JUL 31 1933

By pain of heart now check'd, & now impell'd,
The Intellectual Power, through words & things,
Went sounding on a dim & perilous way.

Begun Jan. 1816
Revised June 1816.

There is perhaps no title in Law, which comes more into
than that of Attachment. But important as it is I am able to fin
few American decisions concerning it. It is my intention, as far as I am
with the few means, which the profits of a Connecticut Lawyer suffer him
to possess, to give a brief view of the Principles, upon which it depends,
& to have them Original attention, & the present received Law. The Essay on
Bailments, by Sir W. Jones, will serve as a model of the mode. And
I believe I am Justified in Conformity with the judgment of One whom
I esteem all this side of Idolatry, in saying, that for masterly, unlikely is,
perspicuous ar-
rangement, apt illustration & plain & comprehensive reasoning, it is not
surpassed, in the English, perhaps in any other Language. It completely
answers my notion of the kind of Study, which should form a Phi-
losophical Lawyer. The Doctrine of Attachment depending on Usage, chief-
ly upon Law's positive, is not capable of the same & Analysis or elucidation
as the more rules founded on the Laws of Nature. It may therefore be
necessary to break a little upon the discipline to read Logically division of
upon the several parts
so perfectly as in the "Essay." I shall endeavour, however feebly, to imitate
it.

Analysis.

Distress, is the taking a personal Chattel out of the possession of of a Wrong
doer, into the custody of the Law, as a means of procuring satisfaction for
an injury. This right may perhaps be found in natural Law under the
name of Reprisal. There is no plainer maxim, than that the damage done to us
by another ought to be repaired. If the injury can be repaired if compensation can
be made, by pecuniary satisfaction, the Distrainor can do himself justice by
a sale of the Distress. If the injury cannot be repaired by money, still, from the
known disposition of Man. There is no mode so effectual, of awakening his sense
of duty, as by a threatened loss of some of the good things of this life. The rules
of this title in Natural Law, are few & simple. The thing taken should

d. until a reasonable time has elapsed in which satisfaction should be made; & in default of such satisfaction, the property is to be considered as having changed owners: in a state of Nature it belongs to the person suffering injury, as is sufficient to compensate it: in civilized society, it should be applied to the reparation of the injury, subject to the direction of the governing power; & the rest should be restored. III Burl. pr. pol. Laws 260-262. It follows from these rules, that the article taken should be such as a valuable property can exist in & should be the property of the wrong doer; & since it is only a means of compelling satisfaction, it should be such as will sustain no injury from keeping, though if it is the only property of the wrong doer which can be taken be perishable, perhaps the natural Law will permit it.

The preceding doctrine as applicable to this title, is perhaps of speculation merely; it can be of little use to the practising Lawyer. In the present elegant but abstruse system of Statutes & decisions only which he can repose rest, in support of his Clients claim; for they have so entirely altered, limited, & ascertained the right & mode of distress, that the received rules can scarcely be referred to these principles. In the present elegant, but abstruse for the most part abstruse system of our Laws, the principles upon which they were originally founded sprung, cast but a dim, wavering, uncertain light upon the path of the Practising Lawyer;

The preceding doctrine as applicable to this title, is perhaps merely of speculation; In the present elegant but abstruse system of Property, the principles upon which it is founded, tied as we are by Statutes & decisions, the principles upon which they are founded can be cast but a dim, uncertain, wavering light, upon the path of a practising Lawyer. But they must by no means be forgotten — they often shorten, & always embellish his labours — but in cases which cannot but sometimes arise, in which the highways are dark, & the file affords no precedent, upon them only

can he rely with confidence, to conduct him thro' the doubt to the Land of decision. The Guide of the Israelites, in the day was the Pillar of Cloud, but a Column of fire by Night.

But in our System, this natural right is limited, altered, & controlled by various in its origin, progress, & effect. At Common Law, Distress is used, 1. for nonpayment of rent, 2. for injuries by things damage feasant, 3. to compell appearance at Court, either for suit or service, 4. for Amerciaments. Statutes have extended it to certain the levying of certain duties; as in England for Poor rates, & taxes; here for taxes, & military fines. The last are not properly Distresses, but rather in the nature of Executions. The first does not obtain here, since the only process for the non payment of rent is by Action. And as we know no services, in our tenures, the latter branch of the third is not used. Of course it will be necessary to consider distress for things damage feasant, & distress to compell appearance in suit. I propose to consider seperately these two branches as to their objects, & their means. & then to inquire into the things liable to Distress.

Distress Damage feasant. As the owner of real property is entitled to the exclusive possession of it, the law invests him with the power, to protect this himself from every invasion of this right, subject to the greater interests of society. He may repel with force a forcible entry, & may justify an trespasser assault in expelling a trespasser, but The preservation of the Peace is of so much greater consequence that this right of redress for injuries committed, is not generally granted to the party injured party, except by the intervention of a court of Law. In this manner, he may obtain a more perfect remedy for every wrong, which the interests of Society consider an injury; & the danger that of every man being his own avenger does not exist. But in direct injuries to Land, direct, certain, & notorious, this inconvenience does not exist, if the things doing the injury be held or taken in satisfaction since the Law still carries its superintending hand over the quantum of

3-24

Besides And it would give an unreasonable advantage to the
doer, since the owner of the property may be unknown, & the
perty eloigned beyond the reach of Process. ~~But after a wrong is~~
~~executed, as the Lawyers say, the same cant~~ besides it is a right of
every man to prevent a wrong, or the continuance of a wrong: & the
strongest means of prevention, as well as satisfaction is the taking the
~~actor~~ "actor" into custody. But after a wrong done, or executed, as the
Lawyers say, the prevention fails, & the same certainty cannot exist as
to the "actor"; therefore the Law will not in that case invest private persons with the
power of redressing their own injuries. I am unable to find a case,
in which the right to distrain was held to exist, for an injury to
mere personal property. We may define it, to be "the right of
taking & impounding personal property doing damage to the real property
of another." Perhaps, upon principle, there may be a distress damage feasant
to personal property. The title Distress damage feasant is usually considered
as synonymous with taking cattle trespassing on another's grounds,
because this is the case, in which such remedy is usually ~~resorted~~ had.
But I believe no doubt can exist, but that the right is as extensive as
the preceding rule; Stocks of corn are liable; greyhound chasing conies in
a warren; nets & toils in a several piscary. Bac. Abr. Distress F. I see
no reason why the Common Law doctrine is not applicable to this Country.

Distress damage feasant seems to be a privileged & favoured branch
of Law, for it is restrained by few exemptions. As far as my researches
extend, I am able to discover ~~by~~ but one limitation to the right; & I be-
lieve that any thing doing damage may be distrained, except prop-
erty in the actual occupation of another, which is protected, be-
cause a caption would lead to a breach of the Peace. This pro-
tection will be farther considered in the third branch of the pre-
sent inquiry.

The ~~taking~~ disposal of dead property must be regulated by the Common Law,
while our Statute has superseded the common Law, in the caption

of beasts. Both must be impounded, but there the resemblance ends.

Goods, distrained, might be carried wherever the Distrainor pleased at Common Law; but by the Stat: of Marlebridge, c. 4. 2 Ins. 106, Distresses may not be carried out of the County: & by Stat 1 & 2. P. & M. c. 12. (Bac. Ab. Distress. D.) no distress may be driven out of the hundred, &c, nor above three miles from the place of caption, except a pound overt. I doubt not but the remedial part of these statutes is Law here. But if they did not obtain by their own intrinsic force, the provisions are so reasonable, that I doubt not but they would be considered as limiting the common Law, virtute rationis. For no distress is to be used oppressively, & the provisions of the above statutes may be considered as buoying out the channel of reasonable usage. The reason of the Statutes apply equally to goods as beasts & Statute applies here. qui cunque vie dato; 1. because when beasts were impounded, the Distrainor was to find them sustenance. it would be unreasonable to subject him to the trouble of seeking over the world for them. 2. because he had then a right to replevy them, & it would be wrong to drive him to a distance from his home, to purchase a writ. 2. Ins. sup. I know no Law requiring the Distrainor to carry beasts goods to a public pound, but it would be prudence so to do: it would be expedient to pursue the steps of our Statute as far as convenient: the common Law requires notice, (I believe) to the owner if known. A distress thus taken, of goods remains merely a pledge: our Statute gives no authority to sell it. The Distrainor has no property in it, only a mere jus suspendi: he cannot use it in any way, he is bound to use the strictest diligence in keeping it, if used in any other mode, & in the management of it, is restrained by the most strictest construction of the Law. If the distress escapes or by any, the slightest negligence, his right of seizure is gone; but inevitable necessity is held to excuse it. Illustrations of the strictness of construction. Bac. Ab. Dist. D.

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Distress of Cattle damage feasant, may be made at Common Law of Beasts trespassing upon the grounds of another. At Common Law, every person having the possession of cattle was obliged so to use them, that they did no damage to another, except where tenant was holden to fence by prescription. But as our fathers used to depend upon the woods, to supply their cattle with food, such a rule was found inconvenient, & the Stat. 1 W. & M. 1689, c. 1. § 21. was passed, requiring every person to maintain the fence around his particular enclosures & authorizing him to distrain, only where such fence is found sufficient. It is doubted how far this provision extends, whether wholly to supersede the common Law, or only to impose upon the fencer the obligation required by a prescription to fence. A very elaborate opinion in favour of the last alternative (who was only held to fence my cattle lawfully in ordinary use) may be found in 6. Mass. 90, (on a statute similar to ours) & a similar decision, 4. Mass. 471. I ought not to doubt such an authority; I only hesitate; but I believe the first was the intention of the makers: for nearly the whole land in towns was uninclosed, & the mischief would (have) received an imperfect remedy, by such a construction. I should think by the spirit & policy of our Laws, no man was bound to fence, if he was willing to suffer the inconvenience of letting his land lie waste. But if beasts escape through my neglect to fence, at Common Law, into the close of another, who distrains, the owner of the beasts may bring his curia clausa against me, & recover damages; & this liability to an action would operate as a penalty for not fencing. The words in the Statute are surely strong enough to bear the first construction, but much may be said upon both sides." What shall be deemed a sufficient fence is established in the same Statute § 19.

