.

Denied in Norton v. Warner, 9 Conn. R. 174.—Peters, J., who says—

BULL. N. P. 26—continued.

"This *dictum* has been echoed from Buller to Blackstone, from Blackstone to Espinasse, and from Espinasse to Swift."—It may be doubted even in England, and *a fortiori* in this country, where it is considered a self-evident truth that all are created free and equal."

BULL. N. P. 45.

S. P. Brenan v. Cament, Say. 224.—"No person can in any case retain, where there is a *special agreement*; because then, the other party is personally liable."

Denied in Raitt v. Mitchell, 4 Camp. 150, note; Hutton v. Bragg, 2 Marsh. R. 339.

BULL. N. P. 180.

If a debt, barred by the statute of limitations, be pleaded, the plaintiff may reply to the statute. If it be given in evidence on notice, it may be objected to at the trial.

Denied, 2 Wend. 294. See 16 ib. 461.

BULL. N. P. 225; Roll. Abr. 683, pl. 13.

If an action or information be brought upon a penal statute, and there is another statute which exempts or discharges the defendant from the penalty, this latter act cannot be given in evidence under the general issue, but ought to be pleaded.

Denied in Dwarris on Statutes, p. 632; 2 Phil. Ev. 165.

BULL. N. P. 255; Gilb. Ev. 104.

That in an ancient deed, if there be any blemish in the deed, by rasure or interlineation, the deed ought to be proved, though it were above thirty years old, by the witnesses, or at least one of them; and also the hand of the party, in order to encounter the presumption arising from the blemishes in the deed.

Denied in Bailey v. Taylor, 11 Conn. R. 531.

BULL. N. P. 284.

"A trustee shall not be a witness to betray the trust."

Denied in Gres. Eq. Ev. p. 282 note (*e*).

BULL. N. P. 295.

That evidence of the character of an attesting witness, who has deceased, is not admissible.

Overruled in Provis v. Reed, 5 Bing. 435.

BULLER & CRIPS, cited 1 Com. Dig. 191.

Overruled in Grant v. Vaughan, 3 Burr. 1516.

BULPIT v. CLARKE, 1 N. R. 56.

Overruled in Short v. Hubbard, 2 Bing. 349; 9 Moore, 667; 10 Moore, 107.

1 BULSTR. 177.

That "*from the date*" includes the day; but that "*from the day of the date*" excludes it.

Overruled in Pugh v. Duke of Leeds, Cowp. 714.

BUNBURY'S REPORTS.

"Mr. Bunbury never meant that those cases should be published: they are very loose notes." Per Ld. Mansfield, 5 Burr. 2658.

BUNN v. RIKER, 4 Johns. R. 426.

S. P. as in Juhel v. Church (post).

BURD v. SMITH, 4 Dall. 76.

Denied. Gibson, C. J. says (in Jenks v. Parry, 5 Rawle, 225),—"Indeed, the reasons of the judges are so indistinctly set forth in that case, the discrepance of their views is so remarkable, as to render it of little value as a precedent."

BURDICK v. GREEN, 18 Johns. R. 14.

That the issuing of the writ was the commencement of the suit in all cases where the time is material; as to save the statute of limitations.

Explained in Rose v. Luther, 4 Cowen, 161; the mere filling up the process is not the commencement: it must appear that it was made and sent to the sheriff or his deputy by mail or otherwise, with a *bona fide* and absolute intention of having it served.

BURGES v. LAMB, 16 Ves. jun. 174.

Report is erroneous. "The court has not gone farther than protecting what is planted or growing for ornament," &c.; whereas the words of Ld. Eldon were, trees—"planted and growing or standing" for ornament. Magennis v. Fallon, 2 Moll. 588.

BURGESS v. MERRILL, 4 Taunt. 468.

Overruled in Slocum v. Hooker, 13 Barb. 536.

BURGES v. PLAYER, 1 Freem. 467.

Overruled in Gutliffe v. Dunn, Barnes, 56. See Kyd on Awards, 263.

BURHAUS v. VAN ZANDT, 7 Barb. 91.

Reversed, 3 Selden, 523.

BURKE, or BOURKE v. BOURNE, 2 Dowl. Pr. R. 250.

Overruled in Call v. Thelwell, 3 Dowl. Pr. R. 443.

BURKE v. MILLER, 6 Blackf. 155.

Adverse to Jones v. Stevens, 11 Price, 235.

BURLINGAME v. BURLINGAME, 7 Cowen, 92.

Overruled in King v. Brown, 2 Hill, 485.

BURNETT v. LYNCH, 5 B. & C. 589.

The testimony of the subscribing witness to a lease was dispensed with. It was an action by a lessee against the assignee of a lease, the plaintiff having proved the execution of the counterpart of the lease, the defendant put in the original, which was produced by a party to whom he had assigned it: *held*, that it was not necessary for the plaintiff to call the subscribing witness to prove the execution of a lease. Abbot, C. J. saying,—"It was proved at the trial that the plaintiff's testator had executed a lease, and that the plaintiffs, his executors, had assigned that lease to the defendant, and that the latter had executed a deed by which that lease was again assigned to one Daniel, which deed so executed by Lynch recited the lease which had been granted to the testator of the plaintiffs. That recital was, as against Lynch, abundant evidence of the existence of the original lease."

Explained by Bayley, B. in Wright v. Tatham, 2 Ad. & El. 3:—"The language of the Ch. Justice in Burnett v. Lynch, shows that case was an exception from the general rule."

BURROW'S REPORTS.

Ld. Eldon in 19 Ves. jr. 19—"Speaking with all due deference, but with due anxiety for the information of those whom these books are written to instruct, I cannot help saying, this is not the only instance, how extremely difficult it is to rely upon the circumstances stated as the reasons of the judgment." Burrow's Reports were not published till nine years after the decisions with which they commence were given; and they contain but a small part of the cases decided by jury and in *bank*; the whole number being about 800 annually; or about 25,000 for the thirty-two years during which Ld. Mansfield was Chief Justice.

BURROWS v. VANDEVIER, 3 Ohio R. 383.

See 42 Ohio Laws, 18, s. 1.

BURTON v. AUSTIN, 4 Vt. R. 105.

"It is not intended to say that there may not be reasons arising out of the language of our statute for sustaining the decision in Burton v. Austin; and perhaps it is now too late to question its authority. But, for the reasons already given, I do not think it ought to be extended to embrace cases not coming strictly within its doctrine." Beach v. Beach, 20 Vt. R. 89.

BURTON v. HINDE, 5 T. R. 174.

Held, that a freeman could not prove the title of a corporation to a rent, which was reserved to the use of the whole corporation.

Opposed, Rex v. Mayor of London, 2 Lev. 230; Show. 146; Rex v. Netherthong, 1 M. & Sel. 337; Falls v. Belknap, 1 Johns. 386; Bloodgood v. Jamaica, 12 ib. 285; Jackson v. Com. of Hillsborough, 1 Dev. & B. 177.

BURTON v. ROBINSON, 1 T. Raym. 124; 1 Sid. 246, S. C.

Overruled in Herbert v. Waters, 1 Salk. 206. See also Cheney's case, 10 Rep. 119 b.

BUSH v. BATES, 5 Burr. 2260.

Judgment of nonsuit and for costs, and debt brought on this judgment, and special bail insisted on, as not being within 12 G. 1, c. 29, but refused.

Overruled in Lewis v. Pottle, 4 D. & E. 570.

BUSH v. BRADLEY, 4 Day's Ca. 304.

It is said—"Seisin is necessary in their (English) law, and nothing but ownership in ours."

Denied in Chalker v. Chalker, 1 Conn. R. 87, 8.—Trumbull, J. delivering the judgment of the court. "It is a mistake to suppose from this, that our courts have arbitrarily discarded the rules of the common law on this subject."

BUSH v. PROSSER, 13 Barb. 221.

Reversed, 1 Kernan, 347.

BUSH v. ROYAL EXCH. ASSU. CO., 2 B. & Ald. 72 (5 B. & A. 171.)

That the underwriters are liable for a loss by any of the perils insured against, the remote cause of which is the negligence of the master.

Opposed to Grim v. Phœnix Ins. Co., 13 Johns. 451; 8 Mass. 308; 9 ib. 446.

BUSH v. STEINHAM, 1 Bos. & Pul. 404.

Doubted in Laugher v. Pointer, 5 B. & C. 547, by Abbott, C. J. and Littledale, J.; Holroyd & Bayley, JJ., dissenting.

The cause of action against a master in such case arises from his employing a careless or a mischievous servant, 11 Mass. 57. It would seem, therefore, that in a case like the above, defendant is not answerable; *causa propinqua, non remota, spectator.*

Doubted, Overton v. Freeman, 16 Jur. 65; 21 Law J. Rep. N. S. C. P. 52; 8 Eng. R. 479.

BUSHELL v. PASMORE, 6 Mod. 218.

That in all cases of special pleas of *non est factum*, without any distinction, as *per fraud*, lunacy, delivery as an escrow, erasure, &c. the proof rests on the defendant.

Doubted in 5 Bac. Abr. 373, as to the case of an escrow. But see Union Bank of Maryland v. Ridgely, 1 Har. & G. 417, *et seq.*

BUSKIN v. EDMUNDS, Cro. Eliz. 415, 535.

Badly reported, Haldane v. Johnson, 22 Law J. R. N. S. Ex. 264; 17 Jur. 937; 8 Ex. R. 689; 20 E. L. & E. R. 500.

BUSSARD v. CAPEL, 4 Bing. 137.

Opposed to Capel v. Bussard, 8 B. & C. 141; 3 Y. & J. 341.

BUSSEY v. BARNETT, 9 M. & W. 312.

"That case went to the very verge of the law." Smith v. Winter, 21 Law J. Rep. N. S. C. P. 158; 10 Eng. R. 507; Williams. J., and see Littlechild v. Banks, 7 Q. B. Rep. 739; 14 Law J. R. N. S., Q. B. 356.

BUSSFIELD v. BUSSFIELD, Cro. Jac. 577, 8.

Held, that an arbitrator had no authority, without a special provision, in the submission for that purpose, to award costs.

Overruled in Alling v. Munson, 2 Conn. 691. See Malcolm v. Fullarton, 2 T. R. 645; Wood v. O'Kelly, 9 East, 436; M'Laughlin v. Scott, 1 Binn. 61; Strong v. Ferguson, 14 Johns. 161.

BUTLER & BAKER'S CASE, 3 Rep. 30; Co. Litt. 299; Winchester's case, 3 Rep. 5; Back v. Andrews, Prec. in Chan. 1, S. C.; 2 Vern. 120; 2 Eq. Ca. Abr. 230. Adopted Jackson v. Stevens, 16 Johns. R. 110.

BUTLER & BAKER'S CASE, 3 Rep. 30, etc.—continued.

Husband and wife cannot take by moities, during the coverture; and he has no power to sever the jointure, nor to dispose of any part of the land; for the reason that the husband and wife are one.

Denied in Whittlesey v. Fuller, 11 Conn. R. 337.—Williams. The husband and wife take as joint tenants, and consequently the husband alone can convey his interest:—In Connecticut, "deeds or devises of land to husband and wife, have been considered as vesting the estate conveyed in the same manner as to other persons."

BUTLER v. DAMON, 15 Mass. 223.

The court say that the indorser of a negotiable note shall not be received to show facts antecedent to the transfer, whereby the holder is to be defeated of his recovery.

Limited in Churchill v. Suter, 4 Mass. 156,—"not be received as a witness to prove it originally void." But it has been held, that in an action by indorsee against the maker, the indorser is competent to prove facts which existed before the transfer, not proving the note void. Adams v. Carver, 6 Greenl. 390. S. P. 17 John. 176.

BUTLER v. HASKELL, 4 Desaus. R. 652.

Doubted in M'Cants and wife v. Bee et al. 1 M'Cord, 390. Curia, Nott, J.—"Although I believe the decision of that particular case did not give general satisfaction, yet I am of opinion that upon an impartial examination it will not be found so reprehensible as has been generally supposed."

BUTLER v. MALISSY, 1 Str. 76.

That in case on a joint and several note, declaration that the defendant *et al. conjunctim vel divisim* promised, is bad.

Overruled in Rees v. Abbott, Cowp. 832.

BUTLER v. MILLER, 1 Den. 407.

Questioned, 1 Coms. 496.

BUTLER v. MOORE.

See Rex v. Sparkles (post).

BUTLER v. PLAY, 1 Mod. 27.

It was thought, that it would be sufficient to charge the drawer, if notice of the dishonor of a bill were given to him even at the end of two months, if he had sustained no damage by the delay.

BUTLER v. PLAY, 1 Mod. 27—continued.

Overruled in Leftley v. Mills, 4 T. R. 174; Anon. Ld. Raym. 743; Coleman v. Sayer, 2 Stra. 829; Muilman v. D'Eguino, 2 H. Bl. 365; Williams v. Smith, 2 B. & A. 496.

BUTLER v. SWINERTON (Lady), Cro. Jac. 657.

Better reported in Palm. 339 and 2 Roll. R. 286. See Woodhouse v. Jenkins, 9 Bing. 431.

BUTLER v. The MAYOR OF NEW YORK, 1 Hill, 489.

Reversed, 7 Hill, 329.

BUTLER v. WARREN, 11 Johns. R. 57.

The court considered the admission of an interested witness to prove the service of a notice on the defendant to produce a paper in his possession on the trial, preparatory to giving evidence of the contents of the paper, as an infraction of the rule of law which precludes the admission of an interested witness to give evidence.

Overruled in Jackson v. Frier, 16 Johns. 193.

BUTTERFIELD v. FORRESTER, 11 East, 60.

"This case has been somewhat questioned, perhaps it may be said, criticised, certainly in the later cases in England and America." Robinson v. Cone, 22 Vt. R. 221.

BUTTERFIELD v. HOWELL, 3 N. H. R. 201.

Questioned in Stevenson v. Mudgett, 10 N. H. R. 340; Merrill v. Russell, 12 ib. 79.

BUTTS v. COLLINS, 10 Wend. 399.

Reversed in 13 Wend. 139.

BUTTS v. PENNY, 2 Lev. R. 201.

"That trover lies for *Negroes*, being usually bought and sold among merchants, as merchandise, and also being infidels, there might be a property in them sufficient to maintain trover."

Denied in Forbes v. Cochran, 2 B. & C. 448. Best, J., said—"I am aware of the case in Levinz, but this question was never decided; and if it had, in the case of Smith v. Gould, 2 Ld. Raym. 1274; 2 Salk. 666, the whole court declared the opinion there not law."

BUTTS v. SWARTWOOD, 2 Cowen, 432 note, and supp. note, p. 572.

Held at nisi prius that persons who deny any future punishments might testify.

Denied in Atwood v. Welton, 7 Conn. 75—Daggett, J., who says it is opposed to Jackson v. Tuttle, 18 Johns. 98.

BUXTON v. BEDAL, 3 East, 303.

Overruled in 3 M. & Selw. 178; 6 Taunt. 11; 5 B. & Ald. 613; 2 C. & P. 159; see Pinner v. Arnold, 2 C. M. & R. 613; 1 Tyr. & G. 1.

BYINGTON v. GEDDINGS, 2 Ohio R. 228.

Overruled, Rhodes v. Lindley, 3 Ohio R. 51.

C.

CAINES v. MARLEY, 2 Yerg. R. 582.

If a gift is in writing, delivery of possession is not essential.

Opposed, Cotteen v. Missing, 1 Madd. Ch. R. 176; Morris v. Owen, 2 Call. R. 432.

CALDWELL v. CASSIDY, 8 Cow. 272, 3.

The Ch. J. said that in case of a note payable on demand at a certain place (a bank note for instance), a demand would be necessary to sustain an action.

Denied in Haxtun v. Bishop, 3 Wend. R. 20, 21, by the same C. J., who says, a "holder of a bank note previous to suit need not make a demand of a note payable *on demand at the bank;* but if the bank is solvent, a defence will be made out, which will subject the plaintiff to costs. So, too, upon a bank note payable generally on demand, the commencement of a suit is a demand."

CALLAGHAN v. AYLETT, 2 Campb. 549.

If a bill of exchange be accepted payable at a certain place, in an action against the acceptor the plaintiff must prove a demand at the place where it became due.

Overruled, Fenton v. Goundry, 13 East, 459; see Lyon v. Sundius, 1 Campb. 423; Wild v. Rennards, ib. 425; Nicholas v. Bowes, 2 Campb. 498.

CALLIS, 103.

Overruled in The Inhabitants of Outwell, Style, 192, as to the point that the commissioners of sewers may make new banks, walls, fences, &c.

CALVERLY v. PHELP, 6 Mad. 229.

The principle of making the *cestui que trust* parties was carried in Calverly v. Phelp, further than it had been before: much further than other judges had carried it. The soundness of that decision was not universally assented to. Bifield v. Taylor, 1 Moll. Ch. R. 196.

CALVERT v. ROBERTS, 3 Camp. 343.

Held, that the alteration of even an accommodation bill after acceptance, and whilst in the hands of the drawer, invalidated it.

Overruled in Downes v. Richardson, 1 D. & R. 332; 5 B. & Ald. 674, S. C. Johnson v. Gibbs, 2 Chit. R. 123; Sherrington v. Jermyn, 3 C. & P. 374.

CALYE'S CASE, 8 Coke, 32.

Liability of Innkeepers.

Explained in Smith's Lead. Cas. 50.

CAMBRIDGE v. ANDERTON, 1 Car. & P. 215; 2 B. & C. 697, S. C. in note.

Bayley, J.—"I take the legal principle to be, that if by any perils within the policy, the ship ceases to retain the character of a ship, the party may sell her, and recover as for a total loss, without any abandonment."

Overruled in Roux v. Salvador, 1 Bing. N. C. 526. See Gordon v. Mass. F. & M. Ins. Co. (post).

CAMDEN v. MORTON, cited 18 Ves. 118; 2 Eden, 219.

Questioned and overruled, Hare v. Groves, 3 Anstr. 687, and Holtzapffel v. Baker, 18 Ves. 115.

CAMPBELL v. ARNOLD, 1 Johns. 511.

That lessor cannot maintain trespass *quare clausum fregit* for an injury done to the land while in possession of tenant at will, &c.

But the contrary is settled in Massachusetts, Starr v. Jackson, 11 Mass. 524.

CAMPBELL v. LEACH, Ambl. 749.

Ld. Redesdale doubted that part of this case which attributes to Ld. Ch. J. De Grey the opinion that the remainder-man could not enforce the contract of the tenant for life, with power to lease, &c. See 1 Sch. & Lefr. 65.

CAMPBELL v. SANDYS, 1 Sch. & Lef. 281.

Denied by Mr. Sugden,—Sug. on Pow. p. 245 n. (1),—as to Ld. Redesdale doubting the doctrine of Ld. Hardwicke, &c. that executors and administrators may take as special occupants.

CAMPBELL v. TWENLOW, 1 Price, 81; approved by Park, J. in Batthews v. Galindo, 4 Bing. 610.

Ld. Kenyon ruled, that a prisoner who called a woman his wife during a trial, was estopped from calling her as a witness upon the same trial.

Doubted by Mr. Phillipps in his Treat. on Ev. 173—(5th Am. ed.)

CAMPBELL'S REPORTS.

Mansfield, C. J. in 5 Taunt. 195, 6, said—"Whoever looks through Campbell's Reports, will be greatly surprised to see among such an immense number of questions, many of them of the most important kind, which came before that noble and learned judge (Ld. Ellenborough), not that there are mistakes, but that he is in by far the most of the causes so wonderfully right beyond the proportion of any other judge."

CANAL BOAT HURON v. SIMMONS, 11 Ohio R. 458.

Considered, Lewis v. Schooner Cleaveland, 12 Ohio R. 341.

CANAL COMMISSIONERS, &c. v. TIBBITS, 6 Cowen, 518, note.

Reversed, 5 Wend. 423.

CANNING v. DAVIS, 4 Burr. 2417.

Burrow, in his index, states, "Variance—between declaration and process: 1st. An executor suing out process as executor may declare in his own right;" &c.

Denied, Meggs v. Ford, 4 Dougl. 266, and n. (c).

CANTON v. BENTLEY, 11 Mass. R. 441.

Said not to be law in Connecticut, Middletown v. Lyme, 5 Conn. R. 98.

CANTY v. SUMTER, 2 Bay, 93.

Held, on the authority of Walton v. Shelly, that the obligee in a bond, who had assigned it, could not be admitted, in an action thereon by the assignee, to prove payment.

CANTY v. SUMTER, 2 Bay, 93—continued.

Overruled in Croft v. Arthur, 3 Desaus. R. 223; and now confined to negotiable paper. 3 M'Cord, 71 n.

CAPEL v. BUTLER, 2 Sim. & Stu. 457.

Denied in Miller v. Gibson, 1 Moll. 502.

CAPET v. PARKER, 3 Sand. 662.

See Smith v. Moffat, 1 Barb. 65.

CARLISLE v. LONGWORTH, 5 Ohio R. 371.

Swan's Statutes, 928, s. 85; Turney v. Yeoman, 14 Ohio R. 207.

CARLOCK v. SPENCER, 2 Eng. R. 12.

Overruled, McGough v. Rhodes, 7 Eng. R. 626.

CARPENTER v. NIXON, 5 Hill, 260.

The reasoning in support of these cases is not satisfactory. Crawford, J. in Wilson v. The State, 1 Smith (Wisconsin) R. 193.

CARPENTER v. STEVENS, 12 Wend. 589.

"The decision in Carpenter v. Stevens is plainly inconsistent with the prior decision of the same court in Rowley v. Gibbs, 14 John. 385. Duer, J. in Suydam v. Jenkins, 3 Sand. S. C. R. 644. "The inferences that have been stated, seem to follow in a logical sequence; and if the decision in Carpenter v. Stevens were admitted to be law, we should find it difficult to resist them. But this admission we cannot make. The decision is one of those which, we regret but are constrained to say, we cannot follow. It appears to us to be wrong in principle, and it is plainly contradicted by many authorities."

CARPENTER v. STILLWELL, 12 Barb. 128.

Reversed, 1 Kernan, 61.

CARR v. BROWN, 7 Bing. 508.

Overruled in Combe v. Woolf, 8 Bing. 156; *giving time discharges surety or guarantee.*

CARR v. HOOD, 1 Camp. R. 355.

Best, C. J., in Thompson v. Shackell, 1 Mo. and M. 188, said that he did not go quite as far as Ld. Ellenborough; because he thought that no personal ridicule of the author was justifiable.

CARR v. KING, 12 Mod. 372.

Held, that mere proof of prior cohabitation was *prima facie* sufficient evidence to charge the husband.

Overruled in Hindley v. Westmeath, 6 B. & C. 200.

CARROLL v. FARMERS' LOAN AND TRUST CO., 5 Barb. 613.

Contra, Mumford v. Amer. Life Ins. Co. 4 Coms. 463.

CARROLL v. NORWOOD, 5 Har. & J. 163.

Denied in Pennington v. Bordley, 4 Har. & J. 466.—Johnson, J. dissenting, who said:—"And to take away from the judgment in the case of Carrol v. Norwood, its binding authority, it may be remarked that it was bottomed on the case of Thompson v. Brown (1 Har. & J. 335), which had been decided by the general court in 1803, and that, too, at a time when that case had five years before been reversed by this court. The case, then, of Carrol v. Norwood, was made to rest on a decision which had been overruled when Carrol v. Norwood was determined."

CART v. REES, 1 P. Williams, 381.

S. P. as in Betts v. Kempton (ante).

CARTER. See *Ex parte* Carter.

CARTER v. DE BRUNE, Dick. 39.

Service of a subpœna out of Chancery on a person who transacted business for defendant under a general power, held good.

Denied in Smith v. Hibernian Mine Co., 1 Sch. & Lefr. 238, 240.

CARTER v. HAMILTON, 11 Barb. 147.

Reversed, April, 1854.

CARTER v. MURRAY, 5 Johns. Ch. 522; Jones v. Pengree, 6 Ves. 580; Duff v. East India Co. 15 Ves. 198; Barber v. Barber, 18 Ves. 179, 185.

That open accounts, though they be between merchant and merchant, are barred, where the last item is beyond the time of limitation.

Opposed, Mandeville v. Wilson, 5 Cranch, 15; Watson v. Lyle, Same v. Robinson, 4 Leigh R. 249.

CARTER v. THE PEOPLE, 2 Hill, 317.

Overruled, The People v. Gay, 3 Selden, 378.

CARTHEW'S REPORTS.

Carthew was "a reporter of no great merit." (1 Woodes. 495.) "He had a very imperfect way of reporting." 3 ib. 99.

CARTHEW'S REPORTS—continued.

Lord Thurlow, in the case of the Bishop of London v. Fytche (1783), said, "Carthew and Comberbach were equally bad authority."—Clarke's Bib. Leg. 355; yet Lord Kenyon, 2 T. R. 776:—"in general, is a good reporter;" and Willes, C. J. (Willes, 182): "Carthew is, in general, a very good and a very faithful reporter."

CARTWRIGHT v. BLACKWORTH, 1 Dowl. Pr. C. 489.

That an award, that a verdict for a sum certain should be entered for the plaintiff, is tantamount to an order that the defendant shall pay so much to the plaintiff.

Overruled in Donlan v. Brett, 2 Ad. & El. 344. See also, Jackson v. Clark, 1 McClel. & Y. 200; S. C. 13 Price, 208.

CARTWRIGHT v. GREEN, 8 Ves. 435; 2 Leach, 952.—Lord Eldon.

"If a pocket book is left in a hackney coach, and the coachman did not know to whom it belonged, he acquired it by finding, certainly; but, not being entrusted with it for the purpose of opening it, this is felony according to the modern cases."

Opposed, People v. Anderson, 14 John. 294; Porter v. State, 1 Martin & Yerger, 226.

CARUTHERS v. CARUTHERS, 4 Bro. C. C. 500.

The language of Lord Alvanley in Caruthers v. Caruthers, gives color to the doctrine that the intended wife not under disability may by anterior agreement, in equity contract herself absolutely out of dower. If that be so, it is a new equity. Power v. Sheil, 1 Moll. Ch. R. 312.

CARY v. HOTALING, 1 Hill, 311.

Opposed to Roberts v. Randel, 3 Sand. 707.

CASBERD v. WARD, 6 Price, 411.

Doubted in Giles v. Grover, 1 Clark & Fin. 101, 2.—Alderson: "And it is said by Mr. Baron Wood, 8 Price, 318, that the *liberate* and the *fi. fa.* are equivalent to each other; but I think that proceeds on a mis-statement of the true point in the case."

CASE v. MACKS, 3 Ohio, 305 [2 Hammond, 169].

"The case of Case v. Macks is a case not reconcilable with the rule laid down above, nor with any well-considered case, unless it be that of Leam v. Bray (3 East, 593), and is opposed to the general current of authority on the subject of water navigation." Claflin v. Wilcox, 18 Vt. R. 611.

CASE v. DAVIDSON, 5 M. & S. 79; 2 Bro. & B. 379, S. C.; 8 Price, 559.

That the underwriter on the ship, after an abandonment, is entitled to the whole freight of the voyage then in the course of being earned, as incident to the ownership of the ship, without distinction between the portion of the freight, whether earned as a *pro rata* freight antecedent to the abandonment, or that earned afterward.

Opposed Hammond v. Essex Fire Ins. Co., 4 Mason, 196, 201, and cases cited.

CASE v. MARK, 2 Ohio R. 342.

See 42 Ohio Laws, 72, s. 4.

CASE OF THE DEAN AND CHAPTER OF FERNES, Davies R. 121.

That a corporation could not do any thing without deed.

Overruled in the Bank of Columbia v. Patterson, 7 Cranch, 299; Fleckner v. U. S. Bank, 8 Wh. 338; 9 ib. 738.

CASE OF THE GRATITUDINE, 3 Rob. Adm. R. 274.

It was doubted whether the master could, in any case, bind the owners beyond the value of the ship and freight.

Opposed to such doubt, Cary v. White, 1 Bro. P. C. 284; James v. Bixby, 11 Mass. 34; Milward v. Hallett, 2 Caines' R. 77.

CASES TEMP. NOTTINGHAM.

Said, per Ld. Hardwicke, that the book of "Reports of Cases in Equity in Ld. Nottingham's Time" was of no authority. 1 Wils. 162. See 3 Atk. 334.

CASHMERE v. DE WOLF, 2 Sand. 379.

Opposed to Frith v. Crowell, 5 Barb. 209.

CASS v. ADAMS, 3 Ohio R. 223.

Explained in Reynolds v. Rogers, 5 Ohio R. 173.

CASTLE v. BURDETT.

See Rex v. Aderly (post).

CATERER v. DEAN, 19 Law J. R. N. S. Q. B. 326.

"I am not, however, desirous of avoiding the reconsideration of that case whenever a fitting opportunity shall arise." Coleridge, J., Mills v. Best, 19 Law J. R. N. S. Q. B. 328; and see Lewis v. Forsyth, 20 Law J. R. N. S. Ex. 25; 1 Eng. R. 465.

CATHCART v. LEWIS, 1 Ves. jr. 463.

The case of an assigned judgment.—Story, J., in 4 Mason, 42 :—"Here also, there are no circumstances stated in the report, enabling us to ascertain the nature of the assignment."

CATLIN v. GUNTER, 1 Duer, 253.

Reversed, 1 Kernan, 368.

CATOR'S CASE.

See Goodtitle v. Braham (post).

CATTERIS v. CAMPER, 4 Taunt. 547 note; 2 Saund. 111.

"The rule is stated a little too broadly by the reporter in his note to this case in Taunton." Brewster v. Striker, 1 Smith, 339.

CAVE v. CAVE, 2 Vern. 508.

Ld. Hardwicke said he had ordered the Register to be searched, and that as the case is there stated it is impossible there could be that question in the cause which the book states. 1 Atk. 556.

CAVERLY v. DUDLEY, 3 Atk. 541.

This case is treated very lightly by Ld. Eldon in Jones v. Harris, 9 Ves. 494, who says of it, "as to Caverly v. Dudley, if I am to decide on such grounds, I may decide just what I please."

CAWDREY AND TETLEY'S CASE, Godb. 441, citing Palmer's case (Palmer v. Boyer), Cro. Eliz. 342; Comyn's Dig. Action on the case for defamation, D. 13 to D. 27, and F. 8 to F. 10.

Limited in Ayre v. Cravan, 2 Ad. & Ell. 2; and holding that in actions of slander for words spoken of a physician, the declaration ought not merely to state that such scandalous conduct (words imputing adultery to the plaintiff) was imputed to the plaintiff in his profession, but also to set forth in what manner it was connected by the speaker with that profession.

CAWLIN v. LAWLEY, 2 Price, 12.

Denied in Kemp v. Sumner, 2 Y. & J. 405.—Hullock, B.

CECIL v. SALISBURY, 2 Vern. 224.

It is not law. There are few reporters so inaccurate as Vernon. Russell v. Russell, 1 Moll. Ch. R. 526.

CHADWICK v. THE PROPRIETORS of HAVERHILL BRIDGE, 2 Dane's Abr. 686.

Doubted in Day et al. v. Stetson, 8 Greenl. R. 368.—Weston.

CHAMBERLAIN v. GORHAM, 20 Johns. 144.

Reversed, 20 Johns. R. 746 : Held, that a notice, with the plea, of the matters to be given in evidence, is sufficient, if it contains a statement so as to prevent the plaintiff from being taken by surprise.

CHAMBERS v. FUREY, 1 Yeates' R. 167 ; Saville, 11 pl. 29.

Held, that the owner of a ferry has no right to land his boats on the public road.

Opposed to Peter v. Kendall, 6 B. & C. 703.

CHAMBERS v. GEORGE, 5 Litt. 335.

In Chambers v. George, the opinion as printed has the expression "payable in the *money* of this State." But in this there is a typographical error, and the expression ought to be "payable in the *currency* of this State."

M'Chord v. Ford, 3 Monroe Kent. R. 166, 167.

CHAMBERS v. GRIFFITHS, 1 Esp. 150.

Overruled in Roots v. Dormer, 4 B. & Ad. 77 ; James v. Shore, 1 Stark. 426. See also 2 M. & Keene, 706.

CHAMBERS v. JONES, 11 East, 408, S. P. as in Griffith v. Eyles (post.)

Overruled in the Middle Dist. Bank v. Deyo, 6 Cowen, 735, *et seq.*

CHAMBER'S LANDLORD AND TENANT, p. 591.

"If the lessor enter *without ousting* the tenant, although he damages the premises *irreparably*, it will not be a sufficient entry to suspend the rent."

Doubted. See Bennet v. Bittle, 4 Rawle, 344.

CHAMBERS v. ROBINSON, 1 Str. 691.

Denied in (2 Wils. 249) by Lord Camden who said, "that there seemed to be but one case before his time where a new trial was granted in actions for *torts*, and that was the case of Chambers v. Robinson (1 Str. 691), where the jury gave £1000 damages in an action for a malicious prosecution." The court, he added, were free to say, *that* case was not law. See also Coleman v. Southwick, 9 Johns. 45. Graham on New Trials, p. 444.

CHAMP v. ARDERY, 9 Marshall, 247.

"This case is a solitary one upon the point, and seems to have been decided upon 'first blush,' without a reference to any authority to sustain it, and in effect has been subsequently overruled by subsequent decisions. * * We regard the principle settled in the case of Champ v. Ardery, in effect overruled in the case of Myers v. Bishop, 1 Monroe, 110." McCoy v. Martin, 4 Dana Ken. R. 583; 584.

CHAMPLIN v. BUTLER, 18 Johns. 169.

See Webb v. Rice, 6 Hill, 219.

CHAMPLIN v. HAIGHT, 10 Paige, 274.

Reversed, 7 Hill, 245.

CHAMPLIN v. PETRIE, 4 Wend. 209.

Overruled, Sheldon v. Erie, Common Pleas, 12 Wend. 268.

CHAMPNEYS v. PECK, 1 Stark. R. 404.

The plaintiff in order to prove the delivery of his bill as an attorney, proved the death of D., who had been his clerk, and produced the bill, with an indorsement on it in the handwriting of the clerk; and having proved the existence of the indorsement at his death, &c., the evidence was admitted.

Doubted. Stark. Ev. p. 313 n (b); "The ruling of Ld. Ellenborough in this case has been questioned more than once, but I am not aware that it has been expressly overruled."

CHANCE v. ISAACS, 5 Paige, 594.

"Not entitled to the force of a judicial decision, and not founded upon any adjudged case." Keep v. Lord, 2 Duer, 83.

CHANCELLOR v. POOLE, Dougl. 764.

Doubted in Steward v. Wolveridge, 9 Bing. 60.—Gaselee and Bosanquet, JJ.

2 CHAN. CASES.

"Most of these cases grossly misreported"—Said by Ld. Loughborough, 1 H. Bl. 332.

However, Ch. Kent (1 Kent. Com. 458), says—"The report of some cases in the 3d and last vol. of the reports in chancery, and the great case of the Duke of Norfolk, and the case of Bath and Montague, at the conclusion of the cases in chancery, are distinguished exceptions to this complaint."

2 CHAN. CAS. 244.—Powell on Mort. 1043; 2 Swift's (Conn.) Dig. 197.

That on a bill of foreclosure, the title cannot be investigated.

Denied in Palmer v. Mead, 7 Conn. R. 160, by Dagget, J. See Corning v. Smith, 2 Selden, 82.

CHANCEY v. NEEDHAM, 2 Strange, 1081.

Denied by Ld. Kenyon, 7 T. R. 20. "But if correctly reported there, it does not warrant the proposition which Archbold (2 Arch. 14) has extracted from it, that in no one case will the court allow judgment to be entered upon a warrant of attorney after the death of the defendant, and which Mr. Graham, in his Practice, p. 620, has adopted. (Per Savage, Ch. J. in Nichols v. Chapman, 9 Wend. 454).

CHANDELOR v. LOPUS, Cro. Jac. 4; cited 2 Croke, 2, and Esp. N.P. 629.

The case of a bezoar stone, sold by one skilled, to one unskilled in precious stones, *ubi revera*, it was of inferior value: and held that no action would lie, without a *scienter* laid and proved, or an express warranty, &c.

Denied, Bradford v. Manly, 13 Mass. 143.

And in Smith's Lead. Cases, p. 78.

CHANDLER v. BELDEN, 18 Johns. 157.

Questioned. See Raymond v. Tyson, 17 How. 61.

CHANDLER v. PARKES & DANKS, 3 Esp. R. 76; Jaffray v. Frebain, Wilson v. Black, 5 Esp. 47.—Kenyon and Ellenborough.

In a joint action on a joint contract, and one defendant pleads infancy, the plaintiff cannot enter a *nolle prosequi* against the infant and proceed against the others:—he was bound to begin *de novo*.

Overruled in Hartness et al. v. Thompson et al., 5 John. R. 160; Woodward v. Newhall et al., 1 Pick. 500. (Noke v. Ingham, 1 Wils. 89.) But see Burgess v. Merrill, 4 Taunt. 468.

CHANEL v. ROBOTHAM, Yelv. 68.

If in trover, a bond is called goods, it is a fatal defect.

Overruled. Dyer, 5, b. n. Cook v. Bossinger, 4 Mod. 156. Anon. 1 P. Wms. 267.

CHAPMAN'S CASE, cited 1 Stra. 129.

Lord Parker rejected the testimony of a witness who merely considered himself bound in honor to pay a sum of money according to the event, or to contribute to the expenses of the suit.

Overruled. 1 Phil. Ev. 50; Parker v. Whitby, 1 T. R. 372; Poderson v. Stoffles, 1 Camp. 144. But Parsons, C. J. (in Plumb v. Whiting, 4

CHAPMAN'S CASE, 1 Stra. 129—continued.

Mass. 511), observes:—"If a witness would testify under the impression of an interest, which he honestly believes he has in the event of the suit, he cannot be sworn."

CHARNLEY v. WISTANLEY, 5 East, 270, 271. 1 Chitty on Pleading, 243, 445.

A mere prayer of judgment, without pointing out the appropriate remedy, is sufficient; and, the facts being shown, the court *ex-officio* is bound to pronounce the proper judgment.

The reverse of this rule is the principle of the law of Canada; where the conclusions are held to be essential to the proceedings, and must contain, *a peine de nullitie*, all that the judgment of the court must comprehend. Forbes v. Atkinson, 1 Pyke, 40.

CHARLESTON v. FINNEY, 1 Sid. 215.

S. P. as in Cowper v. Towers (post).

CHATFIELD v. PAXTON, 2 East, 471.

Doubted in Bilbie v. Lumbie, 2 East, 471 n.—Ellenborough.

CHATFIELD v. SOUTER, 3 Bing. 167; 10 Moore, 572.

The court will not stay proceedings in a writ of right, until the costs of a prior ejectment are paid.

Opposed. Bowyear v. Bowyear, 2 Dowl. Pr. C. 207.

CHATAUQUE CO. B'K v. WHITEBarb. 589.

Reversed, 2 Selden, 236.

CHEDWICK v. HUGHES, Carth. 465.

Holt, C. J. says, it was the opinion of all the judges in England, upon debate between them, that in civil cases the court cannot allow a juror to be withdrawn, without the consent of all the parties.

Denied in The People v. Judges of New York, 8 Cow. 130. "The authority of that dictum is rendered rather questionable, by what appears in Foster, 36."

CHEETHAM v. TILLOTSON, 2 Johns. R. 63.

Reversed on a writ of error in 5 Johns. 430; and deciding that after an interlocutory judgment by default, and damages assessed on a writ of inquiry, on which judgment was rendered in S. C.; and the declaration containing two distinct counts, the second of which being bad for want of sufficient averments, and entire damages given on the whole declaration,

CHEETHAM v. TILLOTSON, 2 Johns. 63—continued.

the judgment below was erroneous:—and in S. C. 4 ib. 500, held that all amendments may be made in this court; but after joinder in error, neither party can allege diminution, or pray a *certiorari*.

CHEYNE v. KOOPS, 4 Esp. 112.

Ld. Alvanley seems to have been of opinion that mutual releases executed would not make the partner offered as a witness competent.

Overruled, Wilson v. Hirst, 4 B. & Ad. 760.

Overruled, Beckett v. Wood, 6 Bing. N. C. 380.

CHIDLEY v. LEE, Prec. in Chan. 228.

"I must own I think that was an extremely hard case, and I believe I should have been inclined to determine it otherwise." Per Ld. Hardwicke in Wood v. Bryant, 2 Atk. 521.

CHILD v. BAYLIE, Cro. Jac. 459.

A *grant* or devise of a *term* made to one for life, remainder to another, is good.

Denied in N. Carolina, Morrow v. Williams, 3 Dev. R. 263.

CHILDS v. MONINS et al. 2 Bro. & B. 460.

Held, that a promissory note, by which the makers, as executors, jointly and severally promise to pay on demand, renders them personally liable.

Opposed to Schoonmaker v. Roosa, 17 Johns. R. 301; Ten Eyck v. Vanderpool, 8 ib. 120.

CHIPMAN'S ESSAY ON CONTRACTS, 7, 96.

In a plea of tender of specific articles on the day and at the place, &c. the defendant must aver in his plea that he is *still ready* (*tout temsprist.*)

Denied in Lamb v. Lathrop, 13 Wend. 97.

CHIRAC et al. v. REINICKER, 11 Wheat. R. 280.

Explained in S. C. 2 Pet. R. 622. *et seq.*

CHITTY ON BILLS, p. 160.

"The rule that a bill or note payable upon a contingency is invalid as such, extends also to cases where the bill or note is absolute on the face, but rendered contingent by a contemporaneous endorsement, or even by a written memorandum on a detached paper." *Held*, this is not warranted by the authorities. Smalley v. Bristol, 1 Manning Mich. R. 154.

CHITTY ON CONTRACTS, 228.

Void by statute.

"A statute is like a tyrant; where he comes he makes all void."

Denied in No. 20 Amer. Jurist (Oct. 1833) p. 242. See Norton v. Simmes (post).

CHITTY ON CONTRACTS.

The rule laid down in Chitty on Contracts, that if one party to an agreement was never bound on his part to do the act which forms the consideration for the promise of the other, the agreement is void, for want of mutuality is too broadly stated. Lamoreux v. Gould, 4 Selden, 349.

CHITTY ON CONTRACTS, 378–9.

Opposed to Andrews v. Durant, 1 Kernan, 44.

1 CHIT. CR. LAW, 223.

"Where the time for the prosecution is limited as under 7 W. 3, ch. 3, which provides that no prosecutions shall be had for certain reasons therein mentioned, unless the bill of indictment be found within three years after the crime is committed, the time, as averred in the indictment, should appear to be within the limit."

Denied in the People v. Santvoord, 9 Cow. 660.

1 CHIT. CR. LAW, 393, 4.

Denied by Mr. J. Woodward, in The People v. Vermilyea, 7 Cowen, 121; "All the elementary writers with the exception of Chitty, lay down the proposition broadly, that if a juror has declared his opinion beforehand, it is a good cause of challenge."

CHITTY'S EQUIT. DIG. vol. 2.

"The note of Whittingham v. Burgoyne in 2 Chit. Eq. Dig. is too imperfect to enable us to see on what principle it stands." Thomas v. Phillips, 4 Sme. & M. 429.

CHIT. PL. v. i. p. 4; 7 Am. ed. 7 a.

"A reference to the authorities which are cited by the author, will show that they do not sustain the rule, to the unqualified extent to which he lays it down." White v. Chouteau, 10 Barb. 208.

CHIT. PL. 622, 5th ed.

Lays it down as a general rule that in replevin the general form of a plea in bar, *de injuria*, &c. is inadmissible.

Denied in Selby v. Bardons, 3 B. & Ad. 2; see Bell v. Wardwell (ante).

1 CHITTY PL. 90.

Tenants in common may join or sever in an action on a contract relating to their estate, though they must sever in an avowry for rent.

Denied in Sherman v. Ballow, 8 Cow. R. 309. "The case of Harrison v Barnby, 5 T. R. 246, does not warrant such a proposition."

2 CHITTY PL. 156 note.—Arch. Pl. 170.

That in debt on bond the amount of the penalty or upwards should be inserted in the conclusion of the declaration where there is a special condition; and Archb. says it is usual to do so.

Denied in Allen v. Smith, 7 Hals. 169, by Ewing, C. J. who says—"Williams in his note, 2 Saund. 187 b. directs that the declaration should conclude not as in covenant, but as in debt, where the damages are in general formal and nominal only. 1 Chit. 360. The direction of Chitty has not been the rule of practice even in England. 3 B. & P. 607; 5 Wend. 490, 548; see Gould's Pl. p. 177.

2 CHIT. PL. 435.

Denied in Hughes v. Wheeler, 8 Cowen, 79, in respect to a negotiable security being pleaded specially in *discharge* of the action.

1 CHIT. PL. 509.

Where a plea is an answer to but part of a declaration, the plaintiff should take judgment as by *nil dicit* for so much as is not justified; and not demur.

Denied in Sterling v. Sherwood, 20 Johns. 254; 2 Wend. 421, and 13 ib. 80. "Since the case of Sterling v. Sherwood, &c. each plea must contain in itself an answer to the whole declaration, or to one count in the declaration, whichever it professes to answer."

1 CHIT. PL. 509. Saund. 28, n. 1, 2, 3.

If a plea begin only as an answer to part, and is in truth only an answer to part, the plaintiff can not demur, but must take his judgment for the part unanswered, as by *nil dicit.*

Decided differently in Sterling v. Sherwood, 20 Johns. 204; Hecock v. Coates, 2 Wend. 419; Slocum v. Despard, 8 ib. 615; and Etheridge v. Osborn, 12 ib. 402, 3.

CHUDLEIGH'S CASE, 1 Co. 121.

A leading case on contingent uses.

Reported better 1 Anderson, 309.

CHUDLEIGH'S CASE, 1 Rep. 120.

The doctrine of *scintilla juris.*

Doubted, Sugden on Pow. p. 22, 23: "Ld. Ch. J. Anderson's report (1 And. 309) of this case is indisputably the best"—"our surprise cannot fail to be excited at its ever having been considered as a decisive authority for the doctrine in question." "At most were mere *dicta* not in anywise necessary to the decisions of the court." Sug. on Pow. p. 31, 34.

CHUMAR v. WOOD, 1 Hals. R. 155.

Doubted. See Sterlinn v. Van Cleve, 7 Hals. 235.

CHURCH v. LEAVENWORTH, 4 Day R. 274.

Swift, C. J. said, "that verdicts were never conclusive, unless they are pleaded specially, by way of estoppel."

Denied in Kilheffer v. Herr, 17 S. & R. 324.—Rogers:

"The cases on which he relies do not support the position in the broad manner laid down," &c.

CHURCHILL v. SUTER, 4 Mass. R. 156.

The principle or rule of evidence settled here was, that no man shall, by his testimony, show that a contract which he himself has made and sanctioned by his name, and held out to the world as a valid one, is illegal, or has any secret taint, which will render it invalid in the hands of a third person. The promissor and first indorser were called to show that the note in its formation was usurious.

Opposed, Stafford v. Rice, 5 Cowen, 23. Bankof Utica v. Hillard, ib. 153. Tuthill v. Davis, 20 Johns. 285.

CHURCHMAN v. TUNSTALL, Hard. R. 162.

Overruled in Attorney General v. Richard, 2 Anst. R. 603; and Ld. Abinger in Huzzy v. Field, 13 Law J. 239; S. C., 2 Cromp. Meeson & Rosc. 432, goes farther, and informs us, that after the bill in that case was dismissed (which was a bill by a farmer of a ferry, as it should seem under the crown, for an injunction to restrain the defendant, who had lands on both sides of the Thames, three-quarters of a mile off, and who was in the habit of ferrying passengers across, from continuing to do so), another bill was brought after the Restoration, in 1663, and a decree made by Lord Hale in favor of the plaintiff, that the new ferry should be put down. Per Story, J. in Charles River Bridge, 11 Pet. 625. But see observations of Ch. J. Taney in S. C. p. 562, 3.

CLAPP v. BROMAGHAN, 5 Cowen, 295.

Reversed in 9 Cowen, 530.

CLAPP v. JOSLYN, 1 Mass. 129.

Denied in 4 Greenl. R. 145.—Mellen.

CLARE v. CLARE, Forrester R. 21.

Shaken in subsequent cases. Lyon v. Mitchell, 1 Maddock Ch. R. 467, 486.

CLARKE v. BAIRD, 7 Barb. 64.

Reversed, Dec. 1853.

CLARK v. BRADSHAW, 3 Esp. 155.

Ld. Kenyon held that these words "the plaintiff had paid the money for him 12 or 13 years before, but that he, the defendant, had since become a bankrupt, by which he was discharged, as well by *law* as equity, from the length of time," took the case out of the statute.

Denied in Perley v. Little, 3 Greenl. R. 101; Danforth v. Culver, 11 Johns. 147.

CLARK v. DAVEY.

See Rex v. Green (post).

CLARK v. HOUGHAM, 2 Barn. & Cres. 149.

Doubted in Bloodgood v. Bruen, 4 Selden, 362.

CLARKE v. LUCE, 15 Wend. 480.

Overruled in Bennett v. Brown, 4 Coms. 254.

CLARK v. MAYOR OF N. Y., 3 Barb. 288.

Reversed, 4 Coms. 338.

CLARK v. MERCHANTS' BK., 1 Sand. 498.

Reversed, 2 Coms. 380.

CLARKE v. PARKER, 19 Ves. 1.

Doubted it seems, in Holton v. Lloyd, 1 Moll. 33.

CLARKE v. PINNEY, 7 Cowen, 696.

When the action is brought without delay the rule of damages for breach of contract in not delivering articles, is the highest price at any time between the period for the delivery and the day of trial.

Denied in Kennedy v. Whitwell, 4 Pick. 466, and Parks v. Boston, 15 ib. 206, 207.

See Pinney v. Gleason, 5 Wend. 393; disapproved, Suydam v. Jenkins, 3 Sand. 614.

CLARK v. ROSS, Breese, 261.

Bowers v. Green, 1 Scammon, 42.

CLARK v. RUSSELL, cited 6 S. & R. 358.

S. P. as Read v. Adams (post).

CLARK v. SPENCE, 4 Adol. & El. 448; 31 Eng. Com. L. R. 107.

"The cases of Woods v. Russell and Clarke v. Spence were recognized in Laidler v. Burlingson, 2 Mee. & W. 602, though they were not followed, being inapplicable to the case then before the court. It cannot be denied that the decision in Clarke v. Spence covers the whole ground assumed by the defendant's counsel in this case, but it has never yet been followed in this country." Andrews v. Durant, 1 Kernan, 49.

CLARK v. SYRACUSE and UTICA R. R. CO., 11 Barb. 112.

Said to be "unquestionably unsound" in Jackson v. Burlington and Rutland R. R. Co., 25 Vermont (2 Deane) R. 162.

CLARKE v. TUCKER, 2 Vent. R. 183.

A corporation cannot impose a penalty for a breach of a by-law, to *be levied* by distress.

Denied in Company of Vintners v. Clerke, 5 Mod. 157.

CLARKE'S CASE, O. B.; 1 Moody C. C. 376.

No person can be convicted of stealing goods when they came into his possession by the delivery of the prosecutor's wife.

Overruled in Tolfree's case, 1 Moody C. C. 243; People v. Schuyler, 6 Cowen, 572.

CLARKSON v. DEPEYSTER, 3 Paige, 320.

Questioned, N. American Ins. Co. v. Graham, 5 Saund. 197.

CLARKSON v. HANWAY, 2 P. Wms. 203; 2 Hovenden on Frauds, 103; 1 Ves. 128.

That a deed cannot be supported by evidence of considerations different from those alleged in it.

Denied in Jackson v. Dougherty, 3 Watts' R. 151; Duval v. Bibb, 4 H. & M. 113; Eppes v. Randolph, 2 Call. R. 103; Harvey v. Alexander, 1 Rand. 219; Ballard v. Briggs, 7 Pick. 533. See 1 Maryland R. 208.

CLASON v. SHOTWELL, 10 Johns. 304.

Reversed in 12 Johns. 31.

CLAY v. FRY, 3 Bibb, 248.

Questioned in Thomas v. Phillips, 4 Sme. & M. 424.

CLAY v. SMITH, 3 Pet. R. 411.

Doubted in Agnew v. Lamb, 15 Pick. 422. Shaw, C. J.—"The case is very briefly reported, the facts are not fully stated, and no reasons are assigned. It does not appear whether the bankrupt law of Louisiana was deemed void, as repugnant to the constitution of the United States, which was the precise ground of the decision in Kimberly v. Ely, 6 Pick. 440."

CLAYTON v. ANDREWS, 4 Burr. 2101.

That executory contracts for sale of goods are not within the statute of frauds, sec. 17.

Overruled in Rondeau v. Wyatt, 2 H. Bl. 63. See also Chater v. Beckett, 7 D. & E. 201; Cook v. Tombs, Anstr. 420; Cooper v. Elton, 7 D. & E. 14.

CLAYTON v. ANDREWS, 4 Burr. 2101.

A contract to deliver wheat, which was then unthrashed; *Held*, that the statute of frauds did not apply.

Overruled in Garbutt v. Watson, 1 D. & Ry. 219; 5 B. & A. 613.

CLAYTON'S CASE, 5 Rep. 1; Bacon v. Waller, 1 Ro. 337; 2 Rolle Abr. 520. pl. 4.

"From the day of the date," held, to be exclusive, and to render the demise a lease *in futuro*, and consequently void.

Overruled Pugh v. Duke of Leeds, Cowp. 714. See Sug. on Pow. p. 210, 211 (Am. ed.) Lond. ed. 388. *et seq.*

See Meggot v. Mills.

CLEFOLD v. CARR, 1 Brownl. 137. 1st point.

Overruled in Aleway v. Roberts, 1 Sid. 188; 1 Lev. 38, S. C.

CLELLAND v. CLELLAND, Prec. Ch. 63.

Doubted, Creason v. Robinson, 11 Eng. R. 333; 14 Beav. 589; 21 Law J. R. N. S. Ch. 64; 15 Jur. 1049.

Disregarded and held the reverse in Creason v. Robinson, Rolls Court, Nov. 10, 1051.

CLENDENNING v. CHURCH, 3 Caines, 141.

Admits the validity of wager-policies,—which the courts in Massachusetts do not. 2 Mass. 1. See Juhel v. Church (post).

CLEMENTS v. SWAIN, 2 N. H. R. 475.

Overruled in Mathes v. Jackson, 6 N. H. R. 105, as it has been *supposed*. But, in Kitteridge v. Folsom, 8 ib. 113, the court say:—"We see no reason to depart from the doctrine of Clements v. Swain, and have had no intention to overrule it."

CLENNAN v. LETHWAITE, 2 Ves. jun. 465.

Parol evidence of the testator's intention is admissible to rebut a presumption; and is not to be confined to the time of making the will; but it must be to show the intention at that time only.

Overruled in Whitaker v. Tatham, 7 Bing. 628.

CLERK v. GILBERT, Hob. 331.

"Thou art a thief *and* hast stolen 20 loads of my furze"—held not actionable.

Denied in Wainright v. Whitley, Sty. 115; 3 Caines, 75, in margin.

CLERKE v. MARTIN, 2 Ld. Raym. 757; 1 Salk. 129.

Overruled in Grant v. Vaughan, 3 Burr. 1516.

CLERK v. WITHERS, 2 Ld. Raym. 1072; 6 Mod. 290; 1 Salk. 322.

Holt, Ch. J. said, that the sheriff was bound by the value of the goods returned.

Denied in Williams v. Cheesborough, 4 Conn. 360; Denton v. Livingston, 9 Johns. R. 96; Sly v. Finch, Cro. Jac. 514; See also Giles v. Grover, 1 Clark & Fin. R. 76.—Patterson.

CLEVELAND v. ROGERS, 6 Wend. 438.

Limited in Stiles v. Stewart, 12 Wend. 474:—"The rule laid down by the Ch. J. in Cleveland v. Rogers, so far, as the judgments of the Justice's Courts of this State are concerned, must be considered as confined to the case of an *avowry* or other pleading subsequent to the *declaration*.

CLEVELAND v. RODGERS, 1 Marsh. R. 193.

Doubted in Harrison v. Talbott, 2 Dana, 263. Robertson, Ch. J.;—"is vaguely and unsatisfactorily reported, and may appear to be rather anomalous."

CLEVELAND v. UNION, Ins. Co. 8 Mass. R. 308.

Ch. Justice not present, and Sewall dissented.

The master of a neutral ship, left the ship's register on shore; *held*,

CLEVELAND v. UNION INS. CO. 8 Mass. R.—continued.

that the underwriters were not liable for a loss by capture resulting from that negligence.

Opposed Walker v. Maitland, 5 B. & Ald. 171. See also Grim v. Phœnix Ins. Co. (post.) Waters v. The Merchants' Louisville Ins. Co., 11 Pet. R. 213.

Overruled, Patapsco Ins. Co. v. Coulter, 3 Peters, 222; Copeland v. New England Ins. Co. 2 Metcalf, 432.

CLEVERLY v. BRACKETT, 8 Mass. R. 150.

That where a creditor received from his debtor a personal chattel in pledge as collateral security for the debt, he could not attach other property for the same debt, without first returning the pledge.

Denied in Morse v. Woods, 5 N. H. R. 300.

CLIFFORD. See Lady Clifford (post).

CLIFFORD v. EARL of BURLINGTON.

See Lady Clifford (post).

CLOSE v. STUART, 1 Wend. 438.

Reversed, 4 Wend. 95.

CLOTHIER v. CHAPMAN, 14 East, 331 n.

Although evidence of reputation is received of the boundaries of parishes or manors, which are generally of remote antiquity, such evidence has been held to be inadmissible for the purpose of proving the boundary of a private estate.

Doubted Ellicott v. Pearl, 10 Pet. 412, by Story, J. who observes:—"The doctrine in America, in respect to boundaries, has gone further, and admitted evidence of general reputation, as to boundaries between contiguous private estates,"—*citing* 6 Binn. 59; 1 Pet. C. R. 496, 511, 512. See also Higley v. Bidwell, 9 Conn. R. 451.

CLOWES v. DICKENSON, 5 Johns. Ch. 235.

Reversed, 9 Cowen, 403.

CLUTE v. BOOL, 8 Paige, 83.

See Kane v. Gott, 24 Wend. 641; Arnold v. Gilbert, 5 Barb. 190; Cruger v. Cruger ib. 255.

CLUTE v. ROBINSON, 2 Johns. 595.

Ch. J. Kent said " that a covenant *to execute and deliver a good and sufficient deed* of a piece of land, did not mean merely a conveyance, good in point of form ; but an operative conveyance ; one that carried with it a good and sufficient title to the lands to be conveyed.

Denied Parker v. Parmelee, 20 Johns. 130, 132, *et seq.*—Spencer, C. J. " In the particular case, the opinion expressed was perfectly correct ; but we must remember that this case was on an appeal from the Court of Chancery ; — whether the same rule prevails at law is the question. *Held*, that " a good warrantee deed of conveyance," referred to the instrument of conveyance only, and not to the *title.*

COATES v. CHEEVERS, 1 Cow. 475.

See Collins v. Torry (post).

COBB v. CARR, cited Bul. N. P. 14.

Defendant's evidence of what he swore upon the trial of the indictment is evidence in the action for a malicious prosecution.

Denied 2 Stark. Ev. 496 n (L)

COBDEN v. KENDRICK, 4 Term, R. 432.

Doubted by Tindal, C. J. in 9 Bing. 644, 660 ; "If it can be supported as to this point, we think it can only be on the ground of fraud in the defendant." And Mr. J. Holroyd says (6 B & C. 679)—" If the money had been paid after proceedings had actually commenced, I should have been of opinion that, inasmuch as there was no fraud in defendant, it could be recovered back. This is the correct rule.

COBURN v. PICKERING, 3 N. H. R. 415.

Limited. Boardman v. Cushing, 12 N. H. R. 405.

COCKE v. BAKER, Str. 34.

Mutual promises to marry are within the statute of frauds.

Overruled in Harrison v. Cage, Ld. Raym. 386 ; 1 Salk. 24.

COCKERILL v. BARBER, 16 Ves. 461.

Doubted by Mr. Story, in Conflict of Laws, p. 260, citing Scott v. Bevan, 2 B. & Adol. 78 ; and it seems Delegal v. Naylor, 7 Bing. 460, is at variance with the decision.

COCKERILL et ux. v. KYNASTON, 4 T. R. 277.

Denied by Ld. Kenyon in Bollard v. Spencer, 7 T. R. 354. (Mann v. Baker, 5 Cow. 268.)

COCKING v. FRASER, Park, 114.

That if the articles mentioned in the memorandum at the foot of the policy specifically remain after the voyage, though damaged and worthless, the insurer is not liable.

Ld. Kenyon called this an *obiter dictum*, and said he could not subscribe to it. See Burnett v. Kensington, 7 D. & E. 210. And Ld. Alvanly said he was at liberty to consider the case of Cocking v. Fraser as less strong than it appears to be. Dyson v. Rowcroft, 3 B. & P. 474.

But the U. States courts have adopted the principle of this case. See Morceau v. U. S. Ins. Co., 1 Wheat. 219; 1 Caines, 196; 3 Caines, 108.

COCKS v. PURDAY, 5 C. B. 860.

"The point as to publication abroad is put too broadly there." Ld. Cranworth, Jeffreys v. Boosey, 30 E. L. & E. R. 15.

CODDINGTON v. BAY, 20 Johns. 637, and Roosa v. Brotherson, 10 Wend. 85; Stalker v. McDonald; 6 Hill, 93.

The holder of a negotiable note who receives it in payment of a precedent debt, takes it subject to all the equities existing between the original parties.

Doubted, it seems, 14 Wend. 575—Tracy, senator; and 11 Wend. 509—Beardsley, senator; and the contrary is expressly ruled in Brush v. Scribner, 11 Conn. 388.

In Fellows v. Harris, 12 Sme. & M. 466, Clayton, J. says, There is no point of commercial law upon which the cases are in more direct and irremediable conflict than upon this. He cites Coddington v. Bay; Stalker v. McDonald, and Wormley v. Lowrey, 1 Humph. 468; Ingham v. Vaden, 3 ib. 55, and continues: The Supreme Court of the United States holds the direct converse of the decisions in these cases. Tounsley v. Sumral, 2 Pet. 170; Swift v. Tyson. 16 ib. 1.

CODDINGTON v. WEBB, 4 Sand. 639.

Questioned, The People v. Compton, 1 Duer, 512.

COE v. DUFFIELD, 7 B. Moore, 252.

Richardson, J. said, not that the guarantee itself contained a consideration, but that the declaration might have been framed on the *first* letter, viz. that which was prior to the guarantee, and contained the terms on which the guarantee was to be given, and showed a sufficient consideration.

Denied in James v. Williams, 5 B. & Ad. 1113—Patteson, J.

COE v. TURNER, 5 Conn. R. 91.

Would seem to consider multifariousness, or improperly confounding together distinct matters in one bill, as bad on demurrer.

Denied in Fellows v. Fellows, 4 Cow. R. 682; 5 Paige's Ch. R. 77, so far as respects the principle that where a debtor conveys different portions of his property to several persons, in fraud of the rights of his creditors, a creditor who has obtained a judgment, and placed himself in a situation to enforce his right against the debtor and his fraudulent grantees, may file a bill against the grantor and all the grantees jointly; to reach the property conveyed to each, and have the same applied to his judgment. But it is otherwise, in a case where the complainants set up two distinct claims or grounds of action, in which the separate interests of the different defendants are not connected with, and do not rise out of, the single object of the suit.

COGAN v. EBDEN, 1 Burr. 385.

Denied in Little v. Larrabee, 2 Greenl. R. 40—Mellen, C. J.—" We have examined the case in 1 Burr. 385, which is relied upon by the counsel for the tenant. It does not appear to have ever received any final determination, so as to assume the authority of a decided case."

COGAN v. GRIER, 4 M'Cord R. 509.

Decides that the arrest of the body, under a *ca. sa.*, is a discharge of the lien of the *fi. fa.* in the same case.

Qualified in Walker v. Briggs, 1 Hill's R. 128.

COHEN v. GREER.

See Mairs v. Smith (post).

COIT v. HOUSTON, 3 Johns. C. 243.

Overruled, Russell v. Lyttle, 6 Wend. 390; Hawley v. Foote, 19 ib. 516; Brooklyn Bk. v. Le Grauw, 23 ib. 342; and see Slingerland v. Morse (post).

COKE.

" Who thinks that if he be no licensed chirurgeon or physician that occasioneth this mischance, that then it is felony; for physic and slaves were before licensed physicians and chirurgeons."

Denied in Rex v. Long, 4 C. & P. 114.

COKE LITT. 8.

"That if there be two sons subjects, the father an alien, if one of the

COKE LITT. 8—continued.

sons be seised of land and die, the other cannot inherit; because there was no inheritable blood between the father and the sons, and when the sons cannot be heir to the father, neither shall be heir to the other."

Denied in Collingwood v. Pace, 1 Ventr. 413. (Jackson v. Green, 7 Wend. 335, 7.)

COKE LITT. 45 b.

Where it is said that "term" signifies the estate and interest that passes, and never denotes the number of years or times, &c.

Overruled in Wright v. Cartwright, 1 Burr. 282.

COKE LITT. 161, a, n. 4, (IV.)

The earlier part of that note, strictly speaking, is certainly not law—Williams, J. Cotterill v. Jones, 7 Eng. R. 478; 21 Law J. R. N. S. C. P. 2; 16 Jur. 88.

3 COKE, 80—Jenk. Cent. 254—Vin. Abr. Usury, pl. 3, 4—Bac. Abr. Usury, E.—1 Hawk. P. C., c. 82, s. 50.

That a fine levied, and even a judgment recovered, in pursuance of an usurious contract, may be avoided by an averment of the corrupt agreement.

Denied in Flint v. Sheldon, 13 Mass. R. 451, 2.—Jackson, J., who says,—"As to a fine, in examining the books before mentioned, and tracing the proposition to its source, we find but one adjudged case on the point. That is the case of Dodd v. Ellington, in 1 Roll. R. 41, reported also in Brownl. & Gouldsb. 191, under the name of Barclay v. Ellington. This case at most, would prove that a mortgage, in which a fine is levied as part of the assurance to the mortgage, may be avoided for usury, as well as if made by any other mode of conveyance. See *Harning* v. *Castor*.

COKE LITT. 227 b. 3 Inst. 110; Carthew, 465.

That a jury, sworn and charged by the court, in case of life or member, and so in all cases of felony, cannot be discharged by the court, or any other; but they ought to give a verdict.

Overruled, Rex v. Edwards, 3 Camp. R. 207, and p. 209 note. The People v. Denton, 1 Johns. Ca. 275—301; State v. Woodruff, 2 Day's R. 504; Commonwealth v. Bowden, 9 Mass. 494.

COKE LITT. 299.

Butler & Baker's case, 3 Rep. 30; Winchester's case, 3 Rep. 5; Back v. Andrews, Prec. in Chan. 1 S. C.; 2 Vern. 120; 2 Eq. Ca. Abr. 230; Jackson v. Stevens, 16 Johns. 110.

Husband and wife cannot take by moieties during the coverture; and he has no power to sever the jointure, nor to dispose of any part of the land: each is seised of the entirety.

Opposed to Whittlesey v. Fuller, 11 Conn. 337. The husband and wife take as joint tenants in Connecticut.

COKE LITT. 352 b.

That no estoppel can be by recital.

Overruled in Lainson v. Tremere, 1 A. & E. 792; 2 ib. 278.

COKE v. MARTYN, 2 Atk. 3.

Dictum in, disapproved of. Byrne v. Frere, 2 Moll. Ch. R. 166.

COKE v. FOUNTAINE, 1 Vern. 413.

Doubted in Byrne v. Frere, 2 Moll. 162; the report was said to be unsatisfactory.

COKE'S REPORTS.

"The 12th part is not so accurate as the rest, not having been published by him, but from his notes after his death. Per Holroyd, J., 4 B. & A. 614. So Mr. Hargrave, 11 St. Tr. 40, says they were posthumous and loose collections of papers, neither digested nor intended for the press by the writer."

The precedents in Coke's Reports (as to slander) are beginning to be considered apocryphal. Bush v. Somner, 8 Harris, 162.

COLE v. DAVIES et al., 1 Ld. Raym. 724, 725.

Denied by Ld. Kenyon; 3 Term R. 261, 2:—"is a short note taken by Lord Raymond when he was very young; not even the name of the case is given." To the same effect, Ld. Mansfield, 1 Burr. 36. See also Garland v. Carlisle, 3 Tyrwh. R. 717.

COLE v. JESSUP, 2 Barb. 309; 9 ib. 309.

Reversed, April, 1854.

COLE v. PAIGE, 10 Paige, 583.

Post v. Bk. of Utica, 8 Paige, 640.

COLE v. SACKETT, 1 Hill, 516.

See Waydell v. Duer, 3 Den. 410; Elwood v. Diefendorf, 5 Barb. 398; Livingston v. Radcliffe, 6 Barb. 201.

COLE v. SAVAGE, 10 Paige, 583.

Questioned, Post v. Bk. of Utica, 7 Hill, 391; Vilas v. Jones, 1 Coms. 274.

COLEMAN v. SAYER, 1 Barnardiston, 303.

Questioned, Trask v. Martin, 1 Smith, 518.

COLEMAN v. WISE, 2 Johns. 165.

Overruled, Stafford v. Rice, 5 Cow. 23.

COLEMAN v. WOLCOTT, 4 Day, 388; Swift v. Stevens, 8 Conn. 431.

That the loss or destruction of an instrument is not a preliminary question for the court; and the plaintiff is incompetent to prove the fact; the practice in Connecticut being for the plaintiff to aver, that defendant made the note; that it is lost or destroyed; that it is unpaid;—and each of these facts is to be tried by the jury.

Opposed, Chamberlain v. Gorham, 20 Johns. 144; Donelson v. Taylor, 8 Pick. 390; Adams v. Leland, 7 ib. 62; Blade v. Noland, 12 Wend. 173, and cases cited.

COLE'S CASE, cited from Plowden, 1 Hale's P. C. 425.

"If a man give another a mortal stroke, and he dies thereof within a year and a day, but mesne between the stroke and the death there comes a general pardon, whereby all misdemeanors are pardoned, this doth pardon the felony consequentially, because the act, that is the offense, is pardoned, though it be not a felony till the party die."

Denied in case of Nicholas, Foster's Cr. L. 64; Commonwealth v. Roby, 12 Pick. 508, 9.

COLES v. BARROW, 4 Taunt. 754.

Doubted in Nias v. Adamson, 4 B. & A. 225—Best, J.: "And, besides, if Mr. J. Lawrence had continued in the Court of C. P., that decision would not have been pronounced. It is not, therefore, entitled to any great weight." The authority of that case is much broken in upon by the case of Hesse v. Stevenson, 3 B. &. P. 578.

COLES v. COLES, 15 Johns. 11.

Denied in Sigourney v. Munn, 7 Conn. 18, as to the opinion expressed

COLES v. COLES, 15 Johns. 11—continued.

obiter, "that the principles and rules of law, which govern and regulate the disposition of the partnership property, do not apply to real estate, even when held for the purposes of the partnership." Edgar v. Donally, 2 Mumf. 387, is an express decision against it.

COLES v. KENDER, Cro. Jac. 571.

"In the case of Lapells v. Chatterton, in 1 Mod. 67, and in Raymond, 190, it was said by Twisden that the law is altered since the Coles and Kender case." Peters v. Farnsworth, 15 Vt. R. 160.

COLES v. THE BANK OF ENGLAND, 10 A. & E. 437.

There were some strong observations on Coles v. The Bank of England, in Freeman v. Cook, 2 Exch. 660; Howard v. Hudson, 2 El. & B. 10; 75 Eng. C. L. R. 10.

COLES v. TRECOTHIC, 9 Ves. 246.

Ld. Eldon declared, that unless the inadequacy of price is such as shocks the conscience, and amounts in itself to conclusive evidence of fraud in the transaction, it is not a sufficient ground for refusing a specific performance. And Ch. J. Savage (3 Cow. p. 517), says, "To him may be added Sir William Grant, Ld. Keeper Wright, and probably some others who support the doctrine of Ld. Eldon.

Denied in Seymour v. Delancy, 3 Cowen, 446, 517, 572.

COLLAM v. HOCKER, 1 Rawle, 108, and Shepherd v. Watson, 1 Watts, 36.

That evidence to prove a mistake in the description, as that although a particular tract of land was included in the agreement or deed, yet the land which was in fact to be conveyed, was distinctly shown or pointed out to the vendee before the instrument was written, not admissible.

Overruled in Bowman v. Bittenbender, 4 Watts, 290; S. P. King v. Stubbs, 14 S. & R. 206; and Moon v. Gillespie. 2 Johns. Ch. R. 385.

COLLET v. COLLET, 2 Dall. 294.

Held, that naturalization was not confined to the United States; the States also might naturalize aliens.

Overruled in Golden v. Prince, 3 Wash. C. C. R. 313; Chirac v. Chirac, 2 Wh. R. 269.

COLLIER v. JOHNSON, 7 Ohio R. 235.

See 42 Ohio Laws, 29.

COLLEGE OF PHYSICIANS, Littleton's R. 212.

Held, though the time in a temporary law is expired, yet if it be continued, acts are to be laid as done by the last law.

Overruled in Dominus Rex v. Morgan, 2 Str. 1066; Shipman v. Henbest, 4 T. R. 109; Dingley v. Moor, Cro. Eliz. 750. But see Foster's case, 11 Co. 56.

COLLETT v. HAIGH, 3 Camp. 281.

Overruled in Fenton v. Pocock, 5 Taunt. 195. Mansfield, C. J.: "The case of Collett v. Haigh, must be considered not as a separate decision, but as resting on the authority of the former," (Laxton v. Peat). See Laxton v. Peat (post).

COLLINS v. BLANTERN, 2 Wils. 341.

Illegality may be pleaded as a defense to an action on a bond.

Limited and applied in Hill v. Manch. & S. W., 2 B. & Ad. 552; 2 B. & Ad. 874, S. C.

COLLINS v. BUTLER, 2 Str. 1087.

If the drawee has merely removed from the place where the bill represents him to reside, it is incumbent on the holder to use every reasonable diligence to find out where he is, and if he succeeds, to present it at that place.

Limited in Gillespie v. Hannahan, 4 M'Cord, 503.

COLLINS v. GRIFFITH, 2 Eq. Cas. Abr. 168.

That an obligee of a joint and several bond need not bring before the court all the co-obligors.

Overruled in Angerstein v. Clark, 2 Sw. 147.

COLLINS v. OUGLEY, before Lord Holt, in 9 Wm. 3; Selw. N. P. 1164.

"If goods were delivered to a manufacturer, he might detain them for what he deserved for his labor; *but if there was an agreement for the price, he could not;* in that case he must rely upon the contract, and be in the same condition with other creditors."

Denied in Kaitt v. Mitchell, 4 Camp. R. 150, note.

COLLINS v. TORRY, 7 Johns. 278.

"The more Collins v. Torry, on which Coates v. Cheevers was founded, shall be considered, the more, I venture to say, it will be found to have been without full consideration." Cowen J. in Van Dyne v. Thayre, 19 Wend. 172.

COLLINS v. COLLINS, Burr. 820.

S. P. as in Elliot v. Davis (post).

COLSTON v. NICKOLS, 1 Har. & J. 105; 2 Hayw. 340.

That evidence of unsworn declarations of a witness were admissible to impeach his competency.

Overruled in Stimmel v. Underwood, 3 Gill. & Johns. 282.

COLUMBIAN INS. CO. of ALEX. v. LAWRENCE, 2 Pet. R. 24.

Overruled in Ætna F. Ins. Co. v. Tyler, 16 Wend. 385, and *cases cited;* and settled, that if there is a formal defect in the preliminary proofs required by a policy of insurance or the custom of the place, and which have been supplied, if the insurers do not call for the evidence, but put their refusal to pay on other grounds, they shall be considered as waiving the production of the evidence. See also 10 Pet. R. 507.

COLVIN v. NEWBURY, 8 B. & C. 166.

In reference to the liabilities of ship-owners to shippers of goods; and the effect of a charter-party to make the freighter the legal owner of the ship *pro tempore.*

Reversed in Newbury et al v. Colin et al., 7 Bing. 190. In the Exch. Chamber.

COLWELL v. CHILD, 1 Rep. Cha. 104; 1 Ca. Chan. 86.

Overruled in M'Caw v. Blewit, 2 M'Cord Ch. R. 104. (*semble.*)

COMBER v. HILL, 3 Str. 969; Ca. Temp. Hardw. 22.

That where remainders were limited to two and the heirs of their respective bodies, cross remainders were not to be implied.

"As to the word 'respectively,' the cases which have founded themselves on the distinction of that expression must now be considered as having been overruled." Per Lawrence, J. in Doe ex dem. Gorges v. Webb, 1 Taunt. 239. See also Watson v. Faxton, 2 East, 36; Wright v. Holford, Cowp. 31.

COMBERBACH'S REPORTS.

Carthew and Comberbach are said by Ld. Thurlow to be equally bad authority. 1 Bro. Ch. C. 97.

But Ld. Kenyon says that Carthew is, in general, a good reporter. 2 D. & E. 776.

Buller J. said, Comberbach and Noy were books of no authority. Clarke's Bib. Leg. 355.

COMBE'S CASE, 9 Coke R. 236.

An attorney in executing a power, must do it in the name of his principal; otherwise the deed will be void.

Doubted in 1 Bac. Abr. p. 319, 320, note. "That although the attorney must execute his power in the name of his principal, no particular form of words is required to be used, so as it appears to be the act of the principal. Hence, signing a deed M. W. for J. B. is as good as J. B. by his attorney M. W. Wilks v. Back, 2 East, 142. But see and examine the case in East, and the observations in vol. 3 Amer. Jurist, p. 82 to 86; Fowler v. Shearer, 7 Mass. 14.

COMMENTARIES ON EQUITY JURISPRUDENCE, p. 475. sec. 497.

"If one of the *sureties* dies, the remedy at law lies only against the surviving *parties;* but in equity it may be enforced against the representatives of the deceased *party*, and he may be compelled to contribute to the surviving *surety*, who shall pay the whole debt."

Explained in Kennedy v. Carpenter, 2 Whart. R. 364.—"That *joint debtors* merely are meant."

COMMRS. OF CANAL FUND v. PERRY, 5 Ohio R. 56.

Denied Lewis v. Bk. of Kentucky, 12 Ohio R. 132.

COMMON LAW.

The Common Law of England is not to be taken in all respects to be that of America. 10 Barb. 497.

COMMONWEALTH v. COOPER, 15 Mass. R. 187.

Where one is indicted for a rape, and the jury cannot agree to convict him, they may find him guilty of an assault with an intent to commit a rape.

Overruled in Commonwealth v. Roby, 12 Pick. 507.

COMMONWEALTH v. JONES, 1 Leigh's R. 598.

As to a new trial in a capital case.

Doubted in U. States v. Gibert, 2 Sum. R. 52.

COMMONWEALTH v. MURPHY, 14 Mass. R. 387.

That the credit of a female witness may be impeached by evidence of prostitution.

Overruled in Jackson v. Lewis, 13 Johns. 504; Gilchrist v. M'Kee, 4 Watts, 380; and in Commonwealth v. Moore, 3 Pick. 196, it was questioned.

COMMONWEALTH v. M'CAUL, Virg. Cas. 271.

The court should guard against the possibility of abuse, by setting aside the verdict, if any of the jury depart from the control of the officer.

Denied by Woodworth, J. in The People v. Douglass; 4 Cowen, 24, 5; "The English cases are uniform, that though the jury separate, if there be no farther abuse, this shall not vitiate the verdict; and we think the English cases are founded on the better reason."

COMMONWEALTH v. PARMENTER; 5 Pick. 279.

Was evidently decided without much consideration. Dana v. The State, 22 Ohio R. 97.

COMPTON v. JONES, 4 Cowen, 13.

S. P. as in Fenner v. Mears (post).

COMSTOCK et al. v. APTHORPE et al., 1 Hopk. Ch. R. 143, 147 to 149.

Reversed, 8 Cowen, 386.

COMYNS v. BOYER, Cro. Eliz. 485.

Though there be a penalty for selling at a fair on Sunday, the sale is nevertheless valid.

Overruled in Drury v. Defontaine, 1 Taunt. 131, on the ground that the statute (29 Car. II.) only prohibits business or work of *their ordinary callings*. The court, however, say, that if an act is *forbidden* by statute under a *penalty*, a contract to do it is void.

COMYN, SIR JOHN.

All the cases he quoted were good law. 3 Ohio R. 30.

1 COMYN DIG. Action, F., case decided by Hale at Norfolk, in 1662; 1 Rolle Abr. 29, 1, 36.

Denied by Spencer, J., in 12 Johns. R. 168.—"Is a very unreasonable decision."—"These are cases decided before the courts adopted the true method of considering contracts, in relation to their dependency, or independency."

COM. DIG. Action on the case for defamation. (F.) 2, F. (4.)

Doubted in Tomlinson v. Brittlebank, 4 B. & Adol. 630. Parke,—"The cases under that head in Com. Dig., as to taking words *in mitiori sensu*, have been very much criticised as going into too great minuteness." See Button v. Heywood; 8 Mod. 24; Slowman v. Dutton, 10 Bing. 402.

COM. DIG. Distress (B. 2).

That the goods of a stranger cannot be distrained for the arrears of a rent-charge.

Denied in Saffery v. Elgood, 3 Nev. & M. 346.

COM. DIG. Ejectment.

See Roe v. Doe, ex dem. Humphrey (post).

COM. DIG. Evidence, A. 5.

"A verdict in another action for the same cause shall be allowed in evidence between the same parties. So, it shall be evidence, where the verdict was for one under whom any of the present parties claim."

Limited in Doe v. Derby, 1 Ad. & El. 783. Littledale, J.:—"But that must mean a claim acquired through such party subsequently to the verdict (see Loch v. Norborne, 3 Mod. 141)."

COMYN'S DIG., tit. Parliament, R. 22.

"In Comyn's Digest, title Parliament, R. 22, there is a mistake. The expression in the act is not 'may,' but 'shall.' This mistake pervades all the text books but Tidd's Practice."—Pollock, Ch. B. The York & N. Midland Railway Co. v. Reg. 18 Eng. L. & E. R. 201.

CONCANEN v. LETHERIGE, 2 H. Bl. 36.

The plaintiff may recover in case against the sheriff for taking insufficient sureties in a replevin bond, damages beyond the penalty of the bond, i. e., for more than double the value of the goods distrained.

Overruled in Paul v. Goodluck, 2 Bing. N. C. 222; Evans v. Brander, 2 H. Bl. 547; Hefford v. Alger, 1 Taunt. 220.

CONE v. WHITTAKER, 2 Johns. 280.

Overruled in Warner v. Constant, 5 Johns. 135.

CONNELL v. CONNELL, 6 Ohio R. 358; Meddock v. Williams, 12 ib. 377; Good v. Zercher, 12 ib. 364; Silliman v. Cummins, 3 ib. 116.

Reviewed and overruled in Chesnut v. Shawe's Lessee, 18 Ohio R. 599; and see Vattier v. Chesselden, ib. 639.

CONSEQUA v. FANNING, 3 Johns. Ch. 587.

Reversed, 17 Johns. R. 511.

CONSTANTINE v. VAN WINKLE, 2 Hill, 240.

Reversed, 6 Hill, 177.

CONSTITUTIONAL COURT REPORTS (Treadway), 2 vols.

Denied in 1 McCord, Ch. R. 179; "Gaillard, Chan.—Is that book authority? There is but one equity case in the book, and it is falsely reported." Yet it is seen that Nott, J., in that very case cites the same book without repudiating its authority.

CONVERSE v. FERR, 11 Mass. R. 326.

"At common law, no action lies by one tenant in common, who has expended more than his share in repairing the common property, against the deficient tenants, &c."

Doubted. See Doane v. Badger, 12 Mass. 70, 71, and see 2 Sto. Eq. Jurisp. 484 n. (1).

CONVERSE v. SYMMES, 10 Mass. R. 378.

It was said—"Where the right is not wholly in one, and where the action depends on a title, which is alleged to be in one, but is proved to be in two or more; and it so appears by the pleadings, or in the progress of the suit (1 B. & P. 70), the variance is fatal."

Overruled in Thompson v. Hoskins, 11 Mass. R. 419. Parsons:—"This observation was made in answer to some authorities relied upon by the defendant; upon consulting which and some others not then cited, it is manifest that, even in the case of plaintiffs, an omission of one or more does not go to destroy the action (in tort) without a plea in abatement; unless in actions upon contract, in which the law seems to be, that a failure to join all those who ought to be plaintiffs in the suit will cause a nonsuit, or even an arrest of judgment, if the defect appear of record, although it be not pleaded in abatement."

CONWAY v. GRAY, 10 East, 543.

Overruled, Flindt v. Scott, 5 Taunt. 674, and Baret v. Meyer, 5 Taunt. 824.

COOCH v. GOODMAN, 2 Q. B. Rep. 580.

"The authority of that decision may be questionable."—Parke, B., Wheatley v. Boyd, 7 Ex. 20; 21 Law J. R. N. S. Ex. 39; 12 Eng. R. 553.

COOKE v. BOOTH, Cowp. 819.

Overruled, Iggulden v. May, 2 N. Rep. 452; 7 East, 237, S. C.; 9 Ves. jr. 325. See United Society v. Eagle Bank, 7 Conn. 479.—Hosmer.

COOK, *In re*, 5 Law Rep. 443.

Doubted, *In re* Reed, 21 Vt. R. 639.

COOKE v. COOKE, 2 Vern. 36.

Story, J. in 4 Mason, 42 :—"But it is a very short and loose note."

COOKE v. CRAWFORD, 13 Sim. 91.

Doubted, Titley v. Walstenholme, 7 Beav. 425; McDonald v. Walker, 11 Eng. R. 327; 14 Beav. 556.

COOK v. FOUNTAIN, 3 Swans. R. 585.

"The law never implies, the court never presumes, a trust but in case of absolute necessity."

Explained in 2 Sto. Eq. 6, 439.

COOK v. HEARN, 1 Moo. & R. 201.

Doubted, Dwyer v. Collins, 21 Law J. R. N. S. Ex. 225; 16 Jur. 569; 12 Eng. R. 537.

COOK v. LITCHFIELD, 5 Sand. 330.

Reversed, Dec. 1855.

COOKE v. MUNSTONE, 4 B. & P. 351.

Held, that plaintiff could not recover back the money paid as earnest on a contract to deliver a certain quantity of *soil*, which defendant had wrongfully refused to deliver, under the general counts; because the special agreement was still in force, although he was prevented from recovering on the special count, on the ground of a variance between it and the special agreement.

Doubted, Mead v. Degolyer, 16 Wend. R. 417. Bronson :—"It did not lie with the defendant to object that the special contract was still in force after he had refused to perform it."

"The remarks of Sir James Mansfield, C. J., in Cook v. Munstone, have been cited and misapplied a hundred times."—Bronson, J., Mead v. Degolyer, 16 Wend. 636.

COOKE v. OXLEY, 3 T. R. 653.

Shaken in Adams v. Lindsell, 1 B. & Ald. 681.

COOK v. SWAN, 5 Conn. R. 140.

Overruled in Olmsted v. Hoyt, 11 Conn. R. 376.

COOK v. WISE, 3 H. & Munf. 463, 501.

In debt for rent in arrear, interest is not recoverable.

Opposed Obermyer v. Nichols, 6 Binn. 159; Clark v. Barlow, 4 Johns. 183; Dorrill v. Stephens, 4 M'Cord, 50.

COOKE v. TANSWELL, 1 Moore, 465; 8 Taunt. 131, S. C.

The two reports differ. The point stated in the former report does not appear in the latter.

COOKSON v. ELLISON, 2 Bro. Ch. Rep. 252.

Denied by Ld. Kenyon in Newman v. Godfrey, 2 Bro. Ch. 332; and by Ld. Loughborough in Jerrard v. Smart, and Shaw v. Ching. 11 Ves. 283, 296, 303; and Methodist Episcopal Church v. Jaques, 1 Johns. Ch. Rep. 65.

COOLIDGE v. GRAY, 8 Mass. R. 527.

"I admit it was decided by a court of high respectability, yet I feel myself constrained to say, if it must be admitted to be similar in principle to the present, that it is not supported by any usage of trade, or by a single decision, either in the English courts or any of the courts of our sister States, and stands opposed to the general principles of law as applicable to the construction of written instruments." Dissenting opinion of Smith, J., King v. Middletown Ins. Co., 1 Conn. R. 234.

COOPER v. CHITTY, 1 Burr. 36.

"With respect to what is supposed to have been said by Lord Mansfield in Cooper v. Chitty, of Comberbach having mistaken Ld. Holt's opinion in Lechmere v. Thorowgood, it is as probable that the report of that observation is misstated." Ld. Kenyon, 4 D. & E. 412.

COOPER v. SMITH, 9 S. & R. 26.

S. P. as in Chambers v. Furey (ante).

COOPER v. SPENCER, 1 Stra. 641; 8 Mod. 376, S. C.

The omission of the *similitur* is ground for arrest of judgment after verdict.

Overruled 3 Burr. 1793; 2 Bing. 384; 6 Greenl. 327; 2 Day, 392; 9 Mass. 533. It may be amended as a matter of *course* after verdict, for being only matter of *form;* and as such, would seem to be aided by verdict.

COPPIN *qui tam* v. CARTER, 1 Term R. 462.

Denied in Stiles v. Toby, 2 Mass. 522:—Parsons Ch. J. observed "that the issue joined in this case was on the plea of not guilty, probably on the dictum in the case of Coppin v. Carter; but the old plea of *nil debet* (in debt for a penalty) was the safest; and that upon the plea of not guilty, if the jury find the defendant guilty, they ought also to find the forfeiture."

COPPIN v. WALKER, 7 Taunt. 237.

"The first part of the marginal note in Coppin v. Walker, is not justified by the decision." Robinson v. Rutter, 30 Eng. L. & E. R. 402. Campbell, Ch. J.

CORBETT v. POELNITZ, 1 D. & E. 5.

That a feme covert, living apart from her husband and having a separate maintenance, may sue and be sued as a feme sole.

Overruled in Marshall v. Rutton, 8 D. & E. 545.

CORDAL'S CASE, Cro. Eliz. 315.

Denied in Park on Dower, p. 64, and cases cited.

CORDELL v. NODEN, 2 Vern. 148.

Never followed since; and now overruled. Clenell v. Lewthwaite, 2 Ves. jr. 465, 471; Smith v. Fitzgerald, 3 Ves. & Beames, 2.

CORNELL v. COOK, 7 Cowen, 310.

In trover sued by the officer, his own return on the execution was *prima facie* evidence of the levy against a creditor who had levied upon the same property.

Opposed, Merrill v. Sawyer, 8 Pick. 397.

CORNFOOT v. TOWKE, 6 M. & W. 358.

See Langridge v. Levy (post). "The case of Cornfoot v. Towke is certainly a most remarkable instance of self-delusion brought about by the severity of one's own discriminations."—Redfield, J. in Fitzsimmons v. Joslin, 21 Vt. R. 140.

CORNISH v. CAWSEY, Alleyn, 77; Sty. 118.

Overruled in Pugh v. Duke of Leeds; Cowp. 719.

CORNWALLIS v. SPURLING, Cro. Jac. 57.

Overruled. Fossett v. Franklin, T. Raym. 225; Elliott v. Starr, 1 Freem. 299.

CORNWALL v. RICHARDSON, 1 Ry. & Mo. 305.

In an action of slander for imputing felony with a count for maliciously charging plaintiff with theft before a justice, to which defendant pleaded the general issue, and also pleas in justification of the slander, averring that the charge of felony was true: *Held*, that evidence of general character was not admissible for plaintiff.

Overruled in Harding v. Brooks, 5 Pick. 244. The court say,—Though we find no authority directly in point against the admission of such evidence under the general issue; on the contrary Ld. Alvanly, *held* that it was admissible;—yet the rule is different, where defendant places upon the record a justification of the words. [See Houghtaling v. Kilderhouse, 1 Comst. 530; Pratt v. Andrews, 4 ib. 496.]

CORPORATION OF BARNSTABLE v. LATHEY, 3 D. & E. 303.

Suit by the corporation for toll, and the defendant obtained a rule for inspection of such muniments, &c., of the corporation as related to the matter.

Overruled in The Mayor of Southampton v. Graves, 8 D. & E. 590.

CORPOR. DE SUTTON COLFIELD v. WILSON, 1 Vern. 254.

S. P. as in Burton v. Hinde (ante).

CORPORATION OF SUTTON COLFIELD v. WILSON, 1 Vern. R. 254.

Has been thought to decide, that a mere cross-examination of a witness upon the merits is a waiver of any objection to his competency.

Overruled in Moorhouse v. De Passou, 19 Ves. R. 433; S. C. Cooper R. 300. See also Gass v. Stinson, 2 Sumn. R. 611, 612.—Story.

CORWIN v. CORWIN, 9 Barb. 219.

Reversed, 2 Selden, 342.

COSTER v. LORILLARD, 14 Wend. 265.

Doubted, it seems, by Chan. Kent, in 4 Kent Com. 309 n. (b):—"Ch. J. Savage, in the great case of Coster v. Lorillard, decided in the Court of Errors of New York, in 1835, was led to make some observations on the third class of active trusts, allowed by the statute, which are rather startling, and calculated to increase our regret at the legislative attempt to reduce all trusts to the three specific objects mentioned."

COSTER v. MURRAY, 5 Johns. Ch. 522.

That the weight of authority seemed in favor of applying the statute of

COSTER v. MURRAY, 5 Johns. Ch. 522—continued.

limitations to open merchants' accounts, when the last item is more than six years before the commencement of the suit.

Denied in M'Clellan v. Crofton, 6 Greenl. 434.—Mellen. See 20 Johns. R. 576.

COTTERELL v. DUTTON, 4 Taunt. 826.

Denied in Griswold v. Butler, 3 Conn. 244. Bristol.—As to some *obiter dicta* in the case; if intended as reported they shake its authority.

COTTON v. DAINTRY, 1 Ventr. 30.

That a writ of error is a supersedeas from the sealing of it.

Denied in Meriton v. Stevens, Willes, 275.

COTTON v. JAMES, 1 Mo. & M. 273.

In trespass for entering plaintiff's dwelling house and taking his goods, on a plea justifying the trespass by proceedings under a commission of bankruptcy, and replication taking issue on the act of bankruptcy, the defendant is entitled to begin.

Doubted in S. C. p. 278 note:—"This case seems to complete the series of those by which the doctrine, that the plaintiff is entitled to begin where he has to prove damage sustained, have been for the present overruled."—"The practice appears now to be completely settled by decisions; but there are some circumstances which render it rather doubtful whether it will long continue." And Lord Tenterden in S. C. says—"The rule as established in practice is, that when the general issue is not pleaded, and the affirmative of the issue lies on the defendant, he is entitled to begin. I do not say that this is the most convenient rule; I am by no means sure that the practice is founded on the best principle; but it is established, and I do not think I ought to depart from it."

COTTON v. SIMPSON, 8 Adol. & El. 186.

Overruled in Gardner v. Walsh.

COTTON v. THURLAND, 5 T. R. 405. Smith v. Birkmore, 4 Taunt. 474. Hastleton v. Jackson, 8 Barn. & C. 221.

These cases decide that a party to a bet may rescind it and recover back the property or money deposited, on giving notice to the stakeholder not to deliver it to the winner, at any time before it has been actually delivered; but in the State of New York it is understood "to be now well settled that a party to a bet cannot recover back money or property deposited with a stakeholder unless he gives notice, not to pay it over, before

COTTON v. THURLAND, &c.—continued.

the happening of the event on which the bet depends." Yates v. Fort, 12 Johns. 1; Fowler v. Van Surdam, 1 Denio, 560; Morgan v. Groff, 4 Barb. 528.

COUCH v. ASH, 5 Cowen, 265, and Hubert v. Williams, ib. 537.

Seem to decide, that a debt due by an insolvent as well as a bankrupt, is not a debt due in conscience, and is not a sufficient consideration for a new promise to pay the debt.

Opposed, Earnest v. Parke, 4 Rawle, 452; Scouton v. Eislord, 7 Johns. R. 36, and Shippey v. Henderson, 14 Johns. R. 178.

COULSON v. JONES, 6 Esp. 50.

Overruled in Webber v. Venn, Ry. & M. 413; Duncan v. Grant, 4 Tyrw. R. 818; and settled, that where any plea is pleaded besides the general issue, a notice of set-off will not enable the defendant to give in evidence the matters of his set-off under 2 Geo. II., c. 22, s. 13. See 2 Dowl. Pr. C. 683. (Ry. & M. 413.)

COULTER'S CASE, Cro. Eliz. 630; 5 Rep. 30, S. C.

In 2 H. Bl. 23, it is said that judgment was never rendered in this case and that Croke is mistaken.

COUNDELL v. JOHN, Fortescue, 2 Salk. 505; Holt's Rep.

"I confess that the opinion of the Chief Justice, as stated in this latter book is to me unintelligible—it looks both ways. But if the reports stood free from all objections on the ground of inaccuracy, it is but a solitary case, and is contrary to principle and all the decisions before and since, and must be disregarded." Per Henderson, J. in Scroter v. Harrington, 1 Hawks Law & Eq. 193.

COUNDEN v. CLERKE, Hob. 31, 2d point.

Overruled. Godbolt v. Freestone, 3 Lev. 206; Abbot v. Burton, 2 Salk. 591; Harris v. Bp. of Lincoln, 2 P. Wms. 139.

CTSS. RUTLAND'S CASE, 1 Rolle Abr. 5 (L) pl. 1, cited 2 Phil. Ev. 224.

Held, if a conversion has once taken place, it cannot be cured.

Overruled in Hayward v. Seward, 1 Mo. & Scott, 459, if a demand and refusal amount to a conversion. The court say, however, that a demand and refusal is but evidence of a conversion; and the refusal will be cured by the offer subsequently made, before the issuing the writ, to restore the property.

COURT FOR THE CORRECTION OF ERRORS IN NEW YORK.

Spencer, J. (14 Johns. R. 104) says—"The manner of collecting decisions in that court, unfortunately, in almost every case where several opinions are given, leave it doubtful what is the decision in any given case."

COUTURIER v. HASTIE, 8 Ex. 40; 16 E. L. & E. R. 562.

Reversed, Hastie v. Couturier, 22 Law J. R. N. S. Ex. 299; 17 Jur. 1127; 20 E. L. & E. R. 533.

COVENEY'S CASE, Dyer, 209.

"——it is reasonable to suspect that case not to be law, when the instance is impracticable, which it is brought to prove." Per Lord Holt in Phillips v. Bury, cited 2 D. & E. 346.

COVENHOVER v. SHULER, 2 Paige Ch. R. 122.

Doubted in Evans v. Iglehart, 6 Gill. & J. 171, 193, 4.—Dorsey. "The case in 2 Paige, seems to have been decided simply upon reference to some English authorities; the opinion of Chan. Kent, establishing a different doctrine in Westcoat v. Cady, 5 Johns. Ch. 334, being entirely overlooked."

COVILL v. HILL, 4 Denio, 323.

Reversed, 1 Coms. 522.

COWANS v. ABRAHAMS, 1 Esp. 50.

That in trover for a bill of exchange, defendant must have notice to produce it, before the plaintiff could go into proof of its being in defendant's possession.

The authority of this case is considerably shaken by Bucher v. Jarratt, 4 Bos. & Pul. 143. See also Aickle's case, 1 Leach C. L. 330, and Jolley v. Taylor, 1 Campb. 143.

COWELL'S INTERPRETER.

"Dr. Cowell's 'Interpreter' is frequently cited by the English antiquarians, and Mr. Selden makes much use of it in his notes to Fortescue. It is one of the authorities used by Jacob in compiling his Law Dictionary. While the writings of Coke have descended with fame and honor to posterity, it was the fate of the learned labors of Dr. Cowell to pass unheeded and unknown, into irreclaimable oblivion." 1 Kent's Com. 508.

Coke not only attacked *The Interpreter*, but is said to have taken all occasions to affront him, calling him in derision, Dr. *Cow-hell*. Biog. Brit., Art. *Cowell*.

COWELL v. WATTS, 6 East, 405.

Denied in Kline v. Guthart, 2 Pen. R. 494. Gibson, C. J.—See Bull v. Palmer (ante).

COWNE v. DOUGLASS, 1 M'Clel. & Y. 321.

S. P. as in Blake v. Foster (ante).

Opposed to Harrison v. Hollins, 1 Sim. & Stu. 471. See Math. Presump. Ev. 333 n. (d).

COWPER v. TOWERS, 1 Lutw. 98.

If a plea in bar, or replication, erroneously conclude to the country, when it should conclude with a verification, it is bad on general demurrer.

Overruled in Carthane et al. v. Clarke, 5 Leigh R. 268, 275.

COWPER'S REPORTS. See Hambly v. Trott (post).

COXE v. DAY, 13 East, 118.

Opposed to Hotley v. Scott, reported in Lofft. 316, and more correctly, in 7 Price, 503. "This earlier case was certainly unknown to the counsel by whom Coxe v. Day was argued, and probably to the court also; so that the decision in Coxe v. Day is not wholly free from question as to its particular circumstances."—Abbott, C. J. Dallas, C. J. dissenting from the judgment of the court of *dernier resort*, says, "Still, I think, it is not to be relied on strictly as a perfect authority, even in favor of my view of the subject: first, because if Hotley v. Scott be rightly reported, it would be in opposition to Coxe v. Day; and thus we should only have case against case. Nothing of authority can result from two cases decided by the same court in opposition to each other."

COX v. HART, 2 Burr. 758.

Opposed, Wyatt v. Markham, Barnes, 221. See also Smith v. Sterling, 3 Dowl. Pr. R. 609.

COXALL v. SHARPE, 1 Keble, 937.

Arbitrators have no authority to meddle with the title to land only, but such award is void.

Denied in Jones v. Boston Mill Corpo., 6 Pick. 148; Shelton v. Alcox, 11 Conn. R. 240; Sellick v. Addams, 15 Johns. 197; Cary v. Wilcox, 6 N. H. R. 177.

CRAIG v. CUNDELL, 1 Camp. 381.

Ld. Ellenborough held, that a creditor was not competent for the executor, if it appeared that the estate was insolvent.

Doubted in Davies v. Davies, Mo. & Ma. 345.—Parke. See also 5 B. & Ad. 371.

CRANE et al. v. FRENCH et al., 1 Wend. 311; 9 ib. 437, S. P.

Difficulties in those cases as to entering judgment are obviated by Stat. of Apl. 29, 1833. Pardee et al. v. Haynes et al., 10 Wend. 630.

CRANMER v. GERNON, 2 Pet. Adm. R. 391.

S. P. as in The Cynthia (post).

CRAWFORD v. WILSON, 2 Con. R. 353.

S. P. as in Timrod v. Shoolbred (post).

CREGIER, In the matter of, 1 Barb. Ch. 599.

Contra Bear v. Snyder, 11 Wend. 592.

CREPPS v. DURDEN et al., Cowp. 640; 9 B. & C. 628.

That a person can commit but one offence, on the same day, by "exercising his ordinary calling on a Sunday," contrary to the statute 29 Car. II. c. 7. And, if a justice of the peace proceed to convict him in more than one penalty for the same day, it is an excess of jurisdiction for which an action will lie, before the convictions are quashed.

Explained, Smith's Lead. Cas. 386.

CRESSEY v. KELL, 1 Wils. 120.

Overruled in Lewis v. Pottle, 4 D. & E. 570.

CRESWELL v. BYRON, 14 Ves. 271.

Ld. Eldon—"I do not know that a solicitor, whatever may be his reasons for declining to proceed, can claim a lien if he does not carry the business through to a hearing." "The C. B., when I was there, held that an attorney, having quitted his client before trial, could not bring an action for his bill."

Doubted in Vansandau v. Browne, 9 Bing. 402. *Held*, that he may for reasonable cause and notice abandon the cause and recover his costs.

CREEUZE v. HUNTER, 2 Ves. jun. 156.

Dictum as to interest.

Doubted Maghee v. Mahon, 1 Moll. 151.

CROCKFORD v. WINTER, 1 Camp. R. 128, and De Bernales, 2 Camp. R. 426.

Denied in The People v. Gordon, 9 Johns. 71, and Reid v. Rensselaer Glass Factory, 3 Cow. R. 435; the court saying, "that the defendant, who retains and converts the money of another to his own use, should pay interest for that use."

CROFT v. PITMAN, 1 Marsh. 269.; S. C. 5 Taunt. 648.

Opposed, Meredith v. Drew, 2 Moore & Scott, 116, and cases cited p. 119 n. (a).

CROFTON'S CASE, 1 Mod. 34.

That if a statute create a new offense, to be prosecuted "by bill, plaint, or information," an indictment will lie, except there be negative words—as, "and not otherwise."

"——has been denied many times." Per Ld. Mansfield in Rex v. Wright, 1 Burr. 543.

CROKE, CAR. and CROKE, JAC.

"It is easy to cite many cases of slander decided at the period embraced by the reports of Cro. Car. & Cro. Jac., which give a color to this application. That was a period in which actions of slander had greatly multiplied, and it had become necessary to stop them, and without doubt some of those decisions would not be supported at the present day." Pollock, Ch. B. Tozer v. Mashford, 20 Law Jour. N. S. Ex. 226.

CROKE'S REPORTS.

3 Croke being cited, Keeling, J. in 2 Keble, 316, said, "It were better that it had never been printed." "There has been a very incorrect edition of these, varying from the other editions, and the dates are printed in numerical letters—M D C L." Bridg. Leg. Bib. 88.

CROMACK v. HEATHCOTE, 2 B. & Bing. 4; 4 J. B. Moore, 357.

Communications made to an attorney are confidential, although they do not relate to a cause existing, or in progress, at the time they were made.

Opposed, Broad v. Pitt, 3 C. & P. 518; and Williams v. Mundie, R. & M. 34; 1 C. & P. 158. See Doe dem. Shellard v. Harris (post).

CROMPTON'S PRACTICE.

"Many of the cases were partly collected by myself before I was at the bar, they were never intended by me for publication, and were too loose to be relied upon." Per Buller, J. in 5 Term R. 372.

CROMWELL v. OWINGS, 7 Har. & John. 57.

S. P. as in Ilsley v. Stubbs (post) in its fullest extent.

CROOKE v. BROOKING, 5 Vern. 106.

The concluding observation of the reporter, denied in Jackson v. Staats, 11 Johns. 350.

CROP v. NORTON, 2 Atk. 74; 9 Mod. 233.

Corrected, as to its general application, in Wray v. Steele, 2 Ves. & Beames, 388.

CROSBY v. PERCY, 1 Camp. R. 303.

Opposed, Thompson v. Miles, 1 Esp. R. 184. 1 Sug. on V. & P., p. 287. (Amer. ed.)

CROSBY v. WADSWORTH, 6 East, 611.

Grass growing cannot be sold by parol; it is a *sale* of an *interest* in land. Doubted in Frear v. Hardenberg, 5 John. R. 276—Spencer, J. See observations of Ch. J. Savage in Mumford v. Whitney, 15 Wend. 386, 7; 1 Sug. on Vend. 82, 83. Upon citing Evans v. Roberts, 5 B. & C. 829, Mr. Sugden remarks—"The determination of the courts to escape from the rule in Crosby v. Wadsworth, without overruling that case, renders it somewhat difficult to apply the law to individual cases."

CROSER v. THOMLINSON, Barnes Notes, 472.

"If that case were *res nova*, I think it would be decided differently." Pollock C.B. "That case involves much inconsistency." Alderson B. Williams v. Holmes, 22 Law J. R. N. S. Ex. 283; 20 E. L. & E. R. 373.

CROSSLING v. CROSSLING, 2 Cox Ch. R. 396.

Said to be plainly contradicted, and therefore overruled, by Buck v. Wade, 3 Ves. & Bea. 198, & Grierson v. Kersoff, 2 Keen, 653. See Dominick v. Sayre, 3 Sand. 566.

CROSWELL v. CRANE, 7 Barb. 191.

Overruled, Young v. Duke, 1 Selden, 463.

CROVAT v. COBURN, 3 M'Cord, 14.

Limited in Walker v. Briggs, 1 Hill's R. 125, to the point decided.

CROWDER.

See *Ex-parte* Crowder (post.)

CROWLEY v. VILTY, 7 Ex. R. 319; 9 E. L. & E. R. 501.

The question was not much discussed, and the distinction between rent and value not taken. And is opposed to Fearon v. Norval, 5 Dowl. & L. P. C. 445; Harrington v. Ramsey, 22 Law Jour. N. S. Q. B. 460; 17 Jur. 1029; 20 E. L. & E. R. 165.

CROYSTON v. BANES and Symondston v. Tweed, Prec. in Chan. 208 and 374.

Denied by Ld. Loughborough (2 H. Bl. 68): "do not seem fairly to admit any other construction than this, namely, that the court thought that, where a parol agreement was admitted by the defendant's answer, he might or might not take advantage of the statute, at his option."

CROZIER v. BARTLETT, 15 Johns. 250.

Reversed in Bartlett v. Crozier, 17 Johns. 439, deciding that a civil action will not lie against an overseer of highways for neglecting to repair a bridge whereby the horse of the plaintiff was injured.

CRYGIER v. LONG, 1 Johns. Cas. 393; and Lawrence v. Bowne, 2 Johns. Cas. 225.

After appearance and pleading in chief, a defendant cannot object, the suit being upon a note, that it was commenced before the note was due.

Overruled in Osborne v. Moncure, 2 Wend. R. 172. (3 ib. 170).

CUD v. RUTTER, 1 P. Wms. 570.

Lord Parke said—"That a court of equity ought not to execute any of these contracts (to transfer South-Sea stock), but to leave them to law, where the party is to recover damages," &c.

Denied in Bryan v. Lewis, 1 Ry. & M. 386.—Tenterden. See 2 Sto. Com. on Eq. Jurisp. 80 and n. (a).

CUFF v. PENN, 1 M. & S. 21.

In contract for the sale of goods of the value of £10: *Held*, that the time (in which, by the agreement in writing, the goods were to be delivered) might be extended by a verbal agreement.

Doubted by Parke, J. in Goss v. Ld. Nugent, 5 B. & Ad. 58. But see 1 Phil. Ev. 561, and 3 Johns. 520.

Overruled, Stead v. Dawber, 10 Ad. & El. 57. and see Marshall v. Lynne, 6 M. & W. 109, and Stearns v. Hall, 5 Month. Law Rep. N. S. 17, 18 n.

CULL et ux. v. SARMIN; 3 Lev. 66, cited in 5 Com. Dig. tit. Obligation, B. 4.

Explained in Waugh v. Bussell, 5 Taunt. 709, by Gibbs, C. J.: "The case in Levinz, when examined, is only because the plaintiff added an *e* final to the name of the widow, *Sarmine*; and the Court say, misspelling will not vitiate an obligation. Chief Baron Comyn has certainly misunderstood that case."

CUMBER v. WAYNE, 1 Str. 426.

Giving a note for £5 cannot be pleaded as a satisfaction for £15.

Doubted in Heathcote v. Crookshanks, 2 T. R. 24. But see Fitch v. Sutton (post); and Smith's Sel. Lead. Cases, 147.

CUMMING v. ROEBUCK, Holt, 172.

"The facts are not given; if the opinion was intended to be unqualified, there is authority and principle against it." Earle, J. Sivewright v. Archibald, 15 Jurist, 949.

CUNDELL v. PRATT, 3 Car. & P. 238.

Doubted in Fries v. Bougler, 7 Hals. 80. See Tucker v. Welsh, 17 Mass. 160; 9 Cowen, 625; 2 Penn. R. 728.

CUNLIFF v. MAYOR of ALBANY, 2 Barb. 190.

Reversed 2 Coms. 165.

CUNLIFFE v. TAYLOR, 2 Price, 329.

Overruled in Masters v. Fletcher, 1 Young's Exch. R. 25.

CUNNINGHAM v. COLLIER, 4 Dougl. R. 233.

A person entering into a charter party in his own name on behalf of the government is personally liable.

Opposed. Unwin v. Wolseley, 1 T. R. 674. See Allen v. Waldgrave, 8 Taunt. 567; Gidley v. Palmerstone, 3 Bro. & B. 275; and this though the *agent may have affixed his own hand and seal.* Hodgson v. Dexter, 1 Cranch, 345; Dawes v. Jackson, 9 Mass. 490; Stinchfield v. Little, 1 Greenl. 231; Sheffield v. Watson, 3 Caines, 69: it is sufficient if the authority of the agent appears. See 15 Johns. 1.

CUPIT v. JACKSON, 13 Price, 721.

Where the co-existence of legal remedies raises no objection to a suit in equity.

Overruled in French v. Morgan, 2 Moll. 488.

CURLING v. LONG, 1 B. & P. 637.

Denied by Ld. Alvanley, in 3 B. & P. 430.—"With great deference to that *dictum* of Ld. C. J. Eyre in the case of Curling v. Long, I think that capture and re-capture do not put an end to the voyage." (12 Johns. 385.)

CURRIE v. WALTER, 1 Esp. 456, and 1 B. & P. 523.

That it is lawful to publish *ex parte* proceedings in the courts, viz. in K. B.; provided the proceedings are conducted openly, and the accounts are just and true.

Doubted by Abbott, C. J. (in Duncan v. Thwaites, 3 B. & C. 556), who says, "The case is of great authority in itself, and derives additional weight from the manner in which it is mentioned by Lawrence, J., in King v. Wright (8 Term R. 293). It has not, however, received the sanction of subsequent judges. 5 Esp. 123, Heath, J.:—And we wish it not to be inferred from any thing here said as to the distinctions between this case and Currie v. Walter, that we think the publication of *ex parte* proceedings even in this court to be a matter allowable by law." [See Stanley v. Webb, 4 Sand. 21.]

CURTIS v. HANNAY, 3 Esp. N. P. C. 83.

Ld. Eldon is reported to have said, that "he took it to be clear law, that if a person purchases a horse which is warranted sound, and it afterwards turns out that the horse was unsound at the time of the warranty, the buyer might, if he pleased, keep the horse and bring an action on the warranty, in which he would have a right to recover the difference between the value of a sound horse and one with such defects as existed at the time of the warranty; or he might *return the horse and bring an action to recover the full money paid;*"—and proceeds to say "if the horse is returned in a worse state than it would have been on discovery of the unsoundness, the purchaser will have no defence to an action for the price:"—And Starkie on Evidence, part IV. p. 645, adopts the inference from this—viz:—that "the vendee may refuse to pay the price, or recover it back if paid."

Denied. in Street v. Blay, 2 B. & Ad. 456. In Pateshall v. Tranter, 3 Adol. & El. 103, it was held, that the buyer of a horse warranted sound, may recover in a special action of assumpsit for a breach of the warranty, though he never returned the horse, and though he neglected to inform the defendant of the unsoundness for several months after it was discovered. The rule, therefore, that a vendee is bound to return the article as soon as he discovers the unsoundness, is confined to cases where he is bound to return it. See also Fielder v. Starkin, 1 H. Bl. 17; Kimball v. Cunningham, 4 Mass. 502.

CURTIS v. GROAT.

See Osterhout v. Roberts (post).

CURTIS v. OHIO, 5 Ohio R. 324.

See 42 Ohio Laws, 52, s. 2.

CUTHBERT v. GOSTLING, 3 Camp. 515.

In trespass for breaking through the wall of the plaintiff's house, the defendant pleaded a license, to which the plaintiff new assigned excess; *Held*, that the workmen employed to do the work, were competent witnesses, for the defendant to disprove the excess, without being released.

Doubted. Wake v. Lock, 5 C. & P. 456: The driver of a carriage is not admissible in an action against his master, without a release. Perhaps, however, the cases are distinguishable. See 1 Phil. Ev. 130 n., 244.

CUTTER v. DOUGHTY, 23 Wend. 513.

Reversed, 7 Hill, 305.

CUTTING v. WILLIAMS, 1 Salk. 24.

That a judgment cannot be reversed in part and affirmed in part.

Overruled. Kent v. Kent, 2 Str. 971; see also Bellew v. Aylmer, 1 Str. 188; Henriquez v. Dutch W. I. Company, 2 Str. 807; Frederick v. Lookup, 4 Burr. 2018; Smith v. Jansen, 8 Johns. 111; Nelson v. Andrews, 2 Mass. 164; Waite v. Garland, 7 ib. 453; Cummings v. Pruden, 11 ib. 206.

CUTTS v. SURRIDGE, 9 Q. B. 1015.

Qualified. Tallis v. Tallis, 16 Jur. 744; 21 Law J. R. N. S. Q. B. 269; 11 Eng. R. 457.

CUYLER v. NELLIS, 4 Wend. 398.

Overruled, Downer v. Remer, 21 Wend. 10.

CYNTHIA, THE, 1 Pet. Adm. R. 204.—Peters.

"There can be no doubt of the principle that wages are due to seamen in cases of capture or wrecks, to the last port of delivery, and for half the time the vessel stayed there. This is the settled law in this court."

Overruled in Bronde v. Haven, 1 Gilpin R. 592, 603.—Hopkinson: "It is the first reported decision on this point, unless we may regard as such an incidental dictum of the same judge in M. Bordman v. The Elizabeth, 1 Pet. Adm. 130."

D.

DABNEY v. GREGG, 5 Viner's Abr. 40, pl. 55.

There are two mistakes in Viner's report of this case; viz. that the question arose on a covenant *of the wife before marriage*;—and that defendant was seized of other lands *in right of his wife*. See Willes Rep. 150, S. C.

DA COSTA v. SCANDERET, 2 P. Wms. 170.

That where a policy is void for fraud in the insured, he may still have a return of the premium.

Overruled in Chapman v. Fraser, Park, 218.

DA COSTA v. PYM, Peake's Ev. app. lxxxii.

Ld. Kenyon refused to admit proof of the bond in suit, by comparing the signature with other signatures proved to be defendant's.

But in Massachusetts such evidence is admissible. Homer v. Wallis, 11 Mass. 312. So in Connecticut. State v. Brunson, 1 Root, 307.

DALBY v. DORTHALL, Cro. Car. 553.

Husband and wife may join in an action of conspiracy for malicious prosecution against them both.

Opposed. Harwood v. Parrot, 7 Mod. 104; Smith v. Dixon, 2 Str. 977.

DALE v. HALL, 1 Wils. R. 281.

Doubted by Story, J., Law of Bailm. p. 326.

DALE'S CASE, Cro. Eliz. 44.

He who sells a chattel without title, is not answerable to the purchaser, (from whom the property is recovered by the rightful owner), unless he made an express warranty, or knew of the defect of his title.

Denied in Osgood v. Lewis, 2 Maryland R. 495, 520.

DANIEL v. CARTONY, 1 Esp. 274.

Overruled in Lowes v. Mazaredo, 1 Starkie, 385; Chapman v. Black, 2 Barn. & Ald. 588.

DANIELL v. DANIELL, 6 Ves. 297.

S. P. as in Brograve v. Winder (ante).

DANIELL v. M'RAE, 2 Hawks' R. 590.

That indorsers on accommodation paper for the benefit of a third person, where there is no special agreement between such indorsers, and where neither is benefited, are to be considered as co-securities.

Denied in Richards Adm. v. Simms, 1 Dev. & B. 48. The court say—"We unanimously take this occasion to say, that were it *res integra*, we could not sanction the principle. We should say, as has been said by the rest of the mercantile world, that the parties to accommodation paper, were to be governed by the same rules as parties are governed whose names are on other or business paper. Fentum v. Pocock, 5 Taunt. 192; Murray v. Judah, 6 Cowen, 484; 3 Kent Com. 86." The court however, felt bound to follow that case as the established law in North Carolina; and *held*, that they were to be taken as co-sureties, although by agreement one of the sureties was to have part of the proceeds of the note discounted, for which he was to give the principal his own separate bond, and that agreement was not made known to the other surety at the time of his indorsement.

DANKS v. QUACKENBUSH, 1 Coms. 129.

Held, not obligatory as a precedent, and opposite decision made. Morse v. Gould, 1 Kernan, 281.

DARCY v. CHUTE, 1 Cha. Ca. 21; S. C. 2 Ch. R. 245; 1 Eq. Ca. Abr. 63, pl. 1; Furson v. Penton, 1 Vern. 408.

Overruled, it seems, in Milbourn v. Ewart, 5 Term R. 384.

DARVIN v. HATFIELD, 4 Sand. 468.

Reversed, Dec. 1852.

DASH v. VAN KLEEK, 7 Johns. 477.

Overruled in Barry v. Mundell, 10 Johns. 563.

DAUBIGNY v. DAVILLON, 2 Anstr. 460.

Lately overruled in the Exchequer; but this last case questioned by Ld. Eldon. Aldbrecht v. Sussman, 2 Ves. & Beames, 323.

DAUDE v. CURRER, 1 Sid. 285.

The marginal note is, "Although it appear that more money is paid than the statute allows, still the party ought to plead the usurious contract, and not demur.

Denied in Dearden v. Binns, 1 Man. & Ry. 135 n. (c).

DAVID v. ELLICE, 2 B. & C. 196; Lodge v. Dicas, 3 B. & A. 611.

A creditor of a firm, by assenting to an arrangement made between the partners, for the one who remains in trade, to take upon himself the debts of the late firm, does not discharge the retiring partner from liability.

Doubted, if not overruled, in Thompson v. Percival, 5 B. & Adol. 925; 3 Nev. & Mann. 167; Kirwan v. Kirwan, 4 Tyrwh. 491; Smith's Lead. Cas. 147.

DAVIES v. DODD, 4 Price, 176.

The case of Davies v. Dodd is a mere dictum at most. Hopkins v. Adams, 20 Vt. R. 412.

DAVIES v. WILLIAMS, 1 Simon's R. 5.

When one of several executors alone has proved, he may sue alone in equity, and need not join the other executors though they have not renounced; and it was said, that the same rule prevails at law.

Doubted, 2 Williams, 627, 1174; Bro. Executors, 83; 1 Saund. 291 n. 4; Kilby v. Stanton, 2 Young & J. 75, 77. In the last case, two executors were appointed, one proved, the other declined to act; an action was commenced by the acting executor against a debtor to the testator; and, the rule of law requiring all the executors to join, the action was brought in the name of all the executors. On a bill filed by the debtor, he obtained the common injunction for want of answer. The acting executor subsequently put in answer; and on an affidavit that the other executor, who resided abroad, refused to act or put in any answer, the court granted an order *nisi* to dissolve the injunction.

DAVIS v. BENBOW, 2 Bayl. R. 427.

In an action upon a lost note, the plaintiff is not a competent witness to prove the loss, although the existence of the note has been established by the testimony of other persons.

Opposed, Jackson v. Frier, 16 Johns. 195; Chamberlain v. Gorham, 20 ib. 144; Donelson v. Taylor, 8 Pick. 390; M'Niel v. M'Clintock, 5 N. H. R. 355. See Coleman v. Wolcott (ante).

DAVIS v. DARRORD, 12 Wend. 64.

See Anthoine v. Coit (ante).

DAVIS v. GETTY, 1 Sim. & Stu. 411.

Overruled in Nichols v. Roe; 5 Sim. 156.

DAVIS v. LEWIS, 7 T. R. 17; Maitland v. Golding, 2 East, 436; Woodworth v. Meadows, 5 East, 4, 669.

The repeater of a slander may defend by giving the words as he heard them from the author (naming him).

Denied in Done v. Lyon, 10 Johns. 447; and in Inman v. Foster, 8 Wend. 606. See M'Pherson v. Daniels, 10 B. & C. 263; Ward v. Weeks, 7 Bing. 211, and Fidman v. Ainslie, 28 Eng. R. 567.

DAVIS v. LIVING, 1 Holt, 275—Ch. J. Gibbs (in action of *tort*).

That when the plaintiff has closed his case, if no evidence has been produced against any particular defendant, that it was discretionary with the judge, and not a matter of right which a party can claim, to discharge him by a verdict, so that he may be admitted a witness for his co-defendants.

Denied in Van Duzen v. Van Slyck, 15 Johns. 223, and Bates v. Conkling, 10 Wend. 392, affirming it to be matter of right which a party can claim.

DAVIS v. MILLER, 1 Call. 127.

S. P. as in Kennon v. M'Roberts (post).

DAVIS v. PACKARD, 6 Wend. 327 (in error).

Reversing judgment of S. C.; but see 6 Peters, 41; 10 Wend. 50; 7 Pet. 276; 8 Pet. 324.

DAVIS v. SHIELDS, 24 Wend. 322.

Reversed, 26 Wend. 341; and see Vielie v. Osgood, 8 Barb. 130; James v. Patten, 8 ib. 344.

DAVIS v. TALCOTT, 14 Barb. 611.

Reversed, 2 Kernan, 184.

DAVIS v. WILLIAMS, Peck's R. 151.

The language of this decision tends to the conclusion, that although the holder of a bill may have sought diligently to ascertain from the most correct sources the residence of an indorser, and the post-office to which his residence is nearest, nevertheless, if his information should be erroneous, and upon such wrong information he should direct the notice to the wrong post-office, it is to be considered as no notice to the indorser, who is thereby released.

Denied in Nichol v. Bate, 7 Yerg. R. 305.

DAVIS' REPORTS.

Not authority. Latch, 238; Palm. 462; 4 Term R. 194.

DAVISON v. MARCH, 7 East, 34.

Overruled in Edwards v. Dick, 3 Barn. & Ald. 496: *Held*, that an affidavit to hold to bail which states that defendant is indebted to plaintiff as drawer of a bill of exchange, is not sufficient, unless it is also stated that the bill is due.

DAVY v. MILFORD, 15 East, 559.

Overruled in Wadsworth v. Pacific Ins. Co., 4 Wend. 33, 39. The Chancellor says—"Since the decision of the K. B., in Davy v. Milford, it is considered as settled in that country, that if any distinct package or parcel of the memorandum article is totally destroyed or lost, the underwriter is liable as for a total loss, *pro tanto*." It is now "a settled rule of American insurance law, that the underwriter is not answerable for any partial loss on memorandum articles, except for general average, unless there is a total loss of the whole of the particular species, whether the particular article is shipped in bulk, or in separate boxes, or packages."

Overruled Biays v. Chesapeake Ins. Co., 7 Cranch, 415.

