Billet

St Vast Comre sur les Coutumes 4e vol. p. 367.

Si un billet, non daté, doit être censé prescrit, ou s'il porte une obligation perpetuelle ? — On distingue, si c'est la même personne qui a signé la promesse, qui oppose la prescription, elle doit être condamnée, parcequ'elle ne doit pas se prevaloir, si elle n'a pas daté son ecrit, suivant l'axiome de droit, nemini fraus patrocinari debet; et on presume que le Créancier s'est contenté de voir la somme qui lui est dûe, assurée, sans prendre garde si l'ecrit etoit daté; mais qu'à l'egard de l'heritier du debiteur, il est en droit d'alleguer la prescription, parcequ'alors le Créancier doit s'imputer, s'il a laissé mourir son debiteur sans lui en faire la demande.

Id. p. 340. —

M. de Parence dit, d'apres de Renusson, Tr. des Props: que deux marchands, quoique non en Societé, — signant un billet, s'obligent solidairement, quoi qu'il n'en soit pas fait mention. — Arret du Parlemt de Toulouse du 17 Juin 1672. a

Id. — p. 437. —

M. de Parence dit, d'apres Bardet, que cedule sous signature privée de plusieurs marchands pour marchandises, emporte la Solidité, quoique non exprimée. — Arret du 18 Janvre 1633. liv. 2. C. 3 — Jour. du Pal. tom. 2. p. 51. —

Billet. — Solidarité

The parties to a negotiable note being liable solidairement to the holder may be sued jointly or severally.—

Denizt. vo. Endosseurs No 11. — Le dernier porteur d'une lettre de change ou billet de Commerce, a pour debiteurs solidaires tous les endosseurs, tireurs et accepteurs — mais il doit diriger son action dans les tems reglés &c —

Repse vo. Billet. pp. 382. 3. — C'est pourquoi si le debiteur du billet ne paye pas à l'echeance, la personne qui en a la proprieté a une action en recours, tant contre celui qui a endossé le billet à son profit que contre tous les endosseurs précedens — elle est en droit de les faire condamner solidairement à la payer. —

Id. vo. Endossement p. 709. bottm 4 2e col. Nous avons deja dit plusieurs fois, que le dernier porteur d'une lettre ou billet de change a pour garans solidaires tous les endosseurs, tireurs, et accepteurs. &c —

p. 712 Case cited of Dlle Vanackre, who sued the drawer and endorser — pour les faire condamner solidairement à lui payer la valeur du billet. &c —

Poth: Cont: Change No 115. — L'acceptation que celui sur qui la lettre est tirée fait de cette lettre, renferme un Contrat entre — l'accepteur et le proprietaire, par lequel l'accepteur accede à l'obligation du tireur de la lettre, et s'oblige en consequence, conjointement et solidairement avec le tireur envers le proprietaire de la lettre, à lui payer en acquit du tireur la somme portée par la lettre à son echeance, et au lieu ou elle est payable. —

Carrier. — Common.

8 Taunt. 144. — Smith. v Horne & al. } In an action of assumpsit against a Carrier evidence to prove negligence is admissible — and a gross neglect, will defeat the usual notice given by Carriers for the purpose of limiting their responsibility. —

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8 Dow: & Ryl. 223. Marsh. v Horne

A Common carrier who has given public notice that he will not be accountable for the loss of any parcel above the value of £5. — unless — entered and paid for accordingly, is not liable for the loss of a parcel worth more than £5. delivered to him by a person informed of his notice, and accepted by him without any demand for the carriage, although at the time of such acceptance he knew that the value of the parcel exceeded £5. —

Id. — p. 289. Helsby. v Mears & al.

A special contract made by one of several joint Coach proprietors for the carriage of parcels, is binding upon them all, though some of them became proprietors after the Contract was made. —

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3. Barg. Rep. 2 Rowley. v Horne

10 Moore's Rep. 247 S. C. —

To fix a plaintiff with knowledge of a general notice by which a Coach proprietor had limited his responsibility, it was proved that the plaintiff had taken in for three years a newspaper in which the notice had been advertised once a week — The Jury having nevertheless found a verdict against the proprietor, the Court refused a new trial. —

Carrier — Common.

