Chief justice Reid's
Digest
I
a - J

Abatement. – Misnomer. –

If a Defendant sued by the name of A. pleads in abatement, that he was baptised by the name of B. he must prove that this name was given him by baptism, and it is not enough for him to shew that he has always been known and called by the name of B. – 1 Camp. N.P. 479. – 1 Salk. 6. Holman. v. Waeden.

A Plea in Abatement must begin by alledging, That the Defendant, stiling himself by his real Christian name, comes &c – and it must also give his real Surname. – 5. Taunt. 652. Docker. v. King.

See also case on Note – Peake. v. Davis – A Defendant who pleads a misnomer in abatement, must come & appear by his right name, and not by the description, "*he who is sued*" – And he must shew his Surname with certainty. –

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2. Bos. & Pull. 125. Mainwaring v. Newman – A plea in abatement ought to give a better writ, not ~~merely~~ to shew that the Plaintiff can have no action at all. –

Abatement.

1 Raym. 249.
Benson v. Derby.

A Defendant may plead misnomer in abatement, after putting in bail by the name whereby he is sued — Per Holt. Ch. J. — The putting in of bail is the act of the bail, and therefore will not estop the Defendant.

Action. – Joinder of. –

Actions which require different judgments cannot be joined. – 1 Raym. R. 272. Courtney v. Collet. 1697. –

Per Ld. Ch. Justice Wilmot. 2. Wilson. 321. Dickon. v. Clifton. 1766. — The true test to try whether two Counts can be joined in the same declaration, is to consider and see whether there be the same judgment in both, and not whether they require the same plea, and wherever there is the same Judgment in both, I think they may well be joined. – and p. 322. – I have a doubt whether trespass vi et armis and Trover can be joined but think they cannot, because they have different judgments. – see 1. Wils. 248. – 3. Salk. 202.

p Buller. J. 1. T. Rep. 276. Brown. v. Dixon. 1786. — Perhaps the rule of judging whether two Counts can be joined, by considering whether the same Judgment can be given on both, is not true in its extent; but by adding another requisite it is universally true. — For wherever the same plea may be pleaded and the same Judgment given on two Counts, they may be joined in the same declaration. – Assumpsit and Tort — cannot be joined, because the pleas to both are not the same. –

A Count on a promise made by the Defendt. as administrator, to pay money received by him as such to the

the plaintiff's use, cannot be joined with other Counts on promises made by the Intestate. – 4 T. Rep. 347. Jennings. v Newman.

So a man cannot join actions founded upon a Tort, and upon Contract in the same declaration. Com. Dig. tit. Action. (G.) p. 138. –

Jenk. 211. – Nor an action at Common Law with an action founded upon a Statute. Ib. p. 139.

Ch. J. De Gray. in the Case of Mast. v. Goodson Black. 849. – observes, that no rule could be drawn from the sameness of the process, or plea, or Judgment as to the joining of actions, but it must depend upon the nature of them. – Supp^t. to Vin. ab. Tit. actions p. 180. No. 2. –

Trespass vi et armis, and Trespass on the Case cannot be joined in the same action. Howard. v. Bankes 2. Bur. 1113.

2. Sand. Rep. 116. Note (2).

With respect to those who may join, or be joined in the same action, it is to be observed that regularly where two or more are jointly entitled or have a joint interest, they may join in the same action. –

See p. 117 f. The result of all these Cases seems to be that wherever the same plea may be pleaded, & the same Judg^t. given in all the Counts of the declaration – or whenever the Counts are of the same nature, and the same Judg^t. is given on them all, though the pleas be different, as in the case of Debt upon bond, and on a Mutuatus – they may well be joined. –

Under a declaration containing only one sett of counts, charging the Defendant in his own right, the plaintiff may recover one demand due from the Defendt individually, and another due from him as Surviving partner – 1. Barnewall & Alderson's Reps. 29. Richards & al'. v. Heather.

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3. Bos. & Pull. – 150. Cook & another v. Batchellor.

If defamatory words be spoken of two partners respecting their trade, they may maintain a joint action for the Slander, averring special damage.

see also. 2 Sand. Reps. 116. 117. –

N. Denizt. vo "action". §. 1. No. 7.

Il arrive souvent que l'on a tout à la fois, pour le même objet, une action personnelle, et une action réelle sans que ces deux actions forment une action mixte, – parceque'elles ne sont point dirigées contre la même personne. Ainsi, une dette avoit eté contractée par une personne, avec hypotheque sur un Immeuble qu'elle a mis hors de sa main. Le Créancier a l'action personnelle contre son debiteur, et l'action reelle contre le detenteur de la chose hypothequée; ce sont deux actions distinctes qui subsistent ensemble. – Le Demandr peut choisir, et preferer l'une des deux, ou les exercer toutes deux concurrement. – Mais lorsque une fois, il est remplis de ses droits par l'effet de celle qu'il a preféré, l'autre s'eteint d'elle même, parcequ'il n'y a plus d'interet à la suivre, et que l'interet est la regle, et la mesure des actions

1 Lev. Rep. 101 Holms. v. Taylor
3 Lev. 99. Bage. v. Bromwel.
1 Salk. 10. –
3. Wilson. 352. –

Assumpsit and Trover cannot be joined – and though there be a verdict for the Defendt. on the Count for the trover, yet it is said that does not cure the declaration, but is bad ab initio. –

Trover and detinue cannot be joined in the same action Willes Rep. 118. Kettle v Bromsall. —

2. Wilson. 319.
Dickson. v. Clifton

Case for a misfeasance and negligence, may be joined with <u>trover</u> in the same declaration

1 New Rep. 46.
Judin. v. Samuel.

Heath. J. — Different causes of action may be joined in the same suit, where the same process is used and the same Judgment follows, and it would be very inconvenient in practice, if it were otherwise — In Mast. v. Goodson[+], this Court was of opinion, that a Count upon a cause of action to which a Contract is only inducement, may be joined with a Count upon a tort. — see. 6 East. 333. —

+3 Wilson. 348.

4 Barn. & Ald. 437
Skinner & al. v. Stocks.

The Joint owners of a vessel engaged in the whale fishery, may sue a purchaser for the price of whale oil, although the Contract of sale were made by one of the part owners, and the purchaser did not know that other persons had any interest in the transaction.

Action — locality of

1 Cowper. 176.
Mostyn. v Fabrigas

Per L^d. Mansfield. — There is a formal, and a substantial distinction as to the locality of trials — I state them as different things. — The substantial distinction is, where the proceeding is in rem, and where the effect of the Judgment cannot be had if it is laid in a wrong place — &c

With regard to matters that arise out of the realm, there is a substantial distinction of locality too, for there are some cases that arise out of the realm which ought not to be tried any where but in the Country where they arise

p. 179

But it cannot be doubted that actions may be maintained here, not only upon contracts which follow the persons but for injuries done by subject to subject, especially for injuries where the whole that is prayed is a reparation in damages, or satisfaction to be made by process ag^t. the person or his effects within the Jurisdiction of the Court. —

Action for Malicious Suit..

1 Comyns Rep. 190
Bird v. Line

An action on the case does not lie for a malicious suit, pendente lite.

An action lies for knowingly suing in a Court where there is no Jurisdiction of the Cause — And also for suing in a proper Court, but proceeding there vexatiously —

Bull. N.P. 12,
2. Wilson. 305.

An action will lie for such excessive damages being alledged that the Defendant could not put in bail

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12 Mod. 257
1 Salk. 14,
1 Raym. 380.—

An action upon the case does not lie for a suit brought without cause

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3. Dowl. & Ryl. 669
Freeman vs. Arkell

Where the Pltff declared in case against the Defendant for a malicious arrest, by going before a Justice, and there falsely charging him with an assault, and causing the Justice to grant his warrant for apprehending him, by virtue of which he was arrested and committed to prison until he found sureties, and that the Deft — afterwards preferred an Indictment agt. the Pltff, which was ignored at the Sessions — and in order to prove the information and warrant upon which the Pltff was arrested, the Committing Justice, the Deputy Clerk of the Peace and the Constable were — severally examined, none of whom could produce the sd. documents, nor say what had become of them — Held that the Pltff was at liberty to go into secondary evidence of their contents. —

A Count for maliciously indicting for an assault

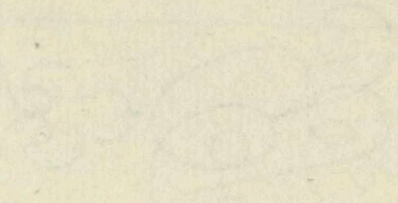
cannot

cannot be supported without proof of some —
consequential injury sustained by the Plaintiff. —
See. Savil. v. Roberts. 1 Salk. 13. & cases there cited —
Burn v Moore. 5 Taunt. 187. —

Addition. —

2. Raym. 849.
Bennet. v.s Purcell

In an action by bill, if the plaintiff gives the Defendant one addition, and he pleads a misprision of addition, the plaintiff may reply that he had by reputation the addition mentioned in the bill. —



Admission. – Acknowledgmt. – Confession. –

An admission of a hand writing made by the Defendant pending a treaty for compromising a Suit, is evidence agt. him. 1. Esp. Rep. 143. Waldridge. v. Kennison &al. –

Any admission of a demand or confession to that effect made by a Defendant when he is arrested, and is ignorant whether he is bound by law to the payment of the demand or not, is inadmissible evidence to charge him. – Id. 155. Rous. v. Redwood

The admission by an Indorsee of his handwriting is evidence against the maker. 2 Esp. N.P. Rep. 647. Maddocks v. Hunckey. –

A letter or admission of the plaintiff on record is evidence against him, even although the plaintiff is only nominal, and another is the party really concerned. Id. 663. Bouerman. v. Radenius. – See also. R. v. Hardwicke 11 East. 578. 589. Hanson. v. Parker. 1 Wils. 257. – Smith. v. Lyon.

Confession of an escape by the under Sheriff is evidence agt. the Sheriff – 1 Ray. 190. – Yabsley. v. Doble. – and the reason given is, because the Sheriff is answerable for the acts of his under-Sheriff – upon this Evans, (2. Poth. on Obl. 328) observes, – These reasons are not very satisfactory; for although a Sheriff is answerable for the acts of his under-Sheriff, it does not follow that the declaration of the under-Sheriff (except where it constitutes a part of the res gesta) is the proper evidence of those acts, and the liability over, is only an indirect and incidental consequence, the primary object of the action being

to

to charge the Sheriff personally, and his security for reimbursement may probably be defective. – The argument would go to shew that all principals are bound by the admissions of the agents against whom they have a remedy over. –

In an action by several partners against the Defendt. for the non-performance of an agreement, a declaration by one of the partners, that the goods, to which the agreemt. related, were his separate property, is evidence against all the plaintiffs suing as upon a joint Contract. – Lucas & al'. v. De la Cour. 1 M. & Selw. 249. – The rule has even been extended so far, as to admit the declarations of one Partner to be evidence against another, concerning joint Contracts and their joint interest; although the person who makes such declarations is not a party to the Suit – as where in an action by a Creditor against some of the partnership firm, the answer of another partner to a bill filed by other Creditors, was received in evidence against the Defendants, not indeed to prove the partnership but, (that being established,) as an admission against those who are as one person with him in interest – (a)

(a)
Grant. v. Jackson. Peake. N. P. C. 203. –
Wood & al'. v. Braddicke 1 Taunt. 104. –
and see Whitcomb. v. Whiting 2. Doug. 652. –
Jackson. v. Fairbank 2. H. Bl. 340. –
Thwaites. v. Richardson Peake's N. P. C. 16.

And the admission of a Partner though not a party to the Suit, is evidence as to joint Contracts against any other partner, as well after the determination of the partnership, as during its continuance – Wood & al. v. Braddicke. 1. Taunt. 104. –

This

Admission, Acknowledgt. Confession.

This is the rule respecting admissions in the case of *Joint Contracts*, or where several persons have one and the same interest in the Subject matter.– But the same rule cannot be applied to actions of Trespass or to Criminal proceedings.–

In an action of Trespass agt. several Defendt., an admission by one of the Defendants is not evidence agt. the others to prove the fact of their being Co-trespassers, and even where the fact is fully established, it seems very doubtful, whether any admissions or declarations made by one of the Defendts. as to the joint motives or designs of the party, can be received as evidence against the others, except so far as they accompany the act, and may be considered as forming a part of the *res gesta*. Phillips on Ev. 73.4.–

The statement or representation of an *Agent* in – making an agreement, or in doing an act within the scope of his authority, is evidence against the principal himself, and equivalent to his own acknowledgement – Fairlie v. Hastings. 10 Vez. Jr. 127.– For what the agent says, may be explanatory of the agreement, or determine the quality of the act which it accompanies, and must therefore be as binding on the principal as the *act* or *agreement* itself – To prove such a representation the opposite party is not obliged to call the agent, but may establish it by other evidence.– Thus what an Agent says at the time of a Sale which he is employed to make, is evidence as part of the transaction of Selling;

but

Helyar. v. Helyar
5 Esp. N.P.C. 74. –

Peto. v. Hague
5. Esp. N.P.C. 135. –

Alexander. v. Gibson
2 Camp. N.P.R. 555. –

Palethorp. v. Furnish.
2 Esp. N.P.C. 511. n.

but the principal is not bound by a representation of the Agent at another time. – (a) see Phillips Ev. 75. –

The Court of Common Pleas has lately decided, after much argument in the cases of Kahl. v Jansen, 4. Taunt. 565 – and Langhorn. v. Allnutt. 4 Taunt. 511. and Reyner v. Pearson. 4 Taunt. 663. that the letters of an agent abroad to his principal, containing a narrative of the transaction in which he had been employed, were not admissible in evidence against the principal, as the mere representation of the agent. – The general rule on the subject was there fully recognized and confirmed — " When it is proved said the Ch. Justice, that A. is agent of B, whatever A. does or says or writes, *in the making of a Contract* as agent of B, is admissible in evidence, because *it is part of the Contract* which he makes for B, and which therefore binds him, but it is not admissible as *the Agent's account* of what passes." 4. Taunt. 519. Such declarations are admitted in evidence for the purpose of establishing the truth of the fact stated, but as representations by which the principal is, as much bound, as if he made them himself, and which are equally binding whether the fact stated be true or false. –

It must be remembered, that the cases in which

the

the declarations of an agent have been admitted against the principal, are exceptions to that general rule which requires evidence to be given on oath — and the exception is confined to such statements as are made by him, either at the time of his making an agreement about which he is employed, or in acting within the Scope of his — authority — "Except in one or other of these ways" (said the Master of the Rolls in Fairlie v. Hastings. 10 Vez. 128.) "I do not see how they can be evidence against the " principal:" — "The admission of an agent cannot " be assimilated to the admission of the principal — a party is bound by his own admission, and is not per=mitted to contradict it — but it is impossible to say a man is precluded from questioning or contradicting any thing that any person may have asserted as to his conduct or agreement, merely because that person has been an agent — If any fact, material to the — interest of either party, rests in the knowledge of an agent, the general rule is, that it ought to be proved by his testimony, not by his mere assertion." —

The force and effect of an admission must of course depend upon the Circumstances under which it has been made. — In many cases it will be evidence of the strongest kind, if clearly proved, in some it amounts to little. — A full and free admission of a debt, is,

unless

unless satisfactorily explained, conclusive against the party who makes it. — On the other hand an offer to pay money by way of Compromise, and to get rid of an action, is not evidence of a debt — in such Cases, the point to be considered is, what the view and intention of the party was in making the offer, whether to buy peace, or from a conviction of the justice of the demand against him — Thus if A. sue B. for £100. and B. offer to pay him £20. — it shall not be received in evidence, for this neither admits nor ascertains any debt, and is no more than saying he would give £20 — to get rid of the action — But if an account consits of ten articles, and B admits that a particular one is due, it is good evidence for so much — Admissions of particular articles before an arbitrator are also evidence under the same limitation, that is, when they are made, not with a view to compromise, but while the parties are contesting their rights —(6)

Bull. N. P. 236. —

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(6) 1. Peere Wms 497. Slack v. Buchanan. — Peake. N.P.C. 5. Waldridge v. Kennison. — 1. Esp. N.P.C. 143. —

Admissions by a party to the Suit are evidence, whether made before or after the commencement of the action — whether before arrest or after — whether in writing or by parol — Phillips Ev. 79. —

It is scarcely necessary to observe, that the

whole

whole of the answer or admission must be taken together in order to shew distinctly the full meaning and sense of a party — Thus if a person in making an admission against his own interest, refers to a written paper, without which the admission is not complete, the contents of the paper ought to be shewn before the statement can be used as evidence against the party —(a) Or if a person says, that he did owe a debt, but that he had paid it; such an admission will not be received as evidence to prove the debt, without being also evidence of the payment — see Anonys case cited. 12. Vin. Abr. A. b. 23. — what such person has said in his favor may perhaps weigh very little with a Jury, whilst his admission against himself may be conclusive. — it is however reasonable, that if any part of his statement is admitted in evidence, the whole should be admitted — see — Green. v. Dunn. 3. Camp. Rep 215. — Smith. v. Young — 1 Camp. Rep. 439. —

(a)
Jacob. v. Lindsay.
1 East. 462. —
Smith. v. Young.
1 Camp. Rep. 439.
Ld Barrymore v. Taylor
1 Esp. N.P.C. 325.
Randle. v. Blackburn
5. Taunt. 245. —

3 Barnw. & Andn
14. —
Mountstephen & al
v
Brooke & al. — }

Where in a deed, between Defendts and a third person the defendt acknowledged within 6 years, the existence of a debt, and the plffs were wholly strangers to the deed Held — this was sufficient to take the case out of the Statute of Limitations. —

Cours du Droit Commercial.— 2e. Vol. 97. 98.