DAY v. ARUNDEL, Hardr. 510.

Overruled, Milland's case, 2 Freem. 43; Wagstaff v. Read, 2 Ch. Ca. 156.

DAY v. EVERETT, 7 Mass. R. 145.

That a father may bind his minor son to service to others for a consideration to enure to himself.

Denied in United States v. Bainbridge, 1 Mason's R. 71; 2 Kent Com. 263 *et seq.*

DAY v. NIX, 9 Moore's R. 159.

S. P. as in Greenleaf v. Cook (post).

DEAN v. ALLALLEY, 3 Esp. 11.

Erections made by the tenant for mere agricultural purposes were allowed to be taken away by him at the end of his term; such erections being put on the footing of erections for the benefit of trade.

But this doctrine is denied, and this case spoken slightly of by Lord Ellenborough in Elwes v. Maw, 3 East, 54.

DEAN & CHAP. OF FERNES, Davis R. 121.

That a corporation could only express its will in writing under the seal of the body corporate.

Overruled in The Bank of Columbia v. Patterson, 7 Cranch, 299; 8 Wheat. 338; 2 Kent Com. 290 n. (b.) and cases cited.

DEAN v. DICKER, 2 Str. 1250.

Wager policy held valid.

Not law in Massachusetts. Amory v. Gilman, 2 Mass. 1.

DEANE v. LITTLEFIELD, 1 Pick. 241, note.

Where the will purports to dispose of real estate; the words being sufficient for that purpose, no evidence out of the instrument can be admitted to prove the state of the testator's property.

Denied in Brown v. Thorndike, 15 Pick. 395, as to the latter part of the opinion stated; it was "*obiter dictum.*"

DEAN v. PEEL, 5 East, 49.

Denied in Sargent v. ———, 5 Cow. 115. "Dean v. Peel is the only case in which the right of the father to maintain an action for debauching his daughter, *whilst under age*, has ever been denied; and that he considered it a departure from all former decisions upon the subject." See Martin v. Payn, 9 Johns. R. 389.

DEANE'S CASE, Hutt. 125.

Overruled, March 11.

DEARBORN v. CROSS, 7 Cow. 46.

Commented on, Allen v. Jaquish, 21 Wend. 628.

DEARBORN v. KENT, 14 Wend. 183.

Overruled, Auburn Canal Co. v. Leitch, 4 Denio, 65.

DE BERDT v. ATKINSON, 2 H. Bl. 336.

That the rule requiring demand on the maker, and notice to the indorser, is applicable only to fair transactions, where the bill or note has been given for value, in the ordinary course of trade.

Bayley on Bills, p. 136, says, "the court appear to have proceeded on a misapplication of the rule which obtains as to accommodation acceptances," &c., which Chambre, J., calls "a very sensible note." Leach v. Hewitt, 4 Taunt. 731; see Warder v. Tucker, 7 Mass. 449; Bond v. Farnham, 5 Mass. 170; see Lafitte v. Slatter, 6 Bing. 523; Chit. on Bills, 471, 2, and n. (k.)

DE BERKON v. SMITH & LEWIS, 1 Esp. R. 29.

Ld. Kenyon :—"That though in point of fact, parties are not partners in trade, yet if *one* so represents himself, and by that means gets credit for goods for the other, that both shall be liable."

Denied in Mitchell v. Roulstone, 2 Hall, 351.—Oakley.

DE BOW v. THE PEOPLE, 1 Denio, 9.

Overruled, Gifford v. Livingston, 2 Den. 380.

DE BUTTS v. BACON et al., 6 Cranch, 252.

This case was brought before the S. C. of U. S., on error, from the C. C. of Dist. of Columbia. It was a bill of foreclosure; and the defence was a plea of usury. The C. C. adjudged the contract to be usurious and void.

Denied, Palmer v. Mead, 7 Conn. 149. Hosmer, C. J.—"The case was probably decided on the local law of the State. In all events, all is in the dark. The opinion and act of the court is in few words: 'Which decree, this court, after argument, affirmed.' In such a case, I cannot conceive it an authority."

DE CAMP v. STEVENS, 4 Blackf. 24.

Overruled, Coe v. Smith, 4 Porter, 79.

DE GROOT v. VAN DUZER, 17 Wend. 170.

Reversed, 20 Wend. 390.

DE WOLF v. LONG, 2 Gilman, 679; Doyle v. Teas, 4 Scammon, 203; Wright v. McNeely, 11 Ill. 241.

Overruled, Webster v. French, 11 Ill. 275.

DECOUCHE v. SAVETIER, 3 Johns. Ch. R. 216.

Overruled, Kane v. Bloodgood, 7 Johns. Ch. R. 125.

DEEKS v. STRUTT, 5 T. R. 690.

No action lies at common law for a legacy, although it appear that the executor has assets sufficient, and though he has paid for several years the annuity for the arrears of which the action is brought.

Opposed, Van Orden v. Van Orden, 10 Johns. R. 30; Ewer v. Jones, 2 Ld. Raym. 937; S. C. 6 Mod. 26; 2 Salk. 415; Swasey v. Little, 7 Pick. 296.

DEEZE. See *Ex parte* Deeze (post).

DEHERS v. HARRIOT, 1 Shower, 164.

Questioned, Trask v. Martin, 1 Smith, 517.

DELAHAY v. McCONNELL.

See The People v. Pearson (post).

DELAVERGNE v. NOXON, 14 Johns. 333.

Overruled, Overseers of Canajoharie v. Overseers of Johnstown, 17 Johns. 41.

DEVONSHIRE (Earl of), in Howell's St. Trials, vol. 11, Col. 1353.

Doubted by Abbott, C. J., in The King v. Taylor, 3 B. & C. 516, where he says, "I should be sorry to consider that case an authority for any thing."

DE GAILLON v. L'AIGLE, 1 B. & P. 357.

Overruled, as *it seems*, in Stretton v. Busnach, 1 Bing. N.C. 139.

DE KENTLAND v. SOMERS, 2 Root, 437.

Doubted in Coit v. Starkweather, 8 Conn. 295.—Daggett :—"No reasons are assigned, nor authorities cited."

DELAUNY v. MITCHELL, 1 Stark. R. 439.

Held, that where the plaintiff had received a notice to prove the consideration of the note or bill, he ought to do so in his opening; he cannot do it in reply.

Overruled, see Chit. on B., 8th Am. ed. 638 n. (c).

DEL COL. v. ARNOLD, 3 Dal. 323.

Overruled, in effect, in L'Invincible, 1 Wheat. 238.

DELLABY & HASSALS' CASE, 1 Leon. 123.

"That is a strange case." Campbell Ch. J., Tallis v. Tallis, 16 Jur. 744; 21 Law J. R. N. S. Q. B. 269; 11 Eng. R. 460 *n.*

DE LOVIO v. BOIT, 2 Gall. 398.

Story, J. "We are at liberty to re-examine the doctrines, and to construe the jurisdiction of the admiralty upon enlarged and liberal principles."

Limited in Davis & Brooks v. The Seneca, Gilpin, 28, 29. Hopkinson, J. "But we are not to conclude from this, that we are to set no limits to it; or that we may do, under it, any thing that may seem to be convenient

DE LOVIO v. BOIT, 2 Gall. 398—continued.
in any particular case; nor yet that we should not cautiously respect the English decisions by great and learned men, tainted perhaps, but not blinded or corrupted, by prejudice."

DENNISON v. MODIGLIANI, 5 D. & E. 580.

That the taking of letters of marque by a merchant vessel avoids the policy, though no use be made of them.

The authority of this case is shaken in Moss. v. Byrom, 6 D. & E. 379. In Massachusetts it is denied. Wiggin v. Amory, 13 Mass. 118.

DENN v. FERNSIDE, 1 Wils. 176.

1st resolution—that the grant of a freehold to commence in *futuro* was void.

"This old principle of law—has no good ground to stand upon, at this day." Per Pratt, C. J. in Freeman v. West, 2 Wils. 165.

DENNE v. SHERSTON, Cowp. 410.

That dying without issue, upon a limitation of lands, had never been confined to issue living at the time of the death.

Denied in Patterson v. Ellis, 11 Wend. 283, 4. See Brewster v. Striker, 2 Coms. 19.

DENN v. DUPUIS, 11 East, 134; Purling v. Parkhurst, 2 Taunt. 237.
Denied in Horwood v. Underhill, 4 Taunt. 346.

DENTON v. NOYES, 6 Johns. 296.

Overruled Allen v. Stone, 10 Barb. 547.

DENTON v. STEWART, 17 Ves. 756; 1 Cox, 258; and Greenaway v. Adams, 12 Ves. 395.

Overruled in Gwillim v. Stone, 14 Ves. 128 and Jenkins v. Parkinson, 2 M. & K. 5; 1 Coop. Sel. Cas. 179; S. C. (8 Cond. 432). See 13 Price, 750.

DE SOUZA v. EWER, Park, 361.

That the sentences of foreign Admiralty Courts were conclusive, though founded on the want of a document not required by treaty, nor by the law of nations.

Ld. Kenyon afterwards said he was satisfied he was mistaken in that decision, and consequently that it could no longer be considered as any authority. 8 D. & E. 444, note.

DEWES v. MORGAN. 1 Mart. Lou. R. I.
S. P. as in Timrod v. Shoolbred (post).

DE WOLF v. JOHNSON, 10 Wheat. R. 367.

Overruled in Lloyd v. Scott, 4 Peters' R. 205, as far as the principle is there asserted, that the grantee of a mortgagor cannot avail himself of the defence of usury, to a bill of foreclosure by the mortgagee. See Trumbo, Ex'r v. Blizrard, 6 Gill & J. 18; Sands v. Church, 2 Selden, 347.

DE WOLFE v. THE N. Y. F. INS. CO., 20 Johns. 214, 225, 229.

Reversed in 2 Cowen, 56.

DEY v. DUNHAM, 2 Johns. Ch. R. 188.

Reversed in 15 Johns. 555; S. P. Dunham v. Gould, 16 ib. 367.

DIAS v. BOUCHAUD, 10 Paige, 445.

Reversed 1 Coms. 201.

DICK v. BARRELL, 2 Stra. 1248.

Plaintiff insured on any ship he could come in, from Virginia to London, interest or no interest. The ship he sailed in springs a leak, he removes to another, and arrives safely, but the first ship is taken. The insurer was held liable.

This case is treated by Marshall as entitled to no credit [p. 376]; and is shaken in Plantamaur v. Staples, 1 D. & E. 611, n.

DICKENSON v. DICKENSON, 2 Murph. R. 279; Smith v. Williams, 1 ib. 426; Streator v. Jones, ib. 449.

Where an absolute deed is made, parol evidence is not admissible to prove that a deed was made under any special trust, and that a valuable consideration was not paid.

Doubted. See Coach v. Rosine, 227; Lock v. Whiting, 10 Pick. 279.

DICKENSON v. SHEE, 4 Esp. R. 68; 1 Arch. K. B. 4 ed. 331.

When a witness has been examined in chief, the counsel of the opponent may put any question at all relevant to the cause, he may think of, and in a manner *however leading.*

Qualified. "Leading questions should never be put but when the witness is obviously anxious to conceal the truth." 3 Chitty's Pr. 900.

DICKENSON v. SHEE, 4 Esp. R. 68; 1 Phil. Ev. (911) 846.

That if a witness has been once examined by a party, the privilege of cross-examination continues in every stage of the cause; so that the other

DICKENSON v. SHEE, 4 Esp. R. 68; etc.—continued.

party may call the same witness to prove his case, and in examining him may put leading questions.

Denied in Phil. Ev. (911) 846—5th Am. ed. n. (a), by some cases; but in others affirmed.

DICKENS' REPORTS.

"From the author's official situation as Register of the Court of Chancery for many years, great expectations were formed by the bar, from his proposed publication; *Sed parturiunt montes.*"—Bridgman's Leg. Bib. 96. And Mr. Sugden (Sug. Vend. 139, 2d ed.) "The accuracy of the book being very questionable." (1 Sch. & Lef. 240).

DICKERSON v. TILLINGHAST.

See Root v. French, and Wardell v. Howell (post).

DICKSON. See *Ex parte* Dickson (post).

DICTA. See Obiter dicta (post).

DIGHTON v. GREENVILLE, 2 Ventr. 321.

Reversing, in Cam. Scac. the judgment in B. R. as reported in Skin. 26. But this judgment in Cam. Scac. was reversed in Dom. Proc. Cruise on Fines, 222.

DIXON v. SWIGGETT, 1 H. & J. 252.

Parol evidence cannot be given to prove the non-payment of the consideration money for lands sold and conveyed; the deed expressing that the consideration had been received.

Overruled in Higdon v. Thomas, 1 H. & G. 139; M'Crea v. Purmort, 16 Wend. 460.

DODDINGTON v. HALLET, 1 Ves. sen. 497.

That part owners of a ship, being tenants in common, and not joint tenants, have a right notwithstanding to consider that as a chattel, used in partnership, and liable as partnership effects, to pay all debts whatever, to which any of them are liable on account of the ship.

Overruled in Young, *ex parte*, 2 Ves. & B. 242; Daniel v. Russell, 14 Ves. 393; Merrill v. Bartlett, 6 Pick. 47; Nicoll v. Mumford, 4 Johns. Ch. R. 522. But see S. C. 20 Johns. R. 611. The better opinion is against the lien. Per Hopkinson, J. in Patton v. The Randolph, Gilp. R. 460.

DOE v. BURDETT.

See March v. Collnet (post).

DOE v. CHALLIS, 20 Law J. R. N. S. Q. B. 113; 2 Eng. R. 215.

Reversed, Challis v. Doe d. Evers, 21 Law J. R. N. S. Q. B. 227; 10 Eng. R. 429.

DOE v. HARRIS, 5 Carr. & P. 592; S. C. 24 Eng. Com. Law R. 468.

Per Parker, J. "I am of opinion that the privilege applies to all cases where the client applies to the attorney in a professional capacity; and an application to draw a deed is I think of that description." See to the same effect, 1 Greenl. Ev. 284. Greenough v. Gaskell, 6 Eng. Ch. Rep. Cond. 518, S. C. 1 My. & K. 104. Story Eq. Pl. 578. But in Crisler v. Garland, 11 Sme. & M. 139, Clayton, J. says,—"These cases state the rule very explicitly, but there are others which hold a different doctrine, and there is a great want of harmony both in the English and American decisions." See Cromack v. Heathcote (ante).

DOE dem. BARRETT v. KEMP, 7 Bing. 332; 5 M. & P. 173.

Whether a slip of land between some old inclosures and the highway, vested in the lord of the manor, or the owner of the adjoining freehold: *Held,* that evidence might be received of acts of ownership by the lord of the manor on similar slips of land not adjoining his own freehold, in various parts of the manor.

Reversed, it seems, in the Exchequer Chamber, 2 Bing. N. C. 102.

DOE v. HORNER, 8 Adol. & E. 235.

Has not been approved of in the other courts.—Crowder, J. Mayo v. Cannell, 28 Eng. L. & E. R. 332.

DOE v. JEFFERS. See Adams on Ejectment (ante).

DOE v. LAMING, 4 Camp. 77.

"I cannot say that the grounds upon which Lord Ellenborough decided that case appear to be satisfactory to my mind." Parke B. Greenslade v. Tapscott, 1 C. M. & R. 59; 4 Tyrw. R. 566.

DOE v. BRABANT, 4 T. R. 709 note.

Denied by Woodworth, J. in 5 Cow. 224, who says "the note is short and unsatisfactory."

DOE d. CHALLMER v. DAVIS, 1 Esp. R. 461.

Overruled in Bryan d. Child v. Winwood, 1 Taunt. 208.

DOE dem. CLARKE v. SPENCER, 2 Bing. 203, 370.

Doubted in Stokes v. Deey, 1 Moll. 597.

DOE v. ERRINGTON, 3 Nev. & M. 646.

Denied in Parker v. Edge, 3 Tyrw. 364; Hanbury v. Ella, 1 Adol. & El. 64.

DOE v. GOEF, 11 East, 668.

Overruled by Ld. Redesdale in Jesson v. Wright, 2. See Ward v. Bevil, 1 Y. & J. 527.

DOE d. PETERS v. HOPKINSON, 3 D. & R. 507.

The court are reported to have held, that where there was a demise by writing, not under seal, parol evidence was admissible "to prove that the real understanding between the parties was, that a tenancy should commence at "Old Lady Day," though the expression in the demise was general "from Lady Day."

Doubted by Mr. Phillipps in his Tr. on Ev. (754) 700, 5th Am. ed.

DOE v. LUXTON, 6 T. R. 292.

Doubted in Campbell v. Sandys, 1 Scho. & L. 295, as to a dictum of Ld. Kenyon.

DOE v. MANNING, 9 East's R. 59.

Held, that a voluntary conveyance will be set aside as fraudulent in favor of a subsequent purchaser for value, though the latter had notice of the first deed.

Denied in Buckle v. Mitchell, 18 Ves. 110; Hudual v. Wilder, 4 M'Cord, 294:—see also Sterry v. Arden, 1 Johns. Ch. R. 261; Ricker v. Ham, 14 Mass. 139. See 2 R. S. 137, s. 4.

DOE v. PASQUALI, Peake's N. P. C. 259.

A notice was held necessary when a tenant refused to pay rent to a devisee under a contested will.

Doubted in Doe d. Calvert v. Frowd, 4 Bing. 560;—a notice to quit is only necessary, where a tenancy is admitted on both sides.

DOE v. RICHARDS, 3 Term R. 356.

Disapproved, Mesick v. New, 3 Selden, 168.

DOE v. ROAKE, 2 Bing. 497—C. B.

A devisor being seized of a moiety of certain lands in S——, having by her own creation a dower of appointment over the other moiety, which she had purchased of her nephew, who succeeded her sister in the possession of it,—and having no other real estate—devised all her freehold estate in S. to J. R. on condition that out of the rent and profits she should keep the whole in tenantable repair, and under limitations framed to keep the property as long in her family as possible :—*Held*, that this devise was, under the circumstances, a sufficient execution of the power, and that both moieties passed under it to J. R.

Reversed in Denn v. Roake, 5 B. & C. 720; affirmed in 6 Bing. 475.

DOE v. ROE, 9 Dowl. Pr. C. 548.

Overruled, Cross v. Jordan, 22 Law Jour. R. N. S. Exch. 70; 17 Jur. 93; 8 Ex. 149; 16 Eng. R. 522; and see Doe d. Gretton v. Roe, 4 Com. B. Rep. 576.

DOE v. ROGERS, 5 B. & Adol. 755; 2 Nev. & Man. 550, S. C.

Doubted in Sug. on Pow. p. 417 (Lond. ed.) p. 226, *et seq.* (Am. ed.)

DOE d. SAVILLE v. EARL OF SCARBOROUGH, 3 Ad. & El. 3; 4 N. & M. 274.

Reversed in Earl of Scarborough v. Doe d. Saville, 3 Ad. & Ell. 897. The Exchequer court holding that the recovery defeated the limitations expectant on the estate tail.

DOE v. SNOWDEN, 2 Bl. 1224, cited 2 East, 383.

Overruled by Ld. Kenyon, at N. P. in Doe v. Wilton, cited 2 Stark. Ev. p. 300, n. (x). But see 2 East, 383.

DOE d. TEYNHAM v. TYLER.

See Teynham, dem. of, v. Tyler (post).

DOE v. THOMAS, 9 B. & C. 288.

Mr. Sugden says, "the case is not accurately stated in the report." Sug. on Pow. p. 49, n. (k).

DOE v. WATTON, Cowp. 189.

That "from the day of the date" was exclusive. This case was afterwards overruled by Ld. Mansfield, who decided it, in Pugh v. Duke of Leeds, Cowp. 714.

DOLERAINE v. BROWN, 3 Brown, C. C. 663.

Doubted in Hovendon v. Ld. Annesley, 2 Sch. & Lef. 637.—Redesdale; but see his pleadings, p. 173, 4 (3 ed).

DOLIN v. COLTMAN, 1 Vern. 294.

Doubted by Atherley on marriage settlements, p. 162, and by Parker, C. J. in Bullard v. Briggs, 7 Pick. 539, 540.

DONNELLY v. ROCKFELLER, 4 Cowen, 253.

Reversed in Rockfeller v. Donnelly, 8 Cowen, 623.

DORMER v. FORTESCUE, 3 Atk. R. 134.

That betterments or improvements should be deducted in an action for the mesne profits.

Denied, Bank of Hamilton v. Dudley's Lessee, 2 Pet. R. 492; Russell v. Blake, 2 Pick. 505; Lombard v. Ruggles, 9 Greenl. R. 62; see Nelson v. Allen, 1 Yerg. R. 360.

DORMER v. THURLAND, 2 P. Wms. 506.

Power given to charge the premises with £2000 by *will, or any writing in nature of a will, sealed and attested by three or more witnesses.* The premises were charged by will signed and attested by three witnesses, but not *sealed.* The judges of B. R. determined that this was not a good execution of the power. But Ld. King thought it was;—"and I own," says Ld. Mansfield, "I should incline to his opinion." Earl of Darlington v. Pultney, Cowp. 268.

DOUGLASS v. CLARKE, 14 Johns. 177.

Overruled, Thomas v. Allen, 1 Hill, 145.

DOUGLASS v. DANGERFIELD, 10 Ohio, R. 152.

Denied, Neiswanger v. Gwynne, 13 Ohio R. 74.

DOUGLASS v. MOODY, 9 Mass. 548.

Overruled in 14 Mass. 66.

DOUGLASS v. WADDLE, 1 Ohio R. 420.

Limited in Williams v. Bosson, 11 Ohio R. 62.

DOUGLASS v. WILKINSON, 6 Wend. 637.

See Taplin v. Packard, 8 Barb. 220.

DOVE v. SMITH, 6 Mod. 153.

"Opinion of the reporter, not of Ld. Holt." Per Lawrence, J., 6 D. & E. 406.

DOW. See *Ex parte* Dow.

DOWE v. HOLDSWORTH.

See Magget v. Mills (post).

DOWN v. HALLING, 4 B. & C. 330.

To the point in respect to a party's taking a bill under circumstances which ought to have excited the suspicion of a prudent man that it had not been fairly obtained.

Overruled in Crook v. Jardis, 5 B. & Ad. 909; Buckhouse v. Harrison, 5 B. & Ad. 1098. *Held*, that nothing but *gross negligence* will prevent an indorsee from recovering. See Gill v. Cubitt (post).

DOWNER v. REMER, 21 Wend. 10.

Reversed, 23 Wend. 620; 25 ib. 277; Seneca Bk. v. Neass, 3 Coms. 442.

DOWNER v. THOMPSON, 2 Hill, 137.

Overruled, 6 Hill, 211.

DOWNHALL v. CATESBY, Moore, 356 (Swift's Dig. 141).

Denied in Comstock v. Hadlyme, 8 Conn. 254.—Williams.

DOWTHWAITE v. TIBBUT, 5 M. & S. 75—(3 Bing. 651).

Overruled in A'Court v. Cross, 6 B. & C. 610.

DOYLE v. TEAS.

See De Wolf v. Long (ante).

DRADDY v. DEACON, 2 Vern. 242, cited in Hadley v. Clarke, 8 Term R. 266.

It is said (in Reed's Bib. Nov. 297–8), that Kenyon, C. J., observed, "that it had been an hundred and an hundred times lamented that Vernon's Reports were published in a very inaccurate manner."—"Mr. Vernon's notes were taken for his own use, and never intended for publication. He was the ablest man in his profession."

DRAKE. See *Ex parte* Drake.

DRAKE v. ROYMAN, Sav. 133.

That an executor cannot maintain trover, if the conversion was in the lifetime of the testator.

Overruled, Crosier v. Ogleby, 1 Stra. 60; Badlam v. Tucker, 1 Pick. 389.

DRANE v. HODGES, 1 Har. & M'Hen. 262.

That an award cannot establish title to land.

Denied in Shelton v. Alcox, 11 Conn. 248.—Williams, C. J.: The case "occurred in Maryland, before the Revolution, seems a solitary exception to the current of American decisions."

DRAPER v. GLASSOP, 1 Ld. Raym. 153; Com. Dig. Pleader (2 W. 17).

The latter, in enumerating the cases in which the defendant may plead the general issue *nil debet*, to debt upon contract, not upon bond, says, "So, though the debt is barred by the statute of limitations; for he could not plead *nil debet infra sex annos*, but *nil debet* generally."

Overruled in Chapple v. Durston, 1 Cr. & Jerv. R. 1: *Held*, that the statute of limitations must be replied specially to a plea of set-off, and cannot be taken advantage of under the general replication of *nil debet*. See 1 Cranch, 465, approved, Pearsall v. Dwight, 2 Mass. 84.

DREKE v. MAYOR OF EXON. 2 Freem. 183; Vandernanker v. Disbrough, 2 Vern. 97: Moyses v. Little. ib. 194.

Opposed, Doe d. Mitchinson v. Carter, 1 Y. & Jerv. 427; 2 ib. 572; 2 Rose, 86.

DREW v. BIRD, 1 Mo. & Malk. 156.

On a bill of lading of goods "shipped by A. B. to be delivered to C. D. or his assigns, he or they paying freight;" if the goods are delivered without receiving freight, the *shipper* is not liable for the freight, there being no charter-party.

Opposed, Barker v. Havens, 17 Johns. 234:—In this case, the shipper was also the owner of the goods; in Drew v. Bird, *supra*, that fact does not appear in the report. See Howard v. Tucker, 1 B. & Ad. 712; and 3 Kent Com. 222, n. c.

DREW v. COLLINS, 20 Law J. Rep. N. S. Ex. 369; 4 Eng. R. 540.

Dissented from Tetley v. Taylor, 21 Law J. R. N. S. Q. B. 2; 16 Jur. 59; 8 Eng. R. 370.

DREW v. WADLEIGH, 7 Greenl. R. 94.

A written contract was admitted for the purpose of impeaching the witness on the stand, without calling the subscribing witness; the witness admitting his signing it.

Doubted. See 1 Phil. Ev. 465, note; Harris v. Wilson, 7 Wend. 57.

DRIVER v. THOMPSON, 4 Taunt. 294.

That a married woman may execute a power, whether appendant, in gross, or simply collateral, and as well over a copyhold as a freehold estate.

Doubted in Sugden on Pow. p. 185, ch. 4, s. 1, n. 2—"Notwithstanding the decision in Driver v. Thompson, it deserves a reconsideration whether she and her husband can surrender *her* estate to the use of her will."

DROWN v. SMITH, 3 N. H. R. 299.

See Odiorne v. Odiorne, 5 N. H. R. 316; Wilson v. George, 10 ib. 447.

DRURY v. DEFONTAINE, 1 Taunt. 135.

Doubted by Mr. J. Park, in Smith v. Sparrow, 4 Bing. 84:—"I do not think the court was right in the decision of Drury v. Defontaine, 1 Taunt. 135. I think the construction put upon the statute in that case, too narrow." See Bloxsome v. Williams (ante).

DUBBER v. TROLLOPE, Amb. 453.

The words *heir male* in the singular number give the estate a descendable quality, and make it inheritable.

Doubted, it seems, by Mr. Preston, Tr. on Estates, 2 vol. 8.

DUBOIS v. DELAWARE & H. CANAL CO., 12 Wend. 334; 15 ib. 89.

The contract stipulates for the valuation of any *extra work* or other work necessary to the final settlement of the contract, to be determined by an engineer; and yet held, that *hard-pan excavation* was not within the contract—and the contractor was entitled to recover upon a *quantum meruit.*

Opposed to Morgan v. Birnie, 9 Bing. 672, as it seems. See Sherman v. Mayor of New York, 1 Coms. 320.

DUBOIS v. GROVE, 1 T. R. 112.

Doubted, in Hurlbert v. The Pacific Ins. Co., 2 Sumner, 471, 480, 481, Story, J. says,—"In Dubois v. Grove (1 Term R. 112), and Bize v. Dickason (1 Term R. 285), the broker acted under a *del credere* commission, and having paid the losses to his principal, he was allowed to set off

DUBOIS v. GROVE, 1 T. R. 112—continued.

these losses against a claim for premiums by the assignees of a bankrupt. Under such circumstances, it may be fair, as between himself and the underwriters, the policy being made in his name and the amount being paid, to treat him as the owner of the policy. Moody v. Webster (3 Pick. R. 424), Koster v. Eason (2 M. & Selw. 112), and Parker v. Beasley (2 ib. 423), recognizing the like right of set-off where the brokers are under a *del credere* commission, or have a lien by reason of acceptances (see also Davies v. Wilkinson, 4 Bing. 573). But where there is neither *del credere* commission nor a lien, the right of set-off is held not to exist. Parker v. Smith (16 East R. 382, 386). It would, however, be a great mistake to consider Grove v. Dubois (1 Term R. 112), from which all other cases have sprung, an authority to the extent of considering, that where the broker acts under a *del credere* commission, he is to be considered as the primary debtor to his principal, and therefore, to all intents, the insured. In Baker v. Langhorn (6 Taunt. R. 519), and Peele v. Northcote (7 Taunt. R. 478), Ld. Ch. J. Gibbs repudiated such a notion. (See also Gall v. Comer, 7 Taunt. R. 558.) Without going further into the examination of the English cases on this particular point, resting, as they do, upon the case of Dubois v. Grove, a case in itself not very satisfactory in its principles, it is sufficient to say, that they furnish no general reasoning applicable to the case before the court."

DUBOIS v. LUDERT, 5 Taunt. 606; 1 Marshall, 248.

The non-joinder of a dormant partner, may be pleaded in abatement. Overruled in De Mautort v. Saunders, 1 B. & A. 396; Mullett v. Hook, 1 M. & M. 88. See 17 Ves. 412; 19 ib. 294.

"That case stands alone, and is opposed to the decision in the case of Baldney v. Ritchey, 1 Stark, N. P. C. 338; Doe v. Chippenden there cited; to the opinion of Lord Eldon, in *Ex parte* Norfolk, 19 Ves. 455; and directly overruled by Lord Tenterden in Mallet v. Hook, 1 M. & M. 88; and by the Court of King's Bench in the case of Mautort v. Saunders, 1 B. & Ad. 398." Cleveland v. Woodward, 15 Vt. R. 305.

Said to be overruled, see Hagar v. Stone, 20 Vt. R. 111.

DUBOSE v. WHEDDEN, 4 M'Cord R. 221.

See Haine v. Tarrant, 2 Hill's R. 401.

Held, that an infant may bind himself, for necessaries; and it *seems*, even on a negotiable note, for necessaries, while in the hands of the original payee.

Opposed, Swasey v. The Adm'r of Vanderheyden, 10 John. 33.

DUCHESS OF KINGSTON'S CASE, 11 State Tr. 261; 20 How. St. Tr. 538; 2 B. & C. 887.

"The judgment of a court of *concurrent* jurisdiction, directly upon the point, is, as a plea in bar, or as evidence, conclusive between the same parties, upon the same matter directly in question in another court," &c.

Denied in Jackson v. Wood, 3 Wend. 27; but this case was reversed in Wood v. Jackson, 8 Wend. 1; see 3 Cowen, 120; and 4 ib. 559.

DUCKHAM v. WALLIS, 5 Esp. R. 252 (Hurd v. West, post).

Ld. Ellenborough held, that the declarations of the payee, though made previous to the indorsement of the note, were not admissible, it appearing that the note was indorsed after it was due.

Denied in Hatch v. Dennis, 1 Fairf. R. 249. Parris, J.—"From the recent cases in K. B. and C. B., it would seem that the ruling of Lord Ellenborough is not now considered as law in England." Pocock v. Billing, 2 Bing. 269; Barough v. White, 4 B. & C. 325; Shaw v. Broom, 4 D. & Ry. 730; Beauchamp v. Parry, 1 B. & Ad. 89; Smith v. De Wruitz, Ry. & Mo. 212; Graves v. Key, 3 B. & Ad. 313. But see Whitaker v. Brown, 8 Wend. 490 (post). See Gibblehouse v. Strong, 3 Rawle, 452.—Kennedy.

DUFFIELD v. ELWES, 1 Sim. & Stu. 239.

Held, that a bond and mortgage cannot pass as a *donatio mortis causa.* Reversed, 1 Bligh's R. 497.

DUFFIT v. JAMES, 7 East, 480 n.

Overruled in Broom v. Davis, 7 East, 479 n.; Buller (S. P., Cormach v. Gillis, 7 East, 481 n.); Morgan v. Richardson, ib. 482 n.; and held, in a case where a specific sum had been agreed upon and part paid, that inadequate execution was no defence, though the plaintiff was fully apprised of the fact.

DUFFY v. THE PEOPLE, 1 Hill, 355.
Reversed, 6 Hill, 75.

DUGUET v. RHINELANDER, 1 Johns. Cas. 360.
Reversed, 2 Johns. Cas. 476.

DUMAS. See *Ex parte* Dumas.

DUMPOR'S CASE, 4 Coke, 119.

A condition, not to alien without license is determined by the license granted. Apportionment of conditions.

Commented upon in Smith's Lead. Cas. 68.

DUNCAN v. BISCOE, 2 Eng. R. 175.

Overruled, Wilson v. Biscoe, 6 Eng. R. 44.

DUNCAN v. DICK, Walker's Rep. 281.

The court refused to be bound by this decision, in Garland v. Rowan, 2 Sme. & M. 629.

DUNCAN v. LOWNDES, 3 Camp. 478.

Evidence ought to be given to show an authority for the signature of the partnership firm to a guarantee.

Overruled in Sandilands v. Marsh, 2 B. & Ald. 673; Gordon *ex parte*, 15 Ves. jun. 286.

DUNCAN v. SELF, 1 Murph. R. 466.

S. P. as in Tims v. Porter (post).

DUNDAS v. DUTENS, 2 Cox Cas. in Ch. 235; 1 Ves. jun. 196, S. C.

Ld. Thurlow said, that a recital of a prior parol agreement was valid; but that if it was not so, the plaintiffs had no equity against the fund which they sought.

Denied in Reade v. Livingston, 3 Johns. Ch. 490:—"We cannot say, from this report of the case, on which ground the bill was dismissed; nor does it even appear, whether the creditors were prior or subsequent to the settlement. A case so uncertain and so variously reported, can be of no material use or authority." See also 5 Cow. 72, 73.

DUNHAM v. DEY, 2 Johns. Ch. 188.

Reversed in 15 Johns. 555.

DUNHAM v. OSBORN, 1 Paige, 634.

See Bear v. Snyder, 11 Wend. 592.

DUNHAM v. PETTEE.

Reversed, 4 Selden, 508.

DUNK v. HUNTER, 5 B. & Al. 322.

Doubted in Warman v. Faithful, 3 Nev. & M. 137:—Littledale says—There have been conflicting decisions upon the subject as to what constitutes a lease;—"the old authorities are more clear."—Patteson, J.:—"The rule is to look *for the intention* of the parties within the four corners of the instrument."

DUNKIN v. VANDENBURGH, 1 Paige's Ch. R. 622.
S. P. as in Gridley v. Garrison (post).

DUNKLEE v. FALES, 5 N. H. R. 528.
Questioned, Young v. Walker, 12 N. H. R. 506.

DUPUY v. UNITED INS. CO., 3 Johns. Cas. 182.
Overruled, Smith v. Bell, 2 Cai. Cas. 153.

DURAND v. CARRINGTON, 1 Root, 355.
Overruled in Beach v. Norton, 8 Conn. R. 71.—Williams, J.

DURAND v. CHILD, 1 Bulstr. 157.

Trespass will *not* lie by the owner of the soil, for an injury done to it in a highway.

Overruled in Lade v. Shepherd, 2 Stra. 1004; Peck v. Smith, 1 Conn. R. 103, 118.

DUTCHESS COT. M. v. DAVIS, 14 Johns. 245.—Thompson.

"The defendant having undertaken to enter into a contract with the plaintiffs in their corporate name, he thereby admits them to be duly constituted a body politic and corporate under such name."

Doubted, Nelson, J., in 8 Wend. 481:—"The remark was not necessary to the point under consideration."

DUVALL v. CRAIG, 2 Wheat. 45.

That a variance between the writ and declaration cannot be taken advantage of on general demurrer, but must be pleaded in abatement.

Denied, 1 Saund. 318, note 3; Giles v. Perryman, 1 Maryland R. 171.—Earle, J.

DYER, 253, b. pl. 102.

Lease to W. C. *pro termino* 12 *annorum, si tam diu vixerit; et si obierit infra predictum terminum, tunc, &c.* The remainders were holden void, because the term is determinable on the life of W. C.

This doctrine is denied in Wright v. Cartwright, 1 Burr. 282, where it is settled that "*term*" means the *estate*, or *interest* created, as well as the limitation of time.

DYER v. EAST, 1 Vent. 146.

That a smiter in a church yard does not stand *ipso facto* excommunicated, until conviction at law, transmitted to the ordinary.

DYER v. EAST, Vent. 146—continued.

"This is the only case to be met with to this purpose; and it must be a mistake, either in the statement of the case or in the opinion." Per Dennison, J., 1 Burr. 244.

DYER v. HATCH, 1 Ark. R. 345.

Qualified, Ferguson v. State Bk., 6 Eng. Ark. R. 518.

DYETT v. PENDLETON, 4 Cowen, 581.

Reversed in 8 Cowen, 727.

E.

EADES v. VANDEPUT, 5 East, 39.

Doubted by Ld. Ellenborough (3 M. & S. 197, 8):—"It is but a very loose note;"—"under the uncertainty both of fact and form which attends that case, I think no very material argument is to be derived from it."

EARL OF BATH v. BATHERSEA, 5 Mod. 9.

Ld. Ch. J. Denman said (in Doe v. Derby, 1 Ad. & El. 783):—"That case is not stated clear enough to be relied upon." See Phil. Ev. 571.

EARL v. ROWCROFT, 8 East, 126.

That part of this case which contains the opinion that the motives of the shipmaster are of no account in a question of barratry, is inconsistent with Crousillat v. Ball, 4 Dall. 296; Marcadier v. Chesapeake Ins. Co., 8 Cranch, 39, 49; Kendrick v. Delafield, 2 Caines, 72; and see note to 7 D. & E. 508, that barratry must arise *ex maleficio.*

EARLE v. BROWNE, 10 Ad. & El. 412.

Doubted, Humphries v. Jenkinson, 22 Law J. R. N. S. Ex. 250; 8 Exch. R. 684; 20 E. L. & E. R. 479.

EASELEY v. CROCKFORD, 10 Bing. 243.

S. P. as in Gill v. Cubitt (post). See Down v. Halling (ante).

EAST'S PLEAS OF THE CROWN, 528.

Denied in Commonwealth v. Snell, 3 Mass. 82; The People v. Howell, 4 Johns. R. 302; The People v. Dean, 6 Cowen, 31; and deciding that a party whose name has been forged may be a witness against the offender.

EAST'S CROWN LAW, 411, 440.

Mr. J. Buller decided at the Winchester Spring assizes, 1787—that the attempt to commit a rape was merged in the *actual rape*,—the lesser crime in the greater.

Overruled in State v. Shepard, 7 Conn. 54, and Commonwealth v. Cooper, 15 Mass. 187. Indictment for an attempt to commit, sustained by proof of a rape; or if indicted for a rape, he may be found guilty of an assault with intent to commit a rape.

EAST HAVEN v. HEMMINGWAY, 7 Conn. 186.

The owner of land adjoining a navigable river, has the exclusive right to the soil between high and low water mark; and may erect stores and wharves thereon.

Doubted. Chapman v. Kimball, 9 Conn. 38; Storer v. Freeman, 6 Mass. 438; Kean v. Stetson, 5 Pick. 492.

EASTON v. PRATCHETT, 1 C. M. & R. 798; 4 Tyr. 472.

Affirmed on error in Ex. Cham. 2 C. M. & R. 542.

EASTWOOD v. BUEL, 1 Ind. R. 434.

Overruled, Wells v. Dawson; see List of overruled cases appended to 1 Ind. R.

EATON v. JAQUES, Doug. 460.

A mortgagee of leasehold lands is liable only in respect of the possession; and that as a mortgage is a mere security, the mortgagee out of the possession was not liable as assignee.

Overruled in Williams v. Bosanquet, 1 B. & P. 72, 238, by ten judges; and Dallas, C. J. says, that as the lessee is liable for the rent whether he enter or not, the assignee is under the same liability, although his assignment is only by way of security. But this latter decision not applicable in New York.

EATON v. JAQUES, 2 Doug. 455.

That if a term be assigned by way of mortgage, with a clause of redemption, the lessor cannot sue the mortgagee as assignee of all the estate, right, &c. of the mortgagor, even after forfeiture of the mortgage, unless the mortgagee has taken actual possession.

Said to have been denied to be law. Powell on Mort. 241.

Overruled, Williams v. Bosanquet, Bro. & B. 238; 5 Com. Law R. 72.

EATON v. SANFORD, 2 Day's R. 523.

Held, that a person who at the decease of W. was an infant, and while such married, and so remained until she died, which was within five years from the commencement of the action, yet the case was within the saving of the statute.

Denied in Bush v. Bradley, 4 Day, 298.

Overruled, Bunce v. Wolcott, 2 Conn. 27; McFarland v. Stone, 17 Vt. R. 175.

EBERLE v. MAYER, 1 Rawle, 366.

Overruled in Howell v. Atkyn, 2 Rawle, 282. It is said (Amer. Jurist, No. 19, July 1833) to have been overruled itself by The Commonwealth v. Strembect, 3 Rawle, 341. However, this is denied in No. 22 Jurist, Jan. and April, 1834.

ECCLESIASTICAL ORGANIZATION, &c.

The cases which may be found in the English reports, have no relation to ecclesiastical organization and proceedings as they exist in this country. Smith v. Nelson, 8 Vt. R. 555.

ECCLESTON v. SPEAKE, 1 Show. 89.

Better reported in Carth. 80.

ECKHARDT v. WILSON, 8 D. & E. 140.

That the assignees of a bankrupt should be joined with his solvent partners.

Contra, 1 Esp. 140, 170; Webb v. Fox, 7 D. & E. 391: Fowler v. Down, 1 Bos. & Pul. 44; Bird v. Pierpont, 1 Johns. 126; 5 East, 230.

EDGAR v. BOIS, 11 S. & R. 415.

Doubted in Binney v. Gleason, 5 Wend. 396. See Meason v. Phillips.

EDGAR'S LESSEE v. ROBINSON, 4 Dall. 132.

Doubted in Little v. Delancy, 5 Binn. R. 271, 273; Tilghman, C. J. and Yeates, J. "The report is short; and I am satisfied that the reporter was not present at the trial, or the case would have been stated with more clearness and precision."

EDGAR v. HALLIDAY, 1 Lownd. M. & P. 367.

Overruled in Driscoll v. Whalley, 16 Jur. 150; 8 Eng. R. 355; 10 ib. 436.

EDGELL v. HAYWOOD, 3 Atk. 352.

S. P. as in Bayard v. Hoffman (ante).

EDMUNDS v. HARRIS, 2 Ad. & El. 414: See 1 C. M. & R. 741; 2 ib. 547; 2 Bing. N. C. 671; 1 M. & W. 352.

Overruled in Broomfield v. Smith, 1 M. & W. 542: *Held*, that in *indebitatus assumpsit* or debt for goods sold and delivered, the defendant may prove, under the general issue, that the goods were sold on a credit which had not expired at the time of action brought.

12 EDW. 4 PL. 12.

Overruled in Shaw v. Barbor, Cro. Eliz. 830: *Held*, that if tenant at will make a lease and the lessee enters, *he* only is the disseisor.

EDWARDS v. HARBEN, 2 T. R. 587.

Denied in Hall v. Tuttle, 8 Wend. 386; and later English cases have laid down, that, under almost any circumstances, the question *fraud or no fraud* is one for the consideration of the jury. See Martindale v. Booth, 3 B. & Adol. 498, where several cases to this point are cited; and see in Carr v. Burdiss, 5 Tyrwh. 316, the expressions of Parke, B.; Dewey v. Bayntem, 6 East, 257; Reed v. Blades, 5 Taunt. 212. This is true in cases where the conveyance is *absolute* and there is no transmutation of possession; but where there is no change of possession by the express agreement of the parties, as for instance, where it is by way of mortgage, and the mortgagee is not to take possession till a default in payment, the want of possession by the vendee is no evidence of fraud. Martindale v. Booth, 3 B. & Adol. 505; Reed v. Wilmot, 7 Bing. 577. See 2 Kent Com. 520. Ld. Tenterden says that "possession is to be much regarded; but that is with a view to ascertain the good or bad faith of the transaction." Latimer v. Batson, 4 B. & C. 634.

Questioned and not followed, Bryant v. Kelton, 1 Texas R. 420.

EGERTON v. FURZEMAN, 1 Car. & P. 613.

The action was brought to recover money staked upon a dog fight. C. J. Abbott, refused to try it; saying that he thought the court was not to be employed in trying which dog or which man won a battle.

But in New York, by the 5th section of the "Act to prevent horse-racing," an action lies by the loser against the *stakeholder*. See 7 Cow. 496. In Hayward v. Sheldon (13 Johns. 88), an action was brought to recover back a wager on the event of a horse-race. The plaintiff declared in the general form provided by the 2d section of the "Act to prevent excessive and deceitful gaming;" and the court said, that it was "the cor-

EGERTON v. FURZEMAN, 1 Car. & P. 613—continued.

rect and only manner of proceeding, to authorize a recovery." Indeed, it does not seem to require any reasoning or authority to show that, if no action in such a case can be sustained without the aid of the statute, the form prescribed by the statute must be observed. And such appears to have been the practice, as far as can be gathered from the cases on the subject, which have been reported. In Hayward v. Sheldon (13 Johns. 88), and in the case of Strong & Havens v. The N. Y. Firemen Ins. Co. (11 Johns. 323), the cargo was estimated in the adjustment of the average at the market price in Lisbon, the port of destination, where the contribution was settled, which not being conformable to the rule of adjustment in this State, as established by the case of Leavenworth v. Delafield (1 Caines, 573), the defendants insisted that they were not bound by the adjustment at Lisbon, and were liable only for the proportion of general average, to be settled according to the rules adopted here. But the court, after reviewing all the cases, held the adjustment to be conclusive, on the ground that a settlement of the general average at the foreign port, when fairly made according to the laws of the country to which the port belongs, is binding upon the parties, and that it is the duty of the master to cause an adjustment to be made on his arrival at the port of destination, and to enforce the payment of the contribution, and that he has a lien upon the cargo for its proportion.

In Allen v. Ehle (7 Cowen, 496), the action was debt. The declaration was in the general form for money had and received; but such form is expressly given by the statute. (Collins v. Ragrew, 15 Johns. 468.) It does not appear what was the form of the action. It was commenced in a justice's court, and for aught that is contained in the report of the case, may have been an action of debt. There is no case, it is believed, in which an action under the statute has been tried on an issue of non-assumpsit.

EGGLESTON v. LEWIN, 3 Salk. 175; 1 ib. 23.

That *indebitatus assumpsit* will lie for money won at play.

Contradicted by Smith v. Bromley, Doug. 696 n.; Howson v. Hancock, 8 D. & E. 535; Vandyck v. Hewit, 1 East, 98; Farrar v. Barton, 5 Mass. 395; Worcester v. Eaton, 11 ib. 368.

EICHEBERGER v. M'CAULEY, 5 Har. & J. 213.

S. P. as in Clayton v. Andrews (ante).

ELLIOTT v. DAVIS, Bunb. 23.

That plaintiff might recover beyond the penalty of a bond, by way of damages, being the interest due by the condition, or costs.

Doubted. Clark v. Birk, 3 Cow. 156. See 3 Bro. Ch. R. 490; 6 T. R. 303; 1 Taunt. 218.

ELLIS v. ATKINSON, 3 Bro. Ch. Ca. 563.

Overruled by Sir Pepper Arden, Master of the Rolls, in Socket v. Wray, 4 Bro. Ch. Ca. 483; but it may doubted if it is not again established, and Socket v. Wray overruled by Heatley v. Thomas, 15 Ves. 596; and see Clancy on the rights of married women, 88 to 106.

ELLIS v. ELLIS, 11 Mass. R. 92 (4 Burr. 2057).

That the second marriage in the case of a prosecution for adultery must be proved by the oath of some person present when the marriage was solemnized.

Doubted by the court in Cayford's case, 7 Greenl. R. 58.—Mellen. See Trueman's case (post).

ELLIS v. NIMMO, Lloyd & Gould, 333.

Said to be overruled. See Dillon v. Coppin, 4 Myl. & Craig, 647; Holloway v. Headington, 8 Sim. 324. Jefferys v. Jefferys, 1 Craig. & Phil. 138; Duvoll v. Wilson, 9 Barb. 490, 492; Story Eq. Jurisp. § 793 b., 987. See, however, Hayes v. Kershow, 1 Sand. Ch. R. 258.

ELLIS v. PAIGE, 1 Pick. 43; Hollis v. Pool, 3 Met. 551.

"I cannot coincide with those cases." Bennett, J. in Barlow v. Wainwright, 21 Vt. R. 93.

Opposed, Jackson v. Laughead, 2 Johns. 75.

ELLIS v. RUDDLE, 2 Lev. 151; Ellis v. Audle, 3 Keb. 552, S. C.; Ellis v. Nulso, 3 Keb. 659, 678, S. C.

This case is examined and denied by Willes, C. J. in Huggins v. Bainbridge, Willes, 245.

ELLMAKER v. BUCKLEY, 16 S. & R. 77.

S. P. as in Harrison v. Rowan (post).

ELMENDORF v. HARRIS, 5 Wend. 516.

Reversed 23 Wend. 628.

ELMORE v. STONE, 1 Taunt. 458.

Doubted by Weston, J. in 4 Greenl. 381, saying—"In Horn v. Palmer (3 B. & Ald. 321), Bailey, J. expresses a doubt of the authority of the decision in Elmore v. Stone." See Shindler v. Houston, 1 Coms. 268.

ELMS v. CHEVIS, 2 M'Cord, 349.

That a book account may be proved by proving the handwriting of the clerk who made the entry, if he be out of the State.

Denied in Merrill v. The Ithaca & Oswego R. R. Co., 16 Wend. 16—Cowen.

ELMSLEY v. YOUNG, 2 My. & Keene, 82 (7 Cond. R. 270).

S. P. as in Hinckley v. M'Larens, and Phillips v. Garth (post).

Reversed in S. C. 2 M. & Keene, 780 (8 Cond. R. 227). See 4 Kent Com. 537 n.

ELWES v. MAWE, 3 East, 38.

Held, that buildings subservient to the purpose of agriculture did not come within the recognized exceptions of erections set up for the advantage of carrying on a trade.

Opposed, Dean v. Allaley, 2 Esp. R. p. 11; Amos & Fer. on Fix. 46 to 60; Gibbon's Law of Fix. 27. See Winn v. Ingleby (post).

EMBURY v. CONNER, 2 Sand. 98.

Reversed, 3 Coms. 511.

EMERSON v. HEELIS, 2 Taunt. 38.

Where growing turnips were sold, but no particular time was stated for their removal, nor did it appear what the degree of their maturity was, the court, without adverting to these circumstances, held it to be a sale of an interest in land within the statute.

Overruled in Evans v. Roberts, 5 B. & C. 829: *Held*, that a *sale of the produce of the land, whether it be in a state of maturity or not, provided it be in actual existence at the time of the contract, is not a sale of any interest within the fourth section of the statute* (1 Sug. on V. p. 84).

EMERSON v. HOWLAND, 1 Mason, 45, and Abbott on Shipping, p. 146.

Judge Story says, "In future, where seamen are discharged in a foreign port, I shall decree against the owners the whole of the three months' wages, authorized and required to be paid by the statute 28th February, 1803," &c.

Doubted in Pool v. Welsh, 1 Gilpin R. 193, 200–203. Hopkinson, J.: "I cannot but hesitate to oppose myself, without a more deliberate examination of the question, to this learned and enlightened judge, and, therefore, have reluctantly determined to sustain this suit; but, at the same time, I shall not hold myself to be bound by this decree, if at any future time, on a more full argument, or by my own mature deliberation, I shall find my own impressions of the law to become deeper and stronger."

EMERSON v. THOMPSON, 16 Mass. 429.

Denied in Peck v. Bostford, 7 Conn. 180. Daggett, J.—"Emerson v. Thompson, 16 Mass. 429; and that rests on Baxter v. Penniman, 8 Mass. 134; which, as has been shown, did not affect the point in controversy."

See also, per Sharkey, Ch. J. in Henderson v. Ilsley, 11 Sme. & M. 17. "The effect of an admission by an executor or administrator was not the question before the court; its remark was therefore but an *obiter dictum.*"

EMERY v. GROCOCK, Mad. 57.

Limited and qualified in Magennis v. Fallon, 2 Moll. 579.

ENGLISH v. HARVEY, 2 Rawle R. 309.

S. P. as in M'Call's Estate (post).

EPPES v. RANDOLPH, 2 Call. 125, and Tinsley v. Anderson, 3 Call. 329.

Limited by C. J. Marshall (1 Brock. R. 171):—"Those cases, in my opinion, go a great way. I shall respect them in a case precisely similar, but shall not extend their application. They were pronounced in favor of sureties who had discharged judgments against their principals and themselves, and I shall not consider them as extending to cases of a different description.

EPPES v. TUCKER, 4 Callis R. 346.

S. P. as in Bradhurst v. The Columbian Ins. Co. (ante).

EQUITY CASES ABRIDGED (Vol. 2).

"In 1756, a supplemental part or volume was published, continuing the cases to the present time. This is not so highly esteemed as the *first;* for Kenyon said (2 Bro. Ch. C. 45), that this book was not of the first authority, yet he must be guided by such cases as stand in point there, particularly where they contain much sense and reason." Bridg. Leg. Bib. 112.

Lord Eldon (1 Bligh, 539) said:—"The case happens to be reported likewise in another book of no very high character. I mean the second volume of the Equity Cases Abridged. It is not so high in character as the first volume of the Equity Cases Abridged."

ESDAILE v. STEPHENSON, 1 Sim. & Stu. 122.

Overruled in De Visme v. De Visme, 1 M'N. & G. 336.

ERNEST v. BROWN, 2 Bing. N. C. 674.

That an admission in the particulars is no more than evidence of payment, and that it could not be received in bar of the action without a plea of payment.

Doubted in Kenyon v. Wakes, 2 M. & W. 764, by Parke, B; and see ib. 758.

ERSKINE v. TOWNSEND, 2 Mass. 496.

What is said by Parsons, C. J., that if the mortgagee declare generally, and the mortgagor shall plead in bar, that the mortgagee is seized as tenant in mortgage, the condition of which is broken, the action shall be barred,—is overruled in Green v. Kemp, 13 Mass. 515.

ESTWICK v. CAILLAUD, 5 T. R. 420.

Doubted in Mackie v. Cairns, 5 Cow. 568, by Colden, Senator; and, p. 582, by Savage, C. J.

EVANS v. BEATTIE, 5 Esp. Cas. 26.

In a suit against the guarantee of one C, for "any woolens that should be furnished him by plaintiff," evidence was offered to prove C's parol acknowledgment of certain goods delivered, but refused on the ground that he might be sworn.

Doubted in Drummond v. Prestman, 12 Wheat. R. 522.—Johnson, J.

EVANS v. BICKNELL, 6 Ves. 183.

Did not go quite as far as C. B. Richards states it in Hall v. Maltby, 6 Price, 258, with respect to the rule of evidence. The report in Vesey is silent on that point of the case. Mulholland v. Hendrick, 1 Moll. Ch. R. 360.

EVANS v. CHARLES, 1 Anst. 128.

Doubted in Price v. Strange, 6 Madd. 159; but in Palin v. Hills, 1 M. & K. 470 (7 Cond. 132), its authority is recognized.

"The case of Evans v. Charles has been overruled."—Romilly, M. R. Long v. Watkinson, 10 Eng. R. 71; 16 Jur. 235.

EVANS v. CRAMLINGTON, Carth. 5.

Doubted. See Sigourney v. Lloyd, 8 B. & C. 622.

EVANS v. CROSIER.

See Key v. Collins (ante).

EVANS v. EVANS, 17 Sim. 86.

Overruled, Williams v. Evans, 22 Law J. R. N. S. Q. B. 241; 1 El. & Bl. 727; 18 E. L. & E. R. 335.

EVANS v. HETTICK.

See Bleecker v. Bond (ante).

EVANS v. MORAN, 12 Wend. 180.

Overruled, Stratton v. Lord, 22 Wend. 611.

EVANS v. RICHARDSON, cited 16 Johns. 486.

"In the short note of the case of Evans v. Richardson cited in 16 Johns. 486, it does not appear whether it was at law or in chancery, or before or after judgment." Thomas v. Phillips, 4 Sme. & M. 429.

EVANS v. SALT, 6 Beav. 266.

"It is a very short case. It came on upon petition. It would not be right to consider it as a case which is to be put in competition with others upon this important question." Beauvoir v. Beauvoir, 3 House of Lords Cases, 524 ; 18 E. L. & E. R. 11.

EVANS v. THE COMMONWEALTH, 2 S. & R. 441.

Overruled in The Commonwealth v. Shepherd, 3 Penn. R. 509, 514.

EVELYN v. EVELYN, 2 Dick. 800.

Evelyn v. Evelyn is but a word, and does not explain the nature of the estate. Per V. Ch. in 2 Sim. & Stu. 144.

EVELYN v. TEMPLAR, 2 Bro. Ch. C. 148.

The printed note is very imperfect. Per Ld. Eldon in Pulvertoft v. Pulvertoft, 18 Ves. 84.

EVERETT v. GRAY, 1 Mass. R. 101.

The gunlocks which were the subject of the contract, had been received, and afterwards proved defective ; and it was thought that the defendant could not be permitted to show the defect, although arising from fraud in the plaintiff, against the claim for the consideration according to his contract.

Doubted in Taft v. The Inhab. of Montague, 14 Mass. 282.

EVERRITT v. LANE, 2 Ire. Eq. R. 548.

"This case is in conflict with the other cases before cited, and ought not to be followed." Tifft v. Porter, 4 Selden, 520.

EWING v. HIGBY, 7 Ohio R. 198.

See Swan's Statutes, 362.

EWING v. HOLLISTER, 7 Ohio R. 480.

See Swan's Statutes, 362.

EXALL v. PARTRIDGE, cited in Doe v. Grey, 1 Stark. Rep. 283.

Doubted, Dwyer v. Collins, 12 Eng. R. 537; 21 Law J. R. N. S. Ex. 225; 16 Jur. 569.

EXETER v. STRATHAM, 2 N. H. R. 102.

Overruled, Gilford v. New Market, 6 N. H. R. 305.

EX PARTE ALEXANDER, 2 Glyn & J. 275.

An equitable mortgagee is not entitled to the rents and profits of the mortgaged estate previous to the sale.

Ex parte Rignold, 2 Glyn & J. 273.

EX PARTE BANK OF MONROE.

See Bank of Monroe (ante).

EX PARTE BROWN. Same case as Reg. v. Brown, which see.

EX PARTE CARTER, 15 Jur. 984; 7 Eng. R. 312.

Reversed, 15 Jur. 1142; 8 Eng. R. 113.

EX PARTE CROWDER, 2 Vern. 706. *Ex parte* Cook, 2 P. Wms. 500; *Ex parte* Hunter, 1 Atk. 228; *Ex parte* Tait, 16 Ves. 195.

Lds. King and Hardwicke, from 1715 to the time of Ld. Thurlow, held, that joint creditors could not prove under a separate commission, for the purpose of receiving dividends with the separate creditors; but only for the purpose of going for the surplus after the satisfaction of the separate creditors.

Overruled in *Ex parte* Hodgson, 2 Bro. Ch. R. 5. Ld. Thurlow (in 1785) held, that there was no distinction between joint and separate creditors; that they ought to be paid out of the bankrupt's estate, and his moiety of the joint estate; and that the joint creditors ought to come in *pari passu* with the separate creditors. See *Ex parte* Hodgson.

EX PARTE DEEZE, 1 Atk. 228.

A packer claimed to retain goods, not only for the price of packing them, but for a sum of £500 lent to the bankrupt on his note; and Ld. Hardwicke determined that he had such right, on the ground of mutual credits.

Overruled in *Ex parte* Ockenden, 1 Atk. 235; and Rose v. Hart, 8 Taunt.

EX PARTE DEEZE, 1 Atk. 228—continued.

499; held, that cloths delivered a fuller, to be dressed, could not be detained for a general balance for work done for a bankrupt before his bankruptcy. But see 3 M. & S. 167.

EX PARTE DICKSON, 1 Rose, 98.

Upon the decision in *Ex parte* Dickson, Lord Eldon afterwards entertained doubts; and the rule at law and in equity is now the same. *Ex parte* Conroy, 1 Molloy's Ch. R. 2.

EX PARTE DOW, 1 Cow. 205.

Overruled, People v. Super. of Oswego, 2 Wend. 291.

EX PARTE DRAKE, 1 Mont. & Bligh, 486; 2 Dea. & Chit. 91.

Opposed to *Ex parte* Nichols, 2 Glyn & J. 101.

EX PARTE DUMAS, 1 Atk. 232.

If a factor who has goods consigned to him, receive notes instead of money, the principal is entitled to the notes, and not the creditors at large in case of insolvency. Limited and defined in West Boylston M. Co. v. Searle, 15 Pick. 225, Shaw, C. J. (p. 230); also Dwight v. Whitney, ib. 179; 3 Mason, 232.

EX PARTE GARDON, 15 Ves. 286.

Partnership bound by the signature of one partner, although a guaranty for another.

Doubted by Chan. Kent, (2 Kent Com. 46). But Mr. Collyer (230), states the fact, that the guaranty was with reference to a partnership transaction; and therefore consistent with *Ex parte* Nolte, 2 Glyn & J. 306.

EX PARTE GUTHRIE, 1 Moll. Ch. R. 245.

Lord Chan.—Lord Eldon in *Ex parte* Guthrie, directed the commission to be re-sealed from the old date, *nunc pro tunc*, giving validity to all acts done under it. But no *nunc pro tunc* order can make that regular which in its inception is invalid. *Ex parte* Sneydes, 1 Moll. Ch. R. 269.

EX PARTE HALE, 3 Ves. 304.

The bankrupt was the acceptor of a bill, the petitioner, i. e. claiming to make it an item of set-off, had indorsed; it was in the hands of the indorsee at the time of the bankruptcy; and the petitioner had been obliged to take it up after the bankruptcy. Ld. Loughborough held "that the petitioner might prove, but that he could not set-off."

Overruled in Collins v. Jones, 10 B. & C. 769; Bolland v. Nash, 8 ib. 105.

EX PARTE HAMER, 15 Jur. 502; 3 De Gex & S. 279; 3 Eng. R. 177. Reversed, 16 Jur. 555; 11 Eng. R. 257.

EX PARTE HODGSON, 2 Bro. Ch. R. 5.

The rule of Ld. King, "that the joint creditors shall be first paid out of the partnership or joint estate, and the separate creditors out of the separate estate of each partner; and if there be a surplus of the joint estate, besides what will pay the joint creditors, the same shall be applied to pay the separate creditors; and if there be, on the other hand, a surplus of the separate estate, beyond what will satisfy the separate creditors, it shall go to supply any deficiency that may remain as to the joint creditors" (see *Ex parte* Crowder, &c. ante),—was deviated from by Ld. Thurlow.

Overruled in *Ex parte* Elton, 3 Ves. 240, Ld. Loughborough; and followed by Ld. Eldon, in *Ex parte* Clay, 6 Ves. 833. See Dutton v. Morrison, 17 Ves. 206; see Collyer on Part. p. 527 *et seq.* as to the exceptions to the rule; and 3 Paige's Ch. R. 168; and 1 Maryland R. 96, 101.

EX PARTE HOLMES, 5 Cow. 426.

See *Re* Barker, 6 Wend. 509.

EX PARTE MANNING, 2 P. Wms. 410.

Doubted in Dorsey v. Smith, 7 Har. & J. 364–5; Archer, J.:—"The case of *Ex parte* Manning came in review before Ld. Hardwicke, in Blount v. Blount, 3 Atk. 635, who remarked that he never knew 'the court take into consideration, as a reason for the purchaser paying interest, the wearing out of lives.' This doctrine of Ld. Hardwicke is sanctioned in the case of Growsock v. Smith, 3 Anstr. 877." But Mr. Sugden (2 Sug. on Vend. 4, 8), seems to adopt the case of *Ex parte* Manning.

EX PARTE MARSHALL, 1 Atk. 262.

Doubted in Wynn v. Brooke et al., 5 Rawle's R. 109—"Seems not to be fully or accurately reported."

EX PARTE NICHOLAS, 6 Taunt. 408; 2 Marsh. 123, S. C.

That the admission of an attorney, who has omitted to take out his certificate for one whole year after his admission, is absolutely void.

Opposed to *Ex parte* Jones, 2 Dowl. Pr. R. 251; Hilleary v. Hungate, 3 ib. 56,—Parke and Littledale, JJ.

EX PARTE REED, 4 Hill, 573.

Overruled, 4 Coms. 173.

EX PARTE RICHARDS, 1 J. & W. 264.

Doubted, but followed *In re* Wheeler, 1 De Gex, M'N. & G. 434; 12 Eng. R. 170.

EX PARTE SHUMWAY, 4 Den. 258.

Doubted. The People v. Ransom, 2 Coms. 490.

EX PARTE SUTTON, 2 Cox's Cases, 84.

The authority of an agent may be delegated so as to enable another to act for his principal.

Opposed. Palliser v. Ord, Bunbury, 166; Coles v. Trecothick, 9 Ves. 234.

EX PARTE TURNER, 3 Ves. 243.

Doubted in Paley v. Field, 12 Ves. 437; and it is qualified in *Ex parte* Libbon, 17 Ves. 334; 1 Rose, 219; see *Ex parte* Rushforth, 10 Ves. 411.

EX PARTE WOOD.

See Wood, *ex parte*, (post).

EYLES v. CARY, 1 Vern. 457.

Marginal note, 1 Equ. Cas. Abr. 198;—"This is a strong case; I question if it would be now so decreed. Per Verney, M. R., in the case of Mallison v. Middleton, Aug. 2, 1739." Ram on Assets, &c. p. 64, n.(m.)

EYRES v. BOND, 4 Burr. 2118.

Doubted, it seems, by Ch. J. Marshall (1 Brock. R. 250): "Reported in a very unsatisfactory manner." "There is too much uncertainty in the report to rely much upon it."

F.

FAIKNEY v. REYNOUS, 4 Burr. 2069.

Bond for repayment of money lent for a purpose prohibited by act of parliament; and held good—but a distinction taken between *malum prohibitum* and *malum in se*, as applicable to such bonds.

Lawrence, J. said this distinction had been very often doubted. Webb v. Brooke, 3 Taunt. 10. It is questioned also by Ld. Ch. J. Eyre in Mitchell v. Cockburne, 3 H. Bl. 379, by Ld. Eldon, in Aubert v. Maize, 2 Bos. & Pul. 372; and by Ld. Loughborough in *Ex parte* Mather, 3 Ves. 373. See also, Steers v. Lashley, 6 D. & E. 61; Clayton v. Dilly, 4 Taunt. 165;

FAIKNEY v. REYNOUS, 4 Burr. 2069—continued.

Lacaussade v. White, 7 D. & E. 535; Howson v. Hancock, 8 D. & E. 575; Vandyck et al. v. Hewit, 1 East, 98; Worcester v. Eaton, 11 Mass. 368; Farrar v. Barton, 5 Mass. 395; Aubert v. Walsh, 3 Taunt. 277.

FAIRBANKS v. ANTRIM, 2 N. H. R. 105.

Overruled. Pike v. Madbury, 12 N. H. R. 262.

FAIRLIE v. CHRISTIE, 1 Holt's N. P. 331.

Verdict set aside and plaintiff nonsuited. See S. C., 7 Taunt. 415.

FAIRLIE v. HASTINGS, 10 Ves. 128.

Is referred to by Tindal, C. J. in Garth v. Howard, 8 Bing. 452, as being the leading case on the subject. In the latter case, it seems to be laid down as a more simple rule with respect to admissions, that they are only receivable when there is an authority to make them. See Phil. Ev. 403—5th Am. ed. p. 365. And see Biggs v. Lawrence (ante).

FAIRBROTHER v. SIMMONS, 5 B. & Ald. 333.

Doubted in Bird v. Boultier, 4 B. & Adol. 443, where Taunton, J. says "I very much agree with my brother Littledale as to the difficulty in Fairbrother v. Simmons; but there is no necessity to overrule that case."

FAIRMAN v. IVES, 1 B. & Ald. 642.

That the words were spoken in an innocent sense, or on an occasion which would justify the publication, may be given in evidence under the general issue.

Doubted in Stockley v. Clement, 4 Bing. 167, Best, C. J., in delivering the judgment of the court, intimated, that where a libel contained facts which would make it a privileged communication, the facts ought to be specially pleaded.

FAITH v. M'INTYRE, 7 Car. & P. 44.

Overruled in Pickles v. Hollings, 1 Moo. & Rob. 468; Creevey v. Bowman, 1 ib. 496. See the observations of Nelson, J., 7 Wend. 118, 119; 1 Phil. Ev. 784—5th Am. ed.

FALCONER v. CAMPBELL, 2 M'Lean's R. 195.

Dissented from, Green v. Graves, 1 Doug. Mich. R. 367.

FALMOUTH (LORD) v. GEORGE, 5 Bing. 286.

Where the question was as to the right to exact toll on boats frequenting a cove, in virtue of a custom for keeping up a capstan and rope to

FALMOUTH (LORD) v. GEORGE 5 Bing. 286—continued.

assist boats in landing in bad weather: Held, that a fisherman frequenting the cove was not a competent witness for a party resisting the toll.

Overruled in Lancum v. Lovell, 9 Bing. 465:—Held, in an action for a toll claimed on a public road, persons who have refused to pay the toll are, from necessity, competent to give evidence, notwithstanding their interest in the result of the cause. Park, J., in delivering the judgment of the court, saying:—"Whether it would be possible to support the case of Lord Falmouth v. George, by supposing it savored more of a private than of a public right, I do not think it worth while to discuss. Because in this (Lancum v. Lovell), there can be no doubt that this was a matter in which every subject of the king has an interest; and if any one man, because he has passed that way, unmolested or resisting, and therefore having an interest, is rejected, every individual in the kingdom is equally objectionable."—It is a public right in which all mankind are interested; and such witnesses of necessity must be admissible.

FANNING v. TROWBRIDGE, 5 Hill, 428.

Modified, Thompson v. Sayre, 1 Denio, 175.

FARMER v. ARUNDUL, 2 Black. R. 825.

Denied in Clarke v. Dutcher, 9 Cowen, 686.—Sutherland, J., speaking of Ch. J. Mansfield's solicitude (in 5 Taunt. 144) to avoid collision with the *dicta* of Ch. J. De Grey and Ld. Mansfield, said—"I think his lordship might better have denied those *dicta* to be law, as Ld. Ellenborough did in Bilbie v. Lumlie (2 East, 469), than to have sought to evade them by his gloss."

FARMER, SIR GEO., v. BROOKE, Owen, 67; 1 Leon. 142; Cro. Eliz. 203; 8 Co. 125 b. S. C.

The reporters differ as to the judgment in this case.

FARMER v. STEWART, 2 N. H. R. 97.

Contra, Exeter Bk. v. Sullivan, 6 N. H. R. 124.

FARMERS' AND MECH. BANK v. SMITH, 3 S. & R. 63.

Reversed in S. C. 6 Wheat. R. 131.

FARNSWORTH v. TILTON, 1 Danl. Ch. 297.

"The dictum of Chipman, Ch. J., in Farnsworth v. Tilton, that to an action of debt on judgment it is in no case sufficient to plead in bar a commitment only, denied." Kinsman v. Page, 22 Vt. R. 628.

FARR v. CRISP, 2 Barnard. 521.

Denied in 2 Phil. Ev. 436, n. (1), (7th Lon. ed.): "It is conceived that there must be an error in the report."

FARRAR v. STACKPOLE, 6 Greenl. R. 150.

The purchaser of a factory will hold the machinery under the name of the factory.

Opposed to Swift v. Thompson, 9 Conn. R. 63. But see 2 Kent. Com. 345, n. (c).

FARR v. NEWMAN, 4 D. & E. 621.

That in an action against an executor for his own debt, the goods of the testator cannot be taken in execution.

The contrary is the law of Massachusetts. See Coburn v. Ansart, 3 Mass. 319; see also Scott v. Tyler, 2 Dick, 274; Hill v. Simpson, 7 Ves. jr. 152; Taylor v. Hawkins, 8 Ves. jr. 209; Quick v. Staines, 1 Bos. & Pul. 293.

FARRINGTON v. LEE, 1 Mod. 269, and 2 Mod. 312.

Denied in Union Bank v. Knapp, 3 Pick. 96, 112:—It was contended, that where accounts are settled by carrying the balances forward instead of paying the same in cash, they are to be considered as open and running accounts from the beginning, and so not within the statute of limitations. Putnam, J., said,—"We do not think this inference is to be drawn from the case of Farrington v. Lee, cited for the plaintiff, but if it is, we should consider that this point was as erroneous as was another in the same case, namely that the saving clause in the statute as to merchants' accounts extends only to actions of account. It is now settled that the exception is to be to actions of *assumpsit*, as well as to actions of account." Mandeville v. Wilson, 5 Cranch, 18. But see Union Bank v. Knapp (post).

FARWELL v. HEELIS, Ambler, 724; 2 Dick. 485, S. C.

Questioned in Blackburn v. Gregson, 1 Bro. Ch. Ca. 420; and overruled in Mackreath v. Symmons, 15 Ves. 320.

FAWKES v. GRAY, 18 Ves. 131.

Follows Griffiths v. Smith, but in a way that adds nothing to its authority. Colhoun v. Thompson, 2 Moll. Ch. R. 287.

FEATHER'S APPEAL, 1 Penn. R. 322.

Overruled in Shoenberger v. Adams, 4 Watts, 430, as to the intimation "that the statute runs not to protect a debtor after being discharged under the insolvent laws."

FEDERALIST.

The opinion of "The Federalist" has always been considered as of great authority. It is a complete commentary on the Constitution, and is appealed to by all parties in the questions to which that instrument has given birth. Marshall, Ch. J., in Cohens v. Virginia, 6 Wheat. R. 413.

FENDALL v. NASH, 5 Ves. 197 note.

Denied in Turner v. Turner, 4 Sim. 430. The Vice-Chancellor says, "As to the case before Ld. Thurlow (Fendall v. Nash, 5 Ves. 197 note), I cannot bring myself to think that case properly decided." See Errat v. Barlow, 14 Ves. 202.

FEIZE v. AGUILLAR, 3 Taunt. 507.

Under a valued policy, the amount of interest need not be proved. The value insured must be taken as the value of the assured's interest.

Qualified in Woolcott v. Eagle Ins. Co., 4 Pick. 429. But see Lovering v. Mer. M. Ins. Co., 12 Pick. 367.

FENNER v. MEARS, 2 W. Bl. 1269.

The assignee of a *respondentia* bond may maintain *assumpsit* against the obligor, who has engaged by an indorsement on the bond to pay the same to any assignee.

Doubted in Johnson v. Collings, 1 East, 104—Kenyon: "I cannot as at present advised, and upon the general view of it, agree with the case of Fenner v. Mears, in Bl. Rep. The result of it, however, seems to be this, that the determination having been made according to equity and good conscience, the court will not disturb the verdict; and I doubt whether the decision can be sustained on any other ground." See White v. Parkins, 12 East, 582; 5 Wend. 203; 10 S. & R. 321.

FENTON v. GOUNDRY, 13 East, 459.

Though a bill be accepted payable at a particular place, it need not be presented at the place mentioned.

Overruled in Callaghan v. Aylett, 3 Taunt. 397, and Gammon v. Schmoll, 5 Taunt. 344; Bowes v. Howe, 5 Taunt. 30; Rowe v. Young, 2 Bro. & B. 165; but altered by statutes 1 and 2 Geo. IV. c. 77.

FENTON v. WARRE, 2 Tyrw. R. 158.
Overruled in 2 Tyrw. R. 592, S. C.

FERGUS v. GORE, 1 Sch. & Lef. 107.
Limited in Congreve v. Power, 1 Moll. 121.

FERGUSON v. KIMBALL, 3 Barb. Ch. 616.
Qualified, Ferguson v. Ferguson, 2 Coms. 360.

FERGUSON v. MILLER, 5 Ohio R. 460.
Explained in White v. Bank of United States, 6 Ohio R. 529.

FERNALD v. LADD, 4 N. H. R. 145.
Overruled, Knox v. Knox, 2 N. H. R. 352.

FIELD v. HOLLAND, 6 Cranch, 24.
That the answer of a defendant may be evidence against a co-defendant who derived his right from him.
Opposed, Ward v. Davidson, 2 J. J. Marsh, 443, 445; Rees v. Lawless, 4 Litt. R. 218. The decisions in Kentucky proceed upon the distinction that the answer filed before the respondent has parted with his interest, shall be received against all to whom the subject afterwards comes; but not if filed after. See 1 Phil. Ev. 361, note 648, 650.

FILLY v. BRACE, 1 Root, 507.
That mere liability, without any damage, is sufficient cause of action.
Overruled in Booth v. Starr, 1 Conn. R. 244.

FINCH v. WILSON, 1 Wils. 167.
Doubted, 2 Saund. 63, note; Ballantine on Stat. Limitations, 233.

FISH v. WEATHERWAX, 2 Johns. Cas. 215; Horne v. Barney, 19 Johns. 247.
Denied in Favor v. Philbreck, 5 N. H. R. 359; "We are aware that it has been decided in New York, that a writ of error will not lie where judgment has been arrested; and the reason assigned is, that there is no judgment to be affirmed or reversed. But this is a mistake." (2 Mass. 142.)

FIRST BAPTIST CHURCH v. SCHENECTADY AND TROY R. R. CO. 5 Barb. 79.
See First Baptist Church v. Utica and Schenectady R. R. Co., 6 Barb. 313.

FISH v. FOLLEY, 6 Hill, 54.

See Crain v. Beach, 2 Barb. 120.

FITCH, IN THE MATTER OF, 2 Wend. 298.

Overruled, *Ex parte* Haynes, 10 Wend. 611.

FITCH v. SUTTON, 5 East, 230.

The doctrine settled in this case is, that a similar security for a smaller debt cannot be pleaded in satisfaction of a larger one.

Opposed, Alner v. George, 1 Camp. 392; but Smith (in Lead. Cas. 147 n.) observes:—"Yet it is clear, both upon general principle, and from the decisions in Fitch v. Sutton, and other cases, that such an instrument not being an estoppel, cannot prevent the plaintiff from insisting that part of his demand remains unsatisfied. See Graves v. Key, 3 B. & Ad. 313; Skaife v. Jackson, 3 B. & C. 421; Stratton v. Rastall, 2 T. R. 366.

It must be observed, that later cases have engrafted on the doctrine that a smaller sum can be no satisfaction for a larger one payable in the same manner, this distinction, that, although where there is a liquidated debt the rule laid down in Cumber v. Wane prevails, yet if there be not a liquidated debt, but an unliquidated demand of pecuniary damages, in that case the acceptance of a smaller sum than the plaintiff may have originally claimed, will be a satisfaction of his whole demand, and a good answer to an action in respect of it. This distinction seems to have originated in the case of Longridge v. Dorville, 5 B. & A. 117; it was discussed in Watters v. Smith, 2 B. & Adol. 889, and settled by Wilkinson v. Byers, 1 Adol. & Ell. 106. That was an action of *assumpsit;* the declaration stated that T. R., as the defendant's attorney, had sued the plaintiff in the Palace Court for 13*l.* 10*s.*, which action was depending; and thereupon, in consideration that the plaintiff would pay the defendant the 13*l.* 10*s.*, the defendant promised the plaintiff to settle with the said attorney for the costs of the action, and indemnify the plaintiff against them; that plaintiff accordingly paid the 13*l.* 10*s.;* but that defendant neglected to settle with the attorney, who proceeded with the action, and signed judgment against the plaintiff, who was obliged to pay 7*l.* 10*s.* costs, and 3*l.* in endeavoring to set aside the judgment. At the trial, it appeared that Byers, the present defendant, was a wood-turner, who had done work for Wilkinson, the present plaintiff, to recover a compensation for which the action had been brought. A verdict was found for the plaintiff, subject to the opinion of the court upon the question whether, as the payment of the 13*l.* 10*s.* was a payment in discharge of an admitted debt, it could be any consideration for the defendant's promise to indemnify the plaintiff against the costs of the Palace Court action. The court held that the verdict was right. "The case," said Parke, J., "may be decided shortly on this ground. If an action be brought on a *quantum meruit*, and the defendant agree to pay a less sum than the demand in full, that is a good consideration for a promise by the plaintiff

FITCH v. SUTTON, 5 East, 230—continued.

to pay his own costs and proceed no further. Payment of a less sum than the demand has been held to be no satisfaction in the case of a liquidated debt; but where the debt is unliquidated, it is sufficient. Now, here we cannot say that there was originally any certain demand. A jury, if asked, could not, in my opinion, have said so. In the great majority of actions of this nature, for work, labor, and goods sold, it is not a specific sum that forms the subject matter of the action; and, unless that could have been shown in the present case, there was a good consideration for the promise."

FITTS v. HALL, 9 N. Hamps. R. 441.

Opposed to Johnson v. Pie, 1 Keble, 905. And see Price v. Hewett, 17 Jur. 4; 8 Ex. R. 146; 18 E. L. & E. R. 522, and note h. 524.

FITZER v. FITZER, 2 Atk. 511.

Where an agreement for a separate maintenance rests in articles between the husband and wife; held that such articles may be enforced at the suit of the wife.

Doubted in Wallingsford v. Wallingsford, 6 Har. & J. 489. Martin J.: "But it is said, this decision was disapproved by subsequent chancellors; and Legard v. Johnson, 3 Ves. 361; St. John v. St. John, 11 Ves. 532, and Wilks v. Wilks, 2 Dick. 791, are referred to as evidence of it."

FITZGERALD v. PECK, 4 Litt. R. 125; 2 M'Cord, 455; 2 Bail. 623.

Where it is said that even for mistakes in law, relief may be granted in some cases.

Denied in Champlin v. Laytin, 18 Wend. 416—See 9 Pick. 112, and 9 Conn. 96.

FITZGIBBON'S REPORTS.

Ld. Hardwicke called this "a book of no authority," 3 Atk. 610; but allowed the case of Holt v. Ward to be well reported. See also Andrews, 75.

FITZROY v. GWILLIM, 1 Term R. 153.

Overruled in Tregoning v. Attenborough, 4 Moore & Payne, 722; 7 Bing. 97, S. C. Tindal, C. J. said,—"The case of Fitzroy v. Gwillim has been cited, as having held that a party cannot entitle himself to relief from an usurious contract by a civil remedy (as by maintaining an action of trover), unless he tender all the money really advanced. It seems to me that that case can hardly be supported; according to the

FITZROY v. GWILLIM, 1 T. R. 153—continued.

concurrent testimony of Westminster Hall, it was hastily decided." Gazelee, J., said—"The case of Fitzroy v. Gwillim has always struck me as being a very extraordinary decision." See also Ramsdell v. Morgan, 16 Wend. R., 574, 575; 4 B. & Adol. 92; and 2 Ad. & El. 12.

FLAGG v. MANN, 14 Pick. R. 467.

Doubted in Flagg v. Mann et al., 2 Sumn. R. 486, 544, in respect to the views suggested in the opinion delivered in behalf of the court.

FLAGG v. THURBER, 14 Barb. 196.

Reversed, Flagg v. Munger, April, 1854.

FLANAGAN v. FLANAGAN, 1 Bro. C. C. 500.

Commented on and overruled, Graham v. Dickinson, 3 Barb. Ch. R. 170.

FLANDERS v. THOMPSON, 2 N. H. R. 421.

Overruled Osgood v. Hutchins, 6 N. H. R. 375; Banks v. Johnson, 12 ib. 445.

FLECKNER v. U. S. BANK, 8 Wheat. 338.

That the use of the seal grew out of the state of the times in which it originated, and the authentication of an instrument by the use of the common seal (of a corporation) was attended with fewer difficulties and perplexities, &c.

Denied in Union Bank of Maryland v. Ridgely, 1 Har. & G. 423; Buchanan, Chan.:—"That would seem to be a mistake; the greater facility and certainty attending the authentication of an instrument by the use of the common seal, was not the reason why it was originally held that corporations could act in no other way."

FLETCHER v. AUBURN & SYRACUSE R. R. CO., 25 Wend. 462.

Must be regarded as shaken, if not overruled, by subsequent cases. See note to Hatch v. Central R. R. Co., 25 Vermont (2 Deane) R. 71.

FLETCHER v. MARILLER, 9 Ad. & E. 491.

Correctness of report questioned, Williams v. Roberts, 7 Exch. R. 618; 14 Eng. R. 489.

FLETCHER v. PECK, 6 Cranch, 125.

Doubted. Mr. Ch. J. Taney (in Charles R. Bridge v. Warren Bridge, 11 Pet. 573), says—"If it had not been otherwise laid down in the case

FLETCHER v. PECK, 6 Cranch, 125—continued.

of Fletcher v. Peck, 6 Cranch, 125, I should have doubted whether the inhibition (which prohibits States from impairing the obligation of contracts) did not apply exclusively to executory contracts. This doubt would have arisen as well from the consideration of the mischief against which this provision was intended to guard, as from the language of the provision itself."

FLETCHER v. SONDES, 5 B. & A. 835.

Overruled in S. C. (in error), 1 Bligh N. S. 144; 3 Bing. 598.

FLOWER'S CASE, Noy's R. 67.

S. P. as in Irons v. Smallpeace (post).

FLOYD v. BROWN, 1 Rawle's R. 121.

S. P. as in Smith v. Gibson (post).

FLYNN v. STOUGHTON, 5 Barb. 113.

Overruled, Republic of Mexico v. Arrangois, 11 Pr. R. 1; Valarino v. Thompson, 3 Selden, 576.

FODEN v. FINNEY, 4 Russ. 428.

The distinction taken in Foden v. Finney was monstrous. It was a monstrous doctrine.—Romilly, M. R. *In re* Cutler's Trust. 6 Eng. R. 97; 15 Jur. 911.

FOOT v. BROWN, 8 Johns. 64.

Disapproved, Seen v. Harris, 18 Barb. 425.

FOOT v. GUMAER, 12 Wend. 195.

Overruled, Carhart v. Blaisdell, 18 Wend. 531.

FOOT v. TRACY, 1 Johns. 46.

Case for libel, and not guilty pleaded. On the defendant's motion to give in evidence the general character of the plaintiff, in mitigation of damages, the court were equally divided, and defendant took nothing by his motion.

But such evidence is admissible in Massachusetts. Larned v. Buffinton, 3 Mass. 546. See also King v. Waring, 5 Esp. 14.

FORBES v. FANSHAW, Trin. 24 G. III. C. B.

Denied in Latless v. Holmes, 4 D. & E. 660.

FORD v. GREY, Salk. 286.

If one makes an answer in chancery which is prejudicial to his estate, it may be given in evidence against him, but not against his alienee.

Doubted. Gres. Eq. Ev. 323–4; see 1 Phill. Ev. p. 361, note 648.]

FORD v. JONES, 3 B. & Ad. 248.—Littledale, J.

"Such assent must always be a matter of doubt."

Explained in The matter of Tunno, 5 B. & Ad. 488.—"I can hardly think, if it had distinctly appeared that the parties agreed to the mode of choice, the court would have decided as it did."—Patteson. "If that means that the appointment (by lot of arbitrators) would be bad although the parties assented, I cannot agree in the proposition; but I think what was said there proceeded on the want of any sufficient proof of assent or acquiescence."—Parke.

FORD v. SKINNER, 4 Ohio R. 378.

Overruled, Ford v. Commissioners of Geauga County, 7 Ohio R. 492.

FORD v. STEWART.

See Hendricks v. Judah (post).

FORMAN v. HOMFRAY, 2 V. & B. 329; Lascombe v. Russel, 4 Simon, 10.

Lord Eldons eems to have thought, and the Vice-Chancellor has decided, that one partner cannot file a bill against another, praying for an account, without a dissolution of the partnership.

Doubted in Harrison v. Armitage, 4 Madd. 143, where Sir John Leach expressed a contrary opinion.

FORRESTER v. COTTEN, Ambler, 388.

Overruled. In Stump v. Findlay, 2 Rawle, 174, Ch. J. Gibson:—"And, beside, I take the principle in Forrester v. Cotten to have been since overruled."

FORSYTH v. GANSON, 5 Wend. 558.

Forsyth v. Ganson, if it can be sustained at all, must be upon the existence of an express contract. Per Hand, J. in Raymond v. Loyl, 10 Barb. 486.

FORTH v. CHAPMAN, 1 P. Wms. 667.

Doubted by Thompson, J., in 1 John. R. 451. "The Lord Chancellor thought the words *leaving no issue*, ought to receive a different construc-

FORTH v. CHAPMAN, 1 P. Wms. 667—continued.

tion when applied to real, than when to personal estate." The soundness of this distinction has been much questioned. "Denied also in Drummet v. Barber, 2 Hill's R. 551; 4 Kent. Com. 275."

FORTUNE, MANUCAPTORS OF DAVIS, Carth. 8.

Recognized by Buller, J. in Chandler v. Roberts, 1 Dougl. 58.

In *sci. fa.* against special bail the plaintiff in his replication should set out the *ca. sa.* and return.

Doubted, in Cappeau v. Middleton, 1 Maryland R. 154.

FOSTER v. ALLANSON, 2 T. R. 170.

A previous partnership being dissolved, and an account settled, is in point of law, a sufficient consideration for a *promise.*

Doubted; Parke, J. in 2 Bingham's N. C. 108, said,—"That decision was considered at the time a great novelty in principle." But it was confirmed in Fromount v. Coupland, 2 Bing. 170; 9 Moore, 319, S. C. where it was held there *must* be an express promise to pay. But see Collyer, p. 152–3, and note (45); Rackstraw v. Imber (post).

FOSTER v. BLAKELOCK, 5 B. & C. 328.

That a probate stamp was sufficient proof of assets.

Denied in Stearns v. Mills, 4 B. & Ad. 655, by Littledale, J.—"The point in that case regarding the effect of a probate stamp, as *prima facie* evidence of assets, does not seem to have been much considered. And Parke, J. said—"I cannot concur in that decision."

FOSTER v. JACKSON, Hob. 52.

"That a *capias ad satisfaciendum*, as against the party, is not only an execution, but a full satisfaction by force and act and judgment of law."

Qualified and limited in Sunderland v. Loder, 5 Wend. 58.

FOSTER v. McDONALD, 5 Ala. R. 376.

The head note to this case is corrected and explained. Gindrat v. Mechanics' Bk. of Augusta, 7 Ala. R. N. S. 324.

FOSTER v. SHAW, 7 Serg. & R. 156.

Opposed to the cases of M'Dill's Lessee v. M'Dill, 1 Dall. 63, and Hamilton's Lessee v. Galloway, ib. 93, and "overturning a construction thereby given to our recording acts, which I think has been almost universally followed ever since, without objection." Kennedy, J. in Chew v. Keck et al., 4 Rawle's R. 163, 165 *et seq.*

FOTHERINGHAM v. GREENWOOD, 1 Stra. 129.

Pratt, Ch. J. said, "that if a witness thinks himself interested, it is a bias upon him;" and it had before been ruled by Ch. J. Parker, that a person under an honorary obligation to indemnify the party producing him, was not a competent witness.

Overruled in Bent v. Baker, 3 T. R. 365; Smyth v. Downs, 6 Conn. R. 365; Phelps v. Winchel, 1 Day, 269. See 18 Wend. 475.

FOWKES v. GRAY, 18 Ves. jun. 131.

S. P. as in Griffiths v. Smith (post).

FOWKES v. JOICE, 2 Ventr. 50; 3 Lev. 260; 2 Lutw. 1161, S. C.

Denied in 3 Bl. Com. 8 (15th ed.) by Mr. Christian. See Horsford v. Webster, 1 Camp. M. & Ros. 696.

FOWLER v. ÆTNA FIRE INS. CO., 6 Cow. 673.

Ch. J. Savage said, that he saw no reason for a difference in a fire policy from a marine policy, in respect to the description of the property insured.

Opposed, Jolly v. Baltimore Eq. Soc., &c., 1 Maryland, 295.

FOWLER v. PADGET, 7 D. & E. 509.

That merely departing the realm, without actual *intent* to delay creditors, is not an act of bankruptcy.

Overruled in Robertson v. Liddel, 9 East, 437.

FOWLER v. POLING, 2 Barb. 300.

Reversed, 6 Barb. 165.

FOWLER v. SHEARER, 7 Mass. R. 19.

That the covenants in a deed were of themselves a sufficient consideration for a promise, although there is a want of title.

Denied in Rice v. Goddard, 14 Pick. 296. A total failure of title is a total failure of the consideration.

FOWLER v. SHEARER, 7 Mass. 14.

A wife may release her right of dower in a deed separate from her husband.

Opposed. Powell v. Brimfield Manufacturing Co., 3 Mason, 347. But see Rowe v. Hamilton, 3 Greenl. 63, and 8 Pick. 532, which uphold Fowler v. Shearer.

FOX v. BAKER, 2 Wend. 244.

Overruled in Allen v. Mapes, 20 Wend. 633, and Lovett v. Cowman, 6 Hill, 233.

FOX v. CHESTER (Bishop of), 4 D. & R. 93; 2 B. & C. 635.

Overruled in S. C. (in error) 1 Dow. & C. 416; 3 Bligh, N. S. 123; 6 Bing. 1.

FOX v. COLLYER, And. 65, pl. 140; Mo. 107, pl. 251.

In favor of concurrent leases.

Doubted. See the observations of Mr. Sugden, in Sug. on Pow. p. 216 *et seq.* (Am. ed.)

FOXCRAFT v. LACY, Hob. 89.

Doubted in Sumner v. Buel, 12 Johns. 479.—Thompson, Ch. J.: "But the correctness of the report of Foxcraft v. Lacy may be questioned." In Symm's case (Godb. 391), it is said, that it was adjudged that the action would not lie. (See also 1 Viner, 510 note.)

FRAMPTON v. PAYNE, 1 H. Bl. 65.

Where issue was joined in one term, and there was time to give notice of trial in the same term, the plaintiff was bound to do so, or the defendant might have judgment as in case of a nonsuit.

Overruled, *it seems*, in Baker v. Newman, 1 H. Bl. 123; Da Costa v. Ledstone, 2 ib. 558; Prentice v. Blott, 2 Bing. 360; 7 B. Moore, 687, S. C.; Munt v. Tremando, 4 T. R. 557. See also Mosely v. Clarke, 2 Dowl. Pr. R. 66.

FRANCIS v. WYATT, 3 Burr. R. 1498.

Doubted in Brown v. Shevill, 4 Nev. & M. 277:—Held, that all goods sent to a tradesman to be wrought upon in the way of his trade, are protected from distress while in his custody. As the carcass of a beast sent to a butcher, to be slaughtered for the sender; and see 20 Eng. R. 374 n.

FRANK v. FRANK, 1 Ch. Ca. 84.

Where a compromise, founded in mistake, and proceeding from the misrepresentation of one brother, was held binding on the other.

Doubted in Leonard v. Leonard, 2 Ball & Beat. 182–3:—"If the facts be correctly stated, I can only say, that it appears to me to be a very unsatisfactory decision; it comes from a book of very doubtful authority, and the result of it is, as there reported, to give the younger brother the benefit of a gross misrepresentation made by him to his elder brother.

FRASER v. PIGGOTT, 1 Younge, 354.

Doubted, *Re* Overhill Trusts, 17 Jur. 342; 22 Law J. R. N. S. Ch. 485; 17 E. L. & E. R. 327.

FREAN v. CHAPLIN, 2 Dowl. Pr. R. 523.

Where the plaintiff declares in vacation, the defendant is entitled to an imparlance.

Overruled in Nurse v. Geeting, 3 Dowl. Pr. R. 157.

FREDERICK LUMLEY SAVILE, dem. of, v. JOHN LUMLEY SAVILE, 3 Ad. & El. 2.

Reversed in John Lumley Savile v. Frederick Lumley Savile, 3 Ad. & El. 897 (30 Com. Law, R. 259).

FREELAND v. M'CULLOUGH, 1 Den. 414.

Overruled, Corning v. M'Cullough, 1 Coms. 47.

FREEMAN v. ADAMS, 9 Johns. 115; and Myers v. Dixon, 2 Hall, 456.

That an action of debt on an arbitration bond cannot be maintained, where the time for making the award has been extended by agreement under seal, or otherwise.

Opposed to Greig v. Talbot, 3 D. & Ry. R. 446: Held, that if the agreement to extend the time is under seal, an action of debt upon the original bond will lie, on showing that the condition thereof was varied by the obligor, by an instrument under seal.

FREEMAN v. BARNARD, 1 Ld. Raym. 247, 248; Salk. 69; 12 Mod. 130.

The distinction there taken no longer exists. See Armstrong v. Masten, 11 Johns. 190.

FREEMAN v. JURY, 1 Mo. & M. 19.

A, being in possession under a lease for years, underlet the premises from year to year to the defendants, who knew the extent of A's interest. The plaintiff afterwards took a lease of the same premises, expectant on the determination of A's term; and the defendants, after the determination of A's term, continued in possession for a quarter of a year, when they paid the rent for that period, and claimed to give up the premises: Held, in an action for use and occupation for a subsequent period, that there was no evidence of a tenancy continuing beyond that quarter of a year.

Doubted in Woodcock v. Nuth, 8 Bing. 170.—Alderson, J.

FREEMAN v. LUCKETT, 2 J. J. Marsh, 309.

S. P. as in The Trust. of Lansinburgh v. Willard (post).

FREEMAN v. WEST, 2 Wils. 165.

Lease *habendum a die datus*;—objected that the day of date being exclusive, this created a freehold to commence *in futuro*, and therefore void. Agreed by Pratt, C. J., that the day of date is *exclusive*.

But see Pugh v. Duke of Leeds, Cowp. 714; where it is settled that "from" is inclusive or exclusive, according to the intent of parties.

Note. Pratt, C. J., said "this old principle of law, that a freehold cannot pass to commence *in futuro*, has no good reason or ground to stand upon, at this day."

See also Reeve on Domestic Relations, 7, 117.

FREEMAN'S REPORTS.

Said, *arguendo*, to be a book of no authority. Upon which Lord Mansfield observed, that some of the cases in Freeman were very well reported. Cowp. 15—"better than they are supposed." 3 Ves. jr. 580; Cowp. 15 note.

2 FREEMAN'S R. 206 (Case 280).

The person entitled to a remainder in personal estate may call for security from the tenant for life, that the property should be forthcoming at his decease.

Overruled in Foley v. Burnell, 1 Bro. Ch. R. 279, and Hudson v. Wadsworth, 8 Conn. 348; unless in a case of real danger. Hudson v. Wadsworth (supra), and Mortimer v. Moffat, 4 H. & M. 503.

FREEMAN'S R. 287 (ed. 1826). (Case 335).

The administrator, *durante minoriate* of the executor of an executor, is the representative of the first testator.

Opposed to Limmer v. Every, Cro. El. 211, as cited by Ld. C. B. Gilbert in Bac. Abr. Exr. (B.) 1. (2 v., p. 381, 5th ed.); but this case hardly supports him; and in Leonard's report of the same case under the name of Limver v. Evorie, 4 Leon. 58, it is said only that such an administrator should sue as administrator of the first testator. S. C. cited Godolphin's Leg. p. 89; and see Norton v. Molineux, Hob. 246; Freem. R. 287, n. (a).

FREMOULT v. DEDIRE, 1 P. Wms. 430, and Plunkett v. Penson, 2 Atk. 290.

That an estate descending to an heir, charged expressly by the will of the ancestor with the payment of his debts, was not equitable assets in the hands of the executor, but was legal assets in the hands of the heir.

Overruled in Burt. v. Thomas (Court of Exchequer); Silk v. Prime,

FREMOULT v. DEDIRE, 1 P. Wms, 430, etc.—continued.

Dickens, 384; Hargrave v. Tendall, 1 Bro. C. C. 136; Batson v. Lindegreer, 2 ib. 94; Bailey v. Ekins, 7 Ves. 319; Shepherd v. Lutwitdge, 8 ib. 26; Benson v. Leroy, 4 Johns. Ch. 657; Helm v. Darby's Adm'r., 3 Dana, 185.

FREETOWN v. TAUNTON.

See Wangford v. Brandon (post).

FRENCH v. M'ILHANY, 2 Binn. 13.

Doubted in Clayton v. Clayton, 3 Binn. 476. See also 14 S. & R. 90.

FREND v. DUKE of RICHMOND, Hard. 505.

Ld. Hale says, if a record be removed into K. B. out of C. B. by writ of error, and afterwards amended by rule of C. B., the K. B. *must* amend it.

Explained by Best, C. J., in 3 Bing. 146; "the word *must* is too strong." Savage, C. J. (5 Wend. 112).—"The question is, at any stage of the proceedings, whether substantial justice requires the amendment; and (in 6 Cowen, 606), amendment allowed after judgment reversed on error."

FRIENDS, THE, 4 Rob. Adm. R. 143.

Where a seaman was taken out of a captured vessel; but the vessel was afterward recaptured, held, that he was not entitled to his wages; the seaman being a prisoner at the time of the recapture.

Overruled in Bergstrom v. Mills, 3 Esp. R. 36.—Ld. Eldon. See 1 Pet. Adm. R. 115, 123.

FRIERE v. WOODHOUSE, 1 Holt's N. P. R. 572.

In effecting a policy of insurance, a circumstance of intelligence, inserted in Lloyd's lists, need not be communicated to the underwriters, however important it may be to the computation of the risk; for it is to be presumed within their knowledge, and to be taken into account.

Overruled in Elton v. Larkins, 8 Bing. 198.

FRISBIE v. HOFFNAGLE, 11 Johns. 50.

Denied in Lloyd v. Jewell et al., 1 Greenl. R. 359. Mellen, C. J.:—"On examination of the cases of Morgan v. Richardson, 1 Camp. N. P. 40 note; Tye v. Gwynne, 2 Camp. 346; and Barber v. Backus, Peake's Cas. 61, all which are cited at the end of Frisbie v. Hoffnagle, it will be

FRISBIE v. HOFFNAGLE, 11 Johns. 50—continued.

found that they are totally different from that case in principle, and do not in any degree support it." "That is an insulated case."

Overruled, Batterman v. Pierce, 3 Hill, 171; Vibbard v. Johnson, 19 Johns. 77; Whitney v. Lewis, 21 Wend. 131; Lamerson v. Marvin, 8 Barb. 9.

FRITH v. CROWELL, 5 Barb. 209.

See Cashmere v. De Wolf, 2 Sand. 379.

FRITH v. LAWRENCE, 1 Paige, 434.

Reversed in Mactier v. Frith, 6 Wend, 103.

FROST v. BEEKMAN, 1 Johns. Ch. 288.

Reversed in Beekman v. Frost, 18 Johns. 544.

FRY v. HILL, 7 Taunt. 397.

Held, that what is reasonable time for presenting a bill, payable after sight, for acceptance, is always a question of fact to be determined by a jury.

Denied in Chit. on Bills, 412, 413, (8th ed.)

FRYER v. BERNARD, 2 P. Wms. 261, and Arglasse v. Muschamp, 1 Vern. 75.

In respect to the power assumed (1682 and 1724), of granting a sequestration against the estates of a defendant situated in Ireland.

Denied in Ld. Parlington v. Soulby, 3 M. & K. 104. (8 Cond. R. 298), as to the grounds upon which the court proceeded: *held*, that an injunction to restrain the defendants from suing in Ireland upon a bill of exchange given by the plaintiff for a gambling debt is within the jurisdiction of the Court of Chancery in England; this jurisdiction is grounded on the circumstance of the person of the party on whom the order is made being within the power of the court; the Ld. Chancellor saying; —"If the court can command him to bring home goods from abroad, or to assign chattel interests, or to convey real property locally situate abroad;—if, for instance, as in Penn. v. Ld. Baltimore, Ves. sen. 444, it can decree the performance of an agreement touching the boundary of a province in North America; or, as in the case of Toller v. Carteret, 2 Vern. 494, can foreclose a mortgage in the Isle of Sark, one of the Channel Islands,—in precisely the like manner it can restrain the party being within the limits of its jurisdiction from doing any thing abroad, whether the thing forbidden be a conveyance or other act in *pais*, or the instituting or prosecution of an action in a foreign court."

FRY v. PORTER, 1 Mod. 307.

Vaughan.—"I wonder to hear of citing of precedents in matter of equity. For if there be equity in a case, that equity is an universal truth, and there can be no precedent in it. If it be the same with this case, the reason and equity is the same in itself. And if it be not the same, it is not to be cited, not being to that purpose."

Denied in Turner v. Harvey, Jacob, 169; Woodmerton v. Walker, 2 Russ. & M. 197. "Equity is a roguish thing. For law we have a measure,—know what to trust to; equity is according to the conscience of him that is chancellor, and as that is larger or narrower, so is equity. 'Tis all one as if they should make the standard for the measure, a chancellor's foot; 'tis the same thing in the chancellor's conscience." Selden's Table Talk, tit. Equity; 3 Bl. Com. 432 n.; 2 Swanst. 414. This, however, is according to the maxim *dulce est decipere in loco.* Lord Keeper Bridgman says, "Certainly, precedents are very necessary and useful to us, for in them we find the reasons for the equity to guide us; and, beside, the authority of those who made them is much to be regarded." 1 Mod. 307.

FULLER v. ACKER, 1 Hill, 473.

Questioned, Hanford v. Archer, 4 Hill, 271.

FULTON BANK v. PHŒNIX BANK.

See Root v. French, and Wardell v. Howell (post).

FULTON v. LANCASTER INS. CO.; 7 Ohio R. 325.

Overruled in Perrin v. Protection Ins. Co.; 11 Ohio R. 147.

FURSAKER v. ROBINSON, Prec. in Ch. 475; 1 Eq. Cas. Abr. 123. pl. 9.

Courts of equity will not lend their aid to enforce securities given as the *præmium pudicitiæ.*

Overruled in Knye v. Moore, 1 Sim. & Stu. 61; 2 P. Wms. 432. See Gardner v. Heyer, 2 Paige's Ch. R. 11.

FURSON v. PENTON.

See Darcy v. Chute (ante).

G.

GABLE v. MILLER, 10 Paige, 627.

Reversed, 2 Den. 492.

GADSDEN'S EX'R. v. LORD'S EX'R., 1 Desaus. R. 208.

Overruled in Stock v. Parker et al. 2 M'Cord's Ch. R. 377, 384, and cases cited.

GAGE v. ACTON, 1 Salk. 327; 1 Ld. Raym. 115, 522; 1 Comyns, 69; Carthew, 511.

Ld. Holt:—"That when the wife has any right or duty, which by possibility may happen to accrue during the marriage, the husband may by release discharge it."

Denied in Honner v. Morton, 3 Rus. 65, 88 (3 Cond. R. 298); also 4 Term R. 385; Melbourn v. Ewart, Rogers v. Acuster, 14 Beav. 445; 11 Eng. R. 303.

GAGE'S CASE, 5 Rep. 45.

Error to reverse a fine, for that the writ bore *teste after* the return day; and it was held to be amendable.

—"But it is not rightly reported by Ld. Coke, and it has been contradicted in many cases since, and held not to be law." See Wynne v. Thomas, Willes, 568, and the cases there cited.

GAINES v. RIVES, 3 Eng. Ark. R. 220.

Overruled, The State v. Rives, 7 Eng. Ark. R. 721.

GAINSWORTH v. CARROLL, 2 B. & C. 624.

"If the dicta of the court in that case deserve the name of authority." Duer, J. Suydam v. Jenkins, 3 Sand. 641.

GAITHER v. MUMFORD, N. Carolina Term R. 167.

"I regret my concurrence with the opinion given in the case of Gaither v. Mumford." Per Hall, J. in Trotter v. Howard, 1 Hawks Law & Eq. 323.

GALLOWAY v. MORRIS, 3 Yeates, 445.—Shippen.

Denied in Bronde v. Haven, 1 Gilpin, 605.—Hopkinson.—See also The Cynthia, and Anony. 1 Ld. Raym. 739 (ante).

GALBRAITH v. WYTHE, 1 Hayw. 464.

Held, that if a man sell an unsound horse, whose disorder is not known, and receive a sound price, he is liable to an action, which may be *assumpsit.*

Contrary to Baglehole v. Walters, 3 Camp. 154; Pickering v. Dowson, 4 Taunt. 779; Emerson v. Brigham, 10 Mass. 197.

GAMMAGE v. WATKIN, 2 Str. 975.

Where the original debt is too small to require special bail, the addition of costs will not alter the case, though both together exceed £10.

Overruled in Lewis v. Pottle, 4 D. & E. 570.

GANDELL v. PONTIGNY, 4 Camp. 378; 1 Stark, 98.

Questioned. See note b. to Snelling v. Huntingfield, 1 C. M. & R. 26.

GARDINER v. CAMPBELL, 15 Johns. 401.

That replevin will not lie against an officer who had taken goods on an execution, but who afterwards received the full amount of the same with all charges, but refused to re-deliver the goods to the debtor.

Considered and denied in Baker et al. v. Fales, 16 Mass. 153.

GARDINER v. SHELDON, Vaugh. 262.

That an heir shall never be disinherited except by express words, or such as have a *necessary* implication.

Considered and denied by Willes, Ld. Ch. J. in Moore v. Heaseman, Willes, 140, and in Fulham v. Wickett, Willes, 309.

GARDNER'S CASE, 2 Rolle's Rep. 160.

That if an executor give the legatee a bond for payment of the legacy, this is no extinguishment.

Denied. Cuband v. Dewsbury, 8 Mod. 328; Goodwyn v. Goodwyn, Yelv. 39; McTun v. Ferguson's Exrs., 1 Bay, 112.

GARDNER v. GARDNER, 7 Paige, 112.

Reversed, 22 Wend. 526.

GARDNER v. HEARTT, 2 Barb. 165.

Reversed, 1 Coms. 528.

GARDNER v. THE SHIP NEW JERSEY, 1 Pet. Adm. R. 227.

The master has a claim for disbursements abroad.

Opposed, Smith v. Palmer, 1 B. & Ald. 575; Atkinson v. Cotesworth, 5 D. & R. 452; Fisher v. Willing, 8 S. & R. 118.

GARDNER v. TURNER, 2 Johns. R. 260.

Upon a challenge to a juror, if the *triors* find against the plaintiff, the latter must proceed in the cause, or he will be in default.

Doubted in Pringle v. Huse, 1 Cowen, 435.

GARDON. See *Ex parte* Gardon.

GARMENT v. BARRY (or BARRS) 2 Esp. 673.

Overruled in Jones v. Cowley, 6 D. & Ry. 535–6. Bayley: "It is indeed exceedingly difficult to distinguish this case from Garment v. Barry, but I must confess that I was never perfectly satisfied with the reasoning of Lord Ch. J. Eyre in that case. He there lays it down, that in order to constitute a variance, the injury under which the horse labored must be of a permanent nature, and not one arising from a temporary accident. If that reasoning be correct, the warranty in many cases will be contingent, and will ultimately prove either general or qualified accordingly as the injury shall eventually turn out to be permanent or temporary."

GARR v. GOMEZ, 6 Wend. R. 583.

Reversed in 9 Wend. 649, in part.

GARR v. SELDEN, 6 Barb. 416.

Reversed, 4 Coms. 91.

GARRELLS v. ALEXANDER, 4 Esp. 37.

Handwriting was proved by a person who had seen the party write once, and said the writing was like that, but would not take upon him to say he believed it to be the party's writing.

Doubted by Ld. Eldon in Eagleston v. Kingston, 8 Ves. jr. 474–5–6.—Ld. Eldon. But see the observations of Kennedy, J. in 2 Whart. R. 401 *et seq.* and Beauchamp v. Cash, 16 Com. Law R. 410; D. & Ry. R. 3, S. C.

GARRIGUES v. COXE, 1 Binn. R. 592.

Held, that a leak in a vessel caused by rats, without the fault of the captain, was within the terms "perils of the sea," so as to entitle the insured to recover against the underwriter.

Overruled in Aymar v. Astor, 6 Cowen, 266 and *cases cited.* See Dale v. Hall (ante).

GASKELL v. LINDSAY, 1 Holt's N. P. R. 212.

The court set aside the verdict, which had been found for defendant, and directed a verdict to be entered for the plaintiff. See 1 Holt's N. P. R. 677 n.

GARTH v. TAYLOR, Freem. R. 260 (ed. 1826). (Case 282).

Better reported in 2 Bac. Abr. 388–9 (5th ed).

GATES v. MILES, 3 Conn. 65.

It seems to us this case might quite as well have been decided the other way. Claflin v. Wilcox, 18 Vt. R. 611.

GAZELY v. PRICE, 16 Johns. 267.

Overruled in Pomeroy v. Drury, 14 Barb. 418; Fletcher v. Button, 4 Coms. 397.

GEARY v. SWAINE, 1 Lutw. 464, and 3 Salk. 391.

Denied in Dearden v. Binns, 1 M. & Ry. 135, n. (c):—"The notice of the case in Salkeld, seems to be a short and inaccurate abstract of part of the report in Lutwyche."

GEDDINGS v. BYINGTON, 2 Ohio R. 228.

Questioned, Rhodes v. Lindley, 3 Ohio R. 51.

GEER v. PUTNAM, 10 Mass. R. 312.

A promissory note made on Sunday, was adjudged good, on demurrer.

Doubted in No. 26, Am. Jurist (April 1831), p. 381; Smith v. Sparrow, 4 Bing. 84. But see Williams v. Paul, 6 Bing. 653; Smith's Merch. Law, 316; Foster v. Taylor, 3 Nev. & M. 244.

The prohibition in our statute, relative to the observance of Sunday, against exposing to sale on that day any goods, chattels, &c. extends only to the public exposure of commodities to sale in the streets or stores, shops, warehouses, or market-places; and it was accordingly held, that a transfer of personal property made on Sunday, was valid, and the title to the property passed. Boynton v. Paige, 13 Wend. 425.

GEORGE v. PRITCHARD, Ry. & Mo. 417.

On an agreement in general terms, to sell an existing lease, Ld. Tenterden was of opinion, that no contract to make out a complete title would be implied, and that the vendor without an express stipulation, was *not* bound to produce his lessor's title.

Overruled in Souter v. Drake, 3 Nev. & M. 40; 5 B. & Adol. 992, S. C.

GEORGE ex dem. BRADLEY v. WESDON, 2 Burr. 756.

See Roe v. Doe ex dem. Humphreys (post).

GEORGIER v. MIEVILLE, 4 Dowl. & Ry. 641.

Doubted in Gordon v. Cuming, 1 Hud. & Brookes R. 67 (Ireland); it being different from the report of the same case in 3 B. & Cres. 45.

GERMAN v. ORCHARD, Freem. 500.

Reversed in Ex. Cham. Skinner, 528; and the reversal affirmed in *dernier resort.* Show. P. C. 199, 200.

GERWAS v. BURTCHLEY, 2 M. & Malk. 150.

Affidavits for or against the admissibility of early executions, held not admissible.

Opposed. Ruddick v. Simonds, 1 M. & Rob. 184.

GIBBONS v. OGDEN, 17 Johns. R. 488.

Reversed in 9 Wheat. 1.

GIBBS v. ALIBERTI, 4 Yeates, 373.

Explained by Ch. J. Tilghman, in 12 S. & R. 417.

GIBSON v. DICKIE, 3 M. & Selw. R. 463.

Opposed, Binnington v. Wallis, 4 B. & Ald. R. 650.

GIBSON v. HUNTER, 2 H. Bl. 207.

The demurrant shall admit *every fact*, which the evidence of his adversary conduces to prove.

Opposed. Hansbrough's Ex'r v. Thom, 3 Leigh, 147; 2 Rand. 357; 5 ib. 4; the Virginia practice stated.

GIBSON v. PATTERSON, 1 Atk. 12.

That if in the sale of an estate, it be stipulated that the price shall be paid or the title be completed by a certain day, and neither is done, still, the contract shall be enforced; for the general rule is, *not to consider the time as of the essence of agreements.*

Ld. Loughborough said this report was incorrect; and that from the note-book of Ld. Hardwicke, which he examined, the case was decided wholly upon the evidence, and did not call for the opinion attributed to him. Harrington v. Wheeler, 4 Ves. jr. 689.

GIBSON v. PATTERSON, 1 Atk. 12.

"Ld. Hardwicke seems to have laid down the doctrine that lapse of time was of no importance; and to have decreed in favor of a vendor, without any regard to his negligence in not procuring his title deeds, and notwithstanding a conveyance within the time limited for the purpose by the articles."

Overruled in Lloyd v. Collet, 4 Bro. 469; Getchell v. Jewitt, 4 Greenl. R. 361–2: "The generality of the principle laid down by Ld. Hardwicke has been overruled, and a different one established." See also 2 Brock. R. 246.—Marshall.

GIBSON v. WELLS, 4 B. & P. 290.

That case will not lie for permissive waste.

Denied in White v. Wagner, 4 Har. & T. 378 and 398, *et seq.*: Counsel arguendo; and in 4 Kent Com. 78, n. (e), the observations are considered just.

GIFFORD v. HORT, 1 Scho. & Lef. 386.

Lord Chancellor: "I am bound to say of the decree of Gifford v. Hort, that it is right; for it is the order of the House of Lords. One very great lawyer supported that decree, but I happen to know that another very great lawyer had great doubts about the decree in Gifford v. Hort." Lansdown v. Beauman, 1 Moll. Ch. R. 91.

GILBERT ON DEVISES, 15.

That a devise to an alien, and also to the heir of an alien, is void.

Denied in Fox v. Southack, 12 Mass. 146.

GILBERT ON EVIDENCE, 23.

Held, that a copy of a lost record may be admitted when it is according to the rule of the civil law, *vetustate temporis aut judiciaria cognotione roborata.*

Denied in Gres. Eq. Ev. 112.

GILB. EV., 108; 1 Phill. Ev. 63 (7th Lond. ed.)

An agreement by the plaintiff to give the witness a lease in case he recovers, will exclude his evidence. See 9 Pick. 322.

Doubted in Ten Eyck v. Bill, 5 Wend. 55. See Seaver v. Bradley, 6 Greenl. 60. But see Hovill v. Stephenson, 3 Mo. & P. 146.

Gilbert so lays it down upon a decision in 11 Mod. But this has been entirely repudiated. Gibbs v. Linsley, 13 Vt. R. 214.

GILBERT'S (EQUITY) REPORTS.

"The court exploded the book, and told the Serjeant they hoped he would quote cases from some better authority." Clarke's Bib. Legum.

GILBERT v. LANE, 3 Porter, 268.

See Lucy v. Beek (post).

GILCHRIST v. BROWN, 4 D. & E. 766.

Admits the liability of feme covert, living on a separate maintenance, to be sued as feme sole.

Overruled in Marshall v. Rutton, 8 D. & E. 545.

GILCHRIST v. CUNNINGHAM, 8 Wend. 641.

Webb v. Rice, 6 Hill, 219.

GILES v. CAINES, 3 Cai. 107.

Overruled, Smith v. Wells, 6 Johns. 286.

GILL v. CUBITT, 9 B. & C. 466.

Overruled, Crook v. Jadis, 5 B. & Adol. 909; Backhouse v. Harrison, ib. 1098; Brush v. Scribner, 11 Conn. 395; and other cases collected in Matthews v. Poythress, 4 Kelly & Cobbs Geo. R. 305.

GILL v. DUNLOP, 7 Taunt. 193.

Reversed in Dunlop v. Gill, 1 B. & Ald. R. 334.

GILLESPIE v. MOON, 2 Johns. Ch. 585.

That a mistake in any deed or contract in writing may be shown by parol proof, and relief granted to the injured party, whether he sets up the mistake affirmatively by bill, or as a defence.

Doubted in Elder v. Elder, 1 Fairf. R. 87.—Weston, J., who says,—"We have looked into the cases cited by him, but are not satisfied that they sustain the doctrine to the extent his language would seem to imply."

GILLET v. MOODY, 5 Barb. 185.

Reversed, 3 Coms. 479.

GILLETT v. STONE.

See Key v. Collins (post).

GILPIN'S CASE, Cro. Car. 161.

Overruled, Doe v. Timins, 1 Barn. & Ald. 530; see Clarke v. Smith, 1 Salk. 241; Chaplin v. Leroux, 5 M. & S. 14; Langley v. Sneyd, 3 Brod. & Bing. 243. See also note (a) to Brittane v. Charnock, Freem. R. p. 247; (Case 263), (ed. 1826).

GILPIN v. ENDERBEY, 5 B. & A. 954.

Did not satisfy Lord Eldon. Brophy v. Holmes, 2 Moll. Ch. R. 8.

GIMSON v. WOODFALL, 2 Car. & P. 41.

Denied to be law, White v. Spettigue, 13 M. & W. 603.

GIRD v. HALL, 7 Hill, 588.

Beardsley, J., thought the statute of the State of New York prohibiting attorneys, &c., from buying choses in action with the intent to bring suit thereon, did not extend to cases in chancery. Chancellor Walworth, however, thought differently in Baldwin v. Latson, 2 Barb. Ch. R. 306; and of the like opinion was Hand, J., in Hall v. Bartlett, 9 Barb. 299.

GIST v. MASON, 1 D. & E. 84.

The opinion of Ld. Mansfield which may be collected from this case, that insurance of enemies' property is legal, is controverted by Buller, J., in Bell v. Gilson, 1 Bos. & Pul. 354.

GLADSTONE v. KING, 1 M. & Selw. 35.

If the master of a vessel neglects to communicate material facts to the owners, held, that the plaintiffs could not recover for previous loss; the antecedent loss being an implied exception out of the policy.

Overruled in the Gen. Int. Ins. Co. v. Ruggles, 12 Wheat. R. 408; 4 Mason, 74, S. C.

GLASSINGTON v. RAWLINS.

See Rex v. Aderly (post).

GLEASON v. PINNEY, 5 Cowen, 152.

Reversed in Pinney v. Gleason, 5 Wend. R. 393; held, that the measure of damages in an action for not paying a note given thus, "for value received, I promise to pay A. B. $79 50 on, &c. *in salt at fourteen* shillings per barrel," is the *sum* specified, and not the value of the salt on the day mentioned for payment. But Clark v. Pinney, 7 Cow. 681, and M'Donald v. Hodge, 2 Hayw. R. 85, *seem contra.*

GLEASON v. CLARK, 1 Wend. 303.

Overruled, Judah v. Stagg, 22 Wend. 641.

GLOSSOP v. POOLE.

See Latkow v. Eamer (post).

GLICK v. GREGG, 19 Ohio R. 57.

Overruled, Doe v. Chapman, 10 West. Law J. (N. S. vol. 5), 235.

GLOVER v. KENDALL, 1 Lutw. 893.

That an executor cannot maintain an action in his own name, against a sheriff for the escape of a prisoner who was in execution on a judgment obtained by him as executor.

Overruled in Bonafous v. Walker, 2 D. & E. 126.

GOBIN v. HUDGENS, 15 Mo. R. 402.

Overruled, Bates v. Bown, 17 Mo. R. (2 Ben.) 552.

GOBLEY v. BEACHY, 3 Simon, 26.

A fuller report of this case will be found in Mr. Wigram's Treatise on the admission of Extrinsic Evidence. And see 1 Phil. Ev. (730) 679, 5th Am. ed.

GODBOLT, GOLDSBORROW & MARCH.

"Mean reporters, but yet not to be rejected." North's Study of the Law, p. 24.

GODIN v. THE LONDON ASSURANCE CO., 1 Burr. 389.

Double insurance.

Yates, J., in 11 Johns. R. 238.—Ld. Mansfield "could never have intended that two insurances on the same ship, *not for the same entire risk*, was a double insurance."

GODLINTON v. LEE, T. Raym. 14.

12 Mass. 1.

GOFF v. DAVIS, 4 Price, 200;

Overruled. Milner v. Petit, 1 Ld. Raym. 720; Gilb. on Debt, 396; Lodge v. Dicas, 3 B. & Ald. 611; David v. Ellice, 5 B. & C. 196.

Doubted. Thomson v. Percival, cited in Tyrw. R. 497; Parke, B.

GOIX v. KNOX, 1 Johns. Cas. 337.

Reversed in Goix v. Low, 2 Johns. Cas. 48. *Held*, that being condemned as lawful prize, afforded no legal inference that the vessel was enemy's property; the sentence of the Admiralty Court not being conclusive.

GOIX v. LOW, 1 Johns. C. 341.

Reversed, 2 Johns. C. 480.

GOLD v. BISSELL, 1 Wend. R. 213.

"That where a warrant cannot legally issue without oath, but is so issued, all the parties concerned in the arrest under such process are trespassers."

Limited in Savacool v. Boughton, 5 Wend. 179, by Marcy, J. to such as have knowledge that the warrant had not been duly sued out.

GOLDING v. DIOS, 10 East, 2.

Overruled in Ricketts v. Lewis, 1 B. & Ad. 197, upon one point.

GOMEZ v. GARR, 6 Wend. 583.

Reversed 9 Wend. 649.

GOOD v. ZERCHER, 12 Ohio R. 364.

Overruled, Chesnut v. Shane, 16 Ohio R. 599. See Connell v. Connell.

GOODALL v. RAY, 4 Dowl. Pr. C. 76.

That case must be misreported. Parke B. Ouldo v. Harrison, 28 E. L. & E. R. 527.

GOODALL v. SKELTON, 2 H. Bl. 316.

S. P. as in Langfort v. Tyler (post).

GOODELL v. JACKSON ex d. Smith, 2 Johns. R. 188.

Reversed 20 Johns. R. 693.

GOODENOW v. TYLER, 7 Mass. R. 35.

Held, that a factor does not make the debt his own by taking a note payable to himself, unless he refuse to deliver it to the principal on demand, or negotiate it, or otherwise appropriate it to his own use; it being proved to be the usage in Boston, for factors to sell on credit, and take notes in that form.

Doubted in Symington v. M'Lin, 1 Dev. & B. 291; Ruffin, C. J.

GOODENOW v. TAPPAN, 1 Ohio R. 60.

See 42 Ohio Laws, 52, s. 2.