8. Dowl: & Ryl. — 526.
Sissons. v. Dixon & al'

In case, against Carriers for the loss of goods delivered to them in Ireland to be conveyed to England, the question was whether the importation of the goods was illegal, unless they had been entered at the Custom house. — Held — that as illegality can never be presumed, it lay upon the Carriers, who raised the question, to prove that the goods had not been entered.

Ca: Sa: discharge.

Where a defendant taken on a Ca. Sa, is discharged out of Custody by consent of the plaintiff, the debt itself is extinguished: And therefore a promise by a third person to pay that debt on condition of that discharge is an original promise and not within St. 29. Ch. 2d ch. 3. s. 4. 1 Barn. & Ald 297. Goodman & al. v. Chase.

If the prisoner be permitted to go out of prison with the consent of the plaintiff, neither the Sheriff nor the plaintiff can afterwards retake him, for he is thereby discharged from the Judgment. Therefore if debt on a Scire facias be afterwards brought upon the Judgment, or if it be pleaded as a Subsisting debt, the Defendant may plead that he was discharged out of Custody by the plaintiffs consent. Or if he be afterwards taken in execution, the Court will upon motion set aside the execution and discharge him out of Custody. — 1 Show. 177. Buxton v. Home. 2. Mod. 136. Bassett v. Salter — 4. Burr. 2482. Vigurs v. Aldrich. 1 Term Rep. 525. 526. Clarke v. Clement — 1. Bos. & Pul. Rep. 242. Dacosta v. Davis —

And an agreement by the Defendant on his being discharged out of Custody by the plaintiffs consent that the Judgment should be revived, is held to be void — Barnes. 205. Thompson, v. Bristow. —

But

But it is said that the plaintiffs consent must be previous to the escape, for a subsequent assent by him is no bar to debt, or a Scire facias, upon the Judgment. - 1 Salk. 271. Scott. v. Deacock. —

It has been held that in case of a negligent escape a voluntary return of the prisoner into prison before action brought, is tantamount to a retaking on fresh pursuit. — Com. Rep. 554. — Chambers. v. Gambier — 2 Term Rep. 129. Bonafous. v. Walker. — 2 Blank. 1050. —

With respect to what shall constitute an Escape it has been adjudged, that if a person taken in execution is at large for ever so short a time, as well before as after the return of the writ, it is an Escape — But in arrest upon mesne process, it is sufficient if the Sheriff, brings in the body on the day of the return, and therefore in Actions for escape on process of Execution, the form is "ad "largum ire permisit" but on mesne process — "ad largum "ire permisit, et non comperuit ad diem" — 2. Black. 1049. 1050. — Hawkins. v. Plomer — 2. Bos. & Pull. 35. Parient v. Plumbtree — Ibid. 246. Allingham. v. Flower - 2 Saund. 61. c. n. 4.

Ca: Sa:

2. Bl. Rep. 836.
Hunt & al. Exrs
Kendrick. v

Ca: Sa may be amended after it has been executed. —
See cases referred to

Certiorari.

A Certiorari to remove an order of Sessions, must be moved for within Six calendar months after such order of Sessions made, and Six days notice of such motion must be given to the Justices pursuant to 15. Geo. 2d. ch. 18. s. 5. — notwithstanding the order of Sessions was made subject to the opinion of the Court on a Case to be stated, which Case was afterwards stated and settled by the Justices at Sessions. 1. M. & Selw. 631. — The King. v. Justices of Sussex. — see also. p. 734.