When beasts are impounded, which must be in a public pound within the limits of the Stat. 1 W. & M. 1692, c. 18. of the English Statutes before mentioned, notice must forthwith be given to the owner, if known, § 5. or if unknown they must be cried. § 6. The whole form of proceeding may be found in the same Statute: though it ostensibly extends only to horses, cattle, swine, & other creatures, the last clause, I believe includes every living thing, in which there exists a property, independently of possession. — Horses & swine are liable, though fence is insufficient.

Distress for suit in Court; or Attachments

This is a branch of feudal origin. The warlike habits & independant spirit of our hardy ancestors, & the supposed title which the Lords had on the personal services of their tenants, rendered a restraint upon their bodies for civil injury inconsistent with the genius of the institution. But where this civil injury was united with an offence against Society, the public good required that any effectual means of prevention or punishment might be employed. In conformity with this notion, in trespasses, vi et armis, which were supposed to be accompanied with breaches of the peace, & for which a fine to the King was payable, a capias was permitted to issue, to detain & bring to the Court the body of the tortfeasor. But in the other civil actions, which were considered to be mere violations of private injuries, the first only mode of process, to bring the offender to the Judgment seat, was first by summons, 2 attachment, & last by distress infinite. If these failed, no further proceedings could be had: for the offender was thus stripped of his goods, which were forfeit to the King: & since from these satisfaction was to be made, which for satisfaction of the offence was to be made from these personal property, & since the offender was already stripped of these, which were forfeit to the King, any further proceedings were considered as useless. But the progress of civilization & commerce influence of opinion gradually loosened the bands of the feudal System, while the increase & greater proportional value of personal property required every aid should be afforded to its acquisition & security. By fiction, by fiction & by statute, other modes of redress were introduced: & while on the one hand, various the process was extended to detain bring the body of the offender as a in to Court, & detain it as a pledge for satisfaction, Natural Justice on the other required that that the property forfeited for constructive contempt should be applied as far as it could, for in compensation substantial injuries. It is therefore stated to be customary, where goods of an are forfeited to the King upon outlawry, to grant a sign manual to the creditor prosecuting, to apply them in discharge of his debt.

Doug. 346

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Our fathers in this country, ~~with their characteristic boldness~~, without recourse to fictions or made the body of the debtor liable to be taken in default of property. An evil still subsists by the English practice, for if the Debtor appears in pursuance to the summons, the attachment is dissolved. A room is given to the debtor to convey away his effects, beyond the reach of process: but our fathers, with a view to the security of the vigilant Creditor, have in early times directed the goods to stand as security for the judgment. The History of this alteration may be found in Stat. Tit VI. c. 1st. 12. ~~Sec~~ In the Compilation by Roger Ludlow, 1650, an attachment only issued in default of appearance to Summons, except in two cases, either where the Defendant was a foreigner, or where he was about to convey his estate beyond the reach of Execution. In 1660, Creditors, whos debts were due in Specific articles were permitted to levy on them, if they could be found if not, on other estate not prohibited by Law: in 1672, the process might be issued in the first instance, in debts for money, as well as specie, as our fathers called it. In 1702, ~~it was~~ the right to issue it was placed in its present situation, by extending it to any civil suit. The Statute, is not in force, I believe, which directs that the estate attached shall be held to answer the judgment in the suit, but Stat Tit 14, c. 1. § 2 necessarily implies the doctrine, by declaring that estate attached shall not be held longer than that time sixty days to satisfy the Judgment.

The process of attachment is of material advantage to the creditor, as it furnishes an easy mode of securing debts, while by extending the process of Replevin so far as to applying it to a mode of dissolving dissolving an attachment by substituting bonds in lieu of estate, Stat. Tit 137, c. 1 no material injury will be wrought to the Debtor. An inconvenience

may exist, since it is in the power of any man, from spite or malice, to distrain the goods of another to any amount; but since the Distrainor would be liable to costs, where the claim is unfounded, or to an action on the case where the Distress was excessive or malicious, the pluy would be hardly worth the candle; and mankind may be safely left to pursue their own courses, where their interests coincide with the policy of the Law.

The Statutes we have cited relate chiefly to the circumstances under which distresses may be made; for the articles liable to this process, we must have recourse to the Common Law. In a consideration of this part of the subject, may since the exemptions from distress damage feasant are so few, that my observations will be chiefly directed to the articles liable to attachments, & shall specify and diversity between the two classes. What goods then are liable to Attachment?

Coke says, 2 Ins, 254, that attachment should be of such goods as are forfeit by outlawry, or strowe. With submission, this does not furnish a correct criterion; for debts and choses in action are forfeited in such case (Lane 23,) which clearly are not attachable at Common Law.

We shall with more convenience law down the rule, that personal property is generally liable, & proceed to specify the exceptions.

As the Statute directs things attached to be holden safely, days that they may be liable to Execution. Stat. Tit 6. it is but reasonable perhaps, that those exempted from Execution, are not liable to attachment for suit in Court. 6. Mass. 242.

There are other exemptions peculiar to distress.

1. Nothing can be distrained, which cannot be returned in the same "plight" as sheaves, or shocks of corn, or hay. (6 Litt. 47) or leather in vats. 7. Mass. 123. It may be doubted whether grain is distrainable except in bags

I am informed there is a case now pending in Massachusetts upon this point. Corn is liable damage feasant. Kitch. 37. 2 Ins. 82. I am doubtfull whether in this State grain would be exempted. I find in an ordinance of Massachusetts "things subject to present decay, as corn, are not liable to distress, unless security be given to make good the damages. Neals Hist. III. Appendix. 679.

II. Things distrainable must be such as a valuable property can exist in. Things ferae naturae may not be taken. It is believed a hive of bees are distrainable, since ~~they are~~ a Replevin will lie for them. Bac. Abr. Repl.

III. Things in actual use are privileged: as an axe in a mans hand: his wattle; or any thing about his person. Co. Litt. 47. Even an horse, damage feasant cannot be distrained, when the rider is with him. 6 T. R. 137.

IV. The utensils or tools of trade are not liable to attachment; as the are of a carpenter, the books of a scholar. Our Statute exempts "tools" from Execution. & they are of course exempted from attachment for suit; ~~by the~~ and are likewise protected at Common Law. Deut. XXIV. 6. Arcera carruca are comprehended within this rule, in every book, which I have had an opportunity to consult. Esp. Dig. 336. Co. Litt. 47, & adds this exemption holds by the antient Law of England. 3. Bl. R. 3. Bac. Ab. Dist. B. In the last book, they are held liable to a distress for rent, where there is nothing else sufficient on the premises. And by Stat 51. H. 3. c. 11. ~~It~~ it is not necessary, in distress under that Statute for the distrainee to shew in his replevin, there was other sufficient distress; it must come in Justification from the other side. Carth. 359, a cast was held liable in this case. 2 Bur. 687, Oxen are liable to distress for poor rate, because ~~they~~ it is in the nature of an Execution. By our Statute exempting them from Execution, if they are comprehended under this rule they are not liable in such case.

On the other hand, in 6 Mass. 313, it is said that oxen are not privileged under the name of "tools" from attachment or Execution; & seems that a cart & yoke might be taken. This case arose before the case of Thurston & perhaps the opinion of the court at that time was not so well settled, as to the operation of the common Law exemptions, as in the latter case.

It is true, this was a feudal regulation; & perhaps prevailed in other countries, where the feudal Law prevailed. Among the regulations drawn by Gaston de Bearn, one of the heroes of the first Crusade, for the government of his Kingdom during his absence, I find the following. "The Peace "shall at all times be preserved towards the Clergy, monks, travellers, "ladies, & their attendants. If any man take refuge with a Lady, he shall "be secure in his person, on payment of damages. Peace be to "the peasant; his oxen, & his instruments of agriculture shall not "be liable to seizure. Analectic Magazine, June. 1814, Review of Michaud Histoire des Croisades. from Critical Review. This may relate only to an exemption from the Prerogatives of Purveyance: if it does, it shows the policy of the Law in regard to agriculture. But we believe this exemption is founded on broader principles: not merely that he might have wherewithal to earn means for the payment of his debt, but to procure means of subsistence.

VI. Armour, & things necessary for the support of Life are not distrainable. Our Statutes T. t. 63. c. 1. § 1; c. 3; c. 4; tit. 112 c. 1. § 1 of preamble, recognize & limit this exemption.

VII. Goods already in the custody of the Law are not distrainable; as goods already taken on Attachment of Execution. Goods already taken by one Officer cannot be taken by another. 5. Mass. 271. But

different deputies, are servants of the same Sheriff & constitute but one officer. 2 Inst. 591 Constables.

Goods of a stranger are sometimes liable to distress. Beast damage feasant of course &c. 1 Bac. 498. is cited to shew that they are ~~dist~~ distrainable for rent, if found on the premises. The position may be correct, though that case never received a judicial termination: & perhaps in that case, as reported, there existed such a special property, as rendered them liable for the bailees debt. Cattle unlawfully trespassing are liable to distress for rent, or services, but not for amercements. Bac. Abr. Distress. I. But it is believed that goods of another are in no case liable to distress, for suit at Court, because they are not liable to Execution. Bac. Abr. Execution C. 4; Doug. 40; The command in the writ is, to attach the goods of the Defendant. It is every days practice to bring actions for a violation of this Sect. Sys. Replevin. Bac. Abr. Repl. E. Litch. 135. It is believed that every thing is liable to distress for damage feasant, except things in actual use, & almost every thing to distrain for rent, which may be found on the premises.

It is said that some of the preceding exemptions do not hold in those processes in the nature of an Execution, as the first & fifth; & a fortiori, not in case of an Execution. We have some such laws; they are such as are complete, without further Judgment. I believe that the fact that under our system, goods are held to Execution does not prevent them many of these exemptions; for I apprehend not all the reasons apply to them.

It is said that attachment lies not against a corporation. Attachment Raym. 152; 7. Mass. 176; Attachment for contempt certainly does not. for in their corporate capacity, they are incapable of committing contempt. Yet in Chancery, a sequestration may issue, for the contempt of non appearance & at Law, an attachment in the nature of a pone may issue to compell an appearance. Bac. Abr. Attachment. B. as v. 3. Day. 444. & the authorities. But I am informed that in a late case in N York. where A Brunson of Bridgport commenced a large number of suits against a Bank, for the non payment of their Bills. he failed on this ground. An Exon is to be levied upon the individual property of any inhabitant of a town. 11. East 356.