GOODIER v. PLATT, Cro. Car. 471.

—— was decided on the principle that a judgment cannot be reversed in *part only.*

Overruled. See Cutting v. Williams (ante).

GOODLOE v. CINCINNATI, 4 Ohio R. 500.

Modified, Rhodes v. Cleveland, 10 Ohio R. 160; McCombs v. Akron, 15 Ohio R. 475; Akron v. McComb, 18 Ohio R. 229.

GOODRIGHT v. HARWOOD, 3 Wils. 497. C. B.

Reversed on error in B. R. Cowp. 87, and the judgment of reversal affirmed in Dom. Proc. 7 Bro. Parl. Ca. 344.

GOODRIGHT v. MOSS, Cowp. 591.

"Lord Thurlow was most studious to contradict this case, and he learned his doctrine in the same school (i. e. the western circuit). So had the Chief Justice (Mansfield), and Mr. Justice Heath." Per Ld. Eldon, in the case of the Berkley Peerage, 4 Campb. 401, 420.

GOODRIGHT v. STRAPHAN, Cowp. 201.

Questioned in Lee v. Muggeridge, 5 Taunt. 36.

GOODSALL v. BOLDERO, 9 East, 72.

Has been uniformly disregarded. Dalby v. India & London Life Assurance Co., 28 Eng. L. & E. R. 321.

Although the insurers succeeded in Goodsall v. Boldero, they paid to the plaintiff the amount of the insurance before they left the court; probably not from any doubt as to sustaining the decision, but to maintain their reputation with the public. Ellis on Ins. 126, note *e*; 1 Phil. on Ins. 149, note to 3 Sand. 63.

GOODSELL v. MYERS, 3 Wend. 479.

The negotiable note of an infant is voidable, not void.

Overruled in M'Mian v. Richmond, 6 Yerg. R. 1; 1 Camp. 553 note, 10 Johns. 33; 9 Mass. 100; 3 N. H. R. 348. See Swasey v. Adm'r of Vanderheyden (post).

GOODTITLE v. ALKER, 1 Burr. 143.

"Ejectment will lie by the owner of the soil, for land which is subject to a passage over it, as the king's highway."

Overruled in City of Cincinnati v. The Lessee of White, 6 Pet. R. 431,

GOODTITLE v. ALKER, 1 Burr. 143—continued.

442; Thompson. See also Doe v. Jackson, 2 D. & Ry. 523;—Bayley; Stiles v. Curtis, 4 Day, 328; Peck v. Smith, 1 Conn. R. 103.

GOODTITLE v. BAILEY, Cowp. 597.

In this case, and that of Yea v. Bucknell, Cowp. 473; Ld. Mansfield, (followed by Buller, J. in 2 D. & E. 581), considered agreements for leases, to be, between the parties, operative at law, as leases.

But this doctrine is doubted by Ld. Redesdale, 1 Sch. & Lef. 66.

GOODTITLE v. BRAHAM, 4 Term R. 497; S. P., Cator's case, 4 Esp. 117; Hess v. The State, 5 Ohio R. 6; State v. Candler, 3 Hawks, 393.

Admitted persons skilled in detecting forgeries, to prove a particular handwriting not genuine.

Opposed, Cary v. Pitt, Peake Ev. App. 85; Gurney v. Lauglands, 5 B. &'A. 330; Lodge v. Phipher, 11 S. & R. 333; 1 Penn. R. 161. See 1 Phil. Ev. 692—5th Am. ed.

GOODTITLE, d. CHESTER v. ALKER, 1 Burr. 133.

Held, that the ejectment would lie for a highway, by the owner of the soil, *subject to the easement.*

Denied in Stiles v. Curtiss, 4 Day, 330, 331; Peck v. Smith, 1 Conn. 103; and it seems in City of Cincinnati v. The Lessee of White, 6 Pet. U. S. R. 431, is an express decision contrary.

GOODTITLE v. NORTH, Doug. 584.

That bankruptcy is no plea to an action of trespass for mesne profits, because the damages are so uncertain.

Denied in Hatten v. Speyer, 1 Johns. 42.

GOODWIN v. BLACKMAN, 3 Lev. 334.

Ejectment of the tenth part of a messuage, described as lying in two parishes, and proved to lie in one only; and held that the declaration was not maintained, being for precisely the tenth part of an entire thing.

Called "a strange case"—"contrary to all experience." Per Denison, J. in Burr. 330.

GOODWIN v. RICHARDSON, 11 Mass. 469.

S. P. as in Thornton v. Dixon (post).

GOODWIN v. WEST, 1 Jones, 430.

If the witness, whose attendance is required, be a married woman, it will be necessary to serve the subpœna upon her personally, and the tender of the expenses should be made to her, and not to her husband.

Denied. In the report of the same case in Cro. Car. 522, 540, no such point appears. See 1 Phil. Ev. (782) 734—5th Am. ed.

GORDON v. CALVERT, 2 Simons' R. 253 (4 Russ. R. 581, S.C.)

Doubted. In Gass v. Stinson, 2 Sumn. R. 453, 467-8.—Story. "In cases of this sort, where a bond is given for the fidelity of a party for an indefinite period, I am aware, that it has been supposed, that at law the obligation created by the bond, cannot be determined at the will of the surety by notice. That was intimated by Mr. J. Bayley, in Calvert v. Gordon (7 B. & C. 809), and afterwards confirmed by the whole court, in the same case, in 3 Mann. & Ryl. 124. That doctrine may well be maintained at law. I am aware, that the same doctrine seems to prevail in equity; for in the case of Gordon v. Calvert (2 Simons, 253; 4 Russ. R. 581) it seems to have been held that notice would not terminate the liability; and that it was no more a defence in equity, than at law. I confess, that I should yield with more reluctance to this latter doctrine, though I am by no means prepared to say, that it is not maintainable."

GORDON v. MASS. F. & M. INS. CO., 2 Pick. 249; per Thompson, J., in 5 Pet. R. 604.

S. P. as in Cambridge v. Anderton (ante).

GORDON v. HUTCHINSON, 1 Watts & Serg. R. 285.

"There can be but little doubt that that case is opposed to the principles of the common law, and its rule is wholly inexpedient." Fish v. Chapman, 2 Kelly, Geo. R. 355.

GORDON v. SECRETAN, 8 East, 548.

Restricted in its application, Pearce v. Hooper, 3 Taunt. 62; Betts v. Badger, 12 Johns. 223.

GORE v. KNIGHT, Prec. Ch. 255.

Denied in Massarene v. Doran, 2 Moll. Ch. R. 524.

GOSS v. NUGENT, 5 B. & Ad. 56.

That when a written contract had been entered into concerning land, which was required by the statute of frauds to be in writing, parol evi-

GOSS v. NUGENT, 5 B. & Ad. 56—continued.

dence was inadmissible to show, that some of the terms had been altered or dispensed with by a subsequent parol agreement.

Qualified in Goss v. Nugent, 5 Ad. & El. 61. See also 1 Phil. Ev. (776) 728, 5th Am. ed.

GOSS v. WATLINGTON, 3 Bro. & Bing. 132.

Receipts signed by a deceased collector of taxes, for moneys payable to him in his official capacity, are admissible in evidence against his surety in an action on a bond conditioned for the due performance of the collector's duty; the point was not decided, but Dallas, Ch. J. held them inadmissible.

Doubted in Middleton v. Melton, 10 B. & C. 317. In this case also the *grounds* upon which the court (in Goss v. Watlington) decided the principal point in that case, were *overruled;* viz.—That the entries made by such collector were admissible, because they were made in a *public book*, handed down to him by his predecessor in office.

GOSS v. WITHERS, 2 Burr. 694.

Where it seems to be held that the right to recover for a total loss is not made absolute by the state of facts on which the abandonment is founded, but is dependent on subsequent events.

Denied in Maryland & Phœnix Ins. Co. v. Bathurst, 5 G. & J. 159.

GOUGH v. STAATS, 13 Wend. 549.

Questioned, Smith v. Jones, 20 Wend. 192.

GOULD v. HILL, 2 Hill, 623.

Overruled, Parsons v. Monteith, 13 Barb. 353; Moore v. Evans, 14 ib. 524, and see Dorr v. New Jersey Steam Navigation Co., 1 Kernan, 491.

GOULD v. ROBSON, 8 East, 580.

Opposed, Ld. Ellenborough, 1 B. & Ald. 252, and see Tippetts v. Heane. 4 Tyrw. R. 776, n (a).

GOULAND v. DE TARIA, 17 Ves. 20.

The Lord Chancellor was not satisfied at the time, that that case was decided on true principles of equity, and advised an appeal from that decree; and it would have been appealed from, but the plaintiff submitted to a compromise. Scott v. Dunbar, 1 Moll. Ch. R. 459.

GOVETT v. RADNIDGE, 3 East, 62.

Denied in Walcott v. Canfield, 3 Conn. R. 198 :—"The above case has been considered as of no authority. Powell v. Layton, 2 New R. 364 ; Max v. Roberts et al., ib. 454. The same court, which determined the case of Govett v. Radnidge, in the recent determination of Weall v. King et al., 12 East, 452, have virtually overruled their former decision."

GRACE v. WILBER, 10 Johns. 455.

Reversed in Wilber v. Grace, 12 Johns. 68.

GRANBERRY v. GRANBERRY, 1 Wash. 249.

The manner of stating interest in executor's accounts.

Modified in Burwell v. Anderson, 3 Leigh R. 363–4.

GRANT v. BELL, 4 Har. & M'H. R. 419.

Overruled in Green's Ex'r v. Johnson, 3 G. & J. 396–7.

GRANT v. JOHNSON, 5 Barb. 161 ; 6 Barb. 357.

Reversed, 1 Selden, 247.

GRANT v. MILLS, 2 Ves. & B. 306.

Held, that vendor's lien on the estate for the purchase money was not discharged by taking bills of exchange.

Doubted. See Eskridge v. McClure, 2 Yerg. R. 84 ; 4 Kent Com. 152.

GRAVES v. BUSH, 4 Johns. 119, 124.

Reversed in 12 Johns. 17.

GRAVES v. MATTISON, Sir T. Jones R. 201 ; 1 Eq. Ca. Abr. 336, pl. 1.

Leading case as to mortgage or sale of a reversionary term for raising portions or maintenance for children.

Denied in Revesby v. Newland, 2 P. Wms. R. 93. But see 1 Powell on Mort. p. 74, n. (s).

GRAY v. HANDKINSON, 1 Bay's R. 278; see 16 S. & R. 258; 3 Pick. 452.

Where the defects of the things sold are not so great as to require a rescission of the contract *in toto*, then an abatement of the price ought to be allowed. Thus where a mill-seat was the object in view in purchasing the land, that being taken away by elder grant, the vendee was allowed to plead the matter in discount against the bond given for the consideration.

Opposed, Greenleaf v. Cook, 2 Wheat. 13 ; Day v. Nix, 9 Moore's R. 159 ; 3 Fairf. R. 127 ; 3 Dev. R. 390.

GRAY v. OHIO, 4 Ohio R. 354.

See 47 Ohio Laws, 18, s. 6.

GREELEY v. THURSTON, 4 Greenl. R. 479.

A bill may be presented for payment at any reasonable time on the third day of grace.

Opposed, Osborn v. Monroe, 3 Wend. 170.

GREEN v. BAILEY, 3 N. H. R. 33.

That if an extent be insufficient upon the face of it to pass the land, the judgment remains unsatisfied, and an action of debt will lie to enforce the payment of it.

Explained in Burnham v. Coffin, 8 N. H. R. 114; and deciding that the result is the same although the defect does not appear upon the face of the proceedings. See 9 Mass. 92.

GREEN v. DENNIS, 6 Conn. R. 292.

Doubted in Lessee of Ferguson et al. v. Hedges, 1 Harr. (Dela.) R. 524. Clayton:—"We are not unaware of the American decisions on this subject in 6 Conn. R. 292, and in Lingan v. Carroll, 3 Har. & M'Hen. 333; but we prefer following the authorities which we have cited." The case in Delaware decides that a lapsed bequest of real property goes to the heir at law; a *void* one to the *residuary devisee.*

GREEN v. EDWARDS, Cro. Eliz. 217.

Lease for years, if lessee live so long; remainder to another for the residue of the term; and remainder held void.

But this and the like cases are overruled in Wright ex dem. Plowden v. Cartwright, 1 Burr. 282.

GREEN v. FARMER, 4 Burr. 2214.

A dyer has no lien on goods delivered to him in the course of trade, but for the price of dyeing.

Denied in Rose v. Hart, 8 Taunt. 499—Gibbs. See Bennett v. Johnson, 3 Dougl. 387, and notes (a) (b).

GREEN v. PATCHEN, 13 Wend. 293.

Overruled, Smith v. Barse, 2 Hill, 387.

GREEN v. RIVET, 2 Ld. Raymond, 772.

That a bill of Middlesex cannot be returned the same day it was sued out.

Overruled in 4 Term R. 610; and held that it may be.

GREEN v. WILLIS, 1 Wend. 78.

Overruled, Kerker v. Carter, 1 Hill, 101.

GREENBY v. WILCOCKS, 2 Johns. 1.

Dissented from in Martin v. Barker, 5 Blackf. 233.

GREENING or GREERING v. WILKINSON, 1 Car. & P. 625.

"The last of the English cases, and the only one that bears the resemblance of a direct authority, is *Greening* v. *Wilkinson.* It is, however, only a *nisi prius* decision, and the report is not only brief, but we apprehend imperfect; material facts seem to be omitted, nor is it stated what was the verdict finally rendered." Duer, J., in Suydam v. Jenkins, 3 Sand. 635.

GREENLEAF.

Judge Greenleaf was one of the most accurate of elementary writers. Hopple v. Higbee, 3 Zab. R. 350.

GREENLEAF v. COOK, 2 Wheat. R. 16.

To make a failure of consideration a defence to a note, the failure must be total.

Opposed, Lounsbury v. Ball, 12 Wend, 246, *and cases cited.*

GREENLEAF v. KELLOGG, 2 Mass. 568. supp.

As to allowance of compound interest.

Overruled. "This part of the case was overruled in Hastings v. Wiswell, 8 Mass. 455, at a term of the court where Parsons, C. J., presided who was counsel for the plaintiff in the former case, and had cited it with approbation in Tucker v. Randall, 2 Mass. 284, as to the main point decided." Per Weston, J. in 7 Greenl. 50.

GREENWAY v. ADAMS, 12 Ves. 395.

S. P. as in Denton v. Stuart (ante).

Overruled in Gwillim v. Stone, 14 Ves. 128; Jenkins v. Parkinson, 1 Coop. Sel. Cas. 179 (8 Cond. R. 432).

GREENOUGH v. GASKELL, 1 My & K. 104. S. C. 6. Eng. Ch. Rep. Cond. 518.

See Doe dem. Shellard v. Harris (ante).

GREENSBORO' v. UNDERHILL, 12 Vt. R. 604.

See The King v. Twining (post).

GREENWAY v. CARRINGTON, 7 Price, 564.

Overruled in Walthew v. Syers, 3 Dowl. Pr. 160; Dawson v. Bowman, ib. 160, 161.

GREEVES v. ROLLS, 2 Salk., 456.

This case is wrong in Salkeld. Better reported in 12 Mod. 651, and 1 Ld. Raym. 716; see 1 Burr. 359.

GREEVES v. WEIGHMAN, 2 Rolle. Abr. 919. D. 2.

That if a man make two wills, and the executor under the first will prove it and receive a debt, and afterwards the second will be found and proved; the last executor may recover the debt of the debtor, whose remedy is on the first executor.

Denied by Buller, J. in Allen v. Dundas, 3 D. & E. 125.

GREGORY v. CHRISTIE, B. R. Trin. 24 G. III.; Park 67.

Ld. Mansfield's construction of the permission, in a policy, "to touch and stay," is denied by Sir J. Mansfield, C. J., in Urquhart v. Barnard, 1 Taunt. 456.

GRESHAM v. GRESHAM, 6 Munf. R. 187.

S. P. as in Timberlake v. Graves (post).

M'GREW'S APPEAL, 14 S. & R. 396.

Limited in M'Fadden v. Geddes, 17 S. &. R. 341.

GREY v. KENTISH, 1 Atk. 280.

The Chancellor said, "The case is most inaccuartely reported. As stated in Atkins it is unintelligible; and it is only by attending to the correction of it, in a note by Mr. Cox, that we are able to ascertain what the true facts were." Houner v. Morton, 3 Russ. 65 (3 Cond. R. 301.)

GRIDLEY v. GARRISON, 4 Paige, 647.

The lien of an attorney for his costs of suit, cannot be affected by a set-off of a judgment in another suit; the lien being paramount to the claim of the adverse party.

Overruled in 16 Wend. 446. See Cowell v. Snow, 10 Bing. 432.

GRIER v. PHŒNIX INS. CO. 13 Johns. 451.

Overruled, Matthews v. Howard Ins. Co., 13 Barb. 234, 244; Patapsco Ins. Co. v. Coulton, 3 Peters, 222; 3 Kent's Com. 304, n. a.

GRIFFIN v. MARTIN, 7 Barb. 297.

Neither "sound in law nor just in principle." Williams v. Mich. Cen. R. R. Co., 2 Gibbs Mich. R. 265.

GRIFFIN v. TAYLOR, Tothill, 106.

The court ordered a man to procure his wife to acknowledge a fine of mortgaged lands.

Overruled in Howell v. George, 1 Mad. R. 1; Davis v. Jones, 1 New R. 267.

GRIFFITH v. EYLES, 1 B. & P. 413.

It is said, in an action for an escape, if the defendant plead a negligent escape and voluntary return, the plaintiff should new assign a subsequent escape.

Denied in Howland v. Squier, 9 Cowen, 91, and in The Middle District Bank v. Deyo, 6 Cowen, 735.

GRIFFITH v. WILLIAMS, 1 Cr. & J. 47.

That a jury, upon a question respecting the identity of handwriting, may take other papers already in evidence, and compare them with that which is in dispute, for the purpose of coming to a conclusion, from the comparison, whether the disputed handwriting is genuine. See also 2 Stark. Ev. 658 n.

Qualified in Doe d. Perry v. Newton, 1 Nev. & P. 1, where it was said that the case of Griffith v. Williams was limited to the instance of documents already in evidence in the cause, which were therefore necessarily before the eyes of the jury. See also Rex v. Morgan, 1 M. & Rob. 134 n.; and see 1 Phil. Ev. (699) 654, 5—5th Am. ed.

GRIFFITH'S LESSEE v. TUNCKHOUSER, 1 Pet. R. 421.

That a connected plot of different tracts made out and put together in the land office, was not evidence, because it did not profess to be a copy of any plot on record in the office.

Denied in Vickroy v. Skelley et al., 14 S. & R. 375.

GRIFFITHS v. WILLIAMS, 1 D. & E. 710.

Money paid into court; but plaintiff proceeded to trial, and had a verdict for the exact sum paid in. The court directed costs for plaintiff up to the time the money was paid in. But Buller, J. in Stevenson v. Yorke, said (4 Term R. 10), that this part of the case could not be supported.

GRIFFITHS v. SMITH, 1 Ves. jun. 97.

Denied in Colhoun v. Thompson, 2 Moll. 287. "When he reported Ld. Thurlow's cases, Mr. Vesey was a very young man."

GRIGG'S CASE, Sir T. Raym. cited Gilb. Ev. 19, and B. N P. 289.

That the wife may be compelled to give evidence against her husband in a criminal proceeding.

Denied by Ld. Hale; Hale's P. C. 301; and this is the better opinion; Phil. Ev. 161—(5th Am. ed.)

GRIM v. PHŒNIX INS. CO., 13 Johns. 441.

A loss occasioned by fire, and imputable to the negligence of the master or mariners, is not a loss within the policy.

Opposed to Busk v. The Royal Exch. Assu. Co., 2 B. & Ald. 73, and Walker v. Maitland, 5 ib. 171; Petapsco Ins. Co. v. Coulter, 3 Pet. R. 222; Waters v. The Merchants' Lou. Ins. Co. 11 ib. 213.

"It has not been followed by the Federal courts, or even in the courts of this State, and in the English courts there is now a settled course of adjudication the other way." Matthews v. Howard Ins. Co., 1 Kernan, 14.

GRIMSTONE'S CASE, Ambler, 706.

Doubted in Weed v. Tew, 1 Beat. 276.

GRINNELL v. PHILLIPS, 1 Mass. 541.

S. P., Smith v. Cheetham, 3 Caines R. 57.

Which adopted the former practice in England and in this country, of admitting jurors to testify in regard to their own misbehavior.

Overruled by Ld. Mansfield in Vaise v. Delaval, 1 Term R. 11; Dorr v. Fenno, 12 Pick. 525, and 2 Greenl. 41 note, in which all the authorities are collected.

GRISWOLD v. PENNIMAN, 2 Conn. R. 564.

Held, that the administrators of a husband who died in the lifetime of his wife were entitled to the wife's distributive share of her father's personal estate who died in the life time of the husband.

Denied in Wintercast et al. v. Smith, 4 Rawle, 179.

GRISWOLD v. STEWART, 4 Cowen, 457.

In a *scire facias* against Stewart as terre-tenant upon a judgment by default at a term which commenced after the death of the defendant.

GRISWOLD v. STEWART, 4 Cowen, 457—continued.

Held, that the terre-tenant might show it by the plea, and thereby avoid the judgment.

Denied in Warder v. Tainter, 4 Watts' R. 279 *et seq.*—Kennedy, J. See Randall & wife and Haydock v. Cobb (post).

GRONING v. MENDHAM, 1 Stark. R. 257.

In action for the price of clover seed sold by sample, held, that before defendant could show that the seed did not correspond with the sample, he must prove that he had given the plaintiff notice of the variation.

Shaken in Poulton v. Lattimore, 9 B. & C. 259—Bayley, B. in Allen v. Cameron, 3 Tyrw. R, 907; Chappel v. Hicks, 4 ib. 43.

GROVE v. DUBOIS, 1 Term R. 112.

Overruled in Morris v. Cleasby, 4 M. & S. 566. See Gall v. Comber, 7 Taunt. 558; Baker v. Langhorn, 6 ib. 519.

GROWSOCK v. SMITH, 3 Anstr. 877; per M'Donald, C. B.

Overruled, Baxter v. Lewis, Forrest. 61; see Webb v. Bettel, per Windham, J. 1 Lev. 44; Martin v. Smith, 2 Smith's Rep. 543.

GUERARD v. RIVERS, 1 Bay's R. 265.

S. P. as in Liber v. Parsons (post).

Witherspoon v. M'Calla, 3 Dess. Eq. R. 245.

S. P. as in Liber v. Parsons (post).

GUERNSEY v. CARVER, 8 Wend. 492.

That a running account for goods sold, money paid, &c., is an entire demand, incapable of being split up for the purpose of bringing suits.

Denied in Badger v. Titcomb, 15 Pick. 415; Wilde, J.:—"It cannot be maintained that a running account for goods sold and delivered, money loaned, or money had and received, at different times, will constitute an entire demand, unless there is some agreement to that effect, or some usage or course of dealing, from which such an agreement or understanding may be inferred."

GUINESS v. CARROLL, 1 B. & Ad. 436; Arnott v. Redfern, 3 Bing. 353.

The court may be thought to have considered that foreign judgments were not conclusive.

Denied in Martin v. Nichols, 3 Sim. 458, where the Vice-Chancellor, after an examination of the authorities, held that the grounds of a foreign

GUINESS v. CARROLL, 1 B. & Ad. 436; etc.—continued.

judgment could not be revised in the courts of this country, and that a bill for a discovery and a commission to examine witnesses in Antigua, in aid of the plaintiff's defence to an action brought on a foreign judgment in this country, was demurrable. See Phil. Ev. 537 (499), 5th Am. ed. The general doctrine, maintained in the American courts, is, that foreign judgments are *prima facie* evidence, but that they are impeachable. See also Phill. Ev. 543 (504) note.

GULLY v. BISHOP OF EXETER, 4 Bing. 290.

Disapproved, Merick v. New, 3 Selden, 168.

GUTH v. GUTH, 3 Bro. Ch. Ca. 614.

Overruled, in effect, in Legard v. Johnson, 3 Ves. 352; St. John v. St. John, 11 ib. 526, so far as it decided that a *feme covert* might, in equity, sue her husband in a contract for separate maintenance, where there was no intervention of a trustee.

GUTHERIDGE v. SMITH, 2 H. Bl. 377.

Mr. J. Heath in speaking of the effect of paying money into court:— "Coming in lieu of a tender, it has all the effect which a tender would have had, and it is clear that after a tender the plaintiff cannot be nonsuit."

Denied in Anderson v. Shaw, 3 Bing. 290, by Ch. J. Best.

GUTHRIE.

See *Ex parte* Guthrie (post).

GUTHRIE v. FISKE, 3 B. & C. 178.

Opposed to Williams v. Beaumont, 10 Bing. 260:—*Held*, that a private act which directed that the chairman might sue in behalf of the company "for recovering any debts, or enforcing any claims or demands," entitled him to sue for a libel on the company.

GUYKOWSKI v. THE PEOPLE.

See The People v. Peck (post.)

GWINNE v. POOLE, 2 Lutw. 935.

Trespass of assault, &c. and justification under process of an inferior court, where the now defendant was plaintiff and held that he need not set forth that the cause of action arose within the jurisdiction, &c.

Denied in Moravia v. Sloper, Willes, 34; Slocum v. Wheeler, 1 Conn. R. 453.

GYDE v. BOUCHER, 5 Dowl. 127.

Doubted, Creswick v. Harrison, 20 Law J. R. N. S. C. P, 56; 15 Jur. 108; 1 Eng. R. 384.

H.

HACKLEY v. PATRICK et al, 3 Johns. 528; and Walden v. Sherburne, 15 ib. 424.

It seems to have been held that the acknowledgment of one partner, after a dissolution will not bind his copartners, or at least that it is not conclusive.

Denied in Parker v. Merrill et al., 6 Greenl. 41; Martin v. Root et al. 17 Mass. 227; Phil. Ev. 400.

HAGGERTY v. PALMER, 6 Johns. Ch. R. 437.

Denied in Chapman v. Lathrop, 6 Cow. 115, n. (a) where it is said, "The marginal note in Palmer v. Hand, 13 Johns. R. 434 is erroneous. That note with the subsequent decision in Haggerty v. Palmer, 6 Johns. Ch. 437, decided by Kent, late Chancellor, have led the profession generally, to an adoption of the doctrine as stated in Mr. Johnson's marginal note to Palmer v. Hand."

HALDANE v. BEAUCLERK, 3 Ex. Rep. 658; 18 Law J. Rep. N. S. Exch. 227.

Doubted, Montague v. Smith, 21 Law J. R. N. S. Q. B. 73; 9 Eng. R. 329.

HALE. See *Ex parte* Hale.

HALE, DE JURE MARIS:

"I need not repeat here the extravagant eulogium pronounced by Mr. Wirt on this great judge, on the trial of Burr: "That with a mind beaming with the effulgence of noon-day, he sat on the bench like a descended god!" But I will say what is well known to jurists, that in England this work is considered as conclusive upon any question relating to the right of a sovereign or subject, either on the sea, arms of the sea, or public or private streams of water; and that its authority has been repeatedly recognized in this country." 2 N. H. R. 369, 371; 1 Rand. 417, 420; 1 Halstead 1, 74; 2 Conn. R. N. S. 581; 3 Caines R. 307, 315–8. Lumpkin, J. in Young v. Harrison, 6 Cobbs Geo. R. 142.

HALE'S HISTORY OF THE COMMON LAW.

"This book was published from a posthumous manuscript of the learned judge, and is exceedingly cursory and defective." Bart. Elements—Stud. of Convey. 1 Vol. p. 15.

HALE'S PLAC. COR. 556.

Where it is said that if A, hire a chamber in the house of B &c. it is burglary to break it open; and the indictment shall make it *domum mansionalem* of B.

This *dictum* is considered and overruled in Lee v. Gansel, Cowp. 1.

HALE, 2 P. C. 151.

Questioned in Beatty v. Perkins, 6 Wend. 382; see Chipman v. Bates, 15 Vt. R. 60.

HALE, P. C. 2 p. 170.

"Figures to express numbers are not allowable in indictments, though sometimes literal numbers be allowed in returns; but in indictments the numbers, whether cardinal or ordinal, must be expressed in Latin."

Overruled, Kelly v. The State, 3 Sme. & M. 525, where it is said, "Figures are a part of the English language, and are admissible in indictments, citing The State v. Hodgden, 3 Verm. R. 431." But in Goodall v. Harrison, 2 Mo. R. 153, the plaintiff in a civil action laid his damages thus:—"To the damage of the plaintiff $1,000," with the dollar mark. He had a verdict and judgment. The defendant sued out a writ of error, and the Supreme Court reversed the plaintiff's judgment because he had claimed damages in figures and with the dollar mark.

HALE v. ROBERTS, 3 N. H. R. 468.

Limited, Hodgden v. White, 11 N. H. R. 211.

HALE v. WASHINGTON INS. CO., 2 Story's R. 176.

Overruled by Gen'l. Mut. Ins. Co. v. Sherwood, 14 How. 351. See Mathews v. The Howard Ins. Co., 1 Kernan, 19.

HALL v. DENNISON, 17 Vt. R. 310.

Conflicts with Barnes v. Griffin, 2 Coms. 365, and other cases in New York.

HALL v. HARDY, 3 P. Wms. 189.

If the husband for valuable consideration covenant that his wife shall join him in a fine, the court will decree a performance.

Overruled in Howell v. George, 1 Mad. R. 15; see Griffin v. Taylor (ante), and 2 Kent Com. 168.

HALL v. LAWRENCE, 4 D. & E. 589.

That the award of an umpire shall not be set aside because he received the evidence from the arbitrators without examining the witnesses, unless he were requested to examine them before making his award.

Denied in Falconer v. Montgomery, 4 Dall. 232; and in Passmore v. Petit, 2 Dall. 271; Kyd on Awards, 104 note.

HALL v. MALTBY, 6 Price R. 240, 258, 259.

Held, that where a fact is charged, and put in issue in a bill, the examination of witnesses to the confessions, conversations, and admissions of the defendant, are not admissible to prove the fact, unless such confessions, conversations and admissions, are expressly charged in the bill, as evidence of such fact.

Overruled in Smith v. Burnham, 2 Sumner's R. 613.

HALL v. WILCOX.

See Pike v. Strut (post.)

HALLETT, IN THE MATTER OF. 8 Paige, 375.

Overruled, Cutter v. Doughty, 7 Hill, 305.

HALLETT v. HALLETT, 2 Paige 15.

Overruled, Cromer v. Pinkney, 3 Barb. Ch. R. 466.

HALLETT v. NOVION, 14 Johns. 273.

Reversed in Novion v. Hallett, 16 Johns. 327. *Held*, that the common law courts of the several States have no jurisdiction in cases of illegal capture on the high seas, as prize of war.

HALLIDAY v. McDOUGALL, 20 Wend. 81.

Reversed, 22 Wend. 264.

HALLIDAY v. NOBLE, 1 Barb. 137.

Reversed, 1 Coms. 330.

HALSE v. PETERS, 2 B. & Ad. 807; 1 Law Journ. R. N. S. K. B. 2.

"It may be doubtful whether the case of Halse v. Peters is good law." Parke, B., Lawrence v. Boston, 21 Law J. Rep. N. S. Ex. 49; 8 Eng. R. 496.

HAMBLING v. LISTER, Amb. 401, cited from Reg. B. 13 Ves. 336.

Overruled in Ashburner v. Macquire, 2 Bro. C. C. 110, and cases cited in Ram on Assets, p. 122, n. (x).

HAMBLY v. TROTT, Cowp. R.

Denied in M'Kinnie's Exr. v. Oliphant's Exr., 1 Hayw. R. 4—Williams, J.:—"The case of Hambly v. Trott, in Cowper, is not law; and further, I never knew a case in Cowper to be received as law in our courts."

HAMER.

See *Ex parte* Hamer (post).

HAMERSLY v. LAMBERT, 2 Johns. Ch. R. 508.

"No period has been fixed within which a creditor, by not making a demand upon a surviving partner, should be held to have waived his equity against the estate of a deceased partner."

Denied in Executors of Fisher v. Executors of Tucker, 1 M'C. Ch. R. 173.

HAMILTON v. ADAMS, 2 Mur. 161.

Overruled, Doe v. Cole, 13 Ire. 425.

HAMILTON COLLEGE v. STEWART, 2 Denio 403.

The decision of the court of errors in Hamilton College v. Stewart settled no principle. A majority of the members of the court voted to reverse the judgment of the supreme court on diverse and different grounds. And it does not appear that a majority agreed as to any one ground of reversal. Barnes v. Perine, 9 Barb. 214.

HAMILTON v. HEMPSTED, 3 Day, 339.

The fee conditional of the common law of England has never been recognized as part of the law of Connecticut.

In England, it is settled, that if an estate be devised to a man and his heirs, and if he die without leaving heirs, then to his brother, or any person who may be an heir, the word heirs shall be construed to mean *heirs of the body*, and the devise shall operate to convey an estate tail. Porter v. Bradley, 3 Term R. 143. The same doctrine is recognized in Connecticut. Hudson v. Wadsworth, 8 Conn. R. 348. And in Williams v.

HAMILTON v. HEMPSTED, 3 Day, 339—continued.

M'Call, 12 ib. 328, where the words in the will were:—"I give to my son Andrew V: Williams all the land I have on the easterly side of the road against my house, except what I give by my will to my sons William and Nathan, if my said son Andrew shall have a lawful heir; but if he should have none, then after his decease, to be divided between his brothers and sisters—his brothers to have two-thirds, quantity and quality, and his sisters one-third—or to their heirs." *Held*, that this created an estate tail in Andrew, with remainder to his brothers and sisters. The court say,—The intent of the testator manifestly was, that if Andrew died without heirs of his body, the lands should go to the testator's other children. Andrew taking an estate tail, had no power, by any conveyance of his, to defeat the estate of those in remainder.

HAMILTON v. RUSSELL, 1 Cranch, 316.

S. P. as in Edwards v. Harben (ante).

HAMILTON'S LESSEE v. SWEARINGTON, Add. R. 48.

Parol evidence was offered to supply the place of a lost deed, but the court refused to receive it.

Denied in Jackson v. Cullum, 2 Blackford's R. 229; Hilts v. Frier, 16 Johns. 182.

HAMMATT v. WYMAN, 9 Mass. 138.

Held, that a purchaser at sheriff's sale in order to prove title to goods, must show a legal return of the execution.

Denied in Whiting v. Bradley, 2 N. H. R. 82.

HAMMERLIN (or HAMERTON) v. STEAD, 3 B. & C. 478.

Tenant from year to year, during a current year, entered into an agreement, for a lease to be granted to him and A. B.; and from that time A. B. entered and occupied jointly with him: *Held*, that by this agreement and the joint occupation under it, the former tenancy was determined, although the lease contracted for was never granted. Bayley, J., said—"If a sole tenant agrees to occupy, and does occupy jointly with another, that puts an end to the former sole tenancy."

Opposed, Schieffelin v. Carpenter, 15 Wend. 400. Nelson, J., in reference to Hamerton v. Stead:—"The judges were somewhat embarrassed to place the case upon principle, and some of their observations conflict with the case in 6 East, 86, which they admitted to be good law."

HAMMOND v. ATWOOD, 3 Mad. 150.

Overruled. See Brebner v. Thompson, 2 Moll. Ch. R. 433.

HANFIELD v. M'NAIR, 9 Wend. 56.—S. P. 76.

The Ch. J. after asserting the doctrine of the case Striglitz v. Egginton, 1 Holt, 141, that an attorney who executes a sealed instrument must have an authority under seal, concludes by saying, that no subsequent acknowledgment will do.

Denied in Blood v. Goodrich, 12 Wend. 527, 8; "The Ch. J., no doubt, intended to say that no subsequent acknowledgment by *parol* could supersede the necessity of an authority under seal; he did not intend to say that a *parol acknowledgment of the existence of an authority under seal*, could not be admitted."

HANFORD v. ARTCHER, 1 Hill, 347.

Reversed, 4 Hill, 271.

HANKEY v. HAMMOND, 10 Ves. 110 n.

Commented on, *In re* Garland, 10 Ves. 110; and see M'Neille v. Acton, 17 Jur. 661; 22 Law J. R. N. S. Ch. 820; 21 Eng. R. 7.

HANLEY v. TROTMAN. See on page 226 (post).

HANNA v. ADAMS, 3 Mo. R. 160.

Overruled, Edgar v. M'Cutchen, 9 Mo. R. 759.

HANSARD v. ROBINSON, 7 B. & C. 90.

The indorsee of a bill having lost it, cannot in an action at law recover the amount from the acceptor, although the loss was after the bill became due, and the indorsee offered an indemnity. He may tender sufficient indemnity, and then may enforce payment in equity.

Opposed to Swift v. Stevens, 8 Conn. 431. The holder only required to prove that defendant cannot afterwards be called on to pay it. But it was *said* in Hinsdale v. The Bank of Orange, 6 Wend. 378, "if the owner *loses* a bill he cannot recover; but if he can prove it actually destroyed, he may."

HARBECK v. SYLVESTER, 13 Wend. 608.

Overruled, Allen v. Culver, 3 Den. 284.

HARDING v. DAVIS, 2 C. & P. 77.

Held, that an offer by a third person to go up stairs and get the sum which defendant said she was willing to pay the plaintiff, and the plaintiff replied, that she need not trouble herself, for he could not take it, was held sufficient proof to sustain a plea of tender for that sum.

Overruled in Dunham v. Jackson, 6 Wend. 22, 33; Breed v. Hurd, 6 Pick. 356. But see 2 Phill. Ev. 134, and cases cited.

HARDING v. GLYNN, 1 Atk. 469.

"It is briefly and imperfectly reported, and was contradicted, and, as some have thought, overruled, by Lord Hardwicke in the case of the Duke of Marlborough v. Lord Godolphin" (2 Ves. 61).

Was for a long time in abeyance, but was fully restored and firmly established by Brown v. Higgs, 4 Ves. 708; 5 ib. 495; Dominick v. Sayre, 3 Sand. 562.

HARDING v. SPICER, 1 Campb. 327.—Heath.

S. P. as in Gutteridge v. Smith (ante).

HARDMAN v. CLEGG, Holt, N. P. C. 657.

Overruled in Tooth v. Bagwell, 11 J. B. Moore, 349; S. C. 3 Bing. 446; Spires v. Morris, 3 Moore & Scott, 118.

HARDWICKE'S CASE, Nott. Lent Ass. 1811; 1 Phil. Ev. 105. S. P. as in Row's case.

Doubted in Dunn's case, 4 C. & P. 543.

HARLAN v. READ, 3 Ohio R. 285.

See Swan's Stat. 685, s. 136; Baker v. Thompson, 16 Ohio R. 504.

HARMER v. ROGERS, 3 Bligh, N.S. 447.

Where a public right of way was claimed in Scotland, Lord Eldon said, "It was contended in argument, that, according to the law of Scotland, it was necessary to prove forty years' uninterrupted enjoyment down to the period of the trial. But it is quite impossible to maintain a position of that kind; for it would lead to this consequence, that if you were to establish an uninterrupted enjoyment, even for the period of sixty or seventy years, an occupier could at any time defeat that right by successive obstructions, although these obstructions might be resisted by persons exercising the right of way, unless they thought proper to go into a court of justice. I apprehend that cannot be the case. It cannot be the case certainly by the law of England. If the right be once established by clear and distinct evidence of enjoyment, it cannot be defeated, only by distinct evidence of interruptions acquiesced in."

Qualified in Gale & Whateley's Tr. on Easements, p. 382–3, where it is said, "It is evident this language cannot be taken literally, that no amount of non-user would be sufficient to defeat a right of way once fully established. The obvious meaning of Lord Eldon was, that where acts of interruption are proved as evidence that the right has ceased, the material inquiry must be, whether such acts of interruption were known and acquiesced in."

HARMAN v. VAN HATTON, 2 Vern. 717.

Admits the legality of a wager policy.
See Amory v. Gilman, 2 Mass. 1, contra.

HARNING v. CASTOR, 1 Rep. in Chan.—briefly stated in the argument of the Earl of Oxford's case, for point, see 3 Co. &c.

Denied in Flint v. Sheldon, 13 Mass. 452; Jackson, J.:—"This report gives no more than is stated in Viner. (Abr. Usury, pl. 3, 4). It is not law, and it has been repeatedly overruled."

HARPER v. BUTLER, 2 Pet. R. 239.

An executor in Kentucky may assign a chose in action, so that the assignee may sue in his own name in Mississippi.

Opposed to, Stearns v. Burnham, 5 Greenl. R. 261; Thompson v. Wilson, 2 N. H. R. 291.

"From the report of the case it is manifest it was but lightly considered by the court." McCarty v. Hall, 13 Mo. R. 484.

HARRINGTON v. M'MORRIS, 5 Taunt. R. 233.

Ch. J. Mansfield said, "that the defendant's language in one plea cannot be used to disprove another plea."

Denied in Alderman v. French, 1 Pick. 1; Jackson, J., as applicable to an action of slander; and *held*, that the special plea of justification was competent, and legal evidence on the trial of the general issue to prove the speaking of the words.

HARRIS v. BENSON, 2 Str. 910.

Held, that the drawer of an inland bill of exchange was not chargeable with interest for want of a protest.

Overruled in Windle v. Andrews, 2 B. & Ald. 696.

HARRIS v. CLAP, 1 Mass. R. 308.

Where the penalty in a bond is not in the nature of stated and ascertained damages, the injured party may recover beyond the penalty, and against a surety.

Denied in Clark v. Bush, 3 Cow. 151. See 9 Cranch, 104, 120; 1 Gall. R. 348, S. C.

HARRIS v. HICKS, Salk. 458; and in all the English books.

That a marriage between a man and the sister of his deceased wife is invalid.

Denied, generally, in this country; and in Greenwood v. Curtis, 6 Mass. R. 378.

HARRIS v. EVANS, 1 Wils. 262.

Lease for one whole year, and so for two or three years, or any such further term of years as the parties should think fit and agree,—adjudged to be a lease for two years.

But Ambler, who was of counsel in the case, says it was holden to be a lease for one year only, without a subsequent agreement. Ambl. 329.

HARRIS v. KEMBLE, 1 Simons, 111.

Overruled in 2 Dow. & Clark's R. 463 to 479.

HARRIS v. KNICKERBACKER, 1 Paige, 209.

Reversed in 5 Wend. 638.

HARRIS v. TIPPETT, 2 Camp. 637.

Doubted, Morgan v. Frees, 1 Amer. Law Reg., 92.

HARRISON v. DAVIS, 5 Burr. 2683.

Denied in Stockton v. Throgmorton, 1 Baldwin's R. 148, 151, so far as respects the rule, "supposed to be laid down by Lord Mansfield in the case of Harrison v. Davis, that bail must be put in, *and perfected*. Lord Mansfield's words are 'putting in bail;' the words '*and perfecting*,' is a gratuitous interpolation by elementary writers, adopted in some later cases, and thus misleading the judge."

HARRISON v. HANDLEY, 1 Bibb's R. 443; Bell v. Morrison, 1 Pet. 351.

That an express promise, or an express acknowledgment, combined with an assent to pay, are requisite to take a case out of the statute of limitations in Kentucky.

Overruled in De Forest v. Hunt, 8 Conn. R. 179; where it was held that an unqualified and unconditional acknowledgment of a debt as originally just and yet subsisting, removes the bar of the statute of limitations. And the decisions in Massachusetts, Maine, New York, and the U. S. Supreme Court which were cited, seem fully to sustain the court in their decision in De Forest v. Hunt.

HARRISON v. JAKSON, 7 Term. R. 207. See Striglitz v. Egginton, Holt's R. 141.

An authority under seal is necessary to be produced, where one party has executed a deed for himself and his co-partners.

Denied in Fichthorn v. Boyer, 5 Watts, 159; Hart v. Withers, 1 Penn. R. 285.

HARRISON v. McMAHON, 1 Bradford, 583, 10 Barb. 659.

Reversed, 2 Selden, 443.

HARRISON v. ROWAN, 3 Wash. C. R. 580.

Held, that the examining party is prohibited from putting a leading question to a matter not inquired of by the party calling the witness, on his examination in chief.

Denied in Moody v. Rowell, 17. Pick. 490; and see Phil. Ev. p. 911, (8th Lond. & 5th Am. ed.)

HARRISON'S CHANCERY PRACTICE, 294.

If a bill against husband and wife show an interest in the husband, but none in the wife, and both join in a general demurrer,—if it is not sustained as to him, it must also be overruled as to her.

Denied in Crane v. Deming, 7 Conn. R. 393; by Williams, J., who says,—"According to *Ld. Redesdale*, *it is generally considered*, that being entire, it must be overruled." This is nothing more than, that when a party has a good case, but in his bill has intermixed claims not defensible,—though a demurrer to those parts of the bill would be sustained, yet a demurrer to the whole bill would not be.

She must answer with her husband, unless the court grant leave for a separate answer. 2 Madd. 218. The demurrer was sustained as it respects Mrs D.

HART v. THE DELAWARE INS. CO., Cited Marsh. on Ins. (Lond. ed., p. 281.

Doubted in Peel v. Merchant's Ins. Co., 3 Mason, 62.

HART v. HORN, 2 Camp. 292.

Heath, J., *held*, that the declarations of a person under whom the defendant made cognizance in replevin were not evidence against him, and in favor of the plaintiff.

Denied in Harrison v. Vallance, 7 Moore, 304; 1 Bing. 45, S. C.; Titus v. Myers, 11 Wend. 537.

HART v. KING. 12 Mod. 310; Holt, 118.

Shaken in *Ex parte* Greenway, 6 Ves. jr., 812; Pierson v. Hutchinson, 2 Campb. 211; Dangerfield v. Wilby, 4 Esp. 159.

HART v. TEN EYCK, 2 Johns. Ch. 62.

Reversed. See Woodcock v. Bennet, 1 Cowen, 744, note (a).

HARTFIELD v. ROPER, 21 Wend. 615.

"The case of Hartfield v. Roper, is altogether at variance with that of Lynch v. Nurdin (1 Ad. & E., N. S., 28.) [41 E. C. L. R. 422], and far less

HARTFIELD v. ROOPER, 21 Wend. 615—continued.
sound in its principles, and infinitely less satisfactory to the instinctive sense of reason and justice. Robinson v. Cone, 22 Vt. R. 226. But Lynch v. Nurdin, is in effect overruled in Munger v. Tonawanda R. R. Co., 4 Coms. 349.

HARTGRAVES v. DUVAL, 1 Eng. Ark. R. 506.
The dictum that error would not lie to the decision of the court refusing a judgment *de retorno habendo* in replevin.
Overruled, *Ex parte* Williamson, 3 Eng. Ark. R. 424.

HARTLEY v. ATKINSON, 2 Barnes, 255.
That where a nonsuit is regular, the parties are out of court, and it cannot be set aside.
Overruled in Sadler v. Evans, 4 Burr. 1984.

HARTLEY v. CASE, 4 B. & C. 339.
A notice of the dishonor of a bill of exchange must contain an intimation that payment of the bill had been refused by the acceptor ; a letter merely containing a demand of payment was not a sufficient notice.
Doubted. Ld. Brougham, Chan. in Solarte v. Palmer, 1 Bing. N. C. 194, said—"The judgment must be affirmed, on the ground of the decision of Hartley v. Case, and the sanction given to the authority of that decision by the unanimous judgment of the Court of Exc. Cham." and the 5th ed. Bayley on Bills.

HARTLEY v. HURLE, 5 Ves. 540.
Overruled in Tyler v. Lake, 1 Clarke and F. 144 :—*Held*, that "if the bequest be to a married woman '*for her own use and benefit*,' without adding the words '*and at her own disposal*,' especially if there be bequest to men by the same words, the wife does not take a *separate* interest, but her husband is entitled."

HARTLEY v. WILKINSON, 4 Camp. 127 ; 4 M. & S. 25 ; Chit. on B. 60.
An indorsement on the back of a promissory note is considered as part of the note itself.
Opposed. Sanders & Ogden v. Bacon, 8 Johns. 485, and Tappan v. Ely, 15 Wend. 363.

HARVEY v. ASHTON, 1 Atk. 163, 361, 375.
Denied by Ld. Eldon in Clarke v. Parker, 19 Ves. 24, as to the opinion said to have fallen from Ld. Ch. Baron Comyns.—"I may venture to say he expressed no such dictum,"–"that the consent of the majority of the trustees to the marriage is sufficient: "—"I have seen a manuscript note, in which the Ch. Baron says no such thing."

HARVEY v. CHAMBERLAIN, Cro. Jac. 635; Brown v. Low, ib. 443.

The words, "*Thy son hath murdered my child.*"—*Held*, that a *colloquium* must be shown, averring that the plaintiff was the *only* son of his father.

Overruled in Gidney v. Blake, 11 Johns. 54. The rule in regard to the necessity of prefatory averments, their office and effect, is laid down with great clearness by Ld. Ellenborough, in the case of Hawkes v. Hawkey, 8 East, 427; by Van Ness, J. in the case of Van Vechten v. Hopkins, 5 Johns. 211, 223, and Mix v. Woodward, 12 Conn. 262.

HARVEY v. HARVEY, 1 P. Wms. 125; Burton v. Piermont, 2 ib. 79; Peacock v. Monk, 2 Ves. 190.

The property of the wife, of which she was to have the use independent of her husband, should be vested in trustees.

Opposed, 2 Story Eq. 607, and cases cited. "The intervention of trustees is not indispensable."

HARVEY v. SKILLMAN, 22 Wend. 571.

Overruled in Bullock v. Bogardus, 1 Den. 276.

HASTINGS v. FARMER, 3 Barb. 492.

Reversed, 4 Comstock, 293.

HATCH v. DWIGHT, 17 Mass. R. 289.

That the first occupant of a mill seat has a right to sufficient water to work his wheels, even if it should render useless the privilege above or below.

Opposed in Omelvany v. Jaggers, 2 Hill's R. 634; also Platt v. Root, 15 Johns. 213; Palmer v. Mulligan, 3 Caines, 307; 3 Kent. Com. 353.

HATCH v. MANN, 9 Wend. 262.

Reversed in Hatch v. Mann, 15 Wend. 44.

HATFIELD v. THORP, 5 Barn. & Ald. 589.

The English cases (citing 1 Jarm. 64, and Hatfield v. Thorp, supra) *held*, that the statute 25 Geo. II. does apply. The cases in this country hold differently. Per Clayton, J., in Rucker v. Lambdin, 12 Sme. & M. 257.

HAUER v. SHEETZ, 3 Yeates, 205.

Reversed in S. C. 2 Binn. 532.

HAVEN v. BUSH, 2 Johns. R. 387.
See Sears v. Fowler (post).

HAVEN v. FOSTER, 9 Pick. R. 112.
This case seems in conflict with the principle laid down in 2 Wash. C. C. R. 104. See Wooten v. Miller, 7 Sme. & M. 386.

HAVEN v. RICHARDSON, 5 N. H. R. 113.
An assignment to certain specified creditors, with a stipulation in the deed for a release of the debts of such as become parties thereto, and with a reservation of the surplus,—*held*, not conclusive evidence of fraud.
Denied in 2 Kent Com. 534, n. (a): "The reservation would now, generally, and it seems to be everywhere fatal to the instrument." See Barney v. Griffin, 2 Coms. 365.

HAWES v. SMITH, 1 Vent. 268; 2 Lev. 122.
Overruled in Secar v. Atkinson, 1 H. Bl. 104.

HAWKE v. BACON, 2 Taunt. 156, 160.
Overruled in Tapley v. Wainwright, 5 B. & Adol. 395; 2 N. & M. 697, as to the dictum of the court.

HAWKES v. SAUNDERS, Cowp. 289.
Shaken, if not overruled, in Dicks v. Street, 5 Term R. 690; Sleighter v. Harrington, 2 Murph. R. 354.—Hall, J. See Atkins v. Hill (ante).

HAWKINS v. OBYN, 2 Atk. 549, 551.
S. P. as in Grey v. Kentish (ante).

HAWKINS' PLEAS OF THE CROWN, b. 1, c. 74, s. 1.
That solicitation of chastity, is not indictable.
Doubted. The State v. Avery, 7 Conn. R. 267.

HAWKINS v. RUTT, Peake's Cas. 180.
Where the creditor directs the mode of remittance by post, delivery to a bellman in the street is not a sufficient putting into the post.
Doubted in Smith's Merchant. Law (Law Lib. Phil. ed. p. 190).

HAWLEY v. JAMES, 5 Paige, 318.
Reversed, 16 Wend. 61; and see Bowers v. Smith, 10 Paige, 193; Craig v. Craig, 3 Barb. Ch. 76.

HAYDOCK v. COBB, 5 Day's R. 527.
That a stranger to the judgment or decree, though no right that he had was affected by it, might invalidate it in a collateral suit, by showing that it was passed against a person who was dead at the time.
Denied in Warder v. Tainter, 4 Watt's R. 279.

HAYES v. WARREN, 2 Stra. 933.

That assumpsit will not lie for a past consideration, unless it was at the request of the party.

Denied by Wilmot, J., in Pillans et al. v. Van Meirop et al., 3 Burr. 1671.

HAYMAN v. GERRARD, 1 Saund. 102; 1 Sid. 340.

Overruled in Meredith v. Allen, Carth. 116; 1 Show. 148; 1 Salk. 138; Holt, 544.

HAYMAN v. NEALE, 2 Camp. R. 337.—Ellenborough.

Held, that after the broker had entered the contract in his book, neither party could recede from it.

Overruled in Goom v. Affalo, 6 B. & C. 117, and Thornton v. Meux, 1 M. & M. 43. See also 2 Phil. Ev. 99.

HAYTER v. FISH, 6 C. B. Rep. 568; 18 Law Jour. R. N. S. C. P. 68; 12 Jur. 1004.

Disapproved, Room v. Cottam, 20 Law J. R. N. S. Ex. 24; 14 Jur. 1140; 1 Eng. R. 504.

HAYWARD v. BLAKE, 12 Mass. 176.

Merely having on board of the ship an enemy's license, will not avoid the policy.

Opposed, Colquhoun v. N. Y. E. Ins. Co., 15 Johns. R. 352, and cases cited.

HAYWARD v. HAGUE, 4 Esp. R. 93.—Lawrence.

A *letter* written by the plaintiff's attorney demanding payment of a debt, sent to the defendant's house, and to which an answer is returned, that the demand should be settled, is sufficient evidence on the issue of a subsequent demand and refusal.

Opposed, Edwards v. Yeates, Ry. & Mo. 360.—Abbott.

HAYWOOD v. LOMAX, 1 Vernon, 24; Bacon v. Brown, 1 Bibb's R. 334; Ld. Holt, in Anon. Comb. R. 463 (in 1697) (1 Domat, b. 4, tit. 1, s. 4, art. 2, 3).

Where an indefinite payment is made by the debtor, it should be applied most beneficially for him.

Opposed, Manning v. Western, 2 Vern. 607, n. (1) (1707.) *Held,* that where the payment was general, the appropriation belongs to the creditor; —and the latter might apply it as most for his benefit,—as upon a sim-

HAYWOOD v. LOMAX, 1 Vernon, 24; etc.—continued.

ple contract debt, not drawing interest. Followed in Field v. Holland, 6 Cranch, 27; Blanton v. Rice, 5 Monroe's R. 253—except in the latter case, the court thought the application must be to the debt drawing interest. Baker v. Stackpoole, 9 Cowen, 435; Mayor of Alexandria v. Patten, 4 Cranch, 320.

HAZELDINE v. GROVE, 3 Q. B. 997; 3 G. & D. 210; 7 Jur. 36.

"If it should be found difficult to reconcile the judgment of the Court of Exchequer in Shatwell v. Hall (10 M. & W. 523; 2 Dowl. N. S. 567) with that of the Court of Queen's Bench in Hazeldine v. Grove, we may observe that the judgment of the Court of Exchequer was given upon refusing a rule when only one side had been heard, while the judgment of the Queen's Bench was given after full argument by the counsel on both sides, and is besides posterior in point of date." Mellor v. Leather, 17 Jur. 709; 1 El. & Bl. 619; 22 Law J. R. N. S. Q. B. 76; 18 Eng. R. 235. Counsel—"That case is not of much authority. The decisions of courts on refusing rules, are of less weight than when given after argument. Martin, B.—On the contrary, I think them of more weight, for it shows the court thought the matter too clear for argument." Emmett v. Tottenham, 17 Jur. 509; 22 Law J. R. N. S. Exch. 281; 20 E. L. & E. R. 350. Lord Campbell expressed a contrary opinion. Miller v. Leather, 17 Jur. 709; 1 El. & Bl. 619; 22 Law J. R. N. S. Q. B. 76; 18 E. L. & E. R. 235.

HAZLETT v. CRITCHFIELD, 7 Ohio R. ii. 153.

Doubted, Bank of Marietta v. Rees, 12 Ohio (Stanton) R. 23.

HEAD v. EGERTON, 3 P. Wms. 280.

If the mortgagee of an estate has allowed the vendor to retain the title deeds, and thus to commit a fraud upon an innocent party, he cannot afterwards recover them by action.

Distinguished in Harrington v. Price, 3 B. & Ad. 170; Head v. Egerton, was the case of a mortgage, and a mortgagor generally remains in possession of the estate; it is different with a vendor; whoever is entitled to the land has also a right to all the title deeds affecting it.

HEARD v. STANFORD, 3 P. Wms. 409; Cases Temp. Talb. 173.

Explained by Ld. Redesdale in 1 Sch. & Lef. 263.

HEARD v. WADHAM, 1 East, 627.

A *dictum* of Ld. Kenyon, interrupting Abbott. Not law. See Growsock v. Smith (ante).

HEARN v. ALLEN, Cro. Car. 57; Hut. 85.

Holt, C. J. "was of opinion that the authority of this case was not great." Nottingham v. Jennings, 1 Com. Rep. 82.

So thought Willes, C. J. in Goodridge v. Goodridge, Willes, 370.

HEARN v. TOMLIN, Peake's N. P. R. 192.

Occupation under an agreement to purchase the premises. Ld. Kenyon seems to assume that the action would lie; though he nonsuited plaintiff, but because the occupation, instead of being beneficial, was injurious to the defendant.

Denied in Smith v. Stewart, 6 Johns. R. 49; Banckroft v. Wardell, 13 ib. 489.

HEATH v. HENLY, 1 Ch. Cas. 20.

Denied in Trecothick v. Austin, 4 Mason, 31.—Story, J.; and in Murray v. Coster, 20 Johns. 576.—Spencer.

HEATH v. SAMPSON, 2 B. & Adol. 291.

Held, that in all cases where, from defect of consideration, the original payee could not recover on the note or bill, the indorsee, to maintain an action against the maker or acceptor, must prove a *bona fide* consideration given by himself or a prior indorsee.

Overruled in New York in Morton v. Rogers, 14 Wend. 575; and *it seems* in England also. Whittaker v. Edmunds, 1 Moo. & Rob. 366; Branch v. Roberts, 1 Bing. R. N. S. 465; Lowe v. Clifney, 5 M. & Scott, 95; 2 Dowl. Pr. R. 130, 252.

"This decision was made by a majority of the court, Parke, J. dissenting. This decision stands solitary and alone; and we learn in a subseqùent case by the remarks of Patterson, J. who was one of the judges who concurred in the decision, that it led to a consideration of the subject by the court, the result of which has been a decision adverse to the majority of the judges in that case, and in conformity to the view of Parke, J. who dissented. In a note to Chitty on Bills, 56, the opinion of Parke, J. is considered as conformable to the law; and it is stated that in the London Law Magazine the decision of that case is considered as unfounded in principle and opposed to authority. The cases of French v. Archer, 2 D. & R. 130; Steven v. Yglesias, ib. 252; Low v. Clifford, 5 M. & Scott, 95; Brand v. Roberts, 1 Bing. N. S. 465; Whittaker v. Edmonds, 1 M. & Rob. 365, and Morton v. Rogers, 14 Wend. 582, may all be considered as disregarding and overruling the case of Heath v. Samson." Sanford v. Norton, 17 Vt. R. 293.

Disapproved, Smith v. Braine, 3 Eng. R. 379; 15 Jur. 287.

Said to be contrary to the law, as settled by previous adjudications. Yeatman v. Cullen, 5 Blackf. 245.

HEATHCOTE v. MAINWARING, 2 Bro. 217; Haws v. Swaine, 2 Cox, 179.

That no composition real can be effectual to discharge lands from tithes, unless the deed creating it be produced, or proof of the actual existence of it must be given.

Explained in Estcourt v. Kingscote, 4 Madd. 141, by Sir J. Leach, who lays down the rule in a manner much better calculated to obtain assent, viz., that the deed need not be proved by direct evidence, but may be established by presumptive evidence; but that, if there be no other evidence of a composition than mere payment, the legal inference and presumption is, that the composition originated without it; and in Dent v. Rob, 1 Younge & Col. 57, Mr. Baron Alderson says, "Reasonable evidence must be given to make it probable there was such a deed." And the Lord Chancellor, in The Jurist, Am. ed. p. 9 (1839), adds,—"To the rule so laid down it would be difficult to suggest any objection in principle; for, so understood, the rule itself nearly vanishes. And, assuming that a deed was necessary to constitute a binding composition real, what in the language of Sir John Leach, can be stronger presumptive evidence of their having been a deed; or, in the language of Mr. Baron Alderson, what can make it more probable that there was such a deed, than proof of usage which can be referred to no other origin? And this will go far to reconcile the earlier and later decisions, the discrepancies between which are very ably and learnedly commented upon by Mr. Baron Wood, in Bennett v. Neale, Wight. 309, and other cases.

HEATHCOTE v. PAIGON, 2 Bro. Ch. Ca. 167.

Disapproved of in McGhee v. Morgan, 2 Sch. & Lefr. 395 note.

HECKINGTON v. SHELL, 3 Sme. & M. 588.

"The case of Heckington v. Shell has been cited. The section of the statute which was there said to give the writ of error from an interlocutory decree, is the one which gives the appeal. The distinction was evidently overlooked, and the decision was right on the point which was before the court." Stebbins v. Niles, 13 Sme. & M. 310.

HELLINGS v. SHAW. 7 Taunt. R. 608.

Ch. J. Gibbs, said—"Where the defendant has stated, not that the debt remained due, but that it was discharged by a particular means, to which he has with precision referred himself, and where he has designated the time and mode so strictly, that the court can say it is impossible it had been discharged in any other mode; there the court have said, if

HELLINGS v. SHAW, 7 Taunt. R. 608—continued.

the plaintiff can disprove that mode, he lets himself in to recover, by striking from under the defendant the only ground on which he professes to rely."

Doubted in Beale v. Nind, 4 B. & Ald. 568.—Bayley, J. and in Oliver v. Gray, 1 Maryland R. 219.—Buchanan, Ch. J. But see 1 B. Moore, 344, where the case of Hellings v. Shaw, is reported differently. Gibbs, C. J. there confines his observation to a written instrument. See also 2 Phil. Ev. 189; Brydges v. Plumptre, 7 D. & Ry. 746.—Littledale. "I cannot say that his saying, whether true or false, that he has a receipt in full of all demands is to be construed into an admission of his liability."

HENRIUP. IN THE MATTER OF, 3 Paige, 305.

Overruled, Bostwick v. Atkins, 3 Coms. 53.

HEMMENWAY v. HICKS, 4 Pick. 497.

Denied in Rowell v. Bruce, 5 N. H. R. 385. *Held*, that a material allegation in a declaration cannot be supplied by amendment after verdict.

HENBEST v. BROWN, Peake's N. P. Ca. 54.

Ld. Kenyon's opinion, that the statutes of bankruptcy extended to *all debts*, as well as *written securities*, payable at a future date, is controverted by Ld. Ellenborough, in Parslow v. Dearlove, 4 East, 438.

HENCH v. METZER, 6 S. & R. 272.

Trover abates by the death of the defendant.

Doubted in Keite v. Boyd, 16 S. & R. 301: *Held*, that replevin does not abate by the death of the defendant.

HENDRICKS v. FRANKLIN, 4 Johns. 119.

That the holder of a bill of exchange drawn in New York on Great Britain, and returned protested for non-payment, can recover no more than the contents of the bill, and 20 per cent. damages, with interest, or at the par of exchange. He can recover nothing for the difference in the price of bills between the time it was returned and the time the bill was drawn.

Overruled in Dash v. Graves, 12 Johns. 17.

HENDRICKS v. JUDAH, 1 Johns. 319; O'Callighan v. Sawyer, 5 Johns. 118; Bank of Niagara v. M'Cracken, 18 Johns. 493; Ford v. Stuart, 19 Johns. 342.

HENDRICKS v. JUDAH, 1 John. 319, etc.—continued.

The principle seems to be assumed, that as between the original parties, a set-off is a *defence to a negotiable promissory note*; and therefore must be permitted to be made after the transfer, if indorsed after due.

Denied in Burrough v. Moss, 10 Barn. & Cr. 558; Robinson v. Lyman, 10 Conn. 30; Holland v. Makepeace, 8 Mass. 418; Bridge v. Johnson, 5 Wend. 342.

HENLY v. BROAD, 1 Lev. 41.

Denied in Rose v. Oliver, 2 Johns. 368, Spencer, J.:—"Serjeant Williams in his notes (1 Saund. 291 (d) note), after noticing the case of Henly v. Broad, and several other cases, which recognize the principle, that if the plaintiff show that the *tort* was done jointly by the defendant and A B, the suit shall abate, says that there is no good ground for the distinction."

HENLY v. OHIO, 6 Ohio R. 406.

See Mounts v. Ohio, 14 Ohio R. 306.

HENMAN v. DICKINSON, 5 Bing. 183.

That if an alteration appears upon the face of a bill, the party producing it must show that the alteration was not improperly made.

Denied in Bailey v. Taylor, 11 Conn. 531, 538, *et seq.*—Williams, C. J., who cites Taylor v. Mosely, 6 C. & P. 273, as not recognizing Henman v. Dickinson as law.

The case of Bailey v. Taylor, decides that an alteration in an instrument under which the party claims, and which alteration appears to be against his interest:—*Held*, that he was not bound to account for the alteration. "The result to which we have arrived," says the court, "is, that where there is an erasure or alteration in an instrument under which a party derives his title, and the adverse party claims that such erasure and alteration was improperly made, the jury are, from all the circumstances before them, to determine whether the instrument is thereby rendered invalid. Circumstances may be such as to require this explanation on the part of the plaintiff; or, on the other hand, may arise where it would be absurd to require it. In the present case, it is claimed, there is a legal presumption, which requires the jury to believe that the plaintiff altered this note after its execution, and without the consent of the opposite party, not that he might receive more upon it, but that he might be entitled to 100 dollars less. Such a presumption, in face of every motive, we are entirely satisfied, no rule of law requires; and the

HENMAN v. DICKINSON, 4 Bing. 183—continued.

charge was submitted to the jury precisely as it should have been, viz. : That if such an alteration was made in the instrument, after its execution and delive ry, it was for the jury to say, from all the circumstances, at what time such alteration was made; and if the alteration was made after the delivery, whether it was with or without the knowledge or consent of the defendant.

HENNEL v. LYON, 1 B. & A. 182.

Doubted in Rees d. Howell v. Bowen, 1 M. & Y. 383.—Garrow, B. See also Highfield v. Peake, 1 Mo. & M. 109.

HENNINGS v. ROTHSCHILD, 4 Bing. 315; 12 Moore, 559.

Overruled in Rothschild v. Hennings, 9 B. & C. 470.

HENRY v. LEE, 2 Chit. R. 124.

A witness on the trial of a cause may refresh his memory from a document, though not written by himself; Lord Ellenborough saying, "And if upon looking at any document he can so far refresh his memory as to recollect a circumstance, it is sufficient; and it makes no difference that the memorandum was written by himself, for it is not the memorandum that is the evidence, but the recollection of the witness."

Denied in Meagoe v. Simmons, 3 C. & P. 75; M. & M. 121.—Tenterden.

HENRY v. MORGAN, 2 Binn. R. 497.

S. P. as in Fotheringam v. Greenwood—(ante).

Opposed in Plumb v. Whiting, 4 Mass. 518. Parsons, C. J., makes a distinction thus—"If a witness would testify under the impression of an interest, which he honestly believes he has in the event of the suit, he cannot be sworn; for the effect on his mind must be the same, whether his interest arises from a legal contract, or from a gratuitous promise on which he confidently relies."—Thus where a minor son was offered as a witness by the father in an action for the son's work, after having himself proved by a witness that his son was to have *one-half the money;* and it being objected that the promise was voluntary and could not be enforced at law;—Parsons, C. J., said, "that it did not lie with the plaintiff to say that the witness he produced does not confide in the promise, which the plaintiff himself has made to him; the plaintiff cannot impeach the credit of his own witness."

HENRY v. RISK, 1 Dall. 265.

That interest was not payable for goods sold and delivered. Overruled in Crawford v. Willing, 4 Dall. 286, 289, n (2).

HENRY v. THE SHIP JOHN AND ALICE, 1 Wash. Cir. R. 293.

Denied in The Brig Draco, 2 Sumner, 179—Story: "That case cannot stand, unless upon the ground that a bottomry bond given by an owner, in a foreign port, is not cognizable in the Admiralty; a doctrine which is inconsistent with what I cannot but now think to be an established doctrine in our Admiralty Courts." See the case of Barbara, 4 Rob. R. 1.

33 HENRY I., 46 pl. 30 (or 33 Hen. VI.)

S. P. as in Holcomb v. Rawlins (post).

Overruled in 13 Hen. VII. 15 pl. 11; see Putnam, J., in 2 Pick. 496 *et seq.*

HENSHAW v. PLEASANCE, 2 Black. 1174.

Denied in Hume v. Burton, 1 Ridg. Parl. Ca. 43, 44 n (d).

HEPPELL v. BAILEY, 2 Myl. & R. 537.

The doctrine of Lord Brougham in Heppell v. Bailey has been questioned and shaken, and perhaps overthrown, by his learned successor, Lord St. Leonard (Sug. on Ven. 11th ed., 737). Coffin v. Tallman, 4 Selden, 471.

HEPPELL v. KING, 7 D. & E. 372.

Lawrence, J., observed, that there was an inaccuracy in the wording of this report, in what he is made to say of the *recognizance* of the bail below. Bail below do not enter into recognizance, but give *bond* to the sheriff. 3 East, 606 note.

HERKIMER MANUF. CO. v. SMALL, 21 Wend. 273; 2 Hill, 127.

Overruled, 2 Coms. 330.

HERLAKENDEN'S CASE, 4 Rep. 62.

Trespass qu. cl. and plea as to *part* only, to which the plaintiff demurred; and it was holden to be a discontinuance.

"This is certainly not law." Per Willes, C. J., in Bullythorpe v. Turner, Willes, 480.

HERMAN v. DRINKWATER, 1 Greenl. R. 27.

In trover against a shipmaster for breaking open a trunk and converting the contents to his own use, the owner was permitted to prove the contents and the value; "he not having it in his power to establish the fact by other proof."

Doubted in 8 Amer. Jurist, 35 (July, 1832).

HERNE v. BEMBOW, 4 Taunt. R. 764.

S. P. as in Gibson v. Wells (ante).

HERON v. STOKES, 12 Cl. & Fin. 161.

Examined, Kerr v. Middlesex Hospital, 17 Jur. 49; 22 Law J. R. N. S. Ch. 355; 7 E. L. & E. R. 71.

HERRICK v. CARMAN, 12 Johns. 159.

See Hall v. Newcomb, 7 Hill, 416.

HERRICK v. MANLEY, 1 Caines R. 253.

Overruled, Coats v. Darby, 2 Coms. 517.

HERTELL v. BOGERT, 9 Paige, 52.

Reversed, 4 Hill, 492.

HESS v. THE STATE.

See Goodtitle v. Braham (ante).

HETHERINGTON v. REYNOLDS, 1 Salk. 8.

If a *feme sole* be sued in an inferior court, and after plea marries and removes the cause, by *habeas corpus*, she may plead coverture in abatement to the new declaration above.

Overruled in Haddock v. Hasard, Barnes, 355; Vosburgh v. Rogers, 8 Johns. 95.

HEUDEBOURCK v. LANGSTON, Wood and Mal. N. P. C. 402 n.

It was decided, that in an action of debt by a surveyor of highways, against his predecessor in office, to recover the penalty imposed by the highway act for not accounting, inhabitants of the parish were competent for the plaintiff, although their evidence would tend to increase the funds in relief of the rates.

Doubted in Oxenden v. Palmer, 2 B. & Ad. 236; R. V. Bishop Auckland, 1 Ad. & Ell. 744; Phill. Ev. 137, where it seems to have been overruled.

HEYER v. PRUYN, 7 Paige, 465.

See Jackson v. Sackett, 7 Wend. 94.

HEBBLEWHITE v. McMORINE, 6 M. & W. 200.

See Texira v. Evans (post).

HIGGINS v. BROWN, 6 Co. R. 45; Cro. Jac. 73; S. C. Yelv. 68.

Doubted in Lechmere v. Fletcher, 1 Cr. & Meeson R. 623.—Bayley. In U. States v. Cushman, 2 Sumn. R. 426.—Story.

HIGGINS v. LIVERMORE, 14 Mass. 106.

The phrase, "Swedish Brig Sophia," was *held* to amount to a warranty that the vessel was in fact a *Swede*, or *at least that she was regularly documented as such.*

Explained in Lewis v. Thatcher, 15 Mass. R. 431; Parker, C. J., said, "the qualification of the opinion was unfortunate."

HIGGINS v. SENIOR, 8 Mees. & Wels. 834.

The *dictum* of Parke, B., in this case, that although it is not competent for a person who has signed a contract in his own name to discharge himself from liability by parol proof that he acted as agent for a third person, yet that it is competent by parol proof to charge such third person as principal, denied to be law in Fenly v. Stewart, 5 Sand. 101.

HIGGINSON v. AIR et al., 1 Desaus. R. 427.

That the assumption of the surviving partner, as to the affairs of the firm, bound the other partner's estate; and the law had fixed no limitation of time as to the reviving a partnership debt by his acknowledgment.

Overruled in Executors of Fisher v. Executors of Tucker, 1 M'C. Ch. R. 171.

HIGGINSON v. MARTIN, 2 Mod. 195; 1 Freem. 322.

Contradictory reports of this case. See 3 Dougl. R. 48, n. (a).

HIGHAM v. RIDGWAY, 10 East, 109.

"That if a person has peculiar means of knowing a fact, and makes a declaration of that fact which is against his interest, it is clearly evidence of that fact *if he could have been examined to it in his lifetime.*"

Denied in Gleadow v. Atkins, 3 Tyrw. Exch. R. 302.—Bayley. See 1 Phil. Ev. 244, 330, 5th Am. ed.

See further, as to the admissibility of entries by a person having peculiar means of knowledge, Marks v. Lahee, 3 Bing. N. C. 420, and Price v. Lord Torrington (post). See further, the cases of Searle v. Lord Barrington, and Wynne v. Tyrwhitt (post).

HANKEY v. TROTMAN, 1 W. Bl. 1.

Denied in Medcalf v. Hall, 3 Dougl. R. 113. Buller,—"The case of Hankey v. Trotman cannot be supported, for, according to the statement, it was not possible for the party to receive the bill sooner."

HILDRETH v. SANDS, 2 Johns. Ch. R. 35.

Explained by Ch. J. Marshall, in 11 Wheat. R. 90, as to what Chan. Kent says in respect to allowing the deed to stand in favor of an innocent grantee, if the deed is admitted to be fraudulent on the part of the grantor, see 18 Wend. 365.

HILL v. ATKINSON, 3 Price, 404.

"That appropriation means payment."—Eldon.

Doubted in Att. Gen. v. Wood, 2 Y. & J. 300.—Alexander, Ld. C. B., in respect to the language found in the report of the case by Mr. Price.

HILL v. BURNHAM, 15 Ves. 227.

Ld. Eldon said,—"There is one proposition, however, which, perhaps, is stated too generally: I have there said, 15 Ves. 227, that an executor has the right to have the value ascertained in the way in which it can be best ascertained—by sale. But, * * * I am ready to admit, that there may be circumstances, both in the course of dealing between partners, and after one of the partners is dead, or has ceased to be a partner, which may constitute a case, in which that rule may not be capable of being applied."

HILL v. SHERIFF OF MIDDLESEX, Holt's N. P. R. 217; 7 Taunt. R. 8, S. C.

Opposed, Bowden v. Waltham, 5 B. Moore, 183; 2 Phil. Ev. 378, and *cases cited.*

HILL v. SOUTHERLAND'S EX'RS.

See Maggot v. Mills (post).

HILL v. WADE, Cro. Jac. 523.

"Overruled by subsequent cases; which appear to establish it as a general rule, that where the promise is to pay a debt or duty, and the action is brought for the non-payment of it, after it becomes due, no special averment of request is necessary." Lawes on Pl. in Assump. 190. (234.)

HILL v. WILLIAMS, Barnes, 358 (3d ed.)

The reason why a party cannot take money out of court when he traverses the tender is, that the replication to the tender is a refusal to accept the money.

Overruled in Le Grew v. Cooke, 1 B. & P. 333–4.

HILL v. YATES, 12 East, 229.

Where the K. B. refused to set aside a verdict although it appeared that the son of one of the jurymen answered to the name of his father, when called on the panel, and actually served as one of the jury, in lieu of his father, though he had never been summoned.

Denied in The People v. Ransom, 7 Wend. 424.

HILLARY v. WALKER, 12 Ves. jr. 266.

Denied in White v. Westmeath, 2 Moll. 177.

HILLIARD v. JENNINGS, 1 Ld. Raym. 505.

Denied in Dallam v. Dallam's Lessee, 7 Har. & J. 246:—"When we look to the same case of Hilliard v. Jennings, in 12 Mod. 276, and in Com. R. 94, where Ld. Holt so far from approving, denied the authority of Soulle & Gerrard. So far only, I presume, as related to the *dictum* about the estate tail."

HILL v. LONDON ASS. CO., 5 Mees. & W. 575.

The dictum of Lord Abinger in this case said to be made on a total and palpable mistake about the law and the facts in Davy v. Milford, 15 East, 559. Newlin v. Ins. Co., 8 Harris, 315 (20 Penn. State R.).

HILLS v. ROSS, 3 Dall. 331.

Iredell & Chase held, that one partner could not enter an appearance for a co-partner.

Overruled in Taylor v. Coryell, 12 S. & R. 243, 250.

HILYARD v. SOUTH SEA CO., 2 P. Wms. 77.

As to the effect of a forged letter of attorney to transfer stock.

Opposed, Ashly v. Blackwell, Ambler, 503. See W. & Philadel. T. Co. v. Bush, 1 Harr. (Dela.) R. 47, where it was held, that a purchaser of stock need only look to the title of his vendor *on the books of the company*, and is not affected by previous irregularity in the transfers.

HILL'S CASE, Cro. Car. 384.

That matter of aggravation need to be answered.

Denied in James v. Hayward, Cro. Car. 184; Rolle Abr. Nusans. Y.; Sir W. Jones R. 221, S. C., where the defendant might have opened the gate without cutting it down, yet the cutting was held to be lawful. See Gale & What. on Easements, p. 402.

HINCKLEY v. MACLARENS, 1 My. & K. 27.

Overruled in Elmsley v. Young, 2 My. & Keen, 780.

HINDLE v. O'BRIEN, 1 Taunt. 413.

S. P. as in Fitzroy v. Gwillim (ante).

HINTON v. HUDSON, Freeman's R. 248 (Case, 264) (ed. 1826)

The husband is not liable upon contracts of the wife with a stranger, after separation.

Opposed, Rawlins v. Vandyke, 3 Esp. R. 250; *Held*, that it was incumbent on the husband to show that the tradesman had notice of the separate maintenance.

HISCOX v. BARRET, Park. Ins. 6th ed., 542 n.

Overruled in Bell v. Ansley, 16 East, 141, and Cohen v. Hannam, 5 Taunt. 101.

HITCHCOCK v. AICKEN, 1 Caines, 460.

That a judgment in a sister State is only *prima facie* evidence of a debt.

The contrary is law in Massachusetts, where nothing is examinable but the jurisdiction of the court rendering the judgment. Bissel v. Briggs, 9 Mass. 462.

HITCHCOCK v. FITCH, 1 Cai. 460.

Overruled in Andrews v. Montgomery, 19 Johns. 162.

HITCHCOCK v. GIDDINGS, 4 Price's R. 135.

Denied by the chancellor in Bates v. Delavan, 5 Paige's Ch. R. 307, who said that the case must have been decided on the principle of the civil law, that an action of redhibition, to rescind a sale and to compel the vendor to take back the property, and restore the purchase money, could not be brought by the vendee, wherever there was error in the essentials of the agreement, although both parties were ignorant of the

HITCHCOCK v. GIDDINGS, 4 Price's R. 135—continued.

defect which rendered the property sold unavailable to the purchaser for the purposes for which it was intended. He adds—"I agree, however, with the learned commentator on American law, that the weight of authority, both in this State and in England is against this principle so far as a mere failure of title is concerned; and that the vendee who has consummated his agreement by taking a conveyance of the property, must be limited to the rights which he has derived under the covenants therein."

HIXT v. GOATES, 2 Rolle Abr. 703.

Where in covenant on a deed of agreement, with a sum liquidated as damages, the jury gave less than the sum, and held good.

But of this case Ld. Mansfield said "It is impossible to support it." Lowe v. Peers, 4 Burr. 2229. It is clearly reported in Cro. Jac. 390.

HODGES v. M'CABE, 3 Hawke's R. 78.

That a wife is not dowable of lands sold after the death of her husband, under a *fi. fa.* tested before.

Overruled in Frost v. Ethridge, 1 Dev. R. 30.

HODGES v. STEWARD, Comb. 104; 1 Salk. 125; 12 Mod. 36; Holt, 115; Horton v. Coggs, 3 Lev. 299.

Overruled in Grant v. Vaughan, 2 Burr. 1516.

HODGES v. WINDHAM, Peake, 39.

No action of trespass for criminal conversation could be brought for an act of adultery after a separation between husband and wife.

Overruled in Chambers v. Caulfield, 6 East, 244; 2 Smith, 356.

HOFFMAN v. CAROW, 22 Wend. 285.

Denied to be law, Rogers v. Huie, 2 Calif. R. 571.

HOGAN v. WALKER, 14 How. R. 29.

Doubted, Bate v. Graham, 1 Kernan, 241.

HOLBROOK v. PRATT, 1 Mass. 96.

That *quod cum*, in trespass, is bad on general demurrer.

Overruled in Coffin v. Coffin, 2 Mass. 364.

HODGSON. See *Ex parte* Hodgson.

HODGSON v. LE BRET, 1 Camp. 233.

Is stated to have been an action for goods *sold and delivered.*

Overruled, it seems, as to the form of action. See Boulter v. Arnot, 3 Tyrwh. 269.

HODKINSON v. HODKINSON, 2 Dowl. Pr. C. 535.

Overruled in Colston v. Berends, 1 Cromp. M. & Ros. 833.

HOLCOMB v. RAWLYNS, Cro. Eliz. 540.

That an action of trespass might be maintained against the lessee or feoffee of a disseisor, where the disseisee re-enters and reduces the possession to himself, notwithstanding the plea of title.

Denied (in Liford's case, 11 Co. 51; and Symons v. Symons, 3 Car. 1; Hetley, 66). But 2 Rolle Abr. 554, *Tres. per Relation;* Gilb. Ten. 47, 50; Com. Dig. Tresp. B. 2; Bull. N. P. 87; Wilde, J., in Emerson v. Thompson, 2 Pick. 473, 485, *et seq.;* and Putnam, J., in S. C., p. 496, *et seq.* See also 12 Mass. 46; Thompson, J., in 3 Caines' R. 262; and see Liford's case (post).

HOLCROFT v. HEEL, 1 B. & P. 400.

Ch. J. Eyre held a possession of 23 years, without interruption, not as evidence to a jury from whence they might presume a grant, but as a complete answer, or bar, to an action for disturbing a market, by erecting another.

Denied in Summer v. Child, 2 Conn. R. 607, 613.—Swift.

HOLCROFT'S CASE, Dyer, 240 (b); Stephen v. Oliver, 2 Bro. R. 9; Lush v. Wilkinson, 5 Ves. 384; see Sears v. Rogers, 3 B. & Ad. 362.

That a voluntary conveyance is not fraudulent against creditors within the 13th Eliz., unless the party making was indebted at the time, or nearly so; and indeed Ld. Alvanley has said that to invalidate a settlement made after marriage, by the 13th Eliz. the settler must be in insolvent circumstances.

Qualified. See Bull. N. P. 257: "And it would be difficult to contend that a conveyance proved to be made *with the express intent* to defraud even *future* creditors would not be void as against them, indeed that very point seems involved in Tarback v. Marbury, 2 Vern. 510, and Hungerford v. Earle, 2 Vern. 261. It has been held to make no difference that the debt was contracted, not by the party making the conveyance but by his ancestor from whom he derived the estate, Apharry v. Bodingham, Cro. Eliz. 56; Gooch's case, 4 Rep. 60; and as a fraudulent conveyance by the heir is void, so is one by an executor or administrator

HOLCROFT'S CASE, Dyer, 240 (b), etc.—continued.

of the property of the deceased, and he is chargeable with what he so conveys as assets. Doe v. Fallows, 2 Tyrwh. 460; 2 C. & J. 481. And property fraudulently conveyed by the deceased himself is, in contemplation of law, assets for payment of his debts in the hands of his executors. Shears v. Rogers, 3 B. & Ad. 363. By sec. 3 of stat. 13 Eliz., parties to a fraudulent conveyance, bond, &c., forfeit a year's value of the lands or tenements conveyed, the whole value of the chattels, and the amount of any covenous bond, half to the crown and half to the party grieved; the assignees of an insolvent are *parties grieved* within this section. Butcher v. Harrison, 4 B. & Ad. 129." Smith's Lead. Cas., p. 12.

HOLDEN v. JAMES, 11 Mass. 396.

Where the defendant accepted the trust of administrator, December 2, 1806. It was said by the court, p. 400, that the four years, the lapse of which bars an action against an administrator, expired December 2, 1810.

But this expression was afterwards said to be "inaccurate," the time expiring December 1. See Presbrey v. Williams, 15 Mass. 193; and Phelan v. Douglass, 11 Pr. R. 193.

HOLLIS' CASE, 1 Vent. 345.

S. P. as in Grant v. Bell (ante).

HOLLIS v. POOL, 3 Web. 551.

See Ellis v. Paige (ante).

HOLLOWAY v. COLLINS, 1 Cas. Ch. 245, and Bilson v. Saunders, Bunb. 240.

Overruled in Dagley v. Tolferry, 1 P. Wms. 285; Morrell v. Dickey, 3 Johns. Ch. R. 153.

HOLMAN v. JOHNSON, 1 Cowp. 341.

"That is a case which comes up to the utmost limit of sound doctrine. And so it has been considered in the English courts." Biggs v. Lawrence, 3 Term R. 454.

Questioned, Steele v. Curle, 4 Dana Ken. R. 385.

HOLMES. See *Ex parte* Holmes.

HOLMES v. BLOGG, 8 Taunt. 508.

Ch. J. Gibbs is reported to have held, that in a contract voidable by an infant on arriving at age, he must give notice of disaffirmance.

Denied in Thompson v. Lay, 4 Pick. 48: *Held*, that the promise of

HOLMES v. BLOGG, 8 Taunt. 508—continued.

an infant cannot be revived so as to sustain an action, unless there be an express confirmation or ratification after he comes of age. See also Ordinary v. Wherry, 1 Bayley's R. 28; and Wheaton v. East, 5 Yerg. R. 41.

HOLMES v. CHADBOURNE, 4 Greenl. R. 10.

Doubted in Kavanagh v. Saunders, 8 Greenl. R. 422, in respect to the marginal abstract.

HOLMES v. GORING, 2 Bing. 76.

Held, that whenever a way of necessity ceases, the easement claimed, of necessity, becomes extinct.

Doubted by Woolrych (Law of Ways, p. 72):—"The necessity arises out of the grant, and not out of any state of facts subsequent to the grant."

"Probably if this case be taken to a court of error, Holmes v. Goring will be reviewed." Alderson, B., Proctor v. Hodgson, 29 Eng. R. 455.

HOLMES v. REMSEN, 4 Johns. Ch. 460.

Denied by Platt, J., in 20 Johns. 227; 13 Mass. 313; Kirby's R. 313; 6 Binn. 353; 1 H. & M'H. 236; 2 Hay, N. C. 24; Const. R. S. C. 283; and in Harrison v. Sterry, 5 Cranch, 298; and Ogden v. Saunders, 12 Wheat. 213; all in effect affirming that "the bankrupt law of a foreign country is incapable of operating a transfer in the United States." And the court of errors in Abraham v. Plestoro, 3 Wend. 538, *held*, that an assignee under a foreign commission of bankruptcy is not entitled before judgment to an injunction to restrain the bankrupt from receiving from the custom-house here, goods which were in transit (on the high seas) at the time of suing out the commission.

HOLMES v. TURNER, 7 Hare, 367 note.

Overruled, Watts v. Symes, 16 Jur. 114; 8 Eng. R. 247.

HOLST v. POWNALL & SPENCER, 1 Esp. R. 240.

Ld. Kenyon held, that in order to give the consignee a right to claim by virtue of possession, it should be a possession obtained by the consignees, on the completion of the voyage.

Overruled in Mills v. Ball, 2 B. & P. 461; 3 ib. 42.

HOLT v. HOLT, 2 Vern. R. 322.

Plaintiff's father seized in fee of land, articles to pay J. S. £1,000 to build an house on the premises, and dies before the house is built. The plaintiff may compel the heir to build it, and his father's executor to pay for it.

Denied in cases cited in 2 Sto. Eq. Com. p. 32, n. (4). But see Mosely v. Virgin, 3 Ves. jr. 185, and the observations in 2 Sto. Eq. Com. p. 33.

HOLT'S REPORTS.

Said by Lee, C. J. to be "a book of no authority." 1 Wils. 15.

HOLWARD v. ANDRE, 1 Bos. & Pul. 32.

That where bail are opposed and rejected, and defendant surrendered the next day, he may justify new bail, without paying the costs of the former opposition.

Said to have been "very properly overruled." 1 Taunt. 57.

HOMER v. WALLIS, 11 Mass. 308.

Held, that the hand-writing of the obligor to a promissory note might be proved, if the subscribing witness was out of the State, without proving the handwriting of the subscribing witness.

Denied in Ingram v. Plasket, 3 Blackf. R. 450, 456—(Doe v. Durnford, 2 M. & S. 62; Higgs v. Dixon, 2 Stark. R. 180).

HONE v. KENT, 11 Barb. 315.

Reversed, 2 Selden, 390.

HONE v. VAN SCHAICK, 7 Paige, 221.

See Kane v. Gott, 24 Wend. 641; Arnold v. Gilbert, 5 Barb. 190; Cruger v. Cruger, ib. 255.

HONE v. VAN SCHAICK, 3 Barb. Ch. 388.

Reversed, 3 Coms. 538.

HONITON v. ST. MARY-AXE, 2 Salk. 535.

Overruled, Rex v. Inhabitants of Lubbenham, 4 D. & E. 251; Holt, 578.

HONNER v. MORTON, 3 Russell, 298.

S. P. as in Hornsby v. Lee (post).

HOOD v. MANHATTAN FIRE INS. CO., 2 Duer, 191.

Reversed, 1 Kernan, 532.

HOOK v. GRAY, 6 Barb. 398.

Reversed, 4 Coms. 449.

HOOK (LADY) v. GROVE, 5 Vin. Abr. 293, pl. 40; 4 Bro. Parl. Cas. by Toml. 593.

Sug. on Pow. p. 313, n. (y), says, "Viner states it inaccurately"—"In Bro. Parl. Cas. is, probably by mistake, called her *original* jointure; it was her only jointure."

HOOKER v. HOOKER, 2 Barn. 200, 203.

Doubted in Park on Dower, p. 66 *et seq.*

HOOPER v. PERLEY, 11 Mass. R. 545.

"The general rule, as to wages of seamen, which has been for many years recognized and uniformly adopted in our courts, is, that if a ship has earned one or more freights, and is afterwards lost before completing the voyage for which the seaman was hired, he is entitled to his wages up to the last port of delivery, and for the half the time that the ship lies in port."

Denied in Bronde v. Haven, 1 Gilpin, 606; as not supported by the English authorities cited.

HOPEFUL TYLER, CONSUL v. JOHN WHITE, cited 2 Sum. R. 422.

Doubted in Parsons v. Hunter, 2 Sum. R. 422, 423.

HOPE'S CASE, 1 Moo. & Rob. 396 (n).

Where Vaughan & Patteson, JJ. admitted the examination of a prisoner, without calling either the magistrate or his clerk to prove it, an attesting witness was called to prove it.

Opposing decision in Roscoe Cr. Ev. p. 4 (Am. ed.), Denman, C. J., Richards' case.

HOPKINS v. LEE, 6 Wheat. R. 109.

That if the vendor fail to convey, according to his contract, the measure of damages is the value of the land at the time of the breach, and not the price fixed in the contract.

Doubted in Baldwin v. Munn, 2 Wend. 407.

HORE v. CHAPMAN, 2 Salk. 636.

Quare was substituted for *quod cum*; and judgment was arrested after verdict.

Overruled in Coffin v. Coffin, 2 Mass. R. 358.

HORE v. MILNER, Peake, 42.

Where the vendee by the consent of the vendor, deals with his goods as his own by selling them, the delivery is complete; for after *resale*, the vendor cannot bring an action for goods bargained and sold.

Opposed, Mertens v. Adcock, 4 Esp. 251. *Held*, that a resale was no bar to the action.

HORN v. BARNEY.

See Fish v. Weatherwax (ante).

HORN v. HORN, Ambl. R. 79.

Denied in Dundas v. Dutens, 1 Ves. jr. 196—Ld. Thurlow said,—"The opinion in Horn v. Horn, is so anomalous and unfounded, that forty such opinions would not satisfy me." See Grogan v. Cooke, 2 B. & Bea. 233; 1 Sto. Eq. Com. 361 *et seq.;* 2 Kent Com. 440, 443.

HORNCASTLE v. HAWORTH, 2 Marsh. on Ins. 674.

Opposed, Langhorn v. Allnut, 4 Taunt. 511.

HORNER v. TWINING, 3 Pick. 492.

Wherever trover is the proper form of action, it will lie as well against an infant as an adult.

Denied in Penrose v. Curren, 3 Rawle, 352.

HORNSBY v. LEE, 2 Madd. 16.

Sustained in Purdon v. Jackson, 1 Russell, 1, and followed in Honner v. Morton, 3 Russell, 298.

Opposed, Bates v. Dandy, 2 Atk. 207; Schuyler v. Hoyle, 5 Johns. Ch. R. 207; Udall v. Kenney, 5 Cowen, 507; Krumbaar v. Burt, 2 Wash. C. C. R. 406; Hartman v. Dowell, 1 Rawle, 281; Siter et al., Guardians of Jordan, 4 Rawle, 468. In this case, the husband conveyed to trustees the choses in action of the wife for the benefit of the latter and her child; and held that this passed the interest of both husband and wife, to the trustees, so that upon the death of the husband, the wife could not take as survivor, so as to entitle a second husband to claim them as his property. See the case, for an able review of the English cases by C. J. Gibson.

HORSEY v. HEATH, 5 Ohio R. 355.

See Swan's Stat. 355, s. 92.

HORTON v. HORTON, Cro. Jac. 74.

"Mr. Justice Blackstone" spoke "still more slightly of the case of Horton v. Horton in Cro. Jac. which, he observed, was not determined, and was only upon a collateral point." 6 Burr. 2609.

HORWOOD v. HEPPER, 3 Taunt. 421.

Ld. Mansfield and Lawrence, J., are said to have been of opinion, that the circumstance of a prostitute being placed at the husband's table was not sufficient to justify the wife's departure, so long as she could obtain support in the house.

Overruled in Houlston v. Smith, 3 Bing. 127; Gaselee, J. saying: "I have always understood the law as laid down by Ld. Kenyon, that if a man renders his house unfit for a modest woman to continue in it, she is authorized in going away."

HORWOOD v. UNDERHILL, 10 East, 123.

Reversed on error, 4 Taunt. 346, S. C.

HOSIER v. LORD ARUNDELL, 3 B. & P. 7.

Doubted in Partridge v. Court, 5 Price's R. 419, 423.

HOSOCK v. ROGERS, 6 Paige, 415.

Reversed, 18 Wend. 319.

HOSTLER'S CASE, Yelv. 66.

Much shaken. See Brennan v. Cament (ante).

HOTHAM v. EAST INDIA COMPANY, Doug. 272.

The *dicta* of Ld. Mansfield and Buller, J., in that case, that if an agreement had been made in the course of the voyage, that the cargo should be delivered at a different port from that which was stipulated for in the charter party, and if that substituted contract was performed, the compensation for it *might be recovered in an action of covenant framed on the charter party*, were overruled by the court in Thompson v. Brown, 7 Taunt. 756.

HOTLEY v. SCOTT, Loft. 316.

S. P. as in Doe v. Watson and in Clayton's case (ante).

HOUBLON v. MILNER, Lutw. 1039, 1042.

Said to have been denied to be law, by Ld. Hardwicke in the case of Hart and Holmes. See 1 Wils. 63.

HOUGH v. GRAY, 19 Wend. 202; Luqueer v. Prosser, 1 Hill, 256; 4 ib. 420; Mauron v. Durham, 3 ib. 584; Leggett v. Raymond, 6 ib. 639.

These cases have been repudiated in Hull v. Farmer, 5 Denio, 584; affirmed on appeal, 2 Coms. 553, and see 10 Barb. 639.

HOUGHTON v. PAGE, 1 N. H. R. 60.

Overruled, Harris v. Dennett, 11 N. H. R. 180.

HOULDITCH v. MILNE, 3 Esp. R. 86.

If a tradesman part with the possession of goods, upon which he has a lien, on the promise of a third person to pay the demand, *Held*, that such promise is not within the statute of frauds.

Doubted in 1 Wms. Saund. 211 c. n. 1; Boyce v. Owens, 2 M'Cord, 208; the nature of the consideration cannot affect the terms of the promise unless the liability of the original debtor be extinguished. But see 10 B. & C. 664; Olmstead v. Greenly, 18 Johns. R. 12; 2 N. H. R. 352.

HOUSE v. HOUSE, 5 H. & J. 125.

Explained in Jones v. Hungerford, 4 Gill & J. 407—Buchanan, Ch. J.:—"It will be seen, on the examination of the record, that there was an *innuendo*, that the defendant meant that the plaintiff was guilty of *arson*, and did *willfully* burn the defendant's barn."

HOWARD CH. PR., 77.

The rule that no evidence shall be admitted at the hearing but what is mentioned in the pleadings, qualified. Blacker v. Thepoe, 1 Moll. Ch. R. 357; but see Brazill v. Isham, 2 Kernan, 17.

HOWARD'S LESSEE v. POLLOCK, 1 Yeates R. 509.

The court denied an amendment to alter the date of the demise in ejectment.

Denied in Jackson v. Murray, 1 Cowen, 156.

HOWARD v. MASON, 1 Root, 537.

A man may divert a stream of water to manure and enrich his meadow, to the prejudice of a mill that had been erected on the stream below, more than twenty years.

Overruled in Sherwood v. Burr, 4 Day, 224; Ingraham v. Hutchinson 2 Conn. 584, 591.

HOWE v. BOLINGBROKE, 1 Str. 639.

The court refused to permit a judgment to be entered up after a lapse of twenty years, the court observing that the debt was satisfied.

Denied in Smith's Ex'rs v. Miller, 14 Wend. 191.

HOWE v. CHITTENDEN, 1 Vt. R. 28.

This case carries the notion of apportioning a mortgage security, upon different parcels of the security, further than is altogether consistent with the rights of the mortgagee. Gates v. Adams, 1 Deanes R. 71 (24 Vermont R.)

HOWE v. WHITFILD, 1 Ventr. 338, 339; see 2 Show. 57.

Denied in Doe d. Douglas v. Lock, 2 Ad. & El. 721. Denman,—"And the case as reported in Ventris, it should seem cannot be relied upon."

HOWELL v. CINCINNATI INS. CO., 7 Ohio R. i. 276.

Overruled, Perrin v. The Protection Insurance Company, 14 Ohio R. 147.

HOWELL v. MAINE, 3 Lev. 403.

For a bond to a feme *before* coverture, the husband may sue alone.

Denied in Preston's Abst. of Tit. vol. 1, p. 348. But see 2 Kent Com. 142 and n. (e.)

HOWELL v. ROBBARD, 4 Exch. 309.

Overruled, Callander v. Howard, 20 Law J. R. N. S. C. P. 66; 15 Jur. 130; 1 Eng. R. 388.

HOWES v. BARKER, 3 Johns. 506.

S. P. as in Schermerhorn v. Vanderheyden (post).

HOWIS v. WIGGINS, 4 D. & E. 714.

That if the payee of a note pay it to an endorser, after bankruptcy of the maker, he may recover it of the maker, notwithstanding his bankruptcy and certificate.

Cited and disapproved of by Grose, J., in Cowley v. Dunlop, 7 T. R. 577; see also Buckler v. Buttevant, 3 East, 71; Sarratt v. Austin, 4 Taunt. 200; Kennedy v. Carpenter, 2 Wharton R. 357, 8.

HOWLAND v. UNION THEOLOGICAL SEMINARY, 3 Sand. 82.

Reversed, 1 Selden, 193.

HOWTON v. FREARSON, 8 T. R. 50.

The court held, that a way of necessity over the grantor's land would equally be implied as incident to a grant, though the granting party was a trustee.

Doubted by Ld. Kenyon. See Gale & Whateley on Easements, p. 75.

HOYLE v. LUNDON, 3 Keble, 839.

Denied in Farr v. Newman, 4 Term R. 621, 649.

HOYT v. M'KENZIE, 3 Barb. Ch. R. 314.

Questioned, Woolsey v. Judd, 11 Pr. R. 49.

HOYT v. THOMPSON, 3 Sand. 416.

. Reversed, 1 Selden, 320.

HUBBELL v. CARPENTER, 2 Barb. 4847; 5 ib. 520.

Reversed, 1 Selden, 171.

HUBBEL v. COWDRY, 5 Johns. 132; 1 Caines, 460.

That a judgment in Connecticut was to be regarded as a foreign judgment, and the statute of limitations of actions upon simple contract was applied.

Overruled in Andrews v. Montgomery, 19 Johns. 16; Gulick v. Loder, 1 Green's R. 68.

HUBERT v. GROVES, 1 Esp. 148.

For any obstruction to a public highway, which is a public nuisance, though such should obstruct the party's business, an action on the case cannot be maintained by the party so obstructed; the only remedy is by indictment.

Overruled in Wilkes v. Hungerford Market Co., 2 Bingham's N. C. 281. See also Pierce v. Dart, 7 Cowen, 609; 3 S. & R. 393; 8 N. H. R. 54.

HUCKMAN v. FERNIE, 3 Mee. & M. 505; 7 Law J. R. N. S. Exch. 163.

Where Lord Abinger is reported to have said,—"I cannot say we should interfere in a very doubtful case; but if the decision of the judge was clearly and manifestly wrong, the court would interfere to set it right." Now, this is a misrepresentation, and I have corrected it in my own hand in the copy of Meeson & Welsby which is in this court. Parke, B., Branford v. Truman, 20 Law J. R. N. S. Ex. 36; 14 Jur. 987; 1 Eng. R., 445; and see Booth v. Mills, 15 Law J. R. N. S. Ex. 355.

HUDSON v. HUDSON, 1 Atk. 460 (1737).

Ld. Hardwicke considered administrators have not the same authority to release debts as executors.

Denied in Jacomb v. Harwood, 2 Ves. 267, where Sir John Strange

HUDSON v. HUDSON, 1 Atk. 460 (1737)—continued.

said—"When that case was more narrowly looked into, it appeared clearly that that was applicable to the particular circumstances of the case." Willard v. Fenn, 2 Wheat. Selw. 574, n. 8; Murray v. Blatchford, 1 Wend. R. 617.

HUGHES v. UNDERWOOD, 1 Mod. 28.

That the sealing of a writ of error is a supersedeas to the execution, and this, though the writ was defective and erroneous.

Denied in Meriton v. Stevens, Willes, 275.

HULL v. ADAMS, 1 Hill, 601.

Reversed, 2 Denio, 306.

HULL v. CARNLEY, 2 Duer, 99.

Reversed, 1 Kernan, 501.

HULME v. TENANT, 1 Bro. Ch. Ca. 16.

This case has been doubted by Ld. Eldon. See Nantes v. Corrock, 9 Ves. 188; Jones v. Harris, 9 Ves. 497.

HUMPHREYS v. WINSLOW. See Balbi v. Batley (ante).

HUMBLE v. BILL, 2 Vern. 444; 1 Eq. Ca. Abr. 358, pl. 4.

Reversed in the House of Lords. See Savage v. Humble, 1 Bro. Parl. Cas. 71; 17 Ves. jun. 160; but the reversal is considered to have proceeded from proof of fraud, and has not been attended to in subsequent cases. 2 Sug. on Ven. 57.

HUNSCOM v. HUNSCOM, 15 Mass. 184.

Opposed, Jackson v. Gridley, 18 Johns. 98, and Curtiss v. Strong, 4 Day, 51. See 1 Phil. Ev. 10—5th Am. Ed.

HUNSDON'S (LORD) CASE, Hob. 109.

Ld. Chan. would not follow the case in Hobart in restraining a party until the production of a lost instrument, which may never be capable of being produced, but should have directed the trial of an issue. Power v. Shiel, 1 Moll. Ch. R. 312.

HUNT v. AMIDON, 1 Hill, 147.

Reversed, 4 Hill, 345.

HUNT v. ROUSMANIER, 8 Wheat. R. 174.

Seems to sustain the position that a Court of Chancery will relieve against a mistake in law.

Denied in Wheaton v. Wheaton, 9 Conn. R. 101. Bissell, J.,—"It would not perhaps be going too far to say, that the doctrines laid down by Ch. J. Marshall, in this case, were greatly shaken by the subsequent opinion of Judge Washington (S. C. 1 Pet. U. S. R. 1); and taking the whole case together, it will hardly warrant a departure from principles long considered as settled."

HUNT v. WHITE, 1 Ind. R. 105.

Overruled, State v. Strange, 1 Ind. R. 538.

HUNTER v. BEAL, cited 3 D. & E. 466.

Overruled in effect by Richardson v. Goss, 3 Bos. & Pul. 119, and Dixon v. Baldwin, 5 East, 175, 184; see Rowe v. Pickford, 1 Moore, 526.

HUNTER v. GILHAM, Breese, 51; Beston v. Powell, 2 Gilman, 119.

Partly overruled, Hope v. Sawyer, 14 Ill. 254.

HUNTER v. REINHARD, 13 Mo. R. 23.

Overruled, Huff v. Knapp, 17 Mo. R. (2 Ben.) 414.

HUNTER v. SPOTSWOOD, 1 Wash. 145.

S. P. as in Grant v. Bell (ante).

HUNTINGTON v. MATHER, 2 Barb. 538.

Overruled, Wilson v. Little, 2 Coms. 443.

HURD v. DARLING, 14 Vt. R. 214; 16 ib. 377.

Examined and its correctness questioned by Bennett, J., in Aiken v. Smith, 21 Vt. R. 173.

HURD v. WEST, 7 Cowen, 752.

That the declarations or admissions of the vendor of personal property, though made before the sale of it, were not evidence against the vendee.

Denied in Gibblehouse v. Stong, 3 Rawle R. 450–1.—Kennedy.

HURRY v. MANGLES, 1 Camp. 452.

Doubted and denied in Austen v. Craven, 4 Taunt. 644; and White v. Wilks, 5 Taunt. 176.

HURST v. HURST, 2 Wash. C. C. R. 69; 3 Binn. 347, note S. C.

Overruled in Bank of N. America v. Fitzsimmons, 3 Binn. 342.

HURST v. KIRKBRIDE. 1 Yeates, 139.

Doubted in Church v. Church, 4. Yeates, 281. See also 2 Dall. 172.

HURST'S LESSEE v. M'NEIL, 1 Wash. Cir. C. R. 70.

That a deed executed, in order to give jurisdiction to the court, was a mere fictitious thing, not to be countenanced.

Doubted in Briggs v. French, 2 Sum. R. 259, 260; see Harrington v. Long, 2 M. & K. 592.

HURST v. MEAD, 5 D. & E. 365.

Overruled in *Ex parte* Charles, 14 East, 197; Walker v. Barnes, 5 Taunt. 778.

HURST v. WATKINS, 1 Esp. R. 452.

Denied in 1 Phil. Ev. (880) 820—5th Am. ed.:—"It should seem that the case as reported in Espinasse is not law."

HUTCHINGS v. SPRAGUE, 4 N. H. R. 469.

Questioned, Boardman v. Cushing, 12 N. H. R. 113.

HUTCHINSON v. HODGSON, 2 Anstr. 361.

The Vice-Chancellor, in 5 Sim. 156:—"An ill-reported case."

HUTTON v. BALME, 2 Tyrw. R. 620.

Entitled wrong. It should have been Balme, and others v. Hutton and others; see 3 Tyrw. R. 731, n. (a.)

HUTTON v. BRAGG, 2 Marsh. 339.

The Court of Common Pleas *held*, that by the charter of an entire ship, the possession was parted with to the charterer, so that the owner could have no lien for the freight upon goods put on board.

Limited or rather narrowed in subsequent cases, so as to depend in respect to the possession upon the terms of the contract, the purpose and object of it. Dean v. Hogg et al., 10 Bing. 345; 4 M. & S. 288; 8 Taunt. 293.

HUTTON v. DIBBLE, 1 Day, 121.

That a married woman can hold no separate property given in trust for her, either in law or equity, and that no debt could be raised to her separate use, and her husband, of course, was the *cestui que trust.*

Doubted by Reeve, J., in Goodwin v. Goodwin, 4 Day, 343, who says,—

HUTTON v. DIBBLE, 1 Day, 121—continued.

"To this I answer, if the case does recognize that doctrine, the opinion was an *obiter* opinion, and nowise necessary to determine that case. Such an opinion is opposed to all authority, and never was law, unless that decision has made it so. But admitting that a wife can have no separate property, and that our books on this subject are to be given to the winds, yet surely the husband cannot be the *cestui que trust*; to suppose it, would be a violation of all principle."

HYAM v. EDWARD, 1 Dall. 2; Fogler's Lessee v. Simpson, cited in 1 Yeates, 17; Lessee of Douglass v. Sanderson, ib. 15.

That a copy of the register of births and deaths of the people called Quakers in England, proved to be a true copy by an *ex parte* affidavit before the Lord Mayor of London, was good evidence in cases of pedigree.

Denied by Tilghman, C. J., in Kingston v. Lesley, 10 S. & R. 388–9: "Although I do not approve of its principle, I would not overrule it at *nisi prius*."—"I was not satisfied with the rule established in these cases, because there is no more reason to admit *ex parte* affidavits in cases of pedigree than in other cases, where it appears that better evidence is in your power."—But "considering all the authorities then, we must take it, that the case of Hyam v. Edwards is law."

HYCKMAN v. SHOTBOLT, 3 Dyer, 279.

An entire wrong Christian name was inserted in a bond, which the obligor signed by his true name, and by this he was sued. *Held* that he should have been arrested by the name in the bond, with an *al. dict.* as to the true name.

This case "may be good law, but the reason and common sense of it are not very palpable." 2 Caines, 363.

HYDE v. FOSTER, Dick. 102.

Denied by Ld. Redesdale in Smith v. Hibern. Mine Comp. 1 Sch. & Lefr. 240.

I.

ILDERTON v. ATKINSON, 7 Term R. 480.

Overruled in Scott v. M'Lellen, 2 Greenl. 204; Townsend v. Downing, 14 East, 565; and see Hubbly v. Brown, 16 Johns. 70; see 1 Phil. Ev. 106.

ILEY v. FRANKENSTEIN, 8 Scott, N. R. 839.

"I cannot help thinking there must be something strange in that case." Moss v. Sweet, 20 Law J. N. S. Q. B. 168; 3 Eng. R. 311.—Patteson, J., "I admit that Iley v. Frankenstein is difficult to reconcile with the previous current of decisions, but I think there must be some misunderstanding about that case." *Ib.*

Coleridge, J., "As to that case if the facts were as appears in the report of it, I cannot understand it, but I think there must be some mistake." *Ib.*

ILSLEY v. STUBBS, 5 Mass. 283 (1 Ch. Pl. 189).

"Chattels in the custody of the law cannot at common law be replevied."

Denied in the American Jurist, No. 23, July, 1834, p. 104 *et seq.*

IMRAY v. MAGUAY, 11 M. & W. 267; 7 Jur. 240.

"When the proper opportunity arises, I should like to hear the question in Imray v. Maguay reconsidered."—Campbell, C. J.; Reumette v. Lawrence, 14 Jur. 1067; 20 Law J. R. N. S. Q. B. 25; 1 Eng. R. 262.

INGERSOLL v. JONES, 5 Barb. 661.

Doubted in Bartley v. Ritchmeyer, 4 Coms. 38.

INGERSOLL v. VAN BOKELIN, 7 Cowen, 670.

Reversed in Van Bokelin v. Ingersoll, 5 Wend. 315.

INGHAM v. VADEN, 3 Humph. 55.

Overruled in the Supreme Court of the United States. See Coddington v. Bay (ante).

INGRAM v. SKINNER, 2 Show. 252.

If a person be sued as executor, he may, after a special imparlance, plead "joint executorship" in abatement.

Opposed, 2 Keble, 81.

INGRAHAM v. WHEELER, 6 Conn, 277.

S. P. as in Lord v. Brig Watchman (ante), viz.: that a release being required of creditors in an assignment by a debtor, rendered the instrument void as against dissenting creditors.

INNES v. JACKSON, 16 Ves. jun. 356.

Sugden on Pow. p. 364, n. (1), says: "The facts are correctly stated by Ld. Redesdale. In Mr. Vesey's Report they do not tally with Ld. Eldon's judgment."

IN THE CASE OF THE KENSINGTON, 1 Pet. Adm. R. 239, 240.

Upon the subject of a loss of a part of a cargo or other articles from the ship; *Held*, each seaman shall stand answerable for it, if neither he nor anybody else knows how the loss happened, nor, if by embezzlement, by whom the fraud was committed, to whatever sum his proportion may amount.

Overruled in Edwards et al. v. Shearman, 1 Gilpin, 461.

IN THE MATTER OF GILBERT SHOTWELL, 10 Johns. R. 394.

Reversed in Clason v. Shotwell, 12 Johns. R. 31.

IN THE MATTER OF WOOD, 1 Hopk. Ch. 6.

Overruled in 20 Johns. R. 492.

IRONS v. SMALLPEACE, 2 B. & Ald. 552.

Ch. J. Abbott said:—"That by the law of England, in order to transfer property by gift, there must be a deed or instrument of gift, or there must be an actual delivery of the thing to the donee.

Denied in Cotten v. Missing, 1 Madd. Ch. R. 176; Fink v. Cox, 18 Johns. 145; see Caines v. Marley, 2 Yerg. R. 582; and Pitts v. Mangum, 2 Bail. R. 588.

IRVINE v. CAMPBELL, 6 Binn. 118.

In regard to what fell from the court favorable to the doctrine of lien, for the residue of the purchase money.

Denied in Kauffelt v. Bower, 7 Serg. & R. 76, by Gibson, J.

IRVING v. EATON, 2 Scott, 799.

An affidavit of debt in an action against the drawer of a Bill of Exchange stated that the bill was *undue* and unpaid, and *disclosed no default of the acceptor*:—*Held* sufficient.

Overruled in the Court of Exch. in Crosby v. Clarke, 1 M. & W. 296; Buckworth v. Levi, 5 M. & P. 23; 7 Bing. 251; 1 Dowl. 211.

IRVING v. RICHARDSON, 1 M. & Rob. 153.

In an action on a sea policy, defendant had insured £1,700 with one company, and £2,000 with another, on his ship S., valued in both pol-

IRVING v. RICHARDSON, 1 M. & Rob. 153—continued.

icies at £3,000; he received both sums, the latter company not being aware of the former insurance, when they paid. *Held*, that they might recover back the £700, being the excess of the amount paid above the value declared; the defendant being bound by the valuation in the policy, though the vessel was really worth £3,700. However, this decision seems to overrule the case of Bousfield v. Barnes, 4 Camp. 228.

ISAAC v. DE FRIER, Ambl. 595.

This case is both imperfectly and erroneously reported in Ambler; but is corrected in Att'y Gen'l v. Price, 17 Ves. 371, 373.

ISRAEL v. ARGENT, Blyth v. Archbold, cited in Chit. Prec. by Pearson, 330, note b.

These cases are loosely stated.—Maule, J. Roberts v. Bethell, 16 Jur. 1087; 14 Eng. R. 221.

ISRAEL v. DOUGLAS, 1 H. Bl. 239.

That a written promise to pay money for another, will support an action for money paid to his use.

Denied in Johnson v. Collins, 1 East, 102, and Taylor v. Higgins, 3 East, 171.

IVAT v. FINCH, 1 Taunt. R. 141.

Upon an issue between A and B whether C died possessed of certain property, evidence may be given of declarations made by C, that he had assigned the property to A.

Doubted in Chadwick v. Webber, 3 Greenl. 146. See 1 Phil. Ev. n. (a).

J.

JACKSON v. BELL, 19 Johns. R. 168.

"It seems that the lessor in ejectment cannot release the action."

Denied in Jackson v. M'Claskey, 2 Wend. 544; the marginal note is wrong; (though the decision is right,) the motion was to plead such a release executed before the last continuance: the court place their refusal upon the laches of the defendant and his want of merits; not upon the technical ground that the lessor is not a party to the record.

JACKSON v. BETTS, 9 Cowen, 208.

Reversed in 6 Wend. 173.

JACKSON v. BLANSHAN, 3 Johns. 298.

Dissented from, Hewlett v. Cock, 7 Wend. 371.

JACKSON v. BRADT, 2 Caines, 169.

Overruled, Jackson v. Wilsey, 9 Johns. 267.

JACKSON v. BROWN, 15 Johns. 264.

Overruled, Jackson v. Goodell, 20 Johns. 693.

JACKSON v. CHEW, 12 Wheat. 167.

[The U. S. Superior Court adopts the State decisions, because they settle the law applicable to the case; and the reasons assigned for this course apply as well to rules of construction growing out of the common law, as the statute law of the State, when applied to the title of lands.

Explained in Marlatt v. Silk, 11 Pet. R. 22.—Barbour, J.

JACKSON v. COMMONWEALTH, 2 Binn. 79.

Doubted, it seems, by Tilghman, C. J., in Duncan v. The Commonwealth, 4 S. & R. 451, 2:—"It may deserve consideration, whether, even in a criminal case, the judgment may not be reversed *as to costs*, and affirmed as to the rest, or *vice versa*."

JACKSON v. DELANCY, 4 Cow. 427.

Modified, Rogers v. Eagle Fire Co., 9 Wend. 611.

JACKSON v. DUNSBURGH, 1 Johns. Cas. 94; Jackson v. Swart, 20 Johns. R. 87.

That a freehold to commence in futuro may be conveyed by bargain and sale.

Denied in Wallis v. Wallis, 4 Mass. R. 136, and in Welsh v. Foster, 12 ib. 96.

JACKSON ex dem. ERWIN et al. v. MOORE, 6 Cowen, 706.

Reversed in Moore v. Jackson ex dem. Erwin et al., 4 Wend. 58.

JACKSON ex dem. SMITH v. GOODELL, 20 Johns. 188, 97, 118.

Reversed in Goodell v. Jackson ex dem. Smith, 20 Johns. 693.

JACKSON ex dem. VAN WYCK v. SEWARD, 5 Cowen, 70.

Reversed in Seward v. Jackson ex dem. Van Wyck, 8 Cowen, 406.

JACKSON v. FAIRBANKS, 2 H. Bl. 340.

Very much doubted by the court in Brandnam v. Wharton, 1 Barn. and Ald. 463.

JACKSON v. FARRAND, 2 Vern. 424.

Ld. Hardwicke called this quite an anomalous case, and said he should lay no stress upon it. 1 Atk. 556.

JACKSON v. GABREE, 1 Ventr. 51.

Overruled. Sayer's Rep. 150.

JACKSON v. HORNBECK, 2 Johns. Ch. 115.

Overruled, Black v. Brown, 9 Johns. 264.

JACKSON v. HUMPHREYS, 1 Johns. 498.

"This court (Supreme Court of Ohio) pays great respect to the cases adjudged by the Supreme Court of the State of New York, but when by chance we find one against the current of authorities, we must pause before we adopt it as settled law. We find by two subsequent adjudications of the same court, the case of Jackson v. Humphreys substantially overruled, and we are rather inclined to adopt the later decisions." Lessee of Moore v. Vance, 1 Ohio Rep. 13.

JACKSON v. HUNTER, 1 Johns. 495.

Overruled, Jackson v. Cole. 16 Johns. 257.

JACKSON v. JOHNSON, 5 Cowen, 74.

Overruled in Clapp v. Bromagham, 9 Cowen, 530. *Held*, that a possession may be adverse, though the agreement under which the claim is made be executory.

JACKSON v. LAUGHHEAD, 2 Johns. 75.

Denied in Ellis v. Paige, 1 Pick. 48—Wilde, J.—"In the case of Jackson v. Laughhead, it was decided by a majority of the court, against the opinion of Thompson, J. that in ejectment against a mortgagor, notice to quit was necessary. This was never held to be law in this State; nor is it the law of England."

JACKSON v. LEWIS, 13 Johns. 504.

That a witness cannot be impeached by showing either that she is now, or was in her younger days a common prostitute.

Opposed, Commonwealth v. Murphy, 14 Mass. R. 387, which was a prosecution for a rape.

JACKSON v. LOOMIS, 18 Johns. 81.
——————— 19 Johns. 449.

JACKSON v. LOMAS, 4 Term R. 166.

An insolvent assigned over his effects for the benefit of his creditors, and in the deed there was a proviso that the shares of those creditors who did not execute it before a given day, should be *paid to the insolvent. Held*, as it seems, that this provision would not make the deed invalid.

Doubted, Ingraham v. Wheeler, 6 Conn. R. 277; Hyslop v. Clark, 14 Johns. 458; Brasear v. Hest, 7 Pet. 608; 2 Kent Com. 534, n. (a).

JACKSON v. LUQUERE, 5 Cowen, 221.

Doubted in Bool and Wife v. Mix, 17 Wend. 119.

JACKSON v. MOORE, 6 Cowen, 706.

Reversed in Moore v. Jackson, 4 Wend. 58.

JACKSON v. NEELY, 10 Johns. 374 (1813).

The depositing the conveyance, which recited the power of attorney by which the conveyance was made, the subsequent purchaser had notice of the power by means of the recital, and is affected equally as if the power itself had been deposited.

Overruled in Wendell v. Wadsworth, 20 Johns. 659; Jackson v. Bowen, 6 Cow. R. 146.

JACKSON ON REAL ACTIONS, 114.

In a writ of entry on disseisin done by defendant, the latter may plead in bar a disseisin done by his ancestor and a descent cast.

Overruled in Gordon v. Pierce, 2 Fairf. R. 213. "An exception of this sort must be taken in abatement." S. P., 4 Greenl. R. 20.

JACKSON v. N. Y. INS. CO., 2 Johns. C. 191.

Overruled, Dugnet v. Rhinelander, 2 Johns. C. 466; 1 Cai. C. 25.

JACKSON v. PIGOTT, Ld. Raym. 364; 12 Mod. 212.

If the declaration allege in terms an acceptance made before the time limited by the bill for its payment, the plaintiff will be precluded from giving in evidence acceptance afterwards.

Denied, Bayley on Bills, 5th ed. 393; 2 Phil. Ev. 4; Molloy v. Delves, 5 Mo. & P. 273; S. C. 4 C. & P. 492; See Penn v. Flack et al., 3 Gill & J. 369.

JACKSON v. PLUMBE, 8 Johns. R. 378.

S. P. in 14 Johns. 245; 19 ib. 300; 2 Cowen, 770.

That when a corporation sues, either on a contract, or to recover real property, they must, at the trial, under the general issue, prove that they are a corporation.

Doubted, Conrad v. The Atlantic Ins. Co., 4 Pet. 450:—"By pleading to the merits, the plaintiff necessarily admitted the capacity of the plaintiffs to sue."

JACKSON v. POST, 9 Cowen, 120.

Explained in Jackson v. Chamberlain, 8 Wend. R. 620, 627.—Error in the report.

JACKSON'S CASE, Russ. & Ry. 487.

It appeared that the prisoner got into the woman's bed, as if he had been her husband, and was in the act of copulation, when she made the discovery; upon which, and before completion, he desisted. Four judges thought it amounted to a rape; but eight judges thought it would not.

Doubted. See 1 Whar. Cr. Law, 381 n.

JACKSON v. SACKETT, 7 Wend. 94.

Ejectment for land mortgaged; and the notes having lain more than six years after they were due, no action could be sustained upon them; that the time was evidence of payment, which might be presumed in analogy to the presumption of payment of specialties after twenty years.

Denied in Belknap v. Gleason, 11 Conn. 160, 166: *Held*, that the security of a lien was not impaired in consequence of the debts being barred by the statute of limitations; and see Heyer v. Pruyn, 7 Paige, 465.

JACKSON v. SCHAUBER, 7 Cowen, 193.

Reversed in Schauber v. Jackson, 2 Wend. 13.

JACKSON v. SEWARD, 5 Cowen, 67.

Reversed in Seward v. Jackson, 8 Cowen, 406.

JACKSON v. SHUTZ, 18 Johns. 174.

See Livingston v. Stickles, 7 Hill, 253; Overbagh v. Patrie, 8 Barb. 28.

JACKSON v. SHARPE, 14 Johns. 472.

Overruled in Jackson v. Goodell, 20 Johns. 693.

JACKSON v. STETSON, 15 Mass. 48.

If defendant pleads a justification in slander and also the general issue, it is an admission of the speaking of the words even under the general issue.

Denied in Starkweather v. Kittle, 17 Wend. 20; see also Cilley v. Jenness. 2 N. H. R. 89; Melvin v. Whiting, 13 Pick. 184.