Le Jugement arbitral a le meme force que s'il emanoit des tribunaux ordinaires, en ce qui touche les parties qui ont compromis.— Ainsi la declaration des arbitres que les parties ont fait tel *aveu*, ou qu'il a eté transigé entre elles de *telle* ou *telle* maniere, fait foi, sans qu'il soit besoin de la signature des parties; mais ce jugement ne peut en aucun cas être opposé à des tiers.—

5. Taunt: Rep. 245.— Randle & al v Blackburn

The whole of the account which the party gives of a transaction, must be taken together and his admission of a fact disadvantageous to himself shall not be received, without receiving at the same time his Cotemporaneous assertion of a fact favorable to himself

2. Tr. ꝑu Pais 363.—

The Confession of a party must be taken whole, and not by parts— As if to prove a debt it be sworn that the Defend. confessed it, but withal said at the same time that he paid it, his confession shall be valid as to the payment, as well as that he owed it. ꝑ Hale. Ch. J. And so is common practice

Admission, Acknowledgmt. Confession. &ca

3. Bing: Rep. 119. Colledge. v Horn	ꝑ Burrough. J. A statement made by a Counsel upon his address to a Jury, but in the hearing of his client, is binding on the client, if he makes no objection.—
7 Barn: & Ald. 86.— Rogers. v. Jones.	An acknowledgment of a debt, made by a debtor after arrest, but before an escape, is evidence against the marshall, in an action for the escape.— ꝑ Bayly. J.—

Affidavit – to hold to bail. &ca

7 Taunt: Rep. 171
Machu. v. Fraser

An Affidavit to hold to bail the acceptor of a bill of Exchange, not shewing that the bill is become payable, and that it continues unpaid* is bad. –

Id. – p. 237
Horsly & ux v. Walstab. –

If a plaintiff swears positively to a bailable cause of action, the Court will not try upon affidavits whether the transaction be such, as could create no legal debt. –

But where the Defend.t was arrested for a very large sum of money (£10,000.) in an action of Trover – the Court interfered on account of the enormity of the sum, & discharged the Defendant – and it was thought a great stretch of authority of the Court. –

Ib. – p. 275
Byland. v. King

If the assignee of a bond takes on himself to dis-affirm by his affidavit a tender in bank notes by his assignor, the Court will not reject the affidavit. –

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3. Barn: & Ald. 495
Edwards. v. Dick.

An affidavit to hold to bail, which states that Defend.t is indebted to pl.tff as Drawer of a bill of Exchange, is not sufficient, unless it is also stated that the bill is due. –

Affidavit to hold to bail &ca

7 Taunt. 405
Armstrong & al'
v
Stratton —

A discretion exists in this Court (C. B) to receive supplemental affidavits to hold to bail — by Ch. J. Gibbs — But it ought to be very sparingly exercised. —

The Court of K. B. exercises no such discretion By Park. J.

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3. Barn: & Ald. Rep.
495.
Edwards. v. Dick. —

An affidavit to hold to bail, which states that the defendant is indebted to the plaintiff as drawer of a bill of exchange, is not sufficient, unless it is also stated that the bill is due. —

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4. Burr. 1992
Barclay & al. v. Hunt

see. 2. Bl. Rep. 850. —
Roche, Exr. v. Carey. —

Affidavit by the assignees of a Bankrupt "as appears from the books &c" — sufficient to hold to bail. —

also

An affidavit by an assignee — "as appears "and he believes"; is good. —

1 Chitty's Rep. p. 92.
Lowe. v. Farley.

Affidavit to hold to bail in an action by assignees, made by a Clerk of the Bankrupt, and stating that the Defendt is — indebted, "as appears by the Bankrupts books", is bad, if it do not state the Depont's belief that the debt is due. —

see cases referred to. Sheldon. v Baker. 1 T. Reps. 84 —

Affidavit – to hold to bail –

An affidavit to hold to bail must shew on what account the debt became due, and the Depont^s. addition and place of abode. Polleri. v. De Souza. 4. Taunt. 154. –

But it is no objection to an affidavit to hold to bail, which states that the Defend^t. is indebted and denies a tender in Bank Notes, that the Pltff resides in a foreign Country, and that it does not appear, how the deponent could know these facts. – Id. p. 231. Andrioni. v. Morgan. – –

2. Black: Rep. 850
Roche, Exr. v Carey.

Subsequent affidavit by a plaintiff Executor, that he believes the debt sworn to be due, – which before was only sworn, "to appear by accounts, admitted. – see 2 Stra. 1219. – 1. T. R. 716. –

A supplemental affidavit is allowed in C. P. Barnes. 100. – 1. H. Bl. 248. – 1 Bos. & Pul. 36. – & 227. – 2. Bos. & Pul. 298. – 7 Taunt. 405 – 1 B. Mo. 110. –

But not in K. B. – 2 M: & S. 563. – 2 Doug. 467. – 5. T. R. 552. –

It seems sufficient for an Executor to swear to his belief. – 1. T. R. 83. – 2 Bos. & Pul. 298. – 1 Price. 402. – So also a Co-assignee suing in the name of his principal – 8. T. R. 418. –

The

The discretion to permit a plaintiff to fyle a supplemental affidavit, ought to be very — sparingly exercised. -

Per Gibbs Ch. J. in Armstrong. v Strattan. 7. Taunt. 408 and see Garnham v Hammond. 2. Bos. & Pul. 298. — Sands. v Graham. 4. B. Moore. 18. — Hobson. v. Campbell. 1. H. Bl. 245 - Tidd's Prac. 191 - 3d edit. —

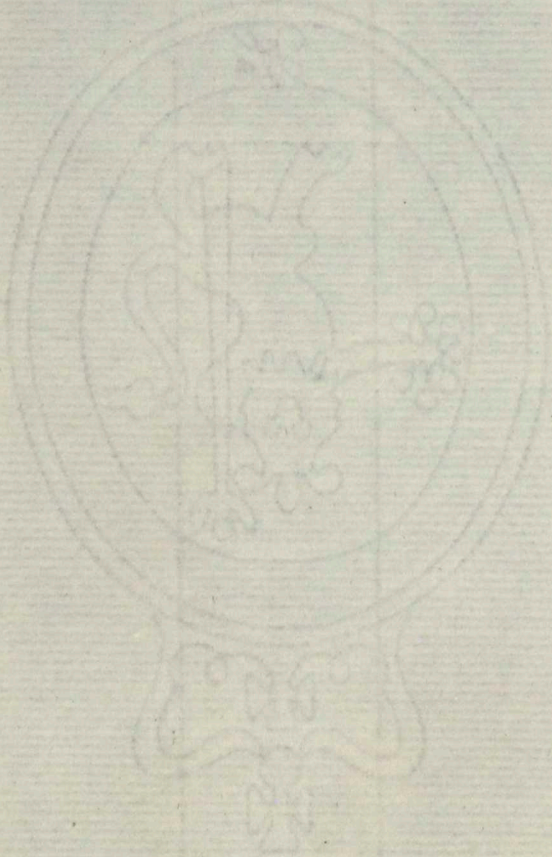
Affidavit

1 Chitty's Rep. 228
Doe. v Roe.

Affidavit must state in the Jurat, the day on which it was sworn. — but this may be amended. —

4 Dowl: & Ryl. p. 144.
Park. v Strockley

A Plaintiff convicted of a Conspiracy, is not incompetent to make an affidavit to hold a Defendant to bail. —



Agent. —

5. Barn: & Ald. 333.
Farebrother. v. Simmons

The Agent contemplated by the 17th Sec. of the Stat. of Frauds, who is to bind a Defendant by his signature, must be a third person and not the other contracting party; and therefore where an auctioneer wrote down the Defdt's name by his authority opposite to the lot purchased — Held, that in an action brought in the name of the auctioneer, the entry in such book was not sufficient to take the case out of the Statute. —

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3. Carr.s & Payne. N.P.
Rep. p. 352.
Capel & anr. v Thornton

An Agent authorised to sell goods, has, in the absence of advice to the Contrary, an implied authority to receive the proceeds of such Sale. —

* * *

1 Moody & Malkins
N. P. Ca. — 200. —
Barrett. v Deere

Payment to a person found in a Merchant's Counting house, and appearing to be entrusted with the conduct of the business there, is — good payment to the Merchant, though it turns out that the person was never employed by him. —

* * *

3. Doug: Reps. 410
Nelson. v Powell.

Where an agent without declaring his principal, purchases goods, the Vendor on discovering the principal, may sue him, though he has debited the Agent, and though the principal has remitted money to his agent to discharge the debt. —

* * *

Peake's Addl. Ca, 131
George. v Claggett & al

Where a factor sells goods as his own and fails, the purchaser may set off a debt owing to him from the factor, in an action at the Suit of the principal see. 1 M. & Sel. 576. — & 2 Camp. 343. —

Alien- Enemy.

Contract. with. No contract made with an alien enemy in time of War, can be enforced in a Court of British Judicature — Although the plaintiff do not sue until the return of peace — And although the Plaintiff be an English- born Subject, resident in the hostile Country. —

The Defendant a British Subject resident in England having in his hands the proceeds of certain goods of A. an alien Enemy — A. drew on the Defendant, payable to his own order, and indorsed the bill to the plaintiff, an English born Subject resident in the hostile Country, who sued on the bill after peace restored. — Held that he could not recover.

7 Taunt. Rp. 439
Willison. vs
Patterson & al.

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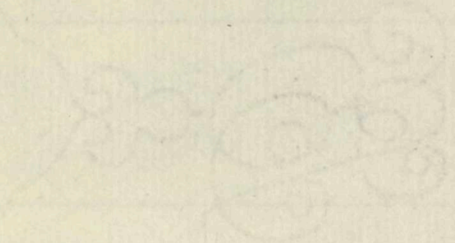
1 Raym. 282. —
Wells. v. Williams.

But an alien enemy commorant here by the Kings licence and under his protection may sue though he came in time of war without a safe conduct.



Alimentary allowance to Debtors &c

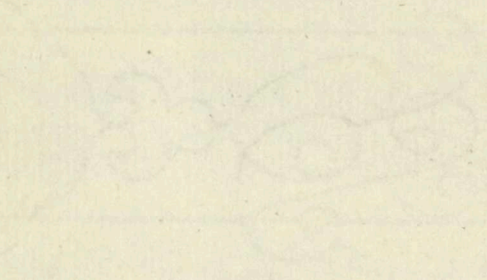
7 Taunt: Rep. 7.
Agutter v. Wilson.

If a Creditor who detains a Defend.t in custody pays any part of his weekly allowance, in a spurious or foreign Coin, the Defendant is entitled to his discharge.

The Turnkey of a prison is not such an Agent for a prisoner confined in execution, that by his acceptance of spurious Coin in part of the Prisoners allowance, he can bind the prisoner.

Allegiance

1. Hale. P. C. 68. Two or more Co-ordinate absolute allegiances cannot be due from one person, to several independant princes. –



Amendment.

4. M. & Selwyn 94. – Usher et al. v. Dauncy et al. –

Where verdict was given for a sum exceeding the damages in the declaration, and Judgt entered for the same, and writ of Error upon the Judgment assigning this for Cause – The Court allowed the Plaintiffs to amend the Judgment and Transcript in a Term subsequent to that in which the Judgment was signed, by entering a remittitur for the excess.

Jousse on Ordce 1667. – 1 vol. p. 56. – Tit. 5. art. 5 – aussi. p. 7 & 8.

Si la partie s'etoit trompée dans les conclusions de l'exploit quoique revêtû de toutes ses formes, elle peut aussi corriger ou changer ses conclusions, avec cette difference seulement, qu'elle ne peut les changer entièrement lorsque la Cause a eté contestée à moins &ca mais s'il ne s'agissoit que d'ajouter ou diminuer aux conclusions de la demande, cela peut se faire en tout etat de Cause. –

1. Pigeau. 143. 39. Poth. Proc. Civ. 15. Jousse. Ord. 1667 Tit. 2. art. 1. p. 7 & 8.

It would seem however that in case of any nullity in the exploit, or in case it were mal-libellé, the Plff must discontinue, particularly where such defects are taken advantage of by the Defendt

1 Pigeau. 161 1 Bornier. 10. Poth. Proc. Civ. 15.

But even where such nullités do exist – elles se couvrent par les défenses de la partie assignée.

Serpillon on Tit. 2. art. 1, says – Les termes dans lesquels cet article est conçu, sont imperatifs, la nullité est prononcée, ce qui semble decider, que la peine est encouruë ipso facto, cependant, comme il est difficile que la demande ne soit un peu libellée, il est d'usage de recevoir le Demandeur à la mieux libeller

dans

Amendment

dans la suite par un detail de ses moyens plus circonstancié. –

* * *

Repre de Jurce
v° "Conclure".

Independement des conclusions au fond on en prend encore dans le cours d'une instance soit pour rectifier ou corriger celles qu'on a – precedemment prises, soit pour s'en desister, soit enfin pour y ajouter – On en prend enfin dans les defenses &ca –

Nouv: Denist.
v° assignation.
Sec. 4. No. 4. in fine

Relativement à la peine de nullité prononcée par l'Ordonnance à defaut d'expression des tenans et aboutissans – M. de Monvalon remarque avec raison, que cette nullité est reparable avant le Jugement –

Instit. de Just: par
Fer: 6 vol. 133.

Dic. de Droit – V° "Demande de moins qu'il n'est du" – ne fait courir aucun risque a celui qui l'a faite, parce qu'il peut augmenter sa demande avant le Jugement –

Id. loc. cit. –

Celui qui a demandé une chose pour une autre, peut en tout etat de cause reformer sa demande avant le Judgt –

* * *

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2 Wilson. Rep. 147.
Marriot. v. Lister.

Amendment of declaration after verdict refused. –

* * *

Amendment. Errors, omissions &c

1 Raym. Rep. 182.
Villars. v. Parry & Moor.

see also. under head of – *Neglect*. *omission* &c post.

Errors in Judicial proceedings are of two descriptions, *ministerial* and *Judicial*. –

Ministerial Errors, are such as are committed by Clerks and others in entering up the proceedings as in writing, Thomas for John, and such like, which may be amended at any time. – Str. 139. 1132. & 1156. Barnes. 7. Foster. v Blackwell. 4 East. Rep. 175. Rex. v Atkinson & many others ‒

Judicial Errors, or errors in point of Law can be amended only in the same term in which the Judgment was given, because the Judgment in the eye of the Law is, all the Term in which it is – pronounced, in the breast of the Court.

* * *

6. Taunt. Rep. 400
Woodroffe. v. Watson

An amendment of the plaintiffs declaration does not necessarily entitle the Defendant to plead *de novo*, but only where the amendment alters the state of the defendant's case. –

* * *

1 Chitty's Rep. 349.
Stevenson. v. Castle

A Writ of Ca: Sa: varying from the Judgment in the sum recovered, may be amended on shewing Cause against a rule for setting it aside on payment of Costs – and Defendant to bring no action. –

* * *

Amendment.

2. Burgh: Rep. 384.
Reeder. v Bloom

Where it is not inconsistent with the Justice of the Case, the Court will, after verdict, amend the record by the insertion of a *Similiter*.

10. Moore's Rep. 504.
Wyatt .v. Cocks &ux.

Where in an action for Slander for giving a Servant a false character, a rule for a new trial was made absolute, and the plaintiff had leave to amend one of the Counts in the declaration in order that the words charged to have been spoken might be made to correspond with those proved at the first trial — The Court allowed a new Count to be added, to enable the parties to try the merits at the second trial. —

Animaux. Degas –

Repre. vº Animaux.
p. 443. – 444. –
Id. vº Quasi-Delit.

Celui qui surprend dans son heritage les animaux d'autrui qui y paccagent, ne peut user d'aucune voye de fait qui puisse leur nuire, si non il demeure responsable du dommage. –

Id. vº Dommagé
– vº Voye de fait.
17 Vol. 604. 2e. col.

Le Proprietaire d'un heritage ou des bestiaux d'autrui font du dommage, peut les faire arreter, jusqu'à ce que le dommage soit estimé et que le maitre des bestiaux l'ait payé. – Il faut à cet egard se conformer aux Coutumes et aux usages du lieu. –

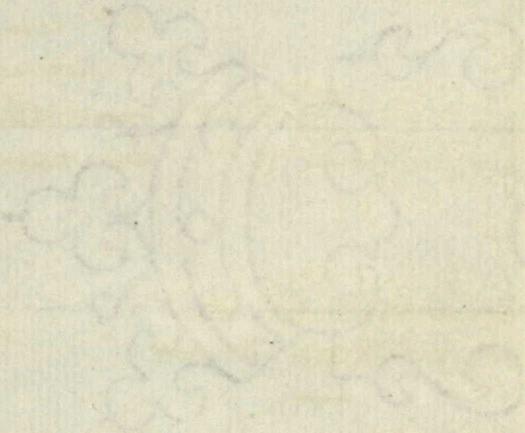
Animals. Feræ naturæ. –

1 Raym. 250. –
Sutton v. Moody

A man has a property, *ratione loci*, in animals which are *feræ naturæ* on his land. –

But this property ceases when they quit, or are hunted off the land. –

The right of the owner of a warren in the animals in that warren, continues after they are *hunted* out of it – But not after they *voluntarily* quit it. –



Arbitration, Arbitrators, Award.

9. Barn: & Cress. 407.
Bates. v: Cooke

Where a submission to the award of two persons, authorized the appointment of an umpire by them if they should disagree — Held that they might chuse an umpire before they entered upon the enquiry. —

The declaration on the award made under this submission, after stating the choice of an Umpire, alledged that the arbitrators and umpire made the award — Held that taking the whole together, it was substantially an allegation that the Umpire made the award. —

The award after reciting, that A.B & C.D. had been appointed arbitrators, and that they had appointed E.F. umpire, proceeded — "We the said arbitrators do award &ca — and was signed by the two arbitrators and the umpire — Held - that the latter by signing the award adopted the language as his. —

* * *

9. Barn: & Cress. 624
In the matter of Cassell

A submission was made to two arbitrators, and to such third person as they should appoint, the award to be made by any two of the three — The two arbitrators met for the purpose of appointing a third, and being able to concur in such appointment it was agreed between them that each of them should name two, and that the names of the four should be put into a hat, and that the name drawn should be the third arbitrator, and the arbitrator was so appointed. The award was made by one of the arbitrators originally named and the person so appointed by the two — Held that the appointment of the third arbitrator was bad inasmuch as the choice of the third ought to have been the act of the will and judgment of the two, and matter of choice, not of chance. —

Arrest.

Bail attending to justify are entitled to protection from arrest on Mesne process. 1 M. & Selw. 638. Rimmer v. Green – refers to case. 1 H. Bl. 636. Meekins v. Smith.

An action for false imprisonment lies against the Sheriff for an arrest made by the bailiff after the return day of the writ. 2. Esp. Rep. p. 585. Parrot v. Sheriff of Kent.

A bailiff in the execution of mesne process may break open the door of a lodger's apartment, having first gained peaceable entrance at the outer door of the house, 1 Cowp. Rep. 1. Lee v. Gansel.

An arrest must be by the authority of the bailiff, but he need not be the hand that arrests, nor in the presence, nor actually in sight, nor within any precise distance of the person arrested. Id. p. 65. Blatch v. Archer.

To hinder a bailiff from arresting a man, is a contempt of the Court. 6. Mod. Rep. 210. case 298. Powell v. Ball.