At Common Law, Franchises, such as Bank Stock, turnpike shares. &c cannot be taken by attachment or Execution. 7. Mass 204. Our Statute Tit. 14, c. 2 subjects them at the a suit against the individual members; (& provides mode of proceeding) but it is believed that in a suit against the Corporation, they continue protected. 2. Ans. 282; 7. Mass. 204; 4 Mass. 397.

An Equitable Right, can not be levied upon by strict Law, & of course, is not attachable as personal property. 8 East, 467. 5. B & P. 461. The remedy is by Bill in Chancery. An Equity of Redemption may be taken as Real Estate. 1 Day. 93; 2. Day. 149; 1. Caines, 47. & or by the 29. C. 2. c. 3. Equitable rights may be taken by Elegit. Bk. Com.

The fourth Exemption from Attachment I omitted. Valuable things in the way of trade are not liable to distress: as an horse at a smiths shop: cloath at a taylors: sacks of meal in a mill or market. Co Lit. 47.

5-9

By the 2nd Exception, bank notes, or any other chose in action may not be taken; for they cannot be sold, to confer a right of collection upon another. Cas. Temp Hard. III. 53; 7. Mass. 498; Backus Constable. 60; Bac. Abr. Ex. 4.

R. G. one told me than Ex. was issued against the Inhabitants of the first Society of Norwich, in their corporate Capacity, for the expenses of building or repairing their meeting house, & was levied upon some leading person or other opposed to raising the money. I think upon one Mr Backus; perhaps the late Deacon.

Lex. viarum.

An highway, by the common Law, means nothing more than an easemen
to another, viz. the right of passage, does not convey any interest in the soil.
The soil, & all the profits arising from it, as mines, turf, herbage, gravel, &c belong
to the Lord of the fee, but such trespasses as are incidental to the enjoyment
of the easement are excusable, such as trampling the herbage, diminishing it
by cattle passing over it, since the law, by conferring a privelege, conveys
every power necessary to the enjoyment of it. For every other trespass, an
action accrues to the owner of the soil, & it is believed that trespass vi &
armis is the most proper remedy, for such injuries as go directly to the
injury of the herbage, soil, & it may it be doubted whether case would lie.

Towns often pass a bye law, that no cattle shall run at large, pursuant to
the power, given them by Statute 1. 651. It may perhaps be doubted, whether the
legislature gives can restrain a man, from in the enjoyment of his property so
far as to prevent him from pasturing his creatures before his door, under a keeper.

To decide this, we must consider, what rights to the land, are conveyed to the public? all our law books say that only the right of passage is conveyed, & the whole interest, except that remains in the previous owner, she alone may bring an action for redress, except where the injury interferes with the publics rights. If then that privelege is vested in him, can he be considered as intending to convey it, by the easement to the public.

Epitaph on Esqr Hunt. Minister of Windsor, Died 1711

Who when he lived, we drew his vital breath
Who when he died, his dying was our death,
Who was the stay of State, the Churches staff,
Alas! the times forbid an Epitaphe.

Here lyeth the body of Henry Wolcot, sometimes magistrate of this Jurisdiction, who died the 30th day of may, anno Salutis, 1655
aetatis 77.

Title.

Doc. Any may fish in the river opposite his own land to the channel.

Common Law. Navigable rivers belong to the King.
Altered now.
Right depends on the right of soil
Either by the English Law
For, this is not a navigable river
Because the tide does not ebb & flow.
6. Mass. 438
Esp. Dig.

Or by our Common Law.
Reasons of the distinction
In arms of sea, owners of land extend as far as they can, i.e. to channel.
1. Saw.

Trespass was given by 1st Westm. 2 Inst. 202.
River an highway. 2. Burns 366.

When can extra costs be recovered.

In an act of malfeasance, where Pltff incurred costs in judicial proceedings, if there is an order of a court that they shall be pd. he cannot get them either as special damage, nor obtain the extra costs.

Points relating to Real Property, held under an article.

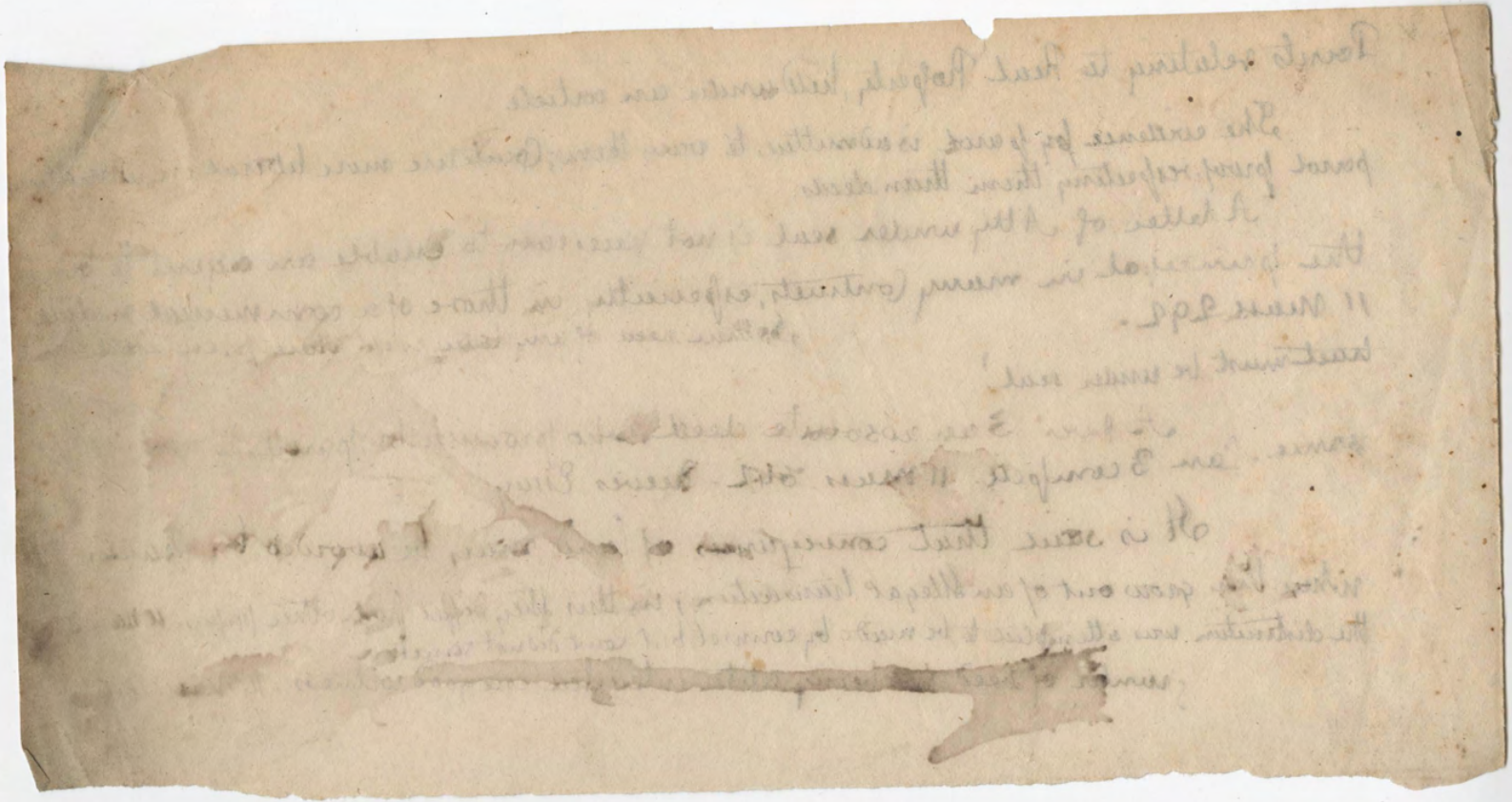
The evidence by parol is admitted to vary them; Courts are more liberal in admitting parol proof, respecting them than deeds.

A letter of Atty under seal is not necessary to enable an agent to bind the principal in many Contracts, especially in those of a commercial nature. 11 Mass. 292. Is there need of any letter, except where principal contract must be under seal?

A gives B an absolute deed, who promises by parol to give a defeasance. Can B compell. 11 Mass. 362. Reeves Essay.

It is said that conveyances of land may be avoided by grantor, when they grow out of an illegal transaction; in this they differ from other papers. 10. Mass. 373. The distinction was attempted to be made by counsel, but Court did not sanction.

Grantor of Deed, not being a[n] interested, is a good witness. 11. Mass. 496



State vs "

When a person is accused of a crime, the Law throws about him various fences & protections, to enable him the better to defend himself from an unjust accusation, & to demonstrate his innocence to the tribunal, before which he is to be tried. He cannot even be put to trial, before until at least twelve men, see reasonable ground of suspicion: he cannot be convicted, unless twelve men, indifferently chosen from the body of the county are willing upon their oaths, to pronounce him so. But the most important, & the most effectual of all his privileges arises, from the effect of the evidence. I take from the different issue, or question put to the jury, in civil & in criminal cases. In civil cases, or mere contests between one man & another, where the right of property only is concerned, the Law compels you to come to a Decision; however scanty the evidence, or imperfect the light you receive on the subject, or small the reasons, that you should believe that justice was with the one, or the other of the parties.

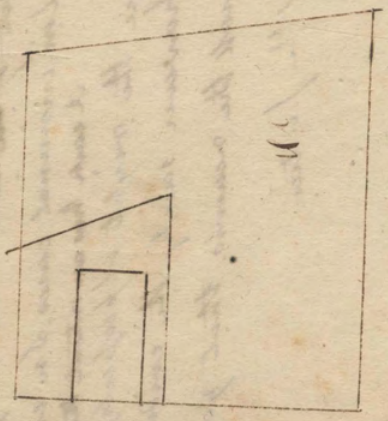
A case has an intrinsic bad

8.

table 3
door .25
cupboard 1.25
work board .50
work 2.
setting saw . .25
9.00.

bedstead.
table

1.25
10.50
11.75.
70.50.
82.25



The distinction of Law & equity is more in any cou
permanent one: the former is continually gaining g
upon the latter. What was equitable in the last age
is strict Law in this, & our Equitable principles will
incorporated with the maxims of Law by our poste
There are however certain principles resulting from the
peculiar constitution of the court, which must forever
remain the peculiar objects of Equitable Jurisdiction
I Where the legal remedy is doubtfull or incomplete.
II. Wilfull misrepresentation was one a ground of Eq: in
terference; but Courts of Law have lately assumed
Jurisdiction, & it might be doubted if it could be sustained here.
2. East. 92. &c.
III. Advantage gained at Law by fraud. But courts of
Law have assumed jurisduction in this; as in relase
given by Assignor to promisor, of a note. & 4. Day
Colman vs Wolcott.
IV. Average & contribution is another ground. But
even here Law has encroached upon Eq.
V. Removing impediments to a fair trial.
VI. Preserving property pendente lite.
VII. Assisting to enforce Judgments.
VIII. Injunctions to prevent irreparable injury.
IX. Restraining multiplicity of actions.
X. Bills of discovery.
XI. Bills to perpetuate evidence.