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1 Coups. 24
Rex. v Smith

No Certiorari lies to the Justices to remove an Indictment upon the St. 30. Geo. 2. c. 24. for the more effectual punishment of persons obtaining goods or money under false pretences. —

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2. T. Rep. 89
Rex. vs Eaton

A Certiorari is granted of course on the application of the Crown; but not so where a defendant applies, but he must lay some ground before the Court supported by affidavit. — see also. 1 Barn: & Cress. Reps. p. 145. —

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1 Barn: & Cress: Reps. p. 182.
Rex
v
Inhabitants of Pennegoes
&c —

The Court will not grant a Certiorari to remove an Indictment from the Quarter Sessions after Judgment has been pronounced in that Court.

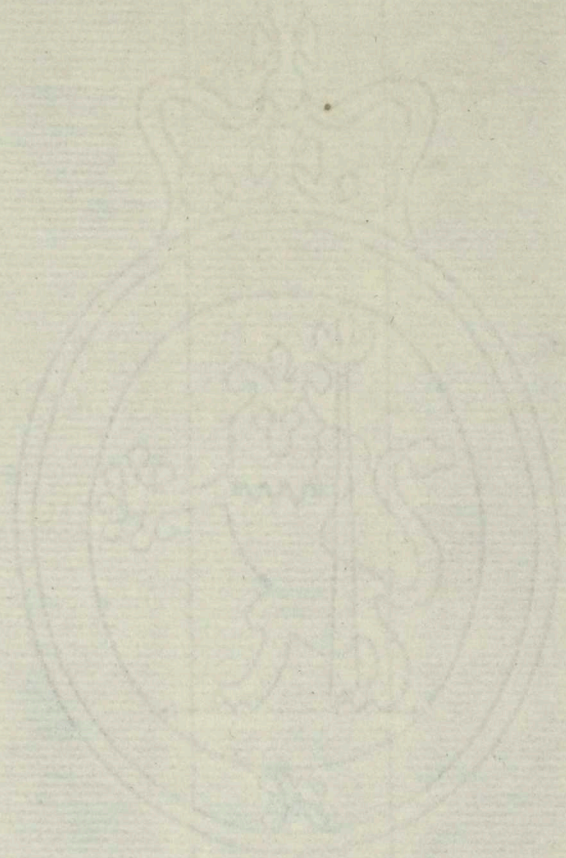
Certiorari

4. Barn: & Cress. Rep p. 403.

Palmer & another v Forsyth & Bell

A Cause cannot be removed by Habeas Corpus cum causa, from an Inferior Court unless the Defendt is actually or constructively in prison.—

Where a Certiorari issued to remove a Cause from an Inferior Court, and the Court below returned a Copy of the Record and not the record itself, the Court of K. B. quashed the writ and return, and awarded a procedendo —



Challenges to Jurors &c

4 Barn. & Ald. 471. King. v. Edmonds & al. — No challenge can be taken either to the array, or to the polls, until a full Jury have appeared; and therefore where the challenges are taken previously, they are irregularly made. —

The disallowing of a challenge, is not a ground for a new trial, but for a venire de novo: and every challenge must be propounded in such a way as that it may be put at the time upon the nisi prius record, so that the adverse party may either demur, or counterplead, or deny the matter of challenge; in which last Case only triers are to be appointed — And therfore where the challenges were not put on the record, the Defendants were held not to be in a condition to aske the opinion of this Court, as a matter of right, upon their sufficiency. —

There can be no challenge to the array, on the ground of misindifferency in the master of the Crown Office, he being the Officer of the Court expressly appointed to nominate the Jury — The only remedy in such a case is, to apply to the Court by motion, to appoint some other Officer to nominate the Jury

The master of the Crown Office in nominating the Jury, selected the names of the Jurors, and did not take them by chance from the freeholders book — he also took those only whose names had the addition of "Esquire", or of some higher degree, and included some persons who were

in

in the Commission of the Peace — Held that in so doing, he was perfectly right — He also included in his nomination, some persons, who as Grand Jurymen, had found the Indictment and persisted in his opinion as to their sufficency unless the Crown would consent to abandon them, which was done, and others were then substituted in their places — Held that he was wrong in his opinion, but that there was no ground for presuming partiality. —