If, when a man is apprehended, and in the custody of Officers of Justice, a third person espouses his cause and encourages the prisoner to resist, the officers may imprison such third person. Peake's Cases. 89. White v. Edmunds & al.

Arrest.

The Court will not discharge on common bail a woman under arrest, as being married, if she obtained credit pretending she was single. 5 Term. R. 194. Partridge v. Clarke.

A, having been arrested at the Suit of B, gave him a draft for part of the demand, and agreed to settle the remainder in a few days — The draft was dishonoured, on which B. again arrested him on the same affidavit, and it was held regular — 6. T. Rep. 52. Puckford. v. Maxwell. —

If a Sheriff's officer upon an arrest, accept an undertaking for the appearance of the party instead of a Bail bond without the plaintiff's assent, and bail above is not duly put in, the Sheriff is liable to an action for an escape, and the Court will not relieve him by permitting him to put in and perfect bail afterwards. — 7. T. Rep. 109. Fuller & al'. v. Prest. —

A Defendant who had been arrested in America, arrested in England upon the same Cause of action, and held regular, the Court being of opinion that they could not take Judicial notice of an arrest in a Foreign Country — and that it would be unjust to deprive the plaintiff of perhaps the only

Arrest

only security they had for the payment of their debt
7. T. Rep. 470. Maule & al. v. Murray & al. —

Though the Sheriff appoint special bailiffs to arrest the Defendant at the plaintiffs request, the Sheriff is responsible for the Defendant after the arrest made. —
8. T. Rep. 505. Taylor & anr. v. Richardson. —

A Married woman arrested on mesne process is entitled to be discharged out of custody on filing common bail, although her husband had absconded and the debt had been incurred by her while a *feme sole*. — 1. Barnewall & Alderson's Rep. 165. Crookes & al v. Fry & ux. —

7 Taunt. 192.
Cartwright v. Keely. —

A second arrest for the same cause is allowable where a Judgment in a former action has been reversed for error. —

1 Taunt. 399
Wilks. v. Lorck

If a Defendant be arrested by a wrong — Christian name, the Court will discharge him on motion — And the Sheriff is liable to an action. —

Arrest.

2. Barn: & Ald. 743.
Barclay & al. v. Faber

A Defendant not priviledged from arrest at the time, was arrested on an — insufficient affidavit to hold to bail, and afterwards on that ground discharged out of custody — during his imprisonment another Creditor, without collusion with the former, lodged a detainer against him — Held — that such detainer was properly lodged. —

5. Ma: & Selw. 93.
Wheelwright v Joseph

Where the plaintiff held the defendant to bail before the cause of action accrued and afterwards discontinued and paid Costs, and then arrested him de novo, after it accrued, the Court discharged Defendant on common bail — the Court considered the Plaintiff's proceeding to be vexatious. —

5. Barn: & Ald. p. 513.
Dronefield: v. archer

3. Barn: & Cress: Rep. 139.
Austin. v. Debnam. —

Where in an account between the Pltff and Defendt there are items clearly due on both sides, the Defendant ought to be held to bail only for the balance. —

1 Chitty's Rep. 273.
Kearney. v. King

After a nonsuit on the ground of a variance in a former action in which the Defendant was arrested, he may be again arrested in a second action for the same — Cause. — see cases referred to in note (a)

Arrest.

1 Chitty's Rep. 282.
Kitching v. Alder.

Where a Defendant has been arrested by a wrong name and has given a Bail bond and moves to set aside the Writ and proceedings the Court will require him to file Common bail, and to undertake not to bring any action.

Per Curiam – If you apply to the Court for relief in a Summary way, you must do so on equitable terms. The ordinary course is to plead in abatement; but as you desire to be relieved from the necessity of that course, in order that the Defendant may not remain in prison, or put in and justify bail above, the Court will only relieve him upon the terms of filing common bail and undertaking not to bring any action.

Rule absolute accordingly without Costs.

Id. p. 682
Ricketts v. Gurney

A Witness, or other person priviledged from arrest, may apply for his discharge either to the Court under whose process the priviledge is claimed, or to the Court out of which the process issued upon which the party was arrested,

3. Moore. Rep. 607.
Archer v. Champneys

4. Moore Rep. 294.
Williams v. Thacker

A Defendant cannot be held to bail a second time for the same cause of action, if the pltff non-pros or discontinue the former, unless such Pltff shew that he did so on account of a mistake, or misconception, and that the second Arrest was not vexatious.

Arrest.

6. Moore Rep. 264.
Taylor. v. Rutherman

But see —
Howell } 2 Bos. & Pul.
Coleman } 466.

Kingston
v.
Llewellyn } 4 Moore. 317

If the Defendant be arrested by the — initials of his christian name only, and sign a bail bond in a similar manner, the Court will discharge him on entering a — common appearance, on his undertaking to bring no action. —

4 Barn: & Cress: Rep.
21.
Nicholson v. Coghill

A. arrested B. on an affidavit of debt for money paid to his use, but did not declare till ruled to do so, and soon afterwards discontinued the action and paid Costs — Held, that this was sufficient *prima facie* evidence of malice, and the absence of probable cause to — support an action for a malicious arrest. —

Id. — p. 596.
Wright. v. Court &al

A Constable arresting a man on suspicion of felony, must take him before a Justice to be examined, as soon as he reasonably can, — therefore a plea justifying a detention for three days, in order that the party whose goods had been stolen might have an opportunity of collecting his witnesses and bringing them to prove the felony, was held bad on demurrer,

Semble — that a Constable cannot justify handcuffing a prisoner, unless he has attempted to escape, or unless it be necessary in order to — prevent his doing so. —

Arrest

3. Bing: Rep. 492.
Holroyd. v Doncaster

A party who sues another for arresting him on an illegal warrant, is not bound to produce the warrant. – The Court holding it as clear, that a party who took upon himself to imprison another, was *prima facie* guilty of a trespass, the onus of justifying which rested entirely with himself. –

6. Barn: & Ald. 528.
Berry. v. Adamson

Where a Sheriff's Officer, to whom a warrant upon a writ against A. was delivered, sent a message to A. and asked him to fix a time to call and give bail, and A accordingly fixed a time, attended and gave bail – Held – that this was not an arrest, and that an action for a malicious arrest would not lie – against the party suing out the writ, although he had no cause of action. –

Id. p. 635. –
Beckwith v. Philby & al

A Constable having reasonable cause to suspect that a felony has been committed, is justified in arresting the party suspected, although it afterwards appears that no felony has been committed.

8. Barn: & Cress. 769
Wells, admx. v. Gurney.

Where by the contrivance of the plaintiff's attorney, a party had been arrested on a Sunday on Criminal process for the purpose of effecting his arrest on Civil process, and he was detained in Custody till Monday, and then arrested on the Civil process – the Court ordered him to be discharged out of Custody. –

12 Price's Rep. 335.
Atty. Genl. v Golder

An illegal detention will vitiate and vacate an arrest made during that detention under legal process; even although the Defendant should afterwards consent to the Custody on conditions –

p. 338 Case cited of Lyford. v Tyrrell, 1 Anstr. 85 –

Arrest.

9 Barn: & Cress. 446.
Ex parte. Susannah Scott

Where a party against whom a True bill for perjury had been found, and a warrant for her apprehension granted, was apprehended abroad, and brought to England in Custody, and committed to prison for want of bail, the Court refused to discharge her, on the ground that she had been improperly apprehended in the foreign Country. –

The practice however is different in Civil Cases, there the Court will enquire into the manner in which the arrest was effected, and if that was improper, they discharge the party – see Lyford v. Tyrrel. 1 Anst. 85. – Spence. v. Stewart. 3. East. 89. –

* * *

7 Bing: Rep. 230.
Hamilton. v. Pitt & al.

Where a plaintiff arrested a defendant for the amount of two items, and recovered for one only, offering no evidence on the other, the Court discharged the Defendt. on Common bail upon the plaintiff arresting him a second time for the item in respect of which no evidence had been offered in the first action. –

* * *

8. Bing: Rep. 54.
Wilson v. Hamer.

A party discharged from arrest on giving security, cannot be arrested again, if the security turn out to be worthless, unless he has been guilty of fraud. –

* * *

Arrest.

9 Dowl^{s} & Ryl. 558
Berry. v. Adamson –

In an action for maliciously arresting and imprisoning the plaintiff until he gave bail, it was proved, that in consequence of a verbal message the plaintiff voluntarily went to the bailiffs house and gave a bail bond. – Held – that this was not an arrest and imprisonment to sustain an action on the case against the original plaintiff, although the latter had no cause of action. –

Arrest - persons priviledged from.+

1. Hy Black. Rep. 636.
Meekins. v. Smith.

All persons who have relation to a Cause, which calls for their attendance in Court, and who attend in the course of that cause, though not compelled by process so to do (such as bail) are priviledged from arrest, eundo et redeundo, provided their attendance be not for any unfair purpose - such as in the case of Bail, for an insolvent person to justify. -

see Walpole. v. Alexander. Tidd's Prac. 199. -
Rimmer v Green. 1. M. & S. 638. -

3. Doug. Rep. 45.
Walpole. v Alexander

A Witness coming from abroad to give evidence in a Cause here, without being served with a Subpœna, is privilidged from arrest. -

1 Dowl. Prac. Rep. 157.
Anonymous

A Defendant when discharged from legal custody has no priviliedge from arrest in returning home. -

Assignation - Consorts. - Exploit. &ca

Lorsqu'une demande est formée par plusieurs personnes, qui ont toutes les memes interets, et la même qualité, par example, des Coheritiers, elles doivent être designées chacune par son nom, et sa demeure, sans se contenter d'en nommer une, et d'indiquer les autres par l'expression — vague de Consorts. - Dans ce dernier cas l'assignation seroit nulle à l'egard de ceux qui se seroient designés que par la qualité de Consorts. — Nouv: Denizt. Vo assignation §. 4. No. 6.

Un des heritiers peut poursuivre seul la dette active commune. l. 40. §. ult. de Procur. si les autres ne contredisent l. 31. de Jud: mais ne peut recevoir pour les autres sans procuration de tous. arret. Juin 1543. Pap. Le Brun. n. 50. Lacombe. Vo Partage. sec. 3. No. 16.

It would appear to be a nullity, the omission of the residence of the Defendt. 1 Pigeau. 39. & 139 note (b)

Serpillon. p. 23. extends tit. 2. art. 2. to both parties, not so Bornier. 1 Vol. 15. — and Jousse. 1 Vol. 11, confing it to the domicile of the Pltff in express words. —

The above say nothing of the name of the Defendt but see Bornier. 1 Vol. 10. - L'ajournement libellé requiert trois choses - le nom du Demandr et du Defendeur - celui du Juge pardevant lequel on est ajourné, et le lieu ou l'on doit comparoir, et la chose

Assignation, Ajournement, Exploit &ca.

Dic. de Droit. v° ajournement. 43. contentieuse — Quis. Quam. Coram quo. Quo Jure. Quid, et a quo, petatur. „

Jousse. 1 Vol. p. 48. — parties qui plaident, doivent être en nom dans les exploits. —

Nouv. Denizt. v° Assignation. sec. 3. No. 9. Il est incontestablement necessaire, que la partie assignée soit nommée dans l'assignation si l'ordonnance n'en parle point, c'est parceque cette regle s'etablit d'ellemême. —

Ravaut. Pro. Civ. p. 8. — En effet il doit y avoir un original de l'ajournement et une copie, laquelle etant laissée au Defendeur, lui tient lieu de l'original d'ou il resulte, qu'il peut faire valoir tous les vices qui s'y trouvent, quand ils ne seroient pas dans l'Original. „

Nouv. Denizt. v° Exploit. No. 5. It is not necessary to mention the name of the person to whom the exploit is delivered, altho' he ought to be designated

Id. No. 6 — Assignation à I. B. demeurant à Lyon — exploit declaré nul, la rüe n'etant point designée.

Id. v° assignation §. 4. No. 1. — Date necessary — day, month, & year. —

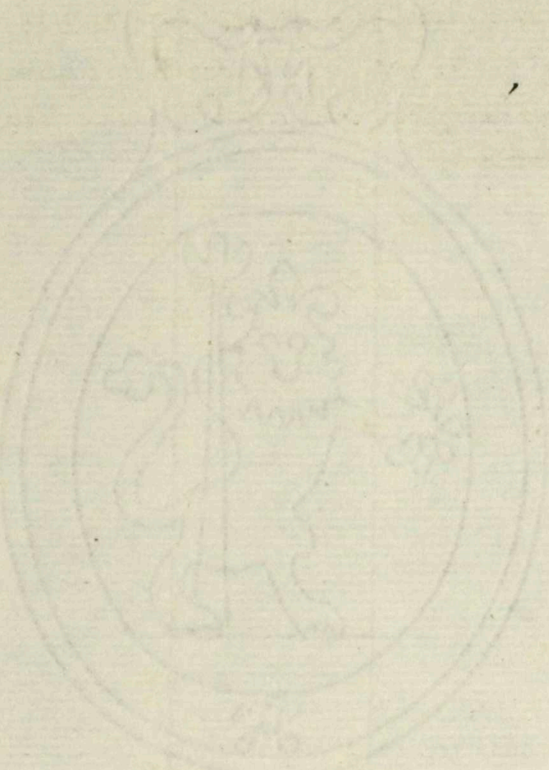
May be served after sun-set. —

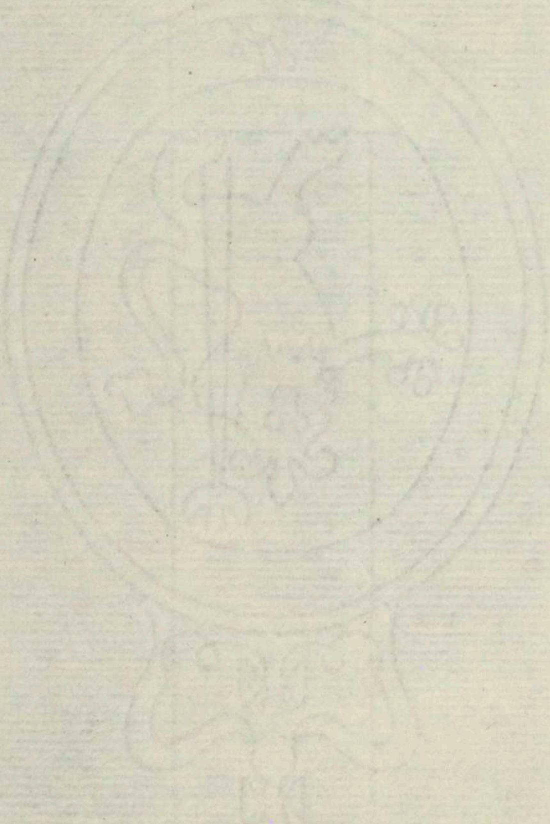
It may be a question whether a bailiff, who is related to the plaintiff, can make the Exploit. Pothier. Proc. Civ. p. 3. seems to think he can in ordinary cases — but see Nouv: Denizt. v° "assignation"

"*Assignation*" §. 2. No. 5, seems of a contrary opinion

Denizt. Vo
assignation.
§. 7. No. 3.-

La signification faite au lieu de la *simple residence*, de la partie assignée en parlant à un domestique, ou autre personne pour elle, n'est pas valable.-





Attorney. – Costs, when liable to. –

2 Burr. 655. –
Rex. v. Fielding

The attorney and complainant shall pay costs upon the discharging of a Rule obtained agt. a Justice of the Peace upon grounds appearing to be frivolous. +

Hullocks Law of Costs
p. 485.

Where either of the parties in a suit is made liable to the payment of Costs, or has actually paid Costs, through the gross negligence, gross ignorance, or gross misbehaviour of his attorney, the Court will upon motion, order such attorney, in the former Case, to pay the Costs instead of his Client, and in the latter to reimburse him. –

see. 1. P. Wms 593. –

Thus after a verdict for the plff, several objections were made in arrest of Judgment, the principal of which were, that though the action was Trespass on the Case, the *jurata* at the foot of the record of Nisi Prius was in trespass only. – That instead of saying, unless the Ch. Justice should come before, *on* the 12th July, it was said, unless he should come before the 12th July. – That two of the Defendants being Sheriff of Middlesex, the *Venire facias*, was awarded to the Coroners but by the *jurata*, the writ was alledged to be delivered to the Sheriff to be executed. – That the writ of Venire facias, instead of being returnable in Court, was made returnable before the Chief Justice. – And that the declaration recited an Original against *James* Brooke and others, and counted against the said John Brooke. –

The

The Court having ordered the necessary amendments to be made, discharged the rule for staying the entry of final Judgment, and directed the plaintiffs Atty whose gross blunders had rendered the amendments necessary, to pay the Costs. –

Barnes. 11. –

* * *

So where it appeared that the plaintiffs Attorney had committed many mistakes in the copy of a – *Capias*, the Court made a rule upon him to shew Cause, why he should not pay both to pltff & Defendt – the Costs of the proceedings, motions &c occasioned by such his negligence and inattention. –

Barnes 250. –

* * *

It is incumbent upon an attorney to proceed in a suit commenced upon the credit of a client, although the client should not furnish him with money; therefore if on that account, he neglect to proceed according to the practice of the Court, whereby Judgment of *non-pros*, is signed against the pltff, the Court will make a rule upon the attorney to pay the Costs of such Judgment together with those of the application. –

Mordecai v. Solomon. Say. Rep. 172

* * *

If in an Affidavit of service upon a Bankrupts assignee, (who was petitioned against to be displaced) with a view to enhance the expence, the whole petition be recited *verbatim* – the Lord Chancellor will order the attorney who drew it, to pay the Costs out of his own pocket. – 1 Atk. Rep. 139. Exparte Smith. –

* * *

see also 15 Ves. Jr 476 –

And

And where a Sham plea was pleaded of Judgments recovered in the Court of Piepoudre in Bartholemew fair, in terms obviously denoting fictitious proceedings — the Court after expressing great indignation against the abuse which had grown up of late, and was continually — increasing, of loading and degrading the Rolls of the Court with sham pleas of this nonsensical nature, making them the vehicles of indecorous jesting, by which it sometimes happened that the time of the Court was taken up in futile investigations of nice points which might arise on demurrer to such Sham pleas, suffered the pltff to sign Interlocutory Judgment as for want of a plea, and made the Defendant's attorney pay all the Costs occasioned by the plea, and the Costs of the Rule for correcting the proceedings

10 East. 237. Blewitt. v. Marsden. —

1. Bing: Rep. 91. In the matter of Knight.

The court granted a rule Nisi, calling upon an Attorney to answer for alledged misconduct, in a matter where no suit was depending, but which appeared to have been entrusted to him in the capacity of an Attorney. —

5. Dowl: & Ryl. 389. In the matter of H. J. Elsam.

Where an Attorney, without any corrupt or unworthy motives, prepared a special case in order to take the opinion of the Court upon the will of testator, and suggested many facts which had no foundation. — Held that he was guilty of a Contempt, and he was fined £30 — for his Offence. —

By the French law also the attorney was liable to pay Costs in many instances —.