It is believed that the sixth & the four last
must forever remain the objects of equitable Jurisdic
tion; it may be doubted, if all the rest may not,
hereafter, or at some future time, be remedied
at Law. Of the 5th & 7th courts of the Law by their practice
remove the inconvenience; of the first, the Principles
may be more definitely settled. Specific performance must

uses, may still be considered within the Eq: jurisdiction only: but a Court of Law will so far recognise it as to allow it to form a sufficient consideration for a promise.

Fraud is equally within the jurisdiction of a Court of Law: but in consequence of the secrecy of its perpetration, & the difficulty of proof, Equity must retain its jurisdiction, as long as the mode of proof is different.

Accidents are becoming assimilated to the Legal tribunal. The C's of Law by dispensing with the Profert of an instrument, have opened to themselves a wide door, for the admission of banners, but lately purely equitable.

Of the remedy of the Vendor of Real Estate for the Purchase Money.

As the object sought for is the recovery of money merely, it is believed that the remedy is to be found at Law. I am not aware of any case where a Bill in Chancery is ~~this~~ preferred, & apprehend that by our practice it cannot be sustained.

The remedy is an action upon the agreement, suited to the case. If it be under seal, covenant & debt will lie; if not, assumpsit.

Covenant will lie in every case, when a promise appears, or would be implied, & it is the only remedy upon sealed instruments, without a penalty, & where the money is payable by

the time for the payment of the last, has not elapsed. Chitty's. Pl.

Debt will lie, where the sum appears certain, upon the face of the sealed instrument. It is apprehended that it is sustainable, whether for the penalty, if there be one, though but a single breach can be shewn.

Assumpsit will lie to recover the price for land, in every case where no agreement is made under seal.

Substitutes Assumpsit is in most cases sufficient, where the price is to be paid in money. And where the contract is executed, in behalf the Vendor, a very general form will suffice

For the amt of damages on default, in Book Debt or account, it seems that the Court may give the whole, or a less sum at their discretion. Winch. 5.

In case Potter vs Turner, Winch. 7. A. being to B, & C to ob. & A. in satisfaction of his Debt to B, assigned C. a Debt, & made a letter of Attorney to sue &c. C promised B to pay this, in consideration of forbearance. In Assumpsit, he could not recover. The case went on the ground, that as the whole consideration was stated, & proved, that consideration must appear to be in the persons power to perform, to the extent. But B could only perform his part of forbearance as far as A consented, for his power was revocable at any time. If it had been in his power to declare, without stating this consideration, he could have recovered. By the great extention of the action for money had & received, in modern times, it is in his power, by the assent of the debtor, to recover in such a contract as this. The question is ruled, whether Plff or Deft was in Justice the most right to the money. Even the illegality of the original consideration, between the original debtors cannot be set up by him, as he is considered a mere trustee of the money. 1. B. & P. 3.

It seems that the Court of KB adopted liberal principles of amendment of Judgment in 19 Jac. Winch 8. On such a case, "It would be a brave case," said Hobart, that our Judgments shall be made good or bad, at the pleasure of Clarks, & we not able to amend them.

Winch 35, Buckley vs Simons, a case on the a writing pourporting to be a covenant to stand seized &c. in which lands after &c shall be, come, remainder &c. It is discussed with considerable ability, & was finally adjudged, on the construction of the deed perhaps, that no use arises. Hobart C.J. It goes into the nature of the conveyance. p. 60. 61. That no estate passes by the Covt, qua covt., but from the agreement of the parties, as testified by it. If I understand aright, in such covt is not obligatory, but declaratory, & no right of action accrues from it. —. It is there said that such an Estate may be created by deed writing but not by parol. Though Elsewhere asserted that any use may be raised either way. II Wood. 582, Bac. Abr. Uses. E. 3. This doctrine is elegantly illustrated, & the cases reconciled, perhaps, by Holt, 12. Mod. 162. That Uses arise, either by a transmutation of the possession, or by a valid agreement: as a Bargain & sale or payment of money but the possession is not transpened in consid. to stand &c. & a parol agreement being void for want of consideration, it therefore requires an instrument under seal.

The Ld is vested upon a dissolution of a Corporation, does land escheat or revert in donor. 39.

Thou ast as account action as any in England. not actionable without averment, that there are Writs in England. Hutton 92.

Novr 17th 1823.

It is proposed to consider the Law of Real Estate, as enforced in America, since by our separate the different states of Society in this Country & Great Britain has produced important alterations, & the limits of this title are even now points among under this title are even more indefinite, fluctuating & imperfectly understood. The elder & more learned class of Lawyers, such as Mowbridge & Parsons seem disposed to refer everything to technical principles of feoff. while in those regions which were rapidly peopling in which the profession had not the learning & the helps of the more ancient States, a robust common sense has supplied the place of study, & estates settled more by a reference either to the maxims either of refined Ethics, or the more fluctuating criterion of the peoples wants. Hence have arisen two schools of American Lawyers, the one prevailing more in the south & the West, & the other & real of the other is in the Newengland States. I cannot now settle the Geographical limits of these modern Proculians & Sabinians, nor determine to which class the Courts of the United States belong; but it be it my humble office to collect the results, & if the both writers in points of practice, & the effect of the both modes of reasoning be the same, the point adjudicated may be considered as settled.

The obvious division of Legal Estates is into freehold, fee simple, fee tail, for life, for years, at will & at sufferance. To these may be added a most important title of Estates in Equity resulting from Contracts.

Fee simple Estates, or is where the whole Legal interest in the Land is invested in the person holding in possession. It may be created by operation of law, as by Discent, or by deed. or by actual possession for the period of 21 years, in which case a deed is presumed, or by a decree of a Court of Chancery operating in rem, which I apprehend may convey a legal title.

5-1

The first mode of acquiring title is in familiar use in our country. By Statute the children even equally in heir; they take as parceners: the possession of one is the possession of all. That one cannot be disseized without disseizing the all, each may bring posses-sitions; & any one may bring ejectment &c against the others for his undivided share.

The second mode of acquiring a title or by deed is likewise very frequent. The consideration of this subject will lead us to investigate the learning of deeds; a matter which cannot be understood without tracing the history of conveyance from its earliest rise in England; & it is a matter of no small difficulty, to settle how far the fragments of the feodal system prevail in our allodial titles, or how far the Statute of Uses operates in our Country.

The third mode will embrace some discussion of the Statute of Limitations

The fourth is only mentioned incidentally; the full explanation may be more properly found under the head of Chancery.

I E Estates in Fee are known in our jurisprudence; but their necessity is so modified by the habits of our citizens, that & so contradicted by the influence of our Statutes, that as a matter of practice, they are of comparatively slight use.

II Estates for Life are not much known in practice.

IV. Tenant by Curtesy & by Dower merit extensive consideration.

The other estates in land I conceive do not deserve ~~extensive~~ enlarged research, as there is nothing in the nature of our Government which renders the rules relating to them different from those governing similar estates in England.

Highways.

The right of soil, in our Highways is a vexata questio. I am decidedly of opinion, that the common Law doctrine must be adopted; for new subtile inventions are not to be favoured. We have already experienced misfortunes & inconveniencies enough, for having forsaken it.

The fee is generally in the person who owns the land adjoining; & a grant of Land bounded on an Highway conveys the soil to the centre. It is not necessary to recur to the authorities to show this position; they are fully discussed. 4. Day. 244.

As to a grant of way, it seems that a presumption arises, from any act permitting an highway in fact, with full knowledge of it. It is difficult to reduce this proposition to terms, sufficiently precise. Perhaps, user of land as an highway, is evidence to go to the Jury of the fact. 2. H. East. 378. n. & case. The nature of this kind of evidence is explained 1. Coup 109; 214. In England, 20 years user, is considered a conclusive bar for this, as for other incorporeal Hereditaments. 3. East. 294. 6 East.

In analogy, Our Courts have considered that 15 years user has the same effect. Minturn & Hampton vs S. Meyers. S.C. Hartford. 1810; & perhaps, the usage for a less time is evidence of a grant.

Warranty.

For rule of Damages. 2. Mass. 488. Do. 458. part 3. Do. 543: 4, 108.
" " " " on warrantie charter. 3. Mass. 543.

At feudal Law, a Lord, granting a fief was holden to warrant it, under the implied tenure if evicted, was bound to ~~restore~~ vest the Land of equal value, with the feud from which he was evicted at the time of the grant without any regard to the improvements, which the tenant might have made.

But in this country, at its first settlement the Land, was of little value, & the improvements the principal object: such a rule would afford a very inadequate remedy; - The personal covenant of warranty had previously been ~~introduced~~ known; ~~that~~ the old action of warrantiae charter was never therefore introduced, but the action on the covenant adopted, & the rule of Damages like other personal actions, was the indemnity of the covenantee, at the time of the breach. vide 3. Mass. 543.

Still an action lys for breach of implied warranty; has it ever been adopted; or must the remedy be warrantiae charter? I believe so - I cannot consult the American Authorities. 2. Caines. 188. 2. Binn. 92

The doctrine of Implied Warranty is explained with admirable perspicuity, in Stat. de Bigamis. 2 Ins. 275, & Co Lit. note Lib. 3, n 392. 345.

Some thought that Implied warranty might be the result of tenure; but it is not, where a man grants, to hold from the Lord Paramount. vide ante.

A. Warranty, in this sense, can only be annexed to land; Co Lit. 101. b. So in a warranty of things personal, no voucher, is allowed. The remedy is by personal action. Leases for years rest upon a different principle; The warranty is not from tenure but contract. v. note 332. No warranty is implied, in the sale of a personal chattel, for a sound price. 2. East. 314. 2 n.

Implied Warranty of a Freehold is not limited by the express w— : in Leases, it is. pro eadem ratione. So in any implied personal engagement, an express agreement may limit from it the effect. Allegn. 94.