But in 6 Car. & P. 535, note (a), it is said that under the rule of court of H. T., 4 Wm. IV.—" In an action of slander of the plaintiff in his office, profession, or trade, the plea of not guilty will operate to the same extent precisely as at present in denial of speaking the words, of speaking them maliciously, and in the sense imputed, and with reference to the plaintiff's office, profession, or trade; but it will not operate as a denial of the fact of the plaintiff holding the office or being of the profession or trade alleged."

JACKSON v. STEVENS.

See Winchester's case (post).

JACKSON v. STILES, 3 Caines' R. 93; 3 Cow. 356.

The court, in 3 Johns. R. 449, say " There were peculiar circumstances though not fully reported, which afforded strong reason to believe that there was really no defence on the merits." See Jackson v. Scovill, 5 Wend. 96.

JACKSON v. TOWN, 4 Cow. 599.

See Jackson v. Chamberlain, 8 Wend. 626.

JACKSON v. TOWNSEND, 7 Wend. 379.

Overruled in Moore v. Spellman, 5 Den. 225.

JACKSON v. TUTTLE, 9 Cow. 233.

Reversed in 6 Wend. 213.

JACKSON v. VAN ANTWERP, 1 Wend. 295.

Overruled in Livingston v. Clements, 1 Hill, 648.

JACKSON v. WOOD, 3 Wend. 27.

Reversed in 8 Wend. 9.

JACOB v. ALLEN, 1 Salk. 27.

Administrator's attorney collects debts and pays over the money; then a will is found, and administration is repealed. *Held* that the executor

JACOB v. ALLEN, 1 Salk. 27—continued.

may maintain *indebitatus assumpsit* against the attorney for money received to his use.

Ruled contra in Pond v. Underwood, 2 Ld. Raym. 1210; see 4 Burr. 1984, Sadler v. Evans. Also, Allan v. Dundas, 3 D. & E. 125, and Cowp. 565.

JACOB v. HARWOOD, 2 Ves. 265.

Same principle as in Nugent v. Gifford, and Meade v. Ld. Orrery.

Denied in Petrie v. Clark et al., 11 S. & R. 386—Gibson, J.:—"But it was ruled differently in Crane v. Drake, 2 Vern. 616, the authority of which is certainly strengthened by the reversal of Humble v. Bill, in the House of Lords, 2 Vern. 444; notwithstanding what Ld. Hardwicke says of these two cases in Meade v. Ld. Orrery. Indeed, my mind is not prepared to acquiesce in the decision by that Chancellor, of any of the cases that came before him."

JACOBS v. ADAMS, 1 Dall. 52.

Dissented from in Purdy v. Phillips, 1 Kernan, 407.

JACOBS v. AMYATT, 4 Bro. Ch. Ca. 542.

Seems questionable since Doe v. Applin, 4 D. & E. 82; Lyon v. Mitchell, 1 Maddock Ch. R. 467, 486.

JAFFRAY v. FREBAIN.

See Chandler v. Parkes (ante).

JAMES v. JOHNSON, 6 Johns. Ch. 417.

Reversed in James v. Morey, 2 Cowen, 247.

JAMES v. M'KERNON, 6 Johns. R. 543.

Reversing decree of Chan. upon the ground of the admission of evidence in respect to what was not in issue by the pleadings—the general rule being that no interrogatories can be put that do not arise from facts properly in issue.

JAMES v. PATTEN, 8 Barb. 344.

Reversed, 2 Selden, 9, and see Vielie v. Osgood, 8 Barb. 130.

JAMES v. RICHARDSON, T. Raym. 330, in Cam. Scac. reversing the judgment of B. R.

Reversed in Dom. Proc. and the judgment of B. R. affirmed. 3 Lev. 232.

JAMES v. JOHNSON, 1 Mod. 232.

This case goes the length of saying that every prescription, when found, must be presumed to have a reasonable commencement.

Denied in case of a prescription against public right, as to take toll on a navigable river, &c. Willes, 116.

JANSEN v. STOUTENBERGH, 9 Johns. 369.

Where it was held, that an action of debt for an escape against a sheriff, was cognizable in a justice's court.

Overruled in Brown v. Genung, 1 Wend. 115.

JANSEN v. THOMAS, 3 Doug. 421; (cited in Chitty on Bills and Bailey on Bills, as Jansen v. Thomas, B. R. Trin. T; 24 Geo. III.)

Questioned, Trask v. Martin, 1 E. D. Smith, 519.

JAQUES v. MARQUAND, 6 Cow. 487.

See Whittaker v. Brown, 16 Wend. 505.

JARVIS v. PECK, 1 Hoff. 479.

Doubted, note v. to 1 Parsons on Contracts, 381.

JEANES v. WILKINS, 1 Ves. sen. 195.

Doubted, Kennedy v. Dunklee, 1 Gray (Mass.) R. 71.

JENDWINE v. SLADE, 2 Esp. R. 572.

Denied in Osgood v. Lewis, 2 Maryland R. 522, 3.

JENKINS v. PRITCHARD, 2 Wils. 47.

Statement of the judgment corrected by Ld. Alvanley, 2 Bos. & Pul. 658.

JERMAINE v. WAGGONER, 1 Hill, 279.

Reversed, 7 Hill, 357.

JERMAIN v. WOOD, 5 Denio, 342.

Reversed, Jermain v. Deniston, 2 Selden, 276.

JEWEL'S CASE, 5 Rep. 3 (a.)

A rent reserved on a lease for years by a bishop, of an incorporeal thing, as of a fair, &c. is good by way of contract between lessor and lessee; but yet such rent is not incident to the reversion, and his successor shall avoid it.

Overruled in Talentine v. Denton, Cro. Jac. 111; see Bally v. Wells, 3 Wils. 25; Windsor v. Gover, 2 Saund. 302, 304, n. 9.

JENKINS v. SLADE, 1 C. & P. 270.

A certificated conveyancer can maintain no action for his fees.

Overruled in Poucher v. Norman, 5 D. & R. 648; 3 B. & C. 744; S. P. Davies v. Sidley, 6 D. & R. 4.

JENNINGS v. MOORE, 1 Vern. 609.

If A purchases in the name of B, with knowledge of a prior incumbrance, yet he shall be affected with the notice to R, because B, by approving of A's conduct, made him his agent *ab initio.*

Doubted by Ld. Hardwicke in Le Neve v. Le Neve, 3 Atk. 649. But see 14 Pick. 34.

JEROME v. ROSS, 7 Johns. Ch. 344.

That it is not necessary to the validity of a statute authorizing private property to be taken for the public use, that a remedy for obtaining compensation by the owner should be provided.

Denied in Bloodgood v. M. & H. R. R. Co. 9 Wend. 17.—Chancellor, & Maison, Senator, p. 37; and Tracy, Senator, p. 75.

JERRY v. THE STATE, 1 Black. R. 395.

Doubted in United States v. Gilbert, 2 Sum. R. 52, 53.

JOHNES v. LOCKHART, Adamson v. Armitage, 19 Ves. 416.

Seems to have been considered as affirming the doctrine that a bequest to a *feme covert* "for her own use." will exclude the husband's control of it.

Denied in 2 Sto. Eq. Jur. p. 610, n. (3.) "These opinions seem to have proceeded in a good measure upon a misunderstanding of the case of Johnes v. Lockhart, now correctly reported in 3 Bro. Ch. R. 383, Mr. Belt's note."

JOHNSON v. BEARDSLEY, 15 Johns. 3.

Overruled, Van Keuren v. Parmelee, 2 Coms. 523; and see Whitcomb v. Whitney (post).

JOHNSON v. COLLINGS, 1 East, 98; see Milne v. Prest, 3 Camp. 393; Holt, C. N. P. 181.

A promise to accept a non-existing bill, not an acceptance.

Opposed, Coolidge v. Paysen, 2 Wh. R. 66; Weston v. Clements, 3 Mass. 1, provided a bill be drawn within a reasonable time afterwards. 1 Pet. 283; 15 Johns. 6; 10 ib. 203; 11 Mass. 54; 5 ib. 11; 2 Wend. 545; 5 ib. 414; see R. S.

JOHNSON v. GEAR, 2 Johns. Ch. 546.

Overruled, Miller v. Avery, 2 Barb. Ch. 582.

JOHNSON v. GILSON, 4 Esp. C. 21; 1 Stark. Ev. 347, 8.

Where notice was given to produce a letter which expressed that it contained several inclosures, but without referring to them particularly, it was held that the party producing the letter was not entitled to have the inclosures read.

Doubted. See the observations of Spencer, J., in Kenny v. Van Horne et al., 1 Johns. 395; and Withers et al. v. Gillespy, 7 S. & R. 10, 14, *et seq.* See also note, 1 Phill. Ev. p. 361.

JOHNSON v. HUDSON, 11 East, 180.

Doubted in Brooker v. Wood, 3 Nev. & M. 96.—Littledale.

The case of Brown v. Duncan has certainly been often questioned by the English courts, and is placed among cases "doubted" by Professor Greenleaf in his collection, and the same may, with justice, be said of Johnson v. Hudson. See the opinion of Littledale, J., in Broker v. Wood, 3 Nev. & M. 96; Terrett v. Bartlett, 21 Vt. R. 188.

JOHNSON v. HUNT, 23 Wend. 87.

"I have not overlooked the case of Johnson v. Hunt, in which a different view of the case of Abraham v. Plestoro was taken, and so far as the decision in that case (Johnson v. Hunt) was founded on that view, I feel myself compelled to dissent from it." Ruggles, Ch. J., in Hoyt v. Thompson, 1 Selden, 343.

JOHNSON v. JOHNSON, 4 Paige, 460.

Reversed, 14 Wend. 637.

JOHNSON v. KENYON, 2 Wils. 262.

——"that case is inaccurately reported; and I am much disposed to think that the Chief Justice never said what he is there stated to have said." Per Wilson, J., in Bacon v. Searles, 1 H. Bl. 88; see also Walwyn v. St. Quintin, 1 Bos. & Pul. 658.

JOHNSON v. LEIGH, 1 Marsh. 565; Ratcliffe v. Burton, 3 B. & P. 229.

If the sheriff break the doors of the house of a third person in order to execute the process of law upon the defendant, or his property, removed thither in order to avoid an execution; still he does so at his peril; for, if

JOHNSON v. LEIGH, 1 Marsh. 565, etc.—continued.

it turn out that the defendant was not in the house, or had no property there, he is a trespasser.

Explained in Hutchinson v. Birch, 4 Taunt. 627; Com. Dig. Execution. C. 5; see White v. Whitshire, Palm. 52; 2 Rolle, 138; Biscop v. White, Cro. Eliz. 759; and judgment in Cooke v. Birt, 5 Taunt. 769; 2 H. Bl. 120.

JOHNSON v. LEWELLIN, 6 Esp. 101.

S. P. as in King v. Middlezoy (post).

JOHNSON v. MASON, 1 Esp. 89.

That the confession of the party executing a deed is not admissible evidence; but it must be proved by the subscribing witnesses.

Such confession is admissible in New York. Hall v. Phelps, 2 Johns. 451.

JOHNSON v. MAY, 3 Lev. 150.

"In Buller's Nisi Prius, 138; in 2 Comyn on Con.; and 6 Johns. R. 48, it is said that at common law assumpsit would lie on an *express*, but not on an implied promise for use and occupation, and that to maintain the action on an express promise it was necessary to show that the promise was made at the time of the demise. These dicta seem all to have been deductions from the case of Johnson v. May, 3 Lev. 150, and that case is not sufficient to establish any such doctrine." Logan v. Lewis, 7 Marshall Ken. R. 4.

JOHNSON v. MEDLICOTT, 3 P. Wms. 131 n.

Opposed, Pitt v. Smith, 3 Camp. 35; Fenton v. Holloway, 1 Stark. 126; see Butler v. Mulvihill, 1 Bligh, 137.

JOHNSON v. PROCTOR, Yelv. 175; Cro. Eliz. 809; Cro. Jac. 233.

Explained. The ground upon which this case was decided was said by Kennedy, J., in 3 Penn. R. 326, to have been misapprehended by Ld. Eldon in Browning v. Wright, 2 B. & P. 25, and also by the judge in delivering the opinion of the court in 16 S. & R. 112.

JOHNSON v. RICH, 9 Barb. 680.

Overruled, Barto v. Himrod, 4 Selden, 483.

JOHNSON v. THOMPSON, 4 Desaus. R. 458–9.

Doubted in M'Donald v. Crockett, 3 M'C. Ch. R. 132, 133, as it would seem, whether the facts are all reported.

JOHNSON v. THE LADY WALTERSTAFF, 1 Pet. Adm. Dec. 215; and Cranmer v Gernon, 2 Pet. Adm. Dec. 391.

S. P. as in The Cynthia (ante).

Overruled in Bronde et al. v. Haven, 1 Gilpin R. 592, 604.

JOHNSON v. WEED, 9 Johns. 310.

The reasoning of the judge who gave the opinion, is said to go further than the rest of the court meant to go. Whitbeck v. Van Ness, 11 Johns. 412.

JOHNSON'S REPORTS.

"The decisions which are found in Johnson's Reports have always come to us with a weight of authority to which the learning, talents, and exalted legal character of the learned justices who composed the court so justly entitle them; and in general when a subject appears to have been thoroughly investigated by that court, I rest satisfied that they have come to a right conclusion." Williams, Ch. J., in Ives v. Hulet, 12 Vt. R. 335.

JOHNSTON v. JOHNSTON, 1 Philli. R. 447.

That marriage and a child need not both occur to create an implied revocation of a will.

Doubted in Brush v. Wilkins, 4 Johns. Ch. 506; and it seems overruled in Gibbons v. Cross, 2 Addams' R. 455.

JOHNSTON v. MARTIN, 3 Murph. 248.

That the discharge of the plaintiff from the prosecution, by competent authority, after full examination, is *prima facie* evidence of the want of probable cause; and the burden of proving the probable cause is then thrown upon the defendant.

Doubted in M'Rae v. O'Neal, 2 Dev. R. 169. See also Purcell v. M'Namara, 9 East, 361.

JOICE v. WILLIAMS, Park, 627; S. C. Hughes, 346.

The lender on bottomry is not liable either to average or salvage.

Doubted. See 1 Phil. on Ins. 301; also 3 Kent Com. 358, 359; Chandler v. Garnier, 6 Mart. Lou. R. N. S. 599.

JONES v. BEACH, 21 Law J. R. N. S. Ch. 543; 11 E. L. & E. R. 200.

Overruled, Jones v. Beach, 22 Law J. R. N. S. Ch. 425; 17 E. L. & E. R. 427.

JONES v. BOW, 5 N. H. R. 145.

Overruled, French v. Shackford, 5 N. H. R. 151.

JONES v. BRODIE, 3 Murph. R. 594.

Overruled in Rayner v. Watford, 2 Dev. R. 338.

JONES v. BROOKE, 4 Taunt. 463.

A leading case establishing an exception to the rule, that in actions brought against parties to negotiable instruments, other parties to the bill are competent to give evidence, either for the plaintiff or the defendant. The exception is that in actions on accommodation bills, in which the party for whose accommodation the defendant has put his name to the bill, is incompetent to give evidence to defeat the plaintiff.

Limited (in 12 Pick. 565), and deciding that a party to an accommodation note is not incompetent, if not interested. See Phil. Ev. 111, 112.

JONES v. CLAYTON, 2 Murph. 62.

Overruled, Fagan v. Walker, 5 Ire. Law R. 634.

JONES v. COOPER, Cowp. 228.

A distinction between a promise for the payment for goods, &c. for another *before* and *after* delivery; the former being held to be an original undertaking, and so binding,—the latter collateral, and within the statute of frauds.

This distinction overruled, Matson v. Wharam, 2 D. & E. 80; Anderson v. Hayman, 1 H. Bl. 120.

JONES v. DAVIES, 1 B. & C. 143.

Doubted in The King v. Pasman, 4 Nev. & Man. 730. Littledale: "Jones v. Davies is not a case I should be disposed to follow."

JONES v. DUTCH, 4 Price, 300; Chit. on Bills, p. 22.

It seems an unsettled point in England, whether an infant first indorsee can entitle the holder to sue on it. Nightingale v. Withington, 15 Mass. 272. *Held*, that he may.

JONES v. EAMER, Anstr. 675.

That putting in and justifying bail before the expiration of the rule to bring in the body, is no bar to an action for the escape.

Overruled in Murray v. Durand, 1 Esp. 87; Pariente v. Plumbtree, 2 Bos. & Pul. 35.

JONES v. EDMONDS, 3 Murph. R. 43.

A judgment is still a lien upon the lands of which the debtor was seized at the time of its rendition, if the creditor sue out an *elegit;* but if he refuse to sue out a *fi. fa.*, the lands are bound only as chattels.

Doubted in Ricks v. Blount, 4 Dev. R. 133.

JONES v. HARRISON, 6 Ex. R. 328; 3 Eng. R. 579; 20 Law J. R. N. S. Ex. 166.

Not followed, Crake v. Powell, 10 Eng. R. 331; 21 Law J. R. N. S. Q. B. 183; 16 Jur. 365; Ashlin v. Blackman, 21 Law J. R. N. S. Ex. 78; 8 Eng. R. 524; Macdougall v. Paterson, 7 Eng. R. 510; 21 Law J. R. N. S. C. P. 27; 15 Jur. 1108.

JONES v. HOAR, 5 Pick. 285.

Where trespass had been committed upon land, and trees cut and carried away, but not sold and converted into money, assumpsit for timber as for goods sold and delivered, would not lie.

Opposed, Hill v. Davis, 3 N. H. R. 384.

JONES v. JONES, 1 Call, 468.

See Wilcox v. Calloway (post).

JONES v. LAWLIN, 1 Sand. 723.

Overruled, Anon. 3 Sand. 725.

JONES v. LEWIS, 2 Sim. & Stu. 242.

S. P. as in Princess of Wales v. Earl of Liverpool (post).

JONES v. MORGAN, 2 Camp. 474.

Overruled by Tanner v. Bean, 4 B. & C. 312: *Held*, in an action against the drawer or indorser of a bill, for default of payment, if it be unnecessarily alleged the bill was accepted, yet the acceptance need not be proved.

JONES v. MUDD, 4 Russ. 122.

Doubted in Portman v. Mill, Jurist, p. 324, Am. ed., where it was held that the word "farm" includes woodlands, though not in the possession of the occupier. Where a person takes possession of lands he has contracted to purchase, without prejudice to the question of title, and abandons possession upon the ground that vendor could not make a good title, and the master afterwards reports in favor of the title, the purchaser must pay interest on the purchase money from the time he took possession.

JONES v. PENGREE.

See Carter v. Murray (ante).

JONES v. RADFORD, 1 Camp. 83 n.

. That an acceptance after an indorsement by one of the payees, admits the regularity of the indorsement.

Denied Chitty on Bills, p. 631, 8th Am. ed.

JONES v. RANDALL, Cowp. 37; Lofft. 383.

Where a wager as to whether a decree of chancery would be reversed on appeal, was held not to be illegal.

Overruled in Evans v. Jones, Jurist for 1839 p. 261, where it was held, that a wager on the result of a criminal trial is illegal and void, as being against the general policy of the law.

JONES v. SAVAGE, 6 Wend. 658.

Not followed, Tibbets v. Dowd, 23 Wend. 379.

JONES v. LORD SAY & SELE, 8 Vin. Abr. 262; 1 Eq. Abr. 383; 3 Bro. Parl. Cas. 458.

Lord Kenyon said it was a case by itself. Cited by Lawrence, J., in Wykham v. Wykham, 3 Taunt. 316.

JONES v. SMITH, 4 Hall's Law Journal, 276.

Point somewhat similar to The Cynthia, (ante).

Denied in Bronde v. Haven, 1 Gilpin R. 604.

JONES v. STEVENS, 11 Price, 235.

Adverse to Sanders v. Johnson, 6 Blackf. 50; Burke v. Mellen, ib. 155; McNutt v. Young, 8 Leigh, 542.

JONES v. TEMPLE, 1 Wash. 42; 1 Dall. 63.

That a seal was not necessarily something impressed on wax.

Denied in Warren v. Lynch, 5 Johns. R. 245.—Kent.

JONES v. THE INS. CO. OF NORTH AMERICA, 4 Dall. R. 246.

Reversed in The Ins. Co. of N. America v. Jones, 2 Binn. 547.

JONES v. WESTCOMB, 1 Eq. Cas. Abr. 245.

"A possessed of a long term for years by will, devised it to his wife for life, and after her death to the child she was then enciente with, and if such child died before it come to twenty-one, then he devised one-third

JONES v. WESTCOMB, 1 Eq. Cas. Abr. 245—continued.

part of the same term to his wife, her executors and administrators, and the other two-thirds to other persons; and made his wife executrix of his will, and died." *Held*, that though the wife was not enciente at the time of the will, yet the devise to her of such third part of the term, was good.

Overruled in Fulham v. Wickett, Willes R. 303.

S. P. in Carpenter v. Heard, 14 Pick. 454 to 460.

JONES v. WILLIAMS, Doug. 214.

That if the condition of a bond be that obligor shall not embezzle, &c. it is necessary, in assigning a breach thereon, to state the particular sum embezzled, and how or from whom it was received.

Overruled in Barton v. Webb, 8 D. & E. 459; Shum v. Farrington, 1 Bos. & Pul. 640.

JONES v. WHITTAKER, Longf. & Towns. Rep. 14.

Doubted; we cannot consider it as good law. Doe d. Newman v. Rusham, 9 Eng. R. 416; 21 Law J. R. N. S. Q. B. 139; 16 Jur. 359.

JONES (SIR WM.) LAW OF BAILMENTS, 52, 60.

That an action lies for damage arising from the non-performance of a promise to become a mandatory, though it be gratuitous.

Denied in Thorne v. Deas, 4 Johns. R. 84, 96; Kent, C. J.

JONES (SIR WILLIAM'S) REPORTS, in K. B. & C. B. from 18 James I. to 15 Charles I.

"In Chanley v. Wistanley, Trin. 44 Geo. III. when the counsel questioned a case in Jones, as anonymous, Lawrence, J., said that Jones was not a reporter to mistake the law of a case, though he might not hear the name." Bridg. Leg. Bib. 180.

JORDAINE v. LASHBROOKE, 7 D. & E. 601.

Action by indorsee on foreign bill of exchange unstamped, and *drawer* admitted as a witness to prove the bill drawn in London and dated abroad to defraud the revenue.

In Massachusetts, the party to a negotiable instrument is not admitted as a witness to prove it void, when he gave it currency. Churchill v. Suter, 4 Mass. 156. See 2 Dall. 194; 1 Day's Cas. 17, 301; 1 Caines, 258, 267; 1 Hen. & Mumf. 175; 1 Hayw. 397 n.; 2 Cran. 202.

JORDAN v. LEWIS, Stra. 1122; reported also in 14 East, 304, note (a).

Reported, it is said (O'Neall, J., 2 Hill R. 675) more accurately in East.

JORDAN v. WILKINS, 3 Wash. C. C. R. 112.

The general rule, that the defendant must avail of a non-joinder of a joint contractor by plea in abatement, does not apply when the plaintiff has not in his declaration disclosed the nature of his demand.

Overruled in Barry v. Foyles, 1 Pet. 311.

JOSLYN v. SMITH, 13 Vt. R. 353.

Conflicts with Van Keuren v. Parmelee, 2 Coms. 523; Bogart v. Vermilya, 2 Code Rep. 142; 1 Code Rep. N. S. 212.

JOYCE v. ADAMS, 2 Sand. 1.

Reversed, 4 Selden, 291.

JUDAH v. HARRIS, 19 Johns. 144.

A note payable at a bank, "in the bank notes current in the City of New York," was held to be negotiable.

Denied in M'Cormick v. Trotter, 10 S. & R. 94.

JUHEL v. CHURCH, 2 Johns. Cas. 333.

A wagering policy was considered legal.

Opposed, Amory v. Gilman, 2 Mass. 1; Babcock v. Thompson, 3 Pick. 446; Adams v. Penn. Ins. Co., 1 Rawle, 107; and now New York, R. S vol. 1. p. 662, ss. 8, 9, 10.

K.

KAIMES, LORD.

"His extreme inaccuracy in what he ventures to state with respect both to the ancient canon law and the modern English law, tends not a little to shake the credit of his representations of all law whatever." Per Sir Wm. Scott in 2 Hag. R. 92.

KANE v. SANGER, 14 Johns. 89.

Denied in Wythy v. Mumford, 5 Cowen, 140; as to the remark of Spencer, J. "that the assignee, with warranty, could not maintain an action, as assignee, for a breach after the assignment:"—Savage, C. J. saying "the remark was not called for. It professes to be supported by no authority but Bickford v. Paige, 2 Mass. R. 460. I do not understand such doctrine to be there asserted."

KAY v. BROOKMAN, 1 M. & M. 286.

S. P. as in Paige v. Mann (post).

KAY v. DUCHESS DE PIENNE, 3 Camp. R. 123, and Gregory v. Paul, 15 Mass. 31, and Robinson v. Reynolds, 1 Aik. R. 174.

Held, that if a foreigner, though resident abroad when the suit is brought, had ever resided here, his wife could not sue.

Opposed, Bean v. Morgan, 4 M'Cord R. 148, and, it seems, 2 Kent Com. 156–7, where it is observed, that there is no distinction in principle, between husbands who are aliens, and who are not aliens.

KEATES v. WHIELDON, 8 B. & C. 7.

Overruled. See Cheetham v. Butler, 2 Nev. & Man. 453; 5 B. & Adol. 837, S. C.; and see Dixon v. Chambers, 1 Cr. M. & Ros. 845. Where by a promissory note, A promised to pay B on demand £20, with lawful interest until payment, for value received,—*Held*, that this was not a note payable to bearer on demand, but was a note payable otherwise than to bearer within two months after date.

KEBLE.

Park, J. said (6 Bing. 656),—"Lord Kenyon reprimanded me, when I was at the bar, for citing Keble."

"Of questionable credit." 1 Wood, 99 note. Park, J. (in Rex v. Sutton, 1 Leg. Ex. & Law Chron. 203) says, "I remember making a minute of the censure passed by Ld. Kenyon on Keble's Reports; and when I went home from court I destroyed them, not considering it worth while to keep a refuse book in my library."

"Not an accurate reporter."—4 Term R. 646, 649. "A bad reporter." —3 Term R. 17. "Another case in 3 Keble, 540, is a loose note by a bad reporter."—Doug. 305. "Though an inaccurate reporter, yet (is) a tolerable historian of the law."—3 Wils. 330. "Keble seldom enlightens any thing."—Willes, 245. "Though far from being an accurate, is a pretty good register."—Ridgway, 100. "A feeble reporter."—Ib. note.

KEECH v. HALL, Dougl. 21; Thunder d. Weaver v. Belcher, 3 East, 449.

The dictum, that when the mortgagor is left in possession, "the true inference to be drawn, is an agreement that he shall possess the premises at will, in the strictest sense; and, therefore, no notice is ever given him to quit."

Explained in Rockwell v. Bradley, 2 Conn. R. 5, 9, 13, 15, *et seq.* See Doe v. Giles, 5 Bingh. 421; Doe v. Maisey, 8 B. & C. 767; Thunder v. Belcher, 3 East, 449; Smartle v. Williams, 3 Lev. 387; 1 Salk. 245. Doe dem. Rogers v. Cadwallader, 2 B. & Adol. 473; Doe dem. Whittaker v. Hales, 7 Bing. 322.

KEICHLEY v. COUSTON, 1 Barnard. 43.

If a *ca. sa.* be tested out of term it may be amended.

Opposed, Johnson v. Nayler, 12 Mod. 247.

KEILY v. MONCK, 3 Ridgw. Pr. C. 205.

Ld. Clarke's reasoning doubted, 1 Moll. Ch. R. 611.

KEILWAY, 98, b. pl. 4.

"In which Fineux & Brudenell, Justices of K. B. in the time of Hen. VIII., were of opinion that if a man have a house underneath, and another have a house over it, as is the case in London, the owner of the first house may compel the other to cover his house, to preserve the timbers of the house underneath; and so may the owner of the house above compel the other to repair the timbers of his house below; and this by action of the case."

Doubted in Tenant v. Goldwin, 6 Mod. 314, by Ld. Holt, who was of opinion, that such writ, which is in F. N. B. 296, was by particular custom and not of the common law; and he doubted the case in Keilway. But in Loring v. Bacon, 4 Mass. 575, Parsons, C. J. says,—

We do not now decide on the authority due to the case in Keilway: but if an action on the case should come before us founded on that report, it will deserve a further consideration." He adds—"But there is unquestionably a writ at common law *de domo reparanda*, the form of which we have in Fitz. N. B. 295, in which A is commanded to repair a certain house of his in N, which is in danger of falling, to the nuisance of the freehold of B, in the same town, and which A ought and hath been used to repair, &c. This writ, Fitzherbert says, lies when a man who has a house adjoining to the house of his neighbor, suffer his house to lie in decay, to the annoyance of his neighbor's house. And if the plaintiff recover, he shall have his damages; and it shall be awarded that the defendant repair, and that he be restrained until he do it. But it is otherwise in an action of the case; for there the plaintiff can recover damages only. And there appears no reasonable cause of distinction in the cases, whether a house adjoin to another on one side, or above, or underneath it.

But if the case in Keilway is law, the plaintiff cannot recover, for by that case the defendant could have compelled the plaintiff to repair his house, or compensate her in damages for the injury she had sustained from his neglect to repair it. And he has the like remedy against her.

If the case in Keilway is not law, then, upon analogy to the writ at common law, the plaintiff cannot compel the defendant to contribute to his expenses in repairing his own house. But if his house be considered as adjoining to hers, she might have sued an action of the case against him, if he had suffered his house to remain in decay to the annoyance of her house.

KEITH (Lord) v. KEIR, Faculty Decisions, vol. 13, p. 679. June 10, 1812.

A person employed by the defendant to clear land of furze, contrary to express direction of the master used fire for the purpose; held that the master was liable for damage resulting from such use of fire.

Denied in M'Kenzie v. M'Leod, 4 Moore & Scott, 254.—Park.

KEITH v. JONES, 9 Johns. 120; Judah v. Harris, 19 Johns. 144.

A note payable in bank bills was negotiable within the statute, if confined to a species of paper universally current as cash.

Decided differently in England, Bayley on Bills, p. 6; 3 Kent Com. 75, and in Pennsylvania, Gray v. Donahoe, 4 Watts, 400; M'Cormick v. Trotter, 10 S. & R. 94.

KELLOCK v. ROBINSON, 2 Stra. 745.

Held, that where the indorsee of a promissory note receives part of the money from the maker, this discharges the indorser.

Overruled in Walwyn v. St. Quintin, 1 Bos. & Pul. 652.

KELLOGG v. MILLER, 1 Eng. R. 468.

Overruled in part, Taylor v. Ricards, 4 Eng. R. 378.

KELLY v. HOLDSHIP, 1 Browne, 36.

The party's book must be produced like any other written evidence, as higher evidence.

Denied in 1 Phill. Ev. p. 266, in note 491, p. 700.

KELYNGE, LD., C. J.

"Lord Holt was the learned publisher of Kelynge's Reports." Foster's Cr. L. 204.

John Randolph, in Chase's Trial, 258, said, "Who Sir John Kelynge was, will appear from the 4th volume of Hatsell's Precedents. Upon complaint being made of innovations in the right of trial by jury, a committee was appointed to investigate the conduct of C. J. Kelynge." But R. G. Harper, in p. 267, said he was honorably acquitted, and that his decisions were cited as law by Hale & Hawkins.

KEMP v. FYSON, 3 Dowl. Pr. C. 265.

Overruled in Blundell v. Hanson, 2 M. & W. 343; 5 D. Pr. C. 457.

KENDALL v. STONE, 2 Sand. 269.

Reversed, 1 Selden, 14.

KENNEDY v. GREGORY, 1 Binn. R. 35.

Defendant in an action of slander, might give in evidence, in mitigation of damages, that a third person told him what he related.

Doubted in Coleman v. Southwick, 9 Johns. R. 45.

KENNON v. M'ROBERTS, 4 Wash. R. 96.

That the word "estate" used in the introductory clause alone (in a will) might be transposed to the devising clause, so as to enlarge the interest devised from a life estate, according to the legal import of the words of the devise, to an estate in fee.

Denied in Beall v. Holmes, 6 Har. & J. 224.

KENRICK v. BURGESS, Moore, 126.

"That is not a decision, though the reporter says the *dictum* there was the *dictum* of the whole court." Morgan v. Thomas, 17 Jur. 283; 22 Law J. R. N. S. Ex. 152; 8 Ex. R. 302; 18 Eng. R. 528.

KENRICK v. TAYLOR, 1 Wils. 326.

Ch. J. Lee says—"And for disturbance in a church the plaintiff may recover upon his possession; for," says he, "it is a rule of law, that one in possession need not show any title or consideration for such possession against a wrongdoer."

Qualified in Stocks v. Booth, 1 Term R. 428, 430. Ashhurst, J., says, that "a bare possession can never give a right, because every parishioner has a right to go into the church;" and holding possession to give a sufficient title "would be an encouragement to commit disorders in the church." In Russell v. Stocking, 8 Conn. R. 237, this law was recognized and applied to persons in possession of a fishery in Connecticut. And Williams, J. says—"Whether the property is corporal or incorporal, if it is capable of possession, such possession is a sufficient title against a wrongdoer."

KENRIG v. EGGLESTON, Alleyn, 93.

A box with a great sum of money in it was delivered to a carrier, who was *artfully told* it contained only goods of *mean value*. He was robbed, and held liable. *Quod durum videbatur circumstantibus.*

"Now, I own that I should have thought this a fraud; and I should have agreed in opinion with the *circumstantibus*." Per Ld. Mansfield, in Gibbon v. Paynton, 4 Burr. 2298.

KENSINGTON.

See in the case of The Kensington (ante).

KENSINGTON v. WHITE, 3 Price, 164.

Denied by Leach, V. Ch., in 2 Sim. & Stu. 87. "The report of the case of Kensington v. White, is too loose to afford any principle; and underwriting causes are not to be reasoned upon as furnishing general rules."

2 KENT'S COMMENTARIES, Lect. 39, p. 458.

"The personal incompetency of individuals to contract, as in the case of infancy, and the general capacity of parties to contract, depend upon the law of the domicil."

Denied in Putnam v. Putnam, 8 Pick. 433, *as it seems*, and in 17 Mart. 596; 16 id. 192.

3 KENT'S COMMENTARIES, 346.

The principle of the common law in respect to boundaries on rivers or streams *above tide water*, has been adopted in New York.

Doubted in The Canal Commissioners v. The People, 5 Wend. 422.

3 KENT'S COMMENTARIES, 349.

Denied by Mr. Justice Wilde, in 11 Pick. 213:—"Much, therefore, as we respect the opinion of Chancellor Kent, we cannot agree with him when he adds, that if land is conveyed, bounded by a highway, the soil and freehold to the center of the highway will pass. The law here, and in England, and in New York, and other States, is clearly settled, I apprehend, to the contrary."

KENT v. HARPOOL, 1 Ventr. 306; Sir Thos. Jones, 76, 77; Pollexf. 306. S. C.

Grandfather tenant for life, remainder to father for life, remainder to father's first son in tail, reversion to grandfather in fee. The grandfather died, then a son was born to the father—and whether the descent of the fee to the father destroyed the contingent remainder was the question; and the court seemed to think it did.

Said to be denied, by Reeve, J. But *quære*, and see 2 Saund. 382, c. n.

KENT v. LOWEN, 1 Campb. 177.

Letters of payee admitted to prove usury in the original concoction of a note, in an action by the indorsee against the maker.

Not law in Massachusetts. Churchill v. Suter, 4 Mass. 156. See also the cases under Jordaine v. Lashbrooke (ante).

KERLLY v. JONES, 1 Bing. Rep. 302.

"That case is not only unsupported, but is directly opposed by many others of a later date." Watt's Ex'rs v. Sheppard, 2 Ala. R. N. S. 444.

KERNST v. PETTIS, 14 Eng. L. & E. R. 67.

Overruled, Kernst v. Pettis, 17 Jur. 932; 23 Law J. R. N. S. Q. B. 33; 20 E. L. & E. R. 67.

KESLER v. HAYNES, 6 Wend. 547.

Overruled, Smith v. McFall, 18 Wend. 521; Wilson v. Williams, ib. 581.

KETTLE v. BROMSALL, Willes' R. 118.

S. P. as in Southcote's case (post).
Denied in Foster v. The Essex Bank, 17 Mass. 499 *et seq.*

KEY v. COLLINS, 1 Scammon, 403; Gillet v. Stone, ib. 547; Evans v. Crosier, ib. 548; Shepherd v. Ogden, 2 Scammon, 257; Wakefield v. Goudy, 3 ib. 133; Baldwin v. Edwards, 4 Gilman, 115; Semple v. Anderson, ib. 546.

Overruled in part, Kenny v. Greer, 13 Ill. 432.

KIMBALL v. DAVIS, 19 Wend. 437.

Reversed, Brown v. Kimball, 25 Wend. 259; and see Northup v. Wright, 7 Hill, 493.

KINDER v. SHAW, 2 Mass. R. 398.

This case recognizes and adopts the doctrine of Patterson v. Tash, 2 Str. 1778, which is questioned in Pickering v. Bush, 15 East, 38, and Whitehead v. Tucket, 15 ib. 400.

KIGHTLY v. KIGHTLY, 2 Ves. jun. 328.

Denied in Williams v. Chitty, 3 Ves. 545, and in Sherratt v. Sherratt, 1 Coop. Sel. Ca. 35 (8 Cond. R. 372).

KING, *In re*, 5 Law Rep. 320.

Questioned, Haxtun v. Corse, 2 Barb. Ch. R. 508.

KING (THE) v. ABBOT, 3 Price, 178.

Doubted in The King v. Winstanley, 2 Y. & J. 124; Alexander, Ld. C. B.

KING v. BALDWIN, 17 Johns. 384 (2 Johns. Ch. 554); Paine v. Packard, 13 Johns. 174.

Denied in Warner v. Beardsley, 8 Wend. 198; by the Chancellor, who says, "It also stands in opposition to the decisions of most, if not all of the States in the Union, where the question has arisen." See 17 Johns. 384.

KING v. BECK, 12 Ohio R. 390.

Overruled King v. Beck, 15 Ohio R. 559.

KING (THE) v. THE INHABITANTS OF CLIVEGER, 2 Term R. 263.

On an appeal against an order of removal, the respondents proved a marriage in fact between the paupers; and the appellants called the husband to prove that he had a former wife living; but he denying the fact, they offered to call her for the purpose of proving it; but the court held her to be an incompetent witness, and the rule was founded on policy, which does not permit a wife to be called to give evidence that may *tend to criminate her husband.*

Doubted in Leox v. Bent, 5 Bing. 183, by Best, C. J. & Park, J.; and Abbott, C. J. in 2 B. & Ad. 639, says it is true in respect to a *direct* proceeding. See Broughton v. Harper.

KING v. EDMONDS, 4 B. & A. 470.

Ch. J. Abbott held, that expressions used by a juryman are not a cause of challenge, unless they are to be referred to something of personal ill-will towards the party challenging.

Denied by Woodworth, J., in *Ex parte* Vermilyea, 6 Cow. R. 563–4.

KING (THE) v. ERISWELL, 3 Term R. 707.

On the question whether the deposition of a deceased witness, taken in the absence of the accused, is or is not admissible. The court were divided.

Decided in The State v. Hills, 2 Hill's R. 607; King v. Smith, 1 Holt's R. 614; that the evidence was not admissible.

(See State v. Ferguson, Holt's R. 619).

KING (THE) v. HARDWICK, 11 East, 578.

The admissions of a parishioner, liable to be assessed for taxes, was received, on the ground that the parish was an aggregate corporation, of which he was a member.

Doubted in Osgood v. Manhattan Co., 3 Cowen, 623. And overruled in 3 Day, 493. See 1 Phil. Ev. 395, n. (a).

KING (THE) v. LEWIS.

See McBride v. McBride (post).

KING v. MAYOR, ETC. OF LONDON, 1 Ventr. 351.

That in a question concerning the right of a corporation to tolls, an individual corporator might be received as a witness for the corporation, because the interest was inconsiderable.

Overruled in Burton v. Hind, 5 Term R. 174; Doe v. Tooth, 3 Y. & J. 19. But see Phil. Ev. 48, n. (a), (5th Am. ed.).

KING v. MAWBREY, 6 Term R. 638.

Ld. Kenyon says,—" In one class of offences, indeed, those greater than misdemeanors, *no new trial can be granted at all*; but in misdemeanors there is no authority to show that we cannot grant a new trial, in order that the guilt or innocence of those who may have been convicted, may again be examined into."

Limited in The People v. Comstock, 8 Wend. 549, to cases "where the defendant has been improperly *convicted*, but not where he has been *acquitted*, even in misdemeanors.

KING v. MIDDLEZOY, 2 Term R. 41.

It was a case of settlement, where the respondents had given notice to the appellants to produce an indenture of apprenticeship, by which the pauper was bound to the appellant parish, and which indenture was accordingly produced at the trial of the appeal; the court of K. B. held, that the court below ought not to have required the respondents to prove the execution, but that the indenture should have been admitted *prima facie* as duly executed.

Overruled, it was said, by Ld. Ellenborough, C. J., in Gordon v. Secretan, 8 East, 548. The correct principle is stated by Phillips, 1 vol. p. 450.. Thus: "When a party to a suit in pursuance of a notice, produces an instrument, to which he is a party, and under which he claims a beneficial interest, it will not be necessary that the other party should call an attesting witness to prove the execution; "but (adds Mr. J. Spencer, in Jackson v. Kingsley, 17 Johns. 159) that in other cases, the execution ought to be regularly proved by the party who offers the instrument as part of his evidence in the cause." This is now the settled law upon the subject, with this qualification, that it is immaterial whether the party who calls for the production of the deed be a party or a stranger to it.—ib. See further observations of Mr. J. Washington, 4 Wash. C.C. R. 719.

KING (THE) v. MOUNTSORREL, 3 M. & S. 497; The King v. Great Wigston, 3 B. & C. 484; The King v. Chilles, 4 ib. 94; Lewin 247.

That a child may bind himself without his father's concurrence.

Opposed. Pierce v. Massenburgh, 4 Leigh R. 493.

KING (THE) v. RATCLIFFE, 1 W. Bl. 3, 4, 5; 1 Wils. 150.

The affidavit of a prisoner on account of the absence of a witness, must show merits positively.

Overruled, Cookson v. Simpson, 1 Chit. R. 686, note (a). The late practice in C. B. merely requires the affidavit to state in what respect the evidence is material. Tidd Pr. 708; 16 Mass. 374.

KING v. RENNETT, 2 Term R. 197.

Overruled in The King v. Bonsall, 3 B. & C. 173. See King v. Turner, 1 M. & K. 456. See Right v. Banks, 3 B. & Ad. 664.

KING v. MELLING, Ventr. 230.

"——is very imperfect in Ventris, especially as to the cases said to have been cited by Hale." Per Ld. Hardwicke, 3 Atk. 796.

KING (THE) v. THE SHERIFF OF H., cited in Dealy v. Clark, 1 B. & Ad. 677.

Motion for a prohibition upon the sheriff, &c., from proceeding in two suits in his county court, in cases in which plaintiff as carrier had conveyed goods for defendant to amount of 1*l.* 4*s.*, and in a month after had carried to a similar amount; and the plaintiff brought two actions: *Held*, that this was not within the principle of splitting a cause of action into several portions; for here each is distinct, and one has no connection with the other.

Doubted; for the court has a discretion to *compel* a consolidation of several suits, upon several distinct demands; and when such application is granted, the costs are to be paid by the plaintiff; for the practice is considered oppressive and vexatious. 2 Term R. 639; Com. Dig. Action, 1.

KING v. STOW, 6 Johns. Ch. 323.

Commented on and overruled. Powell v. Tuthill, 3 Coms. 396.

KING v. THORN, 1 D. & E. 489.

Same rule as in Cockerill v. Kynaston (ante).

Denied in Henshall v. Roberts, 5 East, 150.

KING v. TURNER, 2 Simons, 545.

Overruled in S. C. 1 Myl. & Keene, 356 :—*Held*, that the heir may, without admittance, devise copyhold estates descended upon him.

KING v. TWINING, 2 B. & Ald. 386.

Greesboro' v. Underhill, 12 Vt. R. 604, which was decided mainly upon the authority of the case of The King v. Twyning. This latter case has not been followed by the English courts altogether without question. Northfield v. Plymouth, 20 Vt. R. 590.

KING v. WARING, 5 Esp. R. 13.

That plaintiff may give in evidence his general good character in an action of slander, if defendant justifies the speaking.

Overruled in Bamfield v. Massey, 1 Camp. 460; Fowler v. Ætna Ins. Co., 6 Cowen, 673; Shipman v. Burrows, 1 Hall, 399. See Phil, Ev. 489 and 5th Am. ed. 444.

KING v. WATSON, 3 Price, 6.

Denied by Mr. J. Sutherland, in Grover v. Wakeman, 11 Wend. 198. "The case, however, is a very bald one, and is entitled to very little weight as an authority."

KING v. WOBURN, 10 East, 403.

That the rated inhabitants being in reality parties to the proceedings, cannot be compelled to give evidence against their own parish.

By statute (54 Geo. III. ch. 170, s. 9,) parishioners are rendered competent); but it does not appear to be determined, whether, since that statute, parishioners are compelled to give evidence. It has been held, in this country, that the plaintiff on the record cannot be compelled to give evidence. 7 Cowen, 177; 5 Gill & J., 135. See Johnson v. Blackman, 11 Conn. 342, where the action was in the name of the payee of a note against the maker, the payee was held to be competent to testify; the action being brought for the benefit of the assignee. See also 4 Watts, 9; 5 ib. 80.

KING, see Rex (post).

KINGDON, *devisee*, v. NOTTLE, 4 M. & Selw. 53.

Covenant lies by devisee of lands in fee upon a covenant made by defendant to the testator, to whom defendant conveyed the lands in fee, that defendant was lawfully seized, &c., and had a good right to convey, &c.; for such covenant runs with the land, and though broken in the

KINGDON, *devisee*, v. NOTTLE, 4 M. & Selw. 53—continued.

life time of the testator, is a continuing breach in the time of the devisee, and it is sufficient to allege that thereby the lands were of less value to the devisee, and that he is prevented, from selling them so advantageously.

Denied in Mitchell v. Warner, 5 Conn. R. 504.

KINGDON *ex'r* v. NOTTLE, 1 M. & Selw. 355; 4 Maule & S. 53.

Defendant had conveyed to K, the testator, certain property, and covenanted that he was seized of it, and had good right to convey. It was averred as a breach, that he was not seized of the premises; *held*, that the executor could not sue on the covenant, without special damage to the testator, but that the heir might.

Denied in Mitchell v. Warner, 5 Conn. R. 504, *et seq.*—Hosmer, C. J., "The damage is the *consideration paid;* and this is immediate on the delivery of the deed;" and see Davis v. Lyman, 6 Conn. R. 256; Ross v. Turner, 2 Eng. R. 142.

KINGSBURY v. COLLINS, 4 Bing. 202.

The common pleas allowed the right to emblements of teazles.

Doubted in Graves v. Weld, 5 B. & Ad. 105; the right is confined to things yielding present annual profit; and to that year's crop, which is growing when the interest determines; the principle being, the recompense for which cost or labor is to arise, *in the shape of a crop*, is confined to the same year in which there is an outlay of cost or labor.

KINNERSLY v. ORPE, 1 Doug. 517.

Denied in Case v. Reeve, 14 Johns. 82; Spencer, J., and by Ld. Ellenborough in Outram v. Morewood, 3 East, 346, 366.

KINNEY v. WATTS, 14 Wend. 38.

See Tone v. Brace, 11 Paige, 566.

KIRBY v. HANSAKER, Cro. Jac. 315.

Eviction by elder title must be averred and proved in an action of covenant upon general warranty; because if the plaintiff aver that he was evicted by one having a good or a better title, if it is not also alleged that he had an elder title, it might be that he derived it from the plaintiff himself, after the deed.

Limited in Curtis v. Deering, 3 Fairf. R. 501:—"There is no propriety in applying the rule, that there should be proof of elder title, to evictions founded upon the subsequent acts of the covenantor, which cannot be resisted."

KIRBY v. THE STATE, 1 Ohio R. 185.

Doubted, Stoughton v. The State, 22 Ohio R. 563.

KIRKPATRICK v. LOWE, Ambl. 589.

The rule established by this case is almost wholly abandoned, as resting in no sound reason. Adams v. Adams, 21 Vt. R. 69.

KISSAM v. FORREST, 25 Wend. 651.

Reversed, 7 Hill, 463.

KITCHEN v. BLANCHARD, 1 B. & P. 378.

That a defendant cannot demand a bill of particulars, till after he has appeared to the action.

Denied in Derry v. Lloyd, 1 Chit. R. 724; and in Roosevelt v. Gardiner, 2 Cowen, 463.

KITSON v. FLAGG, 1 Str. 60; 10 Mod. 288.

Denied per Ld. Mansfield in Harris v. Ashley, Mich. 30 G. II. B. R.

KLINE v. BEEBEE, 6 Conn. 493; 2 Kent Com. 195; Holmes v. Blagg, 8 Taunt. 35, 39, 40.

Seems to hold that the omission on the part of an infant on coming of age, to disaffirm a contract within a reasonable time, shall be taken as sufficient evidence of ratification.

Opposed, Thompson v. Lay, 4 Pick. 48; Whitney v. Dutch, 14 Mass. 460; Ford v. Phillipps, 1 Pick. 203.

KNAPP v. MALTBY, 13 Wend. 587.

See Texira v. Evans (post).

KNICKERBOCKER v. HARRIS, 1 Paige Ch. 209.

Reversed in 5 Wend. 638.

KNIGHT v. ELLIS, 2 Bro. C. C. 569.

Commented on, *Re* Winch's Trust, 22 Law J. R. N. S. Ch. 750; 17 Jur. 588; 21 Eng. R. 367.

KNIGHTS v. PUTNAM, 3 Pick. 184.

That the indorser could not be a witness to qualify his indorsement by establishing an interest in himself; the indorsement being unqualified.

Denied, it seems, in Adams v. Carver, 6 Greenl. R. 392, 3: *Held*, that such indorser was competent to prove the time of indorsement and facts *prior* not affecting the original validity of the note.

KNICKERBOCKER v. SHIPHERD, 3 Cow. 383.

Overruled in part, Bank of Whitehall v. Weed, 8 Pra. R. 104.

KNIVETON v. LATHAM, Cro. Car. 490.

Berkely, J., *held*, that the giving a discharge of an entire bond, viz.: of the penalty after the payment of principal, interest, and damages, was a devastavit.

Denied in Pennington v. ——, 3 Tyrw. Exch. R. 322.—Bayley, B.: "That is too strong a position."

KNOWLES v. BLAKE, 3 Moore & P. 214, 218 ; 5 Bing. 499, S. C.

The printed report of the facts of that case is exceedingly inaccurate. See 1 Chit. Gen. Pr. 657, n. (a.)

KULEN v. VIGNE, 1 D. & E. 304.

Recognizes the validity of a wager policy; which the courts of Massachusetts do not. Amory v. Gillman, 2 Mass. 1.

KYLES' CASE, 11 Mo. R. 289.

The distinction taken between the notice of loss and other preliminary proofs was not well considered. Phillips v. Protection Ins. Co., 14 Mo. R. 220, 231.

L.

LACAUSSADE v. WHITE, 7 D. & E. 535.

"That whenever money has been paid upon an illegal consideration it may be recovered back."

Denied by Parker, C. J., in Worcester v. Eaton. 11 Mass. 368; Howson v. Hancock, 8 D. & E. 575; Aubert v. Walsh, 3 Taunt. 277; and by Kent, C. J., in Vischer v. Yates, 11 Johns. 31.

LACKER v. HARCOURT, 1 Show. 148; Carth. 126; Holt, 76.

Overruled, Wigley v. Morgan, Ca. temp. Hardw. 285.

LACON v. HIGGINS, 2 Stark. R. 178.

Lord Tenderden admitted a copy of the civil code of France, produced by the French vice-consul, who declared that it was an authentic copy of the law of France, upon which he acted at his office; that it was

LACON v. HIGGINS, 2 Stark. R. 178—continued.

printed at the office for printing the laws of France, and that it would be acted upon in any of the French courts.

Doubted. See Hill v. Packard, 5 Wend. 375; and see Phil. Ev. 586, 5th Am. ed.

LADY CLIFFORD v. EARL OF BURLINGTON, 2 Vern. 379.

Doubted in Evelyn v. Evelyn, 2 P. Wms. 648; but was confirmed, 2 Atk. 352; see Sug. on Powers, p. 131, n. (c.)

LAIDLAW v. ORGAN, 2 Wh. R. 178.

Doubted in Lapish v. Wells, 6 Greenl. 188–9; "That case seems to us to go as far as moral principles will justify, even in cases of that description, depending on public intelligence; and further than the same court seemed willing to go in the case of Elting v. Bank of U. S. 11 Wh. 59."

LAING v. THE UNITED INS. CO., 2 Johns. Cas. 174.

Reversed, 2 Johns. Cas. 487.

LAMBE'S CASE, 2 Leach, 552; Layer's Howell, 215; 2 Russ. on Crimes, 658 n.

Explained in Pressley's case, 6 C. & P. 183, where it was decided, that where the examination has not been signed by the prisoner, it was not receivable in evidence, but it may be used for the purpose of refreshing memory. And where the prisoner has merely put his mark, it must be proved that the examination was correctly read over to him. In Farrant's case, 6 C. & P. 102, where no charge of felony was specified, and it was not stated that the magistrates who signed the examination were acting as magistrates, the examination was rejected as a judicial document; but was allowed to refresh memory. Perhaps this may be considered an authority of some practical importance, that a deposition would, under similar circumstances, be altogether rejected. In Rex v. Reed, Mo. & M. 403, in the case of an irregular examination taken by a coroner, he was allowed to state the examination from memory.

LAMBERT v. OAKES, 1 Ld. Raym. 433; 12 Mod. 244; Lambert v. Pack, 1 Salk. 127, pl. 9.

That in an action on a bill of exchange, it is necessary to prove a demand on the drawer.

This doctrine is exploded, see Bromley v. Frazier, 1 Str. 441; Heylyn v. Adamson, 2 Burr. 669, 678.

LAMBERT v. PACK. See Lambert v. Oakes.

LAMBERT v. PEOPLE, 7 Cowen, 166.

Reversed in 9 Cowen, 578.

LAMPEN v. HATCH, 2 Str. 934.

That a judgment cannot be reversed in part and affirmed in part.

Overruled in Kent v. Kent, 2 Str. 971; see also Waite v. Garland, 7 Mass. 443, and Cutting v. Williams (ante).

LAMPLEY v. THOMAS, 1 Wils. 193.

Overruled, Perry v. Jones, 2 Doug. 213.

LAMPREL v. BILLERICAY UNION, 3 Exch. 283.

Questioned, Clark v. The Guardians of the Cuckfield Union, 11 Eng. R. 443; 16 Jur. 686.

LAND v. HULLS, 5 Esp. 156.

A copy of a notice is not admissible without a notice to produce the original.

Opposed, Ackland v. Pearce, 2 Camp. 601; 7 B. Moore, 112; Colling v. Tweek, 6 B. & C. 394; Smyth v. Hawthorn, 3 Rawle, 358.

LANDIS v. URIE, 10 S. & R. 321.

Overruling the point in Clark v. Hering, 5 Binn. 33, that assumpsit will lie on a promise to pay the money secured by an obligation. Duncan, J., observes:—"I cannot assent to this unless there is a new consideration, as forbearance," &c. See Cro. Car. 343, and Fenner v. Mears (post).

LANE v. HORLOCK, 4 Dow. & L. 408; 16 Law J. R. N. S. Q. B. 87.

Doubted, Lane v. Horlock, 17 Jur. 983; 22 Law J. Rep. N. S. Ch. 985; 21 Eng. R. 168.

LANFEAR v. SUMNER, 17 Mass. 110.

Was a case of the assignment of property at sea; *held*, that an attaching creditor should hold, in preference to the assignee, although he was not guilty of negligence in getting possession of it, after its arrival in port.

Denied in Ingraham v. Wheeler, 6 Conn. 284, and Ricker v. Cross, 5 N. H. R. 573.

LANG v. FATHEREE, 7 Sme. & M. 404.

Explained in Shields v. Taylor, 13 Sme. & M. 127.

LANGFORT v. TYLER, 1 Salk. 113.

That the vendor of goods may resell and elect to consider the contract rescinded, if the vendee do not come and pay for them and take them away in a reasonable time.

Overruled in Greaves v. Ashlin, 3 Camp. 426.

LANGLEY v. WARNER, 1 Sand. 209.

Reversed, 3 Coms. 327.

LANGRIDGE v. LEVY, 2 M. & W. 519; 4 ib. 336.

"The case of Langridge v. Levy, and the case of Comfoote v. Fowkes, 6 M. & W. 358, seem to me wholly irreconcilable so far as any general principle is attempted to be evolved from them. And in my humble judgment I feel compelled to declare that both of those cases seem to be wholly at variance with the general current of the authorities upon that subject since the case of Pasley v. Freeman, 3 T. R. 51." Redfield, J., in Fitzsimmons v. Joslin, 21 Vt. R. 139.

LANGSTON v. HUGHES, 1 Maule & S. 593.

Questioned, Steele v. Curle, 4 Dana Ken. R. 385.

LANSDOWNE v. LANSDOWNE, Mosely's R. 364; 2 Jac. & Walk. 205.

The second of four brothers died seized of land, and the eldest entered upon it; but the youngest having also claimed it, they applied to a schoolmaster, who often acted as attorney, for his opinion; and he, upon consulting his books, gave an opinion in favor of the youngest, on the ground that lands could not *ascend;* upon which the eldest brother, rather than go to law, agreed to divide the estate, and deeds were executed accordingly; but Chancellor King decreed that the deeds should be delivered up and canceled, as having been obtained by mistake, and misrepresentation.

Doubted in 1 Story's Eq. 129, 136, 141, n. (1), and cases cited. But see Lawrence v. Beaubien, 2 Bayl. R. 623.

If the case of Landsdowne v. Landsdowne can be sustained at all, and it has often been doubted, it cannot be on the ground of a mistake of the law, for modern decisions have settled that point. (1 Story Eq. Jur., s. 125). Gilbert v. Gilbert, 9 Barb. 535.

LANSING v. FLEET, 2 Johns. Cas. 13, per Kent, J.; ib. 15 per Bronson, J.; and Spencer, J. in 15 Johns. 259.

That where there has been a voluntary return, there must be notice given by the plaintiff of his election to hold, or the sheriff cannot detain the prisoner.

Denied in Carthane v. Clarke, 5 Leigh R. 288, as not supported by the cases cited.

LANSING v. LANSING, 18 Johns. 503.

Explained and qualified in The People v. The Judges of Erie, 4 Cowen, 445.

LANSING v. M'KILLIP, 3 Cai. R. 286.

The court in Jerome v. Whitney, 7 Johns. 323, say, "Whatever may have been the true import of that decision, the court cannot consistently say, that the acknowledgment of value received is not evidence of consideration in a note, as well as in a deed."

LANSING v. MONTGOMERY, 2 Johns. 383.

An estoppel cannot be taken by inference, but must be relied on in pleading.

Opposed, Adams v. Barnes, 17 Mass. 368, 369; Howard v. Mitchell, 14 Mass. 241.

LANSINGBURG, TRUSTEES OF.

See Plumb v. WHITING (post).

LANUSE v. BARKER, 10 Johns. R. 312.

Reversed in U. S. Court, 3 Wheat. R. 101.

LARGAN v. BOWEN, 1 Sch. & Lef. 296.

"The case of Largan v. Bowen should be carefully examined, because Lord Chancellor Hart has in effect overruled it, though professing to distinguish it from the case before him. [He said it was not an authority by which he should be governed.] (White v. Westmeath, 2 Moll. 131; 1 Beat. 180.)" Waring v. Robinson, 1 Hoff. Ch. R. 530.

LARNED v. BUFFINGTON, 3 Mass. 546.

Denied in Alderman v. French, 1 Pick. 19, as to the dictum of C. J. Parsons, that if defendant had been led into the belief that plaintiff was guilty of the slander imputed, by the misconduct of plaintiff, that might be shown in evidence.

LASALA v. HOLBROOK, 4 Paige, 169.

See Radcliffe v. Mayor of Brooklyn, 4 Coms. 195.

LASCOMBE v. RUSSELL.

See Forman v. Homfray (ante).

LASSEL v. REED, 6 Greenl. R. 222.

Limited in Staples v. Emery, 7 Greenl. R. 202, 204:—"We do not mean to extend the principle of that decision beyond the peculiar facts."

LA TERRIERE v. BULMER, 2 Sim. 18.

"So far as that case goes, I am also inclined to differ from that."—Ld. Brougham, Macpherson v. Macpherson, 16 Jur. 847; 16 Eng. R. 54.

LATHAM v. EDGERTON, 9 Cowen, 227.

Doubted in Van Deusen v. Hayward, 17 Wend. 67.—Bronson.

LATIMORE v. HARSEN, 14 Johns. 330.

Queried, Allen v. Jaquish, 21 Wend. 628.

LATKOW v. EAMER, 2 H. Bl. 437; Glossop v. Poole, 3 M. & S. 175.

That inquisitions, which are extrajudicial, are not admissible in evidence.

Doubted. The practice in New York is for the sheriff having doubt as to the property, to call a jury, and inquire as to the title; and, although the finding of the jury is not conclusive upon the question of property, yet it will justify a return of *nulla bona.* See Phil. Ev. 585 (547), 5th Am. ed., n. (a).

LATOUCHE v. DUNSANY, 1 Scho. & Lef. 137.

The dictum of Ld. Redesdale had a great influence; but the reasoning of the chief baron in Darcy v. Chambers, in opposition to it, appears to be both ingenious and sound. Brown v. Blake, 1 Moll. Ch. R. 386.

LAW v. HODGSON, 2 Camp. 147.

Distinction. In Foster v. Taylor, 4 Nev. & Man. 255—Littledale—"It is necessary, however, to notice one point arising out of this act of parliament, that the penalty is given in the clause which directs the thing to be done, subject to a penalty, and not absolutely; and in Law v. Hodgson, the case most frequently referred to of late on these subjects, Lord Ellenborough notices that the penalty is given in a separate clause."—But he adds, "In many of the cases which have occurred, the penalty is given in the same clause."

LAW v. IBBOTSON, 5 Burr. 2722.

Overruled in Williamston v. Allot, Cowp. 429 ; 5 Burr. 2725,S. C., and Wynn v. Smithies, 6 Taunt. 198.

LAW v. WILKIN, 6 Adol. & El. 718; 1 N. & P. 697; W. W. & D. 235.

Conceded that it cannot be supported to its full extent. See Shelton v. Shimgett, 20 E. L. & E. R. 282; 11 Com. B. R. 452, and doubted Mortimer v. Wright, 6 M. & W. 485.

LAWLESS v. SHOW, 5 Clark & Fin. 129.

In this case one lord chancellor reversed the decision of another; cited Pennock's Estate, 8 Harris, 279; 20 Penn. State R.

LAWLEY v. HOOPER, 3 Atk. 278.

Not accurately stated in Atkyns. See M'Ghee v. Morgan, 2 Scho. & Lef. 395 note.

LAWRENCE v. BEAUBIEN, 2 Bail. R. 623.

Where a distinction was taken between *ignorance* and *mistake* of the law; and *held*, that in the latter case only might relief be granted.

Denied in Chaplin v. Laytin, 18 Wend. 407.—Bronson, J.:—"I think the distinction rests on no solid foundation. See Haven v. Foster, 9 Conn. 96, and Hunt v. Rousmaniere, 1 Peters, 1.

LAWRENCE v. BOWNE.

See Crygier v. Long (ante).

LAWRENCE v. MILLER, 1 Sand. 516.

Reversed, 2 Coms. 245.

LAWRENCE v. OBEE, 3 Camp. 514.

Where an action is brought for a nuisance, and it appears that the nuisance is not felt by the plaintiff until he opens a window through which the offensive smell enters, Lord Ellenborough says, "That the plaintiff having brought the nuisance upon himself by opening the window, had no right of action."

Denied in Gale and Whatley's Tr. on Easements, p. 279.

LAWRENCE v. TRUSTEES OF LEAKE & WATTS ORPHAN HOUSE, 2 Denio, 582.

"I am aware that Assistant Vice-Chancellor Hoffman in the case of Lawrence v. Trustees of Leake & Watts Orphan House, came to a dif-

LAWRENCE v. TRUSTEES, etc.—continued.

ferent conclusion as to the construction of this 52d section of the statute. But it seems to me that the statute is not well considered by him, and that this construction is a forced construction, and without any sufficient reasons to support it." Mason, J. in Calkins v. Calkins, 3 Barb. 311.

LAWRENSON v. BUTLER, 1 Scho. & Lef. 13.

It is not a sufficient memorandum within the statute if signed by the purchaser at auction alone, for want of mutuality.

Overruled in Laythoarp v. Bryant, 2 Bing. N. C. 736, *and cases cited.*

Questioned, see Shirley v. Shirley, 7 Blackf. 454.

LAWSON v. COPELAND, 2 Bro. C. C. 156.

That case would not stand now. It has long been repudiated. Travers v. Townsend, 1 Moll. Ch. R. 498.

LAWSON v. LAWSON, 1 P. Wms. 441.

—— as to donatio mortis causa. See Tate v. Hilbert, 2 Ves. jr. 120; where this is contradicted by reference to the register's book.

LAWSON v. WESTON, 4 Esp. R. 56.

Overruled in Gill v. Cubitt, 3 B. & C. 466. But see the observations upon the principle of this decision in Crook v. Jadis, 5 B. & Ad. 909. See Gill v. Cubitt (ante).

LAXTON v. PEAT, 2 Camp. 445.

The drawer was considered the principal debtor, and the acceptor as a surety.

Overruled in Fentum v. Pocock, 1 Marsh. 16; 5 Taunt. 192; Yallop v. Ebers, 1 B. & Adol. 703; see Murray v. Judah, 6 Cowen, 492; Bank of St. Mary's v. Mumford, 6 Cobb. Geo. R. 73; Manley v. Boycott, 22 Law J. R. N. S. Q. B. 265; 1 Com. Law R. 273; 18 E. L. & E. R. 356.

LEAME v. BRAY, 3 East, 593.

That if the defendant be the immediate cause of the injury, whether willfully or not, trespass, and not case, is the proper remedy.

The correctness of this decision has been doubted in two subsequent cases in C. B.: Rogers v. Imbleton, 2 New Rep. 117, and Haggett v. Montgomery, ib. 446. But in Covil v. Laming, 1 Camp. 497, Ld. Ellen-

LEAME v. BRAY, 3 East, 593—continued.

borough adhered to the doctrine of Leame v. Bray; see also Barnes v. Hurd, 11 Mass. 57.

"Has been often doubted, and seems to me to have been decided rather too much upon the ground quoted from Slater v. Baker (2 Wils. 362) to be regarded as much authority for other cases. * * * It will be found that the case of Leame v. Bray has not been much regarded in England, if we except one or two *nisi prius* cases decided soon after by Lord Ellenborough, who doubtless considered himself so far the author of the decision in Leame v. Bray that he was unwilling to act the part of an unnatural parent by abandoning it to its fate without an effort to sustain it. Covell v. Laming, 1 Camp. 497; Lotan v. Cross, 2 Camp. 465. With these exceptions, I do not find that any English court or judge has undertaken much to vindicate the case of Leame v. Bray, or to rescue it from that oblivious disregard into which it has been constantly falling in that country." Per Redfield, J., in Claflin v. Wilcox, 18 Vt. R. 610.

LEARMAN v. CASTELL, 1 Esp. R. 270.

That a master is liable on an implied assumpsit to pay for medical attendance on his servant.

Opposed, Newbury v. Willshire, 2 Esp. 739; Wennall v. Adney, 3 B. & P. 247; Clark v. Waterman, 7 Verm. R. 76.

LEAPER v. TATTON, 16 East, 420.

"*He had* been liable, but *was not then*, because it was out of date." *Held* sufficient to take the debt out of the statute.

Overruled in Rowcroft v. Lomas, 4 M. & S. 458; Clemenston v. Williams, 8 Cranch, 74; Danforth v. Culver, 11 Johns. 146; Murray v. Tilby, 5 Binn. R. 576; Perley v. Little, 3 Greenl. R. 101. Mellen, C. J.; Sands v. Gelston, 15 Johns. 511.

LEAVITT v. BLATCHFORD, 5 Barb. 9.

Reversed, Leavitt v. Palmer, 3 Coms. 19.

LEAVITT v. LAUNAY, 4 Sand. Ch. 281.

Reversed, 4 Coms. 363.

LEAVITT v. PUTNAM, 1 Sand. 199.

Reversed, 3 Coms. 494.

LEAVITT v. WOODS, 10 Wend. 558.

Overruled, Hecox v. Ellis, 19 Wend. 157.

LE BRET v. PAPILLON, 4 East, 502, 509.

The like point as in Charnley v. Winstanley (ante).

LECHMERE v. LORD CARLISLE, 3 P. Wms. 215.

Denied in Pentland v. Stokes, 2 Ball & Beat. 74:—"And the opinion of Sir Joseph Jekyll, in Lechmere v. Lord Carlisle: 'That the forbearance of trustees in not doing what it was their office to have done, shall in no sort prejudice the *cestui que trusts*,' if it could apply, has been often denied, and it is contrary to many decisions."

LECHMERE v. THOROWGOOD, 2 Jac. 2; 2 Vent. 159; 4 Jac. 2; 3 Mod. 236; Comb. 123; 1 Show. 12.

In an action of trespass, by assignees of a bankrupt against a sheriff, who had seized goods under a *fi. fa.*, after a secret act of bankruptcy, the sheriff could not be made a trespasser by relation.

Denied in Giles v. Glover, 6 Bligh's Pr. R. 302. Patteson, J.: As to what Comb. makes Ld. Holt to say,—"The property in goods is vested by the delivery of the *fi. fa.* * * * is best reported in 1 Show. 12; and this report * * * is the only clear statement of it, in any of the reports." 1 Burr. 35. See Garland v. Carlisle, 3 Tyrwh. R. 725, 735.

LEE v. LIBB, Carthew.

Overruled in Simeon v. Simeon, 4 Sim. 555; Sugd. on Pow. 302, n. (1).

LEE v. HUSON, Peake's Ca. 166.

Ld. Kenyon decided in favor of the admissibility of publications, or of words spoken, subsequent to those for which the action is brought.

Overruled in Mix v. Woodward, 12 Conn. 262, 292, where Bissell, J., in delivering his judgment, in which the whole court concurred, observes: "In regard to the admissibility of publications, or of words spoken, subsequently to those for which the action is brought, the authorities both in Great Britain and in the neighboring States, are far from being uniform. Indeed, they cannot be reconciled. In the case of Charlter v. Barrett, Peake's Ca. 22, Ld. Kenyon admitted the evidence. In Mead v. Daubigney, ib. 125, he rejected it; and again, he received it in Lee v. Huson, ib. 166. In Rustell v. Macquister, 1 Camp. 49, in note, Lord Ellenborough admitted the evidence; and rejected it, in Stuart v. Lovell, 2 Stark. Ca. 93. In Finnerty v. Tipper, 2 Camp. 72, Mansfield, C. J. rejected the testimony. In giving the opinion of the court in Bodwell v. Swan, 3 Pick. 376. Parker, C. J. remarks: "According to Mansfield,

LEE v. HUSON, Peake's Ca. 166—continued.

C. J. a repetition of the same words, or the same libel, may be proved, to show that the first was not heedless, but malicious; and we think, that so far we may go; but we cannot agree, that if a man sue another for calling him a thief, he may prove that, at another time afterwards, he called him a murderer."

In Mix v. Woodward, *supra*, the court held, that neither any subsequent publications, nor subsequent words, not referring to the libel, or to the slander on trial, can be admitted in evidence.

LEE v. MUGGERIDGE, 5 Taunt. 47.

Questioned, if not overruled, Mills v. Wyman, 3 Pick. 207; and see note to 1 Parsons on Contracts, 359.

LEGGETT v. POSTLEY, 2 Paige, 601.

The head note to the case of Leggett v. Postley, is not warranted by the opinion of the court, March v. Davison, 9 Paige, 583.

LEE v. RISDON, 7 Taunt. 191; 2 Marsh. 495, S. C.

Fixtures while affixed to the freehold, cannot be considered as goods and chattels in an action for the price.

In Pitt v. Shew, 4 B. & Ald. 206, they were held to fall under the description of "goods, chattels, and effects," in an action of trespass. See Hallen v. Runder, 3 Tyr. 966, Parke, B., said, "We cannot consider that previous authority overruled, because in the latter case it is probable that the articles taken had been severed from the freehold before the sale by the defendant; though Ld. Ch. J. Abbott certainly does not mention that circumstance as the ground of decision." In Hallen v. Runder, where a short time before the expiration of a lease of a house, the landlord agreed to purchase the tenant's fixtures at a valuation. The lease expired, and the tenant having quitted possession of the premises without severing the fixtures, sent the key to the landlord. The broker appointed by the latter afterwards appraised the fixtures at more than £10, and signed the valuation. Held that the plaintiff having at the defendant's request waived his right to remove the fixtures, the matter bargained for was not an interest in land, and the plaintiff was entitled to recover them in assumpsit, without proving a note, &c., in writing. See Twigg v. Potts, 3 Tyrw. R. 969; Boydell v. M'Michael, 3 Tyrw. R. 974, 976, n. (a).

LEE v. COLESHILL, Cro. Eliz. 529.

See S. C. 2 Anderson, *nom.* Smyth v. Cotshill.

Doubted in No. 20 (Oct. 1833) Amer. Jurist, p. 242. See Norton v. Simmes (post).

LEECH v. COLE, Cro. Eliz. 670.

Overruled, Page v. Hayward, Pigot on Recov. 176; Martin v. Strahan, Willes, 444; Doe v. Nelson, 2 Taunt. 60.

LEER v. YATES, 3 Taunt. 387.

S. P., Holt's R. 36 n.

A general ship took brandies on board, under bills of lading, which allowed twenty days for delivery of the goods in London, and stipulated for £4 per day demurrage afterwards. Certain of the consignees choosing to have their goods bonded, the vessel could not make her delivery at the London docks until forty-six days after the twenty days; some of the goods which were undermost, could not, though demanded, be taken out till the upper tiers were cleared: *Held*, that the consignee was liable, on a general count in assumpsit for demurrage, to pay the £4 per day for the forty-six days.

Overruled in Rogers v. Hunter, Ry. & M. 61; 2 C. & P. 601, S. C.—Tenterden. Dobson v. Droop, 4 C. & P. 112; M. & M. 441.—Tenterden.

LEES v. SUMMERSGILL, 17 Ves. 508.

That the 25 Geo. II. c. 6, extended to all wills, and therefore, that a legacy given by a will of mere personality to a person who was a subscribing witness, was void.

Overruled in Emanuel v. Constable, 3 Russ. R. 436.

LEFTLY v. MILLS, 4 Term R. 170.

Limited in Greeley v. Thurston, 4 Greenl. 481; the court "adopt the views of Mr. J. Buller; and it is our opinion that bills of exchange and negotiable notes, should be paid on demand, if made at a reasonable hour, on the day they fall due; and if not then paid, that the acceptor or maker may be sued on that day, and the indorser and drawer also, after notice given, or duly forwarded."—"But notes of hand and bills of exchange, like other instruments, are not suable until the day of maturity be passed, unless *demanded on that day.*" See also to the same effect, 1 Pick. 401, and 3 Pick. 414.

LEGACIES.

Cases in chronological order where legacies by different instruments have been held *cumulative*:—

Wallop v. Hewitt, 2 Ch. R. 37; Windham v. Windham, Finch, 267; Newport v. Kynaston, ib. 295; Cliffe v. Gibbons, 2 Ld. Raym. 1324; Pitt v. Pidgeon, Chan. Cas. 301; Masters v. Masters, 1 P. Wms. 423;

LEGACIES—continued.

Foy v. Foy, 1 Cox, 163; Wright v. Englefield, Amb. 468; Hooley v. Hutton, 1 Bro. C. C. 398 n.; 2 Dickson, 461; Redges v. Morrison, 1 Bro. C. C. 389; Curry v. Pile, 2 Bro. C. C. 225; Baille v. Butterfield, 1 Cox, 392; Hodges v. Peacock, 3 Ves. jun. 735; Benyon v. Benyon, 17 Ves. 34.

LEGACIES.

Cases in chronological order where legacies by different instruments have been held *not cumulative*:—

St. Alban's (Duke) v. Beauclerk, 2 Atk. 636; Greenwood v. Greenwood, 1 Bro. C. C. 30 n.; Garth v. Meyrick, ib.; Campbell v. Radnor (Earl), ib. 271; Cooke v. Boyd, 2 Bro. C. 521; Jackson v. Jackson, 1 P. Wms. 423 n.; 2 Cox, 35; Maggridge v. Thackwell, 3 Bro. C. C. 517; James v. Semmens, 2 H. Black. 213; Allen v. Callow, 3 Ves. jun. 289; Barclay v. Wainwright, ib. 466; Holford v. Wood, 4 ib. 76; Osborne v. Leeds (Duke), 5 ib. 369; Benyon v. Benyon, 17 ib. 34; Currie v. Pile, ib. 46; Att. Gen. v. Harley, 4 Madd. 263; Hurst v. Beech, 5 ib. 351; Gillespie v. Alexander, 1 Sim. & Stu. 145.

LEGGETT v. RAYMOND, 6 Hill, 639.

Overruled, Brown v. Curtis, 2 Coms. 225; and see Hough v. Gray (ante).

LEGH v. LEGH, 1 B. & P. 447.

S. P. as in Andrews v. Beecker (ante).

LEICESTER (LORD) v. WALTER, 2 Camp. R. 251.

In action of defamation, defendant was permitted to show in mitigation of damages, that before and at the time of the publication of the supposed libel, the plaintiff was generally suspected of the crime imputed to him.

Overruled in Jones v. Stevens, 11 Price, 235. See 2 Phil. Ev. p. 250; Mapes v. Weeks, 4 Wend. 659; Bodwell v. Swan, 3 Pick. 378; Smith v. Buckecker, 4 Rawle, 296.

LEIGH v. BRACE, Carth. 343; 1 Ld. Raym. 101; Holt, 668.

That conveyances by way of use, should be construed as wills, &c.

This case as reported by Carthew, is said to be "contrary to reason and common experience." Per Willes, C. J. in Tapner v. Merlock, Willes, 180.

LEIGH v. BRACE, Carth. 343; etc.—continued.

It is better reported, 5 Mod. 266.

Misreported in Ld. Raymond's Reports; Hampson v. Brandwood, 1 Maddock Ch. Rep. 381.

LEMAYNE v. STANLEY, 3 Lev. 1.

That sealing a will was sufficient signing, within the statute of frauds.

Denied in 1 Wils. 313, and per Willes, C. J. in 1 Ves. jr. 13.

It was said in England that this case was an evasion of the statute, and opened a door for the perpetration of frauds, and was so nonsensical that it ought not to be followed; but it was followed in England and America. Adams v. Field, 21 Vt. R. 265.

LENOX v. GIBBES, 1 Dess. 305.

Doubted. Croft v. Adm'r of Townsend, 3 Dess. 234; see 1 Barb. Eq. Dig. 289.

LENOX v. LEVERETT, 10 Mass. 1.

Held, that notice to the indorser of a foreign bill need not be accompanied by the protest.

Opposed, Blakely v. Grant, 6 Mass. 386; Poth. pl. 148; Robins v. Gibson, 1 M. & S. 288.

LENOX v. ROBERTS, 2 Wheat. R. 373.

Held, that notice of non-payment of a bill or note must be sent by the *mail which goes on the day succeeding the demand.*

Overruled in Geill v. Jeremy, 1 Mo. & M. 61, and Bank of Alexandria v. Swann, 9 Pet. 33. The rule, therefore, is satisfied, if there be no post on the following day; the next post after the day of the demand; or, it seems the next post which goes after notice put into the post office on the next day, at *any time of the day.* See Firth v. Thrush, 8 B. & C. 287.

LENOX v. THE UNITED INS. CO., 3 Johns. Cas. 178.

That a foreign adjustment of an average loss is not conclusive.

Overruled in Strong v. N. Y. Fire Ins. Co., 11 Johns. R. 323; Lewis v. Williams, 1 Hall, 430; 5 Cowen, 63.

The court, in these cases, do not, it is true, in terms overrule the decision in Lenox v. The United Ins. Co.; but they do not give it their sanction. The only notice taken of it by the learned and able judge who gave the opinion of the court, is, that the decision there was against the recovery of the general average, on the ground that the jettison could not by our law be brought into an average loss, but that the effect of the adjustment, if the jettison had, according to the laws of this country,

LENOX v. UNITED INS. CO., 3 Johns. Cas. 178—continued.

been a proper item in making it up, is not determined. This was indeed a nice shade of difference. In the case in which the decision was reviewed, the adjustment was not conformable to that judicially established in this State for the adjustment of average contributions. And it is difficult to perceive a reason for distinguishing between a foreign adjustment which deviates from our laws, in the estimate of the subjects properly made contributory, and one which includes indemnities for subjects that our laws would reject. Each operates to impose charges upon the parties, to which they would not be liable on an adjustment of the average in this country; and the principles on which the court place the last decision, equally require that the foreign adjustment should in both cases be conclusive. But the modern cases of Newman v. Caralet, and Walpole v. Ewer, to which the judge refers as upholding his principle, were upon foreign adjustments, which embraced subjects excluded by the English rules. In the first case, which was an adjustment by the Consular Court of Pisa, several items were charged, which according to the English usage, would not be allowed. And in the other case, the holders of a respondentia bond had been compelled to contribute to the average loss; and Lord Kenyon held the underwritings bound for the amount of the contribution, notwithstanding that by the laws of England, the lender on respondentia is not liable to average losses. Those cases, so irreconcilable with the distinction between objectionable subjects brought into foreign averages and exceptionable rules for the adjustment of the contributions to legitimate subjects of average loss, are cited by the learned judge as illustrating and confirming his sense of the principle that foreign adjustments, when fairly made, are conclusive; and he understands that to be the rule to which the courts of this State are to conform; we must take the rule, he observes, as we find it, and leave any amelioration of which it may admit to another department of the government. The case also of Depau v. The Ocean Ins. Co., 5 Cowen, 63, fully confirms that construction of the rule.

3 LEONARD, 231, pl. 313.

The words "Thou has forged my hand"—held not actionable.

Overruled in Jones v. Herne, 2 Wils. 87.

4 LEONARD, 9, pl. 39.

That if one had been apprentice seven years at *any* trade mentioned in V. Eliz. c. 4, he may exercise *every* trade named in the statute.

Denied by Ld. Mansfield, Raynard v. Chase, 1 Burr. 2; 2 Wils. 40.

LEONARD'S REPORTS.

"Leonard's Reports were always in high estimation."—Sug. on Pow. 16.

LEONARD v. VREDENBURGH, 8 Johns. 29.

Where the guarantee of the defendant was written on the original note; and contained no other consideration than that expressed in the note, which was for value received. The plaintiff offered parol proof, to show that the making of the note, and the giving of the guaranty, constituted one entire transaction.

The court, in considering the case, say, that there are three classes of cases on this subject; one of which is, where "the guaranty is collateral, but is made at the same time with the principal contract, and is an essential ground of the credit given to the principal debtor." In such a case, there need not be any other consideration than that moving between the creditor and the original debtor; and it was expressly held, that the consideration imputed by the words "value received," contained in the note, applied to the guaranty, the whole being one entire contract. It was also expressly held, that "if there was no consideration other than the original transaction, the plaintiff ought to have been permitted to show that fact by parol proof." And it was likewise *held*, that "if there was any doubt upon the face of the paper, whether the note and the guaranty were concurrent acts, and one and the same transaction, parol proof was admissible to show that fact."

The case of Leonard v. Vredenburgh is a leading one on the subject, and has always given the rule, in this State, for the decision of like cases; (Bailey v. Freeman, 11 Johns. 221), and the doctrine of it has been considered, by the Supreme Court of the United States (D'Wolf v. Raubaud, 1 Peters, 501), as reasonable, and founded in good sense. See Wheelwright v. Moore, 1 Hall, 200.

Commented on and disapproved, Brewster v. Silence, 4 Selden, 207.

LEQUEER v. PROSSER, 1 Hill, 256.

Commented on and disapproved, Brewster v. Silence, 4 Selden, 207.

LESSEE OF PATRICK v. VOSTEROUT, 1 Ohio Rep. 27.

Overruled in the case of Lessee of Allen v. Parish, 3 Ohio R. 187, as to all purchasers not parties to the judgment. The law under which these decisions were made was afterwards amended. See Lessee of State v. M'Callister, 9 Ohio R. 79, and note 1 Ohio R. 32.

LESTER v. GARLAND, 15 Ves. 248.

As to the computation of time; no general rule is necessary: cases would occur, the reason of which would require exceptions to be made.

Explained in *Ex parte* Dean, 2 Cowen, 605, and note; and Jackson, J., in 15 Mass. 193, and in 4 N. H. R. 276, *et seq.*

LESTER v. GRAHAM, 1 Const. R. 182.

S. P. as in Timrod v. Shoolbred (post).

LESTER v. JEWETT, 12 Barb. 502.

Reversed, 1 Kernan, 453.

LETCHER v. THE BANK OF THE COMMONWEALTH, 3 J. J. Marsh. R. 195.

Error in the Report corrected in S. C., 1 Dana, 82.

LETHULIER v. TRACY.

The reporters, 1 Barn. & Ald. 742, say, "It appears probable that Fearne, and some other writers who have discussed it, have been misled, by the inaccuracy and want of perspicuity in both Atkyns' & Ambler's reports of it, into an important mistake."

LEVERICK v. MEIGS, 1 Cowen, 645.

S. P. as in Grove v. Dubois (ante).

LEVINZ'S REPORTS.

"Levinz, though a good lawyer, is sometimes a very careless reporter." Said by Ld. Hardwicke.

LEVY v. LEVY, 6 Car. & P. 671.

"Was much relied on to show that an agreement of several not to bid at an auction, was an indictable offense; but this was a mere dictum in a *nisi prius* case, and cannot, we think, be relied upon." Doolubdass v. Ramloll, 15 Jur. 257; 3 Eng. R. 47.

LEVY v. LYSCHINSKI, 3 Eng. Ark. R. 113.

Overruled in Carnall v. Crawford Co., 6 Eng. Ark. R. 604.

LEVY v. WILSON, 5 Esp. R. 180.

Declaration alleging his proper hand being thereunto subscribed, proof of the handwriting of the party indispensable.

Overruled in Booth v. Grove, 1 M. & M. 182; Jones v. Turnour, 4 C. & P. 204.

LEWARD v. BASELY, 1 Ld. Raym. 62; 1 Salk. 407.

The master cannot justify an assault in defence of his servant, because the master may have an action *per quod servitium amisit.*

Doubted. See 2 Kent Com. 261, and n. (b.)

LEWIS v. ENGLAND, 4 Bin. 5.

This case contradicts M'Laughlin v. Scot, 1 Bin. 61, where it is held that an award of costs by *referees* is good, though the principal sum reported by the referees as debt, if found by the *jury*, would be within the statute which forbids the allowance of costs.

But the principle of M'Laughlin v. Scot is the law of Massachusetts. See Nelson v. Andrews, 2 Mass. 164.

LEWIS v. GOMPERTZ. See Balbi v. Batley (ante).

LEWIS v. HANCOCK, 11 Mass. 72; Packet, 3 Mason R. 255; S. P. 7 Cowen, 670.

Held, that the master of a vessel had a lien on the freight for his own wages as well as for advances, and that the owner had no right to receive the freight money from the shipper until the master's wages were paid.

Denied in Van Bokelin v. Ingersoll, 5 Wend. 315, overruling the decision of the Supreme Court.

LEWIS v. LEE, 3 B. & C. 291.

That coverture is a good plea, notwithstanding a divorce a *mensa et thoro.*

Denied in Dean v. Richmond, 5 Pick. 467, as applicable to Massachusetts.

LEWIS v. PIERCY, 1 H. Bl. c. 29 n.

Overruled in *Ex parte* Charles, 14 East, 197, and Walker v. Barnes, 5 Taunt. 778.

LEWIS v. SMITH, 2 S. & R. 142.

Denied in Thompson v. Phillips, 1 Baldw. R. 276, and n. (a), and *cases cited.*

LEWIS' CASE, 2 C. & P. 628.

A cellar window which was boarded up, had in it an aperture to let light into the cellar, and through this one of the prisoners thrust his head, and by the aid of the others thus entered the house; *held*, that it was not burglary.

Opposed, Commonwealth v. Stephenson, 8 Pick. 354: "The offense

LEWIS' CASE, 2 C. & P. 628—continued.

consists in violating the common security of a dwelling-house in the night time, for the purpose of committing a felony; shutting the window blinds and leaving the windows open for air, is a common mode of closing a house in the warm season; if the blinds are forced, it is a breaking." So, lowering himself in chimney. Brice's case, Russ. & Ry. 450.

LEYFORD'S CASE, 10 Coke, 94, 5.

That the want of profert of a specialty is cause of general demurrer. Denied in 2 J. J. Marsh. R. 271.

LEYLAND v. TANCRED, 19 Law J. R. N. S. Q. B. 313; 3 Eng. R. 479.

Overruled, Schreger v. Carden, 21 Law J. Rep. N. S. C. P. 150; 10 Eng. R. 516.

LIBER v. PARSONS, 1 Bay's R. 19.

The value of lands at the time of *eviction*, is the true rule of estimating damages.

Overruled in Furman v. Elmore, 2 N. & M'Cord, 189; Henning v. Withers, 2 Const. R. 584; Ware v. Weathnall, 2 M'Cord, 413.

LICKBARROW v. MASON, 2 Term R. 63.

Though the consignee named in the bill of lading should become insolvent, without having paid for the goods, yet his assignment made for a valuable consideration, and without notice to the assignee, that the goods were not paid for, or that they were paid for by bills sure to be dishonored, has been held to pass them absolutely to his assignee, and deprived the consignor of his right to stop *in transitu*, which as against the original consignee, he might have exercised.

Reversed in Error. 1 H. Bl. 357; and error brought on the reversal in *Dom. Proc.* and the cause directed to be tried anew, which it was, and adjudged as at first, 5 Term R. 683, which judgment was acquiesced in. See Newson v. Thornton, 6 East, 17; Solomons v. Nissen, 2 Term R. 674; Dick v. Lumsden, Peake N. P. C. 190; Haille v. Smith, 1 B. & P. 563, and see stat. G. IV., c. 94; 9 East, 506.

See Smith's Lead. Cases, 433.

LICKBARROW v. MASON, 2 Term R. 63; 1 H. Bl. 357; and 6 East, 21.

The unpaid vendor may, in case of the vendee's insolvency, stop the goods sold, *in transitu*.

Limited in Siffken v. Wray, 6 East, 376, where it was *held*, that the

LICKBARROW v. MASON, 2 Term R. 63; etc.—continued.

person who stops *in transitu*, must be a consignor; a mere surety for the price has no right to do so. But a commission merchant residing abroad, who purchases goods for a correspondent in England, whom he charges with a commission on the price, but whose name is unknown to those from whom he makes the purchases, may stop the goods *in transitu* if his correspondent fail while they are on their passage. Feise v. Wray, 1 East, 93; see Newson v. Thornton, 6 ib. 17.

The goods are *in transitu* so long as they are in the hands of the carrier as such, and so long as they remain in any place of deposit connected with their transmission. If after their arrival, however, at their place of destination, they be warehoused with the carrier, whose store the vendee uses as his own, or even if they be warehoused with the vendor himself, and rent be paid to him for them, that puts an end to the right to stop *in transitu*. See Nicholls v. Lefevre, 2 Bing. N. C. 83; James v. Griffin, 1 M. & Wels. 20; Coates v. Railton, 6 B. & C. 422; Foster v. Frampton, ib. 109; Allen v. Gripper, 2 Tyrwh. 217.

Whether *stoppage in transitu* rescinds the contract of sale altogether, or only puts the vendor in possession of a lien on the goods defeasible on payment of the price agreed on, is still undetermined. See Clay v. Harrison, 10 B. & C. 99; Stephens v. Wilkinson, 3 B. & Ad. 323; see Wiseman v. Vanderput (post).

LIFFORD'S CASE, 12 Jac. 1.

Overruled in Green v. Biddle, 8 Wheat. 75:—"The doctrine laid down in Lifford's case that the disseisee can maintain trespass only against the disseisor for the rents and profits, is, with great reason overruled in the case of Holcomb v. Rawlins, Cro. Eliz. 540. In Bacon v. Sheppard, 6 Hals. 199, Ewing, C. J., says, 'that Holcomb v. Rawlins was decided in the time of Elizabeth, and Lifford's case in the subsequent reign of James the First.'"

LIGGINS v. INGE, 7 Bing. 692.—Tindal.

"Water flowing in a stream, it is well settled by the law of England, is *publici juris*. By the Roman law, running water, light, and air, were considered as some of those things which were *res communes*, and which were defined, things the property of which belongs to no person, but the use to all. And by the law of England, the person who first appropriates any part of this *water flowing through his land* to his own use, has the right to the use of so much as he then appropriates, against *any other*."

Overruled or explained in Mason v. Hill, 5 B. & Ad. 1; 3 ib. 804, by

LIGGINS v. INGE, 7 Bing. 692—continued.

Denman, C. J., who said, "that the first occupant (though he may be the proprietor of the land above) has (no) right, by diverting the stream, to deprive the owner of the land below, of the special benefit and advantage of the natural flow of water therein." See also Bridges v. Purcell, 1 Dev. & B. 492.—Gaston. See also Gale & Whatley on Easements, 150.

LIGHT AND AIR.

The common law of England on the subject of light and air as an easement, is not the law of America. 10 Barb. 537.

LIGHTFOOT v. TENANT, 1 Bos. & Pul. 351.

Questioned, Steele v. Curle, 4 Dana Ken. R. 385.

LILLY'S REPORTS.

"A book of no great authority." Per Willes, C. J. See Willes, 29.

LINCOLN v. HAPGOOD, 11 Mass. 350.

Contra, Jenkins v. Waldron, 11 Johns. 114; Wheeler v. Patterson, 1 N. Hamp. R. 88; Carter v. Harrison, 5 Blackf. 138.

LINGAN v. CARROLL, 3 Harr. & M'Hen. R. 333.

Doubted. See Green et al. v. Dennis (ante).

LIONEL WALDEN v. MITCHELL, 2 Ventr. 265.

"That where a man had been in an office of trust, to say that he behaved corruptly in it, as it imported great scandal, so it might prevent his coming into that or the like office again, and therefore was actionable."

Denied by Ch. J. De Grey in Onslow v. Horne, 3 Wils. 188 (and Sutherland, J., 7 Wend. 208.)

"I know of no case where an action for words was ever grounded upon eventual damages which may possibly happen to a man in a future situation notwithstanding what the justice throws out in 2 Ventr. 266. I think the Ch. J. went too far."

LISLE v. GREY, Sir Tho. Jones, 114.

Sir Tho. Jones says, that judgment in this case was for the defendant; but that it is entirely a mistake. See 2 Atk. 574.

LITTLE v. GREENLEAF, 7 Mass. 239.

Seems to countenance the position, that case and not trespass is the proper action to bring against assessors for wrongfully assessing the plaintiff, whereby he has been compelled to pay a larger tax than his legal proportion.

Denied in Walker v. Cochran et al., 8 N. H. R. 166, where it was held that case or trespass lies at the election of the person injured.

LITTLE v. WESTON, 1 Mass. 156.

Note written "I promise," and signed by two; and held to be joint, and not joint and several.

Overruled in Hunt v. Adams, 5 Mass. 538.

LITTLEFIELD v. STOREY, 3 Johns. R. 421.

S. P. as in Andrews v. Beecker (ante).

LITTLER v. HOLLAND, 3 Term R. 591.

S. P. as in Cuff v. Penn (ante).

LITTLETON.

The principle advanced by Littleton and Coke, that a man shall not be heard to stultify himself, has been properly exploded, as being manifestly absurd, and against natural justice. Taylor v. Dudley, 5 Dana Ken. R. 310.

LITTLEWOOD v. SMITH, 1 Ld. Raym. 182.

Dictum of Treby, C. J.; and cited by Holroyd, J. in Mayfield v. Wadsley, 5 D. & R. 224; 3 B. & C. —

The sale of timber or growing underwood need not be in writing, because it is but a bare chattel.

Overruled in Scorell v. Boxall, 1 Y. & J. 396.

LIVINGSTON v. HEDGES, 1 Hill, 648.

See Farmers' Loan and Trust Co. v. Kursch, 1 Selden, 558.

LIVINGSTON v. LYNCH, 4 Johns. Ch. 573.

Overruled, Townsend v. Goewey, 19 Wend. 424; Cross v. Jackson, 5 Hill, 478; Wilkins v. Pearce, 5 Den. 541.

LIVINGSTON v. PATRICK, 3 Johns. Cas. 293.

S. P. as in Mumford v. Church (post).

LIVINGSTON v. PERU IRON CO., 2 Paige, 390.

Reversed, 9 Wend. 511.

LIVINGSTON v. VAN INGEN, 9 Johns. 507.

Held, that the navigable waters within the territory of the respective States, were subject to the municipal regulations of the respective States, so as to authorize such States to grant the exclusive right of using and navigating *boats by steam* in the waters thereof.

Overruled in Gibbons v. Ogden, 9 Wheat. R. 1; Steamboat Co. v. Livingston, 3 Cowen, 747.

LLEWELLYN v. WILLIAMS, Cro. Jac. 258.

Overruled in Pugh v. Duke of Leeds, Cowp. 714. See Bacon v. Waller (ante).

LLOYD v. GREGORY, Cro. Car. 502; 2 Rolle Abr. 728, pl. 3.

"The note in Croke does not say a word of the only ground of the judgment." It is correctly reported in Sir Wm. Jones, 405; see 3 Burr. 1806, 1807; Co. Lit. 45 a, n. 4.

LLOYD v. HATCHETT, 2 Anstr. 527.

Opposed, Clarke v. Lord Abington, 17 Ves. 106:—Held, that interest will be given beyond the penalty of a bond upon a mortgage for the same debt, though by a surety. See Hellen v. Ardley, 3 C. & P. 12, note; Eastmond v. Holl, 3 Price, 219; Potter v. Webb, 6 Greenl. 14.

LLOYD v. JEWELL, 1 Greenl. 360.

Denied in Rice v. Goddard, 14 Pick. 293: *Held*, where the note was given in consideration of the conveyance of land by deed with the usual covenants of seisin and warranty, and the title to the land failed entirely, that a total failure of title was a total failure of the consideration.

LLOYD v. MAUND, 2 Term R. 760.

It was held, that a letter written by the defendant to the plaintiff's attorney, couched in ambiguous terms, neither expressly admitting nor denying the debt, should have been left to the jury to consider whether it amounted to an acknowledgment of the debt, so as to take it out of the statute of limitations.

Doubted in Ballie v. Inchiquin, 1 Esp. R. 435, note; and see Wilcox v. Roath, 12 Conn. R. 550.

LLOYD v. MOSTYN, 10 M. & W. 478; 12 Law J. R. N. S. Ex. 1.

Questioned in part, Cleave v. Jones, 8 Eng. R. 556; 21 Law Jour. R. N. S. Ex. 105.

LLOYD v. PEARSE, Cro. Jac. 424.

Several damages given on two issues, one of which was erroneous, and an entire judgment entered for both; and held that it must be reversed *in toto.*

Overruled in Henriquez v. Dutch W. I. Company, 2 Str. 807; see Cutting v. Williams (ante).

LLOYD v. WILLIAMS, Cas. Temp. Hard. 115; Bull. N. P. 236.

That a party who is named in the writ and could not be taken, and proved to be concerned in the trespass, was an incompetent witness.

Overruled, Van Nuys v. Terhune, 3 Johns. Cas. 82; Stockham v. Jones, 10 Johns. R. 21.

LLOYD'S CASE, 1 Camp. 260; Rugby Charity v. Merryweather, 11 East, 375 (n).

Whether a street which is not a *thoroughfare* can be deemed a highway? Lord Ellenborough and Lord Kenyon in favor.

Doubted in Woodyer v. Hadden, 5 Taunt. 126; Wood v. Veal, 5 B. & A. 454.

LOCK v. SWAN, 13 Mass. R. 76.

S. P. as in Hooper v. Perley (ante).

Denied in Bronde v. Haven, 1 Gilpin, 606.

LOCKHART v. MACKRETH, 5 Term R. 661.

It appears to have been considered that where a defendant pleads a plea which is a nullity in consequence of its not being signed by counsel, the plaintiff may sign judgment immediately, without waiting till the time for pleading is out.

Overruled in Pepperell v. Burrell, 2 Dowl. Pr. R. 674; Macher v. Billing, 3 ib. 246, and note p. 249.

LOCKNER v. STRODE, 2 Chan. Ca. 48.

Ld. Loughborough, in 1 H. Bl. 332, "That case is, as most of the others are in the same book, grossly misreported"—"In their general character, loose, meager, and inaccurate reports, of not much weight or authority. But the report of some cases decided by Lord Ch. Cowper, in 3d and last vol. of the reports in Chancery, are distinguished exceptions to this complaint." 1 Kent Com. 458.

LOCKWOOD v. STURTEVANT, 6 Conn. R. 373, 386.

That the authority by virtue of which an administrator is empowered to sell and convey estate, must appear on the deed of conveyance, and

LOCKWOOD v. STURTEVANT, 6 Conn. R. 373, 386—continued.

with such certainty that the act done shall visibly be warranted by the power conferred.

Overruled in Watson v. Watson, 10 Conn. R. 77.

LOCKWOOD v. THORNE, 12 Barb. 487.

Reversed, 1 Kernan, 170.

LODGE v. DICAS, 3 B. & Ald. 611.

Overruled, Syth v. Ault, 21 Law Jour. Rep. N. S. Ex. 217; 11 Eng. R. 583; and ib. note; and see David v. Ellice (ante).

LODWICK v. OHIO INS. CO., 5 Ohio R. 435.

Overruled, Perrin v. Protection Ins. Co., 11 Ohio R, 147.

LOFFT'S REPORTS.

"These are said to contain important cases, but which, from a hasty mode of publication, are reputed to be very inaccurate, and have therefore not met with a favorable reception from the profession." Bridg. Leg. Bib. 205. And Park, J., in 2 Bro. & B. 536, says, "Of that reporter, I shall say no more than this, that during a long professional life of forty years, I never heard them quoted three times."

LOGAN v. FARLIE, 2 Sim. & S. 284; 1 My. & C. 59.

Supposed by Parke, B. to be overruled. Att'y Gen'l v. Napier, 15 Jur. 253; 2 Eng. R. 398.

LOLLY'S CASE, 1 Dowl. Pr. C. 124 *et seq.*; 1 Rus. & Ry. Cr. C. 237, S. C.

Held, by *all the judges*, that no sentence or act of any foreign country or state, could dissolve an English marriage *a vinculo*, for ground on which it was not liable to be dissolved *a vinculo* in England.

Opposed to Harding v. Allen, 9 Greenl. R. 140; see also, 2 Kent Com. 92; 3 Hagg. 639.

LOMAX v. LANDELLS, 6 C. B. 577; 6 Dowl. & L. 396; 13 Jur. 38.

Dissented from in Reg. v. Dale, 15 Jur. 657; 5 Eng. R. 361.

LONDON & NORTH WESTERN RAILWAY CO. v. SMITH, 1 Mac. & G. 216; 13 Jur. 417; 1 Hall & Tyrw. 364.

The application of the principle laid down in that case will not be extended. E. & W. India Docks and Birmingham Junction Railway Co. v. Gattke, 15 Jur. 261; 3 Eng. R. 59.

Overruled, Lancashire & Yorkshire Railway Co. v. Evans, 15 Beavan, 322; 19 Eng. R. 299.

LONDON (MAYOR OF) v. MAYOR OF LYNN.

See Mayor of Lynn v. Denton (post).

LONG ON SALES, 288.

Opposed to Andrews v. Durant, 1 Kernan, 49.

LONG v. ALLEN, Marsh. 570.

The rule in England is, to apportion the premium, where usage has settled the rule of apportionment.

Denied, Hendricks v. Com. Ins. Co., 8 Johns. R. 8 :—"With us, however, there never is an apportionment; because we have no usage."

LONG v. BAILLIE, 4 Serg. & R. 226.

Holds to the exploded principle of *bias* as an objection to the competency of a witness.

S. P. as in Henry v. Morgan (ante).

LONG v. COLBURN, 11 Mass. 97.

Parker, C. J., in Ballou v. Talbot, 16 Mass. 463, says, "What is stated in the case of Long v. Colburn, as an intimation of the court, viz., that in such a case a special action upon the case would be the proper action." *Held*, that one signing a promissory note and adding "agent for B." without authority, is not liable as on his own promise, but only in a special action on the case.

LONG v. DENNIS, 2 Vern. 530.

Observations on this case (4 Burr. 2052; 19 Ves. 19) "as going too far against conditions for consent to marriage."

LONGFORD v. ELLIS, 1 H. Bl. c. 29 n.

Overruled in *Ex parte* Charles, 14 East, 197; and Walker v. Barnes, 5 Taunt. 778.

LONG'S CASE, 5 Rep. 120.

In all indictments for murder or manslaughter, a stroke ought to be directly alleged, unless in case of poisoning, &c.

Holt said "there was not a case in the law like that—and that by his consent they would not be so nice again." Regina v. Best, 2 Ld. Raym. 1169; see 1 D. & E. 69.

It is by no means certain that Long's case is of good authority. The State v. Owen, 1 Murpheys Law & Eq. R. 459.

LONSDALE v. CHURCH, 2 D. & E. 388; (2 T. R. 377).

That in an action on bond, damages may be recovered beyond the penalty.

Denied in Wilde v. Clarkson, 6 D. & E. 303; (6 T. R. 304), and Hefford v. Alger, 1 Taunt. 218; McClure v. Dunkin, 1 East, 436: Clark v. Bush, 3 Cow. 151; Lyon v. Clark, 4 Selden, 154. See Warner v. Thurlo, 15 Mass. 154.

Interest, beyond the penalty, is allowed in Massachusetts, Harris v. Clap, 1 Mass. 308; but not in Virginia, Atwell v. Towles, 1 Mumf. 175; see White v. Sealy (post).

LORD ANTRIM v. DUKE OF BUCKINGHAM, 1 Cha. Ca. 18; 1 Sid. 101; 3 Salk. 276; 3 Freem. 168; 1 Abr. Eq. 343; Comyn R. 396.

Doubted. It is said to be (O'Bridgm. R. 109 n.) "so variously and so loosely noticed, that it is difficult to conclude upon what principle the decision against the lease was grounded."

LORD BEAULIEU v. LD. CARDIGAN, Amb. 633; 3 Bro. Parl. Cas. by Toml. 277.

Doubted. "The authority of this decision as affording a general rule, is very questionable." Math. on Presump. Ev. 425, n. (b); see also Butrick v. Broadhurst, 1 Ves. Jr. 172.

LORD FALMOUTH v. GEORGE, 5 Bing. 286.

See Falmouth (Lord) v. George (ante).

LORD LINCOLN'S CASE.

In Doe v. Pott, 2 Doug. 120, Lord Mansfield is reported to have said, "The absurdity of Lord Lincoln's case is shocking; however, it is now law." Cook v. Walker, 15 Geo. R. 469.

LORD v. BRIG WATCHMAN, 8 Jurist, 284.

As to insolvent assignments.

Doubted, 8 Jurist, 338.

LORILLARD v. COSTER, 5 Paige, 172.

Reversed, 14 Wend. 265.

LORILLARD v. PALMER, 15 Johns. 14.

Reversed in Palmer v. Lorillard, 16 Johns. 346.

LOVE v. BAKER, 2 Freeman, 125; 1 Cha. Ca. 67.

Denied in Portarlington v. Soulby, 3 My. & Ke. 104. (8 Cond. R. 299): "Has not been recognized or followed in later times."

LOVE v. DAY, 1 Barnes, 226.

That a regular nonsuit cannot be set aside.
Overruled. 4 Burr. 1986.

LOVE v. WALL, 1 Hawk. 313.

Doubted in Smith v. Smith, Dev. Eq. R. 178.

LOVELACE'S (LD.) CASE, 1 Jon. 271; 2 Bulst. 36; Show. 420.

No prescription or custom is good against a negative statute, whether it be declaratory of the common law, or introductive of a new law.

Doubted in Dwar. on Stat. 641.

LOVELL v. LELAND, 3 Verm. R. 581 (Mass. R. S. part 3, tit. 3, c. 107).

If a mortgagee after foreclosing his mortgage sues for an unsatisfied balance of his debt, it will open the foreclosure.

Opposed, Hatch v. White, 9 Cowen, 346; see Lansing v. Geolet, 2 Gall. R. 152.

LOVIE'S CASE, 10 Rep. 85 a.

That a remainder cannot be limited, after a contingent fee, &c.

Denied by Powell, J. in 2 Ld. Raym. 1150; and by Buller, J. 4 D. & E. 68.

LOW v. HALLETT, 3 Cai. 82.

Overruled in Salisbury v. Scott, 6 Johns. 329.

LOWE v. WALLER, Dougl. 736.

In this leading case, the negotiation commenced for a loan of money, but terminated in a sale of the goods, on the re-sale of which, the borrower (as he was held to be) sustained a great loss. The court charged the lender with that loss, as so much exacted from the necessities of the borrower.

In the case of The United States Bank v. Owen, 2 Pet. 527, the charter of the bank contained these words, "The bank shall not be at liberty to purchase any public debt whatever, *nor shall it take more than at the rate of six per centum per annum, for or upon its loans or discounts.*" And the bank discounted a promissory note, reserving interest thereon, at the rate of six *per centum per annum;* it being agreed that the owner of the note should receive the proceeds of the discount in notes of a State bank, at their nominal value, although the same were at the time of no greater current value than fifty-four per cent. of the said nominal value. *Held*, that the contract was usurious and void; and that the bank could

LOWE v. WALLER, Dougl. 736—continued.

not recover of any of the parties to the note. The court say, "A profit made, or loss imposed, on the necessities of the borrower, whatever form, shape, or disguise it may assume, where the treaty is for a loan and the capital is to be returned at all events; has always been adjudged to be so much profit taken upon a loan; and to be a violation of those laws which limit the lender to a specified rate of interest. *Held* also, that *reserving* was implied in the word taking; consequently the charter applied to a case in which the interest had only been reserved, not received. When the restrictive policy of a law alone is in contemplation, it is an universal rule, that it is unlawful to contract to do that which it is unlawful to do. But, in those instances in which courts are called upon to inflict a penalty upon the lender, whether in a civil or criminal form of action, it is necessarily otherwise; for then the actual receipt is generally necessary to consummate the offense.

There can be no legal remedy for that which is itself illegal; for no court of justice can in its nature be made the handmaid of iniquity. And there is no distinction as to violating the contract, between *malum in se*, and *malum prohibitum*. The court will not execute these contracts. Watts v. Brooks, 3 Ves. jr. 612; 3 B. & P. 35; Hobart, 72; Dyer, 356.

LOWES v. MAZZAREDO, 1 Stark. R. 385.

S. C. in Chitty on Bills, 105 (ed. 1821).

Held, that if the payee of a bill of exchange indorses it upon an usurious contract, a *bona fide* holder cannot afterwards recover upon it against the acceptor.

Denied in Cram v. Hendricks, 7 Wend. 573.

LOWRIE v. BOURDIEU, Doug. 471, cited by the court in Bilbie v. Lumley, 2 East, 469.

Ignorantia juris non excusat.

Doubted in Brisbane v. Dacres, 5 Taunt. R. 158–9. Chambre, J.:— "I do not see the application of the maxim used by Buller, J.; it applies only to cases of delinquency, where an excuse is to be made. I have searched for, to see if I could find any instance of similar application of this maxim."

LOWTHER v. CARLTON, 3 Atk. 139.

Doubted in Calv. on Part. in Eq. p. 11:—"in which persons are reported to have been made parties (to a suit in equity) upon a principle of mutual assistance, is not very intelligible."

LOWTHER v. CARRILL, 1 Vern. 221.

A agrees by parol with B for a lease which is drawn, and then perused and corrected by A's counsel, and afterwards engrossed and executed by B. Whether this is within the statute of frauds as to A, Ld. Keeper ordered defendant to answer.

Overruled in Hawkins v. Moore, 1 P. Wms. 776.

LOWTHER v. CRUMMIE, 8 Cow. 87.

See Pickert v. Dexter, 12 Wend. 150; and Bowen v. Bell (ante).

LOYD v. WOODAL, 1 Black. R. 29.

A certificate from the secretary at war, as to the nature of the station of a sergeant in the army, is said to have been admitted, though opposed.

Doubted, *it seems*, in Phil. Ev. 608 (567), 5th Am. ed., n. (a).

LUCAS v. COMMERFORD, 1 Ves. jun. 235; 3 Brown's C. C. 166.

Opposed to Flight v. Bentley, 7 Sim. 141, where the depositary of a lease for securing a debt was held liable to the trust, although he had not taken possession of the premises. But this later case is overruled by the still later case of Moors v. Choat, Jurist, p. 206, Feb. 1839, where it was held, that the executor of a person with whom a lease was deposited by way of equitable mortgage, not having taken possession, was not liable for the arrears of rent or specific performance of the covenants.

LUCY v. BECK, 5 Porter, 168; Gilbert v. Lane, 3 ib. 268.

"Although this decision (Lucy v. Beck) is, in our view, very questionable upon common-law principles, yet we are in comity bound to presume the Supreme Court of that State (Alabama) to be better acquainted with its own laws than we can be." By Clayton, J., in Wright v. Weisinger, 5 Sme. & M. 215.

LUDDEN v. LEAVIT, 9 Mass. 104; Warren v. Leland, ib. 265; 14 ib. 217.

One to whom the sheriff delivers goods for safe keeping merely, has not such an interest in the goods as will enable him to maintain an action.

Opposed, Poole v. Symonds, 2 N. H. R. 280.

LUDLOW v. SIMONDS, 2 C. C. E. 40, 51, 56.

Denied in Baker v. Biddle, 1 Baldw. R. 415.—Baldwin.

LUDLOWS v. DALE, 1 Johns. Cas. 16.

Reversed in 2 Johns. Cas. 451. See 2 Kent Com. p. 121, n. (c).

LUKE v. LYDE, 2 Burr. 882; 1 Bl. 90, S. C.

That in case of a loss at sea, freight must be paid only in proportion to the goods saved, and the part of the voyage which was performed.

"Several times questioned." See Abbott on Shipping, 347 note, 352; and said to have been "reluctantly admitted" in Mulloy v. Backen, 5 East, 316; see also Liddard v. Lopes, 10 East, 526. And denied in Post v. Robertson, 1 Johns. 24; Coffin v. Coffin, 5 Mass. R. 252. In the latter case, Parsons, C. J., says,—"The rule adopted in Luke v. Lyde, is manifestly unjust; for it was there held that freight was to be paid the proportion in time of sailing;—it should be the proportion in the respective rates of freight, so that defendant may eventually pay according to the benefit he has actually received, which is the principle on which the marine law is founded."

LUQUEER v. PROSSER.

See Hough v. Gray (ante).

LUSH v. WILKINSON.

See Holcroft's case (ante).

LUTTERELL v. REYNELL, 1 Mod. 282; Sir John Friend's case, 13 How. St. Tr. 32; Gilbert, C. B., p. 150; Hawk. P. C., b. 2, c. 46, s. 48; B. N. P. 294.

All which seem to affirm that proof of former declarations in support of the credit of a witness, is admissible.

Overruled in Parker's case, 3 Dougl. 242; Roscoe Cr. Ev., p. 142, (Am. ed.), and the *cases* cited n. (2). See Craig v. Craig, 5 Rawle's R. 91.—Gibson; and 1 Phil. Ev. 857,—5th Am. ed.

LYNN, Mayor of, v. DENTON, 1 D. & E. 689.

That where a corporation is plaintiff, the defendant may have leave to inspect their books, of course.

Overruled in Mayor of Southampton v. Graves, 8 D. & E. 590.

LYON v. RICHMOND, 2 Johns. Ch. 51.

Reversed in Tallmadge v. Lyon, 14 Johns. 501; *Held*, that a decree in a former suit, to be available, should have been pleaded or relied on in the answer, as a bar; and must state so much of the former bill and answer, as to show that the same point was then in issue.

LYONS v. BARNES, 2 Stark. 39.

"I do not think is very good law." Patteson, J., Moss v. Sweet, 20 Law Jour. R. N. S. Q. B. 168.

LYON v. JEROME, 15 Wend. 569.

Reversed, 26 Wend. 485.

LYON v. RICHMOND, 2 Johns. Ch. 51.

Reversed, Lyon v. Tallmadge, 14 Johns. 501.

LYSONS v. BARROW, 10 Bing. 563.

Limited in Engler v. Twisden, 2 Bing. N. C. 263. "It seems to me, that Lysons v. Barrow has laid down the law somewhat too favorably for executor plaintiffs, and that it is a safer and sounder rule to say that they stand in the same situation as any other plaintiff, unless they have been misled by some misconduct on the part of the defendant."—Tindal. See also Ashton v. Poynter, 16 M. & R. 738.

M.

McALLISTER v. MONTGOMERY, 3 Hayw. R. 94.

The legal title to real estate held by joint partners is in the survivor, who may sell it.

Opposed, Robinson v. Crowder, 4 M'Cord, 519; and 3 Kent Com. 38.

McBRIDE v. McBRIDE, 4 Esp. N. P. R. 242; Rex v. Lewis, ib. 225.

That a question the object of which is to degrade the witness's character, cannot be properly asked.

Doubted in Phil. Ev. 921; 5th Am. ed. 855.

McBROOM v. THE GOVERNOR, 6 Porter Ala. R. 32.

Overruled, Hill v. Fitzpatrick, 6 Ala. R. N. S. 314.

McCALL'S ESTATE, Ashm. R. 357.

That compound interest can be awarded under no circumstances, at least against an administrator.

Denied in the matter of Harland's case, 5 Rawle's R. 323; Scheiffelin v. Stewart, 1 Johns. Ch. 620. Though embarrassed by conflicting opinions in England, Gibson, C. J., says (In the matter of Harland's case,—supra),—"The weight of American authority is in favor of the rule therefor, as four to one."

McCAW v. BLEWIT, 2 M'C. Ch. 101.

Overruled in part, Ison v. Ison, 5 Richardson Eq. R. 15.

McCLELLAN'S *Ex'ors* v. HILL'S *Ex'ors*, Conference Rep. 479.

The report of this case omits the fact of Hill's death before that of M'Clellan. Jones v. Brodie, 3 Murphey's Law & Eq. R. 594.

McCORMICK v. BULLER, cited 3 Ves. 174.

This case is questioned in Nevison v. Langdon, cited in 10 Ves. 585; and contradicted in Sockett v. Wray, 4 Bro. Ch. Ca. 346, n. 565, by Sir Wm. Grant's opinion in Richards v. Chambers, 10 Ves. 580.

McCOY v. CHILLICOTHE, 3 Ohio R. 370.

See 16 Ohio R. 574.

McCOY v. HOFFMAN, 8 Cow. 84.

Overruled, Medbury v. Watrous, 7 Hill, 110.

McCOY v. RIVES, 1 Sme. & M. 592.

"In the case of M'Coy v. Rives, the statutory provision was not put in question; and, besides that was a case of a finding by the jury upon an article of property not in issue. The question being now fully presented, is therefore met and settled;" *i. e.*, decided differently from the case of M'Coy v. Rives. Gilliam v. Moore, 10 Sme. & M. 138.

McCULLOCH v. HOUSTON, 1 Dall. 441.

That the indorsee of a note, under the act of the 28th of May, 1715, takes it at his peril.

Doubted in Ridgway v. The Farmers' Bank, 12 S. & R. 265: "Though never overruled, it has always been regretted."

McCULLOCH v. SAMPLE, 1 Penn. R. 422.

Denied in Kline v. Guthart, 2 Penn. R. 494.—Gibson, C. J.:—"I mention this case of M'Culloch v. Sample, to mark my dissent from it; that having been omitted in the report."

McCULLOCK v. THE EAGLE INS. CO., 1 Pick. 278.

Where the plaintiff wrote by mail inquiring upon what terms he would insure his vessel, and the defendants wrote in reply stating the premium, but on the next day again wrote and retracted their offer. The plaintiff had accepted the offer contained in the first letter, and put his letter into the post-office to notify the defendants of such acceptance before the

McCULLOCK v. THE EAGLE INS. CO., 1 Pick. 278—continued.

receipt of their second letter. *Held*, that this was not a binding agreement.

Denied in Mactier v. Frith, 6 Wend. 116; Vassar v. Camp, 1 Kernan, 447; Dunlop v. Higgins, 12 Jurist, 295.

McDERMOTT v. PALMER, 11 Barb. 9.

Overruled, Loonie v. Hogan, 12 N. Y. Leg. Obs. 225.

Reversed, 4 Selden, 383.

McDILL'S LESSEE v. McDILL, 1 Dall. 63.

Denied by Tilghman, C. J., 2 S. & R. 83, and 1 Binn. 190.

McDONALD v. HODGE, 5 Hayw. R. 85; 11 S. & R. 445.

The rule of damages was the *value* of the article, and not the sum specified in the note.

Overruled in Pinney v. Gleason, 5 Wend. 393; Brooks v. Hubbard, 3 Conn. 58.

McELWEE v. HOUSE, 1 Bayley R. 108.

Overruled in Morris v. Peay, 1 Hill's R. 35. The point decided in this case (Morris v. Peay) was, that a nominal plaintiff, who has transferred his interest in the note, shall not be allowed fraudulently to discontinue the action, and thereby defeat the right of the real plaintiff.

McFARLAND v. CRARY, 8 Cow. 253.

Reversed, 6 Wend. 297.

McFARLAND v. SHAW, 2 Car. Law R. 102.

Dying declarations of a daughter were admitted in a civil action.

Opposed, Wilson v. Boerem, 15 John. 286; Doe v. Ridgway, 4 B. & A. 53. It does not appear that such evidence has been received, except in cases of homicide, and in civil cases, where the declarations have been made before attesting witnesses.

McGREW'S APPEAL, 14 S. & R. 396.

Limited in M'Fadden v. Geddes, 17 S. & R. 341.

McKEE v. GARRETT, 1 Bail. R. 341.

A way cannot be prescribed through uninclosed woodlands.

Denied in Smith v. Kinard, 2 Hill's R. 642 n.

McKEE v. THOMPSON, Addis. R. 24.

A submission to an award by an executor amounts to an admission of assets.

Denied in Hoare v. Muloy, 2 Yeates, 161; Swicard v. Wilson, 2 Conn 288; Pearson v. Henry, 5 Term R. 6.

McKILLIP v. McKILLIP, 2 S. & R. 489.

Denied in Slocum v. Taylor, 8 S. & R. 401:—"That case is not stated by the reporters with their usual clearness."

McINTYRE v. MANCIUS, 3 Johns. Ch. 45.

Reversed in S. C. 16 Johns. R. 592; *Held*, that a Court of Chancery will not compel a defendant to discover that which, if he answers in the affirmative, will subject him to punishment, or render him infamous, or expose him to a penalty; and if the bill require him to answer to facts of this description, he may demur to it successfully. But if a party has been joined in the bill for the purpose of depriving a party of his evidence, it forms no objection to the discovery that such party might prove the note usurious.

McLAUGHLIN v. SCOTT, 1 Binn. 61.

Doubted, it seems, by Tilghman, C. J., in Stuart v. Harris, 3 Binn. 323,—"Decided hastily, and upon very little argument."

McMILLAN v. HAPLEY, 2 Car. Law R. 89.

That trespass will not lie for the purchaser, for an intermediate trespass. Doubted in Davidson v. Frew, 3 Dever. R. 3.—Henderson, C. J.

McMURPHY v. MINOT, 4 N. H. R. 250.

Questioned, Lord v. Ferguson, 11 N. H. R. 383.

McNUTT v. YOUNG, 8 Leigh, 542.

Adverse to Jones v. Stevens, 11 Price, 235.

McTAGGART v. ELLICE.

See Balbi v. Batley (ante).

McVEAUGH v. GOODS, 1 Dall. 62; 2 Dall. 50.

S. P. as in Trustees of Lansinburgh v. Willard (post).

McVICKAR v. ALDEN, 1 Cai. 58.

Overruled Anon. 2 Cai. 246.

MACCLESFIELD v. FITTON, 1 Vern. 168.

Doubted. Calvert on Parties in Eq. 106 (Am. ed.)—" The report is altogether unsatisfactory."

MACHIR v. MAY, 4 Bibb. 43, Sentney v. Overton, ib. 446.

" Contrasting the two decisions of Machir v. May and Sentney v. Overton with the other adjudications on the statutes of limitations, they may be compared to two trunks from one root, blasted by the lightning, and standing amidst a forest of evergreens." Per Bibb, J. in a dissenting opinion in South's Heirs v. Thomas' Heirs, 7 Monroe Ken. R. 72 and p. 87.

MACKEY v. COLLINS, 2 Nott & M'Cord, 186, and Furman v. Emore, ib. 139 note.

Opposed, Watton v. Hele, 2 Saund. 177, and Patton v. M'Farlane, 3 Penn. R. 423.—*Held*, that an eviction must not only be alleged, but proved, in order to maintain an action upon a covenant of warranty.

MACKIE v. CAIRNS, 1 Hopk. 373.

Reversed in 5 Cowen, 547.

MACKRETH v. SYMONS, 15 Ves. 329.

Reviewed in Gilman v. Brown, 1 Mason's R. 212, and disapproved in Clower v. Rawlings, 9 Sme. & M. 128.

MACTIER v. FRITH, 1 Paige Ch. R. 434.

Reversed on appeal, 6 Wend. 111.

MADDOCKS v. HAMBY (or Hankey), 2 Esp. 447.