The Ordonce de Roussillon, art. 7. says, —

" Ordonnons, qu'ils soient condamnés en leur propre
" et privé nom és depens des defauts et congés obtenus
" contre leurs parties, sans que les Juges en puissent
" dispenser, apres toutefois, les avoir mandés ouïs —

Neron. p. 425. —

Lorsqu'il est evident qu'il a employés les resources de la chicane pour favoriser la mauvaise foi — dont il avoit connoissance, ou lorsqu'on ne voit que sa propre avidité dans quelques unes de ces affaires, ou l'interet de l'officier est beaucoup plus fort que celui du client, il echappe rarement á une pareille condamnation. —

Il peut y avoir encore d'autres cas ou un Procureur soit obligé de supporter sans aucun recours les depens qu'il a faits. —

6 Nouv. Denizt. Vo Depens. No 4. §. 2.

* * *

see also. 1 Pigeau. 415. 416 — where nearly the same observations are made —

* * *

+ giving evidence of that fact in an action brought by the Son, in which the validity of the deed was attempted to be disputed, although he was not employed in the Cause. —

Attorney & Client.

3. Burr. 1687.
Rex. v. Dixon

An attorney is not bound to obey a Subpœna *duces tecum*, to prove a forgery against his own client. —

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2. Starkie. 239. —
Parkins. v. Hawkshaw

The agent of the Defendants attorney cannot be examined as to communications with the Defendant on the subject of the action in order to prove his identity. — Declarations made by the attorney of a party in conversation are not evidence against his client. —

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2. Barn: & Cress: Rep.
748.
Bramwell v. Lucas & al.

A communication made by a client to his Attorney, not for the purpose of asking his legal advice, but to obtain information as to a matter of fact, is not privilidged, and may be disclosed by the attorney, if called as a Witness in a Cause.

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4 Moore Rep. 357.
Cromack. v. Heathcote

Communications made by a party to an Attorney are confidential, although they do not relate to a Cause existing, or in progress at the time they were made — Therefore where an Attorney was applied to by a father to prepare a deed, by which his property was to be assigned to his Son, and stated that there was no consideration for the assignment, on which the Attorney refused to prepare it, and it was afterwards drawn up by another, — Held, that such Attorney was precluded from

(see other side +)

giving

Attorney — Action agt.

2 Wilson. 325. — Russell v. Palmer

Special action upon the case against an attorney for negligence. —

The declaration sets forth, That whereas the pltff in Hilary Term in the 5th Year of the King recovered agt. one John Stewart a Judgment for £5322„ 13. 2 debt and £17. Costs in K.B. — And while that suit was depending in Trinity Term in the 4th Year of the King A. G. and R B. became bail for said Stewart in the said plea of Debt. — That after recovery of the said Judgment on the 18th May in Easter Term in the 5th Year of the King before Justice Aston of B. R at his Chambers in Chancery Lane the said Stewart rendered himself in discharge of his bail to the prison of B. R, and there continued until the time of his being superseded. — That the defendant was retained as attorney for the plaintiff in the said Suit — and that Stewart being so rendered as above, by the rule and practice of B. R, ought to have been charged in execution on or before the last day of Trinity Term in the 5th Year of the King, to prevent his being discharged — And the said Palmer still being the attorney of the pltff, undertook and promised to do his duty — and the pltff avers that it was ~~the~~ duty of the said Palmer to have caused the said Stewart to be charged in execution on or before the last day of Trinity Term aforesaid but that he the said Palmer neglected so to do, by reason whereof, the sd Stewart on the 25th Nov. in the 6th year of the King was discharged by Supersedeas to the plaintiffs damage £3500 — Judgt. for Pltff.

arrets de Soefve 1. Cent. Ch. 67. p. 66.

Attorney – action agt.

3. Wilson. 368.
Barker. v Braham & Norwood
C. B. 1773

Trespass. vi & armis for false imprisonment, lies as well against the attorney as against his client, who sues out at the suit of his Client an illegal writ of Ca. Sa. against a Defendant, and causes such defendant to be imprisoned thereupon. —

* * *

Arrets de Soefve
Cent. 1. ch. 99.
p. 106. —

Procureur tenu de representer un prisonnier elargi par surprise sur une requête signée de lui, ou de payer la dette. —

* * *

1 Dareau. Tr. des
Inj. p. 134. 5.

An attorney was condemned <u>jointly & severally</u> with his client in a sum of 300^{l}. & all costs, for having published in a <u>memoire</u> several matters injurious to the character & reputation of the Complainant

* * *

7 Moore Rep. 424
Short. vs Pratt & al

Where a charge was made by affidavit, against an attorney of the Court amounting to an indictable offence, the Court refused to call upon him summarily to answer the affidavit but left the party to prosecute — but they granted a Rule calling upon him to deliver over deeds and papers in his hands to the then Attorney of the complaining party. —

Id. p. 437. —
Ex parte Hall. —
In Re Knight.

Where it appeared by affidavit that a client had given his attorney two bills of Exchange for the purpose of getting them discounted, and that he had done so, but applied the proceeds to his own use. The Court granted a Rule Nisi, that the attorney might pay over the amount to the Client, or deliver up the bills to him although he was not employed in any suit at the time the application was made. —

Attorney. – Clerk to – Service of time. – vid. Clerkship

5. Barn: & Ald. 538
In matter of one
Taylor. –

A clerk to an attorney, held during the term for which he was bound, the Office of Surveyor of taxes under the Crown. – Held – that he could not within 28. Geo. 2^d. c: 46. Sec. 8. & 10 be considered as serving his whole time and term in the proper business of an attorney, and that he ought not to be admitted on the roll, and that having been admitted, he ought to be struck off. –

Attorney. Procureur.

Serpillon. Tit. 34. art. 4. of Ordce 1667. p. 656

Le vendredi, 27 Juillet 1759. fut plaidé au Parlement de Paris à la Grande Chambre de relevée, la question de savoir, si les Procureurs pouvoient être condamnés par Corps a rendre aux parties ce qui leur avoit eté payé de trop pour frais.—

Un procureur apres avoir reçu trois Cent livres à compte sur un proces, avoit apres le Jugement touché de la partie adverse condamnée la totalité des frais, au moyen de quoi, il etoit dans le cas de rendre les trois Cent livres; il en convenoit; mais il soutenoit qu'il n'y avoit pas lieu de le condamner par corps à les rendre — Cependant l'arret confirma la Sentence du Chatelet de Paris, qui l'y avoit condamné par Corps. — cites Denizt. vo Procureur. No 64.—

See also Denizt. vo Depot. No 21.—

Old Denizt. vo Procureur. No 65— says, that it was adjudged by an arret of 27 April 1768, that the Contrainte par Corps was not allowed against the Procureur for the monies received by him on account of his client — but this is a mistake which is corrected in the Nouv: Denizt. vo Depot §. 2. No 4 — He refers to the above arret of 27 July 1759— also to an arret of 20. March 1767 — "qui
„ a condamné par Corps un procureur en la Cour
„ a rendre une somme de trois cent et quelques livres
„ qui lui avoient eté remises par son client pour des
„ offres réelles, lesquelles n'avoient point eté acceptées."—
He then goes on to state the difference between these arrets, and that above cited from Old Denizart of 27. April 1768, and says — "Si la Contrainte

par

„ par Corps n'a pas eté prononcée dans ce dernier Cas,
„ comme elle avoit eté dans le premier, c'est que la
„ demande n'avoit pas eté formée contre le procureur
„ par son client — Il est donc impossible d'appercevoir
„ de la contrarieté entre cet arret et celui de 1767."

It is even questionable from the authorities on this head, whether even in this particular case the Contrainte might not have been granted the Court may have seen something in the circumstances of the Case to refuse it. —

It is further added —

La Contrainte par Corps a lieu contre les greffiers, procureurs, et huissiers, pour la remise des pieces qui leur ont eté confiées, et des sommes qui leur ont eté avancées. —

Attorney, his liability &c

3 Dowl: & Ryl. Rep. 195. –
Scarce. v. Whittington

An attorney employing an agent to do business for his client, is primarily liable to the agent for his bill, though the latter knows the business to be done for the client; but to whom the credit is given is a question for the Jury. –

See also. Ryan & Moody's N. P. C. p. 314, Townshend v. Carpenter. –

Ryan & Moody's N. P. C. p. 317
Montrion v. Jeffrys

It is a good defence to an action on an attorney's bill, that the costs sought to be recovered were incurred through inadvertance and want of proper caution on the part of the attorney. –

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1 Swanst. Rep. 84.
Bolton. v. Tate

The Court will not order the personal representative of a deceased Sollicitor to deliver the papers in the cause to another Sollicitor without payment, or – security for payment of the Sollicitor's bill. –

It seems that the summary jurisdiction of the court extends to the representatives of a Sollicitor. –

Id. – – p. 1.
Commerell. v. Poynton

A Sollicitor declining to be further concerned in a cause, is not entitled to compel payment of his costs, by refusing to permit such inspection of the papers in his hands, or such production of them before the Court, or the Master, as may be – necessary in the conduct of the cause. –

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2. Bl. Rep. p. 865
Barker. v. Braham & al

Action of false impresonmt. lies agt. the pltffs. attorney who sues out an illegal & void Ca: Sa: agt. the Defendt. and delivers it himself to the officer, who by his orders arrests Defendt. thereon. –

Attorney. witness.

Ryan & Moodie's N. P. Cases. p. 34.

Williams v. Mundie & al.

It was held in this case by Ld. Ch. J. Abbott, that the priviledge of not being examined to such points as have been communicated to an attorney while engaged in his professional capacity, — extends only to those communications which relate to a Cause or Suit existing at the time of the communication or then about to be commenced — His Lordship — observed — "The rule I have invariably laid down in
" cases of this kind is, that what is communicated for
" the purpose of bringing an action or Suit, or relating
" to a Cause or Suit existing at the time of the communication
" is confidential and priviledged, but what an Attorney
" learns otherwise, than for the purpose of a Cause or
" Suit, I think he is bound to communicate — This
" rule was adopted by the Court of K. B. on a motion
" for a new trial on the Midland Circuit — This is
" not the first time this question has arisen here, and
" it is one to which I have given much consideration,
"Having formed this opinion, I think it unnecessary
" that the question should be further discussed here."

The same point was ruled by Ch. J. Abbott in Wardsworth v. Hamshaw and another, — Sittings after Hilary Term 1819. 2 Bro: & Bing: 5. n. and appears to have been the opinion of Lord Kenyon in Cobden. v. Kenrick. 4 T. Rep. 431 — and Duffin. v. Smith. Peake's N. P. C. 108. —

But in Cromack v. Heathcote. 2 Bro: & Bing: 4. the Court held that the rule was not confined to Attornies employed in a Cause —

See the Cases on this subject collected in — Phillipp's Evidence. 1 vol. p. 134. 6th edit. and the conclusion there adopted is, that this priviledge is not confined to those cases only where he is employed

employed in a Suit or Cause, but extends to all such communications as are made to him in his professional character, and with reference to professional business.

This I conceive to be the more correct opinion, at least such as we observe in the Courts here — see the law as held in the Case of Dufau. v Dufresne 19 June 1827. in K. B. — Montreal. —

See also the Cases collected in the notes to Parkhurst. v Lowton. 2. Swant: Rep. 199. 200.

Ryan & Moodie's N. P. C. p. 165.

Foote. v. Hayne.

The retainer of a Counsel for a Cause is in the nature of a privilidged communication, and cannot be disclosed. —

1 Man: & Ryl. Rep. 306

In Re Horsfall

7 Barn: & Cress. Rep. 528

S. C.

An Attorney when ordered to deliver up the papers of his Client, must deliver up the drafts of deeds for which he has charged and been paid, as well as the deeds themselves. —

3. Carr: & Payne. 518.

Broad. v Pitt. —

No communications made to an Attorney are priviledged, but such as are made for the purpose of the attorney's either commencing or defending a Suit. —

Peake's add: Ca. p. 101. Note (a)

See the different decisions which have occurred as to what Communications made to an Attorney are to be considered Confidential and priviledged. —

Attorney. liability.

5. Moore & Payne. 284
Godefroy. v. Jay. –

In an action on the Case against an – attorney for negligence in suffering Judgt. to go by default in an action which the Plaintiff had retained him to defend, and for not attending the execution of a writ of Inquiry, the Jury found a verdict for the plaintiff. – Held – that it was the duty of the defendant to have pleaded the general issue, and not to have suffered Judgment to go by default – And it seems that such action is – maintainable without proof of special damage: Held also – that the plaintiff having proved – negligence in the Defendant, it was incumbent on him to shew that the plaintiff had no valid defence to the action which the Defendant was entrusted to defend, or that the plaintiff had sustained no – damage through the Judgment by default. –

Auctioneer An action does not lie against an auctioneer for selling an article at the highest price bid for it contrary to the owners express directions not to let it go under a larger sum named. – Otherwise if the owner had directed the auctioneer to set the article up at such a particular price, and not lower. –

1 Cowp. 395. Bexwell. v. Christie. – Feb. 1776.

This principle has however been doubted, and denied, and with appearance of reason, as unless fraud is intended, the agreement in this Case ought to be – equally binding as in any other – Now it is well known that the general practice is to prevent a Sacrifice and not to enhance the value of the article beyond its real worth, by giving these directions to the auctioneer, and I consider it to be the better opinion, that what is so done to avoid a loss, cannot be considered as a fraud –

7 July 1806 — see Smith. v. Clarke. 12 Vez. Jun. 482 – where the Master of the Rolls determined – "That the Circumstance of a
" person bidding at an auction under the private
" direction of the vendors for the purpose of preventing
" a Sale under a Sum specified as the value, is no
" objection to a Specific performance, especially in a Case
" where the vendors were Assignees under a Commission
" of Bankruptcy, and the purchaser was not present
" but purchased by an agent." – In mentioning the foregoing Case of Bexwell. v. Christie, the Master of the Rolls observes – "that very general and broad principles
" are laid down by the Court of Kings Bench, beyond
" any that the Case immidiately before the Court required"

that

Auctioneer

that is, in regard of fraud — for the decision in that Case is made more with a view to prevent fraud that from the actual existence of it — This principle is not admitted by the law of Canada — for there fraud is never presumed — it must exist, and it must be proved to avoid any agreement —

Now it is clear that Lord Kenyon had not always entertained the same opinion as to the doctrine in Bexwell. v. Christie, for in Twining v. Morrice. 2. Bro. C.C. 326. he states, with respect to bidders
"being employed for the Vendors, that he does not
"say, the doctrine in Bexwell. v. Christie is wrong
"but every body knows that such persons are —
"constantly employed —"

1798. — In Bromley. v. Alt. 3. Vez. 620. Lord Alvanley expresses his opinion, that it is perfectly legal for a man to state a price below which he would not permit a Sale, and His Lordship observes, that there is no difference between setting up the lot at a given price, and employing a person to prevent a sale under that price —

see also the observations of the Lord Chancellor on Case of Connolly. v. Parsons — cited in note 4

See case in K. B. Montreal —

Auctioneer

7 Taunt. Rep. 237.
Coppin. v. Walker

If an auctioneer sells goods and delivers them without notice of any lien or claim which he has on the owner, and the buyer without such notice, settles for the goods with the owner, the auctioneer cannot sue the buyer for the price of the goods. –

So if the Auctioneer sells the goods of B, as the goods of A. without notice, and the buyer takes the goods with the auctioneer's assent, and pays the price of them to A. the auctioneer cannot afterwards maintain an action for the price. –

No implied contract to pay arises on the auctioneers giving up his lien by delivery of the goods. –

Id. — p. 243.
Coppin. v. Craig

Where an auctioneer had sold goods and delivered them without payment – held, that as he had parted with his lien, the Defendt might in an action by the auctioneer, set off against the price, a debt due from the owner of the goods to the Defendant. –

And where the auctioneer had sold to the Defendant, the goods of A. in a Sale of the goods of B – held, that this was such a fraud, that the Defendant might set off a debt due to him from B, against the price of the goods of A. –

Id. — p. 358
Gall. v. Comber

The vendor of goods through the medium of a broker who has a Commission *del Credere*

cannot

Auctioneer

cannot recover the price from the broker in a declaration upon an indebitatus assumpt for goods by the plaintiff to the Defendant delivered to be sold, and by him sold —

But an action of account would lie

7 Taunt. 403. Wells &c. v. Ross —

2. Starkie. 311.
Loeschman vs Machin

The hirer of a Piano who sends it to an auctioneer to be sold, is guilty of a conversion and so is the auctioneer who refuses to deliver it up, unless the expence incurred be first paid. —

Auction — Sale by —

4. Dowl: & Ryl: 556.
Kenworthy. —
v.
Schofield.

Sales of goods by auction are within the 17th Sec. of the Statute of Frauds. — Where at a public Sale of goods by auction, the Conditions of the sale were read by the Auctioneer before the biddings commenced, — but the printed catalogue did not refer to the Conditions, nor were they attached to it, and the Agent of the Defendant was declared the highest bidder for a lot, and the auctioneer put down the price and the name of the agent opposite the lot in the sale Catalogue. — Held that this was not a sufficient memorandum in writing of the bargain, to satisfy the Statute: But if the Conditions of sale had been annexed to the Catalogue, the putting down the agent's name, would have been sufficient to bind his principal. —

See case referred to of Hinde. v. Whitehouse
7 East. 558. —

Auction – bidding at. –

3. Bing: Rep. 368.
Crowder v. Austin

25 Jany. 1826.

The vendor of a horse, stationed his servant to join in the bidding at a public auction, and the servant bid up to £23 – after a bona fide bidder had bid £12. – Held that the sale could not be enforced against a subsequent bidder. –

Autorisation. –

Femme n'a pas besoin d'être autorisée pour signer avec son mari, une obligation sous seing; il en est autrement si l'obligation est passée devant notaires, ou que la femme s'oblige après coup, sur le billet de son mari. – Comm.re de St. Vast. sur les Cout. 4' Vol. p. 481.