The question, whether case lies against a Corporation is now under consideration in the Sup. Court, in Justices Riley vs Un: Company, for building piers in such a manner, as to cause the current to carry away the Cliffs land. Is not there a distinction between misfeasance & non feasance. Cowp. 376 See Hume VII. 150.

Originally, the Cliff might constrain the Defendant to waye his law: this was remedied by Magna Charta, c. 23. Nullus Baliovus &c 12. Mod. 678.

There is a great difference given, between powers by C.L. & powers by Statute. Where any person exceeds powers entrusted by the Common Law, his acts are not void, but voidable, & none but the party can avoid it. Where a person exceeds powers given by Statute his acts are void, & any person can take advantage

Is this the reason why an arrest is good, when made by breaking an house? v. Cook. 20.

See this doctrine illustrated. Doct. Con. 199.

It would seem, that

Recaption.

Where one has wrongfully possessed himself of the goods of another, the person deprived may lawfully take the same, provided it can be done, without a breach of the Peace. Jacobs. sub verbo.

Does this right extend to any cases, except where the taking is Larceny. Yes: since Blackstone says, sub verbo, 3-vol - that going in to a private enclosure no to retake goods, may be justified, where the goods are stolen, but not without.

It would seem, that a person is justified in retaking his property peaceably, whenever he is unlawfully deprived of it. Yet where a lawful special property is in the possessor, he may not retake. As if a horse be let to go to New York, & the owner should find the bailee going to Boston, he cannot retake. (Bac. Abr. bailment. C.) for the original possession is lawfull; & perhaps from the confidence reposed.

Taking back goods stolen is no ~~felony~~ offence merely, but any favour shewn the Thief is Theft Bote. 3. Ins. 134.

It is said, (Jacobs, sub sale) if one sell my goods unduly, I may have them again; & Doct & Stu., with Perk. are cited. Does this mean either by action or recaption.

It seemeth that an unlawfull trespass, vests the property - Kitch. 351.

Is a defendant, on the implied promise, or another on express promise, of indemnity of Bail, bound to indemnify against a tortious act or groundless suit. semble not. 2. W R, 458.

It is said (Starks sub sale) if one sell my goods unduly, I

The question, as to the right of recaption depends upon the determination, whose is the property.

A sale, by a person, not authorised to make it, does not alter the property. 1. B. & P. 648. 2. Est. Dig. 138, authorities. Yet it is said by some old cases, that a trespasser obtains a property, Ibid.

A pawnee may retake his own pledge, unlawfully taken away, for he hath a property; a man may retake his own, where he can find it. Bac. Abr. Inkeeper D.

But an Inkeeper, who has but a limited custody, cannot retake, after a distress be rescued, except upon fresh pursuit. ibid. quod nota.

Ap: Stat:

"It is a very wicked thing to play with the beard of "our fathers." Cotton Mather.

The spirit of our Legislation can be very imperfectly understood, without comprehending the religious leaven, which operated more or less in every department of the civil Polities of our ancestors. The first settlers of New Eng land, as they sat out with the intention of forming a Nation of Religious Piety a government of saints. It is a remark of Hume, that the Puritans were more attached to the old testament than the New. 6. v. 326. Our Fathers were naturally led to believe that the Laws of Moses continued the most perfect specimen of civil government. We find that many of its institutions were originally adopted, & its provisions were cited as precedents in our statutes, & I believe as an authority in our Courts. This was the pure Genet of the Brownists & Exiles. A most ardent & deep rooted aversion to the Spiritual Courts is another trait in our Fathers character. Still, the purer principles of toleration were not known: their only objection to persecution was the object towards which it was directed. And as their morals were more rigid, than those of the land which they had forsaken, they found it necessary, that Hawes.

their ~~spiritual~~ principles should be fostered, supported & protected by stronger authority than ~~their~~ spiritual censures, they vested the power in their Civil Magistrates, & many of their peculiar notions were established by the sanction of the legislature. Nevertheless, in consequence of the violent disputes which arose early in the country, as the antinomian controversy in Massachusetts, & the contest concerning the half way covenant, in Connecticut, together with the Proximity of Rhode Island, which afforded a refuge & an home, to all who were persecuted in the other governments, it was soon found expedient to restrain their zeal, or at least to confine it in certain channels. It is perhaps to such trifles as these, operating in a favourable season, that we owe our system of religious liberty.

Besides these, there appears in our early systems, that legislatory spirit, ~~which~~ pervading all small corporations & all small states, or which subjects, or tends to subject all private matters, & small affairs to the superintendance of the Law. Such are the Laws establishing the prices of Provisions, labour &c: those in Mass: directing the employment of Females: the penalty for cutting a Hyde in Cleaving; the regulations of sheep; of using tobacco: &c &c. So the restriction in our Tit. Master & Servant.

A reverence for the offices of Magistrate & Minister appears to have been another trait in our fathers character & Laws. Something still appears in our Statute Book: as in Tennis, Tit. 68. c. 10. Highways, Tit 86. c. 81. & perhaps they owe their exemption from Military duty to this. Our Revolutionary war, among its other evils, made great inroads upon the dignity of these offices. V. Tit. 46.

The State of Connecticut has retained more of its old usages than Massachusetts; which may perhaps arise from the circumstance of retaining its charter, while that of Massachusetts was vacated; and from the greater number of foreigners, & the more extensive commerce of the latter. Yet I believe that Massachusetts carried their religious zeal, & their New England or blueskin stiffness further than the Colony of Connecticut, (exclusive of New Haven.)

The most important titles in our Law, are

Lands.
Estates tenure & consequences.
" Insolvent.
Insolvent Law.
Process, as attachment &c
Executions
Sabbath
Recording of Deeds.
Amendment.
Bail.
Specialty.
Evidence in Book Debt
" of other interested persons.
System of Descents.
Overseers of Poor instituted.
Capacity.
Rights.
Communities.
Informing Officers.
Custom of plantation in Lands 489.
Dower.
Freedom of the Press.
Settlement & support of Poor.
Night Walking & such crimes. Peace. Work Houses.
Grounds & Perjuries.
Vice.

Our Sabbath Laws, are derived originally from the Jewish. The rigid observance of the Sabbath did not hold, I believe in any Christian country, until after the Reformation; & then, ~~most~~ principally with the Calvanists. The Lutherans did not observe it so strictly, since one cause of complaint while our Fathers had against Holland; Hutch. 3

The English never were so strict. Blk. 4.

2. Bus. The observance of saturday night is looked upon as more agreeable to the Jewish Law. "The Evening & the morning," &c. It is every where customary to consider sunday evening as more devoted to cheerfulness, & ~~society~~ social enjoyment than any other evening; while perhaps fulfills one great end of the Institution, & may be taken from the Episcopalian, "feast day." It is also very generally practised, to cook no dinner on sundays: this does probably originate from the inconvenience of cooking, when every member of the family attended meeting; - it would be looking too far for an reason to impute it to an opposition to Episcopacy: - though perhaps, it may be derived in some measure from the Jewish "Essens," & the Jewish Observation.

It would seem, from the notes to our Statute, that we had no act relative to the Observation of this day, before 1721. Offences were unquestionably punished before that time: perhaps the Mass. Statutes were tacitly adopted. The instantaneous conviction, is like a thief taken in the manour at Law.

Stat: I; 1. 97. c. 10. Lands. - This act is for confirming the dispositions of Lands, made by the Inhabitants, in town meeting, passed 1723. Land Estate was at that time considered of so little consequence, ~~that~~ & the encouragement for tillage was so great, that almost any method was employed, to rid themselves of it. In the Records of Lyme, 1678, children of the Inhabitants had a portion of the Town Lands set off to them, in proportion to the number of years they resided in town.

Our System of Education deserves all the praise, though perhaps all the rapture, which Swift has passed upon it. (Sy 157). The Dreame he, & statute cited in Swift, is sufficient to shew the views of our Fathers. In Lyme, 1680. Wm Measure was appointed to teach school, for nine months, & was to receive for it £18. He agreed to ~~teach~~ & lend his cart & oxen to bring ~~&~~ the wood & let them cut it on his land. Each child was to provide one Load. The school was to be taught four months, in the meeting house, the rest of the time at his house. £10 was to be p by the Town, the remainder by the Inhabitants ~~was~~ in proportion to the number of children. The branches he taught were reading, writing & accounts.

This agreement was afterwards rescinded. & he was hired to teach three months at £5. 5. 0.

In the same year, two "School Dames" were engaged to teach sewing & knitting &c. The Townsmen (Selectmen) were to a comittee to visit the families to see who were fit to go to school. Does not our system, by which, every man was exposed to the overlooking of Grandjurors, Alons Tables & Selectmen, bear an affinity to the surveillance, under which the English lived, not by the regulations of Alfred?

I do not know whether the Selectmen ever exercised a jurisdiction - In Lynn, one Dr Harris appeared, pursuant to a Town order, before the Townsmen, to show Cause why he was a Spendthrift. 1680.

In very many of our Penal Statutes, a punishment of whipping is directed to be given to children & negroes. It seems this was a very antient punishment of Servants. Jacobs Dictionary, sub verb "Corium."

Judge Lawson, in Avery v Pyncham, 3. Mass, said, Christianity is no part of the Law of Mass, but offences against Xtianity are punished, not as such, but as offences ag[ainst] the Peace. Would it were so true: but tho it may be doubted if the Position is true true. Our Statute Law provides for the punishment of most, if not all our Ecclesiastical crimes, so that perhaps our Common Law does not embrace them. No doubt mere speculative points are very improperly decided by a Legislative body, whether consisting of Bishops Clergy

conjegrationals, or sans culotte fanatics. The principle that Xtianity is part of the English Law, is established, Blk. 4. 59, & note. The true medium is difficult to be known: it is hard to distinguish doctrines which are merely speculative, from those which interfere with civil Politie. No doubt denying the being of a God should be punished, & perhaps the truth of the Scriptures: as since upon the first depends our whole hope of truth in witnesses, & few will make the proper distinction between the Deism & Xtianity. Profane Swearing rests upon a similar reason. But the belief of the Trinity does not. As ab modo observation of the Sabbath does.

Our Law regarding Children seems with the peculiar N.E. notions. The section ordering all parents to keep their children employed is excellent in theory, though perhaps liable to abuse in practice.