The admission by the indorser, of the indorsement being his hand writing, is admissible and sufficient evidence.

Overruled in Robertson v. Crockett, 1 Yerg. R. 203; See also Humonious v. Robertson, Barnes' Notes, 436.

MADOX v. HOSKINS, 1 Hayw. R. 4.

Overruled in Porter v. M'Clure, 1 Hayw. R. 360.

MAELLER v. FLOWERS, 7 Ohio R. ii. 230.

Overruled, Harrington v. Heath, 15 Ohio R. 483.

MAGGOT v. MILLS, 1 Ld. Raym. 287; Dowe v. Holdsworth, Peake's R. 64; Robert v. Garnie, 3 Caines, 14; see 9th Wh. 737; Hill & Braxton v. Southerland's Ex., 1 Wash. R. 128.

Although if the debtor neglect to make the application at the time of payment, the election is then cast upon the creditor, yet it is incumbent upon the latter, in such a case, to make a *recent* application, by entries in his books or papers.

Doubted. See Mayor, &c. of Alexandria v. Patten, 4 Cranch, 317;—Marshall:—The creditor need not elect immediately; 2 Phil. Ev. 131; "at any time." Stone v. Seymour, 15 Wend. 31, 32.

See Meggott v. Mills (post).

MAGILL v. HINSDALE, 6 Conn. R. 464.

Commented on and disapproved by Walworth, Chancellor. Townsend v. Hubbard, 4 Hill, 351.

MAGOR v. CHADWICK, 11 Ad. & El. 571.

"I can only say that it contains several expressions of opinion which as a member of a court of error I should not approve of."—Parke B. Greatrex v. Hayward, 22 Law J. R. N. S. Ex. 137; 8 Ex. R. 291; 20 E. L. & E. R. 380.

MAIGLEY v. HAUER, 7 Johns. R. 341.

S. P. as Schermerhorn v. Vanderheyden (post).

MAIN'S CASE, 5 Rep. 21.

Overruled as to the point that an action of covenant will not lie during the term, on a covenant to keep in repair the houses demised. Luxmore v. Robson, 1 Barn. & Ald. 584. It was also denied by Dodderidge, J. in 2 Rol. Rep. 347.

MAIRS v. SMITH, 3 M'Cord, 59; Cohen v. Greer, 4 ib. 509.

Overruled in Mayzick & Bell v. Coiel, 1 Hill's R. 311, note (a).

MAITLAND v. GOLDNEY, 2 East, 426.

S. P. as in Northampton's case (post).

MALA FIDES.

The English rule upon the question of *mala fides* in the purchase of goods, is not the doctrine of the American courts. Phillips v. Pringle, 5 Monthly Law Rep. N. S. 336.

MALCOM v. RAY, 3 Moore, 222; S. C. *Nomine*, Malcom v. Day, ib. 579.

Overruled in Barrow v. Humphries, 3 B. & Ald. 598. See also Dixon v. Lee, 1 Cromp. M. & Ros. 645–6.

MALINES. See Molloy & Malines (post).

MALLISON v. ANDREWS, 2 Bro. C. C. 26 n., Ch. Hill, 1782.

Denied in Sugden on Pow. p. 280, and n. (1). The case, it should seem, cannot stand consistently with the later determinations. "There appears to be reason to suspect, from the striking similarity of the names, that the case of Mallison v. Andrews, is merely an inaccurate statement of the former (Brown), or that the case (Maddison v. Andrew, 1 Ves. 57) has been confounded with some other."

MALLORY v. VANDERHEYDEN, 3 Barb. Ch. 9.

Reversed, 1 Coms. 452.

MALPICA v. McKOWN, 1 Miller's Lou. R. 248.—Porter.

The value of the ship and freight earned, does not furnish the measure of the responsibility of the owner thereof for the acts of the master.
Opposed, Crane v. The Rebecca, Dist. Ct. Maine (1831).

MANATON v. MOLESWORTH, 1 Eden, 18.

Overruled in Dolan v. Neville, 2 Moll. Ch. R. 494, as to one point, viz.—the propriety of proceeding by original bill in such cases.

MANCHESTER v. VALE, 1 Saund. n. 3; 1 Chit. Pl. 554.

If a plea professes to answer only a part of the count, and is such in truth, the plaintiff must take his judgment by *nil dicit* for the part not answered, and cannot demur; and if he demur or plead over, it amounts to a discontinuance.
Denied in Sterling v. Sherwood, 20 Johns. R. 204; Hicock v. Despard, 8 ib. 617.

MANDELL v. BARRY, 9 Johns. 234.

Reversed, 10 Johns. 563.

MANDEVILLE v. UNION BANK OF GEORGETOWN, 9 Cranch, 1.

Per Hatcher in Allein v. Agricultural Bank, 3 Sme. & M. 58. "While the opinion expressed by this court in the case of McMurran v. Soria, 4 H. 154, does not amount to a recognition of that decision (Mandeville v. Union Bank of Georgetown), it has already been seriously questioned in Parham v. Randolph, 4 H. 435.

MANHATTAN CO. v. OSGOOD, 15 Johns. 167; 1 Cowen, 65.

Reversed in Osgood v. Manhattan Co., 3 Cowen, 612.

MANN v. HATCH, 9 Wend. 262.

Reversed in Hatch v. Mann, 15 Wend. 44.

MANN v. LENT, 10 B. & C. 877.

S. P. as in Morgan v. Richardson (post).

MANN v. SWANN, 14 Johns. 270.

Overruled, Stafford v. Rice, 5 Cow. 23.

MANNERS v. POSTAN, 4 Esp. 239.

That the confession of a party executing a deed is no evidence; but proof must be made by the subscribing witnesses.

Denied in New York. Hall v. Phelps, 2 Johns. 251.

MANNING—See *Ex parte* Manning.

MANNING v. NEWNHAM, 3 Dougl. R. 130.

Doubted, if not overruled. See 3 Dougl. R. 130, n. a. See also 2 Phil. Ev. 49, and notes.

MANNING v. WHEATLAND, 10 Mass. R. 502.

Doubted in Knights v. Putnam, 3 Pick. 184; and in Fox v. Whitney, 16 Mass. 118. Wilde, J. said, "The authority of that case has been questioned, and the objection to the doctrine, as there laid down, was entitled to great consideration. The witness was held to be incompetent, not because he was interested, but on the ground of legal policy, which will not permit one who has transferred a negotiable security as valid, to invalidate it by his testimony; but in that case, as in this, there was no illegality in the original contract, and no usury except in the transfer, in which the plaintiff himself was the guilty party."

MANROW v. DURHAM, 3 Hill, 584.

Commented on and disapproved, Brewster v. Silence, 4 Selden, 207, and see Hough v. Gray (ante).

MANT v. MAINWARING, 8 Taunt. 139.

In an action on a joint contract against several partners, held, that one of the defendants was not competent, for the plaintiff, without the consent of the other defendants, to prove the partnership between him-

MANT v. MAINWARING, 8 Taunt. 139—continued.

self and them; although he had suffered judgment by default, and had been released by the plaintiff as to all other actions, excepting the one then on trial.

Opposed, in Warrall v. Jones, 7 Bing. 395.

MANTON v. HOBBS, 2 Mass. R. 433.

Ch. J. Parsons said, that in a covenant of seisin, it was not necessary "to show seisin under an indefeasable title; that a seisin in fact was sufficient; and that if, at the time the grantor executed the deed, he had the exclusive possession of the premises, *claiming* the same in fee simple, by a title adverse to the owner, he was seised in fee, and had good right to convey."

Denied in Lockwood v. Sturdevant, 6 Conn. R. 385; Richardson v. Dorr, 5 Verm. R. 1.

MANWOOD v. HARRIS, Savile, 71.

Overruled in Whelpdale's case, 5 Rep. 119, 3d res.; Pigot's case, 11 Rep. 27, 1st res.

MARCH v. COLLNET, 2 Esp. N. P. R. 665. And see Doe d. Spilsbury v. Burdett, 4 A. & E. 1.

"The rule, that deedsof 30 years' standing prove themselves, is so well established, that even if a subscribing witness were alive, and in a state to be produced, it has been thought unnecessary to call him to prove the execution."

Overruled in Jackson v. Blanshan, 3 Johns. 292; Tolman v. Emerson, 4 Pick. 160. But see Phil. Ev. 654 (612), 5th Am. ed., n. (b).

MARCH (Earl of) v. PIGOT, 5 Burr. R. 2802.

Doubted in Hammond v. Allen, 2 Sumn. R. 387.—Story: "I do not say, whether that case was or was not rightly decided; for upon that point grave doubts may be entertained."

MARCH'S REPORTS.

"—— A very indifferent reporter."—By Parker, C. J., 10 Mod. 138.

MARCY v. CLARK, 17 Mass. R. 330.

"I must be permitted to remark with the greatest deference to the learned court who made that decision, that I cannot reconcile it with the principle stated and recognized by the court, nor with the determination in Child v. Coffin, 17 Mass. 64." Middletown Bank v. Magill, 5 Conn. R. 57.

MARFIELD v. GOODHUE, 1 Sand. 360.

Reversed, 3 Coms. 62.

MARIETTA v. PINDALL, 2 Rand. R. 465.

A banking corporation of Ohio cannot prosecute an action in Virginia on a contract made in Virginia.

Doubted, Brown v. Minis, 1 M'Cord, 80; 5 Conn. 560; Hullet v. King of Spain, 1 D. & C. 169; 2 Ld. Raym. 1532.

MARKHAM v. GOMARTON.

See Pigot's case (post).

MARKS v. MARRIOTT, 1 Ld. Raym. 115.

In this case, Treby, Ch. J., says,—"Things in the realty could be submitted as well as things in the personalty, but they could not be recovered on the award." "This is either abstruse or exceedingly insipid. If it means that the title does not pass, it might have been more clearly expressed; if it only imports that the award will be of no force, the first part of the sentence would seem not a little sage, and almost worthy of Sancho Panza in his island of Barataria." Akely v. Akely, 16 Vt. R. 457.

Marks v. Marriott is certainly overruled. See cases cited, 16 Vt. R. 457; 2 Petersd. Abr. 99, 100, n.

MARQUAND v. WEBB, 16 Johns. 89.

See Anthoine v. Coit (ante).

MARRYATT'S OPINION, 5 Went. 152.

That no action could be sustained for a quit rent.

Overruled in Duke of Leeds v. Corporation of Radnor, 2 Bro. Ch. Ca. 338. See 2 Chit. Gen. Pr. (Supp.) p. 60.

MARSH v. LEE, 2 Vent. 339.

This case is the *first* in which the doctrine of tacking in the case of mortgages, was fully established.

Overruled generally in the United States. See Osborn v. Carr, 12 Conn. 210, 211.

MARSHALL. See *Ex parte* Marshall.

MARSHALL v. DELAWARE INS. CO., cited 4 Mass. 229.

That the facts, and not the information of the parties, must govern in making the contract of insurance.

Doubted in Dorr v. New Eng. Mar. Ins. Co., 4 Mass. 221, by Parsons,

MARSHALL v. DELAWARE INS. CO.—continued.

C. J. who says—"Great inconvenience may arise from the defendant's position; and it is the usage of merchants to consider the right to abandon as depending on the facts known, and upon this principle premiums of insurance have been regulated."

MARSHALL v. RUTTON, 8 Term R. 545.

"A *barrister* practicing only in the courts of *law*, recently advised that there was no *remedy whatever* against a married woman, who had a considerable separate estate, and had jointly with her husband made a promissory note for £2,500 debt of her husband; because by the decision of Marshall v. Rutton the contract of a married woman is absolutely void:—Not knowing that in *equity*, payment might have been enforced out of the separate estate. (Bullpen v. Clarke, 17 Ves. jun. 366; Hulme v. Tenant, 1 Bro. Parl. C. 16; Stewart v. Kirkwall, 3 Madd. R. 387; Bingham v. Jones, at Rolls, 1832; Chitty on Bills, 8th ed. 791; Field v. Sowle, 4 Russ. R. 112.) So on the other hand the *remedy* was said to be only in *equity*, although the *case stated* that, after the death of the husband, the wife had *promised* to pay, in consideration of forbearance, and upon this promise she might have been *arrested and sued at law.* Lee v. Muggeridge, 5 Taunt. 36; Littlefield v. Shee, 2 B. & Adol. 811.

MARSON v. PETIT, 1 Camp. 82 n.

That the introduction into the bill of a place of payment without the knowledge of the acceptor, was immaterial.

Overruled in Rowe v. Young, 2 B. & B. 165; 2 Bligh R. 391; Cowie v. Halsall, 4 B. & A. 197.

MARSTILLER v. McLEAN, 7 Wheat. 156.

"The case of Marstiller v. McLean was decided upon the authority of the case of Perry v. Jackson, 4 Term R. 516."—This latter case was decided upon grounds by no means satisfactory to us. By the court in Wilkins v. Philips, 3 Ohio R. 50.

MARTIN v. COURT.

See Toussaint v. Martinnant (post).

MARTIN v. HEATHCOTE, 2 Eden, 169.

"Merchants' accounts, after six years' discontinuance of dealing, were as much within the statute as any accounts."

Denied in M'Clellan v. Croften, 6 Greenl. 346; Bass v. Bass, 8 Pick. 187. See Spring v. Gray's Ex'r, 6 Pet. 151; Edmandstone v. Thomson, 15 Wend. 554.

MARTIN v. McCORMICK, 4 Sand. 366.

Reversed, 4 Selden, 331.

MARTIN v. MERRITT, Martin, 18.

Denied in Morgan v. Cone, 1 Dev. & B. 234.—Gaston.

MARTIN v. MITCHELL, 2 Jac. & Walk. 428.

S. P. as in Lawrenson v. Butler (ante).

MARTIN v. MOTT, 12 Wheat. 19.

As to the right of the President of the United States to judge of the exigency of calling out the militia.

Opposed, 8 Mass. 554.

MARTIN v. MOULIN, 2 Burr. 978–9.

That a parol gift or relinquishment of a mortgage debt, will release the mortgage itself, without regard to the question of consideration or actual delivery.

Doubted in Whitehill v. Wilson, 3 Penn. R. 413. In Duffield v. Hicks, 1 D. & Cl. 13, by Ld. Eldon: "I must presume to question the accuracy of Lord Mansfield's doctrine." The House of Lords in this case decide, that a father, in contemplation of speedily approaching death, wishing to make a larger provision for a daughter than he had done by his will, delivers or causes to be delivered to her a bond and a mortgage security for a sum of money. This is a good *donatio mortis causa*, and the heir or executor is bound to give effect to the intent of the donor. "This is the first absolute decision on the question." (Decided in 1827.)

In a later case (Royston v. Hankey, 3 Moore & Scott, 381) declarations by an intestate that he meant that a person with whom he resided should have his furniture and effects for what he owed her:—*Held*, sufficient to entitle such person to take and retain possession of the property. Ch. J. Tindal observes,—"There was no complete or absolute delivery required, as both the intestate and the defendant lived under the same roof, and it was proved that he was indebted to her for rent, and all his property was on the premises at the time of his death."

MARTIN v. NICOLLS, 3 Simons, 458.

A foreign judgment cannot be questioned in the courts in this country. Doubted. See Walker v. Witter (post).

MASON v. DAY, Prec. in Ch. 319; Pierson v. Shore, 1 Atk. 480.

Explained in S. C. in 1 West's R. 711.

MASON v. GRAFTON, Hob. 245.

Action against an innkeeper not laying *commune hospitium.;* yet because the declaration laid in the custom for common inns and then laid that *hospitatus in hospitio*, the plaintiff had judgment.

Denied in Sanders v. Spencer, 3 Dyer, 266.

MASON v. JACKSON, 3 Lev. 60.

Same rule as in Cockerill v. Kynaston (ante). Denied in Henshall v. Roberts, 5 East, 150.

MASON & HALE v. DENNISON & DENNISON, 15 Wend. 64.

Held, that the infancy of one of two defendants as *joint debtors*, against whom judgment is rendered without assigning guardian *ad litem* to the infant, cannot be assigned as error in fact.

Opposed, Castledine v. Mundy, 1 Nev. & M. 635; 4 B. & Ald. 90: *Held*, that if an infant appear in person and not by guardian or *prochein ami*, it is error in fact. See Burgiss v. Merrill, 4 Taunt. 468; 3 Taunt. 307.

MASON v. SKURRAY, Park. 116.

Same doctrine as in Cocking v. Fraser (ante).

MASSEY v. PARKER, 2 M. & K. 182.

Doubted *it seems* in Nedby v. Nedby, Jurist for 1839,—Am. ed. p. 4.

MASSICK v. WALLACE, 12 Ohio R. 351.

Limited, Kay v. Watson, 17 Ohio R. 27.

MASSINGILL v. DOWNS, 7 How. 760.

See Tarpley v. Hamer (post).

MASTER v. MILLER, 4 Term R. 320, and 2 H. Bl. 140.

An unauthorized alteration of the date of a bill of exchange, after acceptance, whereby the payment should be accelerated, even though made by a stranger, avoids the instrument; and no action can be afterwards brought upon it, even by an innocent holder for a valuable consideration.

In Alderson v. Langdale, 3 B. & Ad. 660, the doctrine was carried still further, and it was held that such an alteration made by the plaintiff operated as a satisfaction not only of the bill, but of the debt which it was given to secure.

In Alderson v. Langdale, the debtor was the *drawer* of the bill altered; but in Atkinson v. Hawdon, 2 A. & E. 269, it was held that where the debtor, being himself the maker or acceptor, could have no remedy on

MASTER v. MILLER, 4 Term R. etc.—continued.

the instrument against any other party to it, his liability would not be extinguished by the alteration.

Alterations in the date, sum, or time for payment, or the insertion of words authorizing transfer or expressing the value to be received on some particular account, adding the name of a maker or drawer, or an unwarranted place for payment, are *material* alterations within the above rule. See Walton v. Hasting, 4 Camp. 223; 1 Stark. 215; Outhwaite v. Luntly, 4 Camp. 179; Bowman v. Nicholl, 5 T. R. 537; Cardwell v. Martin, 9 East, 190; Kershaw v. Cox, 3 Esp. 249; Knill v. Williams, 10 East, 431; Clark v. Blackstock, Holt, 474; Tidmarsh v. Grover, 1 M. & S. 735; Cowie v. Halsall, 4 B. & Ad. 197; R. v. Treble, 2 Taunt. 328; Alderson v. Langdale, 3 B. & Ad. 660; Taylor v. Moseley, 6 C. & P. 278.

An alteration made with the consent of parties before a bill or note has issued is of no importance, for, up to the time of issue, it is *in fieri;* Downes v. Richardson, Bayley on Bills, 5th ed. 116; Johnson v. Duke of Marlborough, 2 Stark. 313; so when made by an agent of all parties. Sloman v. Cox, 5 Tyrwh. 175. And a bill or note is said to be *issued* when it is in the hands of some party entitled to make a claim upon it. Downes v. Richardson, *ubi supra;* Cardwell v. Martin, 9 East, 190; Kennersly v. Nash, 1 Stark. 452.

If a bill or note exhibit the appearance of alteration, it lies upon the holder to account for it. Henman v. Dickenson, 5 Bing. 183; Bishop v. Chambre, 1 M. & M. 116.

A cancellation by mistake does not affect the liability of the parties whose signatures are canceled. Roper v. Birbeck, 15 East, 17; Wilkinson v. Johnson, 3 B. & C. 428; Novelli v. Rossi, 2 B. & Ad. 765.

MASTERS *q. t.* v. DRAYTON, 2 D. & E. 496.

Held, that the borrower, not having paid the money, and though bankrupt, yet not being certificated, was not a competent witness to prove the usury.

But the contrary was decided in Smith v. Prager, 7 D. & E. 60, where the borrower was admitted, not only to prove the usurious agreement, but the repayment of the money.

So in Massachusetts, Com'th v. Frost, 5 Mass. 53.

MATTHEW'S PRES. EV. 140.

"Extrinsic evidence is not only admissible to repel a presumptive *ademption*, but is also allowed to fortify the presumption when impeached." The writer has used the term *ademption* when satisfaction was evidently intended. Beck v. M'Gillis, 9 Barb. 58.

MATTHEWS v. BEACH, 5 Sand. 256.

Reversed, 4 Selden, 173.

MATTHEWS v. GRIFFITHS, Peake's R. 200; 7 Term R. 185.
Overruled in Hammet v. Yea, 1 B. & P. 144.

MATTHEWS v. STONE, 1 Hill, 565.
Reversed, 7 Hill, 428.

MATTHEWS v. THE HOWARD INS. CO., 13 Barb. 234.
Reversed, 1 Kernan, 9.

MATTHEWS v. THE WEST LONDON WATER-WORKS CO., 3 Camp. 403.
Doubted, Overton v. Freeman, 16 Jur. 65; 21 Law J. Rep. N. S. C. P. 52; 8 Eng. R. 479.

MATTHEWSON v. WELLER, 3 Denio, 52.
Overruled in part, Cole v. Stevens, 9 Barb. 676.

MAVING v. TODD, 1 Stark. R. 72; S. C. 4 Camp. 225.
Doubted by Mr. Justice Story (Com. on Bailm. 294–5) as to the accuracy of the report in Starkie.

MAXWELL'S LESSEE v. LEVY, 2 Dall. R. 381; 4 Dall. R. 330, S. C.
Doubted in Briggs v. French, 2 Sum. R. 257, *et seq.*

MAXWELL v. WHETTENHALL, 2 P. Wms. 27, 4th point.
That a legacy payable out of a particular fund, yielding profits, shall, for that reason, bear interest from the death of the testator.
Denied by Ld. Redesdale in Pearson v. Pearson, 1 Sch. & Lefr. 10.

MAY v. BROWN, 3 B. & C. 113.
The report corrected and explained in Tarpley v. Blabey, 2 Bing. N. C. 437.

MAYER v. JOHNSON, 3 Camp. 324.
Ld. Ellenborough *held*, that recovery could not be at law on a bank note cut in two only by production of the entire note, or by proof that the instrument, or the other part, has been actually destroyed.
Denied in Hinsdale v. The Bank of Orange, 6 Wend. 380; Bank of U. S. v. Sill, 5 Conn. 112, and cases there cited.

MAYNARD v. DOWNER, 13 Wend. 576.
S. P. as in Arnold v. Sanford (ante).

MAYOR of LYNN v. DENTON, 1 D. & E. 689. MAYOR of LONDON v. MAYOR of LYNN, 1 H. Bl. 211.

That where corporations are parties, each may have a rule to inspect the other's books.

Overruled in Mayor of Southampton v. Graves, 8 D. & E. 590.

MAYOR of NEW YORK v. FURZE, 3 Hill, 612.

See Wilson v. Mayor of New York, 1 Den. 595.

MAYOR of NORTHAMPTON v. WARD, 2 Str. 1239; 1 Wils. 115. (For Stallage).

"That trespass was the proper form of action, and that neither debt nor assumpsit would lie."

Overruled in The Mayor, &c. of Newport v. Saunders, 3 B. & Ad. 411; *Held*, that assumpsit lies.

MAXWELL v. WETTENHALE, 2 P. Wms. 27.

Doubted in Pearson v. Pearson, 1 Scho. & Lef. 11, as to the 4th point.

MEAD v. BASHFORD, 20 Law Jour. R. N. S. Ex. 190.

In delivering judgment, Alderson, B., observed, "This case was argued a very long while ago. It has been delayed in consequence of a difference of opinion among the judges, which has not altogether been removed, even at the present moment." The case was argued May 27, 1850, and judgment delivered February 26, 1851.

MEAD v. DAUBIGNEY, Peake's R. 125.—Kenyon.

In an action for words spoken to A concerning the plaintiff, evidence of words (not in themselves actionable) spoken to B, may be received to show the malice of the defendant.

Overruled in Rustell v. Macquister, cited in 1 Camp. R. 49; 2 Phill. Ev. 546; but see Wallis v. Mease, 3 Binn. 546:—Other words, *not actionable*, admissible, by way of showing the malice of a defendant; the words *laid* being first proved. See Gould v. Weed, 12 Wend. 12, 24; see Bodwell v. Swan, 3 Pick. 376, 378.

MEAD v. DEGOLYER, 16 Wend. R. 632.

It seems from the facts in the case that defendant had paid money for the timber contracted for, subsequent to the expiration of the time for performance; yet *held*, that performance of the contract was a condition precedent to the plaintiff's recovering on a *quantum meruit*.

Opposed, Hayden v. Madison, 7 Greenl. 76. The payment of money

MEAD v. DEGOLYER, 16 Wend. R. 632—continued.

on a special contract knowing that it had not been completed, is a waiver of objection on account of the plaintiff's non-compliance. See also, Bridley v. Tibbets, 7 Greenl. 70; Oxendale v. Wetherell, 9 B. & C. 386; Shipton v. Casson, 5 B. & C. 378; cited in 2 Stark. Ev. 872.

MEAD v. LD. ORRERY, 3 Atk. 240.

Doubted in Wilson v. Moore, 1 M. & K. 337; (7 Cond. R. 83).

Shaken by Bonney v. Ridgard, 2 Bro. Ch. Ca. 438; Hill v. Simpson, 7 Ves. jr. 152.

MEANEY v. HEAD, 1 Mason's R. 322.

Replevin for goods. Plea, property in one Green, who put them in defendant's store, for storage merely. The defendant had no lien on the goods. And the court held that if he had pleaded *non cepit*, the verdict must have been in his favor, on the ground that there had been no *tortious* taking.

But this doctrine is questioned in Baker et al. v. Fales, 16 Mass. 153.

MEARS v. SERACOLD.—Ld. Mansfield. Orr v. Chase, 1 Mer. 729.—Sir Thomas Plumer.

Overruled in Harrison v. Jackson, 7 Term R. 207; Cady v. Shepherd, 11 Pick. 403.—Wilde, J.: That a partner has not a general authority to bind his co-partner, by a contract under seal, without his previous assent or subsequent adoption. See 10 East, 427, in notes.

MEASON v. PHILLIPS, Addis. R. 346, and Edgar v. Bois, 11 S. & R. 445.

On a lease of lands at a stipulated rent, payable in grain at certain specified prices per bushel; held that the rule of damages for breach of such contract, was the value of the grain when the rent was payable.

Opposed, Brooks v. Hubbard, 3 Conn. 58; Pinney v. Gleason, 5 Wend. 393, reversing the decision of the Supreme Court in S. C. 5 Cowen, 152, 411.

MECHANICS' BANK v. EDWARDS, 1 Barb. 271.

Said to be a hasty decision of a single judge, Morris v. Floyd, 5 Barb. 130; but the case of Mechanics' Bank v. Edwards, was affirmed, 2 Barb. 545; and approved, Sands v. Church, 3 Selden, 351.

MEDDOCK v. WILLIAMS, 12 Ohio R. 377.

Overruled Chesnut v. Shane, 16 Ohio R. 599, and see Connell v. Connell (ante).

MEDDOWCROFT v. HOLBROOK, 1 H. Bl. 50.

Overruled in Vincent v. Holt, 4 Taunt. 453.

MEDHURST v. BALAM, 1 Rolle Abr. 35, l. 20.

Words of incontinence *per quod consortium vicinorum perdidit,* held actionable. But denied in Barnes v. Strudd, 1 Lev. 261.

MEDINA v. STOUGHTON, 1 Salk. 210.

Ld. Holt is reported to have said, that where the seller of a personal chattel is *out of possession*, the bare affirmation that it is his is not sufficient to charge him, without an express warranty.

Denied. This distinction is not mentioned in the report of the case in Ld. Raym. 593. See Buller, J. in Pasley v. Freeman, 3 Term R. 57.

MEE v. TOMLINSON, 5 N. & M. 624.

As to consolidation of distinct demands in plea—Plea of set-off.

Doubted in Jourdain v. Johnson, 2 C. M. & R. 564; and Marshall v. Whiteside (post), pl. 11; in which latter case Parke, B. stated that Patteson, J. was not satisfied with the decision. See No. 33 (Apl. 1837) Amer. Jurist, p. 131.

MEGGOTT v. MILLS, 1 Ld. Raym. 286; Clayton's case, 1 Meriv. 604.

Seem to hold, that the creditor, in order to appropriate a payment at all, must do it at the time of payment; and also that where no appropriation is made, the law will appropriate to the debt most burthensome to the debtor.

Denied in Tippets v. Heane, 1 C. M. & R. 252. See Truscott v. King, 2 Selden, 147.

See Maggot v. Mills (ante).

MELAN v. THE DUKE OF FITZJAMES, 1 Bos. & Pul. 138.

That a man cannot be held to bail in England, on a contract to pay money in France, if by the laws of France his person was not there liable to restraint for debt.

Doubted by Ld. Ellenborough in Imlay v. Ellefsen, 2 East, 455. See also 1 Caines, 407, in margin, and 2 Johns. 198.

See Milan v. Duke of Fitzjames (post).

MELLISH v. MOTTEAUX, Peake, 115.

Plaintiff bought a brig "with all faults," and no representation was made of her condition. Afterwards *latent* defects were discovered, which defendant had previously known, but used no artifice to conceal: and he was held liable.

Overruled in Baglehole v. Walters, 3 Campb. 154; see also, Pickering v. Dowson, 4 Taunt. 779; Emerson v. Brigham, 10 Mass. 197.

MENDES v. MENDES, 1 Ves. 89; 3 Atk. 619.

That marriage will determine the guardianship as to the female.

Denied in Roach v. Garvan, 1 Ves. 160; Matter of Whitaker, 4 Johns. Ch. R. 380.

MERCER v. JONES, 1 Camp. 479.

"The counsel for the defendant urged the authority of Lord Ellenborough's decision in Mercer v. Jones (1 Camp. 479), as proving that damages could not exceed the value of the property at the time of its conversion. Abbott, Ch. J. (Lord Tenterden), is reported to have said that Mercer v. Jones was hardly law." See Suydam v. Jenkins, 3 Sand. 635.

MERCER-STREET, 4 Cowen, 542.

Overruled in Lewis-street, 2 Wend. 472; and the principle of the decision approved in 8 Wend. 85; 11 ib. 486; and 18 ib. 410.

MEREDITH v. HINSDALE, 2 Caines' R. 362.

Overruled in Andrews v. Herriot, 4 Cowen, 508; the Ch. J. saying, that Mr. B. (counsel for plaintiff), was fully supported by Meredith v. Hinsdale, if that were now to be received as law; but the current of authority, since the decision of that case, had been uniform and unbroken, that the *lex loci contractus* governs only as to the construction of the contract, and has nothing to do with the remedy, which is controlled entirely by the *lex fori*." See S. C. p. 510 n. (a), and Hyde v. Goodnow, 3 Coms. 266.

MERETONY v. DUNLOPE, cited in Lockyer v. Offley, 1 Term R. 252.

The ship received her death-wound during the voyage, but was kept afloat by pumping, till after the policy was expired; and held that the underwriters were discharged.

Doubted in Peters v. The Phœnix Ins. Co., 3 S. & R. 27, 28: Tilghman, C. J.—"We have no report of this case which informs us of the nature of the policy. It was probably of that kind which precluded assured from recovering for a partial loss; otherwise this decision would be contrary to other cases of unquestionable authority, and could not be law."

MERITON v. STEVENS, Willes R. 217.

S. P. as in Blanchard v. Myers (ante).

Limited in Lane v. Bacchus, 2 Term R. 45; Brisban v. Caines, 11 Johns. R. 197.

MERRILLS v. LAW, 9 Cowen, 65.

Reversed in Law v. Merrills, 6 Wend. 268.

MERRILL v. THE ITHACA & OSWEGO R. R. C., 16 Wend. 586.

If an agent be *dead*, at the trial, *original entries* made by him *in the usual course of business* may be admitted in evidence; but absence from the State is not a ground for admitting such evidence.

Doubted, Union Bank v. Knapp, 3 Pick. 96. If insane, his handwriting may be proved. In Elms v. Chevis, 2 M'Cord, 349, *held*, that a book account may be proved by proving the handwriting of the clerk who made the entries, if he be out of the State. Parker, C. J. in 15 Mass. 384, says,—"When the best evidence is out of the power of the party to produce, the next in degree must be resorted to." See The Philadelphia Bank v. Officers, &c., 12 S. & R. 49.—Duncan, J.

MERRITT v. LAMBERT, 7 Paige, 344.

Overruled? Farmers' Fire Ins. Co. v. Edwards, 26 Wend. 241; see Post v. Arnot, 2 Denio, 344.

MERRITT v. LAMBERT, 10 Paige, 352.

See Wallis v. Loubat, 2 Den. 607.

MERRITT v. MERRITT, Martin, 18.

Denied in Morgan v. Cone, 1 Dev. & B. 234—Gaston. "The note of it is too vague and unsatisfactory to furnish a safe ground for reliance." "It may be an erroneous account of the case of Merritt v. Warmouth, reported in 1 Hayw. R. 12." "Besides the decision is directly contradicted by that of Sheppard v. Edwards, 2 Hayw. R. 186, and in Stroud v. Wilkes, not reported, which one of our body personally knows."

MERRITT v. SEAMAN, 6 Barb. 330.

Reversed, 2 Selden, 168.

MERRYWETHER v. NIXAN, 8 Term R. 186.

No action for contribution is maintainable by one wrong-doer, although the one who claims contribution may have been compelled to satisfy the whole damage arising from the *tort* committed by them both.

"From the inclination of the court, in Phillips v. Biggs, Hard. 164, from the concluding part of Lord Kenyon's judgment in Merrywether v. Nixan, and from reason, justice, and sound policy, the rule that wrongdoers cannot have contribution against each other, is confined to cases where the person seeking redress must be presumed to have known that

MERRYWETHER v. NIXAN, 8 Term R. 186—continued.

he was doing an unlawful act." Per Best, C. J., in Adamson v. Jervis, 4 Bing. 72. Accordingly in Betts v. Gibbons, 2 Adol. & Ell. 57, such an action was held to be maintainable. There, the defendant consigned to the plaintiffs ten casks of acetate of lime, for Nyren and Wilson, two of which were delivered, but the remaining eight continued in the plaintiff's hands up to the time of Nyren and Wilson's bankruptcy, on which the plaintiffs by the defendant's orders refused to deliver them to the assignees, who brought an action of trover, which the plaintiffs compromised by paying the value of the casks, together with the costs, and brought this action against the defendants for indemnity. They were held to be entitled to recover. "The principle laid down in Merrywether v. Nixan," said Taunton, J. is "too plain to be mistaken. The law will not imply an indemnity between wrong-doers. But the case is altered where the matter is indifferent in itself, and when it turns upon circumstances whether the act be wrong or not. The act done here, by changing the destination of the goods at the order of the defendant, was not clearly illegal; and, therefore, not within the rule in Merrywether v. Nixan;" Humphreys v. Pratt, 2 Dow. & Cl. 288; Fletcher v. Harcot, Hutt. 55, S. C. as Battersey's case, Winch. 48. In Colbourn v. Patmore, 4 Tyrwh. 677; 1 C. M. & Ros. 73, the proprietor of a newspaper sued his editor for falsely, maliciously, and negligently *inserting* a libel therein, without the knowledge, leave, or authority of the plaintiff, "in consequence of which the plaintiff was convicted and fined for falsely and maliciously *printing and publishing* the said libel." The case was determined against the plaintiff, on a slip in the pleading, the court being of opinion, that it was consistent with the statement in the declaration, that the plaintiff, though he did not know of the original insertion of the libel, might afterwards have knowingly and willfully permitted it to be printed, and so have been convicted in consequence of his own criminal act, and not that of the defendant. But, during the argument, the question whether a newspaper proprietor, convicted and fined in consequence of the publication of a libel by his editor without his knowledge or consent, could maintain an action for indemnity, was elaborately discussed at the bar; and the court in delivering judgment expressed a strong opinion that he could not. "I am not aware," said Lord Lyndhurst, C. B., "of any case in which a man convicted of an act declared by law to be *criminal*, and punished for it accordingly, has been suffered to maintain an action against the party who participated with him in the offence, in order to procure indemnity for the damages occasioned by that conviction; but after hearing the argument, I entertain little or no doubt that such an action could not be maintained." (See Shackell v. Rosier, 2 Bing. N. C. 631.)

The principle established by Merrywether v. Nixan, viz., that one *tort-feasor* cannot recover contribution against another, is but one modification of that general rule laid down by Wilmot, C. J., in Collins v. Blantern, viz. *Ex turpi causa non oritur actio.* "Whoever," his Lordship there lays down, "is a party to an unlawful contract, if he have once paid the money stipulated to be paid in pursuance thereof, shall not have the help of a court of justice to fetch it back again." And the statement of an account in which the money due by the terms of the illegal contract is al-

MERRYWETHER v. NIXAN, 8 Term R. 186—continued.

lowed, seems for this purpose equivalent to payment of it. Owens v. Denton, 1 C. Mee. & Rosc. 712; 5 Tyrwh. 359. In that case, the defendant had sold malt to the plaintiff by the hobbett, and the price having been included in an account stated and settled between them, it was held, that the defendant might avail himself of the sale in support of a plea of set-off to an action brought against him by the plaintiff. "The general proposition," said Lord Abinger, "may be admitted, that a seller cannot enforce a contract of this sort by action, or in support of a plea of set-off. But the question here is, whether a settlement of accounts, equivalent to a payment in cash, has not taken place between the parties?"

Examples of the rule, that money paid in pursuance of an illegal contract, shall not be brought back again, are to be found in B. N. P. 16, 132; Howson v. Hancock, 8 Term R. 575; Browning v. Morris, Cowp. 790; Andree v. Fletcher, 3 Term R. 266; Vandyck v. Hewitt, 1 East, 97; Lubbock v. Potts, 4 East, 449; which show, that, in case of illegal insurance, the premium cannot be recovered back, notwithstanding that, the insurance being void, the underwriters could not have been compelled to pay the loss; though it is otherwise where the illegality has been occasioned by an accident, of which the insured could not have been aware, such as the breaking out of hostilities between the country of the insured and this country, of which no news had arrived at the place where the insurance was effected. Orm v. Bruce, 12 East, 225; and see Hentings v. Stanniforth, 5 M. & S. 122. It must be observed that the generality of this doctrine is subject to some qualifications, for though, generally speaking, money paid in pursuance of an illegal contract cannot be recovered, yet where the contract has been illegal by an act the object of which is to protect one class of men against another, or where the contract has been made in consequence of oppression on one side, and submission on the other, persons belonging to the class whose protection is the object of the law, may recover back from those against whom it is intended to protect them, payments made under such a contract; see Smith v. Bromley, Dougl. 696 n., B. N. 133; Jaques v. Golightly, 2 Bl. 1073; Jaques v. Withy, 1 H. Bl. 65; Williams v. Hedley, 8 East, 378, Taylor v. Lendey, 9 East, 49; Smith v. Cuff, 6 M. & S. 160. And it must also be observed, that even money paid in pursuance of an illegal contract by one of the parties to it, but paid, not to the other party, but to a stakeholder, may be recovered back from the stakeholder before it had reached the other party's hands; for to permit this is merely to allow a *locus pœnitentiæ*, and to prevent the illegal contract from being executed at all. See Cotton v. Thurland, 5 Term R. 405; Smith v. Bickmore, 4 Taunt. 474; Hastelow v. Jackson, 8 B. & C. 221; Hodson v. Ferrill, 1 C. & Mee. 802.

The doctrine established in Merrywether v. Nixan, is drawn from the same source as that which prevents the recovery of money paid in pursuance of an illegal contract. If contributions could be claimed by one tort-feasor from another, the community of wrong between the plaintiff and defendant would be the very foundation of the action; and it is as contrary to policy to allow a man to recover that which he has paid in consequence of his illegal *act*, as to allow him to recover that which he

MERRYWETHER v. NIXAN, 8 Term R. 186—continued.

has paid in consequence of his illegal *contract;* and therefore, where a sheriff lets the defendant go without taking a bail-bond, and is in consequence obliged to pay the debt, he cannot recover the amount of it from the defendant. Pitcher v. Bailey, 8 East, 171; Eyles v. Faikney, Peake N. P. C. 144 n. The qualifications which have been engrafted on the general rule laid down in Merrywether v. Nixan, will be found collected in the note to Lampleigh v. Braithwaite, vol. 1, p. 71 of Smith's Lead. Cases, in which the right of a joint contractor to contribution is also spoken of.

MERTENS v. ADCOCK, 4 Esp. R. 251.—Ellenborough.

A resale does not bar an action for goods bargained and sold, though it may be considered as an unlawful conversion. Doubted in Hagedorn v. Laing, 162, 166.—Gibbs. This question, "is a question as to the pleading only; for there can be no doubt but that the plaintiff might, after reselling the goods, recover the same measure of damages in a special count, framed upon the refusal to accept and pay for the goods bought." Tindal, C. J., in Acebal v. Levy, 10 Bing. 376. See also Penniman v. Hartshorn, 13 Mass. 87; Bement v. Smith, 15 Wend. 493.

MESEROLE v. MAYOR OF BROOKLYN, 8 Paige, 198.

Reversed, 26 Wend. 132.

METCALF v. CLARK, 5 Johns. 361.

Overruled, Swartwout v. Hoage, 16 Johns. 3.

METCALFE v. STANFORD, 1 Bibb, 521.

S. P. as in Leyford's case (ante).

Overruled in Anderson v. Barry et. al., 2 J. J. Marsh. R. 265.

METHODIST EPIS. CHURCH v. JAQUES, 3 Johns. Ch. 77.

Reversed, 17 Johns. 548.

METHODIST EPIS. CHURCH OF CINCINNATI v. WOOD, 5 Ohio R. 286.

Denied, Lewis v. Bank of Kentucky, 12 Ohio R. 132.

METHOL v. PECK, Winch. 112; Hutt. 73, S. C. in C. B.

Reversed in B. R. 3 Bulstr. 298; Poph. 160; W. Jones, 85; Pullison v. Barnard, Savile, 72, S. P.

MICHIGAN STATE BANK v. HASTINGS, 1 Doug. Mich. R. 527.

The reporter's note of this case corrected, 1 Doug. Mich. R. 527.

MICK v. MICK, 10 Wend. 379.

The marginal note says—"That the alien widow of a natural-born citizen cannot be endowed, by reason of her alienism."

Denied in Priest v. Cummings, 16 Wend. 617.

MIDLAND COUNTIES RAILWAY CO. v. WESTCOMB, 11 Sim. 57.

Not followed as to costs, Hinder v. Streeter, 12 Eng. R. 346; 16 Jur. 650.

MILAN v. DUKE OF FITZJAMES, 1 B. & P. 138; S. P. 3 Ves. 449.

The defendant was not liable to arrest on a contract made in France, on which, by the laws of France, he was not liable to arrest in that country.

Overruled in Imlay v. Ellefsen, 2 East, 453; Smith v. Spinola, 2 Johns. 198; Sicard v. Whale, 11 ib. 194; Scoville v. Canfield, 14 ib. 338; Peck v. Hozier, ib. 346; Levy v. Boas, 2 Bail. 219; Ayres v. Audibon, 2 Hill, 601; Pearsall v. Dwight, 2 Mass. 84.

See Melan v. Duke of Fitzjames (ante).

MILBANK v. REVETT, 2 Mer. 405.

"Milbank v. Revett, which was very shortly and very loosely argued, considers that the principles which are applied to partners are applicable also to tenants in common, which probably would not have been the opinion if the case had been more fully argued." By Vice-Ch. in 2 Sim. & Stu. 145.

MILES v. WILLIAMS, 1 P. Wms. 255.

Where it is said that if a bond be made to A in trust for B, who becomes bankrupt, his assignees may sue in their own names, though B must have sued in the name of his trustee.

This is denied in *Ex parte* Coysegame, 1 Atk. 193.

MILLER v. ADSIT, 16 Wend. 335.

Held, in the court of *dernier resort*, that replevin lies by a *receiptor* of goods, which have been taken in execution.

Opposed, Norton v. People, 8 Cowen, 137; Dillenback v. Jerome, 7 ib. 294; Mitchell v. Hinman, 8 Wend. 667; Phillips v. Hall, 8 ib. 614; Collins v. Butts, 10 ib. 410; Waterman v. Robinson, 5 Mass. 303; Ludden v. Leavitt, 9 ib. 104; Perley v. Foster, 9 ib. 112; Warren v. Leland, 9 ib. 265; Commonwealth v. Moor, 14 ib. 217; Bond v. Paddelford, 13 ib. 394; Prownell v. Manchester, 1 Pick. 232. See also Story on Bailment, 72 to 93; Fisher v. Bartlett, 8 Greenl. 122; Johns. v. Church, 12 Pick. 557; Bursley v. Hamilton, 15 ib. 40; Collins v. Evans, 15 ib. 63. The *receiptor is the keeper for the officer;* Carr v. Farley, 3 Fairf. 328; Woodman v. Trafton, 7 Greenl. R. 178.

MILLER v. DRAKE, 1 Cai. 45.

Overruled? Williams v. Healey, 3 Denio, 363.

MILLER v. GASTON, 2 Hill 188.

Overruled, Brown v. Curtis, 2 Coms. 255.

MILLER v. HACKLEY, 5 Johns. 375.

Overruled in Buckner v. Finley, 2 Pet. R. 586: held, that a bill of exchange drawn in another state is a foreign bill.

Overruled in part, Halliday v. McDougall, 20 Wend. 81; 22 ib. 264.

MILLER v. JACOBS, 3 Watts, 477.

Reversed and explained in Jacobs v. Miller, 5 Watts, 208. S. C.

MILLER v. McCAN, 7 Paige, 451.

Overruled in part, Vilas v. Jones, 1 Coms. 274.

MILLER v. STOCK, 2 Bail. R. 163.

In an action brought to render an agent personally liable for goods purchased by him in the name of the principal, the *onus* lies upon the defendant to prove his agency; and it does not dispense with this proof, that the vendor has charged the goods in his books to the principal.

Opposed, Storr v. Scott, 6 C. & P. 241:—Where a tradesman makes out an account in the name of a particular person, it must be taken that the goods were furnished on the credit of such person, unless it be shown by *unequivocal evidence* that the credit was in fact given to another.

MILLER v. TAYLOR, 4 Burr. 2303.

At common law, an author has the sole right of printing and publishing his work, and may sue whoever shall publish the same without his consent, &c.

Overruled in Donaldson v. Beckett, 2 Bro. Parl. C. 129; 4 Burr. 2408. S. C.; Millar v. Taylor, 7 Term R. 2303; see Bickford v. Hood, 7 Term R. 616; Wheaton v. Peters, 8 Pet. 591.

MILLS v. BARBER, 1 M. & W. 427.

As to the right to begin.

Adopts the rule laid down in Amos v. Hughes, 1 M. & R. 464, by Mr. Baron Alderson, to wit—that the party, against whom the verdict would be, if neither gave any evidence, is the party who ought to begin.

Exception, stated in Carter v. Jones, 6 C. & P. 64; 1 M. & R. 281. See 1 Phil. Ev. (834) 776 *et. seq.*—5th Am. ed. In Wooton v. Barton,

MILLS v. BARBER, 1 M. & W. 427—continued.

1 M. & R. 518, Parke B. said, "that the only rule laid down by the judges was, that in actions for personal injuries, where damages are sought, as in actions of assault, &c. (and see 6 C. & P. 687), and in libel and slander, the plaintiff should begin." Nor does an action of trover appear to be within the rule. Scott v. Lewis, 7 C. & P. 347. The rule does not apply to cases in which the damages, though in strict legal language unliquidated, may be ascertained by some measure of calculation, to which the facts may be applied; and the rule seems to be confined to cases where compensation is sought for a personal injury. See Harrison v. Gould, 7 C. & P. 580; Lewis v. Wells, ib. 221.

MILLS v. BELL, 3 Call's R. 326.

It was said, that the rule of damages on a total failure of title, was the value at the time of eviction.

Overruled in Thelkeld's Adm'r v. Fitzhugh's Ex'r, 2 Leigh's R. 451.

MILLS v. DURYEE, 7 Cranch, 418.

Denied in Hall v. Williams, 6 Pick. 232, and in Starbuck v. Murray, 5 Wend. 156.

MILLS v. MARTIN, 19 Johns. 7.

Overruled, Martin v. Mott, 12 Wheat. 19.

MILLS v. SPENCER, Holt's N. P. R. 534.

S. P. as in Northampton's case (post).

MILNER v. HORTON, M'Clel. 647.

Where a general covenant was held to be qualified by reference to other covenants.

Overruled in Smith v. Compton, 3 B. & Adol. 189—Tenterden: "We have considered Milner v. Horton again since the argument, and we cannot feel ourselves bound by its authority; we are, therefore, under the necessity of coming to this conclusion, that the covenant declared upon, being unqualified in itself and unconnected with any words in the qualified covenant, must, in a court of law, be regarded as an absolute covenant for title."

MILTON'S CASE, Hardr. 485.

That debt does not lie on a bill of exchange by the payee against the acceptor, for that the undertaking of the acceptor is collateral only, and the acceptance creates no duty.

See contra, Heylyn v. Adamson, 2 Burr. 674; that when the drawee

MILTON'S CASE, Hardr. 485—continued.

has accepted, he becomes the original debtor. Also, Ruddle v. Price, 1 H. Bl. 547; Bishop v. Young, 2 Bos. &. Pul. 78; Chitty on Bills, 220·; 1 Cranch, 387; Bullard v. Bell, 1 Mason's Rep. 243.

MINTON v. WOODWORTH, 11 Johns. 474.

Denied in Allen v. Smith, 7 Hals. 162.

MILWARD v. CAFFIN, 3 W. Bl. 1330.

Doubted by Lord Kenyon, Harper v. Carr, 7 T. R. 274, on one point; with respect to which, however, it has been upheld both in K. B. & C. B. Fletcher v. Wilkins, 6 East, 285, 286; Hurrell v. Wink, 8 Taunt. 369. Governor, &c. of Bristol v. Wait et al., 1 Adol. & Ell. 264.

MILWARD v. INGRAM, 1 Mod. 205; 2 Mod. 44; 1 Freem. 195, S. C.

Overruled, May v. King, 12 Mod. 538; Rhodes v. Barnes, 1 Burr. 9; 2 Bl. Rep. 65; Atherley v. Evans, Sayer, 269; 3 Lev. 237. S. P.

MIREHOUSE v. RENNELL, 11 J. B. Moore, 139; 3 Bing. 223.

Reversed in S. C. in 7 B. & C. 113; 9 D. & Ry. 810. Reversed also in House of Lords, 1 Moore & Scott, 683.

MITCHELL v. DALL, 2 Harr. & Gill, 159.

In respect to the appropriation of payments of money by a debtor to his creditor in reference to a surety or guarantor.

Reversed in S. C. 4 Gill & J. 361.

MITCHELL v. GAZZANI, 12 Ohio R. 315.

Disapproved, Doremus v. O'Harra, 4 Western Law Jour. N. S. 344.

MITCHELL v. JOHNSON, 1 M. & M. 176.

S. P. as in Page v. Mann (post).

MITCHELL v. REYNOLDS, 1 P. Wms. 181.

A bond or promise to restrain one from trading in a particular place, if made upon a reasonable consideration, is good. Secus, if it be on no reasonable consideration, or to restrain a man from trading at all.

Explained in Young v. Timmins, 1 Tyrwh. 226; 1 C. & J. 331; "and the rule to be collected from them all is stated in that case by Vaughan B., p. 241."

MITCHELL v. WRIGHT, 1 Esp. 280.

A bill of particulars under the judge's order, should contain the credits as well as debits.

Opposed, Ryman v. Haight, 15 Johns. 222.

MITFORD, p. 52.

Overruled, it was said, in Kelly v. Drummond, 1 Hogan, 369.

MOAKLEY v. RIGGS, 19 Johns. 69.

Woodworth, J. in Thomas v. Woods, 4 Cowen, 184—"The expression that a term should not have been lost, may be regarded in that case as an *obiter dictum*."

2 MODERN.

A case being cited from 2 Modern, Holt, C. J.—*in ira* said, "that no books should be published but what were licensed by the judges:" and on another occasion he spoke of "those *scrambling* Reports," that would make posterity think ill of his understanding, and that of his brethren on the bench.

3 MODERN.

Parke, J. in 9 Bing. 361, says, that the publisher of 3 Modern, observes in his preface, that "some of the late reports (of course not meaning his own) are collected with very little judgment."

4 MODERN.

Powell, J. 2 Ld. Raym. 1072,—"These scrambling reports; they will make us appear to posterity like a parcel of blockheads."

6 MODERN.

"A book of no repute." Per Ld. Hardwicke, 1 Ves. 11. Ridgway, 126, *per eundum*—"Not of the greatest authority or correctness."

8 MODERN.

"A miserable bad book." 1 Burr. 386, in margin. See also 2 Burr. 1062. "The court treated that book with the contempt it deserves." 3 Burr. 1326, in margin. See also, 7 D. & E. 239. Ld. Kenyon in 7 Term R. 239, said, "Nine cases out of ten in that book are totally mistaken."—"A book of no authority."—2 Burr. 1062; 3 ib. 1326. Bayley, J. in King v. Williams, 3 M. & Ry. 405:—"Ld. Raymond, who decided Rex v. Harwood, 2 Ld. Raym. 1405, is more likely to be correct than the editor of 8 Mod.—a book notoriously inaccurate and of no authority."

10 MODERN.

Said to be of little authority, by Ld. Mansfield, 1 Burr. 153; but he afterwards quoted the case of Parker v. Cook from it. Cowp. 178. Spoken slightly of, by Buller, J., Doug. 61.

11 MODERN.

"A book of no authority."—*arguendo*, Cowp. 16; see Doug. 61.

12 MODERN.

"Is not a book of any authority." Per Buller, J. Doug. 83. See also Peake's Ev. 41.

MŒLLER v. FLOWERS, 7 Ohio R. 583.

Overruled in Harrington v. Heath, 15 Ohio R. 483.

MOFFAT v. FARQUAHARSON, 2 Bro. C. C. 338.

Denied in Leigh v. Thomas, 2 Ves. 312 n.; see Calv. on Part. in Eq. p. 24.

MOGADORA v. HOLT, 1 Show. 318; 12 Mod. 15, S. C.

S. P. as in Butler v. Pray (ante).

MOLLET v. BRAYNE, 2 Camp. 103.

Doubted, it seems, in Whitehead v. Clifford, 5 Taunt. R. 518.—Gibbs, C. J.: "As to the case in Campbell, it is very different from this, and we do not throw out any opinion against it; but when the like circumstances arise, it will be proper to consider them."

MOLLOY.

"Not usually placed in the first class of authority upon maritime subjects."—Ld. Stowell, in 1 Hagg. Adm. R. 321; "Molloy casts a rapid glance over the law concerning bills of exchange, but this part of his work is far inferior to the treatise of Marius."—3 Kent Com. 126.

MOLLOY and MALINES.

"Almost any thing may be proved by citations from them." Per Ld. Mansfield, 2 Burr. 690. "That part of Malines relating to bills of exchange is brief, loose, and scanty; but it contains the rules and mercantile usages prevailing in England and other commercial countries in the time of the author. 3 Kent Com. 125. But Mr. J. Johnson (in 3 Pet. 236) says, "Malines' book unites the commendations of antiquity, good sense, and practical knowledge."

MONPRIVATT v. SMITH, 2 Camp. 175.

See Smith's Leading Cas. 59, 60.

MONRAVIA v. LEVY, 2 Term R. 483 note.

Doubted in Bowes v. French, 2 Fairf. R. 182–5. Weston.—"The note of Monravia v. Levy, is very brief. It was at N. P. before Buller, J. The defendant had covenanted to account. He did so; and a balance was struck, which he expressly promised to pay. Upon this promise, Buller, J., sustained assumpsit; probably upon the ground that the covenant was fulfilled."

MONROE v. WILSON, 6 Mon. 124.

Overruled, Wells v. Bowling's Heirs, 2 Dana Ken. R. 44.

MONTGOMERY v. KEMP, 5 Ohio R. 240.

See Ohio v. Hnmphreys, 7 Ohio R. 224; Swan's Stat. 373.

MONTGOMERY v. REYNOLDS, 2 Green, 283.

Dissented from, Pharo v. Parker, 1 Zab. 752.

MONTGOMERY COUNTY BANK v. THE ALBANY CITY BANK, 8 Barb. 396.

Reversed in the Court of Appeals, 3 Selden, 459; see Com. Bank of Penn. v. Union Bank of New York, 1 Kernan, 211.

MOODY v. PENDER, 2 Hayw. R. 29.

That the defendant, in an action for a malicious prosecution, may give in evidence what he swore on the trial of the indictment.

Doubted in M'Rae v. O'Neal, 2 Dev. R. 171.

MOONEY v. LLOYD, 5 S. & R. 412.

That an attorney cannot recover a compensation for his services beyond the attorney's fee allowed by statute.

Overruled in Gray v. Brackenridge, 2 Penn. R. 75.

MOOR v. BLAGRAVE, 1 Ch. Cas. 277.

Doubted in Trecothick v. Austin, 4 Mason's R. 41, 44.—Story, J.

MOOR v. HATHWAY, 3 Conn. R. 528.

In Connecticut a witness is protected from answering a question that would charge him with a debt.

Opposed, Bull v. Lovering, 10 Pick. 9; Naylor v. Semmes, 4 G. & J. 273.

MOOR v. WATTS, 1 Ld. Raym. 614.

"In replevin for cattle with *ad hunc detinet*, damages given for the cattle will change the property."

Opposed, S. C. 12 Mod. 428 :—"In replevin for cattle with an *ad hunc detinet*, and defendant has judgment against him for damages, by payment thereof, the property of the distress shall be vested in him." See Smith v. Gibson (post).

MOORE v. COLLINS, 3 Dev. R. 126.

A deed by reason of the death of the register was not registered within six months (the time limited by statute), but was registered as soon as a successor was appointed; *held*, that the deed was available as if duly registered.

Overruled, in S. C. 4 Dev. R. 384.

MOORE v. DAME BROWN, Dyer, 420.

Doubted as to the correctness of the report. See Bendlowe's R. 216, and see Gale & What. on Easements, p. 277–8.

MOORE v. PYRKE, 11 East, 52.

"In my opinion, that case was badly argued and hastily decided."—Pollock, C. B., Bandy v. Cartwright, 22 Law J. R. N. S. Ex. 585; 20 E. L. & E. R. 376; and see Rodgers v. Maw, 15 Mee. & W. 449.

MOORES v. HUISH, 5 Ves. 693.

Overruled in effect in Wagstaff v. Smith, 9 Ves. 920; Sturgis v. Corp. 13 Ves. 190; Essex v. Atkins, 14 Ves. 342; see Clancy on Married Women, 118, 123; Sugden on Powers, 106.

MOORS v. CHOAT, Feb'y, 1839, reported in Jurist, Am. ed. p. 206.

Decides, that the executor of a person with whom a lease was deposited by way of equitable mortgage not having taken possession, was not liable for the arrears of rent or specific performance of the covenants; overruling Flight v. Brentley. See the case of Lucas v. Camerford (ante).

MORAVIA v. HUNTER, 2 M. & S. 444.

No authority, Boyle v. Webster, 10 Eng. R. 396; 21 Law J. R. N. S. Q. B. 202.

MORAVIA v. SLOPER, 2 Comyn's Rep. 573.

Reported briefly and inaccurately in Comyn. Better stated in Willes, 30.

MORDY v. JONES, 4 B. & A. 394.

Doubted in 8 Amer. Jurist, p. 353, Oct. No. 1832.

MOREWOOD v. WOOD, 14 East, 330 n.

Mr. Justice Buller observes:—"Thus far I agree with Lord Kenyon and Mr. Justice Ashurst, that in no case ought evidence of reputation to be received, except a foundation be laid, by other evidence, of the right."

Denied in Crease v. Barrett, 1 Cr. M. & R. It was said that such proof was not an essential condition of its reception; but that it was only material as it affected its value when received.

MOREWOOD v. WOOD, 4 Term R. 157.

"Is very much shaken if not overruled by Maxwell v. Martin, 6 Bing. 522; 8 Law J. R. C. P. 174."—Patteson, J. Davies v. Williams, 20 Law J. R. N. S. Q. B. 330; 15 Jur. 752; 5 Eng. R. 274.

MORGAN'S PRECEDENTS.

"Treated with bare respect by the Supreme Court of New York." So said, Yundt v. Yundt, 12 Serg. & Rawle, 429.

MORGAN'S VADE MECUM, 291.

See Roe v. Doe ex dem. Humphrey's (post).

MORGAN v. BIDGOOD, 1 Price, 61.

Opposed, Hockin (misprinted Dockett) v. Reed, 1 Tyrwh. 386.

MORGAN v. CLICK, Minors R. 79.

Overruled, De Mott v. Swaine's Adm'r, 5 Stew. & Por. (Ala.) R. 304.

MORGAN v. LEWIS, 4 Dowl. Pr. Cas. 29.

Explained in Hickson v. Aylward, 3 Moll. 14.

MORGAN v. RICHARDS, 1 Browne's Penn. R. 171.

Decides that a contract or *sale* made on *Sunday* is void at common law.

Denied in Drury v. Defontaine, 1 Taunt. 131. The court in Delamater v. Miller, 1 Cowen, 75, say, "The defendant was not bound to regard the demand made on Sunday."

MORGAN v. RICHARDS, 1 P. A. Browne's R. 171.

Stands alone, and is opposed to every other decision. Bloom v. Richards, 22 Ohio R. 389.

MORGAN v. RICHARDSON, 1 Camp. N. P. 40 n.; Tye v. Gwynne, ib. 346; Mann v. Lent, 10 B. & C. 877.

In an action on a bill of exchange, a partial failure of consideration is no defence, although the suit is between the original parties; otherwise, of a total failure.

Opposed, Hills v. Banister, 8 Cowen, 31. See 2 Phil. Ev. 8 notes; Christy v. Reynolds, 16 S. & R. 258.

MORLEY'S (Lord) CASE, Kel. 55.

Doubted in Rex v. Savage, 5 C. & P. 143, where the deponent was unable to attend the assizes, in consequence of being near her confinement, and Mr. J. Patteson rejected the evidence. In Rex v. Hogg, 6 C. & P. 176, the deposition of an old woman, bed-ridden, was allowed to be read, on the ground of there being no likelihood of her being able to attend at another assizes. See 3 Wend. 180; 2 Leigh's R. 474; 16 Wend. 601.

MOROE v. WILSON, 6 Monroe R. 124.

It was said, the court could not conceive under what law, or according to what precedent, a judgment *quando* could be rendered against heirs;—"for there cannot be a supposed case of assets descending to them from time to time. They (heirs) take all at once on the death of the ancestor, or not at all."

Overruled in Wells v. Bowling's Heirs, 2 Dana's R. 41.

MORRELL v. JOHNSON, 1 Hen. & Mumf. 449.

S. P. as in Smith v. Gibson (post).

MORRELL v. MORRELL, 1 Barb. 27.

Overruled, 3 Barb. 236.

MORRICE v. ANTROBUS, Hardr. 325.

That if a corporation aggregate make a lease not warranted by statute, it is void against themselves.

This depends on the fact whether such corporation has a head, or principal person, as dean, &c. or not. In the former case the lease would be good for life of the dean, &c.; in the latter, not. Co. Litt. 45 a, n. 4. Armiger v. Bp. of Norwich, Cro. Eliz. 690.

MORRIS v. BRANDON, Bull. N. P. 77.

Ld. Mansfield said—there can be a patent for an addition.

Explained in Boulton v. Bull, 2 H. Bl. 489. Buller, J.—"Since that timeit has been the generally received opinion in Westminster Hall, that

MORRIS v. BRANDON, Bull. N. P. 77—continued.

a patent for an addition is good; but then it must be for the addition only, and not for the whole machine." See Hornblower v. Boulton, 8 Term R. 95.

MORRIS v. FLOYD, 5 Barb. 130.

Overruled, Sands v. Church, 2 Selden, 347.

MORRIS v. JONES, 3 Dowl. & Ry. 605.

It was held that, where the parties agreed that execution might issue upon the judgment, after the year and a day from the signing the warrant, without a *scire facias* to revive it, they cannot afterwards set up the illegality of the proceeding.

Doubted in Heath v. Brindley, 2 Adol. & Ellis, 370; and, it would seem, overruled.

MORRIS v. MILLER, 4 Burr. 2057.

In actions for *crim. con.* "there must be evidence of a marriage in fact; acknowledgment, cohabitation, and reputation, are not sufficient; and in prosecutions for bigamy also, a marriage in fact must be proved."

Denied in Commonwealth v. Murtagh, Ashmead's R. 272; Forney v. Hallacher, 8 S. & R. 158. It seems also, by Mellen, C. J. in Cayford's case, 7 Greenl. R. 57, in respect to cases of bigamy. See (post) People v. Humphrey, Trueman's case; and see also (ante) Commonwealth v. Littlejohn, 15 Mass. 163; Rosc. Cr. Ev. 229; 2 Stark. Ev. 653 *et seq.*

MORRIS v. STEPHENSON, 7 Ves. 474.

S. P. as in Hall v. Hardy (ante).

MORRIS' LESSEE v. VANDEREN, 1 Dall. 64 (Aleyn, 18).

M'Kean, C. J. said—"That the court has a discretionary power to admit circumstantial evidence of the existence of a record."

Denied in Adams v. Betz, 1 Watts, 428; The cases referred to, "will not be found to militate against the doctrine, that a record cannot be contradicted, and must be tried by itself, when in existence."

MORRISON'S EXR'S v. HART, 2 Bibb.

Questioned in Thomas v. Phillips, 4 Sme. & M. 424.

MORROW v. WALKER, 5 Eng. Ark. R. 569.

Overruled in Biscoe v. Madden, 7 Eng. Ark. R. 765.

MORSE v. CLOYES, 11 Barb. 100.

Reversed, Dec. 1853.

MORSE v. HOVEY, 1 Sand. Ch. 187; 1 Barb. Ch. 404.

Reversed, Dec. 1853.

MORSE v. JAMES, Willes, 122.

Ld. C. J. Willes controverts the general position in Britton v. Cole, 1 Salk. 409, that an officer's aid may justify as the officer himself may, and takes a distinction between civil and criminal process.

But Ld. Ellenborough denies this distinction, and affirms the general position in Salkeld. See Grant v. Bagge, 3 East, 132.

MORSE v. ROYAL, 12 Ves. 355.

Denied in White v. Westmeath, 2 Moll. 177; but see the observations of Chan. Kent in 2 Johns. Ch. 265.

MORSE v. SLUE, 1 Ventr. 190.

"Morse v. Slue decides nothing, for the case was confounded." Merritt v. Clayhorn, 4 Monthly Law Reporter (Boston) N. S. 559.

MORTON v. TIBBETT, 15 Q. B. 428.

"Is a correct decision, because the purchaser there dealt with the goods as his own; but much that is said in that case may be open to doubt." Martin, B., Hunt v. Hecht, 22 Law J. R. N. S. Ex. 293; 20 Eng. R. 526.

MOSES v. M'FERLAN, 2 Burr. 1010.

Several times questioned; particularly by Eyre, C. J. and in Marriot v. Hampton, 7 D. & E. 269, and by Heath J. in Brisbane v. Dacres, 5 Taunt. 143; and see Trustees of University of Alabama v. Keller, 1 Ala. R. N. S. 408; Carter v. Canterbury, 3 Conn. R. 461.

Denied as to the refusal of interest in the action for money had and received, in 11 Mass. 504, and the cases there cited. See also Comyn on Contracts, 50.

MOSES v. STEVENS, 2 Pick. 232.

Denied in Weeks v. Leighton, 5 N. H. R. 344. The court say,—"In England and New York, the law is held to be otherwise: that although the infant may avoid the contract and relieve himself from the burthen of completing it, yet he cannot recover any compensation for what he has done under it, nor recover back what he may have paid. 8 Taunt. 508; 8 Cowen, 84; 7 ib. 184."

MOSELEY v. BOOTHBY, 3 Bing. R. 107.

That the collateral *guarantee* is void unless it be in writing and signed, and be given upon a sufficient consideration, and such consideration appear on the face of the guarantee, according to the statute of Frauds.

Decided differently in Massachusetts, Maine, Connecticut & Virginia, 17 Mass. 122; 4 Greenl. 180, 387; 6 Conn. 81, and 5 Cranch, 151.

MOSELEY'S REPORTS.

"Mr. Impey cited Horsley's case from Moseley's Reports; which book Ld. Mansfield told him he should not have quoted." 5 Burr. 2629. See also 3 Anstr. 861; 5 D. & E. 560. Lord Eldon, however, 1 Merivale, 92: "I myself think very differently from Lord Mansfield on that subject, having always considered Moseley's Reports as a book possessing a very considerable degree of accuracy." "Lord Eldon is presumed to have been a better judge of the merits of the work" than Lord Mansfield. 1 Kent Com. 460.

MOSS v. BRYROM, 6 Term R. 379.

Qualified in Phyn v. Royal Exchange Ins. Co., 7 T. R. 505. See also 2 Wash. C. C. R. 67.

MOSS v. CHARNOCK, 2 East, 399.

That if bankruptcy of the vendor intervenes between the execution of the bill of sale and the delivery of the ship, the vendee loses the ship.

Wood, B. said—"With great deference to that authority, I cannot agree to it. I think the property passes instantly by the bill of sale." Hubbard v. Johnstone, 3 Taunt. 208.

MOSS v. GALLIMORE, Doug. 279.

That a mortgagee, after notice of the mortgage to the tenant in possession under a lease prior to the mortgage, is entitled to the rent in arrear at the time of notice.

The Court of K. B. is said to have afterwards somewhat doubted the propriety of this decision. Powell on Mortg. 231-2. But, where a lessor, after the execution of the lease, mortgaged the premises, it was held that he could not afterwards maintain ejectment for a forfeiture. Doe d. Marriott v. Edwards, 5 B. & Ad. 1065. This is the situation of a tenant who comes in under the mortgagor *before* the mortgage. However, the case of a tenant who has entered under the mortgagor *subsequently* to the mortgage is involved in more difficulty. See Alchorne v. Gomme, 2 Bing. 54; in Pope v. Biggs, 9 B. & C. 245; Waddilove v. Barnet, 4 Dowl. 348; the law was considered as settled, that "a tenant

MOSS v. GALLIMORE, Doug. 279—continued.

who comes into possession under a demise, from a mortgagor, after a mortgage executed by him, may consider the mortgagor his landlord, so long as the mortgagee allows the mortgagor to continue in possession and receive the rents, and that payment of the rents by the tenant to the mortgagor, without any notice of the mortgage, is a valid payment. But the mortgagee, by giving notice of the mortgage to the tenant, may thereby make him his tenant, and entitle him to receive the rents." So, in Vallance v. Savage, 7 Bing. 595, the mortgagor was treated as the mortgagee's agent, if he think fit to adopt him as such, in a case arising between trustee and *cestui que trust.* See Megginson v. Harper, 4 Tyrwh. 100; but see Pope v. Biggs (post).

MOSS v. McCULLOUGH, 5 Hill, 131.

See 7 Barb. 279.

MOSS v. MOORE, 18 Johns. 129.

Overruled in Pardee v. Blanchard, 19 Johns. 442.

MOSS v. ROSSIE LEAD CO., 5 Hill, 137.

Overruled? McCullough v. Moss, 5 Den. 567.

MOTT v. SMALL, 20 Wend. 212.

Reversed 22 Wend. 403.

MOUNT v. WARDELL, 7 Johns. 435; and Campbell v. Richardson, 10 Johns. 406.

S. P. as in Juhel v. Church (ante).

MOUNT STEPHEN v. BROOKE, 3 B. & Ald. 141.

Doubted, Bloodgood v. Bruen, 4 Selden, 362.

MOWREY v. WALSH, 8 Cow. 233.

Doubted, Ash v. Putnam, 1 Hill, 302.

MOYLE v. EWER, 2 Bulstr. 184.

It was laid down by Coke, C. J. that if a person sow the ground, and is afterwards deprived, or doth resign, if the corn was not severed at the time of the successor's coming in, he shall have the tithe. The same doctrine is stated in Degge, ch. 1, p. 2, and 1 Gibson's Codex, 661.

But in Bulwer v. Bulwer, 2 Barn. & Ald. 470, the court overruled the doctrine, saying "The authorities cited (meaning the above) are much too loose for the court to act upon, in opposition to so old and so established a rule of law."

MULLINER v. WILKES, E. 24 G. III. B. R.

Denied per Buller, J. in Hedges v. Sandon, 2 D. & E. 439.

MUMFORD v. CHURCH, 1 Johns. Cas. 147.

The right to abandon is to be decided by the information of the assured at the time of the abandonment; and is not to be affected by the actual state of property when the offer to abandon is made.

Overruled in Rhinelander v. Penn. Ins. Co., 4 Cranch, 29; Peele v. Merchants' Ins. Co., 3 Mason, 27, and cases cited; Humphrey v. Union Ins. Co., 3 ib. 429; Dickey v. Amer. Ins. Co., 3 Wend. 658; 4 Cow. 222, S. C.; Church v. Pedient, 1 Cai. Ca. in Err. 21; Queen v. The Union Ins. Co., 2 Wash. C. C. R. 335; Maryland Ins. Co. v. Bathurst, 3 G. & J. 159.

MUNROE v. HOFF, 5 Denio, 362; Porter v. Talcott, 1 Cowen, 383.

The observations in Monroe v. Hoff and Porter v. Talcott, are merely dicta. Noel v. Murray, 1 Duer, 390.

MUNROE v. HOWE, 1 Chit. R. 171.

Ld. Tenterden observed, "This may be a bill of trespass, and not upon promises. It is quite clear the particular cause of action must be expressed in the *ac etiam* clause."

Denied in Anonymous, 1 Dowl. Pr. R. 155.—Patterson. The reporter must have mistaken Ld. Tenterden.

MUNSON v. HASTINGS, 12 Vt. R. 346.

"I think that first and last that case has been as much misunderstood as any one in our reports." Whitcomb v. Wolcott, 21 Vt. R. 373.

MUNSON v. HEGEMAN, 10 Barb. 112.

Reversed, April, 1853.

MUNSELL v. LEWIS, 4 Hill, 635.

Reversed, 2 Denio, 224.

MUNTORF v. MUNTORF, 2 Rawle, 180.

An executor must pay costs where there is a verdict for defendant, or he is nonsuit, although he was obliged to sue in his representative character; there being no difference whether the cause of action arose before or after the death of the testator.

Doubted. See Kline v. Guthart, 2 Penn. R. 490.

MURCHIE v. COOK, 1 Ala. R. 42; Simonton v. Steele, ib. 357; Honeycut v. Strothier, 2 ib. 135.

Examined and explained, McNair v. Cooper, 4 Ala. R. N. S. 660.

MURDOCH v. RATCLIFF, 7 Ohio R. 119.

See Swan's Stat. 289, s. 17.

MURGATROYD v. CRAWFORD, 3 Dall. 491.

Overruled, "The case of Murgatroyd v. Crawford, 3 Dall. 491, cannot be deemed authority, for it was overruled in Duncanson v. M'Lure, 4 Dall. 308." By Story, J., in 4 Mason, 394.

MURLESS v. FRANKLIN, 1 Swans. R. 17.

Ld. Eldon:—That possession, taken by a father at the time of a purchase in his son's name, showed the father's intention to purchase for his own use.

Doubted in Matthews on Presumptive Evidence, 68—"Too general in not being restricted to the case of an adult child, but it seems opposed, in the general principle, to preceding *dicta* and judicial determinations."

MURPHY v. CLARK, 1 S. & M. 221.

"If the question had been decided in Murphy v. Clark by a majority of the court, I should now acquiesce of course; but it was not. Only two judges presided, and each gave a different reason for sustaining the bill. I regard the question now presented as an open one." By Sharkey, Ch. J., in a dissenting opinion. Butler v. Hecks, 11 Sme. & M. 86.

MURRAY v. GOUVERNEUR, 2 Johns. Cas. 441.

In an action for the mesne profits, repairs made may be claimed as a set off; the action being an equitable action, and will allow of every kind of equitable defence.

Denied in 2 Kent Com. 234, 235:—"These were extra-judicial *dicta*." See Jackson v. Loomis, 4 Cow. 168; Nelson v. Allen, 1 Yerg. R. 360.

MURRAY v. GRAHAM, 6 Paige, 622.

Reversed, 22 Wend. 559.

MURRAY v. RIGGS, 15 Johns. 571.

Ch. J. Thompson held, that "The grantors having reserved to their own use, for their maintenance and support, a part of the property covered by

MURRAY v. RIGGS, 15 Johns. 571—continued.

the deed, forms no objection to the appropriation of the residue." 2 Vern. 510, & 5 Term R. 424.

Doubted in Macie v. Cairnes, 5 Cowen, 530; Savage, C. J., observes, that the cases cited seem not to support the doctrine laid down. Austin v. Bell, 20 Johns. 442. See 2 Kent Com. 535, n. (e).

Overruled, Grover v. Wakeman, 11 Wend. 187.

MURRAY v, UNITED INS. CO., 2 Johns. Cas. 263.

S. P. as in Mumford v. Church (ante).

MUSKINGUM BANK v. CARPENTER, 7 Ohio, 21.

Overruled, Luke v. Doud, 10 Ohio R. 415.

See Stansell v. Roberts, 13 Ohio R. 148; Mayham v. Coombs, 14 ib. 428; White v. Denman, 16 ib. 59; Burgoyne v. Clarkson, 2 West. Law Journal, 325.

MUSSELBROOK v. DUNKIN, 9 Bing. 605.

Tindal, C. J., said, "That an award is published when the parties have notice that it is within their reach on payment of such expenses as are *just and reasonable.*"

Overruled in MacArthur v. Campbell, 5 B. & Adol. 518: *Held*, that an award is published when the arbitrator gives the parties notice that it may be had on payment of his charges; whether they be reasonable or not.

MYER v. COLE, 12 Johns. 349.

A cause of action arising after the death of the testator, cannot be joined with one arising in his lifetime, although it is alleged that defendants, *as executors aforesaid, &c.*

Denied in Hapgood v. Houghton, 10 Pick. 154, and the contrary decided.

N.

NACKSTRAW v. IMBER, Holt N. P. C. 368.

Gibbs, C. J., *held*, that an implied promise was sufficient to enable one partner to recover at law from his copartner, on what appears to be due on a balance struck.

Doubted, Fromont v. Coupland, 2 Bing. 170; 9 B. M. 319.

NAISH v TATLOCK, 2 H. Bl. 319.

Overruled in Gibson v. Courthorpe, 1 Dow. & Ry. 206: *Held*, that the assignees of a bankrupt were liable in an action for use and occupation for the rent of a whole year, though the premises had been occupied by thè bankrupt, previous to their appointment, during a part of the year.

NASH v. ATHERTON, 10 Ohio R. 163.

Doubted, Wyckoff v. Stephenson, 14 Ohio R. 20.

NAYLER v. ———, 1 Freem. 192.

Overruled, Mayor of London v. Cole, 7 D. & E. 583; 1 Saund. 248 n.

NEAL v. LEDGER, 16 East, 51.

Overruled in the matter of Casell, 9 B. & C. 624: *Held*, that two arbitrators in choosing a third must make it a matter of choice, not of chance.

NEALE v. WYLLIE, 3 B. & C. 533.

Doubted, Smith v. Howell, 6 Eng. R. 490; 20 Law J. R. N. S. Ex. 377.

NEILSON v. McDONALD, 6 Johns. Ch. R. 212, 213.

Reversed in M'Donald v. Neilson, 2 Cowen, 141.

NELSON v. DIXIE, Cases Temp. Hardw. 305 (1736).

Ld. Hardwicke says "An action for words may either lay the particular words spoken, or may set out the substance of the words spoken; and if the substance only be set out, as, &c., that it is sufficient to prove the substance of the words, and that was Haylay's case."

Overruled by Lord Ellenborough, Cook v. Cox, 3 M. & Selw. 110. A late case (Whiting v. Smith, 13 Pick. 364) recognizes Ld. Hardwicke's doctrine; and affirms that such always has been the practice in that commonwealth, as appears from the precedent (Amer. Prec. Dec., ed. 1810, 308, 309, drawn by Parsons and Jackson). See M'Connell v. M'Coy, 7 S. & R. 223.

"In this case, Lord Hardwicke was mistaken in supposing there was a precedent in Rastall for the form of declaration which he asserted to be proper." Yundt v. Yundt, 12 Serg. & Rawle, 428.

NELSON v. DUBOIS, 13 Johns. 175.

Overruled, Hall v. Newcombe, 7 Hill, 416.

NELSON v. FORD, 5 Ohio R. 476.

See 13 Ohio R. 200.

NELSON'S LUTWYCH.

"There are many other grievances, among which may be reckoned such books as Nelson's Lutwych—a book which deserved public censure, at least, as being a reproach and dishonor to the profession, and rather adapted to Billingsgate than Westminster Hall." Pref. to 18 Vin. Abr.

NELSON v. McDONALD, 6 Johns. Ch. 201.

Reversed, 2 Cow. 139.

NELSON v. WHITTALL, 1 B. & A. 21.

Bayley, J., referring to the opinion of Ld. Kenyon, in Wallis v. Delancy, 7 Term R. 266 n., that the handwriting of the obligor of a bond ought to be proved; the witness being dead.

Overruled in Page v. Mann, 1 Mo. & M. 79; Doe d. Wheeldon v. Paul, 3 C. & P. 613; Kay v. Brookman, 1 Mo. & M. 286; 3 C. & P. 555; Mitchell v. Johnson, 1 M. & M. 176.

NELTHORPE v. DONINGTON, 2 Dev. 113.

Doubted. See 4 Dougl. R. 20, n. (a.)

NESBITT v. LUSHINGTON, 4 D. & E. 783.

What Buller, J. is made to say, that as to the articles enumerated in the memorandum at the foot of the policy, the insured could not recover for any partial loss, unless it were the *direct* and *immediate* consequence of stranding, is denied in Burnett v. Kensington, 7 D. & E. 210.

NEW YORK & HARLEM R. R. v. STORY, 6 Barb. 419.

Reversed, 2 Selden, 85.

NEWBURY v. COLVIN, 8 B. & C. 166; 2 M. & R. 47.

Reversed in S. C. in 1 Cr. & Jerv. R. 192.

NEWCOMB v. BONHAM, 1 Vern. 7.

A mortgage is made redeemable during the life of the mortgagor only, yet his heirs shall redeem. And in this case the mortgagor may be foreclosed in his own life-time.

Reversed in Bonham v. Newcomb, 1 Vern. R. 331 (case 232).

NEWLIN v. NEWLIN, 1 S. & R. 275.

Overruled in Lancaster v. Dolan, 1 Rawle R. 231, 248—Gibson, C. J.: "Notwithstanding the case of Newlin v. Newlin (1 Serg. & Rawle, 275), which was hastily determined on an exception to evidence, we are entirely prepared to adopt the conclusions of Chancellor Kent, in The Methodist Epis. Ch. v. Jacques, 3 Johns. Ch. R. 108, that the English decisions are so floating and contradictory, as to leave us at liberty to adopt the true principle of these settlements; that instead of holding the wife to be a feme sole to all intents as regards her separate estate, she ought to be deemed so only to the extent of the power clearly given in the conveyance."

NEWLAND v. OSMAN, 1 Bott's P. L. 4th ed. 460.

Debt on bond conditioned to indemnify the parish against the support of a bastard child. Plea that the defendant offered to take the child to maintain, he being the putative father, and that the overseers refused: and held good.

Doubted in Strangeways v. Robinson, 4 Taunt. 498.

NEWMAN v. CARTONY, 3 Bro. Ch. Ca. 346, in note.

Overruled. See Ellis v. Atkinson (ante).

NEWMAN v. WALLIS, 2 Bro. C. C. 143.

Ld. Thurlow held, that a plea of "no heir" was bad without averring who was the heir.

Overruled in Hall v. Noyes, 3 Bro. C. C. 483. See Hardman v. Ellames, 2 M. & K. 732 (8 Cond. R. 207).

NEWTON v. REID, 4 Simons' R. 141.

Testator gave a sum of money for the separate use of his daughter, a *feme sole;* and declared that she should not be at liberty to sell or dispose of it, and if she attempted so to do, that such sale should be void. The daughter afterwards married: *Held*, that the restraint on alienation was void, there being no gift over.

Denied in 2 Kent Com. p. 165, n. (a).—"It is not the law in this country."

In Nedby v. Nedby, Jurist, Am. ed. for 1839, p. 4, the lord chancellor explains the case of Newton v. Reid; and in Benson v. Benson, 6 Sim. 131, the vice-chancellor said, "Newton v. Reid did not interfere with the question whether you can protect an unmarried woman in equity, by executing a trust for her separate use. There the married woman and her husband combined to assign her separate property, and no one doubt-

NEWTON v. REID, 4 Simons' R. 141—continued.

ed that they might do so, unless they were prevented by the clause against alienation; and the decision only went to this, that the restriction on alienation was rendered ineffectual by the context of the will; but no opinion was expressed as to the effect or operation of the previous words;" but how rendered ineffectual by the context is not very apparent in the report of the case.

NICHOLAS. See *Ex parte* Nicholas.

NICHOLE v. ALLEN, 3 Car. & P. 36.

Doubted, Mortimore v. Wright, 6 M. & W. 485.

NICHOLL v. MUMFORD, 4 Johns. Ch. 522.

Reversed, 20 Johns. 611.

NICHOLL v. PATTERSON, 4 Ohio R. 200.

Denied in Maeller v. Flowers, 7 Ohio R. ii. 230; but Maeller v. Flowers was overruled, Harrington v. Heath, 15 Ohio R. 486.

NICHOLS v. GWYN, 1 Sim. 389.

Ld. Chan.—I had great difficulty, but I yielded in Nichols v. Gwyn to the authority of Lord Eldon, in Shaw v. Lindsay, 18 Ves. 496, and of Ld. Thurlow, in Scott v. Hough, 4 Bro. C. C. 213. It now appears that these cases were misreported, and there is no authority for it. Johnson pet. Nagle res., 1 Moll. Ch. R. 244.

NICHOLS v. RUGGLES, 3 Day's R. 145.

Overruled in Wheaton v. Peters, 8 Pet. R. 591.

NICHOLS v. SKINNER, Prec. Chan. 528.

In Massey v. Hudson, 2 Merivale, 130, the master of the rolls said that, as reported, he could not acquiesce in that decision. And he afterwards said, that on examining the register's book, the case appeared to have been wholly misrepresented.

NICHOLS v. WEBB, 8 Wheat. R. 326.

Doubted in Bank of Wilmington and Brandywine v. Cooper, 1 Harr. (Dela.) R. 10.—Clayton, Ch. J.: "I must be permitted to say a word as to the case of Nichols v. Webb, 8 Wheaton, so far as it is considered an authority to establish the point that the entry on the record of a de-

NICHOLS v. WEBB, 8 Wheat. R. 326—continued.

ceased notary's book 'that due notice was given to the indorser,' is to be taken as proof that legal notice was given. The book I would hold as evidence of all the facts it gives as to the time, manner, &c., of notice, by reason of his death. If we go further, we make the notary the judge of what is legal notice to fix the indorser. Now, what is legal notice is a question of law for the court, and not for the notary. He should note the facts,—when he gave the notice, to whom, the mode, &c. These are *facts*, and his record would be sufficient to prove them; but the conclusion of the law, whether it is due or not, is for us to decide, and not him. If the case in Wheaton goes as far as it appears it did go, it has not my approbation as sound law."

NICHOLSON v. COGHILL, 4 B. & C. 23.

Dictum of Holroyd, J., that in an action for malicious prosecution, it has been held that evidence of the bill having been thrown out by the grand jury, is sufficient to warrant an inference of the absence of probable cause.

Denied in Byne v. Moore, 5 Taunt. 187; 2 Phil. Ev. 256.

NICHOLSON v. LEAVETT, 4 Sand. 252.

Disapproved, Burdick v. Post, 12 Barb. 168; and subsequently reversed, 2 Selden, 510.

NICHOLSON v. SEDGWICK, 3 Salk. 67.

Overruled in Grant v. Vaughan, Burr. 1522.

NICHOLSON v. SHERMAN, 1 Ch. Cas. 57.

Doubted in Holland v. Prior, 1 Coop. Sel. Cas. 426 (8 Cond. 490), as to the accuracy of the report.

NICHOLSON v. WILLAN, 5 East, 506.

Doubted in Garnett v. Willan, 5 B. & Ald. 53, by Best, J.:—"I think that the authority of that case is considerably shaken by the case of Birken v. Willan (2 B. & A. 356), where the decision of the court proceeded expressly on the ground that the carrier was liable for gross negligence."

NICKLIN v. MORROW, 1 Const. R. (Tr. Ed.), 474.

Overruled in Breithaupt v. Clarke, 1 Hill's R. 399.

NICOLL v. MUMFORD, 4 Johns. Ch. R. 522.

Reversed in Mumford v. Nicoll, 20 Johns. 611; see 2 Sto. Eq. 490.

NICOLL v. NICOLL, in Chan. 1835 (not reported).

Reversed in S. C. 16 Wend. 446:—*Held*, that an attorney's lien for costs is no bar to a bill in chancery, filed to obtain a *set-off;* nor is it a bar when the question arises on a trial at law.

NISI PRIUS REPORTS.

"It is impossible for any judge to decide at once rightly upon every point that comes before him at nisi prius; and Ld. Ellenborough in Campbell's Reports, is wonderfully right in by far the most of the cases, beyond the proportion of any other judge." By Mansfield, C. J., 5 Taunt. 196.

"Very likely one's first thoughts at nisi prius may be wrong, and I am extremely sorrow that they are ever reported; and still more so, that they are ever mentioned again." By Bayley, J., 1 Chit. R. 121.

"Certainly it is, *it is only a nisi prius case.*" By Ld. Mansfield, Doug. 697 note; see Scott v. M'Intosh (post).

NIXON v. HYSEROTT, 5 Johns. 58.

Opposed to Vanada v. Hopkins, 22 Marshall's R. 293. See Peters v. Farnsworth, 15 Vt. R. 160.

NIXON v. PALMER, 10 Barb. 175.

Reversed, 4 Selden, 398.

NOBLE v. KENNOWAY, Dougl. 510.

Evidence of particular commercial usages is admissible, either to engraft terms into the contract, as in those cases concerning the time for which the underwriters' liability in respect of the goods, shall continue after the arrival of the ship; or to explain its terms. See Ougier v. Walters, 3 Camp. 16; Bold v. Rayner, 1 Mee. & Welsb. 446; Powell v. Horton, 2 Bing. N. C. 668.

Qualified in Smith v. Wilson, 3 B. & Ad. 728. See also, Hockin v. Cook, 4 Term R. 314; 6 ib. 338; 11 East, 312; Cro. Eliz. 267; Smith v. Walton, 8 Bing. 238; Blackett v. Royal Exch. Ins. Co., 2 Tyrwh. 266; Roberts v. Barker, 1 Cr. & Mee. 808; Reading v. Menham, 1 M. & Rob. 236; Anderson v. Pitcher, 2 B. & P. 168; Cross v. Eglin, 2 B. & Ad. 106.

NOKE'S CASE, 4 Co. 80,—4th Resolution.

It was held, that an express covenant qualified the generality of an implied covenant, and restrained it by the mutual consent of the parties, so that it should not extend any farther than the express covenant.

Doubted in Proctor v. Johnson, 2 Brownl. 214; and in Croke's report

NOKE'S CASE, 4 Co. 80—continued.

of the case, Cro. Eliz. 675, it is said that the case was decided against the plaintiff for other reasons; yet in Weiser v. Weiser, 2 Whart. R. 284, Kennedy, J. says—"The authority of Noke's case upon this point has been recognized in many cases, and is now considered an established rule of law."

NOLLE PROSEQUI.

One of the leaders of a set of fanatics known by the title of French prophets having been committed by Ch. J. Holt's warrant for some seditious language, one Lacy, another of the fraternity, called at his house and desired to see him; and when told that he was unwell, said he must see him, for he came to him from the Lord God. The Ch. Justice hereupon ordered Lacy in, and asked him his business. "I come," said he, "from the Lord, who has sent me to thee, and would have thee grant a *nolle prosequi* for John Atkins, his servant, whom thou has sent to prison." "Thou art a false prophet and a lying knave," answered the Ch. J.; "for if the Lord had sent thee, it would have been to the Attorney General, for he knows it is not in my power to grant a *nolle prosequi*; but I can grant a warrant to commit you to bear him company;" which he did.—Lond. Law Mag.

NORDEN v. WILLIAMSON, 1 Taunt. 378; 1 Stark. Ev. 580.

A plaintiff was by *consent* of the defendant allowed to be examined upon oath as a witness in the cause, although he came to defeat the claim of a co-plaintiff.

Doubted. Supervisors of Chenango v. Birdsall, 4 Wend. 453; Schermerhorn v. Schermerhorn, 1 ib. 119; see also 1 Phil. Ev. p. 69, note 122. But see also 1 Phil. Ev. p. 73, note 129; and 1 Phil. Ev. p. 74, note 134.

NORDEN'S CASE, Sir Tho. Jones, 88; 3 Keb. 778.

That an execution against the goods of the executor for debt *in jure proprio* is a *devastavit*, *nolens volens*.

Cited and denied, 4 D. & E. 630, 649.

NORMAN v. COLE, 3 Esp. 253.

That a sum of money placed in the hands of a defendant to procure a pardon, could not be recovered.

Opposed, Wilkinson v. Kitchen, 1 Ld. Raym. 89; Aubert v. Maze, 2 B. & P. 371; Cannan v. Bryce, 3 B. & A. 179. The distinction between *malum prohibitum* and *malum in se*, disapproved of.

NORRIS v. INS. CO. OF NORTH AMERICA, 3 Yeates, 84.

The written instructions or order to make insurance are admissible to control and explain the expressions in the formal policy; and the mistake of the scrivener or clerk may be rectified thereby.

Denied in Higginson v. Dall, 13 Mass. R. 96.

NORTH v. CROMPTON, 1 Ch. Ca. 196; Forr. 268; 3 P. Wms. 193.

Doubted in Kellett v. Kellett, 1 Ball & Beat. 543:—"It is a very short report, and not to be reconciled with the later decisions."

NORTHAMPTON'S (MARQUIS OF) CASE, 3 Leon. R. 71; 4 ib. 17; Dyer, 357 a; 2 Bro. Abr. 261.

Reported imperfectly in 3 Leon. 71. See Sug. on Pow. 202, and notes 1 and 2.

NORTHAMPTON'S (LORD) CASE, 12 Coke, 134 (4th Res.)

It is a good defence to an action for slander, for a defendant to show he heard it from another, and at the time named the author.

Overruled in M'Pherson v. Daniels, 10 B. & C. 263; Ward v. Weeks, 7 Bing. 211; De Crespigney v. Wellesley, 5 Bing. 392. And extended to a libel as well as oral slander. See Dole v. Lyon, 10 Johns. 449; Miller v. Kerr, 2 M. C. & R. 285; Selby v. Bardons, 3 B. & Adol. 2.

NORTH RIVER STEAMBOAT CO. v. HOFFMAN, 5 Johns. Ch. 300.

Overruled in 9 Wheat. 1; North River Steamboat Co. v. Livingston, 3 Cow. 713.

NORTON v. SIMMES, Hob. 12; Mo. 856; 1 Brownl. 64.

"And difference was taken between a bond made void by statute and by common law; for upon the statute of 23 H. VI. if a sheriff will take a bond for a point against that law, and also for a debt due, the whole bond is void, for the letter of the statute is so; for a statute is a strict law; but the common law doth divide according to common reason, and having made that void that is against law, lets the rest stand."

Denied by T. M. in No. 20, Oct., 1833, Amer. Jurist, p. 243. It is there affirmed as the true principle—"If any part of a contract is valid, it will avail *pro tanto*, though another part may be prohibited by statute; *provided* the statute does not expressly, or by necessary implication, render the whole void; and *provided also*, that the sound part can be separated from the unsound. As to the possibility of separation, however, there is no difference between contracts against the common law and against a statute."

NORTHROP v. WRIGHT, 24 Wend. 221.

Reversed, 7 Hill, 476.

NOY'S MAXIMS.

Barton in Elements, &c. p. 26, says,—"Too much obsolete law to be safely intrusted in the hands of a noviciate. He confesses that he once entertained different sentiments, but subsequent reflections have effected an alteration in his opinion of the merit of that work." But, Ch. J. Kent, (2 Kent Com. 554) says—"A collection of reputation and authority, applicable to every general head of the law." And Roscoe's Lives, 414: "Noy was a very industrious and learned man." "With infinite pains," says Howell, in his letters, "he came to his knowledge of the law; but I never heard a more perfect anagram than was made of his name, William Noy: *I moyl in law*."

NOY'S REPORTS.

"This book is said to be a loose collection of notes, never intended by Noy for the public eye,"—&c. Co. Litt. 54 a, in note. And is called "a bad authority," by Buller, C. J., in Petrie v. Hannay, 3 D. & E. 418; and "of no credit," by Kent, Ch. J., 2 Johns. 72.

NUGENT v. GIFFORD, 1 Atk. 463.

Shaken, 2 Dick. 724; Scott v. Tyler, 2 Bro. Ch. Ca. 431; M'Leod v. Drummond, 17 Ves. 153 to 172; see Sutherland v. Brush (post), and Colt v. Lasnier, 9 Cowen, 320.

NURSTIVE v. HALL, 1 Ventr. 10.

In 4 Dougl. 54 n. it is said that this case "seems to be an imperfect note of the same case with Thursby v. Plant, 1 Saund. 240; where it was held that covenant lay for the assignee at common law. See 1 Saund. p. 240, n. 3 *contra*.

O.

OAKLEY v. ASPINWALL, 2 Sand. 7.

Reversed, 4 Coms. 513.

OAKLEY v. BOORMAN, 21 Wend. 588.

Commented on and disapproved. Brewster v. Silence, 4 Selden, 207.

OBITER DICTA.

Reporters do wisely that omit opinions that are delivered accidentally, and which do not conclude to the point in question.—1 Co. R. 50. The points adjudged are to be observed, and not matters of discourse, ib. 52.

O'CALLIGHAN v. SAWYER.

See Hendricks v. Judah (ante).

OCEAN INS. CO. v. FRANCIS, 2 Wend. 68.

In New York it is settled law, that the sentence of a foreign court of admiralty condemning the property as a good and lawful prize, according to the law of nations, is conclusive to change the property, but is only *prima facie* evidence of the facts on which the condemnation purports to have been founded; and in a collateral action, such evidence may be rebutted by showing that no such facts did, in reality, exist.

Decided differently in Crondson v. Leonard, 4 Cranch, 434; Dempsey v. Ins. Co. of Penn., 1 Binn. 299 n.; Baxter v. The New England Ins. Co., 6 Mass. 277; Stewart v. Warner, 1 Day, 143.

OGDEN v. GIBBONS, 4 Johns. Ch. 150; 17 Johns. 488.

Overruled in Gibbons v. Ogden, 9 Wheat. 1; see Hopk. 149; 8 Cowen, 714.

OGDEN v. SAUNDERS, 12 Wheat. R. 213.

Explained in Frey v. Kirk, 4 Gill & J. 509; and the ultimate opinion of the S. C. in the above case adopted.

OGDEN v. TURNER, Salk. 696.

To render words actionable, it is not sufficient that the party may be fined and imprisoned for the offense, if true; for, says he, there must not only be imprisonment, but an *infamous punishment*.

Doubted in Onslow v. Horne, 3 Wils. 177—De Grey. But in Skinner v. White, 1 Dev. & B. 471,—*Held*, that the charge to sustain an action must impute an offense to which is annexed an *infamous punishment;* thereby affirming the rule laid down by Lord Holt, as the settled rule of law in North Carolina.

OHIO v. CAFFEE, 16 Ohio R. 152.

See 43 Ohio Laws, 115, s. 7.

OHIO v. COLLINS, 16 Ohio R. 126.

See Swan's Stat. 685, s. 136; Baker v. Thompson, 16 Ohio R. 504; Withers v. Green, 9 Howard's R. 214.

OHIO v. MOUNT, 2 West. Law Jour. 81.

Overruled, Mount v. Ohio, 14 Ohio R. 295.

OHIO v. TOWN, Wright's R. 76.

OHIO v. TURNER, ib. 27.

Said to be incorrectly reported, see Montgomery v. Ohio, 11 Ohio R. 424.

OHL v. EAGLE INS. CO., 4 Mason, 172; 5 Rob. 138.

That a written document is the proper and necessary evidence of the title of transfer of a ship.

Opposed, Bixby v. Franklin Ins. Co., 8 Pick. 86; and cases cited; Ring v. Franklin Ins. Co., 2 Hall, 1.

OLAND'S CASE, 15 Rep. 116 a.; Rolle Abr., Tit. "Emblements," vol. 1, p. 726.

Held, that if a lease be made to husband and wife during coverture, and the husband sow the land, and afterwards they be divorced *causa præcontractus*, the husband shall have the corn, "because the sentence which dissolves the marriage is the judgment of the law, and *judicium redditur in invitum*."

Doubted, it *seems*, in Davis v. Eyton, 4 Mo. & P. 820, 827.—Gaselee: "The only case cited is Oland's case, reported by Lord Coke, and also to be found in Cro. Eliz. 460. The report in Coke does not refer to any particular place where the judgment passed; but, in Croke, it is not treated as a judgment that had actually passed; it is merely cited as a supposed case."

OLDFIELD v. DODD, 8 Exch. 578; 20 Eng. R. 380.

Reversed in the House of Lords, see Farlie v. Danks, 30 Eng. L. & E. R. 119.

OLDHAM v. LEDBETTER, 1 How. 47.

"This conclusion is reached in full view of what is said by the court in Oldham v. Ledbetter. The remark in that case that the plaintiff could have protected himself by bill of interpleader, was thrown out without sufficient consideration. It was not a point for decision." Yarborough v. Thompson, 3 Sme. & M. 295.

OLIVA v. JOHNSON, 5 B. & Ald. 908.

Overruled, Tambisco v. Pacifico, 21 Law J. R. N. S. Ex. 276; 14 Eng. R. 332.

OLIVE v. SMITH, 5 Taunt. 56.

Overruled, see Dixon v. Stansfeld, 11 Eng. R. 537; 10 Com. B. Rep. 398.

OLIVER v. GRAY, 1 Har. & Gill, 204.

Any unqualified acknowledgment, &c. with no other excuse for not paying than a reliance on the bar created by the act of limitations, is sufficient to take the case out of the statute.

Overruled. Rowcroft v. Lomas, 4 M. & S. 458; Perly v. Little, 3 Greenl. 97; Exeter Bank v. Sullivan, 6 N. H. R. 124.

OLMSTEAD v. ELDER, 2 Sand. 325.

Reversed, 1 Selden, 144.

OLMSTEAD v. HOTALING, 1 Hill, 317.

Opposed to Roberts v. Randall, 3 Sand. 707.

OLMSTEAD v. LOOMIS, 6 Barb. 153.

Reversed, April, 1854.

OMYCHUND v. BARKER, 1 Atk. 45.

Denied in Butts v. Swartwood, 2 Cowen, 432, n. a. as to what Ch. J. Willes is reported to have said as to the admissibility of witnesses who "do not believe in a God or future rewards and punishments." Better reported in Willes' Reports. The following account of the principal case is extracted from 1 Wilson, 84. "It was held by the Lord Chancellor that an infidel, pagan, idolater, may be a witness, and that his deposition, sworn according to the custom and manner of the country where he lives, may be read in evidence." See R. v. Taylor, Peake, 11 (post).

ONEIDA MANUF. CO. v. LAWRENCE, 4 Cowen, 440.

Overruled in part, Waring v. Mason, 18 Wend. 425.

ONTARIO BANK v. PETRIE, 3 Wend. 456.

"It (the case of Ontario Bank v. Petrie) was decided on the authority of Reedy v. Seixas, 2 Johns. Cas. 337; and Smith v. Whiting, 11 Mass. R. 6, without any notice of the just distinction between a mere misdescription of the instrument on which those cases turned, and the true question then before the court. It was a mistaken application of authorities. But the case of the Ontario Bank v. Petrie has been since expressly overruled by the case of Ransom v. Mack, 2 Hill, 595, and is no longer authority in New York." Per Sharkey, Ch. J. in Routh v. Robertson, 11 Sme. & M. 389.

ORANGE CO. BK. v. BROWN, 9 Wend. 85.

Questioned in part, Hawkins v. Hoffman, 6 Hill, 586.

ORBY v. HALES, 1 Ld. Raym. 3.

That if the justices at sessions make an illegal order for discharge of poor prisoners, and the sheriff discharge them, he is not liable for an escape.

"Cannot be considered as law." Per Ld. Kenyon in Brown v. Compton, 8 D. & E. 431. See also The Marshalsea case, 10 Rep. 76.

ORBY v. MOHUT, 2 Vern. 531, 342; Prec. Ch. 257; 2 Freem. 291.

Best reported in 3 Ch. R. 56; see Sug. on Pow. 437 (Lond. ed.), p. 236 (Am. ed.)

O'REILLY v. THE ROYAL ASSURANCE CO., 4 Camp. 246.

Overruled in Green v. Elmislie, Peake's R. 212—Kenyon. Levie v. Janson, 12 East, 653—Ellenborough. Scott v. Thompson, 4 B. & P. 181; Riggin v. Patapsco Ins. Co., 7 Har. & J. 290.—Dorsey. See Stocker v. Harris, 3 Mass. 417.

ORMSBY v. BAKEWELL, 7 Ohio R. 98.

See 48 Ohio Laws, 33, s. 3.

O'ROURKE v. PERCEVAL, 2 B. & B. 58.

S. P. as in Lawrenson v. Butler (ante).

ORRINGTON v. NEALE, 2 Stra. 819; 2 Ld. Raym. 1544.

Declaration that defendant et al. *conjunctim et divisim* promised, &c. held bad.

Contradicted by Rees v. Abbot, Cowp. 832.

OSGOOD v. LEWIS, 2 Har. & G. 495.

Explained in Hyatt v. Boyle, 5 Gill & J. 111.

OSGOOD v. MANHATTAN CO., 15 Johns. 167–8 (1 Cow. 65).

Reversed in 3 Cowen, 612. See Anthoine v. Coit (ante).

OSTERHOUT v. ROBERTS, 8 Cowen, 43; Curtis v. Groat, 6 Johns. 166; Jenk. Cent. 4, case 88, p. 189.

If the plaintiff brings an action of trespass or trover against the defendant to recover compensation for the loss of goods, and obtains a judgment covering the value of the goods; yet that the property of the plaintiff in

OSTERHOUT v. ROBERTS, 8 Cowen, 43; etc.—continued.

the goods in such cases is not changed, until the defendant shall have paid or satisfied the judgment.

Opposed, Marsh v. Pier, 4 Rawle, 286, and the English cases there cited. Murrell v. Johnson's Adm'r, 1 H. & M. 449; Philbrick, 5 Greenl. 147; Broome v. Wooton, Yelv. 67; Campbell v. Phelps, 1 Pick. 62.

OTHER v. CALVERT, 8 J. B. Moore, 239; 1 Bing. 275.

Overruled in Hart v. Cutbush, 2 Dowl. Pr. R. 456.

OTT v. SCHROEPPEL, 7 Barb. 431.

Reversed, 1 Selden, 482.

OUTFIELD v. ROUND, 5 Ves. jr. 508.

Where a purchase had been made for a meadow, without any notice of a footway around it and across it, Ld. Rosslyn decreed a specific performance, saying he could not help a purchase who did not choose to inquire.

Doubted by Ld. Manners in 1 Ball & Beat. 350. See also Bean v. Herrick, 3 Fairf. 267.

OVERSEERS OF PITTSTOWN v. OVERSEERS OF PLATTSBURG, 15 Johns. 436.

Overruled, S. C. 18 Johns. 407.

OWEN v. GRANGER, 2 Day, 477—(1807).

That the legal title cannot be drawn in question, on a bill of foreclosure.

Denied by Daggett, J. in Palmer v. Mead, 7 Conn. R. 164.—"The first time I ever heard a suggestion of the kind, was in Owen v. Granger, at Hartford, in 1802, when the court, Judge Swift presiding, held, that usury could not be given in evidence on a bill of foreclosure. This was heard with astonishment, by several gentlemen of the profession, some of whom lived to witness his retraction of that opinion in his Digest of 1823." See, however, 2 Selden, 197.

OXENDALE v. WETHERELL, 9 B. & C. 386.

Where by a contract of sale, the vendor agreed to deliver 250 bushels of wheat within a specific time, and delivered part, but not the residue: *Held*, that he might, after the time mentioned in the contract had expired, recover from the purchaser the value of the wheat delivered to and retained by him.

Overruled in Champlin v. Rowley, 13 Wend. 270.

OXENDALE v. WETHERALL, 9 B. & C. 401.

"Is not in accordance with the rule [of law] as settled in this State" [New York],—Bronson, J., Mead v. Degolyer, 16 Wend. 637.

OXLADE v. PERCHARD, 1 Esp. R. 287.

The bankrupt was competent to explain a doubtful act of bankruptcy.
Overruled in Rabbett v. Gruny, 1 Montague, 489; Chapman v. Gardiner, 2 H. Bl. 279. See Binns v. Tetley, 1 M'Clell. & Y. 397. But in Sayer v. Garnett, 7 Bing. 103: *held*, that a bankrupt was not admissible either to support or defeat the commission.

OYSTER v. SHUMATE, 12 Mo. R. 580.

Overruled, Huff v. Knapp, 17 Mo. R. (2 Ben.) 414.

P.

PACE v. MARCH, 1 Bing. 216.

S. P. as in Boehm v. Campbell (ante).

PACKWOOD v. MADDISON, 1 Sim. & Stu. 232.

Denied in Moffet v. Smith, 2 Moll. 359.

PADELFORD v. PADELFORD, 7 Pick. R. 152.

Overruled in Sackett v. Sackett, 8 Pick. 309.

PAGE v. FRY, 2 Bos. & Pul. 240.

Overruled in Bell v. Ansley, 16 East, 141, and Cohen v. Hannam, 5 Taunt. 101; see also, Graves v. The Bolton M. Ins. Co., 2 Cranch, 441. But see Pacific Ins. Co. v. Catlett, 4 Wend. 75, 80, *et seq.*

PAGE v. MANN, 1 M. & M. 79.

Proof of the handwriting of the subscribing witness to an instrument is sufficient, he being dead, without any further proof of the identity of the parties, except the identity of name and description.
Overruled in Whitelocke v. Mann, 1 C. & M. 511; 3 Tyr. 541, S. C.

PAGET v. PAGET, 2 Ch. Ca. 101; Brudnell v. Price, Finch, 365.

"From the reports in which they [the above cases] are found, and the positions they affirm, they are not entitled to any great attention." By Sir Wm. Grant in Richards v. Chambers, 10 Ves. 580.

PAINE v. BENSON, 3 Atk. 78.

Doubted by Ld. Thurlow in *Ex parte* West, 1 Bro. C. C. 575, and Taylor, C. J. in M'Kay v. Hendon, 3 Murph. 26.

PAINE (JUDGE) v. FOX, 16 Mass. R. 133.

That the words following a *vidilicet* in a declaration are never to be taken as an averment, and are not traversable.

Denied in Hastings v. Lovering, 2 Pick. 223, and Gleason v. M'Vickar, 7 Cowen, 42.

PAINE v. McINTIER, 1 Mass. 69.

This was debt on an administrator's bond, brought to recover a distributive share of the estate, and interest was allowed from the time of the decree of the Court of Probate.

But this part of the case was overruled in Heath v. Gay, 10 Mass. 371.

PAINE v. PACKARD.

See King v. Baldwin (ante).

PALK v. CLINTON, 12 Ves. 58; Cockburn v. Thompson, 16 Ves. 326.

All persons interested in the subject of the suit, however numerous, ought to be parties.

Denied in Calvert's Tr. on Parties, p. 5 to 7. The rule:—"All persons having an interest in the object of the suit, ought to be made parties."

PALMER v. GURNSEY, 7 Wend. 248.

Doubted, Cooper v. Whitney, 3 Hill, 95; Baker v. Thrasher, 4 Den. 493.

PALMER v. HAND, 13 Johns. R. 434, and Haggerty v. Palmer, 6 Johns. Ch. R. 437.

"Where goods are sold, to be paid for on delivery, if on the delivery being completed, the vendee refuses to pay for them, the vendor has a lien for the price, and may resume the possession of the goods."

Denied in Chapman v. Lathrop, 5 Cow. R. 115, n. (a) where the reporter says, "The dictum cited is certainly at war with the decision in the principal case, whatever may be said of Haggerty v. Palmer."

PALMER v. HOOKER, 1 Ld. Raym. 727.

On non-assumpsit, defendant gave in evidence that the debt was attached by foreign attachment in London, by J. S. v. plaintiff; and it was held he should prove that the plaintiff was indebted to J. S.

Denied by Ld. Ellenborough: "There must be some mistake in that report." M'Daniel v. Hughes, 3 East, 367.

PALMER v. KEBLETHWAITE, 1 Show. 64.

See another report of this case in Skinner, 65, and see observations of Gale and Whatley in their Tr. on *Easements*, p. 169; and 8 Greenl. R., Blanchard v. Avery.

PALMER v. MEAD, 7 Conn. R. 149.

On a bill of foreclosure, the title of the mortgagee cannot be investigated. Denied in Cowles v. Woodruff, 8 Conn. R. 35, by Williams, J., who said,—"The case of Palmer v. Mead is, indeed, in principle nearly allied to this; but, decided as it was by a divided opinion, I cannot consider it as an authority for this case."

PALMER v. NEEDHAM, 3 Burr. 1389.

Special bail in an action of debt on judgment, discharged, the original debt being under £10.

Overruled in Lewis v. Pottle, 4 D. & E. 570.

PALMER v. HUGHES, 1 Blackf. R. 329.

If a note be made payable at a particular place, a demand of payment at such place must be averred and proved.

Denied in Bowie v. Duvall, 1 G. & J. 175, and by the current of the cases in this country.

PALMER v. RICHARDS, 6 Ex. R. 335; 5 Eng. R. 535; 20 Law Jour. R. N. S. Ex. 323.

Not followed, Crake v. Powell, 10 Eng. R, 331; 21 Law J. R. N. S. Q. B. 183; 16 Jur. 365; Ashlin v. Blackman, 21 Law J. R. N. S. Ex. 78; 8 Eng. R. 524; M'Dougall v. Patterson, 7 Eng. R. 510; 15 Jur. 1108; 21 Law Jour. R. N. S. C. P. 27.

PALMERSTON'S CASE, cited by Ld. Kenyon, 4 Term R. 290.

That what Ld. Palmerston swore upon a former trial was evidence, the witness having died in the interim; but the evidence was ultimately rejected, because the witness could not give the words, but only the fact.

Denied in Cornell v. Green, 10 S. & R. 16: See also Rowley's case, 1 Ry. & M. 111; Observations of Nelson, J., in Crary v. Sprague, 12 Wend. 45; Chess v. Chess, 17 S. & R. 411. Duncan, J., in Watson v. Gilda, 12 S. & R. 342:—"We have relaxed that strictness, and admitted a witness who would undertake to give evidence of the substance; but in that, there must be no equivocation or ambiguity." S. P., 5 Rand. 31. "It must be words or the substance." The whole must be given—all or none. By Henderson, J., in 3 Dev. R. 466. But see the observations in 14 Mass. 235.

PARADYNE v. JANE, Aleyne, 26; Style, 47, S. C.

Where a party by *his own contract* engages to do an act, the performance is not excused by an inevitable accident, or other contingency, although not foreseen by or within the control of the party.

Denied in Shubric v. Salmond, 3 Burr. 1639.—Dunning, *arguendo;* and overruled in Pollard v. Schaffer, 1 Dall. 210.—M'Kean. But Lord Alvanley, in Touten v. Hubbard, 3 B. & P. 300; Lawrence, J., in Hadley v. Clark, 8 Term R. 267; Baylies v. Fettyplace, 7 Mass. R. 325; Fowler v. Bott. 6 ib. 63; 3 Johns. 45; and Doe v. Harvey, 8 Bing. 239, seem to recognize the doctrine of Paradyne v. Jane. See Harmony v. Bingham, 2 Kernan, 99; Oakley v. Morton, 1 ib. 25.

PARIS v. SALKELD, 2 Wils. 137.

Plea of bankruptcy *puis le darrein continuance*, and held good.

Overruled in Tower v. Cameron, 6 East, 413; and Willan v. Giordiani there cited. See also 2 Smith, 441.

PARISH v. CRAWFORD, 2 Str. 1251.

Overruled in Frazer v. Marsh, 13 East, 238.—Ellenborough. Master of the Trin. House v. Clark, 4 M. & S. 288; Abbott on Ship. p. 22. See also, Cowp. 143, and Soares v. Thornton, 7 Taunt. 627.

PARISH v. STEVENS, 3 S. & R. 298.

Overruled in Waler v. Sherman, 8 S. & R. 357.

PARKER v. ALFIELD, 1 Ld. Raym. 678; 1 Salk. 311; 12 Mod. 527.

Denied by Kent, Ch. J. in 11 Johns. 19, 20:—"This case is differently reported in the three books from which it is cited, and it is badly reported in all, and is not entitled to much weight in support of the doctrine for which it is adduced.

PARKER v. CONSTABLE, 3 Wils. 25.

Doubted, it seems, in Ellis v. Paige, 1 Pick. 47. Wilde, J.—"This is clearly the law, notwithstanding the case of Parker v. Constable, 3 Wils. 25, which is a short and imperfect report."

PARKER v. KETT, 12 Mod. 472; 1 Ld. Raym. 661, S. C.

A dictum of Ld. Holt overruled. Whitehall v. Squire, Carth. 104; Mountfort v. Gibson, 4 East, 441.

PARKER v. MILLER, 9 Ohio R. 108.

Explained, Irwin v. Smith, 17 Ohio R. 226.

PARKER v. NORTON, 6 D. & E. 695.

Trover for a bill of exchange; and held that bankruptcy which happened after the conversion was no defence; but admitted it would have been a good defence, had the action been for money had and received.

Denied in Hatten v. Speyer, 1 Johns. 42.

PARKER v. PARMELEE, 20 Johns. 130.

Overruled, Pomeroy v. Drury, 14 Barb. 418; and doubted, Fletcher v. Button, 4 Coms. 397.

PARKER v. PATRICK, 5 Term R. 175.

See Peabody v. Fenton, 3 Barb. Ch. R. 451.

PARKER v. THE GREAT WESTERN RAILWAY CO., 7 Man. & G. 253; 13 Law J. R. N. S. C. P. 105; 8 Jur. 194.

"I must say that if the point should again arise which came before the Court of Common Pleas in that case as to whether an action for money had and received, can be maintained, I should wish to see it discussed in a court of error." Martin, B., Parker v. Bristol and Exeter Railway Co., 20 Law J. R. N. S. Ex. 112; 2 Eng. R. 418.

If the point should arise which came before the court in that case, I should like to see it carried to a court of error. Martin, B., Parker v. Great Western Railway Co., 15 Jur. 109; 1 Eng. R. 516.

PARKER v. WINDHAM, Prec. Ch. 418.

Overruled, in effect, in Bond v. Simmons, 3 Atk. 20; Clancy on Married Women, 357.

PARKER'S CASE, Hutt. 56.

Where *indicari* was written for *indictari*, and held bad.

This case is shaken in 2 Hawk. 239; Queen v. Drake, 2 Salk. 660; Rex v. Beach, Cowp. 229.

PARKHURST v. VAN COURTLANDT, 1 Johns. Ch. 279.

Reversed in 14 Johns. 15.

PARR v. ELIASON, 1 East, 92.

Overruled in Loires v. Mazaredo, 1 Starkie, 385, and Chapman v. Black, 2 Barn. & Ald. 588.

PARRAT v. CARPENTER, Noy, 64; S. C., Cro. Eliz. 502.

The imputation of adultery upon a clergyman was considered not actionable.

Doubted in Ayre v. Craven, 2 Ad. & El. 2.—Denman, C. J.: "Some

PARRAT v. CARPENTER, Noy, 64, etc.—continued.

of the cases have proceeded to a length which can hardly fail to excite surprise; a clergyman having failed to obtain redress from the imputation of adultery (Parratt v. Carpenter, Noy, 64; S. C., Cro. Eliz.); and a schoolmistress having been declared incompetent to maintain an action for a charge of prostitution. Per Twisden, J., in Wharton v. Brook, 1 Ventr. 21: "But, in actions of this nature, the declaration ought not merely to state that such scandalous conduct was imputed to the plaintiff in his profession, but also set forth in what manner it was connected by the speaker with that profession." See also Bayley, B.; in Lumley v. Allday, 1 Cro. and J. 305; S. C. 1 Tyrwh. 224.

PARRY v. COLLIS, 1 Esp. 399.

In an action for words spoken against an attorney with reference to a former cause, the proceedings in that cause must be *proved.* Reported more fully in Peake's Cas. 47:—*Held*, necessary to *produce* the nisi prius record, though it is not alleged that the cause was in fact tried.

PARSONS v. WELLS, 17 Mass. 419.

Denied by Wild, J., in 11 Pick. 297, as to the admission that "a writ of entry might be maintained, in such a case, by the mortgagee;" "but this admission was inadvertently made, and without adverting to the effect of the requiring in such a case a conditional judgment to be entered."

PARTERICHE v. PAWLETT, 2 Atk. 386.

Ld. Redesdale doubted the *dictum* of Ld. Hardwicke, as to admitting parol evidence to add a written agreement respecting lands; and said he had reason to know that this case was most imperfectly stated by Atkins. 1 Sch. & Lefr. 35.

PARTRIDGE v. GARDNER, 4 Exch. 303.

Overruled, Callander v. Howard, 20 Law J, Rep. N. S. C. P. 66; 15 Jur. 130; 1 Eng. R. 388.

PARTRIDGE v. STRANGE, 1 Plow. 79.

Held, that a statute takes effect from the first day of the session, when no time was specified.

Overruled, or rather abolished everywhere, by statute.

PASLEY v. FREEMAN, 3 Term R. 51.

Doubted by Ld. Chan. Eldon, in 6 Ves. jun. 184, 185:—"The doctrine laid down in that case is in practice and experience most dangerous."

PASQUIN. See Anthony Pasquin (ante).

PATTERSON, App't, v. ELLIS' Ex'rs, Respond. 11 Wend. 259.

Reversed in S. C. 259 and 671.

PATRICK v. HAZIN, 10 Verm. R. 184.

"In Laim v. Church, 4 Mad. Rep. 207, the Vice-Chancellor says, "that he had not been able to find any case in which it had been holden, that a solicitor had any lien upon a fund recovered in the cause, except for his costs incurred in such cause. See Moody v. Spencer, 2 D. & R. 6. After a good deal of search we have found but one case (Patrick v. Hazin) of that character, and that was decided without much discussion or reference to authority." By Clayton, J., in Pope v. Armstrong, 3 Sme. & M. 221.

PATRICK v. JOHNSON, Lutw. 259, 929.

Plea of *molliter manus imposuit* will not justify a battery.—*Semble.*

Denied in Rowe v. Tutte, Willes, 16. The case is correctly reported 3 Lev. 403.

PATRICK v. OOSTEROUT, 1 Ohio R. 27.

Overruled, Allen v. Parish, 3 Ohio R. 190; Chase, 940.

PATTERSON v. CHOATE, 7 Wend. 441.

Overruled, Van Keuren v. Parmelee, 2 Coms. 523; and see Whitcomb v. Whiting (post).

PATTERSON v. TASH, 2 Str. 1178.

Questioned by the court in Pickering v. Bush, 15 East, 38; Whitehead v. Tuckett, 15 East, 400..

PATTISON v. BLANCHARD, 6 Barb. 537.

Overruled, 1 Selden, 186.

PATTISON v. POWERS, 4 Paige, 549.

Overruled, Williamson v. Champlin, 8 Paige, 70; Suydam v. Bartle, 9 Paige, 294.

PATTON'S LESSEE v. EASTON, 1 Wheat. 276.

Overruled in Green v. Lessee of Neal, 6 Pet. R. 291.

PAWLETT v. PAWLETT, 1 Wils. 224.

"This case did not decide any thing." Sug. on Pow., p. 578, n. (1).

PAWLINGS v. BIRD, 13 Johns. 192.

Overruled, Andrews v. Montgomery, 19 Johns. 162.

PAYLER v. HOMERSHAM, 4 M. & S. 422.

Overruled in Britten v. Hughes, 5 Bing. 460. Gaselee, J., *dissented*, saying—"All the other cases are distinguishable from the present, except Payler v. Homersham, which appears to me to be directly in point, and to be overruled by the present decision."

PAYNE v. BALDWIN, 3 Sme. & M. 661.

"The views of this court (High Court of Errors and Appeals for Mississippi) were expressed in Payne v. Baldwin. That opinion was reversed in the Supreme Court of the United States, and we have since conformed to their decision." By Clayton, J., in Montgomery v. Galbraith, 11 Sme. & M. 574.

PAYNE v. CUTLER.

See Root v. French and Wardell v. Howell (post).

PAYNE v. HAYES, Buller, N. P. 145.

Overruled in Wicks v. Gordon, 2 Barn. & Ald. 335.

PAYNE v. ROGERS, 2 H. Bl. 350.

Doubted, Eakin v. Brown, 1 Smith, 45.

PEACOCK v. PEACOCK, 2 Camp. R. 45.

Overruled in Reybold v. Jefferson, 1 Harr. (Dela.) R. 401:—If a partnership be established, it is *prima facie* one of equal interests. See 16 Ves. 56.

PEACOCK v. SPOONER, 2 Vern. 43, 195; 2 Freem. 124.

Frequently doubted. Lyon v. Mitchell, 2 Maddock Ch. R. 467, 483, 493.

PEARPONT & LORD v. GRAHAM, 4 Wash. C. C. R. 234.

It was said to admit of serious doubt whether one partner can, without the consent of his associates, assign the whole of the partnership effects otherwise than in the course of trade in which the firm is engaged.

Overruled in Deckard v. Case, 5 Watt's R. 24.

PEARSON'S CASE, Lewin, 97.

When several depositions have been taken before a magistrate, but only one produced at the trial, Hullock, B. refused to receive it, although it was the only one that was taken in writing, on the ground that those which were not produced might be in favor of the prisoner.

Doubted in Phil. Ev. 567 (531), 5th Am. ed.

PECK v. LOCKWOOD, 5 Day's R. 22.