The Sheriffs officer had neglected to summon one of the 24 Special Jurymen returned on the pannel — Held that this was no ground of challenge to the array for unindifferency on the part of the Sheriff

Held also, that it is not competent to ask Jurymen (whether Special Jurymen or talesmen if they have not, previously to the trial, expressed opinions hostile to the Defendants and their Cause, in order to found a challenge to the polls on that ground, but that such expressions must be proved by extrinsic evidence. —

Christian Name

1 Raym. 562.
Rex. v. Newman

A person was indicted by the name of — Elizabeth Newman, alias, Judith Hancock, M^r King moved to quash it, because a woman cannot have two Christian names — and for this reason the Indictment was quashed.

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2 Raym. 771.
Poitvin v^s Tregeagle

The Christian name of the plaintiff cannot be amended in a declaration in K. B. by the by. —

The reason is plain — for if the plaintiff's name is mistaken it is no declaration at his Suit, and if Peter will declare by the by in the name of John, it is not Peter's Suit, so he has no right to move to amend. —

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4. Barn. & Ald. p. 536
Reynolds. v. Hankin

An arrest of a party, described in a fictitious special Capias, and in the affidavit to hold to bail by the initials of his Christian name only, is irregular.

Clerkships.—

5. Barn: & Ald. 538
In the matter of
Taylor. Gent. &c

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 22. Geo. 2. ch. 46. S. 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 —

By St. 22. Geo. 2. ch. 46. S. 8. it is directed that every person who shall be bound to serve any attorney, shall during the whole time and term of service, continue and be actually employed by such attorney in the proper business, practice or employment of an attorney — and by sec. 10. before he can be admitted, he must make an affidavit, that he has actually and really — served during the whole term of five years. —

Per Curiam — It is very important, that we should require these provisions to be strictly complied with — Here the party having an employment under the Crown during the whole time could not with propriety have made the requisite affidavit — And therefore, however much we regret it, we think it our duty to make the rule absolute for striking his name off the roll. —

See Case. Ex parte John Hill. 7 T. Rep. 456. — where under St. 2. Geo. 2. c. 23. The service of five years required by that St. was not complied with, by the Clerk serving part of the time with another attorney

with

with his masters consent, and the rest of the time
with his master — and see opinions held by
the Judges on this Case. —

Comity of Nations.

Comitas, or Comity, as used in international law, signifies the Courtesy of Nations, by which effect is given in one Country to the laws & institutions of another, in questions arising between the natives of both —

This Comity takes place in all contracts made in one Country when the execution of them is demanded in another — and so recognized by the law of England in general — see. Feaubert. v. Thurot. Prec. Cha. 207. — Freemoult v. Dedire. 1 P. Wms 429. — Alvis. v. Hodgson. 7 T. Rep. 241. — Male. v. Roberts. 3. Esp. 163. — Inglis. v. Usherwood. 1 East. 515. —

In cases of Bankruptcy also, it has been repeatedly held that the bankrupt laws of one Country, are to be recognized and carried into effect in another — Sill. v. Worswick. 1 H. Bl. 665. — Hunter. v. Potts. 4 T. Rep. 182. — Richards. v. Hodgson. 4 T. Rep. 182 cited — Potter. v. Brown. 5 East. 124. — Burrows. v. Semino. 2 Stra. 733. — see also. Montag: Dig. Bank. Laws. 324. cum notis. —

Again the same rule has been acted upon in the distribution of personal property in cases of intestacy where it has been held, that the law prevailing in the Country where the intestate was domiciled, must govern the distribution of his property wherever found. — Gordon. v. Gordon. 3 Swanst. 400. — Somerville. v. Somerville 5 Ves. 750. — Brodie. v. Barry. 2 Ves. & B. 127. — Ryan. v. Ryan. 2 Phil. 332. —

Commencement de preuve par ecrit. —

It is difficult to lay down a general rule applicable in all cases, as to what shall be considered a commencement de preuve par ecrit this must differ according to the different circumstances of every case — there are however some general principles applicable to all cases.