Though our Laws do not exclude Clergymen from secular employments, yet they are exempted from Military duties, & work on Highways. - Gov. Saltonstall. 2 v. 2. Coke. 3. It would seem, that their exemption from these is very odd.

In May. Char. No sheriff, Constable or Coroner shall hold pleas of the Crown. c. 17. May one provision that they shall exercise no part of the Lawyers business be ultimately derived from that.

Our Perambulations, between Towns, is taken perhaps from the common Law, de perambulatione faciendâ. 2 Ins. 129. Jacob in verbo.

See the antient observation of the Sabbath. 2 Ins. 264.

Our Law, excusing certain offices from serving after the age of seventy, has perhaps a precedent in West. 2. C. 38. 2 Ins. 446.

Justices of the Peace were not known until about 1697. Neither were they known in Mass. under their old Charter: 4. Mass. 545. So that our folks probably followed the practice of the Boston folks.

See an old Statute, for the destruction of Noyous game in England. 2 Burns, 278.

An Administrator, qua such, can maintain no real action. 2. Mass. 478.

The origin of arrests, says Lord Coke, is Jewish. 1 Sam. VII. 16. 17. 2 Ins. 498.

Abbott's Law of Shipping.

1. Sid. 452. II P.W. 395 — Master has all authority necessary
II Bro. Parl. ca. 92 — to navigate, but none to sell, except in cases of extreme necessity the Ship.

H Blk. 131. Do. 114. — Whether Mortgagee be owner of the
Doug. 454. VIII R. 306. — Ship before possession.
II E. Sm. 1251. Esp. III. 27.
Comp. 143.

II Ch. Ca. 36. Carth. 63 — Majority, [or ½ equality] may send
I vern. 297. Show. 280. Holt 684 — Ship to sea, against consent of ~~minority~~ minority, on
Ambl. 255. Hard. 473.
Cas t. P. 26. Comb. 109. II Show. 13. — giving security.
I. Raym. 225. Do 235. VI Mod. 162.
II Raym. 1285. Str. 940. Fitz. 147.
I Vent. 101.

Carth. 63. III Lev. 254. III Mod. 324. — Owners are bound by every lawfull
I Show. 29. 101. Hard. 395. 494 — contract of the master, relative to the usu-
VIII T.R. 531. Abb. 3rd 43. — -al employment of a Ship, in a general
Ship.

Comp. 636. II T.R. 102 — Master is always bound by contract, made
Ca Temp. Hard. 374. — by himself for owners; not by contract made by
owners.

Comp. 636. I T.R. 109. VII Do. 342. — Persons expending money for the use of
II Show. 338. Salk. 446. Ruy. 905. — the ship, has no lien on her, at home, unless
II P.W. 367. II Str. 1252. 1 Ves. 184 — by express contract, in England, contra Ireland
I Ad. 234. Doug. 101. Ab. 647.

II B&P. 224. V St. Tri. 237 — Master has authority over mariners,
may reasonably chastise them.

I Atk. 245. II Blk. 865. VII R. 445 — Stoppage in transitu.
II Vern. 208. VIII R. 466. Ambl. 309.

JUL 31 1933

Names of Writs of Real Actions

1 Cui in Vita. Where a husband alienes his wifes lands it lies after his death.

2 Recure Impedit. In favour of a Patron of Advowson.

3 De Ventre Inspiciendo. Vide plures enarrare

4 Quare fecerit. lies at the suit of the King, where all the lands of an Escheat are supposed not to be found, to discover those which are not. — disused since 12 car 2

5 Per quae Servitia. Judicial writ, on the note of a fine lies for cognisee of lands to compell ~~them~~ cognisor to attorn.

6 Quod Clerici non eligantur officio. In favour of Clerk, who is elected Bailiff &c by reason of the land he holds.

7 Quod ei deforceat. In favour of tenant in Dower, Curtesy or for life, against recoverer, where they have lost lands by default.

8 Quod permittat tot ocurimentum prosternere.

9 Quod permittat. Lies for Heir disseised of Common.

10 Quo jure. lies in favour of A to compell B to show cause why he steres holds common in land of A

11 Quo Warranto.

12 Tenentibus in assisa non querendis. lies for him to whom lies ~~seisor~~ with ~~released~~ aliened land that he be not molested in Assizes by assise of Dissesion with sufficient to satisfy damages. — ges

Vide Bonis & catallis Rehabendis post purgationem. lies to restore land &c to clerk after purges of felony by ordinary.

Ferris & Catallis tentis ultra debitum levatum. Judicial to restore Lands &c to debtor distrained above quantity of Debt.

Admeasurement of Pasture. To ascertain number of common of pasture.

De secunda superatione. lies after precedency.

Writ of Right of Advowson.

Assise of Darein presentment. lies to inquire who last presented.

Quare Impedit.

Ad admittendum Clericum. to the Bishop to admit Clerk of patron in Quo: Jm.

Quare non admisit. against Bishop for not admitting on precedency.

Quare Incumbravit. To remove Clerk of Bishop vs Pl

Ne Admittas. Caution to Bp not to admit.

Writs of Entry.

1. Entry sur disseisin & Intrusion.
2 Dum fuit infra etatem.
3 Dum fuit non compos mentis.
4 Cui in vita, Where a husband has aliened a woman's Estate in his life.
5. Cui ante divortium. Do before divorce.
6 Ad Communem legem. for reversioner where tenant hath aliened, after death of tenant.
7 Cum summons. for reversioner during life of tenant by dower, who has aliened.
8 In casu consimili. for reversioner during life of other tenant for life.
9. Ad terminum qui preterit. Do Where tenant for years holds over.
10 Causa Matrimonii prelocuti.
11. Dower unde nihil habet.
12 Sine assensu capituli. Where Bishop &c aliens land without assent of convent or chapter.

Writs of Assise.

1 Novel Disseisin
2 Mort d'ancestor
3 Darien Presentment.
4 De Ultimo. lies for a person &c to know if land be held by lay or ecclesiastical tenure.
5 Assise of the Fleing. View of frank pledge
~~6 Assise of Bread~~
6 Assise of Nuisance. where nuisance is erected
7 Assise of Novel. brought by an infant to enquire of a disseisin. &c
8 Assise en Point of Assise. in mortum assise. Where the tenant setteth fort to the demandant, pleadeth nul disseisin, nul tort.
9 Assise out of point of assise. where the tenant pleadeth something foreign as release
10 Assise of right of Damages. Where tenant traverseth ouster but demurs whether it was rightly done or no, & it is found against him this writ lieth.

JUL 31 1933

Principles of the Law of Insurance. Chapter I.

Insurance is a Contract, whereby one party, in Consideration of a stipulated sum, undertakes to indemnify the other against certain perils or risks, to which he is exposed, or against the happening of some event.

Marsh. 1.

In England, all persons, aliens or natives, may be insured, except alien enemies.

Brandon vs Nesbit 6 T.R. 23

An Alien Enemy cannot maintain an action on a policy, though goods were shipped before the war commenced.

Bristow v Towers. 6 T.R. 35.

An Action cannot be maintained on a policy on the property of an alien enemy, though of british manufacture, exported from hence.

The Great Question, whether alien Enemies can be insured, still remains undecided; the above cases only show that an action cannot be sustained in war time.

Marsh. 48

At Common Law, any person or any Company may be insured.

No Insurance can be made on any species of Goods intended to be exported or imported contrary to the laws of the Kingdom or of its dependences, or the laws of nations; & if the intended commerce be illegal the Policy to protect it is void.

ibid 49.

The Insurer may take advantage of this objection, although he knew the nature of the trade.

Lever vs Fletcher at NP after the 1780. Park 237.

The laws of England pay no regard to the Revenue laws of another country; & a policy will not be void though the trade be a fraud against the Revenue of a foreign State, & expressly contrary to a british Treaty, if known to the Insurer.

Bell vs Gleason 1 Bosan & P. 345

An Insurance on Contraband goods, being belli instrumenta, is void.

All Commerce with an Enemy, without permission of the Sovereign, is ~~void~~ illegal.

Pole vs Bell 8 T.R. 548.

But Goods, the produce of the enemy's country, purchased by a subject, & shipped home may be legally insured. — But this case was removed into B.R. & after great consideration, such trading was adjudged illegal, & the Policy void.

Webster vs de Tastet. 7 T.R 157

Seamens Wages can not be insured.

Freight may be insured legally.

Slaves may not be insured by Statute in England

Grant vs Parkinson. Park 269.

Profit is not insurable eo nomine, but by a declaration in the Policy, of a reasonable expectation of Profit. [The Question was never really determined; it is common to insure it eo nomine.]

Godin v London Ass. 1 Burr. 489. 1 Blk. 163.

A qualified interest is insurable, & different persons, each having a qualified property, may insure the same Goods to their value

Supra 21

A reasonable expectation of profit, or of future interest insurable

De Cros vs Hughes 1 Marsh. 82.

Captors have an insurable interest before condemnation.

Crawford et al vs Hunter. 3 T.R. 13

Trustees, having the disposal of ships according to discretion, may insure — so Commissioners, appointed by Statute may likewise insure

Goddard vs Garrett 2 Vern. 269.

At common Law, an insurance might be made without interest. This power was taken away by 19 G. II. c. 37.

Insurance Continued

Hill & Gathers vs Secretan 1 B&P. 315.

A mere cestui que trust may insure

But an insurable interest must be founded on a Legal or Equitable interest. a mere claim, will not give a right. 91.

Hibbert vs Robertone. 3T.R. 406

Whether a mere hope or expectation be insurable, is not decided. 92.

It has been held that no one has a legal & Equitable title, unless named in the Registe.

112. A Lender on bolomry has an insurable interest. 93

If an insurer be desirous to be relieved from the responsibility, he may reinsure. But such reinsurance is prohibited in England by 19 Gtt. c 37.

115. Double insurance is where the insured makes two insurances on the same risk. It differs from Reinsurance, in as much that it is made by the insured nominally to double the risk, & recover double satisfaction. But they are considered in Law as making but one insurance.

Newby vs Reed at NP. 1 Bl. 416

Those who pay the loss can recover a ratable proportion from the other insurers.

God in Bal vs Lond Ass. 1 Bur. 489. 1 Bl. 103

Yet different persons can recover the full value of the same thing.

122. By the voyage is meant the passage of the ship upon the seas, from one port to another.

Wilson vs Marry at. 8T.R. 31.