The right of fishing for shell-fish, where the ground must be dug to take them, on land which is covered with water at high-water mark, but which is above low-water mark, may be exercised by every citizen.

Doubted, see 3 Kent Com. 416, n. (d).

PECK v. SMITH, 1 Conn. R. 103.

When a highway is laid out under the statute, the adjoining proprietors can maintain trespass for an injury upon the highway in front of their land.

Doubted in Tyler v. Hammond, 11 Pick. 194. But the doctrine is maintained in Chatham v. Brainard, 11 Conn. R. 60, 82, *et seq.*—Williams.

PEELE v. SUFFOLK INS. CO., 7 Pick. 254.

If a vessel is stranded, the underwriter is not obliged to accept the offer to abandon; but may take her into his possession and repair her, the assured refusing to do it; and if he can do this at an expense less than half her value, he may restore her to the assured, and thus avoid paying for a total loss.

Doubted in 2 Phil. Ins. 321. See also the observations of Chan. Kent, in 3 Kent Com. 324, n. (e).

PEERE WILLIAMS (3d Vol.)

Lord Com. Shadwell (2 M. & K. 732; 8 Cond. R. 215): "The cases in the third volume of Peere Williams are not of equal authority with those in the two preceding volumes, which were published in his life-time.

PELHAM'S (SIR WM.) CASE, 1 Co. 14 (b).

Overruled in Smith v. Clyfford, 1 Term R. 738.

PELHAM v. PAGE, 1 Eng. Ark. R. 148.

Overruled, Calloway v. The State, 2 Eng. Ark. R. 354.

PELL v. LOVETT, 19 Wend. 546.

Reversed, 22 Wend. 369.

PELTIER v. SEWALL, 3 Wend. 269.

Overruled in S. C. 12 Wend. R. 386 :—The court say—"The distinction between an executed and an executory contract, does not appear on that occasion to have been sufficiently considered. As long as a special contract remains in force, neither performed nor rescinded, no recovery can be had under the common counts for any service performed under it; the action must be upon the contract itself. 14 Johns. 326 ; 19 ib. 205. But where the contract has been fully performed, and nothing remains to be done but the payment of the money, the common counts are all that is necessary to insert in the declaration ; the special agreement need not be noticed in the pleading." See 2 Phil. Ev. p. 109 (7th ed.)

PENDLETON v. DYETT, 4 Cowen, 581.

Reversed in Dyett v. Pendleton, 8 Cowen, 727 : *Held*, that if the lessor bring lewd women under the same roof, though in an apartment not demised, to the disturbance of the tenant, he cannot recover rent.

PENDLETON v. GRANT, 1 Eq. Ca. Abr. 230, pl. 2 ; 2 Vern. 517.

Overruled by Kelly v. Powlet, 1 Bro. C. C. 476, which decided that plate passed under a bequest of household furniture ; refusing the evidence of the drawer of the will, who said it was *not* intended. See 1 Sug. on Vend. p. 184 (Amer. ed.)

PENFIELD v. COOK.

See Wright v. Jacobs (post).

PENNIMAN v. MEIGS, 9 Johns. 325.

Decided that a discharge, under the insolvent act of New York was a bar to all suits brought *there*, upon antecedent contracts, *wherever made.*

Overruled by Sturges v. Crowninshield, 4 Wheat. 122, and M'Killan v. M'Neil, ib. 209. These cases changed the law ; and it is now settled, that a contract made out of this State cannot be discharged by our insolvent laws. Sherrill v. Hopkins, 1 Cowen, 103 ; Wyman v. Mitchell, 2 Wend. 458, 24 ; and see Mather v. Bush, 16 Johns. 233 ; Roosevelt v. Cebra, 17 ib. 108.

PENNINGTON v. ALVIN, 1 Sim. & Stu. 265.

Doubted in Nalder v. Hawkins, 1 Coop. Sel. Cas. 175, and the principle stated that should govern cases in which the motives of persons instituting suits as next friends, are questioned.

PENNY v. INNES, 1 Cromp. M. & Ros. 439.

Opposed, Birchard v. Bartlett, 14 Mass. R. 279.

PENROSE v. CURREN, 3 Rawle, 351.

The plaintiff let his horse to defendant, an infant, to go to a particular place; the defendant went to a different place, and killed the animal by hard driving: *held*, that defendant may plead his infancy in bar of the action for damages.

Decided differently in Campbell v. Stakes, 2 Wend. 137, where, however, there was no change of destination, and the horse was returned before it died. It was held that though case would not lie, trespass might be maintained. An able writer (Amer. Jurist, No. 22, Jan. and April, 1834) questions the soundness of this latter decision.

PENTON v. ROBARTS, 2 East, 88.

The tenant has a right to remove fixtures, after his interest in the land terminates, if he has not yielded up possession.

Opposed, Poole's case, 1 Salk. 368; Davis v. Jones, 2 B. & Ald. 165; Lyde v. Russel, 1 B. & Ad. 394; Storer v. Hunter, 3 B. & C. 368.

PEOPLE. See The People (post).

PERKINS, 192—294.

When a deed is to two or more, and one dissents, the others are vested with the whole property.

Denied by Reeve, J. (in 4 Day, 401):—"It is an idea wholly inadmissible, that when a deed is executed to two or more, and one dissents to the conveyance, the others are vested with the whole property. When a deed is executed to more persons than one, without designating in what proportions they shall hold, they must take in equal proportions; and the dissent of one cannot increase the proportions of the others. The moment that one dissents to the conveyance, it divests him of all title, but cannot operate to convey his share to the other grantees, but leaves it where it was before, viz. in the grantor."

PERKINS, 96, b., tit. Devises, sec. 500.

"A devise by joint-tenant," &c. quoted 3 Burr. 1493.

Denied in the sense there given it—and explained, 3 Burr. 1497.

PERKINS v. BAYNTON, 1 Bro. R. 118.

A legacy to two jointly, is not a joint-tenancy.

Overruled in Campbell v. Campbell, 4 Bro. R. 15; Crook v. De Vandes, 9 Ves. jun. 197; Jackson v. Jackson, ib. 591: *Held*, "that a simple bequest of a legacy or a residue of personal property to A. & B. without more, is a joint-tenancy."

PERKINS v. WASHINGTON INS. CO., 6 Johns. Ch. 485.

Reversed, 4 Cowen, 645.

PEROTT v. CABLE, 1 Goulds. 173.

Reported incorrectly. See Sugden on Pow. 209 (Am. ed.)

PERROT v. AUSTIN, Cro. Eliz. 232.

Covenant by A. that he will do a certain act, or that his executor shall pay £20. He breaks his covenant, and dies. Ruled that debt lies not against the executor.

Ld. Mansfield said this case was "an extraordinary one, in itself," 3 Burr. 1383; and Wilmot, J. was clear in opinion against it,—ib. 1384.

PERRY v. JACKSON, 4 Term R. 516.

See Marstiller v. M'Lean (post).

PERRY v. SKINNER, 2 M. & W. 471.

Questioned, Reg. v. Mill, 20 Law J. R. N. S. C. P. 16; 15 Jur. 59; 1 Eng. R. 346.

PETER v. COMPTON, Skinner, 353 (Wells v. Hornton, 4 Bing. 40).

"An agreement that is not to be performed within the space of one year from the making thereof" means, in the statute of frauds, an agreement which appears from its terms to be incapable of performance within the year.

Limited in Donnellan v. Read, 3 B. & Ad. 809, where it was decided, that an agreement is not within the statute, provided that all that is to be done by one of the parties, is to be done within a year. In Birch v. Earl of Liverpool, 9 B. & C. 392, the defendant's wife hired a carriage for five years at 90 guineas per annum, which contract was, by the custom of the trade, determinable at any time on payment of a year's hire; the court

PETER v. COMPTON, Skinner, 353, etc.—continued.

held the case within the statute, and that the contract ought to have been in writing. And so must a contract for a year's service, to commence at a day subsequent to the making of the contract. Bracegirdle v. Heald, 1 B. & A. 722; Snelling v. Lord Huntingfield, 1 C. M. & R. 20.

PETERS v. GOODRICH, 3 Conn. R. 153.

Overruled in Pond v. Clark, 14 Conn. R. 334, and see note to 3 Conn. R. 2d ed. 153.

PETERS v. WARREN INS. CO., 14 Peters, 99.

Opposed to De Vaux v. Salvador, 4 Adol. & El. 420; 31 Eng. Com. Law R. 104; and said to be overruled, Matthews v. The Howard Ins. Co., 1 Kernan, 19.

PETERBOROUGH (LORD) v. DUCHESS OF NORFOLK, 2 Freem. 264.

Imperfectly reported. Calv. on Part. in Eq. p. 195, n. (6).

PETERSDORFF, Abr.

In general a work of great thoroughness and accuracy. Akeley v. Akeley, 16 Vt. R. 457.

PETRIE v. HANNAY, 3 D. & E. 413.

S. P. as in Faikney v. Reynous (ante).

PETTIBONE v. GRISWOLD, 4 Conn. 158.

"This case does not appear to have been decided on a full examination of the authorities. The judge who delivered the opinion, indulged in some remarks and made some observations well expressed and creditable to him as a scholar, but which proved very inconvenient in the investigation of after cases; and it is apparent that the courts, when this subject came before them afterwards, while endeavoring to preserve the authority of that case, have disregarded it, so far as the learned judge treats these mortgages for subsequent advances, as dangerously indefinite and at war with the policy of the recording system." M'Daniels v. Colvin, 16 Vt. R. 308.

PETTY'S CASE, Harp. 59.

Denied in State v. Hooper, 2 Bail. R. 37; and the rule laid down to be this: That where the officers of the bank are within the reach of the

PETTY'S CASE, Harp. 59—continued.

process of the court, they ought to be produced, or their absence accounted for;—particularly in cases where a resort to the private marks of the bank is necessary to afford satisfaction to the mind on trials for counterfeiting.

PETTYWOOD v. COOKE, Cro. Eliz. 52; Putnam v. Cooke, 3 Leon. 180, S. C.

Devise of three messuages to wife for life, remainder of one of them to A. and his heirs, of another to B. and his heirs, of another to C. and his heirs, and if any of them die without issue, the survivors to enjoy *totam illam partem* equally to be divided between them; and held that the survivors took only an estate for life.

Per Ld. C. J. Willes—"If I had been required to give my opinion on that case, I own (as I am at present advised) I should have thought otherwise." See Moore v. Hesseman, Willes, 143.

PHELPS v. BARRETT, 4 Price R. 23.

That case is at variance with Harris v. Hayward, 2 Marsh. R. 280; S. C., 6 Taunt. 569, and cannot be supported. Per Bailey, J. in Lewis v. Morland, 2 Barn. & Ald. 56.

PHELPS v. DECKER, 10 Mass. R. 279; same dictum as in Fowler v. Shearer.

Denied in Rice v. Goddard, 14 Pick. 296.

PHELPS et al. v. HARTWELL, 1 Mass. R. 72.

Doubted in S. C. (in note 2d ed.) But explained by Parker, C. J. in Brooks v. Barrett, 7 Pick. 98, 99.

PHELPS v. SAGE, 2 Day, 151.

That the mortgagee has the whole legal estate in him; and may sustain ejectment even against the mortgagor after payment of the money.

Denied (in 4 Day, 234), Reeve, J.—"It is too late to say that mortgages, in the hands of the mortgagee, are real property. They are only considered in that point of light for the purpose of enabling the mortgagee to get into possession when he wants the benefit of his pledge. When contemplated in every other point of view, they are personal property. They will pass by a will not attested with three witnesses, because not real. They will not pass in a will by the term 'my real property,' and will pass by the terms 'all my personal property.' The wife of a deceased mortgagee cannot be endowed in mortgaged premises, because personal. When a woman becomes a *feme covert*, her mortgages are at

PHELPS v. SAGE, 2 Day, 151—continued.

the disposal of her husband, as much as any *chose* belonging to her; and a settlement upon her before marriage will operate upon her mortgages, just as it does upon all her other *choses;* so that at her death, they will belong to him, and on his death to his executor. Such an estate is not within the mischief of the statute of Connecticut against selling pretended titles. The objection as to the mode of conveyance—as, to wit, by deed—cannot avail. It only amounts to this, that we have one species of personal property that must be conveyed by deed the same as real property. The mode of conveyance alters not the nature of the property. If, by law or usage, we were obliged to sell by deed a horse, that horse sold would not be real. The mortgagee who is satisfied has no claim to sell. He holds only the evidence of a legal title which he was bound to restore. He is then a mere trustee of the title for the mortgagor. He may and ought to restore it, although it should eventually turn out that the mortgagor was not the real owner."

PHENIX v. PRINDLE, Kirby R. 209.

Ch. J. Ellsworth expressed an opinion, that the testimony of the plaintiff in actions for book debts should be restrained to the quantity, quality, and delivery of the articles charged.

Denied in Bryan v. Jackson, 4 Conn. R. 288. Hosmer, C. J.—As a general rule, when proper articles are charged on book, the parties *quoad* the book debt, are admissible, like all other witnesses, to testify freely and fully, in support or confutation of the account.

PHILADELPHIA & TRENTON R. R. Co., 6 Wharton R. 25.

Questioned in note to Hatch v. Central R. R. Co., 25 Vermont (2 Deane) R. 72.

PHILLIPS v. EAMER, 1 Esp. R. 357.

S. P. as in Rex v. Brooke (post).

PHILLIPS v. FIELDING, 2 H. Bl. 123.

Doubted in Martin v. Smith, 6 East, 561.—Ld. Ellenborough. "It seems indeed to have been considered by the noble judge (Ld. Ellenborough) whose opinions in the Duke of St. Albans v. Shore, 1 H. Bl. 270, and in Phillips v. Fielding, have been quoted, that it was necessary for the plaintiff to set forth the abstract of his title specially; but I am not convinced that this is necessary." In Ferry v. Williams, 8 Taunt. 66—Dallas, J. also said, "Phillips v. Fielding was in a degree doubted in Martin v. Smith:—Ld. Ellenborough there speaks of the rule in the former case as being the opinion of Ld. Loughborough only, and so speaks Lawrence, J."

PHILLIPS v. GARTH, 3 Bro. C. C. 64.

Overruled in Elmsley v. Young, 2 My. & Ke. 780 (8 Cond. R. 227): *Held*, that B was the only surviving brother of A, and there were children of a deceased brother of A,—that the words "next of kin," used *simpliciter*, are to be taken to mean "nearest of kin;" and that, consequently, B's personal representatives were entitled to the whole fund.

PHILLIPS v. HUNTER, 2 H. Bl. 402.

Overruled in Carter v. Canterbury, 3 Conn. R. 462.

PHILLIPS v. PHILLIPS, 1 Myl. & K. 649.

Overruled, Taylor v. Taylor, 22 Law J. R. N. S. Ch. 742; 17 Jur. 583; 3 De Gex, Mac. & Gor. 190; 21 Eng. R. 363.

1 PHILLIPS ON EVIDENCE, 108 (7 Lond. ed.).

Perhaps a confession by one prisoner when reduced into writing, if that part which relates to the other prisoners is capable of being separated,—that part affecting the others may be omitted.

Overruled in Fletcher's case, 4 C. & P. 250.—Littledale. Bartow's case Lewin, C. C., 110.—Alderson. Foster's case, ib.—Denman, C. J. But in Bartow's case, Parke, J.: "I know that is Mr. J. Littledale's opinion; but I do not like it."

1 PHILLIPS ON EVIDENCE, 124, n. a.

The assertion there made, that presumptions arising from length of possession in the case of incorporeal hereditaments equally applies to lands and tenements. "This position is a mistake," and not warranted by the authorities cited. Sumner v. Child, 2 Conn. R. 631.

See also 1 Phil. Ev. note 311, p. 356 *et seq.*, ed. 1838.

1 PHILLIPS ON EVIDENCE, 255.

Leading questions are "such as instruct the witness how to answer, on material points."

Gresley's Eq. Ev. p. 47: "This is extremely vague."

PHILLIPS ON EVIDENCE, p. 292 (7 Lond. ed.).

A witness, to assist his memory, may use a written entry or memorandum, or the copy of a memorandum; and if he afterwards can swear positively to the truth of the facts there stated, such evidence will be sufficient.

Denied in The State v. Rawle, 2 Nott & M'C. 334, as not warranted by the cases cited.

1 PHILLIPS ON EVIDENCE, 334.

Though all matters in difference are referred, the award is no bar of a cause of action not inquired into before the arbitrator.

Too unqualified. See Brophy v. Holmes, 2 Moll. 5.

1 PHILLIPS ON EVIDENCE (7 Lond. ed.); Bull. N. P. 255; Gilb. Ev. 104.

If there is any blemish in the deed by rasure or interlineation, the deed ought to be proved, though above 30 years old.

Doubted in Bailey v. Taylor, 11 Conn. R. 535.

1 PHILLIPS ON EVIDENCE, 531.

Ambiguities.

An *inaccuracy*, whether latent, or patent, may be explained by parol, subject to several restrictive rules. 2 Phil. Ev. 500, note (4), 7th Lond. ed.

2 PHILLIPS ON EVIDENCE, p. 203; S. P. vol 1, p. 338.

If a person indicted for an assault, plead guilty to the charge, the record has been considered to be conclusive against him in an action for damages for the same assault.

Opposed, 2 Phil. Ev. 203, note (3).

PHILLIPS ON EVIDENCE, 4th ed. Cowen's note.

That a judgment in a sister State has the same force and effect in all respects as a judgment of our own courts.

Denied in 5th ed. of Phil. in note. See also the late case of M'Elmoyle v. Cohen's Adm'r, 13 Pet. 312, where it is said that such judgment is not to be regarded as a foreign judgment; but it is distinguished from a foreign judgment only because the constitution and the act of Congress say that full faith and credit shall be given to it when authenticated as the act has prescribed.

1 PHILLIPS ON INSURANCE, 44.

That the insurable interest of a consignee, or factor, is limited to the extent of his lien.

Denied in De Forest v. The Fulton Ins. Co., 1 Hall, 84.

1 PHILLIPS ON INSURANCE, 76; Marsh. p. 335.

An action will lie for the premium notwithstanding the formal acknowledgment of it in the policy, which is inserted there only to preclude the necessity of proving it in case of loss.

Denied in 1 Phil. Ev. 159, n (5). Held to be conclusive as between the assured and the underwriter.

PHILLIPS' CASE, 3 Camp. 78.

Upon an indictment under the statute for an attempt to procure an abortion or miscarriage, Lawrence, J., ruled that it was immaterial whether the woman was actually with child or not.

Overruled in Scudder's Case, 3 C. & P. 605.

PHILLISKIRK v. PLUCKWELL, 2 M. & S. 396, n. (b).

A note given to a married woman; and she dies:—it was said to be doubtful, whether the right of action was in the husband or in the administrator.

Settled in Griswold v. Penniman, 2 Conn. 566, that the husband can maintain an action in his own name, and the property absolutely vests in him. But see Draper v. Jackson, 16 Mass. 480, where a note and mortgage made to husband and wife during the coverture, was held to survive to the wife.

PHIPPS v. PARKER, 1 Camp. 412.

The subscribing witness to a deed having sworn that it was not executed in his presence, it was held that the deed could not be proved by evidence of the party's handwriting.

Contrary to Fassett v. Brown, Peake's Ca. 23; Grellier v. Neale, ib. 146; Fitzgerald v. Elsee, 2 Camp. 635; Abbot v. Plumbe, Doug. 216; Leman v. Dean, 2 Camp. 636 n.; Talbot v. Hodson, 7 Taunt. 251; S. C. 2 Marsh. 527; 1 Phil. Ev. 475.

PHILPOT v. WALLET, 1 Freem. 541; 3 Lev. 65, S. C.

Overruled. Cork v. Baker, 1 Stra. 34; Harrison v. Cage, 1 Ld. Raym. 386.

PHŒNIX v. BALDWIN, 14 Wend. 62.

"We cannot subscribe to this decision." Hammock v. M'Bride, 6 Cobb's Geo. R. 183; and said to be adverse to numerous cases there cited.

PHYFE v. RILEY, 15 Wend. 248.

Questioned, Fort v. Gooding, 6 Barb. 60.

PICKAWAY v. HALL, 3 Ohio R. 225.

See Ohio v. Humphreys, 7 Ohio R. 224.

PICKERING v. LORD STAMFORD, 2 Ves. 279.

Doubted, it seems, in Byrne v. Frere, 2 Moll. 177.

PIERCE v. CROFTS, 12 Johns. 90.

Held that the holder of a bill payable to A B or bearer, might, either as the bearer or indorsee thereof, recover on a count for money had and received.

Denied in Kennedy v. Carpenter, 2 Whart. R. 349, *et seq.*

PIERCE v. SHELDON, 13 Johns. 191.

Overruled. Platt v. Sherry, 7 Wend. 236.

PIERREPONT v. BARNARD, 5 Barb. 364.

Reversed. 2 Selden, 278.

PIGOT'S CASE, 11 Co. R. 27; Markham v. Gomarton, Cro. Eliz. 626.

"When any deed is altered in a point material, by the plaintiff himself, or by any stranger, without the privity of the obligee, be it by interlineation, addition, erasing, or drawing a pen through a line, or through the midst of any material word, the deed thereby becomes void."

Doubted. See Nichols v. Johnson, 10 Conn. R. 197; Jackson d. Malin v. Malin, 15 Johns. R. 293; Rees v. Overbaugh, 6 Cowen, 746. See Master v. Miller (ante).

PIKE v. BUTLER, 4 Barb. 650.

Reversed. 4 Coms. 360.

PIKE v. STREET, Moo. & Mal. 226; and see also Hall v. Wilcox, 1 Moo. & Rob. 58.

In an action by the indorsee against the indorser of a bill, a parol agreement to sue the acceptor only is admissible.

Explained in Foster v. Jolly, 1 Cr. M. & Ros. 703.—Parke, B.—"The effect of that case only is, that the defendant may deny the *prima facie* evidence of consideration."—"Pike v. Street falls within the class of cases in which the consideration has been contradicted. There the agreement, that the plaintiff should sue the acceptor of the bill only, and should not sue the indorser (the defendant). That, as between the plaintiff and the defendant, negatived any consideration, and so was admissible."

In Foster v. Jolly, supra,—*Held*, that where a note is made payable 14 days after date, parol evidence cannot be given to show that it was not to be paid in case a verdict was obtained in an action brought between other parties.

PIKE v. UNION, 5 Ohio R. 528.

Overruled. Center v. Wills, 7 Ohio R. ii. 171 (518).

PILLANS et al. v. MIEROP, 3 Burr. 1670.

Where Wilmot, J., holds that a *nudum pactum*, if evidenced by writing, is good, &c.

Skyner, Ch. B., "observed upon the doctrine of *nudum pactum* delivered by Mr. Just. Wilmot, that he contradicted himself, and was also contradicted by Vinnius in his commentary on Justinian." Rann v. Hughes, 7 D. & E. 350, in note.

PILFORD'S CASE, 10 Rep. 115 b.

Ld. C. J. Willes, in Witham v. Hill, 2 Wils. 92, called this "an extraordinary case;" and it seems to be overruled in Jackson v. Calesworth, 1 D. & E. 71; see Ward v. Snell, 1 H. Bl. 10.

PILKINGTON'S CASE, 5 Rep. 76.

On the question whether after judgment for a return irreplevisable, a tender to the bailiff would entitle the party to an action against the principal for detaining the beast, Holt said "he was not satisfied with Pilkington's case in that point." 12 Mod. 354.

PILKINGTON v. SHALLER, 2 Vern. 374.

"Certainly cannot be supported." By Ld. Mansfield in Eaton v. Jaques, 2 Dougl. 455.

PINCOME v. RUDGE, Hob. 3.

That upon eviction of the freehold, no personal action of covenant will lie upon the warranty real.

The doctrine of this case is denied by Parsons, C. J., in Gore v. Brazier, 3 Mass. 544–5, who cites 2 Brownl. 164, 165; *sed quære.*

PINE v. NORISH, cited in T. Jones, 103; 2 Lev. 211.

That an action cannot be brought by one to whom the promise is made, when it was made for the benefit of another person.

Overruled. See 17 Mass. 404; 3 B. & Ald. 281; Hammond on Partnership, 9.

PINKNEY v. HALL, 1 Salk. 126, and 1 Ld. Raym. 175. The cases of Gregson v. Hutton and Marsh v. Vansenmer, cited in 1 East, 49. The opinion of Le Blanc, J., in 1 East, 55; and of Ld. Eldon in 6 Ves. jun. 604.

One partner cannot pledge the partnership funds, nor make a valid partnership engagement, for his individual debt.

Doubted by Kent, C. J., in 4 Johns. 277; "Whether this doctrine

PINKNEY v. HALL, 1 Salk. 126, and 1 Ld. Raym. 175—continued.

can be supported, in cases where the person dealing with the partnership is not chargeable with knowledge of the fact, I am not prepared to say. I believe the English law is now understood to be otherwise."

PINNEY v. GLEASON, 5 Cowen, 152.

Reversed in 5 Wend. 393; and affirming that the *measure of damages* in an action on a note for $79 50, payable in salt at 14s. per bushel is the sum specified in the note.

PIPON v. PIPON, Ambler, 25.

S. P. as in Holmes v. Remsen (ante).

PISTOL v. RICCARDSON, 3 Dougl. 361.

S. P. as in Rose v. Bartlett (post).

PIT v. PELHAM, 1 Cha. Ca. 176.

"The inaccuracy of the early reports should be guarded against." Sug. on Pow. p. 135, (No. 31, n. 1). See Fowle v. Green, 1 Ch. Ca. 262.

PITCHER v. JONES, Hardr. 217.

Overruled, Atto. Gen. v. Sheriff, Forrest, 43.

PITT v. WILLIS, Dick. 24.

The answer of a defendant not brought to a hearing, was read against another at the hearing.

Doubted, Gres. Eq. Ev. 25.

PLATT v. HIBBARD, 7 Cowen, 497.

The burden of proof is upon the bailee to show that the goods were not lost by his neglect.

Opposed, Marsh v. Horne, 5 B. & C. 322; and Harris v. Packwood, 3 Taunt. 267.

PLESTORO v. ABRAHAM, 1 Paige, 236.

Reversed, 3 Wend. 538; and deciding that an assignee under a foreign commission of bankruptcy is not entitled before judgment to an *injunction* to restrain the bankrupt from receiving from the customs here, merchandise which was on the high seas, on board a vessel, when commission was sued out in the foreign country.

PLOWDEN'S TREATISE ON USURY.

Ld. Kenyon said that "this was the first English law book that advocated dishonesty." Law Mag. for 1832 (No. 17).

PLOWDEN'S REPORTS.

Ld. Coke says (Pref. 10 Rep. 10),—"Plowden's Commentaries are curiously polished, and published, by himself; of high account with all the professors of the law." However, he remarks—"they contain four erroneous cases, when the whole number of cases are but 43."

PLUMB v. WHITING, 5 Mass. 518; Skillinger v. Bolt, 1 Conn. 147; Richardson v. Hunt, 2 Mumf. 148; Trustees of Lansingburgh, 8 Johns. 428; M'Veauagh v. Goods, 1 Dall. 62; 2 Dall. 50.

That a witness will be incompetent merely on the ground of his believing himself interested.

Opposed to 1 Phill. Ev. 53 (7th Lond. ed.); Stimmel v. Underwood, 3 Gill. & J. 282; Long v. Baille, 4 S. & R. 222; and Fernsler v. Carlin, 3 ib. 130; Rogers v. Burton, Peck, 108; Doe v. Bragg, Ry. & Moo. N. P. Cas. 388; Moore v. Hithcock, 4 Wend. 292; Smith v. Downs, 6 Conn. 365; Carman v. Foster, Ashm. 133.

PLUNKET v. PENSON.

See Freemoult v. Dedire (ante).

POCOCK v. BILLINGS, 2 Bing. 269.

C. J. Best seems to have countenanced the idea that the declarations of the payee of a promissory note were admissible when they were adverse to the interest of the party making them.

Denied in Warner et al. v. M'Gary, 4 Verm. R. 512.—Williams, J. See also Barough v. White, 4 B. & C. 325.

POE v. MURDFORD, Cro. Eliz. 600.

Disapproved, Secor v. Harris, 18 Barb. 425.

POLE v. FITZGERALD, Willes' R. 641.

C. J. Parsons said (4 Mass. 225), that a better report of this case is in 5 Brown's Parl. Cases, 131.

POLLEXFEN v. MOORE, 3 Atk. 272.

In 1 Bro. C. R. 424, Ld. Loughborough says this case is not correctly reported in Atkins; but in substance, is right. And in Tiernan v. Beam, 2 Ohio, R. 388, Burnet, J., says, "It has often been remarked that the

POLLEXFEN v. MOORE, 3 Atk. 272—continued.

report of that case (Pollexfen v. Moore) was very obscure; and the master of the rolls in Trimmer v. Bayne, 9 Ves. 210, affirms that Lord Hardwicke destroys his own dictum, that 'the equity will not extend to a third person,' by the decree which he makes in the same case."

POLLEXFEN'S REPORTS.

"The copies of Pollexfen are very incorrect, varying in the pages and dates, sometimes being printed in numerical letters, thus MD. CCII. In the pages there is a chasm and mistakes." Bridg. Leg. Bib. 257.

In North's life of Guilford (vol. i. p. 110), it is said, "Pollexfen, since the Revolution, published a book of reports, as they are called, consisting chiefly of his factious arguments."

POND v. POND, 13 Mass. R. 413.

"The case of Pond v. Pond, does not seem to have any very good reasons to support it." Bull v. Nicholls, 15 Vt. R. 335.

POOLE v. SHERGOLD, 2 Bro. C. C. 118; 1 Cox, 273.

Denied in Chambers v. Griffiths, 1 Esp. 150, by Ld. Kenyon. But see Chambers v. Griffiths (ante), and Roots v. Dormer, 4 B. & Ad. 77, and Casamajor v. Strode, 8 Cond. Ch. R. 517, *et seq.* "Best reported by Mr. Cox."—By Chan. in My. & K. 706.

POOLE v. VAN LANDINGHAM, 1 Breese, 22.

Overruled in part, Stacker v. Hewett, 1 Scammon, 207.

POLTZ v. CURTIS, 9 Wend. 497.

Reported more fully in Potter v. Lewis, 18 Wend. 159.

POPE v. BIGGS, 9 B. & C. 245.—Bayley.

Doubted in Partington v. Woodcock, 5 Nev. & M. 672, where Patterson, J., adverting to the expressions of Bayley, J., says, "I never could understand how the notice of the mortgagee could make the lessee tenant to him, at the reserved rent."

In Doe d. Barney v. Adams, 2 Tyrwh. 289 (also, Doe d. Barker v. Goldsmith, 2 ib. 710): *held,* that a lease purporting to be by mortgagor and mortgagee jointly, operates as a lease by the mortgagee, with a confirmation by the mortgagor, until the estate of the former has been determined by the payment of the mortgage-money, and then it becomes the lease of the mortgagor, and the confirmation of the mortgagee; and therefore, if ejectment be sued against the tenant during the mortgagee's

POPE v. BIGGS, 9 B. & C. 245.—Bayley—continued.

estate, the demise should be laid in the name of the mortgagee; if afterwards, in that of the mortgagor.

If mortgagor sues for rent, accruing after notice to the tenant by the mortgagee; the tenant should plead *non assumpsit*, and will be allowed to give the mortgage and notice in evidence; but, where the rent becomes due *before* notice, but was unpaid at the time of the notice, the tenant must plead his defence specially. Waddelove v. Barnett, 4 Dowl. Pr. C. 347.

POPE v. FOSTER, 4 Term. R. 590.

An averment in a declaration of the day of a former trial must exactly agree with the record to be produced in evidence to support it, though it be laid under a videlicet.

Overruled in Purcell v. Macnamara, 9 East, 157; 1 Stark. Ev. 492.

POPE v. ONSLOW, 2 Vern. 286.

Where A has two mortgages of different independent estates of the mortgagor, one a deficient security and the other more than sufficient; *held*, that the mortgagor shall not redeem the last without making good the deficiency of the first.

Doubted by Ld. Hardwicke, who forbid the citing of this "imperfect case." 1 Atk. 300.

POPE v. SANDERS, 12 Ves. 290.

Lord Erskine was clearly mistaken in Pope v. Sanders,—Swanton v. Biggs, 2 Moll. Ch. R. 16.

POPHAM v. BARSFIELD, 1 Salk. 236.

Incorrectly reported; see Allanson v. Clitherores, 1 Ves. 24; 1 P. Wms. 54.

POPHAM'S REPORTS.

The case of Brooks v. Brooks, Poph. 125, being cited, Holt said, "The said part of Popham's Reports, being reported by an uncertain author, ought not to be regarded." 1 Ld. Raym. 626; see 1 Keb. 676.

POPKIN v. BUMSTEAD, 8 Mass. 491.

Explained in Eaton v. Simonds, 14 Pick. 107.

PORDAGE v. COLE, 1 Saund. 319.

Defendant had agreed by specialty to give plaintiff £775 for certain lands; and the action was for non-payment, but no averment of a conveyance by plaintiff or a tender of one; and on demurrer held well, for that the covenants were independent.

Ld. Kenyon says of this case, and others of the same sort, "The determinations in them outrage common sense." Goodison v. Nunn, 4 D. & E. 761.

PORTER v. KEPLER, 14 Ohio R. 127.

Opposed to Milne v. Huber, 3 M'Lean's R. 212; see, however, 42 Ohio Laws, 72, s. 1.

PORTER v. TALCOTT. See Munroe v. Hoff (ante).

POTHIER.

Is as high authority as can be had, next to the decision of a court of justice. Cox v. Troy, 5 Barn. & Ald. 480.

POTTER v. STONE, 2 Hawks, 30.

Doubted in State v. Lipsey, 3 Dever. R. 485. Daniel, J.

POTTS v. LAZARUS, 2 Car. Law R. 83.

Doubted in Godley v. Taylor, 3 Dever. R. 178.—Hall, J.

POVEY v. BROWN, Prec. Ch. 225.

Lord Alvanley calls this, in Like v. Beresford, 3 Ves. 512, a strange case, and says it is contradicted by two cases; one before Lord Hardwicke, Jemson v. Moulson, 2 Atk. 417, and the other before Lord Northington, Newman v Mason, 1 P. Wms. 458, note 1.

POWELL v. BROWN, Law Journal, No. 3, 442; 1 Bail. R. 100, S. C.

A remainder in chattels, by deed, is good.

Denied in Morrow v. Williams, 3 Dev. R. 263. See also Betty v. Moore, 1 Dana's R. 237.

POWELL v. FORD, 2 Stark. R. 164.—Ellenborough.

The witness to prove the signature of a party to a bill of exchange, must have seen the party write the whole name which he was to prove.

Overruled in Lewis v. Sapio, 1 Moo. & M. 39, Abbott, C. J.: "I will not abide by any such decision as that."

POWELL v. MILLBANK, 2 Bl. R. 851.

Ld. Grey said the report 3 Wils. 355, was fuller and better.

POWELL'S LESSEE v. GREEN, 2 Pet. R. 240.

Overruled in Green v. Lessee of Neal, 6 Pet. R. 291.

POWELL ON POWERS.

"A kind of *terra incognita*, from which I always returned with jaded spirits and roused indignation." 4 Kent Com. 328.

POWER v. WHITMORE, 4 M. & S. 141.

Wages and provisions during the detention in an intermediate port, for the preservation of the ship, &c. are not included in a general average loss in England.

Opposed, Thornton v. The United Ins. Co., 3 Fairf. R. 152: "The law has been differently settled in the American courts." Per Parris, J.

PRACTICAL REGISTER IN CHANCERY.

"Not a book of authority, but it is better collected than most of the kind." Per Ld. Hardwicke, 2 Atk. 22.—"This and other books of practice only cited where no other authority occurred." Redesdale's Pl. 7, (n).

PRAED v. THE DUCHESS OF CUMBERLAND, 4 Term R. 585.

Buller, J. said—"If there be an award in fact, the party cannot, on the trial of an issue of no award go into objections to the award, in point of law."

Overruled in Fisher v. Pimbley, 11 East, 187; Allen v. Watson, 16 Johns. R. 205. See Macomb v. Wilbur, ib. 227.

PRATT v. FOOT, 12 Barb. 209.

Reversed, April, 1854.

PRECEDENTS IN CHANCERY.

"A book of no great repute." Per Brougham, Chan. in 1 R. & M.—Contra, 7 Lond. Law Mag. 377.

PRESCOTT v. FREEMAN, 4 Mass. R. 627.

S. P. as in Manton v. Hobbs (ante).

PRESIDENT, ETC. of MANHATTAN CO. v. OSGOOD, 1 Cowen, 65.

Reversed in Osgood v. Pres., Dir. & Co. of M. Co., 3 Cowen, 612: *Held*, that the admissions of executors cannot be given in evidence against heirs or devisees; and if such evidence be admitted, it is error.

PRESTON v. CARR, 1 Yo. & Jer. 175.

Doubted in Bolton v. Corporation of Liverpool, 1 Coop. Sel. Ca. 19, (8 Cond. R. 360).

PRESTON v. CROFUT, 1 Conn. 527, note.

The absolute nullity of deeds fraudulent against creditors, even as against a *bona fide* purchaser, is maintained by a majority of the judges.
Denied in Somes v. Brewer, 2 Pick. 198.

PRESTON v. MERCEAU, 2 Black. 1249.

Mr. Justice Blackstone after stating that the court could neither alter the rent nor the term, the two things expressed in the agreement, added, "that, with respect to collateral matters, it might be different; the plaintiff might show, who was to put the house in repair, or the like, concerning which nothing is said."

Opposed, Meres v. Ansel, 3 Wils. 275; Rich v. Jackson, 4 Bro. Ch. C. 515; Powell v. Edmonds, 12 East, 6. See also 1 Phil. Ev. (770, 771) 720—5th Am. ed.

PRESTON'S CONVEYANCING, 3 Vol. 27.

The opinion there as to merger of the equitable estate tail by accession of the legal fee, Ld. Chancellor dissents from, considering the legal estate as a mere shadow, incapable of effecting the slightest change in the true title. Brown v. Blake, 1 Moll. Ch. R. 382.

PRICE v. THE EARL OF TORRINGTON, 1 Salk. 285; 2 Ld. Raym. 873, S. C.

Where the drayman came every night to the clerk of a brewer, and gave him an account of the beer delivered, which he set down in a book kept for that purpose, to which the draymen set their hands, and the drayman was dead, the book with his hand set to it, the handwriting being proved, was held good evidence of a delivery.

Doubted. See 2 Poth. 190; 1 Phil. Ev. 263–4. But see Welsh v. Barrett, 15 Mass. 385.—Parker, C. J.: "It has never been overruled, nor have we ascertained that it is considered as a questionable case. It is stated as law in the most approved digests."

See Smith's Lead. Cas. p. 140 *et seq.*

PRICHARD v. QUINCHANT, Ambl. 147.

This case, as reported by Ambler, is said to be a very loose and incorrect note. It is more accurately stated by Ld. Redesdale in 1 Sch. & Lefr. 296.

PRIDDLE'S CASE, Leach's Crown Law, 382.

That a witness may be asked whether he has not been sentenced to Newgate.

Overruled in Rex v. Careinion, 8 East, 77. See Rex v. Edwards (post).

PRIDEAUX v. MORRIS, 1 Lutw. 82; 2 Salk. 502.

That for false return of member of Parliament, no action lies against the sheriff.

Willes, Ch. J. said "he should always set his face against this case." Wynne v. Middleton, Willes, 605-6; 1 Wils. 125.

PRIEST v. CUMMINGS, 16 Wend. 617.

Reversed, 20 Wend. 338.

PRINCE v. SHUTE, Molloy, b. 2, ch. 10, sec. 1 Wils. 28.

Said to be mistaken, or not law, in Masters v. Miller, 4 D. & E. 336, and Paton v. Winter, 1 Taunt. 420.

PRINCESS OF WALES v. THE EARL OF LIVERPOOL, 1 Swans. R. 114; 2 Wils. Ch. R. 29, S. C.

Ld. Eldon dismissed the bill in chancery because the note stated in the bill was not produced.

Denied in Penfield v. Nunn, 5 Sim. R. 409, and in Kelly v. Eckford, 5 Paige, 549, and the cases there cited.

PRINDLE v. ANDERSON, 19 Wend. 391; 23 Wend. 616.

Overruled, Niblo v. Post, 25 Wend. 280; Benjamin v. Benjamin, 1 Selden, 383; Morewood v. Hollister, 2 ib. 309.

PRING v. CLARKSON, 1 Barn. & Cress. 14.

"In no case has it been said, that taking a collateral security from the acceptor shall have that effect;" that is, of discharging the other parties to the bill; and Ch. J. Abbott concludes by saying, "Here the second bill was nothing more than a collateral security."

Denied in Okie v. Spencer, 2 Whart. R. 253, 258 *et seq.*

PRINN v. EDWARDS, 1 Ld. Raym. 47.

S. P. as in Rogers v. Mayhoe (post).

PRIOR v. POWERS, 1 Keb. 811.

That a juror should not be received to testify that the verdict was the result of chance.

Spencer, J., called this "a very unintelligible and illy reported case," in Smith v. Cheetham, 3 Caines, 57, where such evidence was held admissible.

PROCTOR v. BENY, Barnes' R. 450.

Denied in Patton v. Trueman, Coxe's N. J. R. 113.

PROSKEY v. WEST, 8 Sme. & M. 711.

This case so far as it decides that the submission of a case to a jury upon issue joined on some of the pleas and a verdict and judgment thereon, without disposing of a demurrer to others, is not error to the prejudice of the party whose plea is demurred to, cited and overruled in Vance v. Isbell, 13 Sme. & M. 371.

PUBLIC ADMR. v. WATTS, 1 Paige. 347.

Reversed in Watts v. Public Adm'r 4 Wend. 168.

PUGSLEY v. AIKEN, 14 Barb. 114.

Reversed, 1 Kernan, 494.

PURCELL v. GOSHORN, 17 Ohio R. 105.

The law as laid down in this case subsequently changed by statute, 47 Ohio Laws, 53.

PURCELL v. MACNAMARA, 9 East. 157.

Ld. Ellenborough intimated an opinion, that an averment "as appears by the record," is to be considered as descriptive of the record, and conclusive.

Denied in Stoddart v. Palmer, 3 B. & C. 2.

PURDON v. JACKSON, 1 Russel, 1.

S. P. as in Horsby v. Lee (ante).

PURDY v. DOYLE, 1 Paige, 558.

"We have been referred to the case of Purdy v. Doyle, to show that the lien of a judgment is lost by a second suit, and it is there so said; but I have already cited a case from 1 Salkeld, which is directly the other way, and which must be the law, unless the first judgment can be annihilated or disposed of by the second, by making it of higher dignity." Planter's Bank v. Culvit, 3 Sme. & M. 199.

PURLING v. PARKHURST, 2 Taunt. 237.

That if the memorial of an annuity recites a bond, binding the obligor and his heirs, as a bond binding the obligor only, it is not cured by reciting the condition to be for payment by the heirs of the obligor.

Denied in Horwood v. Underhill, 4 Taunt. 346.

PYBUS v. MITFORD, Freem. R. 372.

S. P. as in Gilpin's case (ante).

PYLUS v. SMITH, 3 Bro. Ch. Ca. 346.

Overruled. See Newman v. Cartony, and Ellis v. Atkinson (ante), the like point. Lord Strange v. Smith, Amb.; Socket v. Wray, 4 Bro.; Mores v. Huish, 5 Ves.; Harvey v. Blakeman, 9 Ves.; Francis v. Wizzle, 1 Madd. R. 6; Morgan v. Elam, 4 Yerg. R. 375, and cases cited. The last case decides, that the power of the *feme covert* is limited by the deed creating the estate; and does not extend beyond it.

Q.

QUEEN. See Regina.

QUEEN v. GODDARD, 2 Ld. Raym. 922.

Doubted in Chit. Cr. Law, 461, note, and by Gibson, Ch. J., in 3 Penn. R. 363 :—"No adjudged case supports the dictum of Lord Holt in the Queen v. Goddard, that a defendant can plead over but in treason or felony," &c.

QUEEN'S CASE, THE, 2 Brod. & Bing. 299.

The principle, that it was necessary to remind the witness of the conversation before you can contradict him by showing he has at some other time made a contradictory statement; and the question there put to the judges assumed that the witness had not been at all interrogated with respect to the declaration supposed to have been made by him.

Overruled in Angus v. Smith, 1 Mo. & M. 473.—Tindal: "Before you can contradict a witness by showing that he has at some other time said something inconsistent with his present evidence, you must ask him as to the time, place, and person involved in the supposed contradiction. It is not enough to ask him the general question, whether he has ever said so and so; but particulars must be specified to him."

QUEEN'S CASE, 2 B. & B. 300; 3 Stark. Ev. 1753.

"Whenever the credit of a witness is to be impeached by proof of any thing he has said or done in relation to the cause, he is first to be asked, upon his cross-examination, whether he has said, declared, or done that which is intended to be proved."

Denied in Tucker v. Welsh, 17 Mass. 160; Ware v. Ware, 8 Greenl. R. 53.—Mellen, C. J.: "This principle has not been admitted in Massachusetts; nor has it in practice in this State;" and so of the State of Connecticut. Hedge v. Clapp, 22 Conn. R. 262.

QUINTIN, *Ex parte*, 3 Ves. jr. 248.

Disapproved by Ld. Eldon in *Ex parte* Twogood, 11 Ves. 517, 519, and by the Master of the Rolls in Addis v. Knight, 2 Merrivale, 117.

R.

RABB v. AIKEN, 2 M'Cord Ch. 118.

Reviewed and limited in Black v. Steel, 1 Bail. R. 307.

RABORG v. PEYTON, 2 Wheat. R. 385.

"Every subsequent holder, in respect to the acceptor of a bill, and the maker of a note, stands in the same predicament as the payee. An acceptance is as much evidence of money had and received by the acceptor to the use of such holder, and of money paid by such holder for the use of the acceptor, as if he were the payee." *Held*, that debt might be maintained by the indorsee, against the acceptor of a bill of exchange, it being expressed to be for value received.

Denied in Kennedy v. Carpenter, 2 Whart. R. 354 *et seq.* See also Pierce v. Crofts, 12 Johns. 90.

RACKSTRAW v. IMBER, Holt's N. P. R. 268.

Doubted in Fromont v. Coupland, 2 Bing. 366, where Best, Ch. J., says, "It is only a *nisi prius* decision, and might, upon a further consideration, have been determined otherwise." See also the observation of Parke, J., in S. C.

RADCLIFFE v. FURSMAN, 2 Bro. Parl. C. 514.

The House of Lords compelled a party to produce a case which he had sent to his professional adviser, but not the opinion which he had received.

Doubted in Gres. Eq. Ev. 33 *et seq.* and cases cited. See also, 1 Coop. Sel. Ca. 27.

RADCLIFFE v. TATE, 1 Keb. 779.

Denied in Doe v. Roe, 1 Taunt. 55.

RAGUET v. ROLL, 7 Ohio R. 77.

See Roll v. Raguet, 4 Ohio R. 418; Cowles v. Raguet, 14 ib. 38; James v. Roberts, 18 ib. 548; Thomas v. Cruise, 16 ib. 54; Cumpston v. Lambert, 18 ib. 81.

RAILSTONE v. THE YORK, NEWCASTLE AND BERWICK RAILWAY CO., 19 Law Jour. R. N. S. Q. B. 464.

Conflicts with Richardson v. The South Eastern Railway Co., 20 Law J. Rep. N. S. C. P. 236; 6 Eng. R. 426.

RAMSEY v. JOHNSON, Minor's Rep. 413.

Overruled. Lee v. Branch Bank of Mobile, 8 Porter's Ala. R. 125.

RAMSEY v. McCAULEY, 2 Texas R. 189.

Its correctness doubted by the judge who decided it; see a note at the end of the case, on page 192.

RANDALL v. COOK, 17 Wend. 53.

Overruled. Smith v. Acker, 23 Wend. 653.

RANDALL v. ———, 2 Mod. R. 308.

The court are reported to have given as a special reason for their decision, that the judgment therein pleaded was not only erroneous, but *void*, on account of its having been given after the death of the defendant.

Denied in Warder v. Tainter, 4 Watts' R. 279, 280.—Kennedy, J., who seemed to think, that the reporter had mis-stated the reason assigned for the decision.

RANN v. HUGHES, 7 Term R. 350.

Ruffin, J., in 2 Murph. R. 333, says—"The note of the case in Term Reports, seems to be a confused one; but its accuracy in this respect (the want of assets not being alleged) is evinced by what fell from Lord Mansfield in Hawks v. Saunders, Cowp. 291."

RASTALL'S ENTRIES.

Ld. Ellenborough (in King v. Wildy, 1 M. & S. 188), said, that one of the forms under title Gaol Delivery was one of the most vicious precedents he ever contemplated.

RATCLIFFE v. BARTON, 3 Bos. & Pul. 223.

That an officer must demand admittance, before he can legally break open an inner door, &c.

Overruled in Hutchinson v. Birch, 4 Taunt. 619, 612.

RATCLIFFE v. DAVIS, Yelv. 178; S. C., Noy, 137; 1 Bulstr. 29; Cro. Jac. 244.

Dictum—that if pawnor do not redeem during his life, the right of redemption does not descend to his executor. Same point, 1 Ld. Raym. 434.

Denied in Cortellyou v. Lansing, 2 Caines' Ca. in Error, 202.

RATHBUN v. MARTIN, 20 Johns. 343.

Overruled. 12 Wheat. 19.

RATTLE v. POPHAM, 2 Str. 992.

That the execution of a power might be good in equity and yet void at law.

But the contrary is holden in Zouch v. Woolston, 2 Burr. 1147.

This last decision, however, seems to be questioned by Ld. Redesdale, 1 Sch. & Lefr. 70.

RAVEN v. DUNNING, 3 Esp. 25; Currie v. Child, 3 Camp. 283.

Doubted in Bate v. Russell, Mo. & M. 332 by Parke, J.; Phil. Ev. 52, —5th Am. ed. n. (4).

RAVENSCROFT v. WISE, 1 Cr. M. & R. 203.

Overruled Schreger v. Carden, 21 Law Jour. Rep. N. S. C. P. 150; 10 Eng. R. 515 note.

RAWLIN'S CASE, 4 Co.—Ascough's Case, 9 Co. 135.

It is held, that the whole rent is *suspended*, where part is redemised to the lessor.

Denied Hodkins v. Robson, 1 Ventr. 277:—"The resolution of that point was not necessary to the judgment given in that case, which was upon the extinguishment of the condition, which is entire, and not be apportioned. But as to the rent no book was found to warrant such an opinion, but Brooke, Tit. Extinguishment. 48." See Comyn Land. & Ten. 218; 3 Kent Com. 470.

RAWLINS v. VANDYKE, 3 Esp. R. 250; Todd v. Stokes, Ld. Raym. 444.

Lord Eldon said that "where the tradesman's demand is for necessaries, it is incumbent to show that he knew of the separate maintenance."

Denied in Manby v. Scott, 1 Siderfin, 109; Montague v. Benedict, 3 B. & C. 631; Seaton v. Benedict, 5 Bing. 28. See 2 Smith's Lead. Cas. 203.

RAY v. FENWICK, 3 Cro. Ch. R. 25.

Story, J., in Trecothick v. Austin, 4 Mason, 42, said, the report "is certainly very unsatisfactory."

RAYMAN v. GOLD, Moor, 635.

Devise by implication, &c., Mr. Justice Willes spoke slightly of this case in Bendale v. Summerset, 5 Burr. 2609.

RAYMOND'S (LORD) REPORTS, Vol. 1.

"These notes were taken in 10 W. III. when Lord Raymond was young as short hints for his own use; but they are too incorrect and inaccurate to be relied on as authorities." Per Ld. Mansfield in Burr. 36; See also 3 D. & E. 261.—But Chan. Kent (1 Kent Com. 455,) says "that these reports are valuable for the many useful entries and forms of pleading which accompany the cases."

RAYNOR v. DOWDY, 1 Murphy, 279.

Doubted in Pipkin v. Wyans, 2 Dev. 403.

REA v. MEGGOTT, cited in Cas. Temp. Hardw. 77.

That a parol acceptance of an inland bill of exchange was not binding.

Overruled in Lumley v. Palmer, 2 Str. 1000. See also Windle v. Andrews, 2 B. & Ald. 699.

READ v. ADAMS, 6 S. & R. 356.

In an action on a foreign bill of exchange; *Held*, that the indorsee need not prove that the indorser had notice of the non-acceptance of the bill.

Opposed, Watson v. Loring, 3 Mass 557; Thompson v. Cummings, 2 Leigh's R. 321; Bachellor v. Priest, 12 Wend. 399; Phœnix Bank v. Hussey, ib. 483; 2 Phil Ev. 31 *et seq.* and notes.

READ v. GARNETT, Barnes R. 58.

Overruled. Borrowdale v. Hitchener, 3 B. & P. 245–6:—Rooke, J., said,—"The reason upon which the decision in Read v. Garnett is founded proves it to be a case of no authority; for a demand of the money is there said to be as necessary before execution is taken out (in the case of a verdict upon an award) as it would be in moving for an attachment." And Heath, J., added, "Many of the cases reported in that book are not law."

READ v. LEE, 2 B. & Ad. 415.

Cost of summonses at judges' chambers are not allowed in K. B. Opposed, Doe d. Prescott v. Roe, 9 Bing. 104.

READ v. POPE, 1 Cr. M. & Ros. 302.

Held, that in debt on judgment for the plaintiff in an inferior court, the declaration must allege that the original suit arose within the jurisdiction of the inferior court. Overruling Bentley v. Donnelly, 8 Term R. 127; Jaques v. Cesar, 2 Wms. Saund. 101, n. (2), n. (b).

READ v. SNELL, 2 Atk. 642.

Overruled in Garth v. Baldwin, 2 Ves. 646; Lyon v. Mitchell, 1 Maddock Ch. R. 467, 486.

RECTOR OF CHEDINGTON'S CASE, 1 Rep. 153.

Demise to B for 30 years after the death of C if C dies within ten years. *Held*, that if C survive the 10 years, the term shall never take effect.

Denied in Wright v. Cartwright, 1 Burr. 282.

READE v. LIVINGSTON, 3 Johns. Ch. 481.

A voluntary settlement by a person who is indebted, is void as to existing creditors, without regarding the amount of the debts or the circumstances of the party.

Doubted. See Story's Eq. Jurisp. 343, 360; also 2 Kent Com. 442, n. (a).

READER v. BLOOM, 10 J. B. Moore, 261; 3 Bing. 9.

A plaintiff obtaining a verdict against defendant is entitled to his full costs, although the person who conducted the cause is not an attorney.

Limited in Meekin v. Whalley, 4 Moore & Scott, 499, n. (i), and Humphreys v. Harvey, 4 ib. 500, to cases where no advances of money appear to have been made by the client to the supposed attorney on account of the suit.

REDDISH v. WATSON, 6 Ohio R. 510.

Overruled, Lafayette Benefit Society v. Lewis, 7 Ohio R. i. 80.

REDESDALE, PLEADING, 9.

"The plaintiff may require a discovery of the case on which the defendant relies, *and of the manner in which* he intends to support it."

Denied in Wigram on Points in the Law of Discovery, 171, p. 51 (Am. ed.), who says, the latter part of the above quotation, must be an inaccuracy; it is opposed to all the authorities.

REDSHAW v. HERTHER, Carth. 354.

Denied in Phill. Ev., p. 155–6 (7th Lond. ed.) "There is probably a mistake, in the short note of this case, as to the form of the plea."

REED. See *Ex parte* Reed.

REED v. WHITE, 5 Esp. R. 122.

Doubted by Parke, J., in 4 M. & Ry. 359, as to the accuracy of the report of that case.

REES v. SMITH, 2 Stark. R. 31; 1 Arch. C. P. 169.

Overruled in William v. Davies, 1 Cr. & M. 464; Brown v. Murray, R. & M. 254; Sylvester v. Hall, ib. 255.

REEVE'S DOMESTIC RELATIONS.

Reeve was not a very careful writer. By Hand, J., in Raymond v. Loyl, 10 Barb. 485.

REGINA. See Queen.

REGINA v. BANNATYNE, 2 L. M. & P. 213; 4 Eng. R. 188.

Dissented from, Reg. v. Aldham and United Parishes Ins. Co., 21 Law Jour. Rep. N. S. Q. B. 1; 8 Eng. R. 368.

REGINA v. BARKIN, 2 Ld. Raym. 1280.

"A strange note." By Ld. Mansfield, 5 Burr. 2636. See also Cowp. 329.

REGINA v. BRIXHAM, 8 Ad. & El. 375.

Overruled, Reg. v. Recorder of Shrewsbury, 1 Com. Law R. 49; 16 Eng. R. 394.

REGINA v. BROWN, 8 Eng. R. 321; 21 Law J. Rep. N. S. Q. B. 113.

Denied in *Ex parte* Jones, 21 Law J. R. N. S. M. C. 116; 10 Eng. R. 531.

REGINA v. DANIEL, 6 Mod. 100.

Dictum of Holt, C. J. Denied in Rex v. Huggins, 2 East, 17.

REGINA v. DARBY, 1 Salk. 78.

That judgment *quod capiatur pro fine* is a *final* judgment. Denied in Rex v. Robinson, 2 Burr. 801.

REGINA v. DREW, 8 Car. & P. 140.

Overruled, Regina v. Baldry, 16 Jur. 599; 21 Law J. R. N. S. M. C. 134; 5 Cox C. C. 523; 2 Den. C. C. 430; 12 Eng. R. 591.

REGINA v. EAST. COUNT. R. R. CO., 10 Adol. & E. 531.

Doubted, York & N. Midland Railway Co. v. Regina, 22 Law J. R. N. S. Q. B. 225; 17 Jur. 690; 18 E. L. & E. R. 210.

REGINA v. FARLEY, 1 Cox, 75.

Overruled, Regina v. Baldry, 16 Jur. 599; 21 Law J. R. N. S. M. C. 134; 5 Cox, C. C. 523; 2 Den. C. C. 430; 12 Eng. R. 591.

REGINA v. HARRIS, 1 Cox, 106.

Overruled, Regina v. Baldry, 16 Jur. 599; 21 Law J. R. N. S. M. C. 134; 5 Cox, C. C. 523; 2 Den. C. C. 430; 12 Eng. R. 591.

REGINA v. JUSTICES OF WILTS. 10 East, 404.

Said to have been questioned by Parke, B., in Rex v. Justices of West Riding, 5 B. & Ad. 671; Regina v. Justices of Bucks, 29 E. L. & E. R. 207.

REGINA v. LANCASHIRE & YORKSHIRE RAILWAY CO., 1 E. & B. 228; 16 Eng. R. 328.

"What Lord Campbell there says, begs the question." Jervis, C. J., York & North Midland Railway Co. v. Regina, 22 Law J. Rep. N. S. Q. B. 225; 17 Jur. 690; 18 Eng. R. 210.

REGINA v. LYONS, Car. & M. 217.

Overruled, Regina v. Dolan, 29 E. L. & E. R. 534.

REGINA v. MEADOWS, 1 Car. & K. 399.

The marginal note is not correct. See Regina v. Manktelow, 17 Jur. 352; 22 Law J. Rep. N. S. M. C. 115; 2 Eng. R. 602.

REGINA v. MORTON, 2 Moo. & R. 514.

Overruled, Regina v. Baldry, 16 Jur. 599; 21 Law J. R. N. S. M. C. 134; 5 Cox C. C. 523; 2 Den. C. C. 430; 12 Eng. R. 591.

REGINA v. MURRAY, 1 Salk. 122.

Overruled, Rex v. Luffe, 8 East, 193; Rex v. Bedell, Ca. Temp. Hardw. 379; Andrews, 9 S. C.; Pendrell v. Pendrell, 2 Str. 925.

REGINA v. STACEY.

The dictum attributed to Justice Patteson: "The justices should have applied for a mandamus to hear the appeal." Doubtful if ever used. Regina v. Justices of Worcestershire, 25 E. L. & E. R. 156.

REGINA v. TAYLOR, 2 Ld. Raym. 767.

Overruled in Rex v. Strong, 1 Burr. 251. See Regina v. Franklyn, 2 Ld. Raym. 1038.

REGINA v. WYCHERLY, 8 Car. & P. 262.

The distinction made in this case between the terms *quick with child* and *with quick child* said to be unfounded. The State v. Cooper, 2 Zab. R. 57.

REGINA v. YORK & NORTH MIDLAND RAILWAY CO., 1 El. & Bl. 177; 16 Eng. R. 299.

Overruled, York & North Midland Railway Co. v. Regina, 22 Law J. R. N. S. Q. B. 225; 17 Jur. 690; 18 Eng. R. 199–227 n.

REID v. VANDERHEYDEN, 1 Hopk. 408.

Reversed in 5 Cowen, 719.

REILLEY v. JONES, 8 Moore, 224; 1 Bing. 302.

Overruled in Davies v. Penton, 6 B. & C. 216; Kemble v. Farren, 6 Bing. 141; Chit. jr. on Cont. 336.

REMINGTON v. STEVENS, 2 Str. 1271.

S. P. as in Bull. N. P. 180 (ante).

REMSEN v. CONKLIN, 18 Johns. 447.

"So far as it holds that the rent under the covenant in that lease, in default of the landlord to appoint a place of payment, was payable upon the land, was overruled in Lush v. Druse, 4 Wend. 313." Livingston v. Miller, 1 Kernan, 92.

RENNELL v. LINCOLN, 3 Bing. 223; 11 Moore, 139.

Reversed in Mirehouse v. Rennell, 8 Bing. 490: 1 M. & Scott, 683; affirming S. C. (in error) nom. Rennell v. Lincoln (Bishop of), 7 B. & C. 113; 9 D. & R. 810.

RENS. GLASS FACTORY v. REID, 5 Cow. 587.

Dissented from, Purdy v. Phillips, 1 Kernan, 407.

12 REPORTS (12 Co.)

Parke, J., in 10 B. & C. 263, said,—"The 12 Rep. is not a book of any great authority. It is said by Mr. Hargrave, 11 St. Tr. 30, to be of small authority, being not only posthumous, but apparently nothing more than a collection from papers neither digested nor intended for the press by the writer. And Mr. Sergeant Hill, in his copy, refers to folio 18, 19, as showing that the 12 Rep. was not fit to be allowed. And Holroyd, J., in Lewis v. Walter, 4 B. & A. 614, gives an opinion unfavorable to its accuracy."

REPORTS.

"It is objected that these books are of no authority; but if both the reporters were the worst that ever reported, if substantially they report a case in the same way, it is demonstrative of the truth of what they report, or they could not agree." Ld. Mansfield in R. v. George, Cowp. 16.

REPORTS OF CASES IN CHANCERY—cited as Rep. Temp. Finch.

No authority. Ld. Hardwicke, 3 Atk. 334; 1 Wils. 162.

REPPLIER v. ORRICH, 7 Ohio R. 602.

See Mitchell v. Gazzam, 12 Ohio R. 315; Bancroft v. Blizzard, 13 ib. 30.

RESPUBLICA v. CARMALT, 4 Yeates, 416.

Overruled in S. C. 2 Binn. 235.

RETAN v. DREW, 19 Wend. 304.

Questioned, Hull v. Peters, 7 Barb. 331.

REX v. ADERLY, Dougl. 463; Castle v. Burdett, 3 Term R. 623; Glassington v. Rawlins, 3 East, 407.

When the computation of time is to be made from an act done, the day on which the act is done, is to be included.

Denied in *Ex parte* Dean, 2 Cowen, 605; where the court say,—"We have departed from the rule of construction of the English courts, and hold that the same mode of computation is to be adopted upon statutes which prevail both in England and in this country as to notices; that is to say, one day is to be counted inclusive, and the other exclusive." See Presbrey v. Williams, 15 Mass. 193.

REX v. ADY, 7 C. & P. 140.

If a party obtain money by a false pretense, it is no answer to show that the party from whom he obtained the money laid a plan to entrap him into commission of the offense.

Doubted.

REX v. ALLEN, Sir T. Raym. 197; Per Twisden, J., and Prec. Ch. 50.

Quære, if not overruled in 2 Vern. 42, 78, 145; Walker v. Perry, Hawk. P. C. c. 82, sec 10; Ord on Usury, 35.

REX v. ALL SAINTS, WORCESTER, 1 Phil. Ev. 79.

Overruled. See Rex v. Barbee, Chelmsford Assizes, cited in Chit. on Bills, 653, 8th Am. ed. n. (t).

REX v. BABB, 3 D. & E. 579.

Same point as in Lynn (Mayor of) v. Denton (ante). Overruled in Mayor of Southampton v. Graves, 8 D. & E. 590.

REX v. BEEZLEY, 4 Car. & P. 220.

The court will, on request order a witness called and sworn, if his name is indorsed on indictment.

Rex v. Bodle, 6 Car. & P. 186: it is a matter of *discretion* with the judge; but if called by defendant, he shall not call witnesses to contradict him.—Gaselee & Vaughan.

REX v. BENNET, 1 Str. 101.

That a new trial is not granted on an information in nature of a quo warranto.

But ruled contra in Rex v. Francis, 2 D. & E. 484.

REX v. BIGNOLD, 1 D. & Ry. N. P. C. 59.

If defendant's counsel state facts which he expects to prove, but afterward declines to call witnesses, the plaintiff's counsel is entitled to reply.

Denied in Crener v. Sodo, 1 Moo. & M. 84. Ld. Tenterden held, that the allowing a reply was discretionary on the part of the judge.

REX v. BISHOP OF CHESTER, 2 Salk. 560.

Reversed in Dom. Proc., Show. Parl. Ca. 212.

REX v. BLACKMAN, 1 Esp. 96.—Kenyon.

Though the Stat. 17 Geo. II. c. 40, leaves an option in the judge either to inflict corporal punishment or impose a fine, the expectation of a share in the fine shall render a witness incompetent.

Overruled in Rex v. Cole, 1 Esp. 169.—Kenyon. And see Rex v. Bland, 5 Term R. 370.

REX v. BROOKE, 2 Stark. R. 473; 1 Phil. Ev. 274.

If a witness is sworn, and would be competent to give evidence for the party calling him, the other party will in strictness be entitled to cross-examine him, though he has not been examined in chief.

Denied in Ellmaker v. Buckley, 16 S. & R. 77.—Gibson, C. J. Where a person, called to produce a document, was sworn by mistake, and asked a question which he did not answer, it was held that the opposite party was entitled to cross-examine him. Bush v. Smith, 1 Crom. M. & R. 94.

REX v. BUGGS, Skin. R. 428.

It was held, that giving a penalty to the King, made it a public statute. Rex v. Morgan, 2 Str. 1066; S. P. State v. Cobb, 1 Dev. & B. 115. *Held*, that an act, making it an indictable offence to fell timber in the channel of a particular creek, in a particular county, is a public law, and need not be recited in an indictment on it. The court and jury are bound to take notice of it, without proof. But see Brett v. Beales, 1 M. & M. 416. A canal act giving power to levy toll on such as shall use the canal, is not a public act; and a private act is not made admissible in evidence against strangers by a clause declaring "that it shall be deemed a public act and shall be judicially taken notice of without being pleaded;"—such a clause only applies to the forms of pleading.

REX v. BURBACH, 1 M. & S. 370.

Overruled in Rex v. Crediton, 2 B. & Ald. 493; The King v. Inhab. of Newtown, 3 Nev. & M. 306.

REX v. CADMAN, R. & M. C. C. R. 114.

That in a prosecution with respect to poisoning, it was held not to be essential to show the swallowing of the poison; but only that some of it was applied to the person to whom it was administered.

Denied by Parke, J., in 4 C. & P. 369, who says: "My note differs from that report; and so also do my own feelings. I am inclined to think that some mistake has crept into that report; my recollection is that the judges held just the contrary to what is there stated."

REX v. CATOR, 4 Esp. R. 145.

S. P. as in Goodtitle d. Revett v. Braham (ante).

REX v. CLENDON, 2 Str. 870; 2 Ld. Raym. 1572.

Indictment for an assault upon *two;* and held not good.

This case was treated "as a case not well considered;" and was held not to be law. Rex v. Benfield et al., 2 Burr. 984.

REX v. CLIVIGER, 2 Term R. 263.

Doubted. Rex v. Inhab. of Bathwick, 2 B. & Adol. 639: Ld. Tenterden, C. J., said—"The decision of Rex v. The Inhabitants of Cliviger appears to have been founded on a supposed legal maxim of policy, viz., that a wife cannot be a witness to give testimony in any degree to criminate her husband. This will undoubtedly be true in the case of a direct charge and proceeding against him for any offense." But where the proceeding is *res inter alios acta*, as in a question of settlement, *held*, that the wife is competent to prove the first marriage, although her husband had been before examined, and proved the second marriage. Ib. See also 6 M. & S. 194; 1 Phil. Ev. p. 79, note 144, p. 148.

REX v. COLE, 1 Mood. C. C. 11.

Overruled in Rex v. Solomons, 1 Mood. C. C. 292.

REX v. MOOR CRITCHELL, 2 East, 66.

Doubted so strongly by the court, that it may be considered as over ruled by The King v. St. Mary's, Leicester, 1 Barn. & Ald. 463.

REX v. DALTON, 2 Str. 911, and Rex v. Magarth, ib. 1242.

Doubted by Mr. J. Woodworth, in *Ex parte* Tayloe, 5 Cow. 59, who says, "We are fortified in the belief that there was probably an omission to state the circumstances, by what Mr. J. Foster says in his Cr. Law, 294, of another case as reported by Strange. He complains that Strange was studious of brevity, and instances Rex v. Tranter, 1 Str. 499, which, from the facts reported, seems to be a case of murder; but by a report of the same case in 6 St. Tr. 195, it appears that important circumstances were omitted by Strange."

REX v. EDMUNDS, 6 C. & P. 164.—Tindal.

A statement upon oath, made on the occasion of a summary conviction in the presence of a prisoner, was received in evidence.

Doubted. See Phil. Ev. 383,—5th Am. ed.

REX v. EDWARDS, 4 D. & E. 440.

That a witness may be asked if he has not stood in the pillory for perjury, because the answer subjects him to no punishment.

Contrary to Cooke's case, 1 Salk. 153, where the reason is, that no man shall be compelled to disclose his own shame. And is overruled in Rex v. Castell Careinion, 8 East, 77, on the ground that the *record* is the *only* evidence of the conviction. Same law in New York, People v. Herrick, 13 Johns. 82, for the reason given in Cooke's case. See Macbride v. Macbride, 4 Esp. Rep. 242.

26

REX v. ELDERSHAW, 3 Car. & P. 396.

A boy under the age of fourteen, cannot be convicted of an assault with intent to commit a rape.

Denied in Commonwealth v. Green, 2 Pick. 380; Parker, C. J., dissenting.

REX v. ELSE, Russ. & R. C. C. 142.

Overruled, Reg. v. Greenwood, 16 Jur. 390; 9 Eng. R. 535.

REX v. ELWELL, 2 Ld. Raym. 1514; 3 Ld. Raym. 360.

Doubted and perhaps overruled in The King v. Wilson, 3 Ad. & El. 817:—Patteson, J.—"I did not mean to say, in Rex v. Oakley, 4 B. & Ad. 314, that the precedent in Rex v. Elwell, was good." See also the observations of Denman, C. J., in delivering the judgment of the court.

REX v. ERISWELL, 3 D. & E. 707.

Two justices examined a pauper under oath as to his settlement, but did not remove him. Afterwards he became insane, and was removed by the other justices upon the former examination, which was held to be admissible evidence.

But this is overruled in Rex v. Ferrystone, 2 East, 54, and Rex v. Abergwilly, ib. 63.

REX v. FAGG, 4 Car. & P. 566.

Garrow, B., expressed his opinion, that nothing which a prisoner stated before he knew what the evidence against him was, ought to be used to criminate him.

Denied in Rex v. Bell, 5 Car. & P. 165. Gaselee, J., after consulting Ld. Tenterden, C. J. said, "My Lord Tenterden agrees with me that the opinion of Mr. B. Garrow in Rex v. Fagg is much too general, as it goes to exclude any acknowledgment of guilt made by a prisoner to a constable."

REX v. FORBES, Holt's C. 598.

Doubted by Mr. Phillips, Ev. 536–4,—5th Am. ed.

REX v. GOSPER AND SHIRE, Yelv. 58.

That when a man assigns error in fact, he ought to put himself *en pais*.

Denied, for that the assignment ought to conclude with a verification. Sheepshanks v. Lucas, 1 Burr. 410.

REX v. GREEN, 10 Mod. 212; Rex v. Adderley, Dougl. 465; Clark v. Davey, 4 Moore, 465.

The day on which the injury was committed must be *included* in the calculation of time.

Overruled in Hardy v. Ryle, 9 B. & C. 603, and Pellew v. Monford, ib. 134; and *held*, that that day is to be *excluded;* and also exclusive of the day of serving the notice. See 4 Mann. & Ryl. 300, in notes.

REX v. GREEN, cited 1 Str. 630, 631; 1 Saund. R. 262 c.

Overruled in Rex v. Venables, 1 Str. 630.

REX v. HODGSON, R. & R. C. C. 21.

On indictment for a rape, the prosecutrix is not compellable to answer whether she has not had connection with other men.

Denied in Rex v. Martin, 6 Car. & P. 562.

REX v. HOLLISTER, and Rex v. Folly, 1 Bott's Poor-Law, 78.

Overruled in Rex v. Gordon, 1 Barn. & Ald. 524.

REX v. INHABITANTS OF HORNSEY, Carth. 212.

Carthew makes Holt, C. J., to say that where a justice of the peace presents a highway upon his view to be out of repair, the parties are estopped to plead that it is in repair.

But this is contradicted in Rex v. Wiltshire, 3 Burr. 1530. See other reports of Holt's opinion, 4 Mod. 38; Holt, 338; 12 Mod. 13; 1 Show. 270, 291.

REX v. HUGGINGS, 2 Comyn, 422.

In an action for escape, for the king's debt, Comyn says the defendant was allowed to plead *non debet* and fresh pursuit.

But in Parker, 15, it is said that the rule to show cause why these pleas should not be pleaded was discharged. See also Forrest, 61; Bunb. 96.

REX v. JAMES, Carthew, 220.

Denied in Crook v. Dowling, 3 Doug. 76, 77, by Ld. Mansfield, and Mr. J. Buller; yet Mr. Roscoe in note to S. C. p. 78, says,—"As stated in Carthew, there was no evidence to connect the defendant with the affidavits; but in the report in 1 Shower, 397, S. C. there was." The case was recognized by Hullock, B. in Rees v. Bowen, 4 M. & Y. 383.

REX v. JARVIS, 1 Burr. 188.

Better reported in 1 East, 647, from the MSS. of Ld. Ashburton, per Dennison, J. See 2 Dowl. Pr. R. 177, n. (a).

REX v. JOLLIFFE. See Wilbur v. Selden (post).

REX v. LAFONE, 5 Esp. R.; S. C. 1 Phill. Ev. 74 (7th Lond. ed.)

On a joint indictment against several for a misdemeanor, a defendant who suffers judgment by default, cannot be a witness for the other defendants.

Doubted in Commonwealth v. Marsh, 10 Pick. 58; The People v. Bill, 10 Johns. R. 95; Campbell v. The Commonwealth, 2 Virg. Cas. 314.

REX ET REGINA v. LARWOOD, 4 Mod. 270; 1 Ld. Raym. 29; Skin. 574; Carth. 306; 1 Salk. 168, S. C.

Overruled. Evans v. Harrison, Wilm. 161; 6 Bro. Parl. C. 181.

REX v. LLOYD, 1 Camp. 260.

Ld. Ellenborough appears to have been of opinion, that it was not necessary that a way should be a thoroughfare, to presume a dedication.

Denied in Wood v. Veel, 5 B. & A. 454; Jarvis v. Dean, 3 Bing. 447. See Marquis of Stafford v. Coyney, 7 B. & C. 257.

REX v. LYONS, 1 Leach, C. C. 185; 2 East P. C. 497.

A house under repair, but not inhabited, is not the dwelling house of the owner, though part of his property is deposited therein. Differently reported in Rex v. Fuller, 1 Leach C. C. 186 n.

REX v. MADDERN, 1 Term R. 627.

Overruled in Rex v. Brooke, 9 B. & C. 915; 4 M. & R. 719.

REX v. MEGGOTT, Cas. temp. Hardw. 77.

Overruled in Lumley v. Palmer, 2 Str. 1000; and Windle v. Andrews, 2 Barn. & Ald. 696.

REX v. MERCERON, 2 Stark. R. 366.

Doubted by Ld. Tenterden, in Rex v. Gilham, Ry. & Mo. Cr. Cas. 203.

REX v. MIDDLEZOY, 2 Term R. 41.

Overruled in Gordon v. Secretan, 8 East, 548. See Johnson v. Lewellin, and Gordon v. Secretan (ante). And in Doe d. Wilkins v. Marquis of Cleveland, 9 B. & C. 869; and deciding, that the fact of a

REX v. MIDDLEZOY, 2 Term R. 41—continued.

written instrument coming out of the possession of the adverse party will not dispense with the necessity of proving its execution, excepting, however, where a party who claims a beneficial interest under deed, produces it under a notice, he is not entitled to insist on the execution being proved, either by the attesting witness or in any other manner; by calling for the production of the deed, he is considered as affirming its due execution. Carr v. Burdis, 1 Cr. M. & R. 785. But where the defendant is not a party to the cause in the proper sense of the word, he is not excused from proving the execution of it. Vacher v. Cocks, 1 B. & Ad. 145; Jackson v. Kingsly, 17 Johns. R. 158; 4 Wash. C. C. R. 719. See 7 Mon. R. 137.

REX v. PAGE, 1 Russ. Cr. 82.

Overruled in Reg v. Greenwood, 16 Jur. 390; 9 Eng. R. 535.

REX v. PEDLEY, 1 Leach C. C. 365.

Overruled and exploded. Ld. Eldon in *Ex parte* Oliver, 2 Ves. & Beam. 244.

REX v. PENRYN, 5 M. & S. 443.

Overruled in Rex v. Penryn, 1 Nev. & M. 74; 4 B. & Adol. 224.

REX v. PIERSON, 2 Ld. Raym. 1197.

It seems to be held, that keeping a bawdy house is an offense personal to the occupant of the house, and cannot affect the lessor.

Opposed in Commonwealth v. Harrington, 3 Pick. 26: "The common law, *propria vigore*, will punish in a case like the one before us." (Indictment for letting a house to a woman of ill-fame.)

REX v. POOLE, 7 Mod. 195; Cases Temp. Hardw. 20.

Lord Hardwicke seems to have been of opinion that where the law directs that officers of a corporation be elected annually, the corporation cannot elect after the expiration of the time.

Doubted in The Trustees of Vernon Society v. Hills, 6 Cowen R. 23; The People v. Runkle, 9 Johns. R. 147; M'Call v. Byram M. Co., 6 Conn. 428. But see Phillips v. Wickham, 1 Paige's Ch. R. 590.

REX v. PYWELL, 1 Stark. 402.

"I think that case has been overruled." Campbell, Ch. J., Reg. v. Rowlands, 9 Eng. R. 291; 21 Law J. R. N. S. M. C. 81; 16 Jur. 218.

REX v. RENNETT, 2 Term Rep. 197.

Overruled in Reg. v. Dendy, 22 Law J. Rep. N. S. Q. B. 39; 16 Eng. R. 170.

REX v. RUSSELL, 2 M. & S. 122.

Overruled in Rex v. Cox, 5 Car. & P. 297.

REX v. RUSSELL, Leach's Crown Cas. 10; Rex v. Taylor, ib. 255; Rex v. Rhodes, 2 Stra. 728; Rex v. Crocker, 5 Bos. & Pul. 87; Rex v. Thornton, Leach's Crown Cas. 723.

That the person whose property may be prejudiced by a forgery, is no witness to prove the forgery on an indictment for the offense.

The contrary the law of Massachusetts. Commonwealth v. Hutchinson, 1 Mass. 7; Commonwealth v. Snell, 3 Mass. 82. And of Pennsylvania. Respublica v. Keating, 1 Dal. 110; Pennsylvania v. Farrell, Addis. 246; Respublica v. Ross, 2 Dal. 239. See also Rex v. Broughton, 2 Stra. 1229; Abrahams v. Bunn, 4 Burr. 2251; 3 D. & E. 27; 7 D. & E. 60.

REG. v. SALFORD, 12 Q. B. Rep. 106; 17 Law J. R. N. S. M. C. 170.

Overruled, Reg. v. Hartfield, 9 Eng. R. 309; 21 Law J. R. N. S. M. C. 62; 16 Jur. 244.

REX v. ST. BENEDICT, 4 B. & Ald. 460.

Denied in the King v. The Inhab. of Leake, 2 Nev. & M. 583.—Parke.

REX v. ST. LEONARD'S, SHOREDITCH, 12 Mod. 212; 2 Salk. 483, 524.

That the session may set aside a poor's rate, and make a new one, &c. Overruled in Rex v. Andrews, 3 Burr. 1458.

REX v. ST. PANCRAS, Peake's N. P. 219.

Doubted, Reg. v. Inhab. of Harrington, 22 Law J. R. N. S. M. C. 89; 17 Jur. 455; 1 El. & Bl. 501; 18 E. L. & E. R. 290.

REX v. SHAKESPEARE, 10 East, 87.

The like point as in Charnley v. Winstanly (ante).

REX v. SHAW, 2 Salk. 482.

Overruled. Rex v. Guardians of Poor of Chester, 3 D. & E. 496.

REX v. SPARKLES, cited Du Barre v. Livette, Peake, 77; Butler v. Moore, Macnally, 253; R. & M. Cr. Cas. 194.

A confession to a clergyman is not privileged.

Explained in Broad v. Pitt, 3 C. & P. 519 by Ld. Wynford who said

REX v. SPARKLES, etc.—continued.

that he could never compel a clergyman to disclose communications made to him by a prisoner; but if he chose to disclose them, he should receive them in evidence. In New York (2 R. S. s. 72) it is provided that "no minister of the Gospel, or priest of any denomination, shall be allowed to disclose any confessions made to him in his professional character in the course of discipline enjoined by the rules or practice of such denomination." The People v. Garrit Gates, 13 Wend. 311.

REX v. STANSFIELD, Burr. 205, 220; S. C. 2 Str. 1193.

Overruled in Rex v. Driffield, 8 B. & C. 684.

REX v. TOOLEY, 3 D. & E. 707.

"I thought the case of Rex v. Tooley had been overruled, though in gentle terms, by the subsequent cases of Rex v. Swift (M. 30 G. III.) and Welsford v. Todd" (8 East, 584). Per Ld. Ellenborough in Hanley v. Cubberly, 15 East, 251.

REX v. TRANTER. See Rex v. Dalton (ante).

REX v. TURNER, 13 East, 228.

A query is appended to the proposition in this case in 2 Russ. on Cr. by Greaves, 687, note (k).

"I cannot regard Turner's case as law."—Campbell, Ch. J., Reg. v. Rowlands, 9 Eng. R. 292; 21 Law J. R. N. S. M. C. 81; 16 Jur. 218.

REX v. VINCENT, 1 Str. 481.

That a will of personal estate cannot be said to be forged, after probate granted.

Said to have been impeached in Rex v. Goodrich; see 3 D. & E. 126. In Hibsham v. Dulleban, 4 Watts, 183, Gibson, Ch. J.:—"It has been repeatedly overruled." (See 4 Watts, 191.)

REX v. WAKEFIELD, cited 2 Russ. on Crimes, 606.

The American authorities do not countenance Wakefield's case nor Perry's case. People v. Carpenter, 9 Barb. 582.

REX v. WARDEN OF THE FLEET, 12 Mod. 341.

A dictum of Holt, C. J., overruled. See Rex v. Dixon, 3 Burr. 1687; Anon. 8 Mass. 370; 1 Tyler, 147.

REX v. WATKINSON, 2 Str. 1122.

Being an indictment for perjury assigned on an answer in Chancery, when the Master who took it could not identify defendant; the solicitor who was present at putting it in, the Ch. J. would not compel him to give evidence and the defendant was acquitted.

Overruled in Studdy v. Sanders, 2 Dowl. & Ry. 347.

REX v. WEBB, Stark. Ev. —Best.

If a witness remain in court after an order for all witnesses to withdraw, he cannot be examined, *although the attorney in the cause.*

Denied in Beamon v. Ellice, 4 C. &. P. 585.—Taunton. See Pomeroy v. Baddely, R. & M. 430; Rex v. Colley, M. & M. 329.

REX v. WESTON, 4 Burr. 2507.

Overruled. Rex v. Clifton, 5 D. & E. 502.

REX v. WHITING, 1 Salk. 283; Rex v. Nunez, 2 Str. 1043; Rex v. Ellis, 2 Str. 1104.

In these cases it was held that the sufferer by cheating, perjury, &c., could not be a witness, on an indictment for the offense.

But they are considered and overruled in Rex v. Broughton, 2 Str. 1229, and Abrahams v. Bunn, 4 Burr. 2251. See also 3 D. & E. 27; 7 D. & E. 60; 4 East, 582, and Watt's case (post).

REX v. WHITNEY, Bott's Poor-Laws.

"Mr. J. Aston said that this case was incorrectly reported in Bott's Poor-Laws, in respect of what Mr. Justice Yates is there mentioned to have said."

Cowp. 619; see 5 Burr. 2637; 1 D. & E. 626.

REX v. WILTS, 10 East, 404.

Doubted in Rex v. The Justices, &c., 3 Dowl. Pr. R. 311; Patterson: Rex v. Wilts—"is certainly one in which some of the expressions have been, I will not say found fault with, but cautiously abstained from in later cases, because the judges thought they went too far."

REX v. WOOD, 1 Moody Cr. Ca. 278; 4 Car. & P. 381; S. C.

Overruled in Rex v. Withers, 1 Moody Cr. Ca. 294; 4 C. & P. 446.—in respect to an *incised* wound.

REX v. WOODFALL, 5 Burr. 2661.

"Whilst the letters of the immortal Junius shall continue to be read or whilst the trial by jury continues to be something more than a mere name, we hope the case of Rex v. Woodfall will never be acknowledged as a fit example for an American court." Bibb, J., in Worley v. Isbel, 1 Bibb Kent. R. 250.

REX v. YOUNG, 2 Anstr. 448.

Overruled, Iggulden v. May, 2 N. R. 452; 7 East, 237; 9 Ves. jr. 235.

REYNELL v. LANGCASTLE, Cro. Jac. 545.

Same point as in Glover v. Kendal (ante). Overruled in Bo nafous v. Walker, 2 D. & E. 126.

REYNOLDS v. BEERLING, M. 25 G. III. B. R.; Doug. 112, note.

Plea of set-off on judgment obtained by defendant against plaintiff after this action brought, but before plea pleaded, and held good.

"This point cannot be supported." Per Buller, J., in Evans v. Prosser, 3 D. & E. 186. See also Le Brett v. Papillon, 4 East, 507; Andrews v. Hooper, 13 Mass, 476; Campion v. Barker, 2 Lutw. 1143.

REYNOLDS v. BUCKLE, Hob. 326.

Ld. Holt in Jones v. Bobinger, Comb. 380, says, "I take the case of Reynolds v. Buckle, Hob. 326, to be misprinted—it was found for the defendant, which could not be * * *—'defendant' instead of 'plaintiff.'" See 4 Rawle, 343.

REYNOLDS v. COM'RS OF STARK CO., 5 Ohio R. 204.

See Northern Bank of Kentucky v. Roosa, 13 Ohio R. 486.

REYNOLDS v. LOUNSBURY, 6 Hill, 534.

Questioned in part, Childs v. Hart, 7 Barb. 370.

REYNOLDS v. PITT, 19 Ves. 134.

"A hard case."—*Durum, valde durum; sed sic ita lex est.* See Swanton v. Briggs, 2 Moll. 17.

REYNOLDS v. REYNOLDS, 5 Paige, 161.

Opposed to Bear v. Snyder, 11 Wend. 592.

RIC. de D.—Assize Book 4, pl. 3, p. 6—brings a writ of "*Quod permittat*" against R. and S.; and the nuisance was assigned, that whereas he hath a house in S., with apple, pear, and other trees, bearing fruit, the defendant levied a lime-kiln so near to the house of the said Ric., that, when the kiln was burning, the smoke thereof burnt and scorched the trees, which became dry and unfruitful.

The defendant pleads that the plaintiff hath no estate in the tenement to which, &c., except as lessee for life under the Abbot de Berg. The defendant further pleaded, that the lime-kiln was so built and used by the defendant's father before the plaintiff had any interest in the frank tenement; without this, that he had levied any nuisance since, &c. Upon argument, the court held the plea bad: "If the defendant's father were now alive, the plaintiff would have an assize against him."

This is the oldest reported case of a nuisance caused by carrying on an offensive trade. See the cases collected in Gale & Whatley on Easements, p. 279 *et seq.*

RICE v. SHUTE, Burr. 2611.

In an action *ex contractu* the non-joinder of a co-contractor as defendant can be taken advantage of by plea in abatement only.

Limited and explained in Cabell v. Vaughan, 1 Wms. Saund. 291.

The non-joinder of a joint contractor cannot be taken advantage of in any way whatever, where it appears that the party not joined is only a secret partner (Mullett v. Hook, 1 M. and M. 88; De Mantort v. Saunders, 1 B. & Ad. 398; overruling Dubois v. Ludert, 8 Taunt. 9; 1 Marsh. 246); and, therefore, if issue joined upon a plea in abatement of non-joinder, the jury are directed to consider *with whom had the plaintiff reason to believe that he contracted.*" See Waterbury v. Mather & Maurin, 16 Wend. 611, where in assumpsit against two, one was arrested and the other returned *not found*, and it appeared on the trial that the defendant not brought in was misnamed (being called *John* instead of *George*), the plaintiff was nonsuited.

RICH v. ALDRED, 6 Mod. 216.

Doubted by Mr. J. Story (Com. on Bail. 192–3): "There is great reason to doubt the accuracy of the report."

RICH v. COE, Cowper, 636.

Doubted Webb v. Peirce, 5 Monthly Law Rep. N. S. 9.

RICH v. TOPPING, 1 Esp. 176; Peake's Cas. 224.

The indorser of a bill was admitted by Ld. Kenyon to prove usury in the transfer of it to the indorsee.

Denied in Churchill v. Suter, 4 Mass. 156; see acc. 2 Dall. 194; 1 Day's Ca. 17, 301; 1 Caines, 258, 267; 1 Hen. & Munf. 175; 1 Hayw. 397 n.; 2 Cranch, 202.

RICHARDS. See *Ex parte* Richards.

RICHARDS LE TAVERNER'S CASE, Dyer, 56 (a).

S. P. as in Rawlins' case (ante).

RICHARDS v. MURDOCK, 10 B. & C. 527.

Where it seems to have been held, that underwriters were admissible to give their opinion, as a matter of judgment, as to the materiality of the matters not communicated at the time of effecting an insurance.

Overruled in Campbell v. Rickards, 5 B. & Ad. 840.

RICHARD v. SYMES, 2 Atk. 319; 3 Barnard, 90; and 2 Eq. Cas. Abr. 617.

Doubted in Hassell v. Tynte, Ambler's R. 318, Ld. Hardwicke said,—"That the case of Richards v. Symes was not a precedent of very considerable value." But in Duffield v. Elwes, 1 Bligh's R. 538–9, Lord Eldon said, "But the case as there reported (2 Eq. Cas. Abr.) is reported from a manuscript note, and from a manuscript note which I think is better entitled to credit for this reason: that having called in assistance in this case (which I believe will be the first absolute determination upon the subject, though I think there is a great deal laid down in the cases which ought to lead us to decide what ought to be a good *donatio mortis causa*), I have found authority to consider that report to be a very correct report, in the library and in the mind which are both equally large storehouses of equity learning,—I mean the library and mind of Lord Redesdale."

RICHARDSON'S PRACTICE.

"Treated with bare respect by the Supreme Court of New York," so said. Yundt v. Yundt, 12 Serg. & Rawle, 429.

RICHARDSON v. CLEAVELAND, 5 Porter Ala. R. 251.

Reviewed and corrected, Livingston v. Steamboat Talapoosa, 9 Porter Ala. R. 111.

RICHARDSON v. HUNT.

See Plumb v. Whiting (ante).

RICHARDSON v. LEARNED, 10 Pick. 261.

The action was sued by the trustee of the wife's property; and *held*, that the husband was a competent witness.

Doubted. See Davis v. Dinwoody, 4 Term R. 678; 1 Phill. Ev. (7 Lond. ed.)

RICHETTE v. STEWART, 1 Dall. R. 317; 2 ib. 196.

It *seems*, that the *protest* of the captain and a majority of the crew, made before a notary public, or for want of one before a magistrate, in the first port recently after arriving there, is evidence in chief for the *insurer*.

Denied in 2 Phill. Ev. 56, and note. Doherty v. Farris, 2 Yerg. R. 73.

RICKARDS v. MURDOCH, 10 B. & C. 527.

Overruled in Campbell v. Rickards, 2 Nev. & M. 542.

RIDDELL v. SUTTON, 5 Bing. 200.

S. P. as in Barry v. Smith (ante).

RIDER v. ALEXANDER, 1 D. Chipman, 267.

The law is now otherwise. Hammond v. Wilder, 25 Vermont (2 Deane) R. 350.

RIDLEY v. M'GHEE, 2 Dever. R. 40.

Doubted in Moore v. Collins, 3 Dever. R. 140.—Ruffin.

RIDLEY v. TAYLOR, 13 East, 175.

Burthen of proof in respect to partnership paper.

Distinction or "difference (said Spencer, J., in Dob v. Halsey, 16 Johns. 38, 39), between the decisions of this court and that of the King's Bench, consists in this: We require the separate creditor who has obtained the partnership paper for the private debt of one of the partners, to show the assent of the whole firm to be bound. The rule of the King's Bench throws the burthen of avoiding such security on the firm, by requiring them to prove that the act was covinous on the part of the partner for whose private debt the paper of the firm was given, by showing that it was done without the knowledge, and against the consent, of the other partners, and that the fact was known to the separate creditor when he took the paper of the firm." (See 11 S. & R. 387).

RIGGS v. MURRAY, 2 Johns. Ch. R. 572 ; 3 ib. 160, S. C.

Reversed in 15 Johns. 571.

RILEY v. CITY OF ROCHESTER, 13 Barb. 321.

Reversed, Oct. 1853.

RILEY v. JOHNSON, 8 Ohio R. 526.

Denied, Riley v. Armstrong, 2 McLean's R. 589 ; and overruled, Carlisle v. Wishart, 11 Ohio, 172 ; 16 ib. 290.

RIMINGTON v. CANNON, 21 Law J. R. N. S. C. P. 137 ; 10 Eng. R. 477.

Reversed, Rimington v. Cannon, 22 Law J. R. N. S. C. P. 153 ; 20 Eng. R. 246.

RINGGOLD v. EDWARDS, 2 Eng. R. 90.

Overruled, Randolph v. Ringgold, 5 Eng. R. 279.

RINGGOLD v. GALLOWAY, 3 H. & J. 451, 455.

Overruled in Snavely v. M'Pherson, 5 Har. & J. 150.

RINGSTEAD v. LANESBOROUGH (LADY), 3 Dougl. R. 197.

Overruled in Marshall v. Rutton, 8 Term R. 545. But see 3 Dougl. R. S. C., n. (a).

ROACH v. COSINE, 9 Wend. 227.

Questioned, Birdsall v. Phillips, 17 Wend. 464; Webb v. Rice, 6 Hill, 219.

ROBBINS v. LUCE, 4 Mass. 474.

In an action on a promise to deliver specific articles at a given day and place, defendant may plead in bar that he was ready at the day and place, to deliver the articles; "he could not tender them unless the plaintiff was there."

Denied in Smith v. Loomis, 7 Conn. R. 110.

ROBERT v. GARNIE.

See Maggot v. Mills (ante).

ROBERTS v. ANDERSON, 3 Johns. Ch. R. 371.

"The original deed from the debtor to a fraudulent grantee *is utterly void* as to creditors; and as against them, the grantee can make no conveyance, for he has no title as against them."

Reversed in S. C. 18 Johns. R. 518 ; Martin v. Cowles, 1 Dev. & B. 29.

ROBERTS v. BARKER, 1 Crompt. & Me. 809.

The outgoing tenant in England is entitled to the manure made during the term.

Opposed, Lassell v. Reed, 5 Greenl. R. 222. See Lassell v. Reed (post).

ROBERTS v. DIXWELL, 1 Atk. 607.

A husband may have curtesy in an estate, although it be given to the separate useof the wife.

Overruled in Hearle v. Greenbank, 1 Ves. 298; 3 Atk. 716, S. C. But see 4 Kent Com. 30.

ROBERTS v. DOWNES, Pr. Reg. C. P. 399.

The court refused to put off a trial on account of the absence of a witness, where the defence was a set-off, of which notice had been given, saying that this was a collateral fact.

Opposed, Gibbes v. Mitchell, 2 Bay, 351, and Lee v. Andrews, 10 Mart. La. R. 682.

ROBERTS v. HARNAGE, 6 Mod. 228.

Said to be an inaccurate statement of the case; and to be more truly reported in 2 Ld. Raym. 1042. By Ld. Mansfield, Cowp. 178.

ROBERTS v. HOLT, 2 Show. 443.

That if a merchant in Ireland consign to one in England, and the master sign the bill of lading, the merchant in England is liable for the freight.

The accuracy of this note was doubted by the court in Christy v. Row, 1 Taunt. 312; See, Lickbarrow v. Mason, 2 D. & E. 63; 1 H. Bl. 357; 5 D. & E. 367; Stubbs v. Lund, 7 Mass. 453.

ROBERTS v. RANDEL, 3 Sand. 707.

Opposed in part to Cary v. Hotaling, 1 Hill, 111; Olmstead v. Hotaling, ib. 317.

ROBERTS v. READ, 16 East, 215.

Doubted in Sutton v. Clarke, 1 Marsh. 429; 6 Taunt. 29.—Gibbs. But recognized in Blakemore v. Glamorganshire Canal Co., 3 Y. & J., 73.—Hullock, B.

ROBERTSON v. CAW, 3 Barb. 410.

Reversed, 1 Selden, 125.

ROBERSTON v. UNITED INS. CO., 2 Johns. Cas. 252.—Kent, J.
S. P. as in Joice v. Williams (ante).

ROBINS v. SEYWARD, 1 Str. 441.

That an attachment for non-performance of an award is a criminal prosecution.

Denied per Buller, J. in Rex v. Myers, 1 D. & E. 266.

ROBINSON v. BATES, 3 Met. 40; Bixby v. Bennett, 11 Mass. 298; 3 How. 205.

"It is greatly above my comprehension to see the force of the reasons on which these decisions are founded." Caldwell, J., in Carter v. Walker, 22 Ohio, R. 344.

ROBINSON v. LYALL, 7 Price, 592.

Doubted, Beldon v. Campbell, 20 Law J. R. N. S. Ex. 342; 6 Eng. R. 473.

ROBINSON v. MACDONNELL, 5 M. & S. 228.

That unearned freight cannot be the subject of assignment.

Overruled in Leslie v. Guthrie, 1 Bing. N. C. 697; *quoad hoc.*

ROBINSON v. MARQUIS OF BRISTOL, 15 Jur. 726; 6 Eng. R. 377.

Reversed, 12 Eng. R. 480; 16 Jur. 889.

ROBINSON v. NICHOLS, 2 Str. 1077.

Same point as in Gammage v. Watkin (ante).

Overruled in Lewis v. Pottle, 4 D. &. E. 570.

ROBINSON v. TAYLOR, 12 Wend. 191.

Overruled in Smith v. White, 7 Hill, 520.

ROBINSON v. UNITED INS. CO., 1 Johns. 611; Jumel v. Marine Ins. Co., 7 ib. 426; and Ogden v. Fire Ins. Co., 10 ib. 180; 12 ib. 31. S. C.

Seem to establish the principle, that the acceptance by the insured for his own benefit, of a purchase of the thing insured, made for account of the owner, is *per se* a waiver of the abandonment; and converts the otherwise total, into a partial loss.

Denied in Maryland and Phœnix Ins. Co. v. Bathurst, 5 G. & J. 159.

ROBINSON v. WEST, 1 Sand. 19.

Reversed, 11 Barb. 309.

ROBY v. HOWARD, 2 Stark. N. P. C. 555; 3 ib. 178.

In assumpsit, there was an issue on a plea in abatement for non-joinder, and it was held, that the plaintiff was entitled to begin.

Overruled in Fowler v. Coster, M. & M. 241. See 1 Phil. Ev. (838) 780,—5th Am. ed.

ROCK v. ROCK, Yelv. 175; Cro. Jac. 245.

Denied per Holt, C. J. in Booth v. Johnson, 7 Mod. 145; 2 Ld. Raym. 838, S. C.; Barnehurst v. Cabbot, Hardr. 5; Totnam v. Hopkins, Godb. 350.; Co. Lit. 303, b.

ROCKE v. DAYRELL, 4 Term R. 402.

S. P. as in Uppom v. Sumner (post).

Denied in Giles v. Grover, 6 Bligh's P. R. 303-4.—Patteson, J.

ROCKWELL v. ADAMS, 6 Wend. 467.

Reversed in Adams v. Rockwell, 16 Wend. 285.

ROEBUCK v. DEAN, and Perry v. Woods, 3 Ves. 204.

Overruled in Cripps v. Wolcott, 4 Madd. Ch. R. 11.

ROE v. ASHBURNER, 5 Term R. 163.

Qualified in Warman v. Faithful, 3 Nev. & M. 137. The doctrine of Ld. Kenyon has been qualified by later decisions, which say, "that where it is to be collected, notwithstanding the stipulations for a future lease, that the parties intended that in the mean time the agreement should be binding, such agreement shall operate as a present demise."

ROE ex dem. WEST v. DAVIS, 7 East, 363.

Denied by Kent, C. J. in 11 Johns. 4:—"The court of K. B. consider it as a given point (7 Term R. 117), that the plaintiff must prove either a demand or no sufficient distress; and in Jackson v. Wilson, in this court (3 John. Cas. 295), the same doctrine was recognized."

ROE v. DOE, ex dem. HUMPHREYS, Barnes. 181.

"A writ of error cannot be brought in the name of the casual ejector." Quoted by Morgan in his Vade Mecum, 291, and by Mr. Rose in his notes to Comyn's Digest. To the same effect is also 2 Burrows, 756; *George ex dem. Bradley* v. *Wesdon*, 2 Bacon's Abr. 454, and Adams Eject., 312; it was held otherwise in *Walker* v. *Budger*, 3 Bibb. 433; and in Roe for the use of Jonas v. Bank of United States, 3 Ohio R. 33, the court said,

ROE v. DOE ex dem. HUMPHREYS, Barnes, 181—continued.

"We are unable to perceive any reason for the doctrine, that a writ of error cannot be sustained in the name of the casual ejector. The doctrine appears to have originated, and indeed to continue, in mere dicta." And an appeal was allowed in the name of the casual ejector.

ROE d. BUSHELL v. GORE, at Lancaster Summer Assizes, 1763, cited in Rex v. Eriswell, 3 Term R. 719.

In questions of pedigree, the declarations of others beside members of the family are admissible.

Denied in Johnson v. Lawson, 2 Bing. R. 86.—Best, C. J.: "As to the nisi prius case at Lancaster, I wish such cases were never cited."—"It misled the court in Rex v. Eriswell."

ROE v. HARVEY, 4 Burr. 2424, 2484.

Doubted in 1 Phil. Ev. 427 (6 ed.) In Bate v. Kinsey, 4 Tyrw. R. 667, Alderson, B. says, "It is a strange decision."

ROE v. PEARCE, 2 Camp. R. 96.

Overruled in Doe v. Warlers, 10 B. & C. 626; the court, particularly Littledale, J., appeared to think that in a case where a *previous* authority was requisite to enable an agent to act, the effect of which would be to raise a duty towards the principal from a third person, and subject such person to an action for its non-performance,—in such case, a subsequent adoption is not sufficient.

ROE, LESSEE OF BRISTOW, v. PEGGE, 4 Doug. 309.

In ejectment the tenant shall not be allowed to set up an outstanding term in trustees to secure an annuity, provided the lessors of the plaintiff do not seek to disturb the possession of the trustees.

Overruled in cases cited in note to S. C.

ROE v. TRANMARR, Willes, 682.

A, in consideration of natural love and of £100, by deeds of lease and release granted, released, and confirmed certain premises, after his own death, to his brother B, in tail, remainder to C, the son of another brother of A, in fee; and he covenanted and granted that the premises should after his death be held by B and the heirs of his body, or by C and his heirs, according to the true intent of the deed. *Held*, that the deed could not operate as a release, because it attempted to convey a freehold *in futuro*, but that it was good as a covenant to stand seized. See 2 Smith's Leading Cases, 294.

ROFFEY v. SHALLCROSS, 4 Madd. R. 227, note.

That purchasers of different lots are not to be connected together, unless there has been an understanding that the buyer should not take any if he could not have all.

Explained in Casamajor v. Strode, 1 Coop. Sel. Cas. 510 (8 Cond. Ch. R. 516). *Held*, the court will not discharge a purchaser from his contract for one lot on the ground that the title to the other is bad, unless it be satisfied, upon a full examination of all the circumstances, that he would never have bought except in the expectation of possessing both lots. See Sug. Vendors, p. 298.

ROGERS v. DE FOREST, 7 Paige, 272.

Overruled. Darling v. Rogers, 22 Wend. 483; Barney v. Griffin, 2 Coms. 365.

ROGERS v. HOSACK'S EXECUTORS, 6 Paige's Ch. R. 425, *et seq.*

Reversed in 18 Wend. 319, S. C.

ROGERS v. MAYHOE, Carth. 1.

Defendant may plead in abatement of action of debt on judgment, a writ of error pending.

Overruled in Rottenhoffer v. Lenthall, 1 Show. R. 146; Syms v. Tyms, ib. 98.

ROGERS v. SEALE, 2 Freeman, 84.

A *bona fide* purchaser without notice, or a witness in rightful possession by any other means, is no reason why he should be protected from answering questions affecting his own title.

Opposed. Burlace v. Cooke, 2 Freeman, 24; Parker v. Blythemore, 2 Eq. Cas. Abr. 79; 1 Prec. in Ch. 58; Jerrard v. Saunders, 2 Ves. 454; 2 Sug. on Vendors, 309.

ROGERS v. WEAVER, 5 Ohio R. 536.

See James v. Roberts, 18 Ohio R. 548.

ROGET v. THURSTON, 2 Johns. Cas. 248.

Overruled in Robinson v. the Marine Ins. Co. of New York, 2 Johns. 89. See Riggin v. Riggin, 7 Har. & J. 289, *et seq.*

ROLLE'S ABRIDGMENT.

Sir M. Hale's preface informs that this is a posthumous work which never underwent the last hand or pencil of the judicious author, and such

ROLLE'S ABRIDGMENT—continued.

works, though, when published, they may advantage others, yet they rarely come out to the due advantage of the author.

"An excellent work, and in point of method and succinctness and legal precision, a model of a good Abridgment." 1 Kent Com. 509.

ROLLE'S ABRIDGMENT, 18; citing Morning v. Knop, Cro. Eliz. 700.

Denied in Ross on Vendors, p. 110.

1 ROLLE'S ABRIDGMENT, 63, pl. 31.

Denied by Holt, C. J. in Iveson v. Moor, 1 Comyn Rep. 60.

ROLLE'S ABRIDGMENT, Detinue, Cas. 606; 9 Hen. VI. 58.

The original bailor may demand the goods from his bailee, and also from the second bailee; but it is said that if the latter has delivered the goods to the first bailor, he cannot thereby defend himself against the action of his immediate bailor (the first bailee).

Denied in Story, Bailm. p. 81. But see and examine Wilson v. Anderton, 1 B. & Ad. 450.

2 ROLLE'S ABRIDGMENT, 124.

S. P. as in Griswold v. Penniman (ante).
Denied in Wintercast v. Smith, 4 Rawle, 183.

2 ROLLE'S ABRIDGMENT, 415, pl. 8.

Same point as in Blackwell v. Nash (ante). Said by Ld. Kenyon to "outrage common sense." Goodison v. Nunn, 4 D. & E. 764.

ROLLE'S ABRIDGMENT, Tres. I. pl. 1.

But it seems that a man who has land next adjoining my land cannot dig his land so near mine that thereby any land shall go into the pit.

The saying of Rolle may have been a wise one in his day, but it is not well adapted to our times.—Radcliff's Ex'rs v. Mayor, &c., of Brooklyn, 4 Coms. 203.

2 ROLLE'S ABRIDGMENT, Executor, 909; I. pl. 5.

That *bona notabilia* shall be accounted £5 at least.

Denied by Ld. Hardwicke, as "a single loose saying in an Abridgment, contrary to the general reason and principles of law." 2 Atk. 659.

2 ROLLE'S ABRIDGMENT, 303, pl. 27.

"Cannot be supported." By Buller, J. in Camden v. Home, 4 D. & E. 398.

2 ROLLE'S ABR. 306, pl. 13.

That if a person lease to a parishioner the tithes of his estate, and afterwards sue for them in kind, no prohibition lies, &c.

Denied by Buller J., in Camden v. Home, 4 D. & E. 397.

2 ROLLE'S ABR. 491, D. pl. 5.

That if *supersedeas* comes after goods taken in execution, and before sale, they shall not be sold, &c.

Denied in Meriton v. Stevens, Willes, 281.

ROOF v. STAFFORD, 7 Cowen, 179.

Held, that an *executed* contract could not be avoided during minority.

Reversed in 9 Cowen, 623.

ROOSA v. BROTHERSON.

See Coddington v. Ray (ante).

ROOSEVELT v. THURMAN, 1 Johns. Ch. R. 220.

The marginal note states—"It was held, by the words 'dying without issue,' the devisee took an estate tail by the English law, or an estate in fee under our statute."

Denied in Dallam's Lessee, 7 Har. & J. 250.—Dorsey, J.: "A palpable mistake committed by the reporter."

ROOT v. FRENCH, 13 Wend. 670; Payne v. Cutler, ib. 605; Wardell v. Howell, 9 ib. 170; Roosa v. Brotherson, 10 ib. 85; Fulton Bank v. Phœnix Bank, 1 Hall, 562; 20 Johns. 637; Dickerson v. Tillinghast, 4 Paige Ch. R. 215, 222.

An antecedent debt is not considered in New York as such a valuable consideration as will support the claim of a *bona fide* holder of a negotiable instrument, to the injury of the right of the original parties.

Opposed. Brush v. Scribner, 11 Conn. 388.—Williams, C. J.

ROPER v. RADCLIFFE, 9 Mod. 170, 171.

Overruled in Craig v. Leslie, 3 Wheat. 564, 577; Rinehart and Wife v. Harrison, 1 Baldwin's R. 177.

1 ROPER'S HUSBAND & WIFE, 462.

"If the jointure be limited to the wife after the death of her husband, *durante viduate*, or upon condition that she perform her husband's will, &c., such limitations, made in lieu of dower, will be good legal jointures."

Denied in M'Cartee v. Teller, 2 Paige's Ch. R. 502:—"unless after the husband's death, she enters and accepts the conditional estate."

ROPER ON LEGACIES, p. 26.

"It is necessary that the gift be made in peril of death, *or* during the donor's last sickness, and to take effect only in case he die."

Denied in Nicholas v. Adams, 2 Whart. R. 22.—Gibson, C. J.

RORKE v. DARYELL, 4 Term R. 402.

Opposed. Rex v. Wells, 16 East, 278 n. *Held,* that goods seized under a *fi. fa.* at the suit of a subject, are before sale liable to be taken by virtue of the king's extent, tested after the delivery of the *fi. fa.* to the sheriff.

ROSA v. BROTHERSON,

See Wardell v. Howell (post).

ROSCOE, CR. EV., 190.

Holding that procuring abortion was an offense at common law.

Denied, The State v. Cooper, 2 Zab. R. 57.

ROSE v. BARTLETT, Cro. Car. 293.

That if one having freehold lands and leases for years, devise all his lands, the freehold lands will only pass.

Doubted. See Turner v. Husler, 1 Bro. C. C. 78.—Eyre. Lane v. Earl Stanhope, 6 Term R. 358. But see Bistol v. Richardson, 3 Dougl. 370, n. (a). (b).

ROSE v. BLAKEMORE, Ry. & Mo. 382; 2 Stark. R. 158; 16 Ves. 64.

In the course of the cause a witness refused to answer the question, whether he had published a particular handbill, on the ground that he had been threatened with a prosecution for the publication; and Abbott, Ld. Ch. J., held the excuse sufficient, and said that no inference of the truth of the fact ought to be drawn from that circumstance.

Doubted in S. C. in note.

ROSE v. GANNEL, 3 Atk. 439.

Imperfectly reported. See Schrœppel v. Redfield, 5 Paige Ch. R. 248.

ROSE v. HIMLEY, 4 Cranch, 241.

Overruled in Hudson v. Guestier, 6 Cranch, 281; but the principle of the case was never questioned. Slocum v. Wheeler, 1 Conn. R. 457.

ROSHER v. KIERAN, 4 Camp. 87; 2 ib. 373; 1 Stark. R. 34; 1 Term R. 167; 7 Ves. jun. 597; 2 Camp. 177.

Overruled in Chapman v. Keane, 4 N. & M. 607: *Held*, that *notice of dishonor* of a bill is sufficient if given by any one who is party to the bill, and need not proceed either immediately or derivatively from the *holder*. See Stanton v. Blossom, 14 Mass. 116.

ROSS v. GOULD, 5 Greenl. 204.

To the point, whether a disseisin can be committed by mistake.

Denied in Ross v. Gould, 7 Conn. 446.—Hosmer, C. J.: *Held*, that a disseisin may be committed by mistake.

ROSWELL v. PRIOR, as reported in 12 Mod. 635.

After giving the decision that an action lay for continuing a nuisance either against the lessor, or his lessee, at the plaintiff's option, there is the following dictum:—"But if this action here were brought *by* an *alienee* of the land to which the nuisance was against the erector, and the erection had been before any estate in the alienee, the question would have been greater; because the erector never did any wrong to the alienee."

Denied in Gale & Whatley's Treatise on Easements, p. 287:—"The reports of this case in Salkeld and Ld. Raymond (vol. ii. 460; vol. i. 392, 713), contain no such dictum, which, at the utmost, amounts to a doubt only, and is directly at variance with the decisions in Rolf v. Rolf, 5 Rep. 101, and in Penruddock's case." *Ib.* See also Bliss v. Hall, 5 Scott, 500.

ROTHSCHILD v. CURRIE, 1 Q. B. R. 43.

Questionable authority, Gibbs v. Fremont, 22 Law J. R. N. S. Ex. 302; 17 Jur. 820; 20 E. L. & E. R. 557.

ROUSE v. THE COUNTY OF PEORIA, 2 Gilman, 99.

Partly overruled, Seagraves v. The City of Alton, 13 Ill. 373; Wright v. Bennett, 2 Gilman, 587.

ROWE v. YOUNG, 2 Bro. & Bing. 165; 2 Bligh R. 391.

Held, that if a bill of exchange be accepted payable at a particular place, the declaration in an action against the acceptor, must aver presentment at that place, and the averment must be proved.

Denied in United States Bank v. Smith, 11 Wh. R. 175:—"A contrary opinion has been entertained by courts in this country, that a

ROWE v. YOUNG, 2 Bro. & Bing. 165, etc.—continued.

demand on the maker of a note, or the acceptor of a bill payable at a specific place, need not be averred in the declaration, or proved on the trial." It is different in respect to the indorsee of a bill or note. See 3 Fairf. 21.

ROWELL v. WALLEY, 1 Rep. in Ch. 219.

Overruled in White v. White, 4 Ves. jun. 24. But see White v. White, 9 Ves. jun. 554.

ROWLAND v. STEPHENSON, 1 Hals. 149.

Overruled in Wood v. Malin, 5 Hals. R. 216, citing Sturges v. Crowninshield, 4 Wheat. R. 197.

ROWLAND v. TUCKER, 1 Russ. & M. 635.

Doubted, Jenkins v. Robertson, 22 Law J. R. N. S. Ch. 874; 19 E. L. & E. R. 553.

ROWNTREE v. JACOB, 2 Taunt. 141.

The deed recited a consideration "so much in hand paid, at or before the ensealing and delivery hereof:"—on the back of it was a receipt for the money as having been paid on the day and year aforesaid:—*Held*, that the evidence of the deed was conclusive.

Doubted in M'Crae v. Purmont, 16 Wend. 467.—Cowen.

ROW'S CASE, Russ. & R. 153; 1 Phil. Ev. 104, S. C.

When the promise or threat proceeds from a person who has no power to enforce it, and who possesses no control over the prisoner, a confession made under such circumstances is admissible.

Doubted in Dunn's case, 4 C. & P. 543: "Any person telling a prisoner that it will be better for him to confess, will always exclude any confession made to that person. Whether a prisoner's having been told by one person, that it will be better for him to confess, will exclude a confession subsequently made to another person, is very often a nice question. See Long's case, 6 C. & P. 179.

ROYAL FISHERY OF THE BANNE, Davies' R. 149.

That the grant of the king passes nothing by implication.

Denied by Mr. J. Story, in Charles River Bridge v. Warren Bridge, 11 Pet. R. 595:—"The case cited to support it is directly against it."

RUAN v. GARDNER, 1 Wash. C. C. R. 145.

Doubted in Hicks v. Fitzsimmons, 1 Wash. C. C. R. 279, n. (b).

RUAN v. PERRY, 3 Caines' R. 120.

Held, that in an action of tort, charging gross misconduct, upon circumstances merely, evidence of character was admissible to repel the charge.

Overruled in Fowler v. The Ætna Ins. Co. 6 Cowen, 673; Norton v. Warner, 9 Conn. 172; Gough v. St. John, 16 Wend. 646, 653; Humphrey v. Humphrey, 7 Conn. 116; Potter v. Webb, 6 Greenl. 14.

RUCKER v. MUSICK, 16 Mo. R. (1 Ben.) 316.

Overruled, Bates v. Bowns, 17 Mo. R. (2 Ben.) 550.

RUDGE v. BIRCH, 1 Term R. 622.

S. P. as in Bottomly v. Brook (ante).

RUE v. MITCHELL, 2 Dall. 58.

"You have taken a false oath before 'Squire R." *Inuendo* perjury in a cause before W. R., Esq.—Held good after verdict.

Contradicted by Packer v. Sprangler, 2 Bin. 60; Shaffer v. Kintzer, 1 Bin. 537.

RUGBY CASE, 11 East, 375 n.

Where the public had the free use of the way for eight years, it was too late for the plaintiffs to resume it. And Lawrence, J. (in 5 Taunt. 137), said, "No particular time is necessary for evidence of a dedication; it is not, like a grant, presumed from length of time: if the act of dedication be unequivocal, it may take place immediately; for instance, if a man builds a double row of houses opening into an ancient street at each end, making a street, and sells or lets the houses, that is instantly a highway."

Doubted in Woodyer v. Hadden, 5 Taunt. 125; and see the observation of Lawrence, J. (on p. 138), as to an error in the report; and 3 Kent Com. 450 *et seq.*

RUGGLES v. KIMBALL, 12 Mass. R. 337.

Doubted in Baldwin v. M'Clinch, 1 Greenl. R. 110.

RUMRILL v. HUNTINGTON, 5 Day, 163.—Trumbull.

"It is a general principle, that an attorney has a lien for his services and expenses, on the papers and securities of his client, &c. But an attorney has no lien upon a judgment obtained in favor of his client, which can vary or affect the rights of a stranger."

Explained in Gager v. Watson, 11 Conn. R. 168, where the court say,

RUMRILL v. HUNTINGTON, 5 Day, 163—continued.

that " the attorney's lien upon judgments is subject to the equitable claims of the parties in the cause, as well as to the rights of third persons, which cannot be varied or affected by such lien. In Andrews v. Morse, 12 Conn. R. 444, the court decides that where the execution is delivered, by the attorney, to the officer, with a notice of his lien, and with directions to collect and pay over its proceeds to them, and the same notice is given to the debtor in the execution, before any thing has transpired changing the relative rights or duties of any of the parties interested, and before any thing has been paid on the execution, that both courts of law and equity will protect the rights of the attorney, subject to the equitable rights of others. " A claim of the attorney to this extent, observes Church, J., was recognized in the following cases, decided by the Court of Common Pleas and King's Bench: Emden v. Darley, 1 New Rep. 22; Swain v. Senate, 2 New Rep. 98; Wilkins v. Carmichael, Doug. 97; Mitchell v. Oldfield, 4 Term Rep. 123; Rundle v. Fuller, 6 ib. 452; Read v. Dapper, 6 ib. 360; Ormerod v. Tate, 1 East, 464.

In the case of Pinder v. Morris, 3 Caines Rep. 165, the Supreme Court of the State of New York held, that if the defendant pay to the plaintiff the debt and costs, after notice from the attorney, he pays in his own wrong; and this is the principle established or recognized in the two last cases cited from the English books. This subject is well considered, by the same court, in the case of Martin v. Hawks, 15 Johns. 405; and the claim of the attorney placed, as we think, upon its true ground. In that case, the attorney is treated in regard to his lien, as the assignee of a chose in action, who takes it subject to all the rights and equities attached to it. And this is considered the true doctrine by Lord Mansfield, in the case of Welsh v. Hole, Doug. 238, and by Lord Kenyon, in the case of Read v. Dapper, 6 Term Rep. 361, and by the Court of Errors of the State of New York, in the case of Nichol v. Nichol, 16 Wend. 446. This principle is entirely consistent with the doctrine of this court in the cases of Rumrill v. Huntington, and Gager v. Watson.

In Andrews v. Morse, *supra*, the court, Church, J. say,—" We do not say, nor do we believe, that attorneys in any case have a lien upon the judgments and papers of their clients, similar to that which manufacturers and others have upon goods and moneys in their hands. We only say, that they have, in certain cases, of which this is one, such a claim upon them as courts of law and equity will protect and enforce, until their lawful fees and disbursements are paid, subject to the equitable rights of others. This claim, which has been generally denominated a lien, has long been recognized, by the *English* courts of law and equity; although the court of King's Bench has extended the claim of the attorney farther than the court of Common Pleas has been willing to follow. And in courts of equity, the precise extent of the lien has not been uniformly recognized. The variety of practice on this subject in the English courts, at length produced a rule of the twelve judges, by which, in 1832, the practice of the court of King's Bench was adopted, as applicable to all the courts. But we think the attorney's lien, to the extent

RUMRILL v. HUNTINGTON, 5 Day, 163—continued.

to which we recognize it, has not been denied in any of the common-law courts of England."

In Potter v. Mays, 3 Greenl. 34, it was held, that an attorney's lien did not commence until judgment. See also Dunklee v. Locke, 13 Mass. 525.

RUNDALL v. ELEY, Carter, 92, 170.

Overruled. Doe v. Beauclerk, 11 East, 666; Porter v. Fry, 1 Vent. 199; Walloon v. Fitzgerald, Skin. 125.

1 RUSSELL ON CRIMES, 540.

Holding that procuring abortion was an offense indictable at common law, denied. The State v. Cooper, 2 Zab. R. 57.

RUSSELL v. DOTY, 4 Cowen, 576.

Overruled in Brown v. Fay, 6 Wend. 392.

RUSSELL v. ROGERS, 15 Wend. 351.

Overruled in Auburn & Owasco Canal Co. v. Leitch, 4 Denio, 61.

RUSSELL v. RUSSELL, 1 Bro. C. C. 269.

Leading case of equitable mortgages by deposit of title deeds.

Doubted. Cawthorne, *ex parte*, 1 Glyn. & Jam. 242; but see 4 Pow. on Mort. p. 1051 *et seq.*

RUSSELL'S CASE, 1 Moo. & Rob. 1[illegible]2.

Overruled in Jenning's case, 4 C. & P. 249; Cozin's case, 6 C. & P. 351; Reekspear's case, 1 Mood. C. C. 342; Cox's case, ib. 337; 5 C. & P. 297.

RUTHERFORD v. LAFFERTY, 2 Eng. Ark. R. 402.

Overruled in Porter v. Doe d. Hanley, 5 Eng. Ark. R. 187.

RUTTER v. BALDWIN, 1 Eq. Ca. Abr. 226.

Doubted in Le Texier v. The Margravine of Anspach, 15 Ves. jun. 165. Lord Eldon said, that he had great difficulty in acceding to the case of Rutter v. Baldwin: "Whether it is meant to intimate, that the wife herself was to be a witness to prove that the husband concealed the marriage, with the view of enabling her to deal with the world; or, that being established by legitimate evidence of other witnesses, she was to prove herself an agent, and that she did the acts as such, I doubt the policy of admitting her evidence even to that extent." See 3 V. & B. 165.

RYALL v. LARKIN, 1 Wils. 155.

Impeached in Ridout v. Brough, Cowp. 135.

RYDER v. MALBON, 3 C. & P. 594.

That a variance between the statement in an avowry of the terms of a tenancy, and the proof produced in support of it, was not within the statute of amendments, on the ground that the statute applied only to cases in which some particular written instrument is professed to be set out, or recited, in the pleadings.

Overruled in Lamey v. Bishop, 4 B. & Ad. 479. This statute (Lord Tenterden) does not apply to a variance between the statement of a writing in the pleadings, and the secondary evidence of the writing. 1 C. & M. 779. And Ld. Tenterden refused to amend the declaration, when the mistake arose from want of common care in drawing it. Jelf v. Oriel, 4 C. & P. 22.

RYERS v. HEDGES, 1 Hill, 642.

See Farmers Loan & Trust Co. v. Kursch, 1 Selden, 558.

RYMER v. COOK, 1 Mood. & Malk. 86, note (a).

Hullock, B. and Bailey held, that if a defendant prove payment to a plaintiff, by showing the particulars of demand, delivered under a judge's order, in which the plaintiff has credited the defendant, this is the evidence of the defendant, and entitles the plaintiff to reply.

Opposed, Brittingham v. Stevens, 1 Hall's R. 379, and Brown v. Watts, 1 Taunt. 353. The particulars are a part of the pleadings; not evidence. Harrington v. M'Morris, 5 Taunt. 228.

S.

SADDLER v. HOBBS, 2 Bro. Ch. R. 117; Toller's Law of Ex'rs., &c., 484.