Bail —

It is a sufficient objection to Bail, that he hath priviledge of parliament, whereby the pltff may be delayed in obtaining payt. from him. — 4 Taunt. 249. Graham. vs Sturt. —

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1 Chittys Rep:
p. 83.—
Butler's Bail

If Bail justify without the observation of the counsel instructed to oppose them, the Court will not require them to come up again and justify *de novo*. — Ib. 666. Hawkins. vs Wilson. —

If a Defendant sued by a wrong name, appears and perfects bail by his right name without identifying himself as the person sued by the other name, the plaintiff may treat the Bail as a nullity and attach the Sheriff, — Or he may waive the variation of the Defendant's name at his own option. — Id. 818. Turnly. v Selley —

The Court cannot take judicial notice of the size of the place where bail are described to reside; if it is too large, that fact must be made to appear by affidavit.

Notice of bail must contain their addition as well as place of abode. — 5. Taunt. 554. — v. Costar. —

Bail.

If Bail have sworn to a false account of their property without the privity of the Defendant or his attorney, the plaintiffs remedy is by Indictment for the Perjury. The Court at same time observed "If the Plaintiff can by any means connect the Defendant or the Defendant's attorney with the false swearing of the Baile the Court will punish them, and the Court has the means so to do; for the one is a Suitor, the other the Officer of the Court. In 5. Taunt. 770. A'Becket. v. ———.

Held, that notice of I. M. as bail, is not good notice for I. M, "the Younger" — and the Plaintiff need not swear there are two of the name. Id. p. 854. Smith. v. Mellon.

Bail attending to justify are entitled to protection from arrest on mesne process. 1. M. & Selw. 638. Rimmer. v. Green. refers to case, Meekins. v. Smith 1. H. Bl. 636.

Bail.

A person enlisted as a Soldier – surrendered by his bail. – see course followed. 1. Bur. Rep. 339. – Bond. v. Isaac.

6 Taunt: 185.
Shawman.
Whalley. –

The Court will not discharge a Defend.t out of Custody on defect in the affidavit to hold to bail, after he has given bail to the Sheriff, and bail to the action, which last have rendered him. –

Bail allowed to justify in respect of property consisting partly of Cash, and partly of a freehold house at Gibraltar. – 4. Maule & Sel. 173. Beardmore & al.s v. Phillips. – see also. p. 371. Graham v. Anderson.

7 Taunt. 53.
Willison. v. Whitaker

Bail discharged, by Plaintiff taking from the Defendant, bills of Exchange, to which a Surety is party, for pay.t by instalments. –

Id. p. 126
Melvill
v.
Glendining & al.
Bail of Coombe

But when a plaintiff receives bills of Exchange from a Defendant with an agreement that he shall not be precluded from proceeding while the bills are running the Bail are not thereby discharged –

Id. p. 235.
Horsley & ux. –
v.
Walstab. –

If a plaintiff swears positively to a bailable Cause of action, the Court will not try upon affidavits whether the transaction be such as no legal debt could arise on it.

Bail.

7 Taunt: Rep. 324
Wheelwright. v. Jutting

Bail are not liable on their recognizance for any cause of action which is not stated in the Affidavit whereon the Defendant is holden to bail. —

Id. — p. 324.

It is not necessary for persons justifying bail by affidavit in several actions about the same time, to specify in either affidavit the relative order in which they are sworn and that among their debts, they include their liability as bail in the other actions. —

3. Taunt. Rep. 425
Pyewell. v. Stow. -

A person may assist Bail in taking and may lawfully detain the principal although the Bail do not continue present

7 Taunt. 53.

Bail discharged by the plaintiff taking from the Defendt. bills of Exchange, to which a surety is party, for payment by instalments.

5. Burr. 2661. -
Bush. v Bates }

Upon a Judgt. of Non-suit, the plaintiff cannot be held to bail for the costs.

Quo- If on an action brought upon a Judgt. in the Inferior Court, where by the addition of the Costs, the sum exceeds £10 Stg. the Defendt. can be held to bail — see 4 Bur. 2117. & 2118. So settled that he may. 4 T. Rep. 570. Lewis. v Pottle. —

Bail — & Bail-bond.

3. Wilson. 348.
Morris. v Rees.
C. B. 1772

The assignee of a Bail-bond must bring his action thereupon in the same Court where the Original action was commenced, for that Court only seems to have jurisdiction of the action. — S. C. 2. Bl. Rep. 838. —

Sed. quo. — This might often be impossible —

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1 Cowp. 72
Blandford & al
v Foot. —

A Defendant who has been superseded for want of being charged in execution within the two terms after Judgment, cannot be held to special bail in an action brought on such former Judgment — but he may be charged in execution after Judgment obtained in the second action.

Id — p 128
Anonymous
see also. Cases temp. Hardwicke. 244.
Hall. v. Howes.

In an action upon a Judgment, though for above £10 — the Defendant shall not be held to Special bail, if the original demand was under that sum — Here the original debt was under £10 — but with the Costs on the Judgment made up £17. — which the Defendant undertook and promised to pay on obtaining a stay of execution — the action appears to have been an action of assumpsit founded on this promise —

This case, is to be distinguished from that above cited 5. Bur. 2661 — in consequence of the form of the action.

Ld. Mansfield — This is a new species of action, and an attempt to turn a Judgment debt into a debt upon — simple contract. — If the undertaking had been by a third person in consequence of the forbearance, it would have been a good ground of assumpsit agt. such third person — but here the promise is by the defendant himself to pay a debt to — which he was before liable upon record — and therefore I am of opinion that such promise is no ground upon which to raise an assumpsit

Bail

5. M. & Selwyn. Rep. 511.
Wheelwright. v. Simons.

In debt on a recognizance of Bail taken in C. B. where plaintiff had recovered in the original action a sum exceeding the sum sworn to, the Court staid the proceedings against the bail on payment of the debt sworn to, with interest and Costs.

* * *

1. Brod: & Bing: Rep. 289
Archer. v. Champneys

Where the Defendant was arrested again after a non-pros: the Court allowed the bail bond in the second action to be cancelled, the plaintiff not shewing that the second arrest was not vexatious:—

and p. 514.
Williams. v. Thacker

The proceedings on a bail bond were set aside, on the ground that it was given in a second action for the same Cause though the first action was non-prossed.

* * *

1. Chitty's Rep. 88.
Colman. v. Roberts.

Notice of bail must truly & accurately describe the persons intended to justify, so that the pltff may not be misled; and therefore where one of the bail was described as housekeeper, and it turned out that his father was really the occupier, the Court would not permit him to justify, nor grant time to add and justify another, without an affidavit repelling all intention to mislead — but on producing this affidavit, time was given. —

Bail

1 Chitty's Rep. 116
Curtis. v. Smith

Bail on coming up to justify, guilty of gross prevarication, may be committed to the custody of the Marshall —

* * *

Id. " — p.285.
Levy's Bail.

Bail cannot justify in respect of property abroad. —

There are conflicting decisions on this subject — see note on this Case —

* * *

Id. " p.306
Stevens's Bail.

In bail by affidavit in K. B. it need not be stated in the affidavit of Justification that the bail are worth double the amount of the sum for which he justifies over and above his liability in other Causes. —

In the Com. Pleas, they hold a different principle. see note on Case (a) —

* * *

5. Moore Rep. 482
Aplin. v. Fox.

If the justification of Bail by affidavit be opposed by another affidavit stating the insolvency of one of the bail, the Court will not allow the matters of the latter affidavit to be answered.

* * *

1 Dowl: & Ryl: Rep.
p. 126.
Duncan v. Hill.

A Member of the House of Commons cannot be allowed to justify as bail, not being liable to the ordinary process of the Court. —

Bail Bond

1. Bing: Rep. 181. Blackford v. Hawkins 7 Moore Rep. 600 S. C.	The plaintiff cannot sue on the Bail bond after ruling the Sheriff to bring in the body. –
10 Moore's Rep. 170. Warrington v Sammell	The Court will not enlarge the time for Bail to render their principal, on an affidavit that he was ill, and could not be removed without endangering his life. – Cases cited. –
3. Carrington & Payne's N. P. Rep. p. 373. Rex. v. Hughes & al –	Bail to the Sheriff have no right to take their principal into Custody – with respect to Bail above it is otherwise. –
1. Barn: & Adolp. Rep. 223. Taylor & al. v. Clow & al.	Bail sued on the Bail-bond cannot traverse the arrest. –
1 Moody & Malkin N. P. Ca. 289. – Baillie v. Hole.	The Bail for the Defendant may be made a competent Witness, by the Defendants depositing at the trial in the hands of the Officer of the Court, a sum of money equal to the sum sworn to, and the Costs of the action, and the Judge's making an order thereupon to strike the name of the Bail off the bail piece. –

Bank Notes. —

Bank Notes though Stolen, yet are the property of the person to whom they are paid, without knowledge of the larceny. — 1 Bur. Reps. 452. —

1. Bank notes are treated, and are to be considered as money, or Cash; not as Securities or documents for debts

2d. They pass by will, as ready money or Cash.

3d. Neither they nor money can be pursued and recovered, after they have fairly and *bona fide* passed in Currency — even though Stolen. —

4th. But before they or the money have passed in Currency, an action will lie for either. — and so it will against the finder of money, or of Bank Notes — before paid away in Currency.

5th. Bank Notes are not like lottery tickets — which are identical and Specific, and whereof mere delivery may make no change of property. —

6th. It is necessary for the purposes of Commerce that their payment should be established and Secured. —

7th. That it may be reasonable to stay payment till inquiry whether the bearer came fairly by it, and for a good and valuable consideration

Banker's Check.—

6 Dowl: & Ryl. 455.

Down. v. Halling & al'.

A Bankers check, dated the 16th for £50. payable to A. or bearer, was changed on the 22d Novr by a tradesman for a strange woman who purchased some goods at his shop, and next day he received Cash for it at the Bankers.— On the 25th A. the payee gave notice to the Bankers to stop payment of the check—

Held, in an action by A. against the tradesman for money had and received to his use, 1st— That it was not incumbent on the plaintiff to shew how the check got out of his possession— and 2d— That if the Jury were satisfied, that the Defendant had taken the check (which was overdue five days) under such circumstances as ought to excite the suspicions of a prudent man, even though he gave valuable— consideration for it and acted *bona fide*, the true owner had a right to recover the amount— for a Banker's check over due, stands on the same footing as a bill or Note put into circulation after its date— has expired, and the holder must shew title in his immediate payer, before he can retain the proceeds.

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8 Dow: & Ryl. 464

Hall & al. v. Fuller & al'

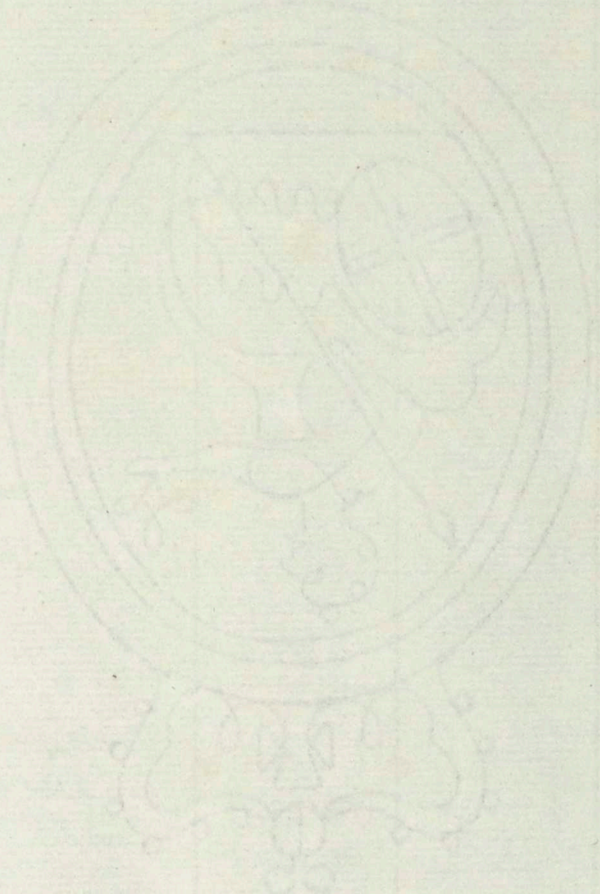
A Customer drew upon his banker, a check for £3.— and paid it away, the amount of the check was altered to £200— in such a manner, that no one in the ordinary course of business could have observed it, and when presented the £200— were paid by the Banker. Held— that the banker was liable to the Customer for £197.— the difference between the amount of the genuine and the altered check.—

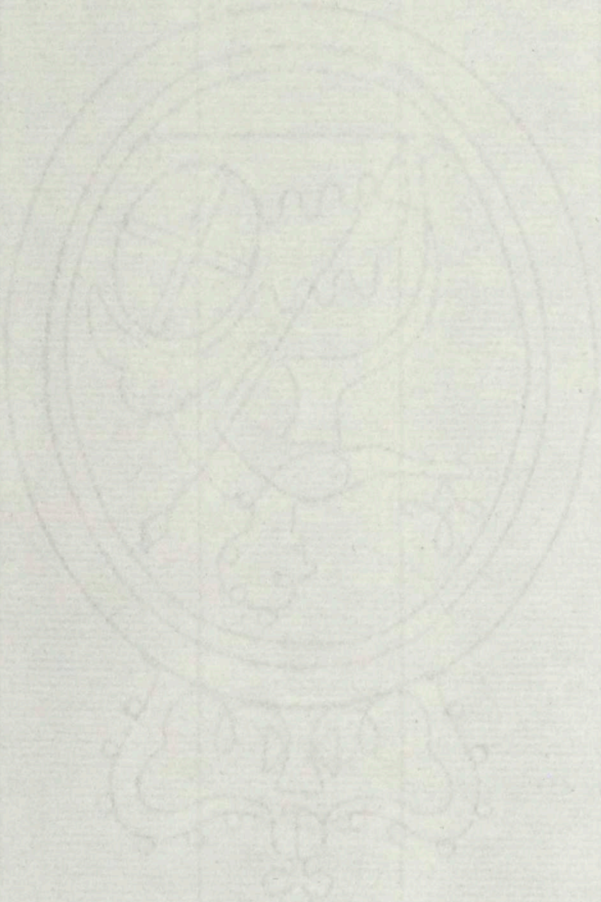
Banker's check.—

4 Bingh: Rep. 253.
Young v *Grote* & al.

A Customer of a Banker delivered to his wife certain printed checks, signed by himself but with blanks for the sums, requesting his wife to fill the blanks up, according to the exigency of his business.— She caused one to be filled up with the words, "*Fifty pounds two shillings*"— the *fifty* being commenced with a small letter, and placed in the middle of a line— the figures, £ 50. 2 — were also placed at a considerable distance from the printed £. — In this state she delivered the check to her husbands clerk to receive the amount, whereupon he inserted at the beginning of the line in which the word "*fifty*" was written, the words "*three hundred and*", and the figure "*3*", between the £ and the "*50*." — The Bankers having paid the £350. 2 Held— that the loss must fall on the Customer.—

Poth. Con. Change p.1. ch.4. §. 99.—





Bankruptcy.— act in contemplation of — and in usual course of Trade.—

A pretended Sale, though of part only of a Traders goods, to a particular Creditor; or any other contrivance, not in the Course of trade, but calculated merely to give a fraudulent preference, and to defeat the equality of the Bankrupt Laws, is void; though the delivery of the goods to such Creditor and his assent to the transaction, be complete before any act of bankruptcy committed.—

But such pretended Sale is not in *itself* an act of Bankruptcy — no more is any fraudulent transaction, which is not a *deed*.—

2 Cowp. 629. Rust. & al'. v. Cooper. 1777.

Ld. Mansfield. Ibid. p. 634. There is a fundamental distinction between an act like this and one done in the Common Course of business.— The Statutes have relation back only to the act of bankruptcy — If in a fair course of business, a man pays a Creditor, who *comes to be paid*, notwithstanding the debtor's knowledge of his own affairs, or his intention to break, yet being a fair transaction in the Course of business, the payment is good; for the preference is there got *consequentially*, not by design — it is not the object, but the preference is obtained in consequence of the payment being made at that time.—

and see. 1 Cowp. Harman & al. v. Fisher. p. 117.—

By the 4th art. of Tit: 11. of Ordce of 1673 — it is said — "Declarons nuls tous transports, Cessions, "ventes et donations de biens meubles ou immeubles "faits en fraude des Créanciers — voulons qu'ils

"soient

" soient rapportés à la masse commune des
" effets". –

Jousse in his observations on this article
and on the Declaration of 18 Novr 1702,
which declares – "que toutes Cessions et
" transports sur les biens des marchands qui
" font faillite, soient nuls et de nulle valeur
" s'ils ne sont faits dix Jours au moins avant
" la faillite publiquement connue &ca" says –
Il faut cependant observer que cette declaration
ne s'entend que des transports faits par le
failli sur ses biens au profit de quelques uns
de ses Créanciers, ainsi que des hypotheques
qui pourroient s'obtenir contre lui – mais
un Créancier qui de bonne foi et sans fraude
auroit recu de son debiteur le montant de ce
qui lui est dû, ne pourroit être recherché par
les autres Créanciers pour rapporter ce qu'il a
reçu, quand meme il auroit reçu ce paiement
la veille de la faillite – Car ce Créancier ne reçoit
alors que ce qui lui appartient legitimement, et
on ne peut presumer aucune fraude de sa part
comme elle est presumée à l'egard des Cessions
et transports qui se font dans les dix Jours avant
la faillite. – Toubeau, en ses Institutions Consulres
liv. 3. tit. 12. ch. 3. p. 730. est de ce sentiment, et il
pense qu'un paiement fait par le debiteur à son
Créancier dans les dix Jours qui precedent la faillite
est bon et valable, et ne peut être attaqué par un
autre Créancier, pourvû qu'au tems du paiement
le marchand fit encore son Commerce, et que la
faillite ne fut encore ouverte. –

2. De Cormis Consultes p. 1328. – ch. 13.

La faillite d'un marchand en un endroit, ne fait pas sa faillite en autre pais, si non du jour qu'elle s'ensuit. –

Bankrupt Laws.

It has been held in England by various decisions, that the Bankrupt Laws of one Country are to have effect in another. –

see.

Sill v. Worswick.	1 H. Bl. 665. –
Hunter. v. Potts. –	4 T. Rep. 182. –
Richard v Hodson –	there cited. –
Potter v Brown –	5 East. 124. –
Burrows v Jemino –	2 Str. 733. –

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1 Hy. Black. Rep. 665.
Sill &al. v. Worswick

If after an act of bankruptcy committed, but before an assignment, a creditor of the bankrupt makes an affidavit of debt in England, by virtue of which he attaches and receives, after the assignment money due to the Bankrupt in the West Indies, the Assignees – may recover the money in an action for money had and received. –

The principle of this case was recognized in that of Phillips. v. Hunter. 2 Hy. Bl. 402. decided in the Exchequer chamber. – Eyre Ch. J. dissᵗ. –

Bannalité.