No insurance can be legally made on a voyage undertaken contrary to the laws of the nation or its dependences, or the laws of Nations.

ibid. A natural born subject may become a citizen of another state, & be possessed of all the advantages of Treaties of either nation.

If an integral voyage be in any respect illegal at its commencement no insurance can be effected on any part of it Legally.

132. Insurances may be made against all marine risks, subject to certain exceptions, founded on public policy, or the interests of humanity.

137. The risks stated in common Policies are "perils of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart & counter mart, suprisals, takings at sea, arrests, restraints & detainments of Kings, princes & people, of whatever nation condition or quality whatsoever, Barratry of the master & mariners & of all other perils, losses & misfortunes that have or shall come to the hurt, detriment or damage of the Owners=chandizes & ship, &c.

In all policies, it is provided, that the insurer shall not be liable for partial losses under a certain per centage

156 There are certain injuries & losses, which can hardly come under the denomination of the perils of the seas for which the owners & masters of vessels are liable. Such as bad stowage, rats, theft, wet, embezzlement &c &c.

At Common Law, they were liable to the full value of the Goods, but by 7 Gtt. c 15, only to the extent of the value of the ship & Freight.

Insurance Continued

161 To charge the insurer, it is enough, that the risk happened in the course of the voyage.

Every voyage must have a terminus a quo, & a terminus ad quem.

In England the words of the Policy, usually, are from the loading of the goods aboard the ship."

Kearney vs Etherington, cited 2 Burr 828. per Lee Cj.

In general while the goods are aboard the ship mentioned in the policy, they are protected & when put aboard another vessel without the consent of the insurers, unless when the ship is disabled &c, they are not protected.

Policies are construed largely, for the benefit of trade

Rucker vs Lond Ass. coram Buller, NP 1784.

The risk continues until discharged & safely landed"

Parkinson vs Collier. NP Park. 3rd

Where goods are put aboard a public lighter, the risk continues; where a man puts them aboard his own lighter, insurers are discharged.

Noble vs Kennoway. Doug. 492

Policy affords protection till goods can be conveniently landed, no longer.

This General rule may be controlled by particular usage.

Every Underwriter presumed to know the practice of trade. per Mansfield.

173. The risk on the ship varies in almost every case. In outward bound voyages it commonly commences, from the time she begins to load. If the insurance be from a place, it commences from the time of her breaking ground for departure. In a policy on a vessel expected to arrive at any place, "at & from" & "from her arrival" mean the first moment of her first arrival.

In English policies, the risk continues "until she has been moored for twenty four hours in good safety;" & the Insurer is liable for no loss after that time.

Lockyer vs Offley 1 T.R. 252

And this rule holds, although the cause of seizure existed before that time

Camden vs Cowley. 1 Blk 417

A risk on a ship, from A to B continues until she has untackled & discharged. [Anonymous Skinner 243]. — Yet a risk insured to Jamaica was held to continue only 24 hours. — Also vide Leigh vs Mather. NP. 2 Ast Rep 412. Park 68

Pelly vs Roy. Ex. Ass. 1 Bur. 341. per Mansfield

The risk on the furniture of a ship, generally continues, only while attached to the ship. Yet when put on shore for necessary repairs, it may continue

Salvador vs Hopkins 3 Bur. 1707.

If a loss fall within the general words of the policy, it lies on the Insurer to show that it was not a peril insured against.

Empson vs Hunter. B. Park. 5.

An insurance on an India voyage includes the risk on the Country voyage by the usage of trade

Stirl vs Warbel NP 2 Ast. Rep. 610.

The general permission "to touch & stay at any place" includes only the usual places of the voyage [Lovabre vs Wilson. Doug. 271]

Liberty to touch & stay does not authorize to break bulk.

Driscol vs Passmore. 1 Pal & B. 220.

A risk may be properly commenced, under circumstances unforeseen in the contract.

Although a ship from necessity change her course, yet if she does not abandon the original voyage, the risk continues. Driscol vs Bovil. 1 B&P. 316.

Tonyne vs Watts. 3 T.R. 362.

Upon Freight, the risk commenceth not, untill the goods are put aboard.

Insurance Continued

Denison vs Modigliani. 5 T.R. 580.

If after the policy is effected, the nature of the risk is changed without the consent of the Insurers, the contract is determined.

Mass vs Byrom 6 T.R. 379.

Yet letters of marque taken out without proper certificates, & without intention to deviate, did not avoid the contract.

198

A policy is a written instrument by which the contract of insurance is effected & reduced to form. It is signed only by the insurer. They are divided into interest & wager; also into open & valued.

some interest

The value in a policy should be only prime cost. Yet it is only necessary to prove

The only difference between valued & open policies, is in case of total loss.

Broker is answerable to Principal for negligence & unskilfulness.

Policies are largely construed for the benefit of trade.

The requisites of a policy are 10, Name of the insured, his agent or trustee, the name of the ship & of the master, the subject matter of insurance, description of the voyage with the commencement & end of the risk, the perils insured against, the powers of the insured in case of misfortune, the promise of the insurers & their receipt of the premium, the common memorandum, the date & subscription, the stamp.

245.

A policy cannot be altered but by consent of parties, or order of court.

248

A warranty is a strict stipulation or agreement on the part of the insured, in the nature of a condition precedent, a kind of formative or promissory. It is either express or implied & must be literally complied with, & a breach avoids the contract ab initio.

251

A Warranty must appear on the face of the Policy.

Hawes vs Whitmore Cowp. 784

When there is a warranty to sail by a given day, nothing will excuse the breach.

Vigilan vs Grant. Nº Cowp. 1779.

Bond vs Nutt Cowp. 601.

Rule to sail after a given day must be complied with the same strictness.

If a ship sail before the day, to join Convoy, the Warranty will be complied with.

232

A Warranty to depart with convoy must be strictly complied with. In sailing with Convoy, 5 things are necessary. it must be a regular convoy appointed by Government. it must be from the place of rendezvous appointed &c, it must be a convoy for the voyage, the ship must have sailing instructions, she must depart & continue with convoy till the end of the voyage unless separated by necessity.

per Buller E.P.B. 5

Nothing will excuse the want of sailing instructions but stress of weather, unavoidable misfortunes, &c &.

286

case of Ship Flad Voyage vs Wilson also Hartley vs Rockwood. 8 T.R. 268.

Property warranted neutral is that which belongs to a state in amity with the belligerent powers. This, if true when made is sufficient.

per Mansfield

A Judgment of a foreign Court of competent jurisdiction, is conclusive evidence of the quality of the property, if it appears on the face of the record. If the special ground of condemnation appear on the face of the Decree, & it appear to be not sufficient, it does not falsify the Warranty.

Bernardi vs Motteux Doug. 554

Gravel vs Byrnington. 8 T.R. 43.

Rich vs Parker. 7 T.R. 705. & Esp. ca. 65

per Kenyon supra.

Mayne vs Walker. B.R. MS. Park. 362.

And if the sentence be ambiguous, it will not be conclusive.

The cases against Neutrality are principally resisting visitation & search, & sailing without proper documents.

The proper documents are, The Passport, Sea letter, Proofs of property, Muster roll, Charter party, Bill of Lading, Invoices, Log book & bill of health.

The Warranty is not merely satisfied by proving that the property in question is neutral property.

But Neutrals are not bound to take notice of the mere arbitrary regulations of a belligerent power.

335.

A Representation is a collateral statement, either by parol or in writing, of such facts & circumstances relative to the proposed adventure, & not inserted in the Policy, as are necessary for the information of the Insurer, to enable him to form a just estimate of the risk.

A wilful representation untrue in a material point always avoids the contract.

It is sufficient if a representation to be true in substance

instruction.

Written representations, unless inserted in the policy are only representations.

347.

Concealment is the fraudulent suppressio veri.

Whatever respect the situation of the ship, time of sailing, &c & should be disclosed

A material concealment will avoid the policy, though from negligence of the clerk, opinion of the broker, even doubtful rumour must be disclosed, noncompliance with an Ordinance contrary to the laws of Nations &c &

There may also be concealment on the part of the Underwriter.

But either party may be innocently silent, with respect to things which the other knows as well as he, or things equally open to both parties.

The implied stipulations, with respect to the ship are, that she be seaworthy, that she be not changed unless from necessity, or with the consent of the insurer, that she be navigated according to law.

When the best is done for the interest of all parties, the Insurers are liable.

Insurance may be made "upon ship & ships"

A ship insured must be navigated according to subsisting treaties.

Deviation is a voluntary departure from the usual course of the Voyage. i.e. the Usual regular course.

393

This determines the contract, although the course be afterwards resumed.

295 The smallness of the deviation makes it not less fatal.

Driscoll vs Bovil I B&P. 313. If there are several ports of discharge, they must be touched at in the order mentioned in the Policy.

However general the liberties "to touch, stay, & trade" may be, they imply only those usual ports of the voyage

Jolly vs Walker NP Beawes. 316 The reason is because it increases the risk.

A letter of Marque is not at liberty to cruise in quest of prizes, but may chase any ~~vessels~~ enemy that comes in her way.

A deviation merely intended, not begun, will not avoid the contract.

If the master act bona fide, & only aim at performing the voyage in the shortest & safest manner, tis no deviation.

408 The cases of Necessity, which usually occur, are stress of

409 weather, joining convoy, avoiding or escaping an enemy, & mutiny of the crew, & want of necessary repair.

Loss is the injury sustained by the insured from any of those perils against which the insurer has undertaken to be indemnify. It is total or partial. The latter are called average.

Green vs Brown NP. Strac. 1199 If a ship is not heard of, in a reasonable time, she is presumed to have foundered at sea.

Capture is when a ship is subdued or taken by the Enemy in open war, or by way of reprisal, or by a pirate, with intent to deprive the owner of his Property. It is lawfull or unlawful.

The above distinctions can make no difference, except in the case of wager policies.

The property of things captured in war is changed, when all reasonable hope of recovering them is gone: i.e. when they are brought under the protection of an enemies forteress, Lege Gentium

But English courts of Admiralty hold, that the property is not changed, untill regularly condemned.

"Arrest of Princes" ~~means~~ means, when any sovereign power detains a vessel from motives of necessity, not of hostility.

The word people means a nation, not a mob.

Barratry is any species of knavery, fraud, deceit or cheating committed by the master & mariners, whereby the owner sustains injury.

460 Average is a contribution made by the owners of the ship freight & goods on board, in proportion to their respective interest towards any particular loss or expense, sustained for the general safety of the ship or cargo.