Rodier on Tit. 20. art. 3. Ord^ce 1667 Quest. 4^me p. 285.

On peut appeller ainsi, tout acte, ou toute ecriture de la part des parties du Proces, ou autres interessés, d'ou il resultat quelque preuve, quoique non suffisante, de la demande formée, et pour le dire en un mot, c'est une preuve commencée, mais preuve par ecrit. — L'ordonnance n'a rien fixé de plus; elle a laissé aux Juges à determiner de quelle qualité devoit être ce commencement de preuve par ecrit — cela n'est pas facile. — Il est des auteurs, comme Momac, sur la Loi. 9. ff. de rebus creditis, qui ont crû que le moindre commencement de preuve par ecrit suffisoit, pour faire recevoir la preuve par temoins — Si vel tantillum scripto cui fides adhibetur, de re controversa constiterit. — Danty dans ses Observations sur Boiceau. p 2. ch. 1. — refute amplement cet avis, et donne de fort bonnes regles à cet egard — Nous ne pouvons mieux faire que d'y renvoyer le lecteur — Voici neanmoins le precis de ces regles

1°. Que l'ecrit soit de la main de quelqu'un de ceux qui ont interet dans la Contestation, en quelque tems que cet ecrit soit fait. —

2°. Que cet ecrit concerne en quelque chose le fait dont s'agit. —

3°.

3°- Qu'il n'ait rien d'opposé à l'intention de celui qui s'en sert.-
4°. Qu'il s'accorde avec les circonstances manifestes du fait.-
5°. Qu'il n'y ait pas de soupçon qu'il ait été fabriqué exprès pour se préparer un commencement de preuve par écrit.-

Serpillon sur same art. p. 321.-

Un commencement de preuve par écrit, c'est lorsque l'on a un titre par écrit, non de la vérité totale du fait, mais de quelque fait qui y conduit ou qui en fait partie - C'est alors au Juge à decider si ce fait est suffisant pour le regarder comme un commencement de preuve, et s'il peut tendre à la decision et à la preuve par temoins.-

Le commencement de preuve par écrit doit resulter d'un acte public, dans lequel le Defendeur a été partie, ou d'un acte sous signature privée duquel on puisse induire de fortes presomptions de la sincerité de la demande.-

L'auteur du Tr. des Ob. N°. 767 rapporte plusieurs examples judicieux du commencement de preuve par écrit- Un particulier en fait assigner un autre en deguerpissement d'un heritage ; Le Defendeur soutient qu'à la verité l'heritage lui a été vendu par le Demandeur, mais qu'il lui en a payé le prix, et pour commencement de preuve par écrit, il produit une piece signée par le demandeur, suivant laquelle il lui a promis de lui vendre l'heritage - Cet acte ne prouve à la verité, ni la vente, ni le paiement du prix, mais etant jointe à la possession du Defendeur, il forme un commencement de preuve par écrit.-
2de. Example - Je vous demande Cinquante ecus pour

pour prix des marchandises que je vous ai vendues — Je n'ai d'autre preuve que votre billet qui porte — "Je "promets payer a ---- 150 livres pour prix de telles et "telles marchandises qu'il m'a livrées."