That a creditor cannot charge an executor when legatees could not.

Opposed, 2 Fonb. 83, 94; Gibbs v. Herring, Prec. Ch. 49, and Case of M'Nair's Appeal, 4 Rawle, 148, 154, and the cases cited by Mr. J. Kennedy.

SAFFORD v. WYCKOFF, 1 Hill, 11.

Reversed, 4 Hill, 442.

SAGE v. WILCOX, 6 Conn. 81; see 9 S. & R. 202, and 8 Pick. 423.

"I hereby guaranty the payment of the within note one year from this date, whether a suit is brought against the signer (J. W.) or not;" *held*, that a demand on the signer was essential.

Denied in Read v. Cutts, 7 Greenl. 191.—Mellen, C. J.: "The decision is at variance with Williams v. Granger, 4 Day, 444, and several other important cases, among which is Allen v. Brightmore, 20 Johns. 365.

ST. JOHN v. VAN SANTVOORD, 25 Wend. 660.

Reversed, 6 Hill, 157.

SAINT PAUL v. EARL RIVERS, Sir T. Raym. 128; in margin.

Overruled, Barber v. Fox, 2 Saund. 137; Porter v. Bille, 1 Freem. 125.

SALISBURY v. BAGOT, 1 Ch. Ca. 278; 2 Freem. 21.

Bill for specific performance of articles made sixty years before. Defence *fine and non-claim:* and on this ground the bill was dismissed, though it was proved that defendant had notice of the trust, &c.

But the contrary is holden in Bovey v. Smith, for that the fine is but a conveyance, which if made to one having notice of the trust could not alter the estate. 2 Ch. Ca. 124; 2 Com. Dig. 627; 1 Sch. & Lefr. 378.

SALKELD'S REPORTS, vol. 3.

Ch. J. Parsons (8 Mass. 258) said, "The third volume of Salkeld was a book of no authority." See 2 East, 8, note (b); 7 Mod. 269, which are to the same effect.

SALMON v. BENNETT, 1 Conn. R. 525.

That a distinction exists in the case of a voluntary conveyance, between the children of the grantor and strangers; and that mere indebtedness at the time, will not, in all cases, render a voluntary conveyance void as to creditors, where it is a provision for a child; that an actual or express intent to defraud need not be proved, for this would be impracticable in many instances where the conveyance ought not to be established, and it may be collected from the circumstances of the case; that if there be no fraudulent intent, and the grantor be in prosperous circumstances, unembarrassed, and not considerably indebted, and the gift a reasonable provision for the child, leaving ample funds unincumbered for the payment of the grantor's debts, the voluntary conveyance to the child will be valid against existing creditors.

Denied in Reade v. Livingston, 3 Johns. Ch. R. 502; also Jackson v.

SALMON v. BENNETT, 1 Conn. R. 525—continued.

Seward, 5 Cowen, 67, 73:—"I have not been able to find the case in which a mere voluntary conveyance to a wife or child has been plainly and directly held good against a creditor existing at the time."

SALUCCI v. JOHNSON, 4 Dougl. 224.

The right to search neutrals is part of the law of nations.

Denied in Garrels v. Kensington, 8 Term R. 230; Maria Paulson, 1 Rob. Adm. R. 360.

SAMM'S LESSEE v. ALEXANDER, 3 Yeates, 268, and Heister's Lessee v. Forner, 2 Binn. 40.

S. P., Yelv. 179.

Overruled in Arnold v. Gorr, 1 Rawle, 223, 227, as to the dicta of Judge Yeates.

SAMSUM v. BRAGGINTON, 1 Ves. 443.

An unsatisfactory authority. Stambank v. Shepard, 22 Law J. R. N. S. Ex. 341; 20 E. L. & E. R. 554.

SANDBACK v. THOMAS, 1 Stark. 306.

That in an action for a malicious prosecution, the plaintiff is entitled to a complete indemnification; and may increase the damages by the amount of the extra costs.

Denied in Grace v. Morgan, 2 Bing. N. C. 534.

SANDERS v. JOHNSON, 6 Blackf. 50.

Adverse to Jones v. Stevens, 11 Price, 235.

SANDERSON v. BOWES, 14 East, 507.

Was the case of a note payable at the Workington Bank; and Bayley, J., says, "When a person binds himself, even by bond, to pay at a particular place, then he is not holden at any other place; and the demand must be made upon him there. So here, the defendants having contracted to pay, on demand, at a particular place, are not liable but upon a demand at that place."

Denied in Haxtun v. Bishop, 3 Wend. R. 20, 21, and in Ruggles v. Patten, 8 Mass. R. 480.

SANDFORD v. HANDY, 25 Wend. 475.

Overruled, Sandford v. Halsey, 2 Denio, 235.

SANDON v. BOURNE, 4 Camp. 68.

Held, that a bill was taxable which contained a charge for the preparing of a warrant of attorney, with a view to business to be done in court.

Overruled in Burton v. Chatterton, 8 Barn. & Ald. 486.

SANDS (CASE OF), 1 U. S. Law Jour. 1.

That the entire jurisdiction of matters under the United States bankrupt law, was in the district court.

Overruled in Lucas v. Morris, 1 Paine's C. C. R. 396.

SANDS v. LEDGER, 2 Ld. Raym. 792.

Ld. Holt at N. P., is reported to have held, in a case where the power was to make leases to be in possession and not in reversion,—a lease was granted, and then, before the determination of it, another,—that by the first lease the power was suspended for the time of the lease, but that being expired, he inclined that the second lease was good.

Denied in Sug. on Pow. 210 (Am. ed.) (Lond. 387).

SARGEANT v. DENISON, 5 Cow. 106.

Overruled in part, Bartley v. Richtmyer, 4 Coms. 38.

SARSFIELD v. WITHERLEY, Comb. 152.

S. P. as in Butler v. Play (ante).

SATTERLEE v. MATTHEWSON, 2 Pet. R. 380.

This case has been supposed to establish the principle that the legislature has the power to pass retrospective acts, which may impair vested rights, provided the obligation of a contract is not impaired.

Doubted in Martindale v. Moore, 3 Blackf. R. 275; and also the case of Overton v. Tracy, 14 S. & R. 311.

SAUNDERS v. MUSGRAVE, 2 C. & P. 294.

Overruled in S. C., 6 B. & C. 524.

SAUNDERS' REPORTS, AND BULLER'S NISI PRIUS.

Books esteemed by the court entitled to high consideration. Sharp v. Conkling, 16 Vt. R. 359.

2 SAUNDERS, 72, b.

"The recognizance upon which the *scire facias* is founded, being joint and several, and the purport of it being to have execution to the form and effect of the recognizance; it therefore follows, that although the *scire facias* be joint, the execution may be several."

Commented upon by Ewing, Ch. J., in the State v. Stout et al., 6 Hal. R. 362, who says "Neither the doctrine of the annotator nor the case he has cited, sustains the propriety of issuing several writs at the same time."

2 SAUNDERS', 117, d. n. 2.

Denied in Ord v. Fenwick, 3 East, 104, and Cowell v. Watts, 6 ib. 405, and other cases which have been considered since Mr. Sergeant Williams wrote. The rule now is, that counts may be joined in one declaration, whenever the money received will be assets in the hands of the executor.

SAVAGE v. CARROLL, 1 Ball & Be. 548.

Ld. Chan. (in Kelsall v. Kelsall, 2 Myl. & K. 414.): "That case of Bennet v. Lee, (2 Atk. 529), was made the ground of the decision in Savage v. Carrol, in which I must observe that the doctrine was carried two steps further than the authorities in strictness warrant," &c.

SAVAGE v. DENT, 2 Str. 1063.

A barrel of beer being left in the house by the lessee, it was holden that the house could not be considered a vacant possession.

Denied in M'Dougal v. Sitcher, 1 Johns. 44.

SAVAGE'S CASE, 2 Leon. 109, 208.

The custom was, that if a man married a customary tenant, had issue, and outlived her, he should be tenant by curtesy. The wife took a customary tenement by descent, *during coverture*, and it was held that the husband should not be tenant by curtesy, as the wife was not customary tenant at marriage.

Denied to be law, 2 Ld. Raym. 1020.

SAVIL, Com. Dig., Tit. Piscary.

That every owner of a ferry must have the land on both sides of the water; otherwise he cannot land.

Denied in Peter v. Kendall, 6 B. & C. 703.

SAVILE, dem. of, v. SAVILE.

See Frederick Lumley Savile (ante).

SAVILE d. SAVILE, 3 Adol. & El. 2.

Reversed, 3 Ad. & El. 897 (30 Com. Law R. 259).

SAVILL v. BARCHARD, 4 Esp. R. 53.

Held, that a dyer has a lien for a general balance.

Overruled. Bennett v. Johnson, 2 Chit. R. 455; 3 Dougl. 387; S. P., Green v. Farmer, 4 Burr. 2214; 1 W. Black. 651.

SAYER v. BENNETT, cited, Watson on Partn. 382.

Questioned in Waters v. Taylor, 2 Ves. & Beame, 299.

SCARBOROUGH v. LYRUS, Latch, 252.

Dictum of Jones, J., overruled in case of Gratitudine, 2 Rob. Adm. R. 272; 2 Molloy, b. 2, c. 11, sec. 11.

SCARMAN v. CASTEL, 1 Esp. 270.

That a master is bound to pay for medicines, &c., for his servant.

The contrary had before been holden in Newby v. Wilshire. See 1 Esp. 739, and was afterwards fully recognized in Wennall v. Adney, 3 B. & Pul. 247.

SCHERMERHORN v. SCHERMERHORN, 1 Wend. 119.

The rule excluding a party to the record to testify, rested on policy as well as interest.

Opposed. Affalo v. Foudrinier, 6 Bing. 306; Bate v. Russel, 1 Moo. & Malk. 332.

SCHERMERHORN v. TRIPP, 2 Cai. 108.

Overruled, Drake v. Barrymore, 14 Johns. 166.

SCHERMERHORN v. VANDERHEYDEN, 1 Johns. 139; 3 ib. 510; 7 ib. 342; 2 Johns. Ch. 43.

S. P. as in Clarkson v. Hannay (ante).

SCHIEFFELEN v. N. Y. INS. CO., 9 Johns. 91.

Explained in Saltus v. Ocean Ins. C., 12 Johns. 112.

SCHINOTTI v. BUMSTED et al., 6 Term R. 646.

Commissioners of a lottery by statute were authorized: "that if any contention or dispute shall arise in adjusting the property of the said fortunate ticket, the major part of the said managers and directors agreeing therein, shall determine to whom it doth and ought to belong." Lawrence, J., says, that the above clause in the statute does not give them (commissioners or managers) judicial authority to decide between contending parties, which of them is entitled to any prize, but merely to decide among themselves, in case they are divided in opinion.

Doubted in Briggs v. Murdock, 13 Pick. 305, 319, 320.—Wilde.

SCHURRMELL v. LOURADA, 4 Taunt. 695.

Explained and corrected in Tremani v. Barrett, and Tremani v. Faith, 6 Taunt. 88.

SCOTT et. al. v. LIFFORD, 1 Camp. 249.

When the parties resided in London, or in the near neighborhood of it, the party sending a notice (of the dishonor of a bill) may avail himself of the convenience of the two-penny post, and was not obliged to dispatch a special messenger.

Decided differently in this country; and Spencer, J., in Ireland v. Kip, 11 Johns. 232; "Decisions in other countries on such points, are entitled to little consideration."

SCOTT v. M'INTOSH, 1 Camp. 238.

When this case was cited, Gibbs, C. J., (in Tomkins v. Wiltspire, 1 Marsh. R. 116), said, a sad use is made of these nisi prius cases. This case never could have been tried; and there is a decency in not pressing cases to a conclusion.

SCOTT v. SCOTT, Ambl. 383; Eden R. 458.

The case said to be right, but the reasons wrong. See Doe v. Timmins, 1 Barn. & Ald. 530, 532.

SCOTT v. SHEPHARD, 2 W. Bl. 892.

Doubted in Fitzsimmons v. Inglis, 5 Taunt. 534; and the authority of the case slighted.

SCOUTON v. EISLORD, 7 Johns. 36; and Shippey v. Henderson, 14 ib. 178; and Earnest v. Parke, 4 Rawle, 452.

That a debt due by an insolvent as well as a bankrupt, is a debt due in conscience, and is a sufficient consideration for a new promise to pay the debt.

Opposed to Couch v. Ash, 5 Cowen, 265; and Hubert v. Williams, ib. 537.

SCOVIL v. GEDDINGS, 7 Ohio R. ii. 214 (562).

Overruled, Rhodes v. Cleaveland, 10 Ohio R. 159; M'Combs v. Akron, 15 ib. 474; 18 ib. 229.

SCRIBNER v. LOCKWOOD, 9 Ohio R. 184.

See Irwin v. Smith, 17 Ohio R. 226.

SCUDAMORE v. WHITE, 1 Vern. 456.

It is laid down that "the statute of limitations is no plea in bar to an open account."

Overruled in Foster v. Hodgson, 19 Ves. jr. 183. See Blair v. Drew, 6 N. H. R. 235.

SCULL v. BRIDLE, 2 Wash. Cir. C. R. 150.

Doubted in The Brigg Sarah Ann, 2 Sum. R. 215.—Story. Unless it is to be received with the qualification here stated.

SEAMON'S v. LORING, 1 Mason, 127.

S. P. as in The Sisters (post).

SEARLE v. Ld. BARRINGTON, 2 Str. 826; 2 Ld. Raym. 1370; 1 Phill. Ev. 122, 123 (7th Lond. p. 172–3). See also 2 Phill. Ev. 172 to 175.

Denied in Rosebroom v. Billington, 17 Johns. 183, Spencer, Ch. J., says, "If the fact stated by Phillipps, that the obligee died about thirteen years after the date of the bond, be correct, the principle of that decision, could never have been questioned. The indorsement would have been made against the interest of the obligee, and being made when no improper motives of gain could have existed, it would come within the rule laid down by Ld. Ellenborough, 2 Camp. 321; for they must have been made before the presumption of payment, from lapse of time, attached. But Mr. Phillipps does not mention how or where he ascertained this important fact, and as none of the four reporters of the case (2 Str. 826; 2. Ld. Raym. 1370; S. C. 8 Mod. 278; 3 Bro. Parl. C. 393 (535) notice so controlling a circumstance, I must be permitted to doubt its accuracy."

See Gleadow v. Atkin, 1 Cr. & Mee. 410, a case well deserving of perusal. See, on the point of the presumption said to arise from the date, Smith v. Battens, 1 Moo. & Rob. 341, the observations of Bayley B., who states in Gleadow v. Atkin (*supra*) that he had discovered by his own researches, that some evidence in addition to the date was given, as to the time of making the entry in Searle v. Lord Barrington. See on this the remarks of Raymond, C. J., Turner v. Crisp, 2 Str. 827; and Ld. Hardwicke, 2 Ves. 43, and generally on the presumption raisable from date, Wright v. Lainson, 2 Mee. & Welsb. 743; Hunt v. Massey, 5 B. & Ad. 902; Goodtitle v. Milburne, 2 Mee. & Welsb. 862. By stat. 9 G. IV. c. 14, s. 3, it was enacted that no indorsement or memorandum of any payment, written after the commencement of that statute's operation, on any note, bill, or other writing, by, or in behalf of the person to whom such payment should be made, should be deemed sufficient proof of such payment, so as to take the case out of the operation of the 21st Jac. I. c. 16, or the corresponding Irish Act.

In Stephen v. Gwennap, 1 Moo. and Rob. 120, it was attempted to

SEARLE v. Ld. BARRINGTON, 2 Str. 826; etc.—continued.

extend the admissibility of entries against interest to the case of a man who had gone abroad under a heavy criminal charge, and was not likely ever to return. His entries, however, were held inadmissible.

SEARS v. BRINKS, 3 Johns. 210, 215.

That the consideration, as well as the promise, must be in writing, to take it out of the Statute of Frauds.

Doubted by Kent, C. J., in Leonard v. Vredenburgh, 8 Johns. 37; see Minet, *Ex parte*, 14 Ves. jun. 190; Hunt v. Adams, 5 Mass. 360; Stadt v. Lill, 9 East, 348; 3 Camp. 242, S. C.; Violett v. Patton, 5 Cranch, 142; also, Mr. Day's note to Wain v. Warlters, 5 East, 10 (Am. ed.)

SEARS v. FOWLE, and Havens v. Bush, 2 Johns. 272, 387.

Overruled in Cunningham v. Morrell, 10 Johns. R. 204. Kent, C. J.: "Those cases were governed by the English decision, in Terry v. Duntze, (2 H. Bl. 389); but from a more full consideration of the subject, we are now led to believe that the C. B. carried too far the principle of mutual and independent covenants." And see Evans v. Harris, 19 Barb. 416.

SEARS v. ROGERS. See Holcroft's case (ante).

SEELEY v. BLAIR. See Wilson v. Runyon (post).

SEERS v. FOWLER, 2 Johns. 272.

Overruled in Cunningham v. Morrell, 10 Johns. 203.

SEIXAS v. WOODS, 2 Caines, 48.

It seems, held that a warranty could not be implied that the article sold was according to the description, against latent defects, where the buyer has the same opportunity of judging as well as the seller.

Overruled in Oneida Manuf. Co. v. Lawrence, 4 Cowen, 444, and Boorman v. Johnson, 12 Wend. 566.

SELBY v. EDEN, 3 Bing. 611; 11 Moore, 511, S. C.; Fayle v. Bird, 6 B. & C. 531; 2 C. & P. 303, S. C.

Overruled in Gibb v. Mather, 8 Bing. 214.

SELDEN v. VERMILYEA, 2 Sand. 568..

Reversed, 3 Coms. 525.

SELDEN'S TABLE TALK.

Cannot be considered any authority on points of law. De Huber v. Queen of Portugal, 7 Eng. R. 352; 20 Law J. Rep. N. S. Q. B. 488.

SELECT CASES IN CHANCERY.

Lord Redesdale, 2 Scho. & Lef. 634, "A book of no great authority."

SELKRIG v. DAVIES, 2 Bro. Parl. C. 242. (Sigourney v. Munn, 7 Conn. 11; 4 Mumf. 316; 3 Kent Com. 37);—and overruling Dixon v. Thornton, 3 Bro. Ch. C. 199.

SELL'S v. ADMINISTRATORS OF HUBBELL, 2 Johns. Ch. R. 397.

Doubted in Sterling v. Brightbill, 5 Watts, 232. It seems, as to what the *Chancellor* seems to say in respect to the interest of partners—"*they are presumed to be equal.*"

SELLERS v. DUGAN, 18 Ohio R. 489.

Overruled in Bloom v. Richards, 22 Ohio R. 388.

SEMAYNE'S CASE, 5 Rep. 93; Bac. Abr. Sheriff, N. 3.

Lord Coke says—"It was resolved by Littleton and all his companions (Year Book, 18 Edward IV.), f. 4, 'that the sheriff cannot break the defendant's house by force of a *fi. fa.*, but he is a trespasser by the breaking, and yet the execution which he doth in the house is good.'"

Denied in Isley v. Nickols, 12 Pick. 270.—Shaw, C. J., Luttin v. Benin, 11 Mod. 50; "For no lawful thing, founded on a wrongful act, can be supported." "This point was not raised or decided in Semayne's case."

SEMPLE v. ANDERSON. See Key v. Collins (ante).

SENIOR v. ARMITAGE, Holt, N. P. C. 197.

The Court of Exchequer, in Hutton v. Warren, 1 M. & W. 466, say, that the printed report of Senior v. Armitage stated the case too strongly.

SENTNEY v. OVERTON, 4 Bibb, 445.

That if a witness state that he conceives himself to be interested, he is to be rejected, though in fact he be not so.

Opposed to Williams v. Matthews, 3 Cowen, 252; Henry v. Morgan, 2 Binn. 497; Baldwin v. West, Hard. R. 50; Reid's Lessee v. Dodson, 1 Tenn. R. 396; Homan v. Thompson, 6 Car. & P. 717. See Machir v. May (ante).

SERGEANT v. PITKIN, C. C. Apl. 1819, cited in 3 Conn. 526.

S. P. as in Melan v. Duke de Fitz James (ante).

Denied in Woodbridge v. Wright, 3 Conn. 526.

SERLESTED'S CASE, Latch, 202.

"Ld. Ellenborough. The reasoning in that case seems to prove too much; for it goes the length of showing that obtaining money under a threat of any thing, however improbable, would be indictable at common law." 6 East, 139.

SETON v. SLADE, 7 Ves. jr. 278.

Overruled, see Growsock v. Smith (ante).

SETTLE v. PERPETUAL INS. CO., 7 Mo. R. 379.

In part overruled, Walsh v. Homer, 10 Mo. R. 6.

SEWALL v. FITCH, 8 Cowen, 215; Groves v. Buck, 3 M. & S. 178.

Seems to be within the principle of Clayton v. Andrews (ante).

SEWALL v. WALLACE, cited 2 N. H. R. 497.

Questioned, Daniels v. Ellison, 3 N. H. R. 287.

SEYMOUR v. BROWN, 19 Johns. 44.

Where wheat was delivered to a manufacturer to be exchanged for flour; and put into the common stock, and consumed by fire before the flour had been delivered; *Held*, that the property in the wheat was not changed and the loss was on the plaintiff.

Overruled in Ewing v. French, 1 Blackf. R. 353. See also Hurd v. West, 752 and 756, n. (a); Smith v. Clark, 21 Wend. 83; Norton v. Woodruff, 2 Coms. 153.

SEYMOUR v. DELANCY, 6 Johns. Ch. 223 to 235.

Reversed in S. C. 3 Cowen, 445.

SEYMOUR'S CASE, 10 Co. 95.

Affirmed; but distinguished. See 2 Burr. 711 to 716.

SHALLCROSS v. FINDEN, 3 Ves. jr. 739; Toller, 288; 1 Madd. Ch. 483-4.

That a general clause in a will, directing all just debts to be paid will revive a debt barred by the statute of limitations.

Denied and overruled in Peck v. Botsford, 7 Conn. R. 176. Daggett.

SHALLCROSS v. FINDEN, 3 Ves. jr. 739, etc.—continued.

J.—"It is true such a doctrine is advanced by able judges; but in Burke v. Jones, 3 Ves. & Bea. 275, all the cases were reviewed and the Vice-Chan. there held, that a devise of real and personal estate for the payment of just debts, did not revive a debt barred by the statute before the testator's death. So, in Smith v. Porter, 1 Binn. 209, and in Roosevelt v. Mark, 6 Johns. Ch. R. 266. 293. I entertain no doubt that the evidence arising from the clause in this will is insufficient for this purpose.

SHAPLAND v. SMITH, 1 Bro. C. C. 75.

Lord Eldon deplored the rule adopted by Lord Thurlow. See Maggennis v. Fallon, 2 Moll. Ch. R. 580.

SHARPE v. GAMON, 2 Vern. 32.

Overruled, Calv. on parties in Eq. 202.

SHARP v. WARD, 7 Ohio R. 223.

See Swan's Stat. 588, s. 6; 587, s. 1.

SHAW v. COATES, at the Sittings before Ld. Kenyon, mentioned in Selwyn's N. P. 320, n. 25.

Denied in Chanoine v. Fowler, 3 Wend. 173.

SHAW v. CRAWFORD, 10 Johns. 236.

See The People v. Pratt, 17 Johns. 195.

SHAW v. DENNIS, 5 Gilman, 405.

Overruled in Allen v. Scott, 13 Ill. 80.

SHAW v. LINDSEY, 18 Ves. 496; Scott v. Hough, 4 Bro. C. C. 213; Nichols v. Gwyn, 1 Sim. 389.

Denied in Johnson Pet., Nagle Res., 1 Moll. 244.—"These cases were misreported."

SHAW v. M'COOMBS, 2 Bay, 232.

Overruled in True v. Plumbley, 36 Maine (1 Heath) 475.

SHAW v. MANDEVILLE, 6 Cranch, 253.

Dissented from, King v. Hoar, 1 New Pr. Cas. 75.

SHEAR v. OVERSEERS OF HILLSDALE, 13 Johns. 496.

Overruled in Grant v. Fancher, 5 Cow. 309.

SHEE v. CLARK, 12 East, 507.

Doubted in Minett v. Forrester, 4 Taunt. 541; Goldschmidt v. Lyon, ib. 534; Parker v. Smith, 16 East, 382. See also Koster v. Easton, 2 M. & S. 112, and Holt's N. P. 91, n. *et seq.*

SHEEHY v. MANDERVILLE, 6 Cranch, 253.

Denied in Robertson v. Smith, 18 Johns. 459—Spencer, C. J. See Fairchild v. Holly, 10 Conn. 474.

Questioned, Trafton v. Bright, 3 Story R. 646.

SHEFFIELD v. WATSON, 3 Caines, 69.

Spencer, J., in Walker v. Swartwout, 12 Johns. 448-9. "I confess, the train of the judge's reasoning in Sheffield v. Watson, does not appear to me perfectly reconcilable with the declaration, which, I am fully convinced, is correct, that we did not intend to shake any of the *English* authorities.

SHELLARD, DOE dem., v. HARRIS.

See Doe dem. Shellard v. Harris (ante).

SHELLEY'S CASE, 1 Co. 104.

"Anderson's severe censure of Coke's report of Shelley's case is in print, and well known." Sug. on Pow. p. 24. (No. 18.)—Abolished in 1 R. S. 725, s. 28 (New York).

SHELLEY'S CASE, 1 Salk. R. 296—Holt.

In strictness no funeral expenses are allowable against a creditor except for the coffin, ringing the bell, parson, clerk, bearers, &c., but not for pall or ornaments.

Overruled in Hancock v. Podmore, 1 B. & Adol. 260; Edwards v. Edwards, 4 Tyrw. R. 438, the expenses must be reasonable, according to the circumstances of each particular case, with reference to the testator's condition in life.

SHELTON v. COCKE, 3 Mumf. 191; 6 ib. 191.

The acknowledgment of a partner after the dissolution of the partnership, was held not proper evidence of the existence of the debt, so as to charge the other partners.

Opposed, Cady v. Shepherd, 11 Pick. 407 *et seq.*; Wood et al v. Braddick, 1 Taunt. 103.

SHEPHERD v. LITTLE, 14 Johns. 210.

Ch. J. Spencer says, "parol evidence of a consideration of a different nature from that expressed in a deed of conveyance" is not admissible; yet it is admissible to show that it has not been paid.

Denied in M'Crea v. Purmort, 16 Wend. R. 470, *et seq.* *Held*, that parol evidence was admissible to prove that the consideration was *iron*, though the consideration expressed was *money paid.*

SHEPHERD v. OGDEN.

See Key v. Collins (ante).

SHEPHERD v. WATSON.

See Collam v. Hocker (ante).

SHEPHERD'S TOUCHSTONE.

"Shepherd's Touchstone is a work which will be found very useful to the young common-law lawyer. It is a work of very high authority, and contains the cream of Coke Littleton." Warren's Law Studies, 262.

SHEPHERD'S TOUCHSTONE, 274.

Where it is said if a man lease to A for 80 years, if he so long live; but if he die within the 80 years, remainder over, that this remainder is void, &c.

Denied in Wright v. Cartwright, 1 Burr. 282.

SHEPHERD'S TOUCHSTONE, 214; Perk. 209.

To deliver seisin or make livery, the feoffor, if it be a house, the manner is to take ring, latch, or hasp of the door (all the people, men, women and children, being out of the house), or if it be a piece of ground, do take a clod of the ground, or a bough or a twig of a tree or bush growing thereupon, and (*all the people being out of the ground*) the same ring, &c.

Overruled in Doe d. Reed v. Taylor, 5 B. & Ad. 575. *Held*, that livery of seisin is not rendered void by the fact of a child having remained on the premises at the time, even though such child were the descendant of a party having title, unless the child was placed there for the purpose of representing that party.

SHERBORN v. COLEBACK, 2 Ventr. 175.

Overruled. 1 Lutw. 180; Whitgrave v. Chauncy; Smith v. Airey, 6 Mod. 128; Walker v. Walker, 12 Mod. 258.

SHERIFF OF ESSEX'S CASE, Hob. 202.

Overruled, James v. Pierce, 1 Vent. 269; Lenthal v. Lenthal, 2 Lev. 109.

SHERIFF v. POTTS, 5 Esp. 96.

Overruled, Emerson v. Heelis, 2 Taunt. 38; Raine v. Bell, 9 East, 195; Laroche v. Oswyn, 12 East, 131; Cormack v. Gladstone, 11 East, 347; Urquhart v. Barnard, 1 Taunt. 450: see Tappenden v. Randall (post).

SHERMAN v. McNITT, 2 Cow. 452.

See S. C., 4 Cow. 85.

SHERMAN v. WAKEMAN, 11 Barb. 254.

Reversed, Oct. 1853.

SHERWOOD v. GEN'L MUT. INS. CO., 1 Blatch. C. C. R. 251.

Reversed, 14 How. 351; see Mathews v. The Howard Ins. Co., 1 Kernan, 22.

SHERWOOD v. READE, 8 Paige, 633.

Reversed, 7 Hill, 431.

SHERWOOD v. SALMON, 2 Day's R. 128.

That no actionable fraud can be committed by false affirmations respecting the quality of lands, because the quality is open to ocular observation.

Overruled in Sherwood v. Salmon, 5 Day, 439.

SHERWOOD v. VANDENBURG, 2 Hill, 303.

Overruled. Sparrow v. Kingman, 1 Coms. 242.

SHINDLER v. HOUSTON, 1 Den. 48.

Reversed, 1 Coms. 361.

SHIPBROOK (LD.) v. LD. HINCHINBROOK, 11 Ves. 257.

As to sending back a report for objections extrinsic.

Denied in Kilbee v. Sneyd, 2 Moll. 241.

SHIRLEY v. DAVIS, cited, 6 Ves. 678.

That and other cases of that class, not to be followed. Magennis v. Fallon, 2 Moll. Ch. R. 589.

SHOCK v. McCHESNEY, 2 Yeates, 473.

Overruled in S. C. 4 Yeates, 507. Yeates, J.—"We were misled by the authority in 2 Term R. 231, and the cases in 1 Salk. 21, 2 Salk. 456, that malicious prosecution will not lie, where an indictment has been found and a *nolle prosequi* entered."

SHOTWELL.

See In the Matter of Gilbert Shotwell (ante).

SHOTWELL v. SUYDAM, 3 Ohio R. 5.

See Swan's Stat. 998, ss. 45, 46; 44 Ohio Laws, 76; Ward v. Ward, 5 West. Law Journal, 503.

SHOVEL v. EVANS, Lutw. 35.

Denied in Waterbury v. Mather, 16 Wend, 613.—Cowen.

SHORT v. PRATT, 6 Mass. 496.

The second award in this case made by two only of the referees was a complete reversal of the former award, and in favor of a different party; which reconciles this case with May v. Haven, 9 Mass. 325, which otherwise would seem to contradict it.

SHRIDER v. NARGAN, 1 Dall. 68.

Overruled in 1 Wash. C. C. R. 204, Hylton v. Brown.

SHRIVE v. WHITTELSEY, 7 Mo. R. 473.

Said to be overruled, Dorsey v. Watson, 14 Mo. R. 61*; and overruled, Fackler v. Fackler, ib. 431; Marvin v. Bates, 13 ib. 217.

SHRUNK v. PRESIDENT, &c., OF THE S. NAVIGATION CO., 14 S. & R. 71.

The fisheries in the rivers as well as in the sea, whether the tide ebbs and flows there or not, is common to all the citizens.

Decided differently in Commonwealth v. Chapin, 5 Pick. 201; The People v. Platt, 17 Johns. 195, and Hooker v. Cummins, 20 Johns. R. 90.

SHUMWAY. See *Ex parte* Shumway.

SHUTT v. PROCTOR, 2 Marsh. R. 227.

Doubted and shaken in Overseers of St. Martin v. Warren, 1 Barn. & Ald. 491, and Coles v. Gowen, 6 East, 110, adhered to.

SHUTTLEWORTH v. STEPHENS, 1 Camp. 408.

An indorser has been admitted, upon a bill drawn for his accommodation, to prove for the plaintiff that the plaintiff gave him value for it.

Overruled in Edmonds v. Lowe, 8 B. and C. 407. See also Bagnall v. Andrews, 7 Bing. 217; Jones v. Brooke, 4 Taunt. 464. See Birt v. Kershaw (ante).

SICKELS v. FORT, 15 Wend. 559.

See Whitback v. Skinner, 7 Hill, 53.

SIDERFIN'S REPORTS.

Ld. Holt, Comb. 377:—"Many good cases are spoiled in Siderfin." "2 Siderfin, which book, by Dolben J. is fit to be burned." 1 Show. 252. In 2 Ventr. 243, Siderfin is called a "young réporter."

SIGNORET v. NOGUIRE, 2 Ld. Raym. 1241.

S. P. as in Bacon v. Waller (ante).

SILLIMAN v. CUMMINS, 13 Ohio R. 116.

Overruled, Chesnut v. Shane, 16 Ohio R. 599, and 47 Ohio Laws, 53, and see Connell v. Connell (ante).

SILSBURY v. McCOUN, 6 Hill, 425; 4 Den. 332.

Overruled, 3 Coms. 379.

SIMEON v. BAZETT, 2 M. & Selw. 94.

Overruled, it seems, in Bazett v. Meyer, survivor of Simeon, 5 Taunt. 824: *Held*, that a neutral insuring against all risks until safely warehoused in the warehouse of the consignee, an adventure in furtherance of the objects of British Commerce is protected by the policy against confiscation by the act of his own government under the Berlin and Milan decrees.

SIMMONS v. WILMOT, 3 Esp. R. 91.—Eldon.

If a person takes care of a casual *pauper*, and for whom the parish officers would be liable to provide, he has a right to recover his expenses of them.

Overrruled in Atkins v. Barnwell, 2 East, 505; Dunbar v. Williams, 10 Johns. R. 249; Everts v. Adams, 12 ib. 352. See Lamb v. Bunce, 4 M. & S. 275.

SIMON v. MOTIVOS, 1 Bl. 599.

The judges intimated an opinion that sales at auction were not within the statute of frauds.

Overruled in Kenworthy v. Schofield, 2 B. & C. 945; Davis v. Rowell, 2 Pick. 64, as to the sale of goods; and in Walker v. Constable, 1 B. & P. 306, as to the sale of lands.

SIMONDS v. HODGSON, 6 Bing. 50.

Instruments of bottomry—what constitutes.
Reversed in 3 B. & Adol. 50, S. C.

SIMONS v. SMITH, Ry. & Mo, R. 29, Cheyne v. Koops (ante).

Denied in Anderson v. Brock, 3 Greenl. 279, where the court say "It is difficult to conceive any interest which may not be thus released." It was held, that the interest of the witness was legally extinguished by the mutual releases, so as to restore the competency of the witness, if he was before incompetent. See also the case of Ward v. Lee, 13 Wend. 41; Jones v. Pritchard, 2 M. & Wel. 199; Phil. Ev. 153, 154.

Doubted in Wynn v. Brooke, 5 Rawle's R. 108–9.—Rogers: "It carries the law to a greater extent than it has been perhaps in England, and certainly further than in Pennsylvania."

Overruled, Beckitt v. Wood, 6 Bing. N. C. 486.

SIMPSON v. CLARK, 14 Lond. Law Mag.. 144.

Said to be contrary to the law as settled by previous adjudications.
Yeatman v. Cullen, 5 Blackf. 245.

SIMPSON v. GUTTERIDGE, 1 Mad. 609.

Contrary to Mansfield's case, cited by Mr. Hargrave, note 8; Co. Litt. 33 a. Although that case is by an unknown hand, the adoption of it by Mr. Hargrave, makes it an authority. Power v. Sheil, 1 Moll. Ch. R. 312.

SIMPSON v. HART, 1 Johns. Ch. 91.

Reversed, 14 Johns. 63.

SIMPSON v. HARTOPP, Willes, 512; 4 Term R. 568.

Respecting the exemption of property from distress.

Explained. 1. Things annexed to the freehold, as fixtures, &c. See Smith's Lead. Cas. p. 192: 2. *Things delivered to a person exercising a public trade, to be carried, wrought, worked up, or managed in the way of*

SIMPSON v. HARTOPP, Willes, 512, etc.—continued.

his trade or employ. See ib.; Adams v. Grane, 3 Tyrwh. 326; 1 C. & M. 390; Brown v. Shevill, 2 Ad. & El. 138; Fenton v. Logan, 9 Bing. 676; Muspratt v. Gregory, 1 Mee. & W. 633.

SIMPSON v. PATTEN, 4 Johns. 422; Jackson v. Raynor, 12 ib. 291.

Explained in Barker v. Bucklin, 2 Denio, 45.

SIMPSON v. RAWLINGS, 1 Scammon, 28; Warnock v. Russell, ib. 383.

Overruled, Linn v. Buckingham, 1 Scammon, 451; Swafford v. The People, ib. 290; Crain v. Bailey, ib. 321.

SIMPSON v. RHINELANDER, 20 Wend. 103.

Overruled, Niblo v. Post, 25 Wend. 280; Benjamin v. Benjamin, 1 Selden, 383; Morewood v. Hollister, 2 ib. 309.

SIMSON v. HART, 1 Johns. Ch. 93.

Reversed in 14 Johns. 63.

SIMSON v. HART, 14 Johns. 63.

That insolvency does or may constitute a sufficient equity to entitle a party, who is a creditor upon a joint judgment, to set off that judgment against a separate judgment debt due by him to one of the joint judgment debtors, both of the latter being insolvent.

Doubted in Howe v. Sheppard, 1 Sum. R. 415 *et seq.* See Green v. Darling, 5 Mason, 145.

SINARD v. PATTERSON, 3 Blackf. 353.

Overruled. Louden v. Birt, 4 Porter, 566.

SINCLAIR v. FRASER, cited in Duchess of Kingston's case, 11 St. Tr. by Harg. 222; 1 Doug. 5, in n.; 1 Phil. Ev. 350, 351, 353, n.

That a judgment in a foreign court, is only *prima facie* evidence of a debt, and has the force of a simple contract between the parties.

Denied in Martin v. Nicholls, 3 Sim. 458 (5 Cond. Ch. R. 198). But see 2 Kent Com. p. 119 *et seq.*

SISON v. KIDMAN, 3 Man. & G. 810.

"It is clear that the plea in Sison v. Kidman, as reported in Man. & Gr., is not correct. The plea as it is reported in the Law Jour. Rep. is just as my brother Maule supposes." Jervis, C. J., Crofts v. Beale, 5 Eng. R. 409; 20 Law J. R., N. S. C., P. 186; 15 Jur. 709.

SISTERS (THE) 5 Rob. 138.

Held, that to transfer the title to a vessel it is necessary that it should be in writing.

Denied in Bixby v. Franklin, 8 Pick. 86; Lazarces v. Commonwealth Ins. Co., 5 ib. 76; M'Namara v. Franklin Ins Co. 2 Hall, 1.

SIX CARPENTERS' CASE, 8 Coke, 290.

If a man abuse an authority given him by *the law*, he becomes a trespasser *ab initio*. *Contra* of an authority given by *the party*.—The abuse is good matter of replication.

Explained and limited in respect to the pleadings in Price v. Peck, 1 Bing. N. C. 380; Crogate's Case, 8 Co. 66; Taylor v. Cole, 3 Term R. 292. The only proper course is to reply the abuse specially; for if the defendant plead an authority in law, and the plaintiff rely on an abuse, he must not reply *de injuria*. See the note to Crogate's Case, Smith's Leading Cases, 55, also Monprivatt v. Smith (ante).

SKELDING v. WARREN, 15 Johns. 275; Hubbly v. Brown, 16 Johns. 70.

The maker of a note is indifferent in an action by the indorsee against the indorser, and may therefore be a witness.

Opposed. Pierce v. Butler, 14 Mass. 303.

SKELTON v. HAWLING, 1 Wils. 258.

Not very intelligible as reported by Wilson; but is clearly stated in 1 Saund. 219. d. Williams' ed. note. See 3 East, 4.

SKILLINGER v. BOLT, 1 Conn. R. 147.

S. P. as in Trustees of Lansingburgh v. Willard (post).

SKILLINGTON v. NORTON, 1 Freem. 412; 3 Keb. 422; 2 Lev. 142, S. C.

Overruled. Stokelane v. Doulting, Fortescue, 219; Clifton v. Churchman, Andr. 314.

SKINNER v. DAYTON, 2 Johns. Ch.

Reversed, 19 Johns. 513.

SKINNER v. WHITE, 2 Johns. Ch. 526.

Reversed in 17 Johns. 357.

SKIPPER v. HARGRAVE, Martin, 74.

Disapproved in Bethea v. McLennon, 1 Ire. Law R. 523.

SKOLFIELD v. POTTER, Daveis R. 392.

Considered in Webb v. Pierce, 5 Monthly Law Rep. N. S. 9.

SLEE v. BLOOM, 5 Johns. Ch. 379, 381.

Reversed in 19 Johns. 456, 474; 6 Cow. 26.

SLEIGHT v. RHINELANDER, 1 Johns. 192.

Reversed. Sleight v. Hartshorne, 2 Johns. 531.

SLINGERLAND v. MORSE, 8 Johns. 474 and Coit v. Houston, 3 Johns. Cas. 242; 1 Root, 55 & 443.

Denied in Weld v. Hadley, 1 N. H. R. 329, Richardson, J., so far as an opinion is intimated that property may pass upon a tender and refusal. See also Heirn v. Carron, 11 Sme. & M. 366.

SLIPHER v. FISHER, 11 Ohio R. 299.

See 42 Ohio Laws, 72, s. 4; 17 Ohio R. 36

SLOCUM v. DESPARD, 8 Wend. 615.

See Root v. Woodruff, 6 Hill, 418.

SLOCUM v. HOOKER, 12 Barb. 563.

Reversed, 13 Barb. 536.

SLOCUM v. THE UNITED INS. CO., 1 Johns. Cas. 151.

S. P. as in Mumford v. Church (ante).

SMALL v. BIXLEY, 18 Wend. 514.

Overruled. Johnson v. Fellows, 6 Hill, 353.

SMALLCROMB v. BUCKINGHAM, 5 Mod. 376; 1 Ld. Raym. 251.

Doubted in Giles v. Grover, 1 Clark & Fin. 99.

SMARTLE v. WILLIAMS, 1 Salk. 280.

Denied by Buller (B. N. P. 256) who says, that this "case is wrongly reported, for it appears from the report in Levinz 3, Lev. 387, S. C., that the acknowledgment was by the bargainer, and so it is stated in Salkeld's manuscript; besides it appears from both the books, that it was only a term that passed, and consequently it was not an enrolment within the statute. See 1 Phil. Ev. (687) 643,—5th Am. ed.

SMEATHAM v. BRAY, 15 Jur. 1051; 8 Eng. R. 46.

Overruled in Watts v. Symes, 16 Jur. 114; 8 Eng. R. 247.

SMITH v. ADAMS, 6 Paige, 435.

Qualified, 24 Wend. 585.

SMITH v. BANCHER, 2 Str. 993; 2 Barnard. 331; Cunn. 89, 127; Cas. temp. Hardwicke, 62; 2 Kelyn, pl. 123.

Explained in Savacool v. Boughton, 5 Wend. 173.

SMITH v. BARBER, 8 Ohio R. 456 (ib. ii. 118).

Reversed, Smith v. Pratt, 13 Ohio R. 548.

SMITH v. CHEETHAM, 3 Caines, 57.

Overruled in Dana v. Tucker, 4 Johns. 487.

SMITH v. CINCINNATI, 4 Ohio R. 514.

See Goodloe v. Cincinnati (ante).

SMITH v. CLARKE, 1 Esp. 180; Peake's Cas. 225.

Ld. Kenyon held, that where a payee of a bill had made an indorsement in blank thereon, no subsequent indorsee could restrain its negotiability by a special indorsement.

Overruled in Sigourney v. Lloyd, 8 B. & C. 622.

SMITH v. CLAY, Amb. 645.

"Much more fully reported in Brown, in the note to Ld. Deloraine v. Brown, than in Ambler" Ld. Alvanley, 2 Ves. jun. 272: "Of which there is an imperfect account in Ambler, but is well reported, from the notes of the learned judge himself, in 3 Bro. Ch. C. 639 n. Per Chan. Brougham, Rus. & M. 453, 4 Cond. R. 524. See 2 Sch. & Lef. 631; 1 Chit. Gen. Pr. 780, n. (m).

SMITH v. DE SILVA, Cowp. 469.

Lord Tenterden, C. J. (8 B. & C. 612):—"The case of Smith v. De Silva, Cowp. 469, is a very entangled case, and the facts stated in the report are not very clear or perspicuous."

SMITH v. DOVERS, Doug. 427.

Plea of usury; and *held* that the plaintiff may traverse the corrupt agreement, and conclude with a verification.

Said by Lawrence, J., to have been overruled. Charles v. Marsden, 1 Taunt. 224.

SMITH v. DUDLEY, 2 Ark. R. 60.

Overruled in Davies v. Pettit, 6 Eng. R. 360.

SMITH v. GIBSON, Cas. Temp. Hardw. 319.

"There are several cases where a recovery in one action shall be a bar to another action of the same nature, but that is where the recovery is a satisfaction for the very thing demanded by the second action. In an action of trover the plaintiff recovers damages for the thing, and it is a sale of the thing to the defendant, and it vests the property in him; and therefore it is a bar to an action of trespass for the same thing."

Denied in Curtis v. Groat, 6 Johns. 168; Osterhout v. Roberts, 8 Cowen, 43; Sanderson v. Caldwell, 2 Aik. 203; Jones v. M'Neil, 2 Bail. R. 466. But Carlise v. Burley, 3 Greenl. R. 250; Floyd v. Brown, 1 Rawle, 121; Marsh v. Pier, 4 ib. 273; Morrell v. Johnson. 1 H. & M. 449, uphold Smith v. Gibson (supra).

SMITH v. JENKS, 1 Den. 580.

Reversed, 3 Den. 592; 1 Coms. 90.

SMITH v. JOHNSTON, 1 Penn. 471.

Except by devise, the crop does not pass as parcel of the land.

Opposed to Spencer, J., in Foote v. Colvin, 3 Johns. 216; Kittridge v. Woods, 3 N. H. R. 503; Crews v. Pendleton, 1 Leigh's R. 297. See Johnson v. Smith, 3 Penn. 501.

SMITH v. KENDAL, 1 Esp. R. 231; 6 Term R. 123.

Although a note is not negotiable, still it is entitled to days of grace.

Opposed, Backus v. Danforth, 10 Conn. R. 297.

SMITH v. LOWELL, 6 N. H. R. 69.

Questioned, Smith v. Smith, 11 N. H. R. 459.

SMITH v. LUDLOW, 6 Johns. 257.

Overruled, Van Keuren v. Parmelee, 2 Coms. 523; and see Whitcomb v. Whitney (post).

SMITH v. LUSHER (or LASHER), 5 Cowen, 688.

The legal effect of a negotiable note given by a partnership firm to a partner, and by him indorsed. It seems to have been decided on the ground of the law peculiar to negotiable paper, which would enable an indorsee to come upon partnership effects of an insolvent company, having the same priority as other partnership creditors.

Doubted in Portland Bank v. Hyde, 2 Fairf. R. 197, 201, 202.

SMITH v. LYNES, 3 Sand. 203.

Reversed, 1 Selden, 41.

SMITH v. MAYO, 9 Mass. 62.

The testator in his will directs his just debts to be paid. *Held,* that this did not amount to a ratification of a note given while the testator was a minor.

Doubted in Wright v. Steele, 2 N. H. R. 51. But see 11 Mass. 147, and 1 Pick. 202.

SMITH v. McDONALD, 3 Esp. R. 7.

Ld. Kenyon said, "that if the evidence offered to the jury by a prosecutor, on the trial of an indictment; be sufficient to cause them to pause, he should hold it to be a probable cause."

Denied in Willans v. Taylor, 3 Mo. & P. 350.—Park.

SMITH'S EX'RS v. MILLER, 14 Wend. 190.

Reversed in Miller v. Smith's Ex'rs, 16 Wend. 425.

SMITH v. MOFFAT, 1 Barb. 65.

Opposed to James v. Stuyvesant, 3 Sand. 665 n.; Capet v. Parker, 3 ib. 662.

SMITH v. MUMFORD, 9 Cow. 26.

See Turner v. Roby, 3 Coms. 193.

SMITH v. PARKER, 2 W. Bl. 1230.

Denied by Ld. Thurlow, Ld. Alvanley, and Sir Thos. Plummer, 1 Bro. C. C. 246; 3 B. & P. 650; Jacob, 219.

SMITH v. PLUMER, 1 B. & Ald. 575.

Held, that the master of a vessel has no lien on the freight for his advances abroad on account of the ship.

Opposed, Gardner v. The ship New Jersey, 1 Pet. C. C. R. 227; Ship Packet, 3 Mason, 255; Lane v. Penniman, 4 Mass. 92; 11 ib. 72 and 415. In Ingersoll v. Van Bokelin, 7 Cow. 670; 5 Wend. 314, S. C.; and the last case, though it recognized the right of the master to a lien on the freight for *repairs*, supplies, and other *necessary expenses* incurred *abroad*, yet it was *held*, that he had no lien on the freight for his wages; reversing the judgment of the Supreme Court as to the lien for wages. "It is entirely clear that the master's wages are a personal charge on the owner, and give no claim on the ship." By Hopkinson, J., in 1 Gilp. R. 1.

SMITH v. RALEIGH, 3 Camp. 513.

Overruled, Christopher v. Austin, 1 Kernan, 219.

SMITH v. SHARP, 1 Salk. 139; 5 Mod. 133; 12 Mod. 86, S. C.

Overruled, Gyse v. Ellis, 1 Str. 228; 11 Mod. 313, Leach's ed. S. C.; Mayor of London v. Tench, 7 Mod. 173; Challoner v. Davis, 1 Lutw. 570.

SMITH v. SHAW, 12 Johns. 257.

Doubted in Savacool v. Boughton, 5 Wend. 176.

SMITH v. SMITH, 1 How. 102.

Overruled, Woodward v. May, 4 How. 389.

SMITH v. SMITH, Wright's R. 643.

Overruled, Wagers v. Dickey, 17 Ohio R. 439.

SMITH v. SMITH, 25 Wend. 405.

See S. C. 2 Hill, 351.

SMITH v. SMITH, Str. 955.

Gibbs, C. J., in 7 Taunt. 231, said—"Smith v. Smith is a very confused case."

SMITH v. SURRIDGE, 4 Esp. 26.

That the sentence of the Court of Admiralty sitting, under a commission from a belligerent, in a *neutral* country, is binding, *if acquiesced in by the government of the neutral country.*

Overruled in Havelock v. Rockwood, 8 D. & E. 276, and is contrary to the case of the Flad. Oyen, 1 Rob. R. 144. See Donaldson v. Thompson, 1 Camp. 429.

SMITH v. VAN DEUSEN, 15 Johns. 343.

Overruled in part, Jackson v. Varick, 7 Cow. 238; 2 Wend. 166.

SMITH v. WILSON, 3 Barn. & Adol. 728.

"I should feel great difficulty in subscribing to that case."—Bronson, J., Hinton v. Locke, 5 Hill, 438.

SMITH'S CASE, Tr. 8 Jac. 1; 2 Rolle Abr. 685.

That the borrower is an incompetent witness on a penal information against the usurer.

Overruled in Abrahams v. Bunn, 4 Burr. 2253. See Commonwealth v. Frost, 5 Mass. 53.

SNEE v. PRESCOTT, 1 Atk. 245.

"—— miserably reported in the printed book." Said by Buller, J., 6 East, 29 (note); where there is a better statement of the same case.

SNELLING v. HUNTINGFIELD, 1 C. M. & Ros. 26, note (c).

Doubting, if not overruling Collins v. Price, 5 Bing. 132; 2 M. & P. 232.

SNIPES v. SHERIFF OF CHARLESTON, 1 Bay R. 395; and Greenwood v. Naylor, 1 M'Cord, 414.

Are founded on the principle, that there is an older judgment entitled to the money, to which the sheriff may properly pay it, and to which he is bound to pay it; and if the money be made by the sale of land, the rule has been so extended that the money must be paid over to the oldest judgment, though no execution has been lodged.

Opposed to the English rule; and in Mitchell v. Anderson, 1 Hill R. 69. "Those decisions cannot apply when the sheriff is forbidden to enforce the elder execution."

SNYDER v. THE STATE BANK OF ILLINOIS, Breese, 122.

Overruled. Linn v. The State Bank of Illinois, 1 Scammon, 87.

SOAMES v. LONERGAN, 2 B. & C. 564.

Opposed to Deffel v. Brocklebank, 4 Price, 36.

SOLARTE v. PALMER, 1 Bing. N. C. 194.

Doubted in Hedger v. Steavenson, 2 M. & W. 799, where Parke, B., says, "By the decision in Solarte v. Palmer, we are bound; though I am not prepared to say that I am bound by all the reasoning or language of the learned judges in giving their opinion, and therefore should myself doubt whether we could go so far as to say that it ought to appear upon the face of the instrument, "by *express terms or necessary implication*, that the bill was presented and dishonored; it seems to me enough if it appear by reasonable intendment, and would be inferred by any man of business, that the bill had been presented to the acceptor, and not paid by him." In an action on a bill of exchange against indorser, Lord Denman, C. J., says—"There must be in the notice a positive statement of the fact of presentment and dishonor;" and Littledale, J., says, that though the notice would in general convey to persons acquainted with bills an intimation that it had been dishonored, however, according to the case of Solarte v. Palmer, we ought to hold it insufficient. The case

SOLARTE v. PALMER, 1 Bing. N. C. 194—continued.

of Strange v. Price, Jurist, p. 368, Am. ed., in which the above observations were made, decides *what is insufficient notice of dishonor.*

"The case of Solarte v. Palmer has caused much confusion in the mercantile world. We must, however, be bound by it, when a notice in the same terms comes before us. Even the House of Lords would, I fear, be obliged to consider it binding upon them; and I only wish the decision was got rid of by an act of Parliament. There is no disguising it, it is a decision very much to be regretted."—Campbell, C. J. Everard v. Watson, 22 Law J. Rep. N. S. Q. B. 222; 1 Com. Law R. 454; 18 Eng. R. 196.

SOOK v. FRIEND, 9 Ohio R. 78.

Explained. Hill v. Henry, 17 Ohio R. 15.

SORRELL v. CARPENTER, 2 P. Wms. 483.

Dictum of King, C. J., overruled in Worsley v. Earl of Scarborough, 3 Atk. 392.

SOULLE v. GERARD, Cro. Eliz. 525.

In respect to the dictum about the estate tail.
Denied in Dallam v. Dallam's Lessee, 7 Har. & J. 245–6.

SOUTH v. SNELLING, 7 Monroe's R. 421.

S. P. as in Moore v. Wilson (ante).
Overruled in Wells v. Bowling's heirs, 2 Dana's R. 44.

SOUTHCOTE'S CASE, 4 Rep. 83 b.; Cro. Eliz. 815.

The position that to *keep*, and to *keep safely*, are one and the same thing.

Denied in Coggs v. Bernard, 2 Ld. Raym. 911 n.; 1 Conn. R. 133; Foster v. The Essex Bank, 17 Mass. 479; Story on Bailm. 50 *et seq.*

SOUTHERLAND v. PURRY, 2 Penns. R. 145, and Smith v. Webster, 2 Watts, 478.

Reconciled in Brown v. Metz, 5 Watts, 167 and 169.

SOUTHERLAND v. SHEFFIELD, 2 Wend. 293.

The proceedings were set aside on payment of cost, it was said that the defendant was not bound to pay the costs until they were taxed; the plaintiff demanding a sum in gross, and *refusing* to give, a bill of items.

Explained in Hoadley v. Cuyler, 10 Wend. R. 593. "It always was

SOUTHERLAND v. SHEFFIELD, 2 Wend. 293—continued.

the practice of the Supreme Court, that a party relieved on paying costs must seek his adversary and pay the costs, within 20 days after the entry of the rule."

SPADER v. DAVIS, 5 Johns. Ch. R. 280; 20 Johns. 554, S. C.

S. P. as in Bayard v. Hoffman (ante).

SPALDING v. MOORE, 6 D. & E. 363.

Overruled in Richards v. Heether, 1 Barn. & Ald. 29.

SPARKES v. BELL, 8 B. & C. 1.

Doubted in Dixon v. Yate, 5 B. & Ad. 313,—*Held*, that to a declaration against husband and wife, for a debt due from the wife before coverture, the husband's discharge under the insolvent act is a good plea. In Lockwood v. Salter, 2 Nev. & M. 255.—Patteson: "With respect to the case of Sparkes v. Bell, I think if Miles v. Williams *et ux.* (1 P. Wms. 249) had been more considered, the decision would have been different."

SPARKS v. GARRIGUES, 1 Binn. R. 153.

Overruled in Longstreth v. Gray, 1 Watts' R. 60.

SPARROW v. CARRUTHERS, 2 Str. 1236.

That if the owner of goods insured takes them out of the ship into his own lighter, the underwriters are discharged. Doubted in Hurry v. Royal Exch. Assur., Marshall on Ins. 167.

SPEAKE v. RICHARDS, Hob. 206.

The party neglecting to plead an estoppel, cannot take advantage of it. Exception. Trevivian v. Lawrence, 3 Salk. 151. S. C. 1 ib. 276; Adams v. Barnes, 17 Mass. 368; and Shelton v. Alcox, 11 Conn. 250, decide, that if the state of the case is such that the party has not opportunity to plead it, he may show it in evidence.

SPEAR v. WARDELL, 2 Barb. Ch. 291.

Reversed, 1 Coms. 144.

SPENCER v. SMITH, 3 Camp. 9.

Overruled in Scott v. Gilmore, 3 Taunt. 226.

SPENCER v. SOUTHWICK, 10 Johns. 250.

Reversed, 11 Johns. 573.

SPENCER'S CASE, 5 Rep. 16 (a).

Better stated in Keppel v. Baily, 2 M. & K. 517. See a learned note upon this subject in Smith's Leading Cas. 27, and Norman v. Wells, 17 Wend. 27.

SPERRY v. MILLER, 2 Barb. Ch. 632.

Reversed, 4 Selden, 336.

SPONG v. SPONG, 1 Y. & J. 300.

Reversed on appeal to the House of Lords. See 3 Y. & J.—***Mem.** at the beginning.*

SPRAGG v. HAMMOND, 3 Bro. & B. 59.

S. P. as in Andrew v. Hancock (ante).

SPRAGUE v. BIRDSALL, 2 Cowen, 419.

Explained in Cayuga Bridge Co. v. Stout, 7 Cowen, 33.

SPRAKER v. NICHOLAS VAN ALSTYNE, 13 Wend. 582.

Reversed in 18 Wend. 200. S. C.

SPRATLEY v. WILSON, 1 Holt's N. P. R. 226.

Gibbs, C. J.—held it sufficient to constitute a good *donatio mortis causa*, where a person *in extremis* said "I have left my watch at Mr. R.'s at C. C.; fetch it away, and I will make you a present of it."

Denied in Bunn v. Markham, 7 Taunt. 224, 226.—Gibbs said, "that what he had there, somewhat improvidently, thrown out could not be maintained."

SPRINGWELL v. ALLEYN, Alleyn, 91.

S. P. as in Dale's case (ante).

SQUIB v. HOLE, 2 Mod. 30; 1 Freem. 193.

That an officer is not chargeable for an escape, if the cause of action arose out of the jurisdiction of the court by whose process the person was taken.

Overruled in Higginson v. Sheif, 1 Com. R. 153. See 3 Com. Dig. 335; 1 Salk. 201.

STAATS v. TEN EYCK, 3 Caines, 111.

That in an action on a covenant of quiet enjoyment forever, the measure of damages is the consideration money and interest.

Not law in Connecticut: See Kirb. Rep. 3. Nor in Massachusetts. Gore v. Brazier, 3 Mass. 523; also 2 Mass. 433; 4 Mass. 108.

STAFFORD v. ROFF, 7 Cowen, 179.

Reversed in 9 Cow. 626 (in error); and affirming, that an infant who had sold his horse while under guardianship—(there being no proof of a delivery, but vendee having offered to sell the horse)—might maintain trover before coming to age without demanding the horse.

STALKER v. McDONALD, 6 Hill, 93.

See White v. Springfield Bank, 3 Sand. 222; and see Coddington v. Bay (ante).

STANCLIFFE v. HARDWICK, 2 Cr. M. & R. 1; 4 Law J. Rep. N. S. Ex. 161.

Overruled in part, Young v. Cooper, 3 Eng. R. 540; 20 Law J. R. N. S. Ex. 136: see Tripp v. Armitage, 4 Mee. & W. 687; 8 Law J. Rep. N. S. Ex. 107.

STANDARD v. WILLIAMS, 10 Wend. 599.

See Mitchell v. Allen, 12 Wend. 290.

STANFILL v. HICKES, 1 Ld. Raym. 280, decided in 1697; also reported in 2 Salk. 413.

Denied in Birch v. Wright, 1 Term R. 380, by Mr. J. Buller, who says that "Stanfill v. Hicks and Bellasis v. Burbrick, therein referred to, were short, loose notes, jumbled together with notes, and not to be relied on." See Nelson, J. 13 Wend. 482.

STANHOPE'S CASE, 6 Ves. jr. 678.

A man had articled for the purchase of an estate tithe free, but which afterwards appeared to be subject to tithes.

Ld. Thurlow decreed a specific performance, although the purchaser proved that his object was to buy an estate tithe-free.

Overruled. See Sug. on Vend. 295 *et seq.* 9th Lond. ed.

STANSFIELD v. JOHNSON, 1 Esp. 101; Still v. Wardell, 2 Esp. 610.

Overruled, see Sheriff v. Potts (ante).

STANTON v. KLINE, 16 Barb. 9.

Reversed, 1 Kernan, 196.

STAPLES v. STAPLES, 4 Greenl. 532.

"Until after demand made, the attorney is not liable to the action of his principal."

Overruled in Coffin v. Coffin, 7 Greenl. 298. Mellen, C. J., saying, "The expression was incidental, and not necessary, and had no connection with the point decided." See also Thayer v. Sherman (post).

STAPLETON v. CONWAY, 1 Ves. 48.

Denied in Aylmer v. Aylmer, 1 Moll. 88.

STAR CHAMBER CASES (Chase's Trial, 182).

Mr. L. Martin, when citing Hob. 294, said, "It is true this case was determined in the Star Chamber, but being for the *accused*, it becomes a higher authority."

STARKIE ON EVIDENCE, 144.

The declining to answer a question respecting a conviction for crime, will raise an impression against the witness. Ld. Ellenborough (2 Peak. N. P. C. 222) said, the witness "was not thereby at all discredited." S. P. 1 Ry. & Mo. R. 382.

1 STARKIE ON EVIDENCE, 194.

A copy is never admissible when the original is produced.

Exception in Burdon v. Rickets, 2 Camp. 121 n. If a copy of any document which itself is not evidence at common law, be made evidence by act of parliament, a copy must be produced; the original in such case is not evidence.

2 STARKIE ON EVIDENCE, 627, citing Enfield v. Hills, Sir T. Jones, 116; 2 Lev. 236.

It is sufficient if the witness release his right to the corporation.

Overruled in Doe v. Tooth, 3 Y. & J. 19. *Held*, that a member of a corporation is not a competent witness to sustain the claim of the corporation, though he release his interest in the subject matter of the suit.

STARKIE ON EVIDENCE, 461 (460) (6th Am. ed.)

"The colloquium and other averments, which connect the words or libel with the plaintiff or subject matter before stated, must next be proved. This is usually done by the testimony of one or more witnesses who know the parties and circumstances, and who state their opinion and judgment as to the *intention* of the defendant to apply his words or libel to the parties or circumstances as alleged."

Denied in Gibson v. Williams, 4 Wend. R. 320.

2 STARKIE ON EVIDENCE, 6 Am. ed. 572.

Evidence is admissible to prove that a deed was executed, or a bill of exchange made, at a time different from the date.

Denied by Martin, J., in Kenner et al. v. Their Creditors, 8 Lou. R. 40, N. S. "On examination we find that they (the cases cited) support the position in regard to deeds only."

2 STARKIE ON EVIDENCE, 859. See 2 Phill. Ev. 63.

"If the landlord evict the tenant from parcel of the premises let at an entire rent, the latter, if he quit the residue, is discharged from the whole rent (Smith v. Raleigh, 2 Camp. 515); but if he continue in possession of the remainder, he is liable *pro tanto.* Stokes v. Cooper, 3 Camp. 514 n.

Denied in Briggs v. Hall, 4 Leigh R. 484, as not supported by the cases cited; and "the better opinion" is said by high authority to be in favor of the doctrine of Briggs v. Hall, 3 Kent. Com. 470; but see the observations of Jackson, J., in Fitchburg Cot. M. Co. v. Melvin, 15 Mass. 268, 270; and see Christopher v. Austin, 1 Kernan, 216.

3 STARKIE ON EVIDENCE, 1757.

"In all cases, where the credit of a witness has been attacked, whether by general evidence, or by particular questions upon cross-examination, *it seems*, that the party who called him is at liberty to support his character, by general evidence of good character."

Doubted; see Rogers v. Moore, 10 Conn. R. 13.

STARR v. CHILD, 20 Wend. 149.

Reversed, 4 Hill, 369.

STARR v. JACKSON, 11 Mass. R. 519.

Establishing the principle that trespass *quare clausum fregit* lies for the owner of land in the possession of his tenant at will, where the injury affects the permanent value of the property.

Explained in Little v. Palister, 5 Greenl. R. 15 *et seq.*

STARTUP v. CORTUZZEE, 2 Cr. Mees. & R. 165.

"The most recent case in the English reports is Startup v. Cortuzzee (2 Cr. Mees. & Rosc. 165), and it stands in direct opposition to West v. Wentworth (3 Cow. 62), and Clark v. Pinney (7 ib. 681), and consequently to Gainsford v. Carroll (2 B. & C. 624), if the *dicta* of the court in that case deserve the name of authority."—Duer, J., Suydam v. Jenkins, 3 Sand. 641.

STATE BANK v. ALLEN, 2 Hawks R. 1.

Overruled in Gov. for use of State Bank v. Twitt et al., 1 Dever. R. 153, as to the point that the return of a sheriff is only *prima facie* evidence against his sureties.

STATE COURT DECISIONS.

The decisions of our State courts are not binding beyond the limits of the State by whose court they are pronounced, and which are not affected by the decisions of the Supreme Court of the United States, which are binding only in a very few cases.—Discourse on the want of uniformity in the commercial law between the different States of our Union, by John W. Wallace, Phila. 1851.

STATE v. CANDLER, 3 Hawks, 393.

That a witness convicted in another State of the crime of forgery was incompetent as a witness.

Opposed in Commonwealth v. Green, 17 Mass. 514; ——— v. Knapp, 9 Pick. 497. See Goodtitle v. Braham (ante).

STATE v. J. N. B., 1 Tyler, 36.

Overruled in State v. Phelps, 2 Tyler, 374.

STATE v. McKEE, 1 Bail. 653, 654.

Reviewed in The State v. M'Lemore, 2 Hill, 680; and the points decided stated more definitely.

STATE v. MORRIS, 3 Hawks, 388.

Denied by Daniel, J.; but approved by Henderson & Ruffin, JJ., in State v. Lipsey, 3 Dev. 485.

STATE v. RAWLS, 2 Nott & M'Cord, 334.

As to the admission of *original entries*, or *memoranda* and *copies*, or *extracts*, to aid a witness' memory.

Qualified and explained in Merrill v. Ithica, &c. R. R. Co. 16 Wend. 595 to 600.—Cowen.

STATE v. RIDGLEY, 2 H. & M'H. 120; Clarke's Lessee v. Hall, ib. 378.

Held, that one convicted of an infamous crime in another jurisdiction, is incompetent to be a witness here.

Opposed, Commonwealth v. Green, 17 Mass. R. 514.

STATE v. ROSWELL, 6 Conn. R. 446.

In a prosecution for incest, an actual marriage must be proved; the confession of defendant is not admissible to prove that fact.

Doubted. See Crayford's case, Greenl. 57; see Ros. Cr. Ev. p. 229.

STATE v. SPARROW, 3 Murphy, 487.

Though the witnesses were ordered out of court pending the examination; yet one remaining by design may be examined.

Opposed, Rex v. Wylde, 6 Car. & P. 380.—Parke, J.: "I always, in a criminal case, reject a witness remaining in court after all the witnesses on both sides have been ordered out."

STATE v. TWITTY, 2 Hawks, 441; 1 Pet. R. 352.

That the printed statute book of another State, was not admissible to prove the statute of such State.

Overruled in Taylor v. Bank of Illinois, 7 Mon. R. 576; Raynham v. Canton, 3 Pick. 293; Whart. Dig., p. 280, 281.

STATE TREASURER v. HOLMES, 4 Verm. R. 110.

"The case of the State Treasurer v. Holmes turned upon the ancient practice and usage within that State (Vermont), and cannot be an authority out of it." Morris v. Lake, 9 Sme. & M. 525.

STATUTE 11 Geo. II. c. 19.

"This statute never was in force in Mississippi." Tefft v. Verden, 11 Sme. & M. 159.

STATUTE 25 Geo. II. c. 6.

"This statute, 25 Geo. II. c. 6, is not in force in the State of Tennessee." Gass' Heirs' v. Gass' Ex'rs, 3 Hump. 279.

STAUNTON v. OLDHAM, 2 Atk. 383.

That a decree for an account is never enrolled.

Denied in Parker v. Downing, 1 Coop. Sel. Cas. 148 (8 Cond. R. 418).

STEARNS v. SWIFT, 8 Pick. 532.

See Fowler v. Shearer (ante).

STEARNS ON REAL ACTIONS, 92, 94, 200.

By the practice in Massachusetts special attachments are made in real actions for the purpose of securing costs in case of recovery.

Denied by Mellen, Ch. J. in 7 Greenl. 234.

STEEDE v. BERRIER, Freem. R., p. 292 (Case 343), ed. 1826, in C. B.

Reversed in S. C. Freem., p. 477, in B. R. (Case 655), on error. See Pollexfen, S. C.; 8 Vin. 163.

STEELE v ADAMS, 1 Greenl.; Emery v. Chase, 5 Greenl. 232, and 6 ib. 364; Dixon v. Swiggett, 1 Har. & J. 252; Brocket v. Foscue, 1 Ruffin, 54; Hawks, 64, S. C.; Spiers v. Clay, 4 Hawks, 22; Graves v. Carter, 2 Hawks, 576.

That an acknowledgment of the consideration money in a deed is conclusive.

Opposed, Pritchard v. Brown, 4 N. H. R. 397, and in S. P. in p. 229; Wilkinson v. Scott, 17 Mass. 249; Shephard v. Little, 14 Johns. 210; Bowen v. Bell, 20 Johns. 338; Jordon v. Cooper, 3 S. & R. 564, 570, 355; Hutchinson's Adm'r v. Sinclair, 7 Mon. R. 291; Gully v. Grubbs, 1 J. J. Marsh. 388, 390.

STEELE v. WRIGHT, cited 1 Term R. 708.

Questioned and overruled in Hare v. Grove, 3 Anstr. 687; and Holtzapffel v. Baker, 18 Ves. 115.

STEELVE v. WRIGHT, cited in Doe v. Sandham, 1 Term R. 708.

S. P. as in Brown v. Quilter (ante).

STEHLEY v. HARPER, 5 S. & R. 544.

Overruled, it seems, in Thompson v. Gifford, 12 S. & R. 74.

STEIGLITZ v. EGGINTON, 1 Holt's N. P. R. 141.

Gibbs:—"One man cannot authorize another to execute a deed for him but by deed. No subsequent acknowledgment will do."

Denied in Cady v. Sheppard, 11 Pick. 406 *et seq.*; Seaton v. Bunker, 1 Hall, 262.

STENT v. BAYLIS, 2 P. Wms. 217.

Denied in Revell v. Hussey, 2 Ball & Bea. 287, as to a dictum of Sir J. Jekill.

STEPHENS v. BEARD, 4 Wend. 604.

Opposed to Taylor v. Read, 4 Paige, 561.

STEPHENS v. ROWE, 3 Denio, 327.

Overruled, Ledyard v. Jones, 3 Selden, 550.

STEPHENS, NISI PRIUS.

A late work, and one I judge, from a hasty examination, of more than common accuracy.—Redfield, J. 16 Vt. R. 360 n.

STEPHENS v. TOT, Moore's R. 666.

The court suppose that a wife may sue alone on a cause of action against a third person.

Doubted. See Croke's R. (Cro. Eliz. 908), S. C.

STERRET'S CASE, 1 Dall. R. 356.

Doubted, it is said, by the reporter in 4 Dall. note (1), though never expressly overruled.

STEVENS v. ADAMS, Brayt. 29.

Said to be reversed by Turner v. Lowry, 2 Aik. 72. See Ives v. Story, 19 Vt. R. 547.

STEVEN v. OLIVER.

See Holcroft's case (ante).

STEVENS v. ROWE, 3 Denio, 327.

Overruled, Ledyard v. Jones, 3 Selden, 550.

STEVENS v. WILKINS, 8 Vt. R. 230.

"It may be said that this case conflicts with that of Stevens v. Wilkins. If so, I cannot regret it; for I never very well comprehended the justice of that decision." Mann v. Holbrook, 20 Vt. R. 525.

STEVENSON v. AGRY, 7 Ohio R. 604.

See Swan's Stat. 717, s. 68; and Raphlier v. Orrick (ante).

STEVENSON v. WATSON, 1 Bos. & Pul. 365.

Overruled in Hewett v. Bellott, 2 B. & Ald. 745. See Sheriff v. Gresley, 5 N. & M. 491. That an attorney cannot commence an action for costs after an order to tax his bill, until the taxation is completed, or the order is waived.

STEWART v. COMMONWEALTH, 4 Serg. & Rawle, 195.

That in the indictment for stealing notes, it was necessary to aver that the same were "due and unpaid."

Denied in M'Laughlin v. The Commonwealth, 4 Rawle, 484.

STEWART v. EAST INDIA CO., 2 Vern. 380.

In Demurrer v. Corp. of Chippenham, 14 Ves. 245. The counsel for the defendants relied upon Steward v. East India Co.; but Sir Samuel Romilly, counsel for the plaintiff, said it was among the many bad cases in that book; and the chancellor said he suspected a misprint.

STEWART v. CHAMPAIGN CO., 4 Ohio R. 99.

See Montgomery v. Kemp (ante).

STEWART v. DUNLOP, 4 Bro. Parl. C. 483.

Thompson, J., in 12 Wheat. 415, says, that this case "is very imperfectly reported, the reasons of the judgment, and the ground on which the decision rested, not appearing in any report of the case." See the observations of Story, J., in 4 Mason, 77.

STEWART v. FORBES, 1 Mac. & Gor. 187.

Doubted, Dudgeon v. Thompson, 29 Eng. L. & E. R. 12.

STICKLE v. PEARSON.

Cited in Thompson v. Stent, 1 Taunt. 322, as having been wrongly decided.

STILEMAN v. ASHDOWN, 2 Atk. 477.

Courts of Equity have long been endeavoring to free themselves from rules which clash with the substantial ends of justice, the satisfaction of debts, and they have accordingly got rid of Ld. Hardwicke's doctrine, in Stileman v. Ashdown, as savoring too much of technicality. Leahy v. Dancer, 1 Moll. Ch. R. 319, 322, 323.

STILES v. RAWLINS, 5 Esp. N. P. C. 133.

That if the declaration professes to describe the writ, any omission was fatal, however immaterial the words might be.

Denied in Cousins v. Brown, Ry. & Moo. 291, by Best, C. J., who said "it was shaken, if not overruled, in a recent case."

STILES v. STEWART, 12 Wend. 473.

See Turner v. Roby, 3 Coms. 193.

STILLWELL v. HASBROOK, 1 Hill, 561.

Doubted, Tracy v. Rathbun, 3 Barb. 543.

STITT v. WARDELL, cited Park on Ins. 388, 6th ed.

Doubted in Urquhart v. Barnard, 1 Taunt. 450.

STOEVER v. STOEVER, 9 S. & R. 434.

That in *assumpsit*, if the plaintiff declare that the defendant, *being indebted* to the plaintiff, &c., *in consideration thereof* promised, it is good without alleging any request of the defendant.

Doubted, Stephens on Pleading, 47.

It has been *said* in several cases in New York, that "if a promise

STOEVER v. STOEVER, 9 S. & R. 434—continued.

founded on a past consideration be not laid to have been on request, a request may be implied;" Hicks v. Burhans, 10 Johns. 243; Comstock v. Smith, 7 ib. 88; and in Doty v. Wilson, 14 ib. 382. But these *dicta* seem not to be sound. See 1 Caines, 585; 3 B. & P. 249 n.; 1 Blackf. R. 247.

STOKES v. CARNE, 2 Camp. 339.

That the register of a ship, obtained upon the oath of one of the defendants, was *prima facie* evidence against all of them.

Overruled in Tinkler v. Walpole, 14 East, 226. See 2 Conn. 233. Gould, J.

STOKES v. COOPER, cited in a note to Smith v. Raleigh, 3 Camp. 514.

Denied in Reeve v. Bird, 1 Cromp. M. & Ros. 36.—Parke, B.: "That decision is at variance with the older authorities;" and see Christopher v. Austin, 1 Kernan, 219.

STOKES v. MOORE, 1 Cox, 219.

Defendant wrote instructions for a lease to the plaintiff, in these words, viz.: "The lease renewed; Mrs. Stokes to pay the king's tax; also to pay Moore £24 a year, half-yearly, &c.; Mrs. Stokes to keep the house in good tenantable repair, &c." Stokes, the lessee, filed a bill for a specific performance, and the Court of Exchequer held it not to be a sufficient signing to take the agreement out of the statute; although it was not necessary to decide the point.

Doubted by Ld. Eldon. See 1 Sugd. on Vend. 102 (Am. ed. 119). See also the observations of Dorsey, J., in 1 Maryland R. 149.

STOMFIL v. HICKS, 2 Salk. 413, pl. 2; 1 Ld. Raym. 480.

S. P. as in Anon. 2 Salk. 413, pl. 4 (ante). Denied by Buller, J., in Birch v. Wright, 1 D. & E. 380.

STONE v. BLACKBURN, 1 Esp. 37.—Kenyon.

That the objection to the witness on the ground of interest may be taken at any stage of the cause.

Doubted in Beeching v. Gower, Holt N. P. C. 314, by Gibbs, Ch. J., where the examination of a witness had been completed, and he had left the box, but was recalled by the judge for the purpose of asking him a question; on the objection being taken, the judge ruled that it was then too late to object to his competency. At all events, the objection must

STONE v. BLACKBURN, 1 Esp. 37—continued.

be made at the trial; 1 Phil. Ev. 148; 7 Mass. 538. The American cases seem to be clear, that the objection may be made during any part of the trial. Butler v. Tufts, 13 Maine, 302; 6 Greenl. 308; Stout v. Wood, 1 Blackf. 72. It seems, however, too late to object after the witness has testified, if it appears that the party objecting knew of the ground of his exception before the witness had testified. 8 Pick. 390; Butler v. Butler, 3 Day, 214.

STONE v. LINGWOOD, 1 Str. 651.

Held by Lord Mansfield in Green v. Farmer, 4 Burr. 2218, not to be law.

STONE v. VANCE, 6 Ohio R. 246.

"Turned upon a peculiar state of facts." Wood, J., Bright v. Carpenter, 9 Ohio R. 141.

STONER v. GIBSON, Hob. 81. b.

If the defendant pleaded in bar to the plaintiff's action a plea which was good, and the plaintiff demurred to it, and the defendant pending the demurrer, pleaded another matter, *puis darrein continuance*, which is decided against him, either on demurrer or on trial, still he would be entitled to the benefit of his first plea; because it being a good bar to the plaintiff's action, and standing confessed by him on the record, he cannot have a judgment in his favor against his own confession.

Doubted in Staple v. Heydon, 6 Mod. 7, by Powell, J., in Martin v. Wyvill, Stra. 493; Eyre, J., who cited Moore, 871, S. C. which is contrary to Hobart, pl. 1210, it was there resolved that a plea *puis darrein continuance* could not be pleaded after demurrer; Bauer v. Roth, 4 Rawle, 52,—Kennedy, J.

STORRS v. WETMORE, Kirby, 203; Starr v. Tracy, 2 Root. 528.

S. P. as in Moore v. Hathaway (post).

STORY, Agency, s. 298.

Questioned, Webb v. Pierce, 5 Monthly Law, Rep. N. S. 9.

STORY, Conflict of Laws.

See Steele v. Curle, 4 Dana Ken. R. 386.

STORY ON CONTRACTS, s. 657.

Does not state the law correctly. See Christopher v. Austin, 1 Kernan, 219.

1 STORY'S EQ. JUR. p. 475, 497, citing Primrose v. Bromley, 1 Atk. 89.

"If one of the *sureties* dies, the remedy at law lies only against the surviving *parties*; but in equity it may be enforced against the representative of the deceased *party*, and he may be compelled to contribute to the surviving *surety*, who shall pay the whole debt."

Doubted in Kennedy v. Carpenter, 1 Whar. R. 364.

STORY, EQ. JUR. p. 322, vol. 3.

Dissented from, Erskine v. De la Baum, 3 Texas R. 417-418.

STORY ON SALES, ss. 315, 316.

Opposed to Andrews v. Durant, 1 Kernan, 44.

STOTT v. HOLLINGWORTH, 3 Mad. 161.

Overruled, Macpherson v. Macpherson, 16 Jur. 847; 16 Eng. R. 45, 54.

STOUFFER v. COLEMAN, 1 Yeates, 393.

Doubted in Kauffelt v. Bower, 7 Serg. & R. 75, by Gibson, J.:—"I can hardly believe that the case of Stouffer v. Coleman, 1 Yeates, 393, the first of the two in the order of time, is accurately reported."

STOVALL v. NORTHERN BANK OF MISSISSIPPI, 5 Sme. & M. 20.

See Thomas v. Phillips (post).

STOVER v. DUREN, 2 M'Cord, 266.

Denied in Walker v. Briggs, 1 Hill's R. 127; Crenshaw v. Westel, 2 ib. 419: "The case of Creyton and Sloan v. Dickerson, 3 M'Cord, 348, (held) that a payment by a prisoner in execution, to be such an one as would deprive him of the benefit of the act, must be an undue preference to the prejudice of the plaintiff. The construction is I think perfectly correct, notwithstanding what is said to the contrary in the case of Stover v. Duren, 2 M'Cord, 266."

STOWE v. WARD, 1 Hawks, 604.

Overruled in Stowe v. Ward, 1 Dev. R. 67, 9157, as to the order of division, *per capita* instead of *per stirpes*; and see, 2 Dev. Eq. R. 509.

STOWE'S CASE, Cro. Jac. 603.

Overruled. Rex v. Everard, 1 Ld. Raym. 638; Holt, 173; 1 Salk. 195.

STRANGE'S REPORTS.

Strange is not a book we can place much reliance in. Hart, V. C., in Green v. Weaver. 1 Simmons, 405.

STRANGFORD v. GREEN, 2 Mod. 228; Kyd on Awards; Watson on Partnership.

That the case of submission to arbitration, is an exception to the general principle that one partner can bind another to strangers by a writing not sealed.

Denied in Southard et al. v. Steel, 3 Mon. R. 436, 7, 8; Gow on Part. 483; Taylor et al. v. Coryell et al. 12 S. & R. 249, 250.

STRELLEY v. WINSON, 1 Vernon, 298, n. a.

Opposed Anonymous, Skinner, 230; Woolrych on Com. Law, 31, n. y. says—"It seems that the case of Strelley v. Winson, is the same with that at Skinner, 230; and that the report in Skinner is the more accurate, which declares that upon an *express prohibition* of the voyage, the dissenting owner will not be entitled to profit, nor be liable to loss."

The ground of this decision is said to be misstated; the true ground being that the part owner who complained had not *expressly* dissented. See Horn v. Gilpin, Amb. 255; Abbot on Shipping, 87, note (m).

STRICKLAND v. CROKER, 2 Ca. in Ch. 211.

A male infant is bound by a marriage settlement.

Doubted in Milner v. Ld. Harewood, 18 Ves. 259.

STRIGLITZ v. EGGINTON.

See Harrison v. Jackson (ante).

STRIKE v. BATES, 1 Lev. 207, 208; 1 Sid. 326.

That by *proper county* in Stat. 16 and 17 Car. II., cap. 8, is intended the county where the issue *arises*.

Overruled in Craft v. Boite, 1 Saund. 246, n. 3, and the cases there cited.

STRIKER v. KELLY, 7 Hill, 9.

Reversed, 2 Denio. 323.

STRINGFELLOW'S CASE, Dyer, 67 b.

Decides in principle that until the creditor obtains a consummate right, the crown's rights are not ousted.

The authority of that case though doubted for a time, cannot now be disputed. It was recognized as good law by Hobart, in Sheffield v. Ratcliffe, Hob. 339; by Ld. Hardwicke and the two Ch. Justices, Ryder and Willes, in Rex v. Cotton, Parker, 112; and by the courts of C. B. and K. B. in Uppom v. Sumner (post), and Rorke v. Dayrell (ante).

STRONG v. FERGUSON, 14 Johns. 161.

In debt on arbitration bond, where a power to award costs was not included in the submission, the arbitrators awarded costs; and the court also allowed the same.

Overruled in Gordon v. Tucker et al., 6 Greenl. 254. "The arbitrators cannot award the costs of reference, unless power be expressly given them for that purpose."

STRONG v. SMITH, 3 Caines' R. 160; S. P. Tucker v. Ladd, 7 Cowen, 450.

It was *held*, that a traverse may be taken to any number of facts if all are necessary to make one point.

Overruled in Tubbs v. Caswell, 8 Wend. 130; Satterlee v. Sterling, 8 Cowen, 233. See O'Brien v. Saxon, 2 B. & C. 908; Selby v. Bardons, 3 B. & Ad. 9; Robinson v. Raley, 1 Burr. 316, and the note to the last, (in Smith's Lead. Cas., p. 247–8); Vivian v. Jenkin, 3 Ad. & El. 741.

STRONG v. STRONG, 2 Aiken, 373.

Modified and overruled so far as it conflicts in principle with the doctrine held in Lovell v. Leland, 3 Verm. R. 581; Paris v. Hulett, 26 Verm. R. 308.

STURTEVANT v. BALLARD, 9 Johns. 337.

That a voluntary sale of chattels, with an agreement in the instrument that the vendor was to retain the possession for a stipulated time, is fraudulent as to creditors.

Overruled in Bissell v. Hopkins, 3 Cowen, 166. But see Divver v. M'Laughlin, 2 Wend. 596; Collins v. Brush, 9 Wend. 198. See also 2 R. S. (New York) 136, s. 5, 6, 7; Cunningham v. Freeborn, 11 Wend. 240; 2 Kent Com. 528 *et seq.*

STUART v. CLOSE, 1 Wend. 438.

Reversed in Close v. Stuart, 4 Wend. 95.

STURT v. BLANDFORD, cited 4 Esp. 16.

S. P. as in Windham (Lord) v. Wycombe (post).

STYMETS v. BROOKS, 10 Wend. 206.

Land sold on an execution sued out after the death of the defendant, but *tested* as on the day *previous* to his death, passed no title.

Denied in Warder v. Tainter, 4 Watts, 283, 284 :—" It appears to be contrary to the English law, as well in respect to taking lands in execution there, as goods." It may be sustained, perhaps, by the statute law on the subject.

SUMNER'S APPEAL, 4 Harris, 169.

Disapproved, Hutchinson v. M'Clure, 8 Harris, 63 ; (20 Penn. State R.)

SUMNER v. BUEL, 12 Johns. 465.

Questioned, Ryckman v. Delavan, 25 Wend. 186.

SUMNER v. BRADY, 1 H. Bl. 630.

Overruled in Rushton v. Chapman, 2 Bos. & Pul. 340.

SUNBOLF v. ALFORD, 3 M. & W. 248.

Overruling a dictum of Eyres, J., 1 Show. 269. The former case decides that an innkeeper cannot detain the person of his guest, or take off his clothes, in order to secure payment of his bill.

SUPERVISORS OF ALBANY v. DORR, 25 Wend. 440 ; 7 Hill, 583, 584 n.

Overruled, Muzzy v. Shattuck, 1 Den. 233.

SUPERVISORS OF ALBANY v. DURANT, 9 Paige, 182.

Reversed, 26 Wend. 26.

SUPERVISORS OF SULLIVAN v. DIMMICK, 18 Wend. 538.

Overruled, Supervisors of Onondaga v. Briggs, 2 Denio, 26.

SURTEES v. HUBBARD, 4 Esp. 203.

When a party indebted to another consents to pay over the amount to a third person, the latter can maintain assumpsit for it.

Denied, it seems, in Owings v. Owings, 1 Maryland R. 484, citing Com. Dig. 309 (note p. by Mr. Hammond). But see Fairlie v. Denton, 8 B. & C. 395 ; Price v. Easton, 4 B. & Ad. 433.

SUTHERLAND v. BRUSH, 7 Johns. Ch. 17.

Chan. Kent, it would seem, adopts without qualification the doctrine of Nugent v. Gifford (ante).—Whale v. Booth (post)—viz.: that the executor has the absolute property in the assets, and could transfer them at pleasure to his own benefit.

Denied, if not overruled, in Colt v. Lasnier, 9 Cowen, 320.

SUTLIFF v. FORGEY, 1 Cowen, 89; 5 ib. 713.

Denied in Priest v. Cummings, 16 Wend. 616, in respect to the marginal note.

SUTTON. See *Ex parte* Sutton.

SUTTON v. NELSON, 10 S. & R. 238.

"In Sutton v. Nelson"—the word "filing" was carefully used for delivering, on the supposition that one would follow the other as a matter of course." White v. Willard, 1 Watts, 42. See also 9 Bing. 46. A paper is said "to be filed when it reaches its place of final custody."

SUYDAM v. KEYES, 13 Johns. 444.

That the officer must see that he acts within the scope of the legal powers of those who commanded him.

Overruled in Savacool v. Boughton, 5 Wend. 170.

SUYDAM v. WESTFALL, 4 Hill, 211.

Reversed, 2 Denio, 205.

SWAINE v. PERINE, 5 Johns. Ch. 492; Hale v. James, ib. 258.

In favor of the widow's right to profits against the alienee, from the death of the husband.

Denied in Tod v. Baylor, 4 Leigh's R. 517.—Tucker.

SWAN v. SOWELL, 3 B. & Ald. 759.—Bayley.

If a party admits the debt, and does not say that it is satisfied, or refuses to pay it, alleging at the time an insufficient excuse for not paying it, the law will, in these cases, raise an implied promise to pay the debt then acknowledged to be due.

Denied in Wetzell v. Bussard, 11 Wheat. R. 312 *et seq.*—Marshall, C. J.

SWART v. SERVICE, 21 Wend. 36.

Overruled, Webb v. Rice, 6 Hill, 219.

SWAYN v. STEPHENS, Cro. Car. 245, 333.

Doubted in Philpott v. Kelley, 3 Adol. & El. 106; where Patteson, J., observes:—"A case of Swayn v. Stephens, Cro. Car. 245, 333, was cited by my brother Coleridge, in which, although the defendant had actually sold the ship for which the action was brought more than six years before, the court presumed, in favor of the plaintiff (who had been unable to sue the defendant, by reason of his remaining abroad), that the ship had come to the defendant's hands a second time and been converted anew. That decision was against the opinion of one of the judges, and savors of subtlety; if such a question arose now, I should doubt if it would be decided in the same manner."

SWASEY v. ADMINISTRATORS OF VANDERHEYDEN, 10 Johns. R. 33.

A negotiable note given by an infant even for necessaries is void.

Overruled in Goodsell v. Myers, 3 Wend. R. 478; Dubose v. Wheddon, 4 M'Cord, 221; but see Goodsell v. Myers (ante).

SWETLAND v. CREIGH, 15 Ohio R. 118.

Opposed to Hosbrook v. Palmer, 2 McLean's Rep. 10; Fry v. Rousseau, 3 McLean's Rep. 107.

SWETT v. BOARDMAN, 1 Mass. R. 258.

A publication of a will was necessary to give validity to the will.

Overruled by Ld. Ch. J. Gibbs, 7 Taunt. 361; Ray v. Walton, 2 Marsh. (Ky.) R. 73.

SWEET v. HORN, 1 N. H. R. 332.

That a tender of the money secured by mortgage, discharged the land, so that a writ of entry may be maintained where the tender had been refused, in favor of the mortgagor, without bringing the money tendered into court.

Denied in Bailey v. Metcalf, 6 N. H. R. 156.

SWIFT'S DIGEST, 469.

"It is said by Judge Swift, in his Digest, 469, that when a submission is in writing the award must be in writing; but he cites no authorities," and it was decided otherwise, Marsh v. Packer, 20 Vt. R. 200.

SWIFT'S DIGEST, p. 527.

"Judge Swift's distinction between a little dog and a large one as furnishing a uniform test of the parties' right, has been properly waived by the plaintiff's counsel." Clark v. Adams, 18 Vt. R. 429.

SWIFT v. CLARK, 15 Mass. R. 173.

S. P. as in Hooper v. Perley (ante).

Denied in Bronde v. Haven, 1 Gilpin, 606.

SWIFT v. STEVENS.

See Coleman v. Wolcott (ante).

SYLER v. ECKART, 1 Binn. 378.

Explained in Eckert v. Eckert, 3 Penn. 362.—Kennedy.

T.

TAGGARD v. LORING, 16 Mass. 337.

Doubted in Arthur v. Schooner Cassius, 2 Story, 93 ; and see Webb v. Peirce, 5 Monthly Law Rep. N. S. 9.

TALBOT v. BRADDILL, 1 Vern. 183, 394.

Denied by Daggett, J., in 7 Conn. R. 384. "It is too bald to insist that the obligor, by his own act, may discharge the contract before it is due."

TALLHIMER v. BRINCKERHOFF, 20 Johns. 386.

Reversed, 3 Cow. 623.

TALLMADGE v. LYON, 2 Johns. Ch. 56.

Reversed in 14 Johns. 501.

TALLMADGE v. RICHMOND, 9 Johns. 85.

Reversed in Richmond v. Tallmadge, 16 Johns. 307. *Held*, that to an action of escape, a plea of voluntary return by the prisoner within the liberties, before suit brought, and that plea found by the jury to be true in fact, is a valid defence.

TAPPEN v. KAIN, 12 Johns. 120.

The truth or falsity of the *plene administravit* must be determined by the inventory only.

Overruled in Willoughby v. M'Clure, 2 Wend. 608.

TAPPENDEN v. RANDALL, 2 B. & P. 472.

That no interest can be recovered in an action for money had and received.

Denied in Wood v. Robbins, 11 Mass. 504; See also Pease v. Barber, 3 Caines, 266; Emmerson v. Heelis, 2 Taunt. 38; Raine v. Bell, 9 East, 195; Laroche v. Oswyn, 12 East, 131; Cormac v. Gladstone, 11 East, 347; Urquhart v. Barnard, 1 Taunt. 450. See 2 Sug. on Vend. c. 10 (9th Lond. ed.)

TARPLEY v. HAMER, 9 Sme. & M. 310.

This case conflicts with Massingill v. Downs, 7 How. 760. The case of Tarpley v. Hamer was, however, followed in Bonaffee v. Fisk, 13 Sme. & M. 684, in preference to the case of Massingall v. Downs.

TASSELL v. LEWIS, 1 Ld. Raym. 743.

"3. If the indorsee of a bill accepts but two pence from the acceptor, he can never after resort to the drawer."

Overruled in Walwyn v. St. Quintin, 1 B. & P. 652; see Cory v. Scott, 3 Barn. & Ald. 619.

TATE v. AUSTIN, 1 P. Wms. 264; 2 Vern. 689.

Overruled, it seems, in Aguilar v. Aguilar, 5 Madd. R. 414. *Held*, that if the wife's separate estate be pledged for the debt of her husband, she is entitled to all the rights and remedies of a *personal surety*. See also Gahn v. Niemcewicz, 11 Wend. R. 312.

TAUNTON, vol. viii.

The 8th volume of Taunton's Reports "is very apocryphal authority. It was not supervised by Mr. Taunton himself, but made up from his notes."—Parke, B., Hadley v. Baxendale, 26 Eng. R. 398, and Peto v. Reynold, ib. 404.

TAWNEY v. CROWTHER, 3 Bro. Ch. Ca., 161, 318.

An agreement respecting lands was prepared in writing and kept by defendant, who refused to sign it, but afterward wrote a letter alluding to it, which Ld. Thurlow thought was tantamount to signing, and decreed for the plaintiff.

Ld. Redesdale says this case is not accurately reported, and that he could never bring his mind to agree with Ld. Thurlow's decision. Clinan v. Cooke, 1 Sch. & Lefr. 34. See Sug. on Vend. 93, 94 (7th Lond. ed.) "But in these cases there must be a clear reference to the particular paper, so as to prevent the possibility of one paper being substituted for another." See Tanner v. Smart, 6 B. & C. 603; See 16 Wend, 28.

TAYLOR, LANDLORD AND TENANT, 443.

States the law erroneously. See Christopher v. Adams, 1 Kernan, 219.

TAYLOR v. BRYDEN, 8 Johns. 173.

Overruled, Andrews v. Montgomery, 19 Johns. 162.

TAYLOR v. CHURCH, 1 Smith, 279.

Reversed, 4 Selden, 452.

TAYLOR v. COLE, 3 Term R. 295; 2 Phil. Ev. 304.

By the modern practice, the sheriff delivers only legal possession; and the creditor, to obtain actual possession, must proceed by ejectment.

Denied in Rogers v. Pitcher, 6 Taunt. 207. Gibbs, C. J.—"There is no case in which a party may maintain an ejectment, in which he cannot enter." See the observations of Ch. J. Parsons, in 3 Mass. R. 218.

TAYLOR v. FLEET, 1 Barb. 471.

Reversed in 4 Barb. 95.

TAYLOR v. HENNIKER, 12 Ad. & El. 488; 4 Per. & D. 242; 4 Jur. 719.

Overruled, Tancred v. Leyland, 15 Jur. 394; 3 Eng. R. 482.

TAYLOR v. HIGGINS, 3 East, 169.

Giving a bond by the plaintiff, in satisfaction of a former bond signed by himself and the defendant, and as his surety, was not to be considered as payment in respect to the defendant.

Decided differently by Ld. Kenyon, in Barclay v. Gouch, 2 Esp. 547. See 9 Mass. 553; 4 Pick. 444; 11 Johns. 516, and 6 Greenl. 333.

TAYLOR v. HORDE, 1 Burr. R. 60.

The effect of a conveyance by ancient feoffment.

Doubted, 2 Preston on Abstracts, 390 *et seq.;* but approved in Doe v. Lynes, 3 B. & C. 388.

TAYLOR v. JONES, 2 Atk. 600.

S. P. as in Bayard v. Hoffman (ante).

Overruled in England and in Kentucky. See Doyle v. Sleeper, 1 Dana's R. 535.

TAYLOR v. NERI, 1 Esp. 386.

Doubted, Lumley v. Gye, 22 Law J. R. N. S. Q. B. 463; 17 Jur. 827; 1 El. & Bl. 216; 20 E. L. & E. R. 169.

TAYLOR v. READ, 4 Paige, 561.

Opposed to Stephens v. Beard, 4 Wend. 604.

TAYLOR v. STIBBERT, 2 Ves. jr. 437.

Doubted as to one point in Crofton v. Ormsby, 2 Sch. & Lef. 582, 599.

TAYLOR v. WILLIAMS, 2 B. & Adol. 845, 857.

Qualified in Venefra v. Johnson, 6 Car. & P. 53; Mitchell v. Jenkings, 5 B. & Adol. 588.

TELLICOTE'S CASE, 2 Stark. 484.

Doubted in Roscoe Cr. Ev. p. 46 (Am. ed.)—"It seems difficult to maintain the decision in *Tellicote's case.*"

TEMPLAR v. M'LACHLIN, 2 New R. 136; Passmore v. Birnie, 2 Stark. R. 5; 2 Phil. Ev. p. 72.

Doubted in 2 Phil. Ev. p. 72, n. (6).

TERRITORIAL SUPREME COURT DECISIONS.

The decisions of the Territorial Supreme Court are binding on the District Courts of the State. Telford v. Burney, 6 West. Law Jour. 386.

TERRY v. DUNTZE, 2 Hen. Bl. 380.

Overruled in Watchman v. Crook, 5 Gill & J. 239; Evans v. Harris, 19 Barb. 416; 8 Mass. R. 80; 10 Johns. 203; See Sears v. Fowler (ante).

TETLEY v. TAYLOR, 21 Law J. R. N. S. Q. B. 2; 8 Eng. R. 370.

Reversed, 21 Law J. R. N. S. Q. B. 346; 12 Eng. R. 469.

TEXIRA v. EVANS, cited 1 Anstr. 228.

Overruled in England, Hibblewhite v. M'Morine, 6 M. & W. 200; sustained in America, Knapp v. Maltby, 13 Wend. 587; 22 ib. 348; The Richmond Manufac. Co. v. Davis, 7 Blackf. 412.

TEYNHAM, dem. of, v. TYLER, 4 M. & P. 377.

Doubted in Crease v. Barrett, 1 C. M. & Ros. 932–3.

THACKARA v. CURREN, 2 Browne, 246.

Doubted in Rodrigue v. Curcier, 15 S. & R. 83.

THALHIMER v. BRINKERHOFF, 20 Johns. 386.

Reversed in S. C., 3 Cowen, 623.

THAMES MANUF. CO. v. LATHROP, 7 Conn. 550.

Doubted in note to Stearns v. Miller, 25 Vt. (2 Deane) R. 27.

THANET v. PATTERSON, K. B. East, 12 G. II. cited in Bull. N. P. 235.

"If a party wants to avail himself of the decree only, and not of the answer or depositions, the decree being under the seal of the court, and enrolled, may be given in evidence without producing the bill and answer, and the opposite party will be at liberty to show that the point in issue there was not *ad idem* with the present issue.

Doubted in Gres. on Ev. 110; 1 Phil. Ev. 392-3.

THAYER v. SHERMAN, 12 Mass. 441.

Denied in 5 N. H. R. 520. See also Staple v. Staple (ante).

THELLUSON v. SMITH, 2 Wheat. 396.

Explained in Conrad v. The Atlantic Ins. Co., 1 Pet. R. 387, 451, where Mr. J. Johnson says—"I have never acknowledged its authority in my circuit, on the point supposed to be decided by it, viz.: the precedence of the debt of the United States as to a previous judgment, in the case of a general assignment."

THE PEOPLE v. AM. ART UNION, 13 Barb. 577.

Reversed, 3 Selden, 540.

THE PEOPLE v. BERNER, 13 Johns. 384; 17 ib. 391.

Denied in Sasscer v. Young, 6 Gill & J. 243.—Chambers. *Held*, that a creditor may forbear during his pleasure the rigorous prosecution of his demand, reposing upon the faith of the security he has taken.

THE PEOPLE v. CANAL APPRAISERS, 13 Wend. 355.

Reversed, 17 Wend. 571.

THE PEOPLE v. FERGUSON, 8 Cow. 102.

Questioned, The People v. Tisdale, 1 Doug. (Mich.) R. 65.

THE PEOPLE v. FREER, 1 Cai. 485.

Overruled? The People v. Van Wyck, 2 Cai. 333.

THE PEOPLE v. GAREY, 6 Cow. 642 ; 9 ib. 641.
Limited, The People v. Morrell, 21 Wend. 563.

THE PEOPLE v. GENNING, 11 Wend. 18.
Doubted, Morgan v. Frees, 1 Amer. Law Reg. 92.

THE PEOPLE v. HASKINS, 7 Wend. 463.
Overruled, Payn v. Beal, 4 Den. 405.

THE PEOPLE v. HUMPHREY, 7 Johns. 314.
That a confession made by defendant, of his first marriage, to a justice of the peace when brought before him on a charge of bigamy, was not sufficient proof of a marriage in fact.
Denied in Commonwealth v. Murtagh, 1 Ashmead's R. 275.
Overruled; see Slate v. Roswell, 6 Conn R. 453.

THE PEOPLE v. HAYNES, 11 Wend. 557.
Reversed, 14 Wend. 546.

THE PEOPLE v. JANSEN, 7 Johns. 332.
That the plaintiffs (The People) are chargeable with the consequences of the neglect of their agents.
Overruled in The People v. Russell, 4 Wend. 570 ; see 9 Wheat. 720 ; 11 ib. 134 ; 12 ib. 505. Establishing the principle that *laches* is not imputable to the government, and that statutory directions to public officers, being directory form no part of the contract with the surety.

THE PEOPLE v. JEWETT, 6 Wend. 386.
Questioned, Briggs v. Georgia, 15 Vt. R. 72.

THE PEOPLE v. JOHNSON, 12 Johns. R. 292.
In this case, Young v. King (3 Term R. 98) is cited to establish the opposite of its true doctrine ; McKenzie v. The State, 6 Eng. (Ark.) R. 598.

THE PEOPLE v. KANE, 23 Wend. 414.
See Clark v. The People, 26 Wend. 599.

THE PEOPLE v. KOEBER, 7 Hill, 39.
Overruled, The People v. Kane, 4 Den. 530.

THE PEOPLE v. MAYOR OF BROOKLYN, 6 Barb. 209.
Reversed, 4 Coms. 419.

THE PEOPLE v. MAYOR OF BROOKLYN, 9 Barb. 535.
Overruled, Heywood v. Mayor, &c., of N. Y., 3 Selden, 314.

THE PEOPLE v. MAYOR OF NEW YORK, 25 Wend. 680.
Overruled in Purdy v. The People, 4 Hill, 385.

THE PEOPLE v. MORRIS, 13 Wend. 325.
Overruled in Purdy v. The People, 4 Hill, 385.

THE PEOPLE v. NEW YORK COMMON PLEAS, 13 Wend. 649.
See Koon v. Thurman, 2 Hill, 357.

THE PEOPLE v. NIAGARA COMMON PLEAS, 12 Wend. 246.
Overruled in The People v. Judges of Oneida, 21 Wend. 20.

THE PEOPLE v. PEARSON, 3 Scammon, 407; Delahay v. M'Connell, 4 ib. 157.
Overruled in part, Pearl v. Wellman, 4 Gilman, 395; Ill. Mut. Fire Ins. Co. v. Marseilles Manuf. Co., 1 ib. 236.

THE PEOPLE v. PECK, 3 Scammon, 119; Bloom v. Goodner, Breese, 35; Guykowski v. The People, 1 Scammon, 476.
Overruled in part, Greenup v. Stoker, 3 Gilman, 202.

THE PEOPLE v. PURDY, 2 Hill, 31.
Reversed, 4 Hill, 385.

THE PEOPLE v. RECTOR, 19 Wend. 569.
Overruled in The People v. Gay, 3 Selden, 378.

THE PEOPLE v. RICHARDSON, 3 Cowen, 357.
Overruled, S. C., 4 Cowen, 97.

THE PEOPLE v. SCHOHARIE COMMON PLEAS, 1 Wend. 315.
Overruled, S. C., 2 Wend. 260.

THE PEOPLE v. SCHUYLER, 5 Barb. 166.
Reversed, 4 Coms. 173.

THE PEOPLE v. SERGEANT, 8 Cowen, 139.
Questioned in Farmer v. Trustees of Albion, 5 Hill, 121.

THE PEOPLE v. STONE, 5 Wend. 39.

The language of the court seems in favor of the right to grant a new trial in capital cases.

Overruled in The People v. Comstock, 8 Wend. R. 549; see the observations of Story, J., 2 Sum. R. 57, and opposed to The People v. Dutchess Co., 2 Barb. 282.

THE PEOPLE v. SUPREME COURT OF NEW YORK, 5 Wend. 114; 10 ib. 285.

Overruled, Judges of Oneida v. The People, 18 Wend. 79; The People v. Judges of Dutchess, 20 Wend. 658.

THE PEOPLE v. SUPERVISORS OF COLUMBIA, 10 Wend. 363.

See Fairbanks v. Wood, 17 Wend. 329.

THE PEOPLE v. SUPERVISORS OF KINGS, 7 Wend. 530.

Overruled, S. C. 16 Wend. 520.

THE PEOPLE v. THE JUSTICES OF CHENANGO, 1 Johns. Cas. 179.

Seems to deny to all courts of inferior jurisdiction the right to grant new trials on the merits, where that right is not given by the power instituting them.

Overruled in The People v. Stone, 5 Wend. 39, as to courts of *oyer and terminer.*

THE PEOPLE v. THE UTICA INS. CO., 15 Johns. 334.

Doubted in Utica Ins. Co. v. Kip, 8 Cowen, 22–3.—Woodworth.

THE PEOPLE v. THOMPSON, 21 Wend. 235.

Reversed, 23 Wend. 537.

THE PEOPLE v. TOMPKINS GENERAL SESSIONS, 19 Wend. 154.

See Thayer v. Overseers of Hamilton, 5 Hill, 443.

THE PEOPLE v. TOWNSEND, 1 Johns. Cas. 105.

Opposed to The People v. Dutchess Oyer and Terminer, 2 Barb. 282.

THE PEOPLE v. VANE, 12 Wend. 78.

Doubted, Ware v. Ware, 8 Greenl. 55; Craig v. Craig, 5 Rawle, 91.

Overruled, The People v. White, 24 Wend. 520; Robb v. Hackley, 23 ib. 50.

THE PEOPLE v. VAN RENSSELAER, 8 Barb. 189.

Reversed, Dec. 1853.

THE PEOPLE v. WATERS, 1 Johns. Cas. 137.

Overruled, The People v. Brown, 6 Cowen, 41.

THE PEOPLE v. WHITE, 22 Wend. 167.

Reversed, 24 Wend. 520.

THE PEOPLE v. WHITESIDE, 23 Wend. 9.

Reversed, 26 Wend. 634.

THE PEOPLE v. WORKS, 7 Wend. 486.

Overruled, The People v. Supervisors of Queens, 1 Hill, 195.

THE PEOPLE v. WRIGHT, 9 Wend. 193.

Doubted, The People v. Stearns, 21 Wend. 409.

THE PEOPLE v. YATES COMMON PLEAS, 1 Wend. 90.

"The decision of the Supreme Court in Massachusetts in the case of Bachelor v. Bachelor, 1 Mass. R. 255, is directly in point; and appears to have been better considered and to rest on sounder reasons than the adversary opinion of our own court in an anonymous case involving the same question, 1 Wend. 90."—Foot, J. Sheldon v. Wright, 1 Selden, 517–523.

THE PEOPLE v. YOUNG, 7 Hill, 44.

Overruled, The People v. Kane, 4 Den. 350.

THE SCHOONER CONSTITUTION v. WOODWORTH, 1 Scammon, 511.

Overruled, Edwards v. Vandemack, 13 Ill. 633; Ward v. The People, ib. 636.

THE STATE v. COX, 3 Eng. (Ark.) R. 436.

Overruled, Eason v. The State, 6 Eng. (Ark.) R. 482.

THE STATE v. POLL AND LAVINIA, 1 Hawks, 442.

Explained in a note at the commencement of the volume.

THE STATE v. SMITH, 32 Maine R. 370.

Doubted, Wilson v. The State, 1 Smith (Wisconsin) R. 194.

THERESA v. BONITA, 4 Rob. Adm. R. 236.

S. P. as in Artaxara v. Smallpiece (ante).

THOMAS v. COOKE, 2 Stark. 408; 2 B. & Ald. 119.

Questioned, Lyon v. Reed, 13 M. & W. 308.

THOMAS v. DAKIN, 22 Wend. 9.

Doubted, Warner v. Beers, 23 Wend. 103.

THOMAS v. DENING, 3 Har. & J. R. 242; and Bulkley v. Landon, 3 Conn. R. 76.

The plaintiff having assigned his interest to another may yet impair that interest, by confessions made by him, to the prejudice of his assignee.

Opposed, Frear v. Everston, 20 Johns. R. 142. *But* if "you derive title under this party, what he says is evidence against you." Haddam v. Mills, 4 C. & P. 486. "Declarations respecting the subject matter of a cause, by a person who, at the time of making them, had the same interest in such matter as one of the parties now has, are admissible in evidence against that party." Woolway v. Rowe, 1 Ad. & El. 114.

THOMAS v. PHILLIPS, 4 Sme. & M. 358.

"This decision (Stovall v. Northern Bank of Mississippi, 5 Sme. & M. 20) is not intended to conflict with the opinion in the case of Thomas v. Phillips, or to limit the rule there laid down. Here there are special circumstances, which did not exist in that case, to exempt the cause from the operation of the general rule."

THOMAS v. THOMAS, 6 D. & E. 671.

The doctrine laid down by Lawrence, J. that the intent of the devisor was to be collected from what passed at the time of making the will;—examined and restricted in its application. Jackson v. Sill, 11 Johns. 219.

THOMAS v. THOMPSON, 2 Johns. R. 471.

S. P. as in Toller's Tr. on Executors, &c. (post).

THOMPSON v. BOND, 1 Camp. 4.

Ld. Ellenborough says "If I represent that I have an order from A., when I have no such order, and so induce a person to deal with me on the credit of A., I am not principally liable as for a debt of my own."

Overruled in Hill v. Perrott, 3 Taunt. R. 274.

THOMPSON v. BUTTON, 14 Johns. 84.

Thompson, C. J.: "That as a general proposition it is undoubtedly true, that goods taken in execution are in custody of the law, and cannot be taken out of such custody, when the officer has found them in and taken them out of the possession of the defendant in the execution."

Limited and applied in Clark v. Skinner, 20 Johns. 467, and Dunham v. Wyckoff, 3 Wend. R. 280.

THOMPSON v. DOUGHERTY, 12 S. & R. 448.

That a trustee by deed for the benefit of creditors, may not avoid a previous fraudulent assignment.

Overruled in Englebert v. Blanjot, 2 Whar. R. 240.

THOMPSON v. FAUSSATT, Pet. C. C. R. 182.

S. P. as in The Cynthia (ante).

Overruled in Bronde et al. v. Haven, 1 Gilpin, 592, 604.

THOMPSON v. GIBSON, 2 Ohio R. 339.

See Helfistine v. Garrard, 7 Ohio R. 275; Chase, 190, 512, 528.

THOMPSON v. LEACH, 3 Mod. 296, 301; Carth. 211, 435.

That a surrender by an infant or an idiot is void *ab initio*.

Denied in Zouch v. Parsons, 3 Burr. 1794.

THOMPSON v. MILES, 1 Esp. R. 184.

Ld. Kenyon held, that in an action for not performing an agreement, in respect to land, the title deeds must be exhibited, but that the proof of their execution, except of the one under which the plaintiff immediately claimed, was unnecessary.

Overruled in Crosby v. Percy, 1 Camp. 303, where Mansfield, C. J., held, that the vendor of the residue of a term, being the third or fourth assignee, was bound to prove the mesne assignments.

THOMPSON v. MACERONI, 3 B. & C. 1.

Doubted in Smith's Com. on Merch. Law 299, n. (v); See Elliot v. Pybus, 10 Bing. 512: "The report on the case is an extremely meager one."

THOMOND (Earl of) v. Earl of SUFFOLK, 1 P. Wms. 464; 2 ib. 165; ib. 331; 3 ib. 385.

A distinction between a compulsory and voluntary payment in respect to a legacy.

Overruled in Ashburner v. Macquire, 2 Bro. C. C. 110; Innes v. Johnson, 4 Ves. 574.

THORNE v. CRAMER, 15 Barb. 112.

Overruled, Barto v. Himrod, 4 Selden, 483.

THORNE v. PITT, Select Cas. Temp. King, Chan. 54.

Overruled in White v. Hayward, 2 Ves. 461, by Ld. Hardwicke, and in Lowter v. The Mayor, &c. of Colchester, 2 Merivale R. 113.

THORNTON v. DIXON, 3 Bro. Ch. R. 199; S. P. 7 Ves. 425; 9 ib. 500.

Was a question between the heirs and distributees; and Ld. Thurlow held that the nature of the agreement between the partners in that particular case was not sufficient to vary the nature of the property; and, therefore, that after the dissolution of the co-partnership the property would result, according to its respective nature, the real as real, and the personal as personal estate.

Overruled in England, in Crawshay v. Maule, 1 Swanst. R. 508, 523, 527; Leckrig v. Davies, 2 Dow. R. 242; Mr. J. Story (Hoxie v. Car et al., 1 Sumner R. 184): "It has been repeatedly denied by Ld. Eldon, who has held the opposite doctrine, that real estate purchased on the partnership account ought, on the death of one of the partners, to be held to be personal estate." See also Yeatman v. Woods, 6 Yerg. 20; 3 Kent Com. 14.

THORNTON v. WINN, 12 Wh. 183.

Denied in Hyatt v. Boyle, 5 Gill & J. 111.

THOROUGHGOOD'S CASE, Noy, 73.

A, having a judgment in debt and execution against B, who died, and the sheriff levied the money upon the executors of B, it was held by the court to be "nought." The editor of Dyer's R. 76 b. in giving a statement of this case in a marginal note, substitutes the term "void" for "nought."

Overruled by the cases cited by Kennedy, J., in Speer v. Sample, 4 Watts, 369, 374; where it was also said, that the substitution of the term *void* for *nought* was unwarrantable.

THORP, J., in 22 Ass. pl. 67.

That trespass does not lie against a corporation aggregate; for a *capias* and *exigent* do not lie against it.

Doubted by Parsons, Ch. J. (7 Mass. 186): "That a capias and exigent do not lie against a corporation is evident; but that no action of trespass lies, is questionable."

THRUSH v. ROOKE, 1 Esp. R. ——.

S. P. as in Cuff v. Penn (ante).

THUNDER, dem. Weaver v. BELCHER.

See Keech v. Hall (ante).

THYNNE v. RIGBY, Cro. Jac. 314.

Award that the defendant should give security to plaintiff for payment of £16 at two days, held void for the uncertainty what security he should give, whether by bond or otherwise.

"Though much weight is due to the authority of Croke, probably if the case reported there were a new case, it would be decided otherwise." Simmons v. Swaine, 1 Taunt. 549.

TIDD'S PRACTICE, 6th ed. p. 908.

In a joint action against several defendants, and one suffers judgment by default, the plaintiff cannot be nonsuited as to one of them only.

Denied in Murphy v. Donlan et al., 5 B. & C. 178, where *it* was held, that after a judgment by default against one defendant,—the plaintiff may upon the trial of an issue joined by the other defendant, elect to be nonsuited; and Holroyd said, "The rule has certainly been as laid down in Tidd's Practice; but it is not founded upon any principle."

TIERNAN v. BEAM, 2 Ohio R. 383, 465.

"We believe that case (Tiernan v. Beam) to have been correctly decided, and we should feel ourselves bound by its authority. But we are unwilling to extend it beyond a case similarly situated. We are led to conclude that the broad position assumed by the judge, in that case, was incidentally taken. It is not in our view consistent with either principle or authority." Williams v. Roberts, 5 Ohio Rep. 44.

TILLMAN v. LANSING, 4 Johns. 45.

Overruled, Barry v. Mandell, 10 Johns. 563.

TILLMAN v. WHEELER, 17 Johns. 176.

See Hall v. Newcomb, 7 Hill, 417.

TILLOTSON v. CHEETHAM, 2 Johns. 248.

Reversed in Cheetham v. Tillotson, 5 Johns. 430.

TILLON v. KINGSTON MUT. INS. CO., 7 Barb. 570.

Qualified, 1 Selden, 405.

TILTON v. GORDON, 1 N. H. R. 33.

Overruled, Farmer v. Stewart, 2 N. H. R. 101. See, however, Fuller v. Little, 7 ib. 535 ; Snow v. Prescott, 12 ib. 535.

TIMBERLAKE v. GRAVES, and Gresham v. Gresham, 6 Munf. R. 174, 187.

Denied in Griffith v. Thomson, 1 Leigh's R. 321.

TIMROD v. SHOOLBRED, 1 Bay, 319.

That selling for a sound price, raises in law a warranty of the thing sold; and that this warranty extends even to faults unknown to the seller.

Contrary to Pickering v. Dowson, 4 Taunt. 779 ; Emerson v. Brigham, 10 Mass. 197 ; See also 3 Day's Rep. 116, note 2, and authorities there cited, and Jones v. Bright, 5 Bing. 533 ; Gray v. Cox, 4 B. & C. 115, and the observations in 2 Kent Com. 478.

TIMS v. PORTER, Hayw. R. 234, 275.

A gift of a chattel to a person with a reservation to the donor, is good; and vests a property in the event of his surviving the donor.

Doubted. See 2 Kent Com. 438, *et seq.* In Royston v. Hankey, 3 Moore & Scott, 381, it was held, that declarations by an intestate, that he meant that a person with whom he resided should have his furniture and effects for what he owed her, were sufficient to entitle such person to take and retain possession of the property.

TINDAL v. BROWN, 1 Term R. 167.

That notice of the dishonor of a bill must come from the holder.

Overruled in Jameson v. Swinton, 2 Camp. 375; Bray v. Hadwen, 5 M. & S. 71 ; held, that any party to the instrument may give it.

TINSLEY v. ANDERSON.

See Eppes v. Randolph (ante).

TIPPING v. SMITH, 2 Stra. 1024.

That an award that all manner of proceedings, if any, depending at law, should be no farther prosecuted, is bad, because not final.

Denied by Kent, J., in Purdy v. Delavan, 1 Caines, 304; See also Kyd on Awards, 211 ; Simmons v. Swaine, 1 Taunt. 549.

TISSARD v. WARCUP, 2 Mod. 280, 1st point.

Overruled. Smith v. Barrow, 2 D. & E. 476 ; Hyat v. Hare, Comb. 383 ; Ditchburne v. Spracklin, 5 Esp. 32 ; Spalding v. Mure, 6 D. & E. 365 ; Blackwell v. Ashton, Sty. 50 ; Aleyn, 21, S. C.

TITCHBURNE v. WHITE, 1 Str. 145.

Contradicted in Gibbon v. Paynton, 4 Burr. 2298.

TITTENSON v. PEAT, 3 Atk. 529.

Arbitrators are not bound to give notice of the time they intend to meet, or the particular place where.

Overruled, Rigden v. Martin, 6 Har. & J. 403.

TOBEY v. WEBSTER, 3 Johns. 468.

That lessor cannot maintain trespass, *qu. cl.* for a wrong done while his tenant was in actual possession of the land.

The contrary is holden in Starr v. Jackson, 11 Mass. 519.

TODD v. CROOKSHANKS, 3 Johns. 432.

Conflicts with Buck v. Kent, 3 Vt. R. 99, and cases cited; 3 Starkie, 1503. See 9 Vt. R. 221.

TODD v. GEE, 17 Ves. 273.

Overruling Greenway v. Adams, 12 Ves. 395.

TODD v. STOKES.

See Rawlins v. Vandyke (ante).

TOLLER'S LAW OF EXECUTORS, &c.

The appointment, and even nomination, of a debtor, an executor, operates a release and an extinguishment of the debt.

Denied in Bacon v. Fairman, 6 Conn. 128; Stevens v. Gaylord, 11 Mass. 256; S. P. 12 ib. 199.

TOLLER'S LAW OF EXECUTORS, 396.

A legacy given by a debtor to his creditor, which is equal to, or greater than the debt, shall be considered as a satisfaction of it.

In Clarke v. Bogardus, 12 Wend. 68.—Savage, Ch. J., said, "The exceptions to the rule are numerous; and the rule should be stated thus; 'that a legacy shall not be deemed a satisfaction of a pre-existing debt, unless it appears to have been the intention of the testator that it should so operate.'"

TOLPUTT v. WELLS, 1 M. & S. 395.

Overruled in Prince v. Nicholson, 5 Taunt. 333, 665; and in Lawrence v. Bush, 3 Wend. 305, 307,—"So far as the case in M. & S. is an authority against allowing an executor to plead *puis darrein continuance* a judgment recovered after he had pleaded the general issue."

TOMPKINS v. BARNETT, 1 Salk. 22.

That money paid on a usurious contract cannot be recovered back.

Lord Mansfield said this had been denied a thousand times. Clark v. Shee, Cowp. 199; see also Dougl. 697; 2 Burr. 1005; 1 D. & E. 286.

TOMPKINS v. ASHBY, 22 Com. Law R. 239; S. C. 1 Mo. & M. 32.

Two gross errors of misprint occur in the Phila. ed. viz.—In the margin—"A demurrer or plea"—should read "A demurrer *to* plea." And the Ch. Justice is made to say (p. 240)—"The demurrer was to be taken." It should read—"The demurrer was *not* to be taken." See the Eng. ed. 1 Mo. & M. 32.

TOMSON v. TRAFFORD, Popham, 9.

Denied in Lyn v. Wyn, Bridgman R. p. 142, and note (q).

TONE v. BRACE, Clarke, 503; 11 Paige, 566.

Opposed to Krime v. Watts, 14 Wend. 38.

TOOK v. GLASCOCK, 1 Saund. 260.

Tenant in tail conveys by bargain and sale to another and his heirs, &c. *Held*, that the grantee has only an estate descendible for life of tenant in tail.

But in Machell v. Clerk, 1 Com. Rep. 119, it was held that the grantee has a base fee simple, determinable by entry of the issue in tail, &c., agreeably to 3 Rep. 84 b.; see also 7 Mod. 18; 2 Salk. 619.

TOTHILL'S REPORTS.

"Little reliance is to be placed upon the loose notes by Tothill." Ch. Kent, 4 Johns. Ch. 559.

TOUSSAINT v. MARTINNANT, 2 Term R. 100; and Martin v. Court, ib. 640.

That a penalty was provable under a commission of bankruptcy, although the party had not actually made any payment.

Overruled in Young v. Taylor, 8 Taunt. 321, and cases cited.

TOUTENG v. HUBBARD, 3 Bos. & Pul. 291.

Overruled in Flindt v. Scott, 5 Taunt. 674; and Baret v. Meyer, 5 Taunt. 824.

TOWENS v. OSBORNE, 1 Str. 506.

Same point as in Clayton v. Andrews (ante).

TOWNE v. LADY GRESLEY, 3 C. & P. 581.

An apothecary may either charge for his attendance or for the medicines he sends; but he cannot be allowed to charge for both.