Denizt. V° Bannalité p 271. N° 6. C'est en abregé de ce qu'on sait de plus precis sur l'origine des bannalités. — Quant à ses effets, ils consistent, dit Duplessis en trois points,

1°. De contraindre les sujets de venir au moulin du Seigneur. —

2°. De les empecher d'en construire dans son ressort. —

2 Bourj: 255. art. 12. — 3°. D'empecher les meuniers voisins de venir chasser dans sa Seigneurie

Denizt. Eo. Verb. N° 17. — Le droit de bannalité du four et du moulin à eau est personnel, c'est a dire, qu'il n'a lieu que pour les personnes domiciliées dans l'etendu de la bannalité.

N° 18. Le droit de bannalité de four et de moulin ne peut avoir lieu que pour la farine et pain qui se consomment dans l'etendu de la banalité

N° 20 Un seul particulier n'est pas recevable a contester au Seigneur le droit de banalité. —

Id. p. 275. N° 3. En general la banalité de moulin n'a d'effet et n'oblige que les Vassaux et Censitaires domiciliés dans l'etendu du Fief ou le moulin est bati, et l'on pense meme, que le seul Seigneur peut avoir un moulin bannal — tel est le droit Commun. —

1 Bourj. 256. art. 21. — Le Seigneur qui a droit de banalité, y etant troublé, peut intenter complainte, qui se juge sur la seule possession — C'est un droit réel, et par consequent cette action y a lieu

see also — 1 Grand Comm. de Fer. p. 1035
1 Bacq: Droit de Justice. p. 428. —
Brodeau sur Louet, lettre. M. 17. p. 174

Bannalité. —

1 Bourjⁿ. 254. note to art. 4.

Le droit de bannalité, comme celui de Corvée, ne sont pas vrais droits Seigneuriaux

Id. 255. art. 11.

La banalité de moulin et de four influe sur tous les domiciliés dans l'etendu de la — Seigneurie, sauf les exceptions qu'on expliquera ci-apres; en effet ils y sont sujets, encore qu'ils ne possedent aucun heritage dans cette Seigneurie parceque telle bannalité est plus personnelle que reelle. —

Id. dᵒ art. 16.

Les Roturiers même ne sont pas sujets à la bannalité du four, à l'egard du pain fait d'un bled achété dans un autre marché et qui doit être vendu par eux hors la Seigneurie C'est une exception trés equitable —

" — " — art. 17.

Bled doit etre moulu 24 heures apres être porté au moulin. —

Repʳ. vᵒ Bannalité p. 118. —

Dans les Coutumes ou la banalité est attaché au Fief ou à la Justice, la banalité ne peut etre aliénée sans le Fief. —

Cout: de Paris 1 Vol. p. 1041. art. 71. Som. 1. Nº 21. —

Si le droit de banalité se peut ceder, vendre ou bailler à rente par le Seigneur? Repond — Il semble que non, parceque la Coutume ne la donne qu'au Seigneur — neanmoins il a eté jugé en la Coutume de Touraine que le Seigneur peut detacher de son Fief

le

le droit de bannalité, et la bailler à rente — Il pourrait même être aliené à prix d'argent suivant le sentiment du même auteur (auzanet) et être par ce moyen detaché du Corps du Fief et de la Justice..

Cout: d'Orleans Page 174. Fiefs. No. 352. —

Repre. vo Bannalité p. 118. 2e col. —

Il suit de ce que nous avons dit, que le Seigr ne pourroit pas ceder à une autre personne — purement et simplement son droit de banalité sans la Seigneurie à laquelle il est attaché, — mais il peut le donner à ferme ou à rente ou à Cens, ou même a titre de Fief, et Ceux qui le tiennent de lui à quelqu'un de ces titres peuvent l'exercer, parceque c'est au nom du Seigneur qu'ils sont Censés l'exercer..

Cout: Paris. art. 71. p. 1047.

Observ. de Mr xxx

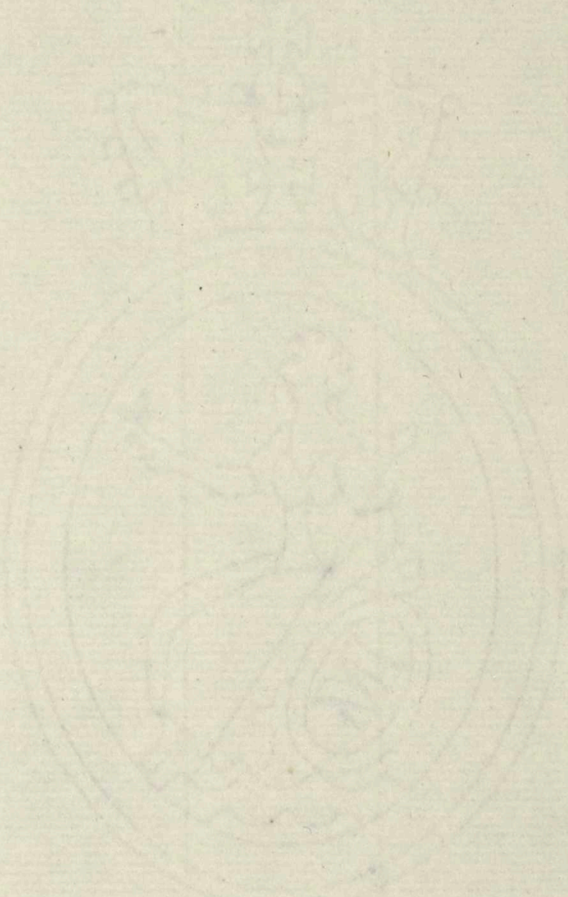
Dic. Droit. vo Bannalité —
Repre. vo Moulin, p. 686. & 690..

L'effet de la bannalité est, qu'en attribuant le droit au Seigneur, il donne en même tems l'exclusion de tous les autres — ainsi celui qui a bannalité de moulin, empeche tous les autres d'en bâtir dans toute l'etendue de son territoire. —

Barrister.

[illegible] Hodgson. vs Scarlett. 1. Barn. & Ald.

An action for defamation will not lie against a Barrister for words spoken by him as Counsel in a Cause pertinent to the matter in issue.



Bill of Exchange.

Payment of bill of exchange cannot be enforced without producing the bill.–

Consideration

An express promise to pay the contents of a lost bill of Exchange, if given without some new consideration, is void. – 4. Taunt. 602. Davis. vs Dodd.

Giving Time

The acceptor of a bill for the accommodation of the drawer is not discharged by time given to the drawer. – Id. 730. Raggett. v. Axmore.–

Notice

One who without consideration, but without fraud, indorses a bill, in which both the holder and acceptor are fictitious persons, is intitled to notice of the dishonour of the bill. Id. 731. Leach. v. Hewitt.–

Interest

The Drawer of a bill which is dishonoured by the acceptor is not liable to pay interest until the dishonor of the bill be notified to him. – 5. Taunt. 240. Walker v. Barnes.–

Qualified acceptance

If a person to whom a bill is directed generally,

accepts

accepts it payable at a particular place, the holder needs not receive such a qualified acceptance, but may resort to the Drawer as for non-acceptance.

Such an acceptance is equivalent to an acceptance payable at the particular place and no where else and narrows the general liability of the acceptor to a liability to pay at that place only. a

But if the holder consents to receive such an acceptance, it interposes in the Contract a condition precedent that the holder shall present the bill to the acceptor for payment at the place specified: and therefore in declaring on the bill the Plaintiff must aver performance of this like other Conditions precedent by shewing a presentment to the acceptor at the place specified — and that whether the action be against the Drawer or against the acceptor. 5. Taunt. 344. Gammon & al. v. Schmoll. a

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Presentment — A presentment of a Bill of Exchange at a Banking House, after banking hours when the house is shut, is not a sufficient presentment to charge the drawer — and no inference is to be drawn from the circumstance of the bill being presented by a Notary, that it had been _before_ duly presented within banking hours. — 1. M. & Sel. 28. Elford & al. v. Teed. —

Bill of Exchange.

Stamp.

Place where made –

Where Partners resident in Ireland signed and indorsed a copperplate impression of a bill of Exchange, leaving blanks for the date, sum, time when payable, and name of the drawee, and transmitted it to B. in England for his use, who filled up the blanks and negotiated it.— Held, that this was to be considered a bill of Exchange by relation from the time of the signing and indorsing in Ireland, and consequently that an English stamp was not necessary. 1. M. & Selw. 87.— Snaith & al'. v. Mingay & al'.

Notice.

Where the drawer of a foreign bill of Exchange, at the time of the drawing was in a foreign Country, but returned home before it became due, at which time it was dishonoured and protested, but notice of the dishonour only and not of the protest was left at the drawers house: Held— that this was sufficient. Id. 288. Robins. v. Gibson.

refers to Case. 2 Esp. N. P. C. 511. Cromwell. v Hynson.

Notice.

Notice to the drawers of non-payt. of a Bill of Ex. by sending to their Counting House during hours of business on two Successive days, knocking there, and making the firm consists of only <u>one</u> person — yet it is not a variance. —

Per Ld. Ellenborough — "A person who takes
" a bill, is warranted in taking it according
" to the ordinary import of its terms, & treating
" it so — and it would introduce vast inconvenience
" if it were otherwise, and if the party declaring
" must never venture to predicate either the singular
" or plural, though the terms of the bill clearly
" import it". —

Notice. The drawer of a bill of Exchange, who has not effects in the hands of the Drawee except that he has supplied him with goods upon credit, which credit does not expire until long after the bill would become due, is not discharged by want of notice of the dishonour. —

Giving Time. Time given by an Indorsee to the Payee does not discharge the Drawer. —

4 Maule & Sel. 226. Claridge v. Dalton. —

Laches — delay. — A. accepts a bill in favor of B. payable at A's Bankers — the bill is never presented. — Eight months after the bill had become due A's Bankers, become bankrupt — but at the time the bill fell due, they had fund's of A.

A. in their hands, sufficient to answer it — A. as acceptor, is not discharged by B's laches.

1 Starkie's N.P. Rep. 79. —

Payable after sight —

The holder of an Inland bill payable after sight is not bound instantly to transmit the bill for acceptce. He may put it into circulation — or — though he do not circulate it, he may take a reasonable time to present it for acceptance —

What delay reasonable —

What is a reasonable time is always a question to be determined by the Jury —

A delay to present until the fourth day a bill on London, given within 20 miles thereof, is not unreasonable. —

7 Taunt. 397. Fry, v Hill. —

Agent liable —

An agent, purchasing foreign bills for his principal and indorsing them to him without qualification, is liable to his principal on his Indorsemt however small be the Commission which he gets upon the purchase —

7 Taunt. 159. Goupy & al. v. Harden & al

Promise to accept. —

A promise by letter to accept a non-existing bill is no acceptance of a bill when drawn, unless it be communicated to the person who is to receive the bill and who is thereby induced to take it. —

An acceptance is as valid by parol as in writing and a Conditional acceptance is as effectual as an absolute one, if the Condition be complied with. —

1 Holt. N.P. Rep 181. Miln. v. Prest —

Bill of Exchange &c

1 Holt. Rep. 363.
Head & al. v. Sewell

Place- where payable.-

In an action against the acceptor of a bill of Exchange, made payable at a particular place, by a memorandum at the foot of the bill, it is not necessary to prove a presentment or demand at that place — but the acceptor is generally and universally liable.

Upon this point the decisions in the Court of Kings Bench and Common Pleas are at variance.— Both Courts however agree to this; — that where a particular place of payment is introduced in the body of the bill of Exchange — or where a promissory note is made payable at a particular place in the express terms of the engagement, and not by way of mere memorandum at the foot of the instrument: — that in such case, the bill of exchange and the promissory note, whether the action be against the maker or indorser of the one, or the drawer, indorser or acceptor of the other, must be presented at that particular place, and a demand be made there, in order to give the holder a cause of action.— In such case, moreover, as respects a promissory note, the presentment and demand must be alledged in the Declaration —

see cases - Bowes. v. Howe - in Error. 5 Taunt. 30.

Saunderson

Bill of Exchange &ca

Saunderson. v. Bowes. 14. East. 500.
Dickenson — v. Bowes. 16. East. 110.
Howe. — v. Bowes. do — do 112
Huffam — v Ellis. 3. Taunt. 315.
Saunderson. — v Judge — 2. H. B. 509.

The two Courts are at variance upon this point. — Where a bill of exchange &ca is made payable at a particular place, by *way of memorandum at the foot of the note &ca*, such place not being embodied in the note — In Gallaghan. v. Aylett 3 Taunt. 397. the Court of Com. Pleas decided, that where a bill was accepted payable at a Bankers it must be presented there for payment, and that the neglect to present it was equally a discharge to the acceptor as to the drawer. — So in — Ambrose. v. Hopwood. 1 Taunt. 61. where a declaration alledged a bill to have been accepted payable at the house of certain persons at a particular place, it was held, upon Special demurrer, necessary to aver that the bill was presented for payment at that place, and not to those persons generally. —

Such were the decisions in the Com. Pleas when the Case of Fenton. v. Goundry, was argued upon a special demurrer to the declaration and the Court of Kings Bench were unanimous in opinion, that in an action against the acceptor of a bill of Exchange, accepted payable at S & Co's it was sufficient to alledge *generally*, a request by the

the Plaintiff to the defendant to pay the bill without alledging that it was presented for payt at the particular place. 13. East. 459.

In a subsequent case, Gammon v. Schmall the Court of Com. Pleas, in opposition to the Case of Fenton. v. Goudry, determined, that if a bill was accepted payable at a particular place, ~~rather words, "accepted, payable at [illegible]"~~, the plaintiff must aver performance of this, like other conditions precedent, by shewing a presentment to the acceptor at the place specified — and that whether the action were against the Drawer or acceptor. 5. Taunt. 344. —

The Courts therefore were at issue upon this point —

In Trinity Term 1816, the case of Rowe. v. Williams came before the Kings Bench upon a Special demurrer to a declaration upon a bill of Exchange — that case was precisely the same as Fenton. v. Goundry — It was an action against the acceptor of a Bill accepted "payable at Sir John Perring & Co's," and there was no averment of the presentment when it became due, at Sir John Perring & Co.'s — The counsel in support of the demurrer cited, Gammon v. Schmall, but the Court of Kings Bench refused to hear the case argued, saying that they considered the point as having been determined in their judgment in Fenton. v. Goundry — Mr. J. Holroyd read a Manuscript note of the case of Smith. v. De la Fontaine, tried before Ld. Ch. J. Mansfield

Mansfield in 1785, in which his Ldship held, that words accompanying an acceptance, "payable "at a particular place" — or the words, "accepted "payable at &c", were not words restricting or — qualifying the acceptors liability, but rendering him generally and universally liable, and that it was not necessary to prove a demand at the particular place in an action agt. such acceptor. Ld. Ellenborough added, that whatever cases might be adduced in favor of, or against the doctrine laid down by K. B, in Fenton. v Goundry, an invincible argument with him for the opinion there given, was, the constant and undeviating usage of Merchants, who never considered such an acceptance to be a restrictive acceptance — that it was mere matter of convenient arrangement and did not raise any obligation on the part of the holder, to demand payment at the particular place" —

Upon this Judgment a writ of Error was brot. in the House of Lords — where the Case is now pending for Judgment —

See decision in the House of Lords in Case Huffam & another vs Ellis — In Error — 3 Taunt. 415 here the point has not been directly decided, the verdict being supported upon the principle, that under the statement in the declaration, that the bill when due had been presented according to the tenor and effect thereof, evidence could be admitted

to

to shew that a presentment and demand for payment had been made at the particular place referred to by the acceptance — But if the observations of Ld. Erskine and Lord Eldon, stated in the note, are to be believed, there is reason to think that the opinion entertained by the Court of Com. Pleas, must prevail —

Lord Erskine is said to have expressed himself — "that if there had been no such "averment as could have led to proof of the "due presentment, the declaration would "have been bad — but it must be apparent "that upon that allegation, due presentment "might have been proved — it would be dangerous "to allow such subtleties to prevail" —

Lord Eldon, Chancellor is reported to have said — "the more the Counsel for the "Plaintiff in error satisfies me, that a "presentment at the place where the bill "was made payable, was necessary — the "more he satisfies me, that I must intend "by this allegation, that such a presentment "was made." —

See also. Bowes & others. vs Howe, In Error — In the Exchequer Chamber. 5 Taunt. 30. — Opinion of Ch. B. McDonald —

Notice of Dishonor

1 Holt. Rep. 476.
Bancroft. v. Hall

The holder of a bill of Exchange which is returned dishonoured, is not bound to send notice to the drawer by the Mail, or first conveyance that sets out from the place where such holder resides — It is sufficient provided there be no essential delay, if he send notice by a private hand, and although such notice should thereby reach the drawer later in the day, than if it had been sent by the Mail, he will not on that account be discharged.

Notice.

1 Taunt. 12.
Horford. v. Wilson.

In an action agt. the drawer of a bill of Exchange, in consequence of the acceptor's default — The Court will leave it to the Jury to presume from Circumstances (such as the payment of a part of the bill without any objection to the want of notice &ca —) that notice was regularly given.

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2. Barn. & And: 113. —
Rees. v. Warwick

Where the Drawer of a bill wrote to the Drawee, stating, that he had valued on him for the amount, and added, "which please to honour," to which the Drawee answered, "*The bill shall have attention*". Held that these words were ambiguous, and did *not* amount to an acceptance of the bill, inasmuch as although an acceptance may be made by a letter to a drawer, still that can only be so, where the terms of the letter, do not admit of doubts.

7. Taunt. 397. –
Fry. v. Hill.

Payable after Sight. –

The holder of an Inland bill, payable after sight, is not bound instantly to – transmit the bill for acceptance – He may put it into circulation, or, tho' he do not circulate it, he may take a reasonable time to present it for acceptance.