L'Ordonnance, par commencement de preuve par ecrit, a entendu parler de quelque ecrit, capable de rendre les faits vraisemblables, et en partie prouvés. —

Les ecritures privées qui ne sont pas signées, forment contre celui qui les a ecrits, un commencement de preuve par ecrit — par example, Je demande à quelqu'un trente pistoles, que je pretends lui avoir prêtées — Je rapporte un billet par lequel il reconnoit le prêt, mais il n'est pas signé, quoique ecrit de sa main — Ce billet ne suffit pas pour justifier entierement le prêt, mais il peut, suivant les circonstances, former un commencement de preuve par ecrit —

C'est la qualité du fait qui doit faire refuser ou accorder la preuve — suivant Monac- Si scripto vel tantillo quale quale illud sit affecta, coptaque est probatio. —

Cites several instances of what was held to be a commencement de preuve par ecrit. —

—

Jousse — on this art. —

says — De meme les Journaux des marchands & artisans pour raison de leurs fournitures, peuvent être regardés — comme des Commencemens de preuve par ecrit — Ce qui depend des circonstances et de la prudence des Juges. —

—

N. Denis[t]. V[o] Commenc[t]. de Preuve —

Toutes les fois que l'on a la certitude d'un fait qui rend vraisemblable un autre fait qu'il s'agit de prouver; on dit, qu'il y a commencement de preuve. ~~par ecrit~~

Repn de Merlin Eo. verbo. —

Cette expression designe des indices qui font presumer la verité d'un fait, ou d'une promesse dont la certitude n'est

n'est pas encore suffisamment etablie. —

Ces indices peuvent être, ou par ecrit, ou par une existence physique, ou par des faits preliminaires qui ont une relation à l'objet principal qu'il s'agit de verifier. —

4 Henrys. 24 q. Plaid: 1A. —

Dans toutes sortes d'affaires la preuve testimoniale est reçue, quand il y a un commencement de preuve par ecrit, soit sous signature privée ou autrement. Il faut dire la même chose des marques que font les Paysans, et les artisans des tailles, des coches et autres semblables — car il suffit que la verité soit constante. —

Compensation — Set-Off —

2. Black. Rep. 695. 6. Rice. v. Shute. — on note (b)

The debts to be set off must be mutual, and due in the same right; and therefore a joint debt cannot be set off against a separate demand or vice versa — see 2 Taunt. 170. Kinnerley. v. Hossack. — 4 Selw. N. P. 139. (edit 1812) —

But a debt due to a Defendant, as surviving partner, may be set-off against a demand against him in his own right. 5. T. Rep. 493. Slipper. v. Stidstone —

This would not hold in Canada, on account of the interest of the representatives of the deceased partner in such debt, unless we admit a right of action in ye. Survivg. Partner.

It is also held in England, that a debt due from a plaintiff as surviving partner, may be set off against a debt due to him in his own right. — 6. T. Rep. 582. — French. v. Andrade. —

Composition between Creditors & Debtor.

2 Starkie 417.
Wood. v Roberts.

If one Creditor by undertaking to discharge his debtor, induce another Creditor to discharge that Debtor on receiving a composition for his debt, he cannot afterwards recover from that debtor. a

Constable.

1 Holt. Rep. 478
M^c Coughan v
Clayton & al - 8

In action of trespass for false imprisonment a Constable may justify under the general issue, though he acted without a Warrant, provided there were a reasonable charge of felony made, — although he afterwards discharges the prisoner without taking him before a magistrate, and although it should turn out in fact that no felony was committed. —

But a private individual who makes the charge and puts the Constable in motion, — cannot justify under the general issue — he must plead the special circumstances by way of justification, in order that it may be seen whether his suspicions were reasonable. —

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3. Barn. & Ald. 330
Parton v. Williams & al

A Constable acting under a Warrant, commanding him to take the goods of A. takes the goods of B. believing them to belong to A. — Held that he was entitled to the protection of the St. 24. Geo. 2. ch. 44. s. 8. and that an action against him must be brought within 6 Calendar months. —

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9 Dowl: & Ryl. 487.
Beckwith v Philby & al

A Constable may arrest a person upon a reasonable suspicion of felony and take him before a magistrate, although no felony has in fact been committed. —

Conquered Country — authority of the King

A Country Conquered by the British Arms becomes a dominion of the King in the right of his Crown, and therfore necessarily subject to the Legislature the Parliament of Great Britain.—