Opposed, Handey v. Henson, 4 C. & P. 110: *Held*, that a surgeon and apothecary may, besides his charges for medicine, recover reasonable charges for attendance.

TOWNS v. WILCOX, 12 Wend. 503.

Overruled, Smith v. Borse, 2 Hill, 387.

TOWNSEND v. BILLERICA, 10 Mass. R. 411.

Said not to be law in Connecticut. Middletown v. Lyme, 5 Conn. R. 98.

TOWNSEND v. BUSH, 1 Conn. R. 160.

The maker of a note is a competent witness to impeach it, negotiable in its inception, and by him negotiated.

Denied in Newell v. Wright, 8 Conn. R. 319.—Daggett. "This testimony is now inadmissible in Massachusetts, New York, and Pennsylvania, and was not admissible in our courts until the case of Townsend v. Bush."

TOWNSEND v. ROWE, 2 Sid. 109.

Overruled, Dodswell v. Nott, 2 Vern. 317; Atty. Gen. v. Wyburg, 1 P. Wms. 599; Burton v. Hinde, 5 D. & E. 174; City of London v. Unfree Merchants, 2 Show. 146.

TOWNSEND v. WILSON, 1 Barn. & Ald. 608.

Questioned, but followed, Hall v. Dewes, 1 Jac. 189 (4 E. C. R. 88).

TOWNSEND v. WINDHAM, 2 Ves. 10.

Where Ld. Hardwicke is made to say, "If there is a voluntary conveyance of real estate, &c. by one not indebted, &c.—it will be good."

By Ld. Mansfield,—"I rather doubt Ld. Hardwicke's saying that." Chapman v. Emery, Cowp. 280.

TRACY v. HARKINS, 1 Binn, 395, note (d).

Words laid in the *second* person are substantially proved by evidence of words spoken in the third person.

Overruled in M'Connell v. M'Coy, 7 S. & R. 223.

TRACY v. RATHBUN, 3 Barb. 543.

Overruled, Van Keuren v. Parmelee, 2 Coms. 523.

TRADER'S INS. CO. v. ROBERTS, 9 Wend. 474.

Reversed, 17 Wend. 631.

TRAFFORD v. BOEHM, 3 Atk. 446.

Doubted in Sug. on Pow. 538, n. (b): "Ld. Hardwicke's doctrine has been questioned."

TRAVIS v. WATERS, 1 Johns. Ch. R. 48.

Reversed, in 12 Johns. 500, S. C.

TRAXIRA v. EVANS, 1 Anst. 229 (note).

Overruled, McKee v. Hicks, 2 Dev. 379; Davenport v. Speight, 2 Dev. & Bat. 381; Graham v. Holt, 3 Ire. Law R. 302; but Traxira v. Evans was followed, *Ex parte* Therwin, 8 Cow. 118, and other cases.

TREADWELL v. UNION INS. CO., 6 Cowen, 270.

Insurance on a cargo of wheat at and from North Carolina to New York; *held*, that if the vessel was sea-worthy when she passed the boundary line of that State, it was sufficient.

Doubted in 3 Kent Com. 306, n. (d).—"giving too narrow a construction to the words *at* and *from*."

TRECOTHICK v. EDWIN, 1 Stark. R. 468.

If the direction as to the place of payment at the foot of the bill be *printed*, it is part of the note.

Overruled in Williams v. Waring, 10 B. & C. 2.

TREMENHERE v. TRESILLIAN, 1 Sid. 452.

That the sale of a ship by the master does not convey the property to the buyer, although the sale was made in a foreign country, in a case of inevitable danger and necessity.

Doubted in Abbott on Shipping, 2; and in effect overruled in Idle v. The Royal Exchange Assu. Co., 8 Taunt. 770. See 17 Mass. 478; 18 Johns. 208.

TRENCH v. THE CHENANGO MUT. INS. CO. 7 Hill, 122.

Commented on and doubted, Wilson v. The Herkimer Mut. Ins. Co. 2 Selden, 53.

TREON v. BROWN, 14 Ohio R. 482.

Limited in Rohrer v. Morning Star, 18 Ohio R. 599.

TREVILIAN v. PYNE, 1 Salk. 107.

That in trespass to real property, where defendant justifies as bailiff, &c., the defendant's authority is not traversable.

Overruled in Chambers v. Donaldson, 11 East, 66.

TREZEVANT v. McQUEEN, 12 Sme. & M. 575.

"But it is insisted that the questions here examined, were decided by this court in the case between the same parties reported 12 S. & M. 575. In answer to this position, it is sufficient to observe that the only question decided in that case was as to the conclusive character of the decree of the probate court, confirming the report of the commissioners of insolvency on the estate of Bostwick. The judgment of the court in that case was correct, and meets with our unqualified approval; but points were discussed by the judge who delivered the opinion, which were not involved in the case. The reasons assigned for the conclusion arrived at, were not concurred in, and are not to be regarded as authority." By Smith, J., in Trezevant v. McQueen, 13 Sme. & M. 316.

"I think the foregoing decision in conflict with the previous decision in the same case." Per Sharkey, Ch. J., ib.

"In my view, it (the present decision) is not in conflict with the former decision, though opposed to some of its reasoning." By Clayton, J., ib.

TRICE v. TURRENTINE, 5 Ire. 236.

Overruled, Jackson v. Hampton, 10 Ire. Law R. 579; Trice v. Turtine, ib. 543.

TRIMBLE v. THORNE, 16 Johns. 152.

See Tibbets v. Dowd, 23 Wend. 379.

TROUP v. HAIGHT, Hopk. R. 270.

"Not entitled to the force of a judicial decision, and not founded on any adjudged case." Jennings v. Webster, 8 Paige, 505.

TROUP v. WOOD, 4 Johns. Ch. 228.

Overruled, Plattner v. Sherwood, 6 Johns. Ch. 118.

TRUEMAN v. FENTON, Cowp. 548.

Ld. Mansfield—"I am ready to account, but nothing is due to you," —and much slighter acknowledgments, will take a case out of the statute.

Denied in Perly v. Little, 3 Greenl. 97.

TRUEMAN'S CASE, reported in East's Cr. Law, 470; 3 Stark. Ev. 1185–6.

That confessions are admissible in evidence to prove the marriage in a prosecution for bigamy.

Denied in State v. Roswell, 6 Conn. R. 450. See 1 Phil. Ev. p. 410, note 782 (ed. 1838).

TRUSCOTT v. CARPENTER, 1 Ld. Raym. 229.

That if the cause of action arose out of the jurisdiction of an inferior court, defendant ought to plead it; and cannot afterwards show it in any collateral action against the plaintiff or the officer executing the process.

Overruled in Moravia v. Sloper, Willes, 36; Slocum v. Wheeler, 1 Conn. R. 453.

TRUSCOTT v. KING, 6 Barb. 346.

Reversed, 2 Selden, 147.

TRUSTEES OF LANSINBURGH v. WILLARD, 8 Johns. 448; Richardson's Ex'r v. Hunt, 1 Mumf. 148.

A witness who declares on his *voire dire*, that he is interested in favor of the party calling him, and that interest is such as cannot be released, the witness ought not to be sworn, though in strictness he is not interested.

Overruled in Commercial Bank of Albany v. Hughes, 17 Wend. 94, and cases cited.

TRUSTEES OF THE METHO. EPIS. CH. v. JAQUES, 3 Johns. Ch. R. 77.

Reversed in 17 Johns. 548.

TUCKER v. IVES, 6 Cowen, 195.

Explained in Kimball v. Brown, 7 Wend. 325.

TUCKER v. LADD, 4 Cow. 47.

Overruled? Brewster v. Hall, 6 Cow. 34.

TUCKER v. OXLEY, 5 Cranch, 34.

Doubted in M'Culloch v. Dashiell, 1 Maryland R. 106–7.—Archer, J. "The case (Tucker v. Oxley) upon which the court there build their opinion, that a legal right universally exists in the joint creditors upon a separate commission to come on the separate estate *pari passu* with the separate creditors, is the case where a joint creditor is the petitioning creditor, and is an excepted case." See argument of Sir Samuel Romily in *Ex parte* Ackerman, 14 Ves. 604. See 1 Madd. 463.

TUCKER v. TUCKER. 4 B. & Adol. 745, virtually overruling the cases of Bottomley v. Brook and Rudger v. Birch, cited in Bauermann v. Radenius, 7 Term R. 663.

The cases of Bottomley v. Brook, and Rudge v. Birch, on which reliance was placed in the principal case of Bauerman v. Rudge, having been disapproved of in Wake v. Tinkler, 16 East, 36.

That the plaintiff upon the record cannot, in a court of law, be looked upon as a mere cipher, so that the party really suing shall not be bound by his acts and admissions, is exemplified by Gibson v. Winter, 1 B. & Adol. 101, where numerous other cases are collected.

There are, however, many cases in which, notwithstanding the distinction between law and equity so strongly marked out by Lord Kenyon in giving his judgment in Bauerman v. Radenius, a court of law is forced to proceed upon, and recognize, the rules of courts of equity. Thus, if an action be brought by a vendee for the deposit, the court may be obliged to inquire whether the vendor's title may be good *in equity*. Maberly v. Robins, 5 Taunt. 625; see Curling v. Shuttleworth, 6 Bing. 121; and Boyman v. Gutsh, 7 Bing. 379. In Morley v. Frear, 6 Bing. 547, it became necessary to reply the assignment of a bond, and the court recognized the validity of the transaction. In questions on the bankruptcy laws, it frequently becomes necessary to take equitable as well as legal rights into consideration. See Hunt v. Mortimer, 10 B. & C. 44; and though from the case of Bauerman v. Radenius, *supra*, it appears, that the admission of a person in whose name the action is brought will be evidence admissible in favor of the opposite party, yet it is well known, that the admission of the party really interested is also evidence. See R. v. Hardwicke, 11 East, 578; Hanson v. Parker, 1 Wils. 257; Smith v. Lyon, 3 Camp. 465; Bell v. Ansley, 16 East, 143; Harrison v. Vallance, 1 Bing. 45; Robson v. Andrade, 1 Stark. 372.

TUCKER v. TUCKER, 5 Barb. 99.

Reversed, 1 Selden, 408.

TURING v. JONES, 5 Term R. 402.

Overruled in Ashworth v. Ryall, 1 B. & Ald. 19, in respect to the dictum that, upon general process, the plaintiff cannot declare in a particular character, as *qui tam*, or in *autre droit*, &c. See 1 Dowl. Pr. R. 98, n. (a).

TURNER. See *Ex parte* Turner (ante).

TURNER v. CHAMBERS, 10 Sme. & M. 308.

"The petition is based mainly on the case of Turner v. Chambers. It is there stated that the remedy in such cases is in equity; but there was no such question involved in the case, the point was not presented by the record. That the general doctrine is so is not denied, but the case of Brooks v. Lewis, 1 How. 207, was directed on the point and decided on the provisions of the statute. The same question was directly involved also in Vanhouten v. Reily, 6 Sme. & M. 440, and decided in the same way. Two decisions directly on the question must outweigh the case of Turner v. Chambers, in which the question was not raised." Smith v. The State, 13 Sme. & M. 145.

TURNER v. EYLES, 3 Bos. & Pul. 456.

Held, that in an action for an escape out of *execution*, where the commitment is stated to be filed of record, this must be proved.

Denied in Cooper v. Jones, 2 M. & S. 202. This was said to be a mistake. See 5 East, 440; 2 B. Moore, 565.

TURNOR v. FOLGATE, Raym. R. 70.

The creditor after having sued out and levied one execution, sued out a second execution on the same judgment, and levied it upon other goods with a view to double charge the debtor.

Denied in Pierson v. Gale, 8 Verm. R. 509, 514. See Ludington v. Peck, 2 Conn. 700.

TURNER v. HOOLE, Dowl. N. P. C. 27.

Doubted, and then explained, in Wilson v. Ray,—April 30, 1839, reported in the Jurist, p. 369,—Am. ed., where Lord Denman, C. J., gave judgment. After reading the case of Turner v. Hoole, his lordship proceeded: "We think this rule must be made absolute. The principle I acted upon at the trial is a right principle, but it is not applicable to this case, nor did it apply in the case of Turner v. Hoole, where Abbott, C. J., used similar language. That principle is, that a creditor shall not be permitted to take advantage of the situation of his debtor to oppress him

TURNER v. HOOLE, Dowl. N. P. C. 27—continued.

and defraud the other creditors. But another principle, which I believe has never been shaken, comes into operation here, and that is, that a party defeated in any legal proceeding by his adversary shall not afterwards recover back in an action for money had and received, the money which has been recovered from him by a legal decision. That principle was established in the case of Marriott v. Hampton, 7 Term R. 269; and we did not mean to impugn it in the Duke de Cadaval v. Collins, 4 A. & E. 858. The test to be applied there was, to whom did the money belong? It was still the property of the duke, who parted with *it only* to relieve himself from the hardship of a fraudulent arrest. But can we say in this case that this was money had and received to the plaintiff's use, when it was money voluntarily paid by the plaintiff to the defendant at a time when he could have used as a defence the same ground which is now set up as the foundation of a claim. The payment of the bill, under these circumstances, is in the nature of an estoppel. It makes no difference in the principle by which this case is to be governed, that no action was brought on the bill; for the plaintiff voluntarily paid the money with full knowledge of all the facts, when the law gave him an opportunity of resisting the payment of it. Rule absolute.

See the case of Astley v. Reynolds (ante); and also the case of Marriott v. Hampton (post). Money which has been extorted by fraud, imposition, and deceit may be recovered back. Bliss v. Thompson, 4 Mass. 488. But where it has been voluntarily paid, although paid without consideration, it cannot be recovered back, unless there was some fraud, mistake, or imposition. Wallis v. Wallis, 4 ib. 135. In Rawson v. Porter, 9 Greenl. 119, the plaintiff's attorney in the settlement of the suit, before the entry in court, exacted and received two and a half per cent. as commissions. It appeared that defendant after objecting to the charge, paid it: *Held*, that he could not recover it back.

TURNER v. HULME, 4 Esp. 11.

The maker of an usurious note being arrested for the debt, procured a third person to join with him in a new note for the same debt; and Ld. Kenyon held that the usury could not be set up in defence against the last note.

Denied in Bridge v. Hubbard, 15 Mass. 100; Wales v. Webb, 5 Conn. R. 164.

TURNER v. LEE, Cro. Car. 471.

That the statute (32 Hen. VIII. c. 37, s. 1) did not extend the remedy by distress to those persons who had remedy by debt at common law; and therefore it was said that the executors of tenant for life could not distrain.

Overruled in Hool v. Bell, 1 Ld. Raym. 172. See Prescott v. Bucher, 3 B. & Ad. 839.

TURNER v. ROBINSON, 1 Sim. & Stu. 313.

Denied in Marcos v. Pebrer, 3 Sim. 466.

TURRILL v. DOLLAWAY, 17 Wend. 426.

Reversed Dollaway v. Turrill, 26 Wend. 483.

TUSON v. EVANS, 12 Ad. & El. 733.

Overruled see Cooke v. Wildes, 30 Eng. L. & E. R. 290.

TWAMBLY v. HENLY, 4 Mass. R. 441.

S. P. as in Manton v. Hobbs (ante).

TWYNE'S CASE, 3 Coke, 80.

What transactions are fraudulent within the statute XIII. Eliz. c. 5, and XXVII. Eliz. c. 4.

Limited in Pichstrock v. Lyster, 3 M. & S. 371; Holbird v. Anderson, 5 Term R. 235; Meux v. Howel, 4 East, 1; Bowen v. Bramidge, 6 C. & P. 19, where it is settled that a debtor may openly prefer one creditor to the rest, and transfer property to him even after the others have commenced their actions. A voluntary conveyance is not fraudulent against creditors within the XIII. Eliz., unless the party making it was indebted at the time, or nearly so; see Holcroft's case (ante).

The XXVII. Eliz. was made for the protection of *purchasers*, as XIII. Eliz. was for that of *creditors*. A conveyance executed *with express intention to defraud* subsequent purchasers for value is void as against them. See Burrell's Case, 6 Rep. 92; Gooch's case, 5 Rep. 60; and a voluntary conveyance is so likewise, even though the subsequent purchasers have notice of it. Goodright v. Moses, 1 Bl. 1019; Evelyn v. Templar, 1 Bro. R. 148; Doe v. Manning, 9 East, 59; Cormick v. Trapaud, 8 Dow. 60; for the very execution of the subsequent conveyance evinces the fraudulent intent of the former one. See Smith's Lead. Cas. 9.

TYE v. GWINNE, 2 Camp. R. 346.

S. P. as in Morgan v. Richardson (ante).

TYLER'S REPORTS.

Denied in 4 Cowen, 28, where Ch. J. Savage says—"Tyler's Reports are not considered good authority even in his own State."

U.

ULRICH v. LITCHFIELD, 2 Atk. 372.

Doubted, see Sherratt v. Bentley, 2 Myl. & K. 149, 162.

UNDERHILL v. GIBSON, 2 N. H. R.

An agent contracting without authority in behalf of a corporation; but not using language applicable to the corporation, the agent may be sued personally on the contract.

Opposed Ballou v. Talbot, 16 Mass. 461; Long v. Colburn, 11 ib. 97. "In such case, a special action on the case would be the proper action."

UNDERHILL v. VAN CORTLAND, 2 Johns. Ch. 339.

Reversed in Van Cortland v. Underhill, 17 Johns. 405.

UNION BANK v. KNAPP, 3 Pick. 96, 112.

Overruled in Bass v. Bass, 6 Pick. 362; 8 Pick. 187, S. C. and settled that merchants' accounts, as described in the statute of limitations, are excepted from the operation of the statute. See also M'Lellan v. Crofton, 6 Greenl. 307, 341, *et seq.*

UNION TURNPIKE CO. v. JENKINS, 1 Caines R. 381.

Reversed in Jenkins v. Union Turnpike Co., 1 Caines Ca. 86.

UNITED STATES v. COOLIDGE, 1 Gall. 488.

Overruled in S. C. 1 Wheat. 415.

UNITED STATES v. FRIES, 3 Dall. R. 515.

A new trial was granted in high treason.

Denied in United States v. Gilbert, 2 Sumner, 19, 48, *et seq.*

UNITED STATES v. GRUNDY, 3 Cranch, 344.

In a civil action a man shall not be compelled to testify against his interest.

Denied in Bull v. Loveland, 10 Pick. 12.

UNITED STATES v. JANUARY & PATTERSON, 7 Cranch, 572.

Doubted in Postmaster General v. Furber, 4 Mason, 333 :—Story, J., says, "It is indeed somewhat difficult, from the facts of the case as reported, to give a very definite interpretation of the opinion of the court."

UNITED STATES v. LACOSTE, 2 Mason, 129; Same v. Smith, 2 ib. 143.

Overruled in United States v. Gooding, 12 Wheat. R. 460, 478, as to one point.

UNITED STATES v. LA VENGEANCE, 3 Dall. 297.

In favor of the extension of admiralty jurisdiction to a case for attempting to export arms to a foreign country.

Doubted in 1 Kent Com. 376 :—"And it may be doubted whether the case of the La Vengeance, on which all the subsequent decisions of the Supreme Court have rested, was sufficiently considered."

UNITED STATES v. McNEAL, 1 Gall. R. 387.

Held, that if the indictment charge the perjury to have been committed on a particular day at the circuit, and the record shows a different day, the variance was fatal.

Opposed, Rex v. Coppard, 3 C. & P. 59; Ld. Tenterden, C. J. They are not held to the day stated in the *nisi prius* record.

UNITED STATES v. MORGAN, 3 Wash. R. 10.

If the bond " bind the obligors to do more than the laws requires, it is not the bond which the officer was authorized to take, and all is void."

Denied in the United States v. Brown, 1 Gilpin's R. 155, 181.—Hopkinson. He qualifies the principle " at least so far as it exceeds the requisitions of the law." The general common-law principle being, that a bond taken at the common law, with a condition in part good and in part bad, a recovery may he had on it for a breach of the good part. The same rule is established in regard to a statutory obligation, on a bond authorized and required to be taken by a statute, where there is nothing in the statute declaring that bonds that vary from the prescribed form, shall be altogether void, and in which the good part of the condition may be easily separated from the bad.

UNITED STATES v. NELSON, 2 Brock. R.—

In respect to the right to fill blanks in a bond after it has been executed by the sureties.

Opposed, Smith v. Crooker, 5 Mass. 538.

UNITED STATES v. RAVARA, 2 Dall. 297.

In favor of the power of Congress to give jurisdiction to other courts in cases in which the United States Supreme Court has original jurisdiction.

Doubted in Pennsylvania v. Kosloff, 1 Cranch, 137. See United States v. Ortega, 11 Wheat. 467.

UNITED STATES v. WILSON, 1 Baldw. R. 9.

A paper purporting to be a pardon granted by the governor of Maryland, under his signature and the great seal of the State, was admissible in evidence without further proof.

Overruled in Leland v. Wilkinson, 6 Pet. 317, *it is said*, by Mr. J. Baldwin in 1 Baldw. R. App.; *sed quære.*

UNITED STATES BANK v. WAGGENNER, 9 Peters, 378.

"That case (United States Bank v. Waggenner) has heretofore been pressed upon us for adoption. It stands opposed to our former decisions." Archer v. Putnam, 12 Sme. & M. 289.

UPFILL'S CASE, 2 Ho. Lords' Cas. 674; 14 Jur. 843; 1 Eng. Rep. 13.

Overruled, Bright v. Hutton, 12 Eng. R. 1; 16 Jur. 695.

UPPON v. SUMNER, 2 Bl. 1251 & 1294.

S. P. as in Rorke v. Daryall (ante).

Denied in Giles v. Grover, 6 Bligh's P. R. 299; 1 Clark & Fin. 84, S. C.; Thurston v. Mills, 16 East, 278 n.; King v. Sloper, 6 Price, 114.

UPTON v. CURTIS, 1 Bing. 210.

Doubted in King v. Baker, 2 Adol. & El. 24, 333:—"There is reason to suppose that the facts are not reported with perfect accuracy."—Denman.

URBANA BANK v. BALDWIN, 3 Ohio R. 65.

See 44 Ohio Laws, 41.

URREY v. BOWERS, 2 Brownl. 8, 20; Moor, 913, pl. 1291.

Overruled, Fosset v. Franklin, T. Raym. 225; Elliot v. Starr, 1 Freem. 299.

UTICA INS. CO. v. SCOTT, 19 Johns. 1.

Reversed in 8 Cowen, 709.

UTICA INS. CO. v. SCOTT, 6 Cow. 606.

Dissented from, Hale v. Lawrence, 2 Zab. R. 81.

UTRETCHT v. MELCHOR, 1 Dall. 428.

Imperfectly reported, Ritchie v. Summers, 3 Yeates R. 539.
Doubted also in Dorsey v. Jackson, 1 S. & R. 51.

UTTERSON v. VERNON, 3 D. & E. 539.

This case was subsequently revised and overruled, in 4 D. & E. 570.

UXBRIDGE v. STAVELAND, 1 Ves. sen. 56.

Arose upon a covenant in a lease:—Ld. Hardwicke said, "Had it been covenanted to grind all the corn they should spend ground, it might relate to the premises, and running with the land, bind the assignees."

Doubted in Keppell v. Bailey, 2 M. & K. 517 (8 Cond. R. 122). See Smith's Lead. Cas. p. 27 note, and see Spencer's case (ante).

V.

VACHEL v. BRETON, 5 Bro. Parl. C. 51.

Doubted in 5 Leigh's R. 239.—Brooke, J., said—It was "doubtfully reported." Tucker, J. in S. C., p. 549, said.—"The master of the rolls (in Pickering v. Stamford, 3 Ves. 338), in delivering his opinion, gives, as I conceive, the true exposition of Vachel v. Breton," &c. "The Ld. Chancellor, however, in the same case, did impugn the authority of this case, declared his disapproval of the reversal of the decree at the rolls by the Parliament, and says the case does not seem to be a case to be followed."

VADE MECUM, MORGAN'S, 291.

See Roe v. Doe ex dem., Humphreys (ante).

VAISE v. DELAVAL, 1 D. & E. 11.

Ld. Mansfield rejected the affidavit of a juror who stated that the jury, being divided, tossed up, and the plaintiff won.

But such evidence was held admissible in Smith v. Cheetham, 3 Caines,

VAISE v. DELAVAL, 1 D. & E. 11.—continued.

57. So in Massachusetts. Grinnell v. Phillips, 1 Mass. 542. But in Massachusetts it was afterwards held that such affidavit should not be admitted to prove the motives or inducements to join in a verdict. Bridge v. Eggleson, 14 Mass. 248.

In Pennsylvania the practice agrees with that in England. Claggage v. Swan, 4 Bin. Rep. 150.

See also Rex v. Wooler, 2 Starkie, 111, that no affidavit can, in any case, be admitted to show that one of the jury did not assent to the verdict pronounced by the foreman.

VALLEJO v. WHEELER, Cowp. 143.

Buller, J., says there is an error in this report, in stating that Darwin chartered the ship to Brown, the captain, when in fact she was chartered by Brown to Darwin. 1 D. & E. 330; Marshall on Ins. 454.

VANADA v. HOPKINS, 22 Marshall's R. 293.

Opposed to Nixon v. Hyserott, 5 Johns. 58. See Peters v. Farnsworth, 15 Vt. R. 160.

VAN ALSTYNE v. SPRAKER, 13 Wend. 578.

Reversed, 18 Wend. 500.

VANCE v. McNAIRY, 3 Yerg. R. 177.

That the return of the sheriff was essential to the title of the purchaser.

Overruled in Mitchell v. Lipe, 8 Yerg. R. 179.

VAN CORTLAND v. KIP, 1 Hill, 590.

Reversed, 7 Hill, 346.

VAN CORTLANDT v. UNDERHILL, 2 Johns. Ch. 339.

Reversed in 17 Johns. 405.

VANDENHEUVEL v. THE UNITED INS. CO., 2 Johns. Cas. 127.

The sentence of a foreign admiralty court is conclusive in respect to the property insured.

Reversed in 2 Johns. Cas. 451, 481, 487; 9 Johns. 277; 2 Cowen, 66; 2 Cai. Ca. 217.

VANDERHEYDEN, dem., v. MALLORY, 3 Barb. Ch. 9.

Reversed, 1 Coms. 452.

VANDERHEYDEN v. REID, 1 Hopk. 409.

Reversed in Reid v. Vanderheyden, 5 Cowen, 719; Held, that a party having no interest cannot be a party in any court.

VANDERNANKER v. DISBROW.

See Dreke v. Mayor of Exon (ante).

VANDERZEE v. WILLIS, 3 Bro. C. C. 21.

Doubted in Adams v. Claxton, 6 Ves. 226.

VANDEWALL v. TYRRELL, 1 Moo. & M. 87.

Explained. Geralopulo v. Weiler, 3 Eng. R. 515; 15 Jur. 316.

VANDYKE v. HEWITT, 1 East, 97; Merryweather v. Nixan, 8 Term R. 186.

This latter case decides that if A recover *in tort* against two defendants, and levy the whole damages on one, that one cannot recover a moiety against the other for his contribution; *aliter*, in assumpsit.

VANE v. STUDLEY, cited in Wade's Case, 5 Co. 114.

Doubted in Ch. J. Kent, in 2 Johns. 460: "The case of Vane v. Studley is cited cautiously, and stated, as *said* to have been so adjudged."

VANE'S (LORD) CASE, 2 Str. 1202.

More fully stated from Mr. Ford's MS. in 13 East, 171, n. (a).

VAN HOOK v. WHITLOCK, 2 Edw. Ch. 304, 7 Paige, 373.

Overruled in part, Corning v. M'Cullough, 1 Coms. 47.

VAN RENSSELAER v. PLATTNER, 1 Johns. 276.

Overruled. Van Rensselaer v. Jewett, 2 Coms. 135.

VAN RENSSELAER v. SHERIFF OF ALBANY, 1 Cowen, 510.

"If a junior creditor becomes a purchaser, though under a senior judgment, he must bid the amount of the older execution and of his own lien, if he intends to secure himself out of the property sold."

Denied in Jackson v. Budd, 7 Cowen, 666, by Woodworth, J. "That point, abstractly and broadly stated, was not before the court," &c.

VAN RENSSELAER v. WHITBEEK, 7 Barb. 133.

Reversed, 3 Selden, 517.

VAN WINKLE v. BEEK, 2 Scammon, 488.

Overruled. Rogers v. Holden, 13 Ill. 293.

VAN WINKLE v. UDALL, 1 Hill, 560.

"We cannot see the just application of such a rule (when a sheriff has several executions, a levy of one is a levy of all) to writs of *fi. fa.* although so held in New York in Van Winkle v. Udall." Per Clayton, J., in Banks v. Evans, 10 Sme. & M. 62.

VARNUM v. CAMP, 1 Green's R. 326.

The general principle of law, that personal property has no locality, but is transferable according to the laws of the owner's domicil, is not without its exceptions; thus, though the contract be valid in New York, the domicil of the parties, it is not valid in New Jersey, if it is condemned by a positive statute.

Doubted. See Hall v. Mulhollan, 7 Lou. R. 383; King v. Harman's Heirs, 6 ib. 607.

VAUGHAN v. BARREL, 5 Verm. R. 333.

An administrator appointed in another State has no authority to discharge a debt due from a citizen of Vermont to his intestate; and if administration is granted here, such discharge would be no bar to an action for the debt.

Opposed, Gaylord v. Stevens, 11 Mass. 256; Trecothick v. Austin, 4 Mason, 16, 33. Story, J., said, "Payments voluntarily made to a foreign administrator, would now be held effectual in our courts, upon principles of national amity. This doctrine supported by Atkins v. Smith, 2 Atk. 63, and still more fully and forcibly illustrated by the very able opinion of Mr. Chancellor Kent, in Doolittle v. Lewis, 7 Johns. Ch. R. 45."

VAUGHAN'S REPORTS.

Ld. Ch. J. Treby in the great case of Courtney v. Bower, in C. B. 1669, in consequence of having to answer an objection from the case of Sheppard v. Gosnold, in page 169 Vaughan, says "These reports are so full of mistakes, that I do not think they are my Lord Vaughan's. I have heard it was a posthumous work. Some of the cases are written out by himself, and give a true picture of his mind; but there are others, and that of Sheppard v. Gosnold I take to be one, that were only taken from loose notes, and which he intended to have perfected if he had lived. This I say without reflection on so very learned a man." MS. note to Mr. Hargrave's copy of Vaughan R. 1677,—in Lond. Jur. vol. iii. p. 338.

VAUX'S CASE, 4 Rep. 44.

Vaux was indicted for murder, and upon special verdict there was judgment of acquittal. Being again indicted for the same offense, he pleaded *autrefois acquit;* but the plea was held bad, because his life had never been in danger.

Said to have been shaken, 1 D. & E. 69; and doubted per Livingston, J., in New York, in The People v. Barrett, 1 Johns. 72.

VAUX v. NESBITT, 1 McCord Ch. R. 370.

Overruled, see McCarthy v. Nash, 1 Selden, 284.

VENAFRA v. JOHNSON, 6 C. & P. 50.

The opinion of Park, J. directing a nonsuit in an action for a malicious prosecution, on the ground that the facts were all one way.

Overruled in S. C. 10 Bing. 301. It should have been left to the jury to determine whether the charge ascribed to the plaintiff was spoken with the bearing and intent supposed.

1 VENTRIS, 238, the case cited by Hale.

Denied to be law by Ld. Mansfield, on account of the fraud practiced on the carrier. Gibbon v. Paynton, 4 Burr. 2298.

VERNON v. VAWDRY, Ventris, 40.

Denied in Ex'r of Gadsden v. Ex'r of Lord, 1 Eq. R. 216,—S. Carolina.

VERNON'S REPORTS.

Ld. Hardwicke (1 Atk. 556), "Sorry to find the reports of so able a man should be so imperfect." Ld. Kenyon (in B. R. 1799), said, "that it had been an hundred and an hundred times lamented that Vernon's Reports were published in a very inaccurate manner. He was the ablest man in his profession." See 8 Term R. 266. Ld. Loughborough (1 H. Bl. 326)—"usually inaccurate."

But Chan. Kent (1 Kent's Com. 459) says "Vernon's Reports are the best of the old reports in Chancery. In 1806 Mr. Raithby favored the profession with a new and excellent edition, enriched by learned notes from the register's books, so that the volumes assumed a new dress and more unquestionable authority." But see 1 Moll. 526.

VESEY JUN. REPORTS.

"When he reported Ld. Thurlow's cases, Mr. Vesey was a very young man; *afterwards*, he became an excellent reporter." Colhoun v. Thompson, 2 Moll. 287.

VICKSBURG WATER WORKS BANK v. WASHINGTON, 1 Sme. & M. 536.

"And it is proper to observe that the case of the Vicksburgh Water Works Bank v. Washington, although the decision was made since the passage of the statute, was decided on pleas put in before the statute, and the attention of the court was not called to the statute by counsel." Wharton v. Porter, 10 Sme. & M. 308.

VIELIE v. OSGOOD, 8 Barb. 130.

Opposed to James v. Patten, 8 Barb. 344.

VILLA REAL v. LORD GALWAY, Amb. 682.

"The case is not clearly reported."—By Ld. Chan. in 3 Cond. Eng. Ch. R. 361.

VILLARS v. PARRY & MOORE, 1 Ld. Raym. 182.

Debt against an executor, and judgment against him *de bonis propriis*, and held not amendable.

But contradicted by Short v. Coffin, where the fault was amended after error brought, and *in nullo est erratum* pleaded. 5 Burr. 2730.

VINCENT v. BRADY, 2 Bl. R. 1; Stacy v. Frederici, 2 B. & P. 390.

The courts do not discharge on common bail where it appears from affidavits that the validity of the defendant's certificate is to be questioned on the trial.

Denied in New York in Reed v. Gordon et al., 1 Cow. R. 50, where the practice is different. "The court will not try the validity of a discharge under the insolvent acts, by affidavits." Noble v. Johnson, 9 Johns. 259.

VINCENT v. HOLT, 4 Taunt. 452.

Doubted, see Latham v. Hide, 1 Dowl. Pr. R. 504, 506.—Bayley.

VINER'S ABRIDGEMENT.

"Viner is not an authority. Cite the cases that Viner quotes; *that* you may do." By Foster, J., 1 Burr. 364.

12 VINER'S ABRIDGEMENT, Tit. Ev. T. b. pl. 27.

That a common seal attached to a deed is sufficient evidence to make title, without further proof.

Denied in Den v. Relandt, 2 Hals. 353.

VISCHER v. YATES, 11 Johns. 23.

Reversed in Yates v. Foot, 12 Johns. 1.

VIVIAN v. BLAKE, 11 East, 263.

Overruled in Hart v. Cutbush, 2 Dowl. Pr. R. 456. *Held*, that if a defendant pleads the general issue and several special pleas, and the jury finds for him on the general issue, and for the plaintiff on the special pleas, the latter is entitled to the costs of the pleadings, and witnesses on those pleas.

VOOGHT v. WINCH, 2 B. & A. 662.

Whether the verdict in a former suit, when offered in evidence under the general issue, in a subsequent action, was as conclusive a bar as if it had been pleaded by way of estoppel. The judges proceed to say, "It would have been conclusive if pleaded in bar to the action by way of estoppel."

Denied in Shafer v. Stonebraker, 4 Gill & J. 345.—Dorsey, J. See also Outram v. Morewood and Wife, 3 East, 345; Miles v. Rose et al., 5 Taunt. 705; and Standish v. Parker, 2 Pick. 20; Estill v. Taul, 2 Yerg. R. 470; Bennett v. Holmes, 1 Dev. & B. Rep. 486.

VOS v. UNITED INS. CO., 2 Johns. C. 180.

Reversed, 2 Johns. C. 469; 1 Cai. C. VII.

VYVYAN v. ARTHUR, 1 B. & C. 410.

Covenant by the devisee of the lessor, against the personal representative of the lessee, upon a lease containing, in the *reddendum*, a reservation of suit to the lessor's mill by grinding there all the corn grown upon the land demised. The court decided that the action lay upon the ground, that both the mill and the reversion were in the ownership of the assignee of the covenantee.

Doubted in Keppell v. Bailey, 2 M. & Keene, 517. (8 Cond. R. 122–3).

W.

WADDINGTON v. OLIVER, 5 B. & P. 61.

Plaintiff cannot bring an action "until the time for the delivery of the whole had arrived."

Doubted in M'Millan v. Vanderkip, 12 Johns. 165; Champlin v. Rowley, 13 Wend. 261, where Nelson, J., says, that it "was disregarded in that case, and in the subsequent cases. 13 Johns. 94, and ib. 365."

WADE v. HOWARD, 6 Pick. 492.

Explained in Thompson v. Chandler, 7 Greenl. 380.

WADE v. PAGET, 1 Bro. C. C. 364.

"The case is very imperfectly reported in Brown." Sug. on Pow. 438, n. (1).

WADSWORTH v. HAMSHAW, cited in 2 Bro. & B. 5; Williams v. Mundie, R. & M. 34.

Ld. Tenterden says, "What an attorney learns otherwise than for the purpose of bringing an action or suit, he is bound to communicate."

Denied in Thompson v. Andrews, 1 Myl. & Keene, 116 (6 Cond. R. 516). See Clark v. Clark, 2 Moo. & Malk. 3; Greenough v. Gaskell, 1 Myl. & K. 98.

WADSWORTH v. WENDELL, 5 Johns. Ch. 229.

Reversed in Wendell v. Wadsworth, 20 Johns. 659. See Jackson v. Neely (ante).

WAGSTAFF v. DARBY, Barnes, 366.

Disapproved, Cox v. Pritchard, 15 Jur. 427; 3 Eng. R. 494.

WAIN v. WARLTERS, 5 East R. 10.

That the consideration of the promise, as well as the promise itself, should be in writing, to take it out of the statute of frauds.

Denied in Hunt v. Adams, 5 Mass. R. 360; Packard v. Richardson, 17 ib. 122; Levy v. Merrill, 4 Greenl. 180; ib. 387; Sage v. Wilcox, 6 Conn. R. 81; Miller v. Irvine, 1 Dev. & B. R. 103. In *Ex parte* Minet, 14 Ves. 189, Lord Eldon said there was a variety of authorities, directly contradicting Wain v. Warlters; and in *Ex parte* Gardom, 15 Ves. 286, he says, "Until that case was decided I had always supposed *the law to be clear*, that if a man agreed in writing to pay the debt of another,

WAIN v. WARLTERS, 5 East R. 10—continued.
it was not necessary that the consideration should appear in the writing." See also Egerton v. Matthews, 6 East, 307.

But in New York, the English law is affirmed in Leonard v. Vredenburgh, 8 Johns. 29; Lanson v. Wyman, 16 Wend. 246. See Saunders v. Wakefield, 4 B. & A. 596; Wood v. Benson, 2 Tyrw. 98; Bushell v. Bevan, 1 Bing. N. C. 103; Hawes v. Armstrong, ib. 761; Ellis v. Levi, ib. 767; James v. Williams, 5 B. & Ad. 1109; Clancy v. Piggott, 2 Ad. & Ell. 473. But it is sufficient if the consideration can be gathered from the whole tenor of the writing; not that a mere *conjecture*, however plausible, would be sufficient to satisfy the statute, but there must be a well-grounded inference to be necessarily collected from the terms of the memorandum. *See the judgments* of Tindal, C. J., in Hawes v. Armstrong, and of Patteson, J., in James v. Williams (supra). A guaranty expressed to be in consideration that the plaintiff "would withdraw *the* promissory note." *Held*, that parol evidence was admissible to show what note was meant. Shortrede v. Cheek, 1 Ad. & El. 59. The agreement may also be collected from different papers. Dobell v. Hutchinson, 3 Ad. & El. 555.

In Davies v. Wilkinson, May, 1839, Jurist, Am. ed., p. 372, it was decided, in what cases an instrument bearing in part the form of a promissory note shall be deemed an agreement. The words, "I agree to pay," in an instrument given in evidence in an action on an account stated, may import consideration.

The case of Wain v. Warlters is one of so much celebrity, that it would have been improper to omit it in a selection of *leading cases;* it was confirmed by Saunders v. Wakefield, 4 B. & A. 596; and has since been acted on in numerous cases. It will be recollected, that, according to the statute, the agreement or some memorandum or note thereof, is to be in writing, *signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.* On these words it has sometimes been made a question what can be deemed a sufficient signature to meet these words. It is clear that the signature need not be placed in any particular part of the instrument or memorandum. See Sanderson v. Jackson, 2 B. & P. 238; Schneider v. Norris, 2 M. & S. 286; Knight v. Crockford, 1 Esp. 190; which are decisions on the corresponding words in the seventeenth section. In Johnson v. Dodgson, 2 Mee. & Welsb. 653, the following note, written by the defendant, was held sufficiently signed to satisfy the 17th section of the statute.

LEEDS, 19th October, 1836.

Sold John Dodgson [the defendant] 27 pockets Playsted 1836 Sussex at 103s. The bulk to answer the sample.

4 pockets Sclme Beckley's at 95s. Samples and invoice to be sent by Rockingham coach. Payment in banker's at 2 months.

Signed for Johnson Johnson & Co. [the plaintiffs]. D. Morse.

WAIN v. WARLTERS, 5 East R. 10—continued.

"The Statute of Frauds," said Lord Abinger, C. B., "requires that there should be a note or memorandum of the contract, in writing, ***signed by the party to be charged.*** And the cases have decided that, although the signature be in the beginning or middle of the instrument, it is as binding as if at the foot of it, the question being always open to the jury, whether the party, not having signed it regularly at the foot, meant to be bound by it as it then stood, or whether he left it so unsigned because he refused to complete it." In Coles v. Trecothick, 9 Ves. 251, Lord Eldon said, that "where a party principal, or person to be bound, signs as—what he cannot be—a witness, he cannot be understood to sign otherwise than as principal." But in Gosbell v. Archer, 2 Adol. & Ell. 500, where the purchaser affixed his signature to an agreement for the sale of land, and underneath was written "*Witness, Joseph Newman,*" in the usual place for a witness's signature, Joseph Newman being the clerk of the auctioneer employed to sell the premises, it was urged that Newman must be taken to have signed as agent for the vendor, and it was attempted to show a ratification of his agency. But the court was of opinion, that he signed simply as a witness; and Lord Denman, C. J., said that "he thought the above remark of Lord Eldon open to much observation; that no such decision had been actually made; and that, if it had, he should pause, unless he found it sanctioned by the very highest authority, before he held that a party attesting was bound by the instrument.

The act does not direct that the promise shall be *void*, but that "no action shall be brought" upon it; and Bosanquet, J., remarks (in Laythroap v. Bryant, 2 Bing. N. C. 744), that the 17th section is stronger than the 4th, for the 17th avoids contracts not made in the manner there prescribed. Though no *action*, therefore, can be brought upon a parol guaranty, the courts have been known to enforce one against an attorney, by virtue of their summary jurisdiction over their own officers; see Evans v. Duncan, 1 Tryw. 283. See Peter v. Compton (ante); and see Miller v. Irvine, 1 Dev. & Bart. 107.

The doctrine of Wain v. Walters, has always been esteemed of doubtful policy and propriety. Hargroves v. Cook, 15 Geo. R. 327.

WAITE v. TEMPLER, 2 Sim. 524.

I cannot say I concur in that view. Beauvoir v. Beauvoir, 3 House of Lords Cases, 524; 18 Eng. R. 12.

WAIT v. WAIT, 4 Barb. 192.

Reversed, 4 Coms. 95.

WAKEMAN v. BAILEY, 2 Hill, 279.

Reversed, 2 Denio, 220.

WAKEFIELD v. GOUDY.

See Key v. Collins (ante).

WAKEMAN v. LINDSAY, 19 Law J. R. N. S., Q. B. 166.

"That decision goes to the extremity of the law, and is not to be enlarged." Alderson, B., Kerby v. Harding, 3 Eng. R. 576; 20 Law J. R. N. S. Ex. 163.

WALBANK v. QUARTERMAN, 3 C. B. 94.

Followed, but its correctness doubted, in Brewer v. Jones, 29 E. L. & E. R. 503.

WALDEN v. MITCHELL.

See Lionel Walden (ante).

WALDEN v. THE N. Y. FIRE INS. CO., 12 Johns. 128.

Reversed in The N. Y. Fire Ins. Co. v. Walden, 12 Johns. 513.

WALDREN v. SHERBURNE, 15 Johns. 409.

S. P. as in Hackley v. Patrick (ante).

WALDRON v. McCARTHY, 3 Johns. 464.

Disapproved in Loomis v. Bedell, 11 N. Hamp. R. 82; and see Leavy v. Durham, 4 Kelly & Cobb's Geo. R. 607.

WALDRON v. McCOMB, 1 Hill, 111.

Reversed, 7 Hill, 335.

WALKER v. BROADSTOCK, 1 Esp. 448.

"I think that case is not sound law." Papenwick v. Bridgwater, 30 Eng. L. & E. R. 297.—Coleridge, J.

"As I understand it, that case cannot be supported," ib. 298,—Earle, J.

WALKER v. BURNELL, Doug. 319; 3 D. & E. 322.

The dictum of Ld. Mansfield, that creditors who prove their debts under a new commission, cannot question its validity.

Overruled in Rankin v. Horner, 16 East, 322.

WALKER v. CHAPMAN, Lofft's Rep. 342, cited Doug. 454.

Mansfield, C. J., called this "a very strange case." Aubert v. Walsh, 3 Taunt. 283.

WALKER v. CONSTABLE, 1 Bos. & Pul. 307; 2 Esp. 659.

That in an action for money had and received, the net sum received was all which could be recovered without interest.

But in Massachusetts interest is given on money fraudulently obtained or wrongfully kept back, &c. Wood v. Robbins, 11 Mass. 504, and cases there cited. So in New York. Pease v. Barber, 3 Caines, 266. See also Emmerson v. Heelis, 2 Taunt. 38, and Sheriff v. Potts, and Pappenden v. Randall (ante).

WALKER v. LAVERTY, 6 Mumf. 487.

An acknowledgment of the debt and a promise to pay, amount to a waiver of all notice; the holder in such case need not prove notice given.

Opposed. Trimble v. Thorne, 16 Johns. 152.

WALKER v. LISCARRY, 6 Esp. 98.—Ellenborough.

Where an annuity has been granted for a sum paid as a consideration for it, that is, money had and received from the grant, if the annuity is at any subsequent time set aside, and where the grantor became bankrupt after the grant, but subsequent to its being set aside, it is barred by his certificate.

Denied in Cowper v. Godmond, 9 Bing. 748; 3 M. &. S. 219, S. C.

WALKER v. PACKER, Cooke's Ca. 47.

That a pauper shall pay costs for all defaults, &c.

Denied in Rice v. Brown, 1 Bos. & Pul. 39.

WALKER v. REEVES, 2 Doug. 461. n.

Same principle as in Eaton v. Jaques (ante); and is said to have been denied. Powell on Mort. 241.

WALKER v. WETHERELL, 6 Ves. 473.

Overruled, Carmichael v. Wilson, 3 Moll. 79.

WALKER v. WITTER, 1 Doug. 1.

Ld. Mansfield: "The judgments of courts of record in England cannot be controverted. *Foreign Courts*, and courts in England not of record, have not that privilege. Foreign judgments are a ground of action everywhere, but they are examinable."

Doubted in Galbraith v. Neville, 1 Doug. 6 note.—Ld. Kenyon. And in Martin v. Nicolls, 3 Simons, 458 (5 Cond. R. 198.) *Held*, that a foreign judgment cannot be questioned in the courts in this country.

WALKER v. WITTER, 1 Doug. 1.—continued.

Therefore a bill for a discovery and a commission to examine witnesses abroad, in aid of the plaintiff's defence to an action brought in this country on a foreign judgment, is demurrable. 1 Stark. Ev. 229 *et seq.* But see 1 Phill. Ev. 351 *et seq.* and notes. Buttrick v. Allen, 8 Mass. 274.

WALKER v. WOOLASTON, 2 P. Wms. 576.

Doubted, to the extent which it goes. Ellis v. Deane, 1 Beat. 13.

WALKER'S CASE, 3 Co. R. 22.

Denied in Howland v. Coffin, 12 Pick. 125, 126. "Though decided right as to the question on which the case turned, has been questioned as to other points."

WALL v. HOWARD INS. CO., 14 Barb. 383.

Overruled. Wall v. East River Mut. Ins. Co., 3 Selden, 370.

WALLACE v. RENWICK, 7 Ohio R. 156.

Reversed, Renwick v. Wallace, 8 Ohio R. 539.

WALLACE v. SMALL, 1 M. & M. 446 and note.

An offer of a specific sum by way of compromise is admissible in evidence, unless accompanied with a caution that the offer is confidential.

Denied (in 11 Conn. 514), where Huntington, J. says—it is "opposed to the previous and subsequent decisions on this point; and we cannot but yield to their authority."

WALLER v. WALLER, 1 Grattan (Va.) R. 454.

"The case of Waller v. Waller, has been pressed upon us, but we cannot accede to the doctrine of that case * * * * * We think that unless there is something peculiar in the statute of that State, this case is unsound, and stands opposed to the whole current of decisions." Adams v. Field, 21 Vt. R. 269.

WALLIS v. DELANCY, 7 Term R. 266 n.

S. P. as in Nelson v. Whitall (ante).

WALLIS v. GILL, 3 M'Cord, 475.

Qualified in Mitchell v. Conolly, 1 Bayley, 203, 205:—"It was a hasty opinion, and illy digested throughout. And one with which I have always been dissatisfied; but discovered the error too late to suppress the publication. The decision itself was correct."—Nott, J.

WALPOLE v. EWER, Park on Ins. 423.

Overruled. See the observations of Park, J. in Simonds v. Hodgson, 6 Bing. 114; and Lord Ellenborough in Power v. Whitmore, 4 M. & S. 141.

WALTER v. MAUNDE, 19 Ves. jun. 426.

Sugden on Pow. p. 269, n. (y), says, "If correctly reported, shows that Ld. Eldon for the moment forgot the rule." See Harding v. Glyn, 8 Ves. jun. 572, 573.

WALTON v. CRONLY, 14 Wend. 63.

Overruled, Webb v. Rice, 6 Hill, 219.

WALTON v. SHELLY, 1 Term R. 296.

Overruled in Jordaine v. Lashbrooke, 7 Term R. 597; and rejecting the doctrine "that no party who has signed a paper or deed, shall ever be permitted to give testimony to invalidate that instrument, which he hath so signed." Utica Bank v. Hillard, 5 Cowen, 153.

WALWYN v. ST. QUINTIN, 1 B. & P. 652.

Doubted in Norton v. Pickering, 8 B. & C. 610; Walwyn v. St. Quintin was quoted as in direct contradiction to Cory v. Scott, 3 B. & Ald. 619; and Lord Tenterden said, "I think the case of Cory v. Scott, 3 B. & A. 619, was properly decided."

WAMBAUGH v. GATES, 11 Paige, 505.

Reversed, 4 Selden, 138.

WANGFORD v. BRANDON, Holt, 574; 3 Burn's Just. 319; Freetown v. Taunton, 16 Mass. R. 52.

That in England, the mother, by marriage, gains no new settlement for her children.

Overruled in East-Hartford v. Middletown, 1 Root, 196, where the mother of an idiot settled in M., married a man settled in East Hartford, where she resided with this child until her husband's death, and long after; and it was held, that the mother acquired a settlement for her child. "As it is now settled in *England*, that a settlement of the mother, acquired by marriage, will not confer a settlement upon her children born before in lawful wedlock, we do not mean to be understood to say, that we should hold otherwise. We sometimes yield to authority where we should not have created the precedent." By Williams, C. J. in 8

WANGFORD v. BRANDON, Holt, 574, etc.—continued.

Conn. 165. Here the question was, whether the court should be governed by the decisions of the courts in Connecticut, repeatedly made, upon the point of the effect of the derivative settlement of the mother upon the settlement of her bastard child; or whether they shall adopt the English decisions in the case of legitimate children. And the court held, that a bastard infant born in N. where its mother was settled, took the settlement of the mother acquired by marriage of the latter to a man settled in N. H. Williams, C. J.:—"Upon this subject our whole system differs entirely from that adopted in Great Britain. The fundamental maxim of the common law, that a bastard is *filius nullius*, is entirely rejected here; and such a child is here recognized by law, as the child of its mother, with all the rights and duties of a child. It has been adjudged that such a child can inherit from the mother. Heath et ux. v. White, 5 Conn. R. 228, 234; Brown v. Dye, 2 Root, 280. Children of this description also take their settlement, not from the place of their birth, as in England, but from the place of their mother's settlement, 1 Root, 29; ib. 155. Even when born in another State, of a mother settled in this State, it has been settled, by this court, that an artificial line should not separate them; and that such a child would take its mother's settlement in this State. Woodstock v. Hooker, 6 Conn. 35. The mother, too, is said to be the natural guardian, and has the right to the custody and control of such children, and is bound to maintain and educate them. 1 Su. Dig. 47; Wright v. Wright, 2 Mass. 109. It has also been repeatedly said by our judges and commentators, that the settlement of such children followed the settlement of their mother. 1 Su. Dig. 48; 2 ib. 821; Reeve Domestic Relations, 276; Woodstock v. Hooker, 6 Conn. 36; Hebron v. Marlborough, 2 ib. 20."

WARBURTON v. LYTTON, cited in 4 Bro. 440, 447.

S. P. as in Strickland v. Croker (ante).

WARD v. HAYDON, 2 Esp. N. P. R. 553.

Ld. Kenyon held, that a defendant in an action of trover, who suffers judgment by default, may be a witness for his co-defendants, as he is not liable to the costs of the issue tried against the other, and is not himself released, whatever may be the event of that issue.

Overruled in Marsh v. Smith. 1 C. & P. 577; Bohun v. Taylor, 6 Cowen, 313; 6 Binn. 319.

WARD v. MACAULEY, 4 D. & E. 483.

Ld. Kenyon afterwards retracted that part of his opinion which states that trover would lie under the circumstances of this case.

See Gordon v. Harper, 7 D. & E. 11; Hull v. Carnley, 1 Kernan, 509.

WARDELL v. EDEN, 1 Johns. R. 331, n. (a).

S. P. as in Andrews v. Beecker (ante).

WARDELL v. HOWELL, 9 Wend. 170; Rosa v. Brotherson, 10 *ib.* 85; Root v. French, 13 ib. 570; Payne v. Cutler, 13 ib. 605; Dickerson v. Tillinghast, 4 Paige's Ch. R. 215, 222; Fulton Bank v. Phœnix Bank, 1 Hall, 562.

An antecedent debt is not such a valuable consideration as will support the claim of a *bona fide* holder of a negotiable instrument, to the injury of the right of the original parties.

Opposed, Brush v. Scribner, 11 Conn. R. 388.

WARING v. DEWBURY, Palgrave v. Windham, 1 Stra. 97, 214.

To entitle a landlord to his motion against the sheriff, he must have made a demand and given notice of the rent due before the goods were removed.

Overruled in Smith v. Russell, 3 Taunt. 400; Arnott v. Garnett, 3 B. & A. 440. See Beekman v. Lansing, 3 Wend. 446.

WARNEFORD v. WARNEFORD, 2 Str. 764.

That sealing a will is sufficient signing within the statute of frauds.

Denied in Smith v. Evans, 1 Wils. 313; also, in 1 Ves. jr. 13.

WARNER v. WEBSTER, 13 Ohio R. 506.

"That case was rightly decided, although a wrong reason was assigned."—Read, J. Paine v. Morehead, 16 Ohio R. 445.

WARNOCK v. RUSSELL.

See Simpson v. Rawlings (ante).

WARREN v. GREENVILLE, 2 Str. 1129.

An entry in a book, whereby the party making it, charges himself with the receipt of money on account of a third person, or acknowledges the payment of money due to himself, is, after the death of the party who made it, admissible evidence against third persons, to prove the fact of the receipt of the money.

Explained. "Upon that ground entries made by receivers, stewards

WARREN v. GREENVILLE, 2 Str. 1129—continued.

and other agents, charging themselves with the receipt of money, have been held, after their death, to be admissible in evidence to prove the fact of the receipt of such money, and that without reference to the particular character of the person who made such entries. In Warren v. Greenville, 2 Str. 1129, the party who made the entry was an attorney; in Manning v. Lechmore, 1 Atk. 453, a bailiff; in Hingham v. Ridgway, 10 East, 109, a surgeon."—Per Parke, J., in Middleton v. Melton, 10 B. & C. 317:—*Held*, that an entry made by a deceased collector of taxes in a private book, kept by him for his own private convenience, in which he charged himself with the receipt of sums of money, was evidence against a surety of the fact of the receipt of such money in an action on a bond conditioned for the due payment of the taxes by the collector, although the parties by whom the money had been paid were alive, and might have been called as witnesses; and that upon the general principle that the entry was to the prejudice of the party who made it. See also Merrill v. The Ithica, &c. R. R. Co., 16 Wend. 586, 593, *et seq.*

WARREN v. MANUF. INS. CO., 13 Pick. 518.

A non-compliance with a statute made for the benefit of the crew and passengers will not render the vessel unseaworthy on this account. Such a contract is only voidable by the individuals for whose benefit it was made, although a penalty is imposed.

Doubted. See De Bignis v. Armistead, 10 Bing. R. 107.—Tindal: for a penalty implies a prohibition. Stephen v. Robinson, 2 Tyrw. 280, and Smith on Merch. Law, p. 315, 316.

WARREN v. MATTHEWS, 1 Salk. 357; 6 Mod. 73, S. C.

Ld. Holt said, "The subject has a right to fish in all navigable rivers, as he has a right to fish in the sea."

Denied in Rogers v. Jones, 1 Wend. 258.—Woodworth J.: "are very briefly reported, and are not supported by the authorities cited, there is good reason to believe the case itself misreported."

WARREN v. STAGG, cited in 3 Term R. 591.

S. P. as in Cuff v. Penn (ante).

WARREN v. WEBB, 1 Taunt. 379.

There is a great difficulty in understanding the report of that case. Simmons v. Lillystone, Eng. 20 R. 449; 22 Law J. R. N. S. Ex. 217; 8 Ex. R. 431.

WASHBURN v. PICOT, 3 Dev. 390.

S. P. as in Morgan v. Richardson (ante).

WASSALL v. REARDON, 6 Eng. Ark. R. 705.

Opposed to Rapley v. Price, 6 Eng. Ark. R. 713.

WATE v. BRIGGS, 1 Ld. Raym. 35; 2 Salk. 565; 5 Mod. 8.

Debt by plaintiff *in jure suo proprio* for escape of one in execution on a judgment recovered by plaintiff as administrator; *held*, illy brought.

Denied in Bonafous v. Walkers, 2 D. & E. 128; Morse v. James, Willes, 127.

WATERBURY v. MATHER, 16 Wend. 611.

Assumpsit against two defendants; one is arrested and the other returned *not found;* and it appearing on the trial that defendant *not found* is *misnamed* in the declaration; he is called John instead of George:—*Held*, that this was a variance on which to ground a nonsuit.

Doubted. 2 Phil. Ev. 132; Barry v. Foyles, 1 Pet. R. 311.

WATERMAN v. SOPER, 1 Ld. Raym. 737; 2 Rolle's R. 255.

Denied in Holder v. Coates, 1 Moo. & Malk. 112.—Littledale, J.: "There is another case on that subject (Masters v. Pollie, 2 Rolle's R. 141), in which it was considered that, if a tree grows in A's close, though the roots grow in B's, yet the body of the tree being in A's soil, the tree belongs to him. The doctrine in the case of Masters v. Pollie is preferable to that in Waterman v. Soper." Accordingly, he held that if a tree grows near the confines of the land of two parties, so that the roots extend into the soil of each, the property in the tree belongs to the owner of that land in which the tree was first sown or planted. So also it seems is the civil law. Holder v. Cates, 1 Moo. & Malk. 114, note. See Lyman v. Hale, 11 Conn. 184.—Williams.

WATERS v. MATTINGLY, 1 Bibb. R. 244.

Overruled in Stewart v Dougherty, 3 Dana, 480: *Held*, that an innocent misrepresentation—not being fraudulent, furnishes no sufficient ground for rescinding a contract.

WATKINS v. McDONALD, 3 Ark. R. 266.

Questioned, Hempstead v. Watkins, 1 Eng. Ark. R. 319.

Overruled Hemphill v. Hamilton, 6 Eng. Ark. R. 425.

WATSON v. BOURNE, 10 Mass. R. 337.

That a discharge of the contract can only operate, where the law is made by an authority common to both creditor and debtor in all respects; where both are citizens, &c.

Overruled in Blanchard v. Russell, 13 Mass. 1. But see Braynard v. Marshall, 8 Pick. 194.

WATSON v. MAIN, 3 Esp. R. 15.

That the statute 11 G. II. c. 19, s. 1, which enabled landlords to seize for rent in arrear, goods clandestinely removed, did not extend to rent *before* it became due.

Doubted in Furneaux v. Fotherly, 4 Camp. 136.—Ellenborough. But in Rand v. Vaughan, 1 Bing. N. C. 767, the law of Eyre, C. J. in Watson v. Main, was affirmed.

WATSON AND PAUL v. THE INS. CO. OF N. AMERICA, 4 Dall. 283.

Doubted in Brown v. Phœnix Ins. Co., 4 Binn. 464.—Tilghman, C. J.

WATSON v. POWELL, 3 Call, 306.

S. P. as in Kennon v. M'Roberts (ante).

WATSON v. SMITH, Cro. Eliz. 723.

Trover will not lie for a bond.

Denied in Bac. Abr. (Trover, D), and Hudspeth v. Wilson, 2 Dev. R. 372.

WATSON v. TURNER, Bull. N. P. 129, 147, 281.

That an express promise upon a *moral* obligation, will support an assumpsit.

Doubted in Wennall v. Adney, 3 B. & P. 249 n. See Paynter v. Williams, 1 Cromp. & Mees. 810. But every *moral* obligation is not perhaps sufficient for this purpose. See per Lord Tenterden, C. J., in Litchfield v. Shee, 2 B. & Adol. 811.

WATSON v. WATSON, 9 Conn. R. 140.

Doubted in Pierson v. Gale, 8 Verm. R. 509.

WATTS v. BELLAS, 1 P. Wms. 60.

The reasoning of Ld. Keeper Wright in this case "was too large, owing to his being then new in the court," &c. Per Ld. Hardwicke, 3 Atk. 189.

WATTS v. CRESSWELL, 9 Vin. 415.

"That certainly was a very strong case." Cory v. Gertcken, 2 Mad. R. 367.

WATTS v. HART, 1 Bos. & Pul. 134.

Overruled in *Ex parte* Charles, 14 East, 197, and Walker v. Barnes, 5 Taunt. 778.

WATTS v. THE PUBLIC ADMINISTRATOR OF N. Y., 1 Paige Ch. R. 347.

Reversed in S. C. 4 Wend. R. 168.

WATT'S CASE, Hardr. 321–2.

That in perjury, the party grieved shall not be a witness.

Overruled in Rex v. Broughton, 2 Str. 1229; Abrahams v. Bunn, 4 Burr. 2251.

In forgery, the party injured is still incompetent as a witness, in England. 4 East, 582. So in Connecticut. 1 Root, 307. But not in Pennsylvania. 1 Dall. 110. Nor in Massachusetts. 1 Mass. 7. See 1 Esp. 97, Day's ed. note 2.

WAUGH v. HAMPTON, 5 Ire. 241.

Overruled, Jackson v. Hampton, 10 Ire. Law R. 579.

WAYDELL v. LUER, 5 Hill, 448.

Reversed, 3 Denio, 410.

WEAKLEY ex dem. YEA v. BUCKNELL, Cowp. 473.

That an *equitable* title is a good defence *at law*, in ejectment.

Overruled in Doe v. Wharton, 8 D. & E. 2. See also 5 East, 132, and Goodtitle v. Bayley (ante).

WEAVER v. BOROUGHS, 1 Str. 648.

That where there is a special agreement, the plaintiff cannot go upon a general *indebitatus assumpsit*.

Denied, Doug. 651; Buller's N. P. 139.

WEAVER v. CLIFFORD, Yelv. 42.

Misreported. See 1 Brownl. 120; S. C., Bac. Abr. Escape A. 1.

WEBB v. BELL, 1 Sid. R. 440.

That the horses and harnesses fastened to a cart loaded with corn, may be distrained for rent.

Doubted in Simpson v. Hartopp, Willes, 517; but see Potter v. Hall, 3 Pick. 368; see 3 Kent's Com. 478.

WEBB v. HANGER, 1 Ark. 122.

Overruled, *Ex parte* Marr, 7 Eng. Ark. R. 84.

WEBB v. HARVEY, 2 Term R. 757.

Denied in Clarke v. Bradshaw, 1 East, 88; and in Lewis v. Pine, 1 Cromp. & Mees. 771. Lewis v. Pine decides, that in *scire facias* if the bail were summoned after 8 o'clock on the evening before the return day of the *sci. fa.* it is regular.

WEBB v. LONDON AND PORTSMOUTH RAILWAY COMPANY, 9 Hare, 129; 5 Eng. R. 151.

We cannot concur in the reasons for this decision; and although it has not been expressly overturned, its authority was greatly shaken when it came before the Lords Justices of Appeal. Gage v. The Newmarket Railway Company, 21 Law J. R. N. S. Q. B. 398; 16 Jur. 1136; 14 Eng. R. 64.

WEBB v. PATERNOSTER, Poph. 151; Palm. 71.

Haughton, J. held, that a license, when executed, is not countermandable; *but it is otherwise while it remains executory.*

Doubted in Gausen v. Morton, 10 B. & C. 731:—*Held*, that A being indebted to B, in order to discharge the debt executed to B a power of attorney, authorizing him to sell certain lands belonging to him, A:—this being an authority coupled with an interest, could not be revoked. See Hodson v. Anderson, 3 B. & C. 851; See 6 Greenl. 200; Liggins v. Inge, 7 Bing. 662; see 2 Phil. Ev. 83, and see Wood v. Lake (post).

WEBB v. PEIRCE, 14 Law Rep. 200.

Overruled, Webb v. Pierce, 5 Monthly Law Reporter, N. S. 9.

WEBB v. POTTS, Noy, 44.

Evidence of reputation was admitted upon a question of a farm modus. Doubted. See Phil. Ev. 253, where the cases are cited.

WEBB v. RICE, 1 Hill, 606.

Reversed, 6 Hill, 219.

WEBB v. RORKE, 2 Scho. & Lef. 661.

Doubted, it seems, in some degree. Math. on Presump. Ev. 410, n. (c).

WEBBER v. SHERMAN, 6 Hill, 20.

Reversed, 2 Denio, 362.

WEBB v. WINSLOW, 3 Dane's Abr. 398.

Denied in Linscott v. Fernald et al., 5 Greenl. R. 501.—Mellen, C. J.: It "is very briefly stated, and we have very few facts to learn the grounds of the decision."

WEBSTER v. LEE, 5 Mass. R. 334.

S. P. as in Appleton v. Boyd (ante).

Overruled in Bull v. Loveland, 10 Pick. 12 to 14; *also denied in* 1 Fairf. R. 251,—Parris, J., in respect to the intimations of the Ch. J. "that a negotiable note paid by the maker to the promisee previous to its arriving at maturity and before indorsement, is *functus officio* and cannot be negotiated." It being now settled, that the holder, who receives it *fairly* before it becomes due can recover upon it though it has been paid.

WEDGWOOD v. BAILEY, 1 Freem. 532.

Reversed on error. T. Raym. 463.

WEEDON v. MEDLEY, 2 Dowl. 689.

S. P. as in Irving et al. v. Eaton (ante).

WEEDON v. TIMBRELL, 5 Term R. 357; Esp. 16.

S. P. Hodges v. Windham, Peake, 39, and Bartelot v. Harskew, Peake, 7.

That no action of trespass for crim. con. could be brought for an act of adultery after a separation between the husband and wife.

Overruled in Chambers v. Caulfield, 6 East, 244; 2 Smith, 356.

WEEKS v. SPARKE, 1 Maule & Selw. 77.

Mr. Justice Bayley said, that "in cases of prescription, which must have originated beyond the time of legal memory, and of which it is impossible the claim be proved by evidence of the grant, reputation seems to be admissible."

Doubted in Richards v. Bassett, 10 B. & C. 663, by Littledale, J., who says, "It is by no means clear that evidence of reputation was admissible in matters of prescriptive right." He thought it was not admissible to determine whether an individual had a right to the soil itself, or only a right of common over it. See Phil. Ev. 254–5.

WEINOLT v. ROBERTS, 2 Camp. R. 586.

S. P. as in Grove v. Dubois (ante).

WEIR v. ABERDEEN, 2 B. & Ald. 320.

If there be unseaworthiness at the commencement of the voyage, and the defect is cured before loss, a subsequent loss is recoverable under the policy.

Doubted, it seems, in M'Lanahan v. Universal Ins. Co., 1 Pet. R. 184. But see Paddock v. Franklin Ins. Co., 11 Pick. 232–3–4.

WELCH v. ALLEN, 21 Wend. 147.

See Welch v. Silliman, 2 Hill, 491.

WELCH v. CREAGH, 8 Mod. 373; 1 Str. 680.

That debt will not lie on a promissory note.

Overruled. Meredith v. Chute, 2 Ld. Raym. 760; Bishop v. Young, 2 Bos. & Pul. 78.

WELCH v. LYNCH, 7 Barb. 380.

Reversed, Dec. 1852.

WELD v. HADLEY, 1 N. H. R. 295.

A tender and refusal of specific articles, according to the contract, transfers no property.

Denied in Slingerland v. Morse, 8 Johns. 474; Nicholas v. Whiting, 1 Root, 448; Rix v. Strong, ib. 55; Smith v. Loomis, 7 Conn. 110; Mitchel v. Merrill, 2 Blackf. R. 87. See Robbins v. Luce (ante).

WELDON v. BUCK, 4 Johns. 144.

S. P. as in Hendricks v. Franklin (ante).

WELFORD v. LIDDEL, 2 Ves. 400.

Ld. Hardwicke held, that a merchant's account will be barred, if there is no item within six years.

Opposed, Catling v. Skoulding, 6 Term R. 189. But see Foster v. Hodgson, 19 Ves. jr. 184–5; Blair v. Drew, 6 N. H. R. 235:—"Neither Cranch v. Kirkman, Peake's R. 121, nor Catling v. Skoulding, can be supported." See 2 Phil. Ev. 143. The following cases seem to confine the exception in the statute strictly to mercantile transactions between merchants. Martin v. Heathcote, 2 Eden, 169; cited 5 Johns. Ch. R. 528; 20 Johns. R. 583, 592, 599; Murray v. Coster; Codman v. Rogers, 10 Pick. 118; Spring v. Gray, 5 Mason, 525; 6 Pet. R. 151, S. C.; Blair v. Drew, supra. See Green v. Caldcleugh, 1 Dev. & B. 320.

WELLS v. EVANS, 20 Wend. 251.

Reversed 22 Wend. 324.

WELLS v. MACE, 17 Verm. R. 503.

Dissented from in Jamison v. Blowers, 5 Barb. 693, and overruled 7 How. Rep. 172. See Beach v. Boynton, 26 Vermont R. 735.

WELLS v. WHITEHEAD, 15 Wend. 530.

That the better opinion now is, that a copy of the bill and protest need not accompany the notice, in the case of a foreign bill.

Doubted. See Chit. on Bills, 8th Am. ed. 498. See also Blakely v. Grant (ante).

WENTWORTH v. WENTWORTH, 5 N. H. R. 410.

Questioned. Conn v. Coburn, 7 N. H. R. 368.

WENTZ v. DEHAVEN, 1 S. & R. 312.

S. P. as in Martin v. Mowlen (ante).

WEST v. CARTLEDGE, 5 Hill, 488.

Reversed, 2 Denio, 377.

WEST v. EMMONS, 5 Johns. 179.

See Parker v. Parmelee, 20 Johns. 136.

WEST v. PRICE'S HEIRS, 2 J. J. Marshall, 388.

Intimated that the junior patentee entering into lap, acquires a possession of his entire tract, against the elder patentee, who had previously entered outside the lap.

Denied in Shrieve v. Summers, 1 Dana's R. 241.

WEST v. SINK, 2 Yeates R. 274.

That rent in its nature is a demand that may be *debitum in presenti* though *solvendum in futuro.*

Denied in Bank of Pennsylvania v. Wise, 3 Watts R. 401–2. Kennedy: "Surely it was a great mistake in the court to say that rent which had not become payable was *a present debt to be paid in futuro.*

WEST v. WENTWORTH, 3 Cowen, 82.

Reviewed in Clark v. Pinney, 7 Cow. 681; and doubted, 3 Sand. 614.

WESTERDELL v. DALE, 7 Term R. 302, 308.

The mortgagee of a ship, whether in or out of possession, must be considered as the legal owner in a court of law, and as such liable for repairs.

Overruled in Trewhella v. Rowe, 11 East, 435; Twentyman v. Hart, 1 Stark. R. 366; Ring v. Franklin, 2 Hall, 1; Thorn v. Hicks, 7 Cowen, 697; Fisher v. Willing, 8 S. & R. 118; Reeve v. Davis, 1 Adol. & El. 312.

WESTON v. MOWLIN, 2 Burr. 969.

What Ld. Mansfield is made to say in pp. 978–9, that whatever will give the mortgage-money, will pass the land with it; and that the estate in the land is the same thing as the money due, &c., is denied by Trowbridge, J. See 8 Mass. supp. 557.

WETMORE v. SCOVELL, 3 Edw. Ch. R. 515.

Questioned, Woolsey v. Judd, 11 Pr. R. 49.

WEYER v. ZANE, 3 Ohio R. 306.

Explained, Adams v. Jefferys, 12 Ohio R. 273.

WHARTON v. BROOK, 1 Ventr. 21.—Twisden.

Doubted by Denman, C. J.; see Parrat v. Carpenter (ante).

WHARTON'S CRIMINAL LAW, 308.

That procuring abortion was indictable at common law, denied, The State v. Cooper, 2 Zab. R. 57.

WHARTON v. PITTS, 2 Salk. 548.

Overruled, Velthasen v. Ormsley, 3 D. & E. 316.

WHEALEY v. LOW, Cro. Jac. 668, cited by Ld. Holt in Coggs v. Bernard, Ld. Raym. 909, and by Sir Wm. Jones on Bailm. p. 51, and by Mr. J. Story on Bailm. p. 76, s. 98 (Deposits).

Denied in Amer. Jurist, No. 32, p. 276, 277, and 279: "If the *gist* of the action was simply to recover damages for the non-feasance, it was law neither then nor now."

WHEATON v. EAST, 5 Yerg. R. 41.

S. P. it seems, as in Holmes v. Blog (ante).

WHEELER v. CURTIS, 11 Wend. 653.

The rule laid down by Neilson, J. qualified in Miller v. Maxwell, 16 Wend. 9, 23, overruled, Auburn & Owasco Canal Co. v. Leitch, 4 Den. 65.

WHEELER v. McFARLAND, 10 Wend. 318.

Reversed, M'Farland v. Wheeler, 26 Wend. 467.

WHEELER v. VAN HOUTEN, 12 Johns. 311.

A submission of all demands, which either party had against the other, is a bar to an action for any demand subsisting at the time of the submission and the award, although the plaintiff can prove that the demand sued was omitted, by mistake, to be laid before the arbitrators.

Opposed, Whittemore v. Whittemore, 2 N. H. R. 26; Webster v. Lee, 5 Mass. R. 334. In Wheeler v. Van Houten, "the important principle seems to be overlooked, that courts of law possess no authority to enforce a specific performance of executory agreements." Woodbury, J., in 2 N. H. R. 26, *supra;* see Jackson v. Ambler, 14 Johns. 96.

WHEELER'S CASE, Godb. 218.

That it belongs to the judges of the courts of law, and not to the ecclesiastical courts, to decide whether an act of Parliament was broken or not.

Cited and disapproved in Camden v. Home, 4 D. & E. 398.

WHEELOCK v. FITCH, 3 Porter Ala. R. 387.

Said to have been incorrectly ruled, and not to be in accordance with the general course of decisions. Abercrombie v. Moseley, 9 Porter Ala. R. 145.

WHICHER v. CEDAR CO., 1 G. Greene R. 217.

Overruled, Hall v. Washington Co., 2 G. Greene R. 473.

WHISKARD v. WILDEN, 1 Burr. 300.

Doubted in Hill v. Hale, 2 New R. 202; but confirmed in Sharpe v. Abey, 5 Bing. 193; 2 M. & P. 312.

WHISTLER v. NEWMAN, 4 Ves. 129.

Overruled in effect by Wagstaff v. Smith, 9 Ves. 920; Sturgis v. Corp, 13 Ves. 190; Essex v. Atkins, 14 Ves. 342; see Clancey on Married Women, 118, 123; Sugden on Powers, 106.

WHITAKER v. BROWN, 8 Wend. 490.

S. P. as in Ducham v. Wallis (ante).

Denied it seems by Parris, J., 1 Fairf. R. 249, and the cases there cited.

WHITBECK v. COOK, 15 Johns. 483.

Ch. J. Spencer, says, "It must strike the mind with surprise, that a person who purchases a farm through which a public road runs at the time of purchase, and had so run long before, who must be presumed to have known of the existence of the road, and who chooses to have it included in his purchase, shall turn round on his grantor and complain that the general covenants in the deed have been broken, by the existence of what he saw when he purchased, and what must have enhanced the value of the farm.

Denied in Hubbard v. Norton, 10 Conn. R. 422, by Williams, C. J., who says,—"It has not been questioned at the bar, but that a highway was an "incumbrance" within the meaning of the covenants. Although this has been doubted, by a highly respectable judge in the State of New York, in the case of Whitbeck v. Cooke, 15 Johns. 483, it is certain that the right of the public to an easement over the land, is utterly inconsistent with that exclusive dominion which the tenant in fee claims and exercises in ordinary circumstances. It is true, that the advantages derived from the highway may be more than equivalent to the loss sustained thereby; yet so long as others have a right of enjoyment, which the owner of the soil can neither prohibit nor control, it seems clear, that there is subsisting a legal incumbrance; and so it was ruled, by the Supreme Court of Massachusetts, in the case of Kellogg v. Ingersol, 2 Mass. R. 97. In Hubbard v. Norton, *supra*, the court held, that parol evidence was not admissible to prove that the existence of the highway was known to the plaintiff at the time of taking the deed. *Held*, also, that covenants against incumbrances, and that the grantor is the owner of the land, are personal covenants, which do not run with the land, and, of course, cannot be assigned.—Ib. In respect to the damages in such a case, the jury are to estimate the actual injury to the party. If the highway is a benefit to the land conveyed, then only nominal damages will be given; if otherwise, a fair compensation is to be made for the injury sustained. Ibid.

WHITBECK v. DUFFIELD, Hoff. 110.

Reversed, 26 Wend. 55.

WHITCOMB v. WHITING, 2 Doug. 652.

Doubted in Atkins v. Tredgold, 2 B. & C. 23; but since approved by some judges, Perham v. Raynal, 2 Bing. 306; Farmers' Bank v. Clarke, 4 Leigh R. 610. See 2 Phil. Ev. 140. See Bell v. Morrison (ante); Burleigh v. Stott, 8 B. & C. 36; Pease v. Hirst, 10 ib. 122; but since

WHITCOMB v. WHITING, 2 Doug. 652—continued.

the statute 9 Geo. IV. cap. 14, "One joint contractor cannot prevent the other from taking advantage of the statute of Limitations by any species of acknowledgment excepting a part payment of principal or interest. But as the statute expressly saves the effect of such a payment, the principal case of Whitcomb v. Whiting is still law, and has been recognized as such in Wyatt v. Hodson, 8 Bing. 313, where Park, J. said, "I have always considered Whitcomb v. Whiting a governing case, notwithstanding some observations which have been thrown out against it; but the case has been recognized in Burleigh v. Stott, and confirmed in Perham v. Raynal, where an acknowledgment by one of the several joint contractors on a promissory note was held to be binding on the others. That was, like the present, the case of a surety, and, therefore, expressly in point. Then, the recent statute having distinguished between the effect of a promise by one of many joint-contractors, and the payment of interest by such a person, the law in respect of such a payment remains where it was under the previous decisions." Rew v. Pettet, 1 Ad. & Ell. 196, is another case to the same effect. The reason which induced the legislature to make this distinction in favor of payment, is said by Tindal, Ch. J., in Wyatt v. Hodson, to have been, because the payment of principal or interest stands "on a different footing from the making of promises, which are often rash and ill-interpreted, while money is not usually paid without deliberation; and payment is an unequivocal act, so little liable to misconstruction, as not to be open to the objection of an ordinary acknowledgment." It has lately been held that if goods be given within the six years in part payment, that takes the case out of the statute. Horne v. Stevens, 7 A. & E. 71; Hart v. Nash, 2 C. M. & R. 337, and see Biscoe v. Jenkins, 5 Eng. R. 114; Shoemaker v. Benedict, 1 Kernan, 184.

"The judge's charge was founded upon the rule which was laid down in the leading case of Whitcomb v. Whiting (Doug. 652), and which was afterwards sanctioned in this State, in the case of Smith v. Ludlow (6 Johns. 267), and finally adopted in Johnson v. Beardsley (15 Johns. 3), and in Patterson v. Choate (7 Wend. 441);" these cases were distinctly overruled in Van Kuren v. Parmelee, 2 Coms. 523; and see Bogert v. Vermilyea, 9 Barb. 35, and Dunham v. Dodge, 10 ib. 566.

WHITE v. BARBER, 5 Burr. 2703.

Said not to be law, in Doe d. Blakiston v. Haslewood, 15 Jur. 272; 2 Eng. R. 308.

WHITE v. BEATTIE, 1 Dev. Eq. R. 87.

Overruled in S. C., 1 Dev. Eq. R. 320.

WHITE v. BEATTIE, 1 Dev. Eq. R. 87.

Overruled, White v. Beattie, 1 Dev. Eq. R. 324.

WHITE v. COLE, 24 Wend. 116.

Reversed; 26 Wend. 511.

WHITE v. DELAVAN, 17 Wend. 49.

Reversed, Ryckman v. Delavan, 25 Wend. 186.

WHITE v. RICHMOND, 16 Ohio R. 5.

Opposed to Hosbrook v. Palmer, 2 M'Lean's R. 10; Fry v. Rousseau, 3 ib. 107.

WHITE v. SCOTT, 4 Barb. 56.

See Griffin v. Martin, 7 Barb. 297.

WHITE v. SEALY, 1 Doug. 49.

Defendant gave a bond in a penalty of £600, conditioned for the payment of a yearly rent by another person of £570. Two judgments had been recovered on the bond; and to the third action, the defendants pleaded the first judgment in bar. The question was, whether the bond was a standing security for the rent for the whole term of 22 years, or only to the amount of the penalty. *Held*, that the defendants were liable only to the amount of the penalty.

Denied in Lonsdale v. Church, 2 Term R. 388, where Buller, J., who concurred in the decision in White v. Sealy, declared that he was not satisfied with the decision in the latter case. In Knight v. Maclean, 3 Bro. Ch. R. 596, Buller, J., sitting for the chancellor, decided that interest should be calculated though it exceeded the penalty; and he said that White v. Sealy went upon the defendants' being sureties. But Ld. Thurlow on re-argument, ruled that the penalty was the extent of the obligor's liability. With the latter opinion accords Clark v. Bush, 3 Cowen, 151, where all the cases were reviewed; and subsequently Lyon v. Clark, 4 Selden, 154.

WHITE v. SMITH, 4 Hill, 166.

Reversed, 7 Hill, 520.

WHITECHURCH, *Ex parte*, 1 Atk. 58.

That a person may be arrested on Sunday, on a warrant for contempt in disobeying the order of court.

Denied by Buller, J., in Rex v. Myers, 1 D. & E. 265, because not a criminal prosecution, as formerly holden.

WHITEHEAD v. SAMPSON, 1 Freem. 265.

Denied in Curtis v. Vernon, 3 Term R. 387, and cases cited in Ram on Assets, &c. p. 127, n. (w): *Held*, that an *ex'r de son tort* may plead, *puis darrein continuance* his letter of administration, although procured after suit commenced and plea put in.

WHITEHOUSE v. FROST, 12 East, 614.

After purchase of forty tons of oil in one cistern, and a resale of ten tons thereof, it was held that the purchaser of the ten tons could recover for them in trover, without any previous separation.

Doubted in Austen v. Craven, 4 Taunt. 644, and White v. Wilkes, 5 Taunt. 176.

WHITELEGG v. RICHARDS, 6 Moore, 501; 3 B. & B. 188.

An order drawn up in the name of the court, by an officer of a court of justice (for instance the clerk of the insolvent debtor's court), is, until amended, repudiated, or rescinded, the order of the court.

Reversed in S. C. (in error); 3 D. & R. 237; 2 B. & C. 45.

WHITFIELD v. McLEOD, 2 Bay's R. 380.

S. P. as in Timrod v. Shoolbred (post).

WHITMIRE v. NAPIER, 4 S. & R. 290.

Doubted in Duncan v. Duncan, 1 Watts, 329.

WHITMORE v. WILKS, 1 Mood. & Malk. 214.

A plaintiff on the record, though a mere trustee, was excluded by Ld. Tenterden, from being a witness.

Shaken in Worrall v. Jones, 7 Bing. 395; 5 M. & P. 241, S. C.:—"That a party to the record should not be *compelled* against his consent to become a witness in a court of law;—but if the party consents to be examined, he is then an admissible witness." See Lampton v. Lampton, 6 Mon. R. 617; Norden v. Williamson, 1 Taunt. 378. But see Supervisors of Chenango v. Birdsall, 4 Wend. 453; and Schermerhorn v. Schermerhorn (post).

WHITNASH v. GEORGE, 8 B. & C. 556.

S. P. as the point decided in Goss v. Watlington (ante).

WHITNEY v. HOLMES, 15 Mass. R. 152.

That an award of arbitrators cannot establish the title to land.

Explained in Jones v. Boston Mill Corporation, 6 Pick. 148; Ch. J. Parker expressly says, *that the award itself would establish the title*, citing 15 Johns. 497, 197.

See also Shelton v. Alcox, 11 Conn. 240, where the court decide, that the award may determine in whom the title is; and estop the party, and those claiming under him, from contesting it. It has not the operation of a conveyance; but the parties are concluded, by their agreement, from disputing the location, or boundaries, or title, as settled by the arbitrator. ib.; Robertson v. M'Neil, 12 Wend. 575. See also Cary v. Wilcox, 6 N. H. R. 177.

WHITNEY v. PECKHAM, 15 Mass. 243.

In an action for a *malicious prosecution*, the recovery in a competent jurisdiction is conclusive evidence of *probable cause*.

Denied in Burt v. Place, 4 Wend. R. 598.

WHITNEY v. STERLING, 14 Johns. R. 215; M'Pherson v. Rathbone, 11 Wend. 96.

That it is competent to prove the partnership by general reputation.

Doubted in Roscoe on Ev. p. 212; Bernard v. Torrance, 5 Gill & J. 383.

WHITTAKER v. BROWN, 11 Wend. 75.

Overruled, 16 Wend. 605.

WHITTAKER v. HOWE, 3 Beav. 383.

Questioned, in note to 1 Smith's Lead. Cas. 782 *a*, 3d ed.; Tallis v. Tallis, 16 Jur. 744; 21 Law J. R. N. S. Q. B. 269; 11 Eng. R. 461 *n*.

WHITTINGHAM v. BURGOYNE, 3 Anst. 900.

"The note of this case in 2 Chit. Eq. Dig. is too imperfect to enable us to see upon what principle it stands." Thomas v. Phillips, 4 Sme. & M. 429.

WHITTINGHAM v. THORNBURG, 2 Vern. 206.

That where a policy is void for fraud in the assured, he is entitled to a return of the premium.

Denied by Ld. Mansfield in Tyler v. Hearn, Park, 218; Chapman v. Fraser, ib.; Marsh. 562.

WICKWARE v. BRYAN, 11 Wend. 585.

Overruled, Jones v. Thompson, 6 Hill, 621.

WIGGLESWORTH v. DALLISON, Doug. 201.

A custom that the tenant, whether by parol or deed, shall have the way-growing crop after the expiration of his term, is good, if not repugnant to the lease by which he holds.

Explained in Hutton v. Warren, 1 Mee. and Wel. 466, 774, by B. Parke, and 1 Smith Lead. Cas. 306.

WILBUR v. SELDEN, 6 Cowen, 162; Rex v. Joliffe, 4 Term R. 290.

The person called to prove what a deceased witness said on a former trial, must repeat the very words.

Denied in Cornell v. Green, 10 S. & R. 16; Chess v. Chess, 17 ib. 409; Ballenger v. Barnes, 3 Dev. R. 460; Bowie v. O'Neale, 5 H. & J. 226; 12 Wend. 45; Pegram v. Isabel, 2 H. & M. 193; Mayor of D. v. Day, 3 Taunt. 261.

WILCOX v. CALLOWAY, 1 Wash. 38; Jones v. Jones, 1 Call, 468.

"The chief justice, speaking for himself, feels bound, after the solemn discussion which the grant of this State, to the governeurs, underwent in those two cases, to submit to the principles therein adjudicated, however he may regret that the judges did not come to a different conclusion. A majority of the court, Judge Owsley dissenting, are of opinion that the determinations of the two cases quoted, have settled the main question in this cause." Stith v. Hart's Heirs, 6 Monroe Ken. R. 631.

WILCOX v. HEWSON, Mo. 696.

A deed or writing obligatory may be delivered as an escrow to the party himself.

Overruled. Halford v. Parker, Hob. 520, 835, 884; 43 E. 3. fo. 27, 19; 18 Ass. pl. 18; 9 Co. 636 b. See Arnold v. Patrick, 6 Paige, 310.

WILD v. FISHER, 4 Pick. 421.

S. P. as in Pierce v. Crofts—*Held*, in an action by the indorsee of a promissory note against the maker, that the plaintiff might give the note in evidence under the common money counts.

Denied in Kennedy v. Carpenter, 2 Whart. R. 354.

WILD'S CASE, 6 Coke R. 17.

That a gift to one and his issue or children, who has issue or children living, creates a joint tenancy.

Denied in Lumpley v. Blower, 3 Atk. 397—Hardwicke: "That was before it was fully settled that the word issue was as proper a word of limitation as heirs of the body."

WILKES v. JACKSON, 2 Hen. & Munf. 355.

S. P. as in Brown v. Wootton (ante).

WILKES v. JORDEN, Hob. 5.

Error in fact is assignable in the Exchequer and House of Lords.

Opposed, Roe v. More, Com. 597; Prior v. ——, 1 Ventr. 207; Evans v. Roberts, 3 Salk. 146; Holt, 278; 2 Saund. 101 a.

WILKES v. MOORFOOTS, Cro. Eliz. 86.

Overruled in Gibb's case, Owen, 27; 1 Leon. 158.

WILKINS v. PHILLIPS, 3 Ohio R. 49.

Followed in Massie v. Wallace, 12 Ohio R. 351; but limited in Kay v. Watson, 17 ib. 27.

"We are aware that the case of Wilkins v. Phillips cannot be reconciled with this opinion." Davis v. Hubbs, 8 Blackf. 184.

WILKINSON v. COVERDALE, 1 Esp. R. 5.

Denied (in Amer. Jurist, No. 32, Jan. 1837): "That is a short *nisi prius* case, of a not very accurate *nisi prius* reporter." "The case as stated, is a slim authority, for any thing." See Thorne v. Deas, 4 Johns. 100.

WILLARD v. TWITCHEL, 1 N. H. R. 177.

S. P. as in Manton v. Hobbs (ante).

WILLES' REPORTS.

"Willes' Reports were not published in more than half a century after the decision of Omychund v. Barker (reported in Willes, 549, and 1 Atk. 45), and the manuscript was furnished by his grandson."

WILLIE v. CAWTHORNE, 1 East, 398.

Doubted in Horwood v. Underhill, 4 Taunt. 346.

WILLIAMS v. BOSANQUET, 1 Bro. & Bing. 72, by ten judges overruling the doctrine of Ld. Mansfield, in Eaton v. Jaques.

Denied in Astor v. Hoyt, 5 Wend. 614, asserting the doctrine of Lord Mansfield, in Eaton v. Jaques, "that upon principle the assignee is liable only in respect of the possession, and that as a mortgage was a mere security, the mortgagee out of possession was not liable as assignee:" the court, Savage, C. J., saying, "It is too late for us now to retrace our steps and adopt the doctrine of Williams v. Bosanquet, even *if* it was correct."

WILLIAMS v. BROWN, 2 Stra. 996.

This case adopts the principle of Comer v. Hill, 2 Str. 969 (ante).

WILLIAMS v. CALLENDER, Holt's R. 307.

S. P. as in Leicester v. Walter (ante).

WILLIAMS v. DUKE OF BOLTON, Dick. 405.

Doubted in Math. on Presumptive Ev. 121, note (b).

WILLIAMS v. DOWNMAN, 4 Q. B. 235.

Reversed in part, 7 Q. B. 103.

WILLIAMS v. ELDRIDGE, 1 Hill, 249.

Disapproved in Cope v. Sibley, 12 Barb. 521.

WILLIAMS, *Ex Parte*, 4 D. & E. 124.

S. P. as in Brickwood v. Fanshaw (ante).
Overruled in Clark v. Donovan, 5 D. & E. 694.

WILLIAMS v. MADIE (or MUNDIE), 1 C. & P. 158; S. C. Ry. & Moo. 34.

Abbot, C. J., ruled that whatever is communicated to an attorney for the purpose of bringing or defending an action is privileged, but not otherwise.

Overruled in Doe v. Harris, 5 C. & P. 592; see Cromack v. Heathcote, 2 Bro. & B. 4; S. C. 4 Moore's R. 357; Robson v. Kemp, 4 Esp. R. 235; 3 Esp. 52.—Lord Ellenborough; Foster v. Hall, 12 Pick. 89; Parkhurst v. Lawson, 2 Swans. R. 216.—Lord Eldon; 1 Phil. Ev. 134; Greenhough v. Gaskell, 1 Coop. Sel. Ca. 96. (8 Cond. R. 400.)

WILLIAMS v. SMITH, 2 Caines, 13.

Reversed, 2 Caines C. 110.

WILLIAMS v. THORP, 8 Cowen, 201.

The plaintiff offered his attorney as a witness; defendant objected, because he had sent to plaintiff to compromise; and the latter said "he must first see his attorney;" and the court rejected the witness.

Doubted, Murray v. Costar, 4 Cowen, 635; 2 Johns. 576; 4 Conn. 142; 5 ib. 416, and 4 Pick. 374.

Overruled, Marvin v. Richmond, 3 Den. 58.

WILLIAMS, Lessee, v. VEACH, 17 Ohio R. 171.

"We refer to this case to show how easy it is for an acute judge, greatly hurried, and an able reporter, feeling also in a hurry, to fail to present the true point intended to be decided. The report would seem to convey the idea that the only point presented was the construction of a power to sell, whereas another point of even greater difficulty was involved—namely, the meaning of the words "needy relations." 1 Western Law Jour. N. S. 485.

WILLIAMS v. WILLIAMS, 3 Barb. Ch. 628.

Reversed, 4 Selden, 525.

WILLIAMS v. WOODWARD, 2 Wend. 487.

See Bloomer v. Waldron, 3 Hill, 361.

WILLIAMSON v. FARLEY, Gilm. 15.

Doubted in Snydor v. Gee, &c., 4 Leigh R. 647.

WILLIAMSON v. LOSH, in note to Chitty on Bills, 75.

"This case was never reported; and the case, at least the grounds of the decision, were soon after denied in Rann v. Hughes, 7 Term R. 350 n.; and the case seems never to have been followed or even quoted as an authority in England. Mr. Chitty speaks of the doctrine of the case as one that formerly prevailed, and we think that case cannot be considered as law, even in England." Smith v. Kettridge, 21 Vt. R. 247.

WILLING v. CONSEQUA, 1 Wash. C. C. R. 307.

Washington, J., held, that a party plaintiff of record, not having an interest in the suit, may be admitted as a competent witness.

Doubted in Levy v. Burley, 2 Sum. R. 361.—Story. "That decision has not been thought entirely satisfactory."

WILLING v. ROWLAND, 4 Dall. 106, note.

Overruled in Gerard v. Taggart, 5 S. & R. 19.

WILLIS v. BAILEY, 19 Johns. 268.

Reviewed in Wallis v. Murray, 4 Cowen, 401, and Townsend v. Lawrence, 9 Wend. 459, in respect to compelling a party to produce books.

WILLIS v. BALDWIN, Doug. 450.

Doubted in Graham v. Walker, 2 Moll. Ch. R. 443.

WILLIS v. EVANS, 2 Ball. & B. 225.

Denied in Fitzpatrick v. Power, 1 Hogan, 24.

WILLIS v. NEWHAM, 3 You. & J. 518.

Overruled, Cleave v. Jones, 20 Law J. R. N. S. Ex. 238; 15 Jur. 515; 4 Eng. R. 514; Williams v. Gridley. 9 Metc. 485; Sibley v. Lumbert, 30 Maine, 353.

WILSON v. DUCKET, 3 Burr. 1361.

Same doctrine as in Whittingham v. Thornburg (ante).

WILSON v. CLERK, 1 Esp. R. 273.

Doubted, see 1 Phil. Ev. (863) 806—5th Am. ed. n. (3).

WILSON v. GREEN, 20 Wend. 189.

Opposed to Niblo v. Post, 25 Wend. 180; Benjamin v. Benjamin, 1 Selden, 383.

Overruled, Morewood v. Hollister, 2 Selden, 309.

WILSON v. IRWIN, 14 Ser. & R. 176.

Disapproved of, Yost v. Eby, 23 Penn. R. (2 Harris) 327.

WILSON v. MILNER, 2 Camp. 452.

Ld. Ellenborough said, that "among joint tort-feasors there was neither contribution, nor implied promise of indemnity. Thus, a levy is made after act of bankruptcy, and the money paid over to the creditor: the assignees then recover against the sheriff; *held*, that the latter had no remedy against the creditor to recover back the money.

Overruled in Betts v. Gibbins, 2 Ad. & Ell. 57:—Ld. Denman, C. J.—"The general rule is, that between wrong doers there is neither indemnity nor contribution: the exception is, where the act is not clearly illegal in itself." Again—"In Wilson v. Milner, 2 Camp. 452, he (Ld. Ellenborough) certainly did go to the point. That, however, is only a *nisi prius* decision; and if the effect of it was, that wherever it turns out that the parties are wrong there can be no indemnity, I think the decision is not sustainable." See 4 Bing. 72.

WILSON v. PAULTER, Str. 794.

A defendant in trover was charged with his *confession* taken before commissioners of bankrupt, and the chief justice refused to let the defendant explain it by parol evidence.

Doubted, Stark. Ev. 571–2:—"It is not stated in what way the defendant proposed to explain the document; and it would not be safe to rely much on so very loose a report." See also Rowland v. Ashby, 1 Ry. & M. 231.

WILSON v. RASTALL, 4 Term R. 753.

This case has been supposed (Sir D. Evans, in his edition of Pothier) to establish the principle, that communications to a conveyancer are not privileged, when made to him in that capacity, though he may happen to be a counsel or attorney.

Denied in Farquano v. Knight, 2 M. & Wel. 100, by Ld. Abinger, C. B., who says, that it is no objection to an attorney's privilege that a document is brought to him in the character of a scrivener. See Phil. Ev. 176, n. (7).

WILSON v. RUNYON and Seely v. Blair, Wright's Rep. 651, 683.

Overruled in Bucklin v. Ohio, 20 Ohio R. 18; French v. Millard, 22 Ohio R. 50.

WILSON v. SMITH, 3 Burr. 1550.

That the words in the memorandum at the foot of policies of assurance import an exception only, and not a condition.

Overruled in Burnet v. Kensington, 7 D. & E. 210.

WILSON v. STUBBS, Hob. 330.

Daggett, J. (in Coit v. Starkweather, 8 Conn. R. 295) says, "It is difficult to understand the case of Wilson v. Stubbs. The question arose upon a description in a writ, of one Ralph Stubbs. There were father and son of the same name, and the court say—'Defendant being named Ralph Stubbs, without any addition, shall never be accounted the younger, but always the elder, of the two of that name.' (How can this be reconciled with the cases in 2 Dall. 70; 1 Black. 60, and 2 P. Wms. 141.) A more satisfactory report of this case is in Cro. Jac. 624, by the name of Stubbs v. Cook, where it appears, that the suggestion of the court in the case in Hobart, that Ralph Stubbs without addition, should never be accounted the younger, but always the elder of that name, is done away, *by the trial of the cause.* The case proves that when there are father and son of the same name, an inquiry may be instituted to ascertain which is intended."

WILSON v. TENYCK, 5 Johns. R. 78.

Overruled in Evans v. Harris, 19 Barb. 416.

WILSON v. THE MAYOR OF NEW YORK, 1 Denio, 595.

"With proper respect, we conceive that decision was erroneous." Mears v. Com'rs of Wilmington, 9 Ire. R. 82.

WILSON'S CASE, Holt, 597.

Where an examination (taken under the statute of Philip & Mary) was offered in evidence, and the magistrate who took it stated that he had examined the prisoner, in the same manner as he was accustomed to examine a witness, the examination for that cause was rejected.

Overruled in Jones' case, 2 Russ. 658 (n.); Ellis' case, Ry. & Moo. N. P. C. 432.

WILTON v. HARDINGHAM, Hob. 129.

Overruled in Brook v. Hustler, 1 Salk. 56; see 1 Wils. 251.

WINCHESTER'S CASE, 3 Rep. 5; Butler & Baker's case, 3 ib. 30—Co. Litt. 299; Back v. Andrews, Prec. in Ch. 1; S. C. 2 Vern. 120; 2 Eq. Ca. Abr. 230; Jackson d. Stevens v. Stevens, 16 Johns. R. 110.

That the relation of husband and wife is such, that they cannot receive estate by moieties, but that each must be seised of the entirety; and of course, that no part of the property so held can be conveyed by one of them.

Overruled, Whittlesey v. Fuller, 11 Conn. 337; and held, that husband and wife take as joint tenants. Deeds or devises of land to husband and wife, have been considered in Connecticut as vesting the estate conveyed in the same manner as to other persons. The wife having a separate existence, so as to be able to take by deed to herself, her identity has not been considered as destroyed from the fact that the conveyance was to her and to her husband, by one and the same instrument. There is no essential difference between the rights of joint-tenants and tenants in common. Sanford v. Button, 4 Day, 310.

WINDHAM v. CLERE, Cro. Eliz. 133; 1 Leon. 187.

That in an action against a justice for maliciously granting a warrant without accusation, it is not necessary to state that the prosecution is at an end.

"Certainly cannot be law." Per Ashhurst, J. in Morgan v. Hughes, 2 D. & E. 231.

WINDHAM v. LORD WYCOMBE, 4 Esp. R. 16.

Held, that the infidelity of the husband was a defence to an action of crim. con.

Bromley v. Wallace, 4 Esp. R. 237.—Best, C. J.

WING v. TERRY, 5 Hill, 160.

Overruled, Suydam v. Westfall, 2 Den. 205.

WINSTEAD v. HEIRS, &c. 1 Hayw. R. 243.

S. P. as in Hodges v. M'Cabe (ante).

Overruled in Frost v. Etheridge, 1 Dev. R. 30.

WINSMORE v. GREENBANK, Willes, 582.

Inasmuch as it appears, that at the time of the employment of the apprentice, defendant knew not of the apprenticeship, no action can be maintained against him until after a demand of the apprentice, and a refusal to deliver him up.

Denied in Ferguson v. Tucker, 2 Maryland R. 190; Blake v. Lanyon, 6 Term R. 221.

WINTER v. LORD ANSON, 1 Sim. & Stu. 434.

Doubted in S. C. 3 Russ. R. 488; but see 3 Sim. 499; 2 Sugden on Vend. 58; 4 Kent Com. 152 (3d ed.)

WINTER v. BROCKWELL, 8 East. 309.

Doubted in Bridges v. Purcell, 1 Dev. & B. 492.—Gaston. *Held*, that the grant of an incorporeal hereditament is void, if by parol, for want of a deed—if a mere authority, it can be revoked, and ceases with the life of the grantor, although a dam had been erected under the license.

WINTHAM v. LEWIS, 1 Wils. 48.

That if, in a special verdict, the jury find a recovery, but omit to find a writ of seisin, on execution, it cannot be presumed by the court; and no advantage can be taken of the recovery, nor will the court award a *venire de novo*.

Ld. Kenyon said this had always been considered a "strange case;" and judges of succeeding times had been astonished that no application had been made to C. B. to rectify the defect of that recovery. Goodright v. Bigby, 5 D. & E. 179.

WINTON v. SAIDLER, 3 Johns. Cas. 183, 185.

S. P. as in Walton v. Shelley (ante).

Overruled in Bank of Utica v. Hillard, 5 Cowen, 153; Williams v. Walbridge, 3 Wend. 416; Stafford v. Rice, 5 Cow. 23.

WISE v. WITHERS, 3 Cranch, 331.

That it is a principle that a decision of a court of limited jurisdiction, clearly *without* its jurisdiction, cannot protect the officer who executes it.

Doubted by the court in Savacool v. Boughton, 5 Wend. 179, 180, where it was held that the same principle which gives protection to a ministerial officer who executes the process of a court of *general jurisdiction* should protect him when he executes the process of a court of *limited jurisdiction*, if the *subject matter* of the suit is within that jurisdiction, and nothing appears on the face of the process to show that the *person* was not also within it.

WITHAM v. BARKER, Yelv. 148.

Much shaken in Lambert v. Stroother, Willes, 221; Chambers v. Donaldson, 11 East, 65.

WITHERS v. HARRIS, 7 Mod. 64.

"Judgment was given in ejectment upon terms, that there should not be execution until such a time, which was a year and a half after. The sole question was, whether this judgment could be executed without a *scire facias?*" and the report concludes, "The execution was set aside as irregular, and restitution granted."

Denied in Hiscocks v. Kemp, 3 Ad. & El. 676.—Denman:—"There are seven other reports of this case referred to in the margin, one in the same volume, p. 50, three in Salkeld, (1 Salk. 258, 2 Salk. 600, 3 Salk. 319,) two in Holt (Holt, 77, 265; in the latter report it is stated that the judgment was upon conditional terms, &c., but no other notice is taken of the fact); and one in Ld. Raymond (2 Ld. Raym. 806); in no one of these is the fact stated that the execution was stayed on terms, nor in the report cited at the bar is it mentioned in the arguments or judgment."

The court in Hiscocks v. Kemp, held, that it was not necessary to revive a judgment by *scire facias* for the purpose of issuing execution after a year and a day, where the execution has been suspended by agreement of the parties.

WITHERS v. REEVE, 5 Johns. Ch. R. 235.

Reversed in Cowes v. Dickenson, 9 Cowen, 403.

WITHERSPOON v. M'CALLA, 3 Dess. Eq. R. 245.

S. P. as in Liber v. Parsons (ante).

WITTER v. LATHAM, 12 Conn. R. 392.

Overruling Coleman v. Wolcott, 4 Day, 388, which held, that the loss or destruction of an instrument, which, in this case, was a contract under seal, was not a preliminary question to be decided by the court, but a material and traversable fact to be determined by the jury. The case of Witter v. Latham, however, established a different rule, and one conformable to later decisions. It is the peculiar province of the court to decide upon the admissibility of evidence; and it is for the jury to weigh and consider that evidence, when received. But the court cannot legally admit secondary evidence of the contents of a written instrument in consequence of the loss of that instrument, until it has found the fact of the loss. The court must, in the first place, decide that question; and having decided it, there is a manifest impropriety in referring the same question again to the jury, and in suffering them to review a decision which the court has been by law required to make.—ib. Donelson v. Taylor, 8 Pick. 390; Walker v. Beauchamp, 6 Car. & Payne, 552.

WOOD. See In the Matter of Wood (ante).

WOOD, *Ex Parte*, 1 Mont. D. & D. 92; 9 Law J. R. N. S. Bank. 20.

Davison v. Farmer, 20 Law J. Rep. N. S. Exch. 177; 4 Eng. R. 391.

WOOD v. BATES, W. Jo. 171, 172.

Condition in disjunctive, and one part becomes impossible by act of God; obligor is not bound to perform the other part.

Opposed, Basket v. Basket, 2 Mod. 204; and Harmony v. Bingham, 2 Kernan, 99.

WOOD v. BRADDOCK, 1 Taunt. R. 104.

That the declarations of a partner, made after dissolution, are admissible to establish a contract against his co-partner.

Overruled in Owings v. Low, 5 Gill & J. 134–5.

Dissented from in Walden v. Sherburne, 15 Johns. 409; Baker v. Stackpole, 9 Cow. 420, Bell v. Morrison, 1 Peters, 373; Doughton v. Tillay, 4 Blackf. 435; contra, see, Pritchard v. Draper, 1 Russ. & Mylne, 191; Cady v. Shepperd, 11 Pick. 400.

WOOD v. BRIDDEN, Hobart, 119.

Doubted in Moore v. Bolcott, 3 Dowl. Pr. R. 145. By the court, "All the authorities are one way except the case in Hobart's Reports, and there the objection was not taken till after verdict."

WOOD v. DILLE, 11 Ohio R. 455.

Reversed, Dille v. Woods, 14 Ohio R. 122.

WOOD v. CRITCHFIELD, 1 Dowl. Pr. R. 587; 1 Cr. M. 72, S. C.

Opposed, Levy v. Duncombe, 3 Dowl. Pr. R. 447.

WOOD v. DRURY, 1 Ld. Raym. 734.

"A deed was produced, to which there were two witnesses, one of whom was blind. It was ruled by Ld. Holt, that such deed might be proved by the other witness and read, or might be proved without proving that the blind witness is dead, or without having him at the trial, proving only his hand."

Doubted by Ch. J. Marshall, in 1 Brock. R. 141 *et seq.*:—"This report is too indistinct, and too short, to be satisfactory. It would seem, however, that the deed was proved by proving the handwriting of the blind witness. Perhaps, in addition to this, the execution of the deed was proved by the other witness, and that which would indicate the contrary may be ascribed to the inaccuracy of the reporter. I am inclined to think it is." But see 1 Phill. Ev. 473, note.

WOOD v. GRIFFITH, 1 Mer. 35.

Doubted, Brophy v. Holmes, 2 Moll. 7.

WOOD v. HARDISTY, 2 Coll. 542.

Explained, Jenkins v. Robertson, 22 Law J. R. N. S. Ch. 874; 19 E. L. & E. R. 550.

WOOD v. INGERSOLE, Cro. Jac. 260.

A testator devises three distinct parcels of land severally *to his three* sons, and if either of them should die, the other surviving should be his heir;—the eldest has issue and dies, *held*, that the descent of the fee upon him at the father's death had merged the freehold devised, and destroyed the contingent remainder.

Resolved not to be law, in Fortescue v. Abbott, 2 Lev. 202; Sir T. Jones, 79; see 2 Saund. 382, c. n.

WOOD v. JACKSON, 8 Wend. 1.

A judgment reversing the decision of the Supreme Court, and affirming that of a former verdict or decree, must be pled in order to avail the party.

Opposed, Howard v. Mitchell, 14 Mass. 24.

WOOD v. JACKSON, 8 Wend. 35, 40.

It is said, that the law of the action of ejectment does not allow a special plea.

Denied in Connecticut; see Crandall v. Gallup, 12 Conn. 365, where a plea of estoppel was allowed. Williams, C. J.:—"This (our action of ejectment) is not that fictitious remedy which exists in England and New York; but it is the only real action known to our law, and comprehends, says Judge Swift, all the actions in England, by writ of right, writ of entry and ejectment, with all the multifarious divisions into which they are branched."

WOOD v. LAKE, Sayer, 3.

A parol agreement was entered into for liberty to stack coals on part of a close for seven years, and that during this term the person to whom it was granted should have the sole use of that part of the close upon which he was to have the liberty of stacking coals. (It is not stated, but the fact is, that an annual payment was reserved in respect of the easement. 1 Sugd. on Vend. 80, (1).) *Held*, that the agreement was good for the seven years.

Denied in 1 Sugd. on Vend. p. 80 *et seq.;* though he says, "It has been followed in several recent cases." See Mumford v. Whitney, 15 Wend. 386 *et seq.;* and cases cited.

WOOD v. REED, 2 M. & W. 777; 6 Law J. Rep. N. S. M. C. 105.

Doubted, Jones v. Johnson, 21 Law J. Rep. N. S. M. C. 102; 10 Eng. R. 533.

WOOD v. ROE, 2 Term R. 644.

Doubted in 6 Greenl. 254.

WOOD v. RUSSELL, 5 Barn. & Ald. 942.

"Has been looked upon with distrust, and followed with reluctance in the later decisions of the English courts." Andrews v. Durant, 1 Kernan, 48.

WOOD v. VANCE, 1 N. & M'Cord, 197.

That infancy is not a defence to an action *ex delicto* for a false warranty on the sale of a horse.

Denied in Green v. Greenbank, 2 Marsh. 485; where Ch. J. Gibbs says, "This is a case in which the assumpsit is clearly the foundation of the action; for it is in fact an undertaking that the horse was sound." See Howlett v. Haswell, 4 Camp. 118.

WOODBRIDGE v. BINGHAM, 12 Mass. 403.

This report of the case is erroneous. See 13 Mass. 556, S. C.

WOODFALL'S LAW OF LANDLORD AND TENANT (ed. pub. in 1802).

In Wright v. Dewees, 3 Nev. & M. 801.—Taunton: "About nineteen out of twenty of the positions in that work are unsupported by authority."

WOODMESTON v. WALKER, 2 Russ. & My. 210; and 2 *M. & K.* 189.

Decides that a woman *sui juris* may dispose, if she think fit, of property given to her, notwithstanding a limitation to her separate use, and a clause against anticipation which has reference to any future coverture.

Doubted in Benson v. Benson, 13 Law. Mag. p. 155, note (1), the V. Chan. noticed "the fright" among conveyancers in consequence of Lord Brougham's decision in Woodmeston v. Walker, expressed a desire that the subject of limitations to separate use, and clauses in restraint of alienation, as applied to unmarried women, might be re-considered before the present Lord Chancellor. It is said also that "the fright" (if any) among conveyancers, is, at least, as much referable to Newton v. Reid, 4 Sim. 141 (ante), as to Woodmeston v. Walker.

WOODWARD v. HARRIS, 2 Barb. 439.

Opposed to Woodward v. Aspinwall, 3 Sand. 272.

WOODWARD v. MEADOWS.

See Davis v. Lewis (ante).

WOODWORTH v. FULTON, 1 Cal. Rep.

Overruled, Cohas v. Raison, 3 Cal. Rep. 453.

WOODYER v. HADDEN, 5 Taunt. 125.

"No particular time is necessary for evidence of a dedication of a highway."

Explained, 2 Smith's Leading Cases, 68.

WOOLLEY v. ESCUDIER.

See Balby v. Betley (ante).

WORDELL v. SMITH, 1 Camp. R. 332.

That an assignment of property without a change of possession, is fraudulent and void as against creditors.

Denied in Eastwood v. Brown, 1 Ry. & M. 312.—Abbott, C. J.: "It is not of itself a *conclusive* badge of fraud."

WORLEY v. MOURNING, 1 Bibb Ken. R. 254.

Said not to be law, Griggs v. Bondurant, 3 Monroe Ken. R. 178.

WORMLEIGHTON & HUNTER'S CASE, Godb. 243.

Overruled in Cowell v. Edwards, 2 Bos. & Pul. 268.

WORMLEY v. LOWREY, 1 Humph. 468.

Overruled in the Supreme Court of the United States. See Coddington v. Bay (ante).

WORTH v. VINER, 3 Vin. Abr. 8 & 9; Bro. Abr. "*Apportionment*," pl. 13 ib. "*Laborers*," pl. 48 ib. "*Contract*," pl. 31.

For the old law in respect to wages for service: *Held*, that in the common case of service, if a servant who is hired for a year die in the middle of it, his executor cannot recover part of his wages in proportion to the time of service.

Overruled in Cutter v. Powell, 6 Term R. 320. See also 2 C. & P. 510 n. See 2 Phil. Ev. 116, *in notis*. "With regard to the common case of an hired servant; such a servant, though hired in a general way, is considered to be hired with reference to the general understanding upon the subject, that the servant shall be entitled to his wages for the time he serves, though he do not continue in the service during the whole year." Per Lawrence, J., in Cutter v. Powell (supra).

WORTHINGTON v. BARLOW, 7 Term R. 453.

S. P. as in Barry v. Rush (ante).

WRIGHT dem. CLYMER v. LITTLER, 3 Burr. 1244.

A dying confession by a subscribing witness to a will, was received as to the forgery and fraudulent execution of the will.

Doubted whether dying declarations would be receivable in any civil case; see the observations of Abbott, C. J. (2 B. & C. 607), and Mr. J. Bayley (in 1 B. & Ald. and 1 Cr. & J. 457); and Mr. J. Thompson, in Wilson v. Boerem, 15 Johns. 286. After citing 2 Johns. 35, he remarks, that "in Capron v. Austin, 7 ib. 96, it is said, that the law requires the sanction of an oath to all parol testimony. It never gives credit to the bare assertion of any one, however high his rank or pure his morals; and it is fairly to be inferred from this case, that the court meant to say, that the declarations *in extremis* were inadmissible evidence, except in the simple case of homicide."

WRIGHT v. DOUGLAS, 10 Barb. 97.

Reversed, 3 Selden, 564.

WRIGHT v. LATHAM, 3 Murph. R. 298.

In an action by indorsee against indorser, *held*, that parol evidence might be given of a special agreement entered into between the parties at the time of the indorsement, that the indorsee should sue the maker of the note, and endeavor to obtain payment of him; and if such endeavors proved unavailing, that the indorser should be liable.

Denied in S. C. by Taylor, Ch. J., citing 1 Taunt. 347, and 8 *Johns.* 189.

WRIGHT v. McNEELEY.

See De Wolf v. Long (ante).

WRIGHT v. MULLIN, 4 Barb. 600.

Reversed, 1 Sand. Ch. 103.
Affirmed, 4 Selden, 9.

WRIGHT v. PAULIN, R. & M. N. P. C. 128.

Best, C. J. denied the right of a defendant in an action of tort, to an acquittal until all the evidence in favor of the other defendants was gone through.

Opposed, Russell v. Rider et al., 6 Car. & P. 416,—Bosanquet, J., observing, The new rule with respect to defendants not fixed by the evidence is, that the verdict in their favor is to be taken at the end of the plaintiff's case.

WRIGHT v. STEELE, 2 N. H. R. 51.

Merriam v. Wilkins, 6 N. H. R. 433.

WRIGHT v. WRIGHT, 1 Cowen, 598.

Denied in Raymond v. Sellick, 10 Conn. 486,—Waite, J., and Holliday v. Atkinson, 5 B. & C. 501; where it was *held*, that affection, friendship, and gratitude are insufficient considerations to support promissory notes. See Parish v. Stone, 14 Pick. 206–7.

Is not regarded as a well considered case, and is referred to in the case of Raymond v. Sellick, 10 Conn. 480, with disapprobation; and is opposed to the authority of the case of Parish v. Stone, 14 Pick. 198; and is also opposed to the whole current of the English authorities. Holley v. Adams, 16 Vt. R. 211.

Overruled, Craig v. Craig, 3 Barb. Ch. R. 76; and see 21 Vt. Rep. 250 n.

WYATT'S PR. REGISTER, 209.

All the executors must join, as well he who does not take out probate as he who does, unless he renounces.

Overruled in Cramer v. Morton, 2 Moll. Ch. R. 109:—"Has been ruled differently more than twenty years."

WYATT v. SADLER'S HEIRS, 1 Mun. 537.

S. P. as in Kennon v. M'Roberts (ante).

WYBORNE v. ROSS, 2 Taunt. 58.

A cognovit is not discharged by bankruptcy and certificate.

Overruled in Metcalf v. Watling, 2 Dowl. Pr. R. 552. See also Vansandon v. Crosbie, 2 B. & Adol. 779.

WYLD'S CASE, 6 C. & P. 380.

See Attorney General v. Bullpit (ante).

WYNDHAM v. WYCOMBE, 4 Esp. 16.

In an action for crim. con., Ld. Kenyon ruled that the notorious, undisguised infidelity of the husband was a complete answer to the action.

But Ld. Alvanley afterwards denied this, and held that such conduct went only in mitigation of damages. Bromley v. Wallace, 4 Esp. 237; See Finnerty v. Tipper, 2 Camp. 72. See 4 C. & P. 499.

WYNNE v. TYRWHITT, 4 B. & A. 376; Higham v. Ridgway, 10 East, 109.

If a person have peculiar means of knowing a fact, and make a declaration or written entry of that fact, which is against his interest at the time, it is evidence of the fact as between third persons after his death. And therefore an entry made by a man-midwife who had delivered a woman of a child, of his having done so on a certain day, referring to his ledger, in which he had made a charge for his attendance, which was marked as *paid*, is evidence upon an issue as to the age of such child at the time of his afterwards suffering a recovery.

Explained, 2 Smith's Leading Cases, 140.

Y.

YATE v. WILLAN, 2 East, 128.

Overruled in Clarke v. Gray, 6 East, 564 :—*Held*, that common carriers who had given notice limiting their liability to £5 for the loss of goods, unless entered and paid for as of a higher value; and the goods being of a higher value, defendants were allowed to bring £5 into court. See 6 Pick. 347–8.

YATES (CASE OF), 4 Johns. 316.

Reversed in John V. N. Yates v. The People, 6 Johns. 337.

YATES v. THE PEOPLE, 6 Johns. 421.

Doubted, Yarbrough v. The State, 2 Texas R. 527 ; Holmes v. Jenneson, 14 Peters, 567.

YEA v. BUCKNELL, Cowp. 473.

See Weakley ex dem. Yea v. Bucknell (ante).

YEA v. LETHBRIDGE, 4 D. & E. 433.

That for taking insufficient pledges in replevin, the sheriff is not liable beyond the value of the distress taken, though that was not equal to the rent in arrear.

Denied in Concanen v. Lethbridge, 2 H. Bl. 36 ; and in Evans v. Brander, ib. 547, where the rule of damages was the liability of the sureties, viz., double the value of the goods taken. See Hunt v. Round, 2 Dowl. Pr. R. 558.

YEATMAN v. WOODS, 6 Yerg. R. 20.

S. P. as in M'Alister v. Montgomery (ante).

YELVERTON, 153.

The words—"When thou wert a justice, thou wert a bribing justice," were held actionable.

Denied in Forward v. Adams, 7 Wend. 208.

YOUNG v. AXTELL, cited in Waugh v. Carver, 2 H. Bl. 235, from a MS. note.

It is laid down, that one suffering his name to be used in the business,

YOUNG v. AXTELL, etc.—continued.

and held out as a partner, is liable though the plaintiff did not know that he was a partner, or that his name was used.

Doubted. See Dickenson v. Valpy, 10 B. & C. 140, where Mr. J. Parke, says, "If it could be proved that the defendant held himself out—*not to the world*, for that is a loose expression—but *to the plaintiff himself*, or under such circumstances of publicity as to satisfy a jury that the plaintiff *knew of it, and believed him to be* a partner, he would be liable." See also Shott v. Streatfield, Moo. & Rob. 9; Alderson v. Pope, 1 Campb. 404 n.

YOUNG v. BECK, 2 Dowl. P. C. 462.

Overruled in S. C., 1 Cromp. M. & Ross. 448.

YOUNG v. COOPER, 20 Law J. R. N. S. Ex. 136; 3 Eng. R. 540.

Throughout that case there is an inaccuracy in the language. Martin B. Jones v. Davies, 20 Law J. R. N. S. Ex. 433, 6 Eng. R. 568.

YOUNG, *Ex parte*, 2 Ves. & B. 242.

That a joint owner of a vessel has no lien on the share of his co-owner for a balance which may be due to him.

Overruled in Mumford v. Nicoll, 20 Johns. 611 (reversing 4 Johns. Ch. 522, S. C.) But see the observations of Hopkinson, J., in 1 Gilpin, 460: "I should be disposed to follow the opinion of Ld. Eldon in the case of Young, *ex parte*, 2 Ves. & B. 242, as Ch. Kent did on this question in the case of Mumford v. Nicoll (4 Johns. Ch. R. 522), although a majority of the judges in the Court of Appeals (Errors), seemed inclined to support the opinion of Ld. Hardwicke, in the case of Doddington v. Hallet (1 Ves. 497), which was in favor of the lien."

YOUNG v. READ, 3 Yerger, 297.

"We have also been referred to a case in 3 Yerger (Young v. Read), to show that an injunction bond destroyed the lien, because on that bond judgment was to be rendered. It seems rather to have been the impression of the judge, that it should be so, but it was not decided as a point in the cause. It was a mere argument of the judge, and is not entitled to the weight of a decision."—Planters' Bank v. Culvit, 3 Sme. & M. 199.

YOUNG v. REUBEN, 1 Dall. 119.

Denied in Wood v. Earl, 5 Rawle, 45, "Were the precise point in Young v. Reuben (1 Dall. 119) now before us, that case would not be recognized as a precedent."

YOUST v. MARTIN, 3 S. & R. 423.

Denied in Dugan v. Vattier, 3 Black. R. 242; Doswell v. Buchanan's Ex'r, 3 Leigh, 365 :—*Held*, that a purchaser from a fraudulent grantee, in order to hold the estate against creditors of the original grantor, must have paid *all* the purchase money, and the deed have been executed, before the notes.

Z.

ZECHARIE v. BOWERS, 1 Sme. & M. 584.

The opinion of the court is entirely misconceived in the syllabus, and the court made to decide the very opposite of what in fact was their decision. The case is republished with an amended syllabus. 3 Sme. & M. 641, and note p. 646.

ZOUCH v. PARSONS, 2 Burr. 1136.

Doubted in Shannon v. Bradstreet, 1 Sch. & Lef. 66, 71, as to some passages there; but recognized in Bort v. Mix, 17 Wend. 119.

ZOUCH v. WOOLSTON, 2 Burr. 1147.

Where Ld. Mansfield is made to say that "whatever is an equitable ought also to be deemed a legal execution of a power," &c.

This was doubted by Ld. Redesdale, in 1 Sch. & Lefr. 70. See also Roe v. Prideaux, 10 East, 186.