What is a reasonable time is always a question to be determined by a Jury. –

Notice

The drawer of a bill of exchange who before the bill becomes due, says, my residence is immaterial I will enquire whether the bill is paid, dispenses with notice of the dishonor. – 1 Stark. Rep. 116. –

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do

Evidence of a letter from the drawer and indorser of an accommodation bill, that the bill will be satisfied before the next Term, supercedes the necessity of proving the dishonor of the bill and notice. – 1 Stark. 217. –

Proof of Partnership of Indorsees. –

Where several Plaintiffs sue as Indorsees of a Bill of Exchange, if the bill appears indorsed in blank there is no necessity for their proving that they were in – partnership together, or that the bill was indorsed and delivered to them jointly. – Ld. Ellenborough. – "The Indorsement in blank conveys a joint right of action to as many as agree in suing on the bill –

3 Camp. Rep. 239. Ord. & al. v. Portal. –

1 Starkie. Rep. 446. –

But

But where a bill of Exchange is payable or indorsed specially to a <u>firm</u>, Ld. Ellenborough has often ruled that in an action by the payees or Indorsees strict evidence must be given that the firm consists of the persons who sue as plaintiffs on the record

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3. Barn. & Ald. 430
Cox. v. Earle.

In an action upon a bill of Exchange with several indorsements, by a pltff who had paid the bill, under protest for the honor of one of the Indorsers, it was held sufficient even upon special demurrer, to state that he had paid the bill according to the usage and custom of merchants, without stating that he had paid it to the last Indorsee.

Id. — p. 619.
Cory & al. v Scott.

Notice

Where a bill was drawn for the accommodation of an Indorsee, and neither such indorsee nor the drawer had any effects in the hands of the acceptor. — Held, that a subsequent indorsee in order to entitle him to recover against the drawer, is bound to give notice of non-payment

But see Case Walwyn. v St. Quintin. 1 B. & P. 652.

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2. Hen. Bl. 509.
Saunderson & al. v Judge. —

Demand

Notice.

A. makes a promissory note payable to B, or order, with a memorandum upon it, that it will be paid at the house of C. who is A's Banker — in the course of business the note is indorsed to C. — In an action by C. against the Indorser it is not necessary to prove an actual demand on A. —

If a note be made payable at a particular house, a demand of payment at that house is a demand on the maker

The putting a letter into the post-office to the Indorser, in proper time, informing him that the maker has not paid a note when due, is sufficient evidence of notice to the Indorser.

Bill of Exchange, &ca

2. Wilson. 353.
Chamberlain. v. Delarive

Diligence

A Creditor accepts a note or draft of his debtor upon a third person, to be paid a sum of money for value received; If he holds it an unreasonable time before he demands the money, and the person upon whom it is drawn becomes insolvent, it is the creditors own loss, though this draft be not a bill of Exchange or negotiable. —

2 Starkie. p. 45.
Jacobs. v. Hart.

alteration

After a bill of exchange has been accepted and while it remains in the hands of the payee, he alters it by making it payable at a particular place; this alteration will not vitiate the bill. —

Ld. Ellenborough. — With respect to the alteration made as to the place of payment, the objection rests upon the *vexata questio*, whether the place of payt. is to be considered as part of the Contract, or merely as a direction where payment will be made — I am of opinion that the objection is without foundn. —

2d Starkie. 228.
Parker. v. Leigh.

An acceptor of a bill of Exchange cannot avail himself of a Renunciation on the part of the holder of his claim upon him, unless it be express, and founded upon some consideration. —

Id. —— 326.
Jeune. v. Ward.

The destruction of the bill by the drawee will not make liable as acceptor, when he has previously declared he would not accept it.

Bill of Exchange &c

2 Starkie — 334.
Richardson v. Allen.

Witness.

The Indorsee of a bill, in an action against the acceptor, having called a Witness to prove the indorsement, who disproved it, the Pltf was afterwards allowed to call the indorser himself to prove his own indorsement. —

Id. — 336

no direction

The Indorsee of a bill in an action against the acceptor, alledges that the bill was directed to the Defendant, (it not appearing by the bill itself to be directed to any person) this allegation is not supported by proof that the drawer drew the bill payable to his own order at a specified place, altho' the Defendant when it was presented there, wrote his name upon it as the acceptor. —

Id. — 411.

acceptance.

The drawee of a bill of Ex. being advised of the drawing of the bill by the drawer, and requested to honour it, answers by letter, "<u>that the bill shall meet attention</u>," — this does not amount to acceptance, — although it appears, that in other instances, the drawee has used the same expression when bills have been drawn upon him. —

Note. — Much however would depend upon the interpretation to be put by a Jury upon the circumstances and usual course of transactions between the parties, in a case like this. —

4. Barn: & ald, 197.
Cowie & al. v Halsall

alteration

A Bill of exchange having been accepted generally, the drawer, without the Consent of the acceptor, added the words, payable at Mr B's Chiswell street — Held a material alteration, & the acceptor thereby discharged —

Bill of Exchange &c

4. Barn. & Ald. 451.
Turner. v. Leech.

Laches.

The indorser of a bill of exchange which had been dishonoured, and which a subsequent indorser had made his own by laches, paid the bill, and immediately gave notice of the dishonor to the Defendant, a prior indorser; Held that the plaintiff could not recover the amount, although it appeared that the defendant, in case successive notices had been given by all the parties on the bill, could not have received notice of dishonor at an earlier period. –

* * *

5 Maule & Sel. p. 65.
Highmore v. Primrose

value received.

A bill of exchange drawn by I. S. to his own order, value received, means, value received by the drawee, and if it be alledged in the declaration to be for value received by the said I. S. it is a variance. &c

* * *

Id. — p. 282
Dun &al. v OKeefe in Error.

Notice

The drawer of a bill of exchange is not discharged by the want of notice of non-acceptance, where the bill has passed into the hands of a bona fide indorsee for value, who had no knowledge of the dishonor. –

* * *

In this Case a bill was drawn on 19 June 1813 by the Defdts in favor of I. Sinclair for £1000, directed to Messrs Ricketts, Thorne, George & Co – payable one month after date – On the 20th June Sinclair presented the bill for acceptance, which was refused – no notice of this refusal was given to the Drawers, but Sinclair on the contrary indorsed the bill to the Pltff. who were ignorant +

+ of the first presentment and on the 13 July. they presented it for acceptance wh – was also refused – of this refusal regular notice was given to Drawers, and the action instituted thereon. –

5. Ma: & Selwyn. 291
Young. v Rowe
Place of payt.

In declaring against the acceptor of a bill of exchange, accepted, payable at a particular place; Held - not necessary to aver a presentment at that place.

Upon this point the Court of Kings Bench had for some years held a different opinion from that of the Common pleas, - the question is now set at rest, by the reversal of the above Judgt in the House of Lords, and thereby establishing the doctrine held by the Court of Common Pleas.

see note (c) on the above case.

5. Barn. & Ald. 244.
Rhodes. v Gent,
Presentment

A bill of exchange was accepted payable at Messrs P. & H. bankers, London, but was not presented there for payment when due, nor until some days afterwards - the acceptor is still liable, unless he could shew that some inconvenience had resulted to him from the delay in presenting the bill.

1 Barn: & Cress. Rep. 193.
Gunson & al' v Metz.
Notice.-

In an action by the Indorsee against the drawer of a bill of exchange, the pltff did not prove any notice of dishonor to the Defendant but gave in evidence an agreement made between a prior indorser and the drawer after the bill became due.- It recited that the Defendant had drawn among others the bill in question, that it was over due, and ought to be in the hands of the prior indorser, and that it was agreed that the

latter

latter should take the money due to him upon the bill by instalments. — Held, that this was evidence that the drawer was at that time liable to pay the bill, and dispensed with other proof of notice of dishonour. —

* * *

1 Moore. Rep. 150.
Robinson & al. v. Yarrow
Evidence

The acceptance of a bill of Exchange, admits merely the drawing, but not the indorsement of the drawer — Therefore if a bill be drawn and indorsed by procuration, it was held in an action by the Indorsees against the acceptor that as the indorsment by procuration was not proved, they were not entitled to recover. —

* * *

2 Moore Rep. 9.
Mant & another v. Mainwaring & al
Evidence

In an action of assumpsit on a bill of Exchange against several Defendants as partners; one of them who had suffered Judgment by default, and to whom the Plaintiffs had severally given a release; is not admissible as a Witness to prove that himself and his Co-defendants were partners at the time the bill was drawn, without the Consent of such Co-defendants as his testimony might tend to inculpate them. —

Mr Justice Dallas said — It has been established as an universal rule, that a party to the record cannot be examined as a Witness without the consent of all parties. —

* * *

3. Moore Rep. 90.
Gray. v. Milner
Acceptance.

If a bill of Exchange be drawn, payable to the order of the drawer at a particular place without being addressed to any person, and the

the Defendant afterwards accept it — Held, that such bill need not have been directed to, or described the Defendant by name, and that by such acceptance he adopted the place of payment. —

6 Moore Rep. 319.
Patterson. vs Becher.

Promise to pay
a waiver of Diligence

In an action by the payee against the drawer of a bill of exchange, the declaration stated, that the latter drew it at S^t Helena, viz^t. at Westminster, and did not aver a protest either for non-acceptance or non-payment. — On the production of the bill, it was dated at S^t Helena and not stamped — On an objection that it was inadmissible as an inland bill for want of such stamp, and that the pltff had given no evidence of a protest for non-acceptance or non-payment — Held, that as there was evidence of a subsequent promise by the Defendant to pay the amount of the bill, coupled with a letter — written by his attorney, offering terms for payment, it was a waiver of those objections, although such Attorney swore that such offer was made without prejudice. —

7 Moore Rep. 130.
Champion & al. v. Terry

Lost or Destroyed

Where the plaintiffs traveller took a bill of Exchange from the Defendant, and inclosed it in a letter addressed to the plaintiffs, and put it into the post Office, but it never came to their hands; Six months after it became due, the Plaintiffs sued the Defendant as the indorser of the note — Held, that the plaintiffs could not recover on such bill, without proof of its destruction or total loss — And that they were also precluded from recovering the value of the goods sold to the Defend^t on the counts for goods sold and delivered,

as

as the Defendant had given full value for the bill, and might still be compelled to pay its amount to a *bona fide* holder. –

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7. Moore Rep. 266.
Bynner. vs. Russel.

Presentmt. for Payt being on a Sunday

An averment in a declaration on a bill of Exchange, that when it became due and payable according to the tenor and effect thereof, vizt. on the 31 March 1822, it was duly presented for payment: Held sufficient on a special demurrer, assigning for cause, that the 31st March was on a Sunday, as it was enough to state that the bill was presented when it became payable, according to its tenor, without mentioning any particular day. –

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3. Dowl: & Ryl. 664
Payne & Wood
vs.
Ives Sargon & Mann

Laches.

Where the Firm of I & Co. gave a garanty to P. & Co., that they would indorse any bill or bills which S. might give to P. & Co. in part payment of an order for certain goods then executing for him; P & Co. to allow £5. ⅌ Cent on the amount of the bills for guaranty; And in part payment of the goods, S gave P & Co. a bill at eighteen months which the latter kept for seventeen months and ten days, and then finding that S was insolvent, applied for the first time to I & Co. for their indorsement tendering the amount of the Commission. – Held, that P & Co. were concluded by their laches, and that I & Co. were not liable on their guaranty. –

4. Dowl: & Ryl. 730.
Shaw. v. Broom.

Declaration of Drawer

Where the drawer of a bill of Exchange indorses it to a third person as a valid security, and whilst it is current, his declaration afterwards that it was an accommodation bill, will not defeat the indorsee's right to sue the acceptor. —

4 Barn: & Cress. 330
Down. v. Halling & al

Check over-due

The owner of a check drawn upon a Banker for £50.— having lost it by accident it was tendered five days after the date to a Shop-keeper in payment for goods purchased to the value of £6.10, and he gave the purchaser the amount of the check, after deducting the value of the goods purchased.— The Shop-keeper the next day presented the check at the Bankers, and received the amount.— Held— That in an action brought by the person who lost the check against the Shop-keeper to recover the value of the check, the Jury were properly directed to find for the pltff, if they thought the Defendant had taken the check under circumstances which ought to have excited the suspicion of a prudent man — Held, also, that the Shop-keeper having taken the check five days after it was due, it was sufficient for the plaintiff to shew, that he once had a property in it, without shewing how he lost it.

Id p. 339.—
Hartley. v. Case.

Notice of dishonor

A notice of the dishonor of a bill of Exchange must contain an intimation that payment of the bill has been refused by the acceptor, and therefore a letter, containing merely a demand for pay^{t}., was held not to be a sufficient notice. —

Bill of Exchange.

Ryan & Moodie's N. P. Cases. p. 37.
Brutt. v. Picard
altering date.

A bill having been dated by mistake, 1822, instead of 1823, the agent of the drawer and acceptor to whom it had been given to be delivered to the indorsee, without their knowledge or consent, corrected the mistake — Held — that such alteration did not vacate the bill.

Ld. Ch. Abbott, said — I shall leave it to the Jury to decide whether this bill was not dated by mistake 1822 — If they are of opinion that it was originally the intention of the parties to the bill that it should have been dated 1823, & that the figure (2) was inserted by mistake I am of opinion that this alteration will not vacate the bill. —

See. Kershaw. v. Cox. 3. Esp. N P. C. 246. — 10 East. 438. Jacobs. v. Hart. 2 Starkie 45. Downes. v. Richardson. 5 Barn. & Ald. 674. Bayley on bills. last edit. 89 — and Cowie. v. Halsall. 3 Starkie 36. —

* * *

Id: p. 49.
Fuller & al. v. Smith —
Forgery

The plaintiffs, bankers, discounted for the Defendants, bill-brokers, a bill of Exchange which the latter did not indorse. — The signatures of the drawer and acceptor (the latter of whom kept an account with the plaintiffs) were forged. — Held that the Defendants were liable to refund the money, and that the fact of their having paid over the amount to the indorsee for whom they were brokers, would not relieve them from their liability. —

In the case of Jones. v. Ryde 5. Taunt: 488

it

Bill of Exchange. —

it was decided, that a person who *discounts* a forged Navy bill, for one who has no knowledge of the forgery, may recover back the money as had and received to his use, upon failure of the consideration. And the principle is there laid down by Gibbs. Ch. J. that the negotiator of a bill, by declining to indorse it is not relieved from that responsibility which attaches on him for putting off an instrument as of a certain description, which turns out not to be such as he — represents it. —

In the subsequent Case of Smith v. Mercer, 6 Taunt. 76. it was held, (Chambre J. diss:) that Bankers who paid a forged acceptance of one of their Customers, made payable at their house, could not recover back the money from the *bona fide* holders of the bill, to whom the payment was made, on the principle that it was the duty of the Bankers to have ascertained the authenticity of the order, before they obeyed it — and because by taking up the bill, they had deprived the holders of the remedy which they might have had against some prior parties on the bill — Vide, also Price. v. Neale. 3. Bur. 1354 1 Bla. 390. —

In the principal case, here decided, it would seem, that the fact of the Defendants having paid over the money to Simpson, would, if proved have made no difference, inasmuch as the payment to them must have been made on the credit of their possession and negotiation of the bill — And the case is distinguished from that of Smith. v. Mercer, by the circumstance of the plaintiff having paid the money on *their own account*, and not in obedience to the forged acceptance of their Customer —

Bill of Exchange

Ryan & Moodie's N. P. Cases. p. 84

Spooner. v. Gardiner

Where the drawer of a bill of exchange had no effects in the hands of the acceptor from the time of the drawing the bill till it became due, but the acceptor had received from the drawer prior to this bill on which the action was brought acceptances of the drawer upon which he had raised money, some of which acceptances had been returned dishonoured and others were outstanding Held – that the Drawer was entitled to notice of dishonour of the bill. –

see Clegg. v. Cotton. 3 Bos: & Pull. 239 – and the Cases on this Subject, Bayley on bills 5th Edit. 234. –

Practice. When notice of intention to dispute the consideration of a bill or note has been given, and the plaintiff's witnesses have been cross examined to that point, the plaintiff must give such evidence as he has to offer in proof of the consideration, in the first instance, and will not be allowed to do so in reply. –

In Delauney. v Mitchell. 1 Starkie. 439. Ld Ellenborough seems to be of opinion to admit the evidence in reply, – but the rule as above laid down seems now to prevail both in the K. B. & C. B. – see Phillipps on Ev. 6th Edit. 2 Vol. p. 17. – Chitty on bills 6th edit. p. 401. –

Id. – p. 127.

Pocock. v. Billings

2 Bing. 269. S. C.

9 Moore. 499. S. C.

The declarations of a former holder of a bill of Exchange, made during his possession, are evidence against a Subsequent indorsee. –

☞ But see distinction taken in the case hereafter noted of Smith & another v. De Wruitz.

☞ See also. 6 Dow: & Ryl. 379. Barough v. White – declarations of a payee of a note, while in his possessn – cannot impeach right of an indorsee

Bill of Exchange.–

Ryan & Moodie's
N.P. C: 145.–
Fryer. v Brown.

The plaintiff in assumpsit gave in evidence an admission of the Defendant that he owed – £147. on a bill of exchange which had been returned dishonoured – Held that such acknowledgment was admissible, though no notice to produce the bill had been given. – Held also that no interest was recoverable unless the bill were produced.–

Id. —— p. 212
Smith & anr. v De Wruitz

The declarations of a holder of a bill, made whilst the bill is current, are not admissible against a subsequent holder under an indorsement made before the bill became due.–

In Shaw. v Broome. 4 Dow: & Ryl. 731. it was decided, that the declarations of one who had been holder, made after he had negotiated it, were not admissible against a subsequent holder, to whom the bill was transferred while current – on the ground, that such subsequent holder to whom the bill was transferred, did not sue as the Trustee of the preceding one, nor stand on his title, but on that acquired by the <u>bona fide</u> taking of the bill. – In <u>Pocock. v. Billings</u>, above cited. & also in 2 Bing. 269. it was held, that in order to make such declarations evidence, they must at all events be made by a <u>then</u> holder of the bill. It would seem that where the plaintiff is Trustee or stands on the title of the previous holder of the bill or note, whose declarations are offered, such declarations are admissible, though made after parting with the bill or note, being equally against the interests of the person making them; and such seems to have been the opinion of the Court in delivering Judgment in Shaw. v Broom.–

Bill of Exchange.

Ryan & Moody's N. P. C. p. 215.

Turner. v. Haddon &al

Liability of acceptors

S. C. 6 Dow: & Ryl. 5.

Held that acceptors of bills of Exchange payable at a bankers in London, were not discharged from their liability, although the holder neglected to present them for payment at the Bankers before they failed, which was several weeks after the bills became due, and although the acceptors at all times up to the failure of the bankers, had a balance in their hands sufficient to cover the acceptances. –

see Bailey on Bills. 4th Edit. 178.
4. M: & S. 462. Sebag. v Abithol. –

* * *

Id. – p. 249

Mann. v Moors.