The conquered Inhabitants, once received under the Kings protection, become Subjects, and are to be universally considered in that light, not as enemies or aliens.—

The articles of Capitulation upon which the Country is surrendered, and the articles of peace by which it is ceded, are sacred and inviolable, according to their true intent and meaning.—

The law and legislative Government of every dominion equally affects all persons and all property within the limits thereof, and is the rule of decision for all questions which arise there.— Whoever purchases, lives, or sues there, puts himself under the law of the place.— An Englishman in Irland, Minorca, the Isle of Man, or the Plantations has no priviledge distinct from the natives.—

The laws of a Conquered Country continue in force until they are altered by the Conqueror.—

If the King (that is, without the concurrence of Parliament) has a power to alter the Qld and to introduce new Laws in a Conquered Country, which is a legislation subordinate to his own authority in Parliament — yet he cannot make any new Law or change contrary contrary to fundamental principles He cannot exempt an Inhabitant from that particular dominion, as for instance from the Laws of Trade, or from the power of Parliament, or give him priviledges exclusive of his other Subjects.—

If

It is left by the Constitution to the King's authority to grant or refuse a Capitulation: If he refuses, and puts the Inhabitants to the Sword, or exterminates them, all the lands belong to him. If he receives the Inhabitants under his protection, and grants them their property, he has a power to fix such terms and conditions as he thinks proper. He is entrusted with making the treaty of Peace; He may yield up the Conquest or retain it upon what terms he pleases — These powers no man ever disputed, neither has it hitherto been controverted that the King might change part or the whole of the Law or political form of Government of a Conquered dominion.

Where the King by any act gives up or transfers his subordinate power of legislation over a Conquered Country, to a Governor Council & Assembly or any other Body, he cannot afterwards resume such power.

See. 1. Cowp. 204. Campbell. v. Hall.

29 July 1815 -

Of Contempts — & proceedings thereon &c —

A summary course of proceeding is generally taken in cases of Contemptuous language and reflections applied to those who preside in Courts of Justice, or to their Judgments and proceedings — And such Contempts are either direct — where a Judge or — Magistrate is openly insulted in the execution of his Office — or Consequential, — where the offender by speaking or writing contemptuously of the Court or its Judges in their Judicial capacity, reflects upon the authority by which they were appointed, and creates a prejudice as to the administration of Justice. —

And 1st Where the insult is offered in the face of the Court, by the use of Contumelious language, demonstrating that want of respect and regard which is essential to the preservation of its authority, the Offender, it is said, may be instantly apprehended, fined, or imprisoned, at the discretion of the Judge, without further examination — Starkie on Libels. 579. 80. — Cro. Eliz. 78. 2. Roll. Ab. 78. 4 Bl. Com. 286. — Staun. P C. 73. b. -

This

This doctrine appears to extend to all cases where contempt words are spoken in the presence of a magistrate in the actual discharge of his duty.— As if a man should say to a Justice of the Peace in the execution of his Office— "You are a rogue and a liar".(a) Or tell the Judge of a Court-Leet, that, "he is a fool",(b) "or is forsworn"(c) Or, say, If I cannot have justice here, I will have it elsewhere.(d)

(a) Str. 420. Ow. 113. Mo. 470 Cro. Eliz. 581.

(b) Cro. Eliz. 78.—

(c) 2 Rol. Ab. 78.

(d) 1 Sid. 144. 1 Keb. 508.

And though the Judge may elect to proceed in this summary mode, yet, if he does not, the Offender is liable to an Indictment, since, wherever a Justice may commit for a Contempt, the party may be indicted for the misdemeanor. Str. 420.—

2ly. Where the Contempt is not offered immediately in the face of the Court, but consists, in insolent comments upon the Court or its proceedings, or in the indecent publication of matters still pending, the effect of which may be to create prejudice and partiality, and thereby to hinder the fair administration of Justice, the proceeding is by attachment, which is a process, from a Court of record, awarded by the Justices at their discretion, upon a suggestion, or