462 A loss, to ~~a~~ claim an average ~~con~~ contribution, must evidently conduce to the safety of the ship; & it must appear that the rest of the cargo were in fact saved.

The ship, freight & cargo shall contribute; persons wearing apparel jewells & ornaments of the person, shall not contribute.

Insurers are bound to pay all average.

Salvage is an allowance made to those by whose means the ship or goods have been saved from the effects of shipwreck, fire, pirates, enemies or other loss.

CI. The party has a lien on the thing saved, untill paid.

The insured need not declare for salvage, but may recover

475 under a declaration of the thing that occasioned it

Where by the happening of any of the perils insured against, the voyage is lost, & the projected adventure is not worth pursuing; or where the thing insured is of little or no value to the owner, or where the salvage is very high; or where

482 what is saved is of less value than the freight: or where further expense is necessary, & the insurer will not undertake at all events to pay the expense, the insured may abandon.

Pringle vs Hartley Sheen 3 Atk. 195. Capture or arrest of Princes prima facie total loss.

Recapture does not deprive the insured of the right to abandon.

per Mansfield The Insured may abandon even from an embargo.

Shipwreck is considered as a total loss.

Bayfield vs Brown NP Strac. 1065. If the cargo be so damaged, as to be of less value than the freight, the insured may abandon.

In England as soon as ~~one~~ the owner is informed of a total loss, he must elect to abandon or not; & must give reasonable notice to the insurers, or will be considered as waiving his right.

508 per Ashhurst. Mitchel vs Edie 1 T R. 608 A reasonable time is the first opportunity.

If the owners abandon, the Captain becomes the agent of the ~~insurers~~ Underwriters.

Cosa vs Newnham 2 T R 787 If the Insurers in any way, prevent abandonment they shall be liable for the whole loss to the amount of the sum insured.

If the insured intend to abandon, he need merely give notice of the loss to the underwriters & his intent to abandon. No particular form is necessary but it must be explicit.

If the insurance be entire, part cannot be abandoned.

It must be simple & unconditional.

The Insurer, upon Abandonment, become instantly possessed of the property.

520

In England, the abandonment of the ship does not transfer freight.

Where the obo insurance is of less value than the interest of the owner, he abandons in the same proportion.

525

An abandonment, once properly made is irrevocable

In case of misfortune, the insured is bound to use every exertion to save what he can.

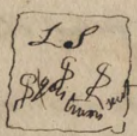
From the nature of his situation, the Captain is has an implied authority, from the insurers & the insured, to do what he deems best: & all are bound by his acts.

The premium must be returned, in the following cases.

1 Where the risk has not been commenced.
2 Where the contract is void at initio.
3 Where conditions stipulated are not performed.

Deduction of ½ per cent is allowed, where the risk is not commenced by default of the insured.

In cases of fraud, the premium will not be returned.



certified & signed by E Lane.

May thirteenth, One thousand, Eight hundred & twelve, at Lyme, in this state of Connecticut.

"Qui transtulit, Sustinet."

"How rises worth, by poverty depress."
"Nunquam paupertas clarius in se,
"Quam quod ridiculos homines facit."

From Le primer Institute del mon Segnor Coke.

Inceptum Maiae 12. 1812

Chapter I. Fee Simple.

Tenant en fee simple est celuy que ad terres & tenements, or tenir de luy & a ses heirs a touts jours. fee a fieff. simple a quia sine plures et purum dicitur, quod est merum et solum quia sine additione.

Mortmain is so called, according to some, a mortua manus, quia possessionem eorum est immortalis, manus pro possessione, mortua pro immortali. Some that it is called mort main per Antiphrasin, fr because bodies corporate never die, [ut similis "mare a morte, quia Mars non est deus maris." &c. & c.]

If one of nonsane memory purchase land & die during his madness, his heir may consent or disagree as he pleases. [2b]

Purchase from I. perquisitum a verbo perquirere.

Terra dicitur a terendo, quia vomere teritur.

[3.b] To them that lend money, my caveat is, that neither directly or indirectly, by, they by art or cunning invention, they take above ten pr cent. for they that seek by slight to creep out of those statutes, [of usury] will deceive themselves repent in the end.

Solum quia est solidum.

Non mihi si centum linguae sint, nocque centum. [5.a]

Omnia terrarum percurrere nomina possem.

There is no knowledge, case, or point of law, seem it never of so little account, but will stand one student in stead, ort one time or other, & therefore in reading, nothing is to be praetermitted. [9a]

Nul averra terre de fee simple, pres discent comme heire d aucun homme, si non que il soit & son heire de entire sanke. [14.a]

[18b] If injury be done to tombstones, pennons, coat armor in a Church, the heir shall have an action, or his heirs. Some say that the exec. & executors who set them up, may have an action for injury done in their time.

Chapter II. Fee Tail.

Tenant in fee tail est per force de le statute de West II. chapter I, en deux manners, tenant en taile general, & tenant in taile special. Tail a French taylhaus, taillez scindere.

Tenant in taile general est lou terres ou tenements sont dones a un homme, a a ses heirs de son corps engendrez.

(2) Tenant in taile special est lou terres ou tenements sont dones a un homme & a sa femme, & le heirs de leurs corps deux engendrez.

Chapter III. Tenant en taille, apres possibilitie d issue.

Tenant en taile apres possibilitie d issue, e tout est lou tenements sont dones a un homme & sa femme en taile especial, & un dey sans issue celuy que supervesquit est tenant &c

Sponte virum fugiens Mulier et adultera facta,
Dote sua careat, nisi sponsi sponte reducta.

The kinds of dower are five, common law, special custom, ad Ostium Ecclesiæ et assensu patris, & de la plus belle

Assurance is derived from assidere, — sidem dare.

Dowment ex & assensu patris dowth pier et seigr de tenement en fee, & son fits & heire apparent quant il espouse, endowe sa femme al huys del monasterie, ou de-glise, de parcel de terres ou tenements son pier de assent de son pier & assigne la quantite de & les parcels.

Re, verbis, scripto, consensu, traditione,
Junctura verte numeri pacta solent.

Judicium quasi Juris Dictum

Contractus est quasi actus contra actum

52b There is a difference between a bare authority, & an authority coupled with an interest. The first must be performed wholly, or not at all. The latter may be performed in part & be good: for omne majus in se minus continet

Dicome Abuille a un homme, mes barbaits a coperter son terre, ou mes boeufs a arer la terre, & il ad court mes avers, & pursuy bien ouer un accion de trespas envers luy, nient obstant le bailment. — 57.a

Court a Curia, derived from cura, quia in curis publicis, causa gerebant

Manerium dicitur a manendo, secundum & excellentiam, sedes magna, fixa, stabilis. Logemoon, ie, habens saccam & soccam super homines suos.

Forisfactum, forfeiture, a foris, & facere.

Provideat sibi omnimo de Seneschallo vir providus, discretus, & gra-tiosus, humili pudore, gravitate & modestia. Deus a Fr. Sire, howe & schale, Offices.

54.b Sex horas somno, totidem des legibus æquis,
Duodecim reliquas, des negotiis tuis.
Quod superest ultro sociis conjugi que tuæ.

Rather
Six hours to law; to soothing slumber seven.
Ten to the world allot, & all to Heaven. Sir W Jones.

Homage a homo. Nil fecit vetustas, sine prudenti ratione.
Foedus a fide, quia fides interponitur.
Women may do homage but they may not say, Je devienge votre feme, but Je face a vous homage. Glanville may be reconciled with this as she shall not do complete homage.
Fealty ad a L. fidelitas.

Our student will observe that the knowledge of the law is like a deep well out of which each man draweth according to the strength of his understanding. He that searcheth deepest, findeth the amiable & valuable secrets of the law wherein I assure you, the sages of the law in former times, have had the deepest reach. And as the bucket in the depth is easily drawn up to the uppermost part of the water, [for nullum elementum in suo proprio loco est gravi] but take it from the water, & it cannot be drawn up without great difficulty. Albeit Beginnings of this study seem difficult but when the professor of the law can dive into its depths it is delightfull easy & worthy any heavy burden, so long as he keeps himself in his own proper element. (71. A.)

70b Six things to be avoided by the student, praeposterus lectio, praeposterus [illegible]

Now what is substance & what is form, you shall see in my Reports.

Marshal, Servus from Mare, a female horse, & Shale officer. 94.a

Ancestor ab antecessor. Antecessor differs from Predecessor, the first applies to the Natural person, the latter, to bodies Corporate.

Plene age est 21. Age & discretion et 12 femels, 14 male

Magna Charta is named, not for the extra length & largeness of it, for it is short in respect to the charters granted to private persons now a days; but it is called great Charter, with respect to the great weightiness, or the weighty greatness of the matter.

Omnium rerum ex quibus aliquid exoritur, nihil ogriculturæ me-lius, nihil uberius, nihil dulcius, nihil libero homine dignius. Cic. offic.

Nullum laborem recusant manus, quae ab aratro aut arena transferuntur, & fortior ostrem miles ex conjugio venit, sed ille unctius, et mitius in primo pulvere defuit

The legal termination -agium commonly signifies service or duty.

Nothing si nescis, perit cognitio rerum et
Nomina si perdas, certe distinctio rerum perditur

To commit the ward to the custody of the nearest of the blood, like the Civil law, sir E Coke pronounces est quasi agium committere lupo ad devorandum

89a For to keep, & to keep safely is alone in law. Sacramenti. Jones Barmest.

Sergeant from Fr idem quod Satellites

Burhoe S signifieth a pledge, as the tithings were mutually pledged for one another

Borh Bury & bury mean the same

Customs are described in Sect. 170. pages 113 & 114.
Villa, quasi vetulla, quod in ea plenè conveniantur fructus.
In England are 8:803 towns.

On Law, & changing Laws; of the trial by Jury. IV.

Holy the 14th Day beyond the rest. Nos. 2001. & 2002.

On Religious Toleration. No 32. Catholic Question. idem.

Cause of the multitude of Laws in a semi barbarous nation. No 32. last.

Effect of diversified studies. Nos 33. 168. On the probable benefits to be derived from Metaphysics. id.

Principles of taste. No 35.

The 18th English school of Poetry. No 36. 1. art.

Effect of civilization, in producing vulgarity in the lower orders. No 36. 480 & seq. a good police unfavourable to delicacy & politeness. id. On the characters of the Scotch Highlanders. id.