In an action against the <u>drawer</u> of a bill of Exchange, dated, <u>Manchester</u>, Held that it was sufficient evidence of his having had notice of its dishonor to prove, that a letter containing such notice, had been put into the post office in London, directed to him, "<u>Manchester</u>". –

In Walter. v. Haynes. Ry: & Moody. 149 – Abbott. Ld. Ch. J. held, that, "<u>Mr Haynes, Bristol</u>" was too general a direction to raise a presumption that the letter reached the particular individual intended; but that case is very distinguishable from the present – That was an action by an indorsee against the indorser – here the action

action is against the Drawer, who designates on the face of the bill itself, the place where it is drawn, furnishing thereby presumptive evidence, that notice of the dishonor of the bill will reach him at that place. –

* * *

Ryan & Moody's
N. P. C. p. 403.
Glover v Thomson

An action may be maintained on a lost bill of Exchange, if the loss did not happen till after the bill became due

If the payee of a bill of exchange delivers it with his name indorsed on it to another, no proof is required of the handwriting of the indorsement

In Hansard v Robinson, sittings after Michaelmas Term 1826, which was also an action by the indorsee against the acceptor of a bill lost after it became due. – Campbell and Patterson for the Defendant objected that the action could not be supported without production of the bill – that the only remedy was in Equity, and they cited – Pierson. v. Hutchinson. 2 Camp. 211
Davis. v Dodd. 4 Taunt. 602.
Poole v Smith Holt. N. P. C. 144.

For the plaintiff Gurney and Chitty cited
Long. v. Bailie. 2 Camp. 214. (n)
Williamson v. Clements. 1. Taunt. 523
Brown. v Messiter. 2. M. & S. 281. – the principal case here mentioned, &
Dart. v Hinks. K. B. sittings after Michs Term 1820

Littledale. J. expressed a strong opinion agt the right of the pltff to recover, and directed a non Suit, with liberty to pltff to move to enter a verdict –

See also. Dangerfield v Wilby. 4 Esp. N. P. C. 159.
Mayor v Johnson. 3 Camp. 324
Champion. v Terry. 3. Br. & B. 295. –

Bill of Exchange

Ryan & Moody's
N. P. C. 425.
Attwood & al. v Griffin & another

A bona fide holder of a bill of exchange accepted, payable to (blank) or order may insert his own name as payee and indorse the same, and the bill may be declared on in that form.

3. Bing. Rep. 476.
De Bergareche v. Pillin. —
Presentment - where

Where the acceptor of a bill of exchange, accepts it payable at a bankers, it is not necessary in an action against the drawer, to alledge that the bill was presented to the acceptor in person, if there is an averment that it was duly presented at the bankers. —

6. Barn. & Ald. 439.
Pownal. v. Ferrand

The indorser of a bill being sued by the holder, paid him part of the sum mentioned in the bill - Held that he might recover the same from the acceptor in an action for money paid to his use.

10 Moore's Rep. 249
Triggs. v. Newnham.
Presentment. -

Presentment of a bill of exchange, at the house of a Trader or merchant, between 8 & 9 in the evening, held sufficient. - L. Ch. J. Best - a Common trader is different from a Banker and has not any particular hours for paying or receiving money. -

4 Bingh: Rep. 149.
Neale. v Turton & al.
Drawer & acceptor

The plaintiff, a holder of shares in a washing Company, drew bills on the directors of the Company for goods furnished by him and his brother. - the bills were accepted, <u>for the directors</u>; by the Secretary of the Company, who had authority to accept bills drawn by the plaintiff's brother. — Held - that the plaintiff could not recover on these bills agt the Coy —

Ch:

Ch. Just: Best. — The second objection (That the — Plaintiff was Partner in the Concern, and therefore could not sue the Defendants his Copartners) is fatal to this action. — It may be admitted, that if a partner were to draw on other partners by name, and they were — individually to accept, he might recover agt. them, — because by such an acceptance, a separate right is — acknowledged to exist — But that is not the case here, for the bills are drawn on the Directors of the Company and accepted for the Directors — they are the Agents of the Company and accept as Agents of the Company. The Case therefore is that of one partner drawing on the whole firm including himself. — There is no principle by which a man can be at the same — time plaintiff and Defendant. — We are clearly of opinion, that these bills being drawn on the Directors are in effect drawn on the Company of which the Pltff is himself a member — He cannot be at the same time drawer and acceptor, and the rule therefore which has been obtained for entering a non-suit must be made absolute. —

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4 Bing. Rep. 390.
Hubbard. v. Jackson

Indorsement. —

A Bill payable to the order of the drawer, having been dishonoured by the acceptor, and paid by the drawer when due. — Held that the drawer might indorse it over a year and a half afterwards and that his indorsee might recover agt. the acceptor. —

1 Moore & Payne. 11. S.C. —

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4 Bing: Rep. 717.
Philpot. v. Briant

Grantg. time to Acceptr

If the Executor of the acceptor of a Bill of exchange orally promise to pay the holder out of her own estate, provided he forbear to sue in consequence. — The promise being void, the drawer of the bill is not discharged by the holder's having promised to give time and having delayed to sue under such Circumstances. —

Gows N. P. Rep. 55.
Boehm v Campbell

An allegation in a declaration, that a bill of exchange was presented for payment by I. S. – does not render it incumbent on the plaintiff to shew that ~~the plaintiff~~, a presentment by I. S. was made. The material allegation is the presentment, and by whom it is made is immaterial. –

Id. p. 81. –
Browning & al. v Kinnear

Ignorance of the place of residence of the drawer of a bill of exchange is a sufficient answer to an objection arising out of the want of due notice of the dishonor of the bill, provided due diligence be used to discover his place of residence. –

Id. p. 113.
Hardwick. v Blanchard

In an action against the acceptor of a bill of exchange accepted for the accommodation of the drawer, the latter is not a Competent Witness to prove that the holder discounted the bill on usurious terms. –

Id. p. 123. –
Martin & al. v Morgan & Lockwood

A post dated check is drawn upon a banker; but on the day on which it purports to have been drawn, the maker informs the holder, that the Banker has no funds to meet the check, and circumstances are disclosed to the holder from which he must infer the probable insolvency of the maker. – The holder however presents the check to the Banker and obtains payment of it, but he does not communicate to the banker (who is wholly ignorant of all the circumstances) what had fallen within his knowledge. –

Under these circumstances – Held – That the holder could not retain the money against the Banker who made the payment under an ignorance of the real circumstances of the case. –

Bill of Exchange &ca

1 Man: & Ryl. Rep. 394
Williams v. Germaine

7. Barn: & Cress. Rep. 468.
S. C.

Where B. accepts a bill for the honor of the drawer, on the refusal of A. the drawee, it must be presented again to A. for payment at maturity before B. can be charged on his acceptance, even in the case of a bill payable after sight.

℘ Ld Tenterden – The proper effect of the transaction seems to us to be, that an acceptance for honor is not absolute, but conditional only, and that all that an acceptor for honor means by his acceptance, is to say this, – Do not return the bill – present it to the drawee for payment when it becomes due, and then if he does not pay it I will.

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7. Barn: & Cress. p. 90.
Hansard v. Robinson

The holder of a bill of exchange, cannot by the custom of Merchants insist upon payment by the acceptor, without producing and offering to deliver up the bill – and therefore it was held, that the indorsee of a bill having lost it, could not 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.

It was however admitted that in a Court of Equity the Plaintiff might recover. – ℘ Ld Tenterden – Is the holder then without remedy? Not wholly so. – He may tender sufficient indemnity to the acceptor, and if it be refused, he may enforce payment thereupon in a Court of Equity – and this is agreeable to the mercantile law of other Countries – In the modern Code de Commerce of France. liv. 1. tit. 9. art. 151. 152, this is distinctly provided and this provision is not new in the law of that Country but is found also in the Ordce de Com. of 1673. Tit. 5. art. 19. +

3. Car: & Payne N.P. Rep. 134
Hubbard v. Jackson.

Re-issuing.

A bill which has been paid by the drawer in default of payment by the acceptor, may afterwards be re-issued by the drawer, and the acceptor will still be liable to pay it.

In such case, if an action be brought against the acceptor by the indorsee of the drawer, the acceptor cannot enquire into the state of the accounts between the indorsee and the drawer, nor will the state of such accounts furnish him with any defence.—

3. Carr: & Payne's N.P. 379
Birch. v Jervis

A bill given to a Creditor to induce him to sign a bankrupt's certificate is void in whosever hands it may be, and whatever the consideration given by the holder — But a bill given to a Creditor to keep him from taking steps to oppose the certificate, would be good in the hands of a holder for value without notice.—

8. Barn:^{a} & Cress:^{c} 345.
Teague. v. Hubbard

A member of a Joint Stock Company was employed by the Company as their agent to sell goods for them and received a Commission of two ℘ cent for his trouble, and one ℘ Cent del credere for guaranteeing the purchaser.— Having sold goods on account of the Company he drew on the purchaser a bill of exchange, payable to his the drawer's own order, and after it had been accepted, he indorsed it to the Actuary of the Company, and the latter indorsed it to another member, who was the managing director, and who purchased goods for the Company — The Company were then indebted to him in a larger amount than the sum mentioned in the bill.— The acceptor having become insolvent before the bill became due, the drawer received from him ten shillings in the pound upon the amount of the bill by way of Composition.— Held — 1st— That the indorsee being a member of the Company could not sue the drawer on the bill, inasmuch as it was drawn by the latter on account of the C^{o}, and that he could not recover the sum received by the drawer on the bill, because that money must be taken to have been received by him in his character of a member of the Company, and not on his own account.—

8. Barnw. & Cress. – 407. –
Edmonds. v. Lowe. –

In an action by the indorsee agt. the drawer of the bill it appeared by the plaintiff's case, that he had received it from the acceptor in discharge of a debt due from him – For the defendt. it was stated, that the bill was accepted in discharge of part of a debt due from the acceptor to the drawer – that it was indorsed and delivered to the acceptor in order that he might get it discounted, and that he delivered it to the pliff upon condition that if he procured Cash for it, he might retain out of it the amount of the debt due to him from the acceptor, but that he never did get Cash ~~from~~ for the bill. – Held – that the acceptor could not be examined as a witness to prove these facts, for although he was uninterested as to the amount – sought to be recovered on the bill, he was interested as to the costs against which he would have to indemnify the Defendant, if the pliff obtained a Verdict. –

* * *

3. Man. & Ryl. p. 58. –
Sigourney. vs Lloyd & al

Pay to A. or his order *for my use*, is a – restrictive indorsement, and the indorsee of A. must hold the proceeds to the use of the restricting indorser. –

* * *

9. Barn. & Cress. p. 44
Sharp. v Bailey.

Where the drawer of a bill of exchange made it payable at his own house – Held – that the Jury might fairly infer, that it was an accommodation bill, which made it unnecessary to give him notice of non-payment by the acceptor. –

* * *

1 Moody & Malkins
N. P. Ca. p. 61. –
Geill. v Jeremy & al'

Diligence & Notice.

A party receiving notice of the dishonor of a bill of exchange, need not give notice to the party above him, till the next post after the day on which he himself receives the notice, although he might easily give it that day, and there be no post on the following day. –

Bill of Exchange &ca

9. Barn: & Cress. 902.
Cocks & others. —
ar
Masterman & al

A bill purporting to have been accepted by A. was presented for payment to his bankers on the day when it became due; the latter believing it to be the genuine acceptance of A, paid the amount, but on the following day having discovered that the acceptance was a forgery, they gave notice of that fact to the party to whom they had paid the bill, and required him to return the money:— Held — That the holder of the bill is entitled to know on the day when it becomes due, whether it is honoured or dishonoured, and that no notice of the forgery having been given on the day the bill became due, the parties who had paid the money, were not entitled to recover it back.—

This a strong case — and there appear to be conflicting authorities, which require notice —

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2. Hy. Black. Rep. 140.
Master. v. Millar.

An alteration of the date of a bill of Exchange by which the day of payment would be brought forward, vitiates the bill, and no action can be maintained upon it after such alteration, though in the hands of an innocent indorsee for a valuable consideration.—

The principle of this case is not confined to negotiable instruments.— Thus an alteration will avoid a broker's Sale Note. Powell. v. Divett. 15 East. 30. or a Policy of Insurance. French. v. Patten. 1 Camp: N. P. C. 72.—

To

To avoid the instrument the alteration must be in a material part. Trapp. v Spearman. 3 Esp. N. P. R. 57.— Marson. v. Petit. 1 Camp. N. P. C. 82 (n) — and see Tidmarsh. v Grover. 1 M. & S. 735 — Cowie v. Halsall 4. B & A. 197.

And where the alteration is merely the correction of a mistake, it will not invalidate the instrument Kershaw. v Cox. 3 Esp. N. P. C. 246.— See also Knill. vs Williams. 10 East. 431.— Cole. v Parkin 12 East. 471. — Bathe. v Taylor 15 East. 412.— Downes. v Richardson 5. B. & A. 674. — Kennerly. v Nash. 1 Stark. N. P. C. 452. Jacobs. v Hart. 2 Stark. N. P. C. 45.— Brutt. v Piccard 1 Ry: & Mood. N. P. C. 37.—

2. Hen. Black. p. 565.
Muilman & al. v D'Equino

Diligence & Notice. —

The purchaser of a foreign bill of Exchange payable at a certain time *after sight*, which is publicly offered for negociation, is not bound to send it by the earliest opportunity to the place of its destination.—

There is no fixed time, when, a bill drawn payable at sight, or a certain time after, shall be presented to the drawee — but it must be presented within a reasonable time.— What is a reasonable time is a question for the Jury to decide from the circumstances of the Case — But *semble*, if the holder of a bill so payable, neither presents it, nor puts it in circulation, he is guilty of laches, and cannot recover upon it. (+) It is sufficient if notice of a bill drawn in England on a person in the East Indies, being dishonoured, is sent to England by the first *direct* and *regular* mode of conveyance, whether it be by an English or a foreign Ship — The holder is not bound to send such notice by the accidental, though earlier conveyance of a foreign Ship not destined to England.—

(+) Goupy. v. Harden.
7 Taunt. 159.—
Fry. v. Hill.
7 Taunt. 397.

Bill of Exchange &ca

7 Bing. Rep. 428.
Molloy. v. Delves

Variance. –

The acceptance was written on a bill of exchange, before the bill was drawn – The declaration described the transaction in the usual order of time – the drawing first and then the acceptance – Held no variance. –

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1 Moody & Malkins N. P. Ca. p. 87. –
Vandewall & al. v. Tyrrell

Payt. for honor of acceptor &ca

A party to a bill of exchange is not liable for money paid to his use by a person who takes up the bill for his honor, unless formal protest of payment to his honor be made before payment of the bill. –

see Chitty on bills. 7th edit. pp. 241. 567. –

* * *

Id. p. 226. –
Pike. v. Street

An indorsee of a bill or note, taking it under an agreement, not to sue the Indorser cannot sue such indorser, although the indorsement be unqualified. –

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5. Moore & Payne. 275.
Molloy. v. Delves

Variance.

In an action by the indorsee against the acceptor of a bill of exchange, the declaration alledged that one I. G. drew the bill which the Defendant <u>afterwards</u> accepted – it was proved that the Defendant accepted the bill in blank and before the drawer had signed his name to it – Held to be no variance. –

* * *

5. Carr: & Payne. 184.
Rolfe & al.' v Wyatt.—

giving time.

Semble.— That an indorsee for value, who receives part payment from the drawer of an accommodation bill, and takes a new bill to give time for the payment of the remainder, does not thereby discharge the acceptor, unless he was aware that the acceptance had been given for the drawer's accommodation.—

Quære— Whether if he knew that fact, it would make any difference?—

* * *

Id. p. 199
Sedgwick. v. Jager.

Where a bill is by the acceptor made payable at a particular place, which is not his residence, proof of presentment at that place is not sufficient evidence of dishonor in an action against the drawer, without proof of the acceptor's hand writing.—

* * *

3. Barn: & Adolph. 313.
Graves. v. Kay & another

A bill of exchange was drawn by A on B. and indorsed to C. — the bill was not satisfied when due, but part payments were afterwards made by the drawer and acceptor.— Two years after it had become due, D. paid the balance to C. the holder, and the latter indorsed the bill, and wrote a receipt on it in general terms.— Held, that that receipt was not conclusive evidence that the bill had been satisfied either by the acceptor or drawer, but that parol testimony was admissible to explain it; and it appearing thereby that D. paid the balance, not on the account of the acceptor or drawer, but in order to acquire an interest in the bill as purchaser, it might be indorsed by D. after it became due so as to give the indorsee all the rights which C. the holder had before the indorsement, and such indorsee might therefore recover from the drawer the balance unpaid by him.—

3. Barn: & Adolph. 660.
Anderson v. Langdale

The vendee of goods paid for them by a bill of Exch. drawn by him on a third person, and after it had been accepted, the Vendor altered the time of payment mentioned in the bill, and thereby vitiated it. – Held, that by so doing he made the bill his own, and caused it to operate as a satisfaction of the original debt, and consequently that he could not recover for the goods sold. –

6. Carr: & Payne. N. P. 70.
Adams v Oakes. –

A. the drawer of a bill gave it B. unindorsed to present it for payment. – B. did so, and got it noted. – Afterwards A. indorsed the bill, and gave it to B. to obtain payment. – Held – that this indorsement was sufficient to enable B. to recover in an action against the acceptor, notwithstanding A. said upon the trial that B. was indebted to him, and he did not give him any authority to bring the action. –

Billet. _ Solidarité. —

Poth. Cont: Change
№ 181. _ in fine

La raison est, que l'accepteur, en accedant par son acceptation dla lettre de change, à l'obligation contractée par le tireur envers le proprietaire de la lettre, n'y a pas accédé comme un simple Caution, il s'en est rendu debiteur principal conjointement et solidairement avec le tireur. — C'est pourquoi la decharge personnelle de l'obligation du tireur n'entraine pas la decharge de la Sienne, de même que la decharge personnelle d'un debiteur solidaire n'entraine pas celle de ses Codebiteurs. cites Tr. Obl. № 617. —

Id. _ № 212

Le proprietaire du billet de change, de meme que le proprietaire d'une lettre de change, celeritate conjungendarum actionum, peut exercer cette action en recours, non seulement contre le dernier endosseur du billet qui a passé l'ordre à son profit, mais solidairement contre tous les precedens. —

This course of proceeding by a joint action agst all the parties liable on the bill or note to the holder seems preferable to the course in England where the holder proceeds by several actions against each of the parties liable to him, so that he may have several actions for the same thing pending at the same time — Chitty on bills. p. 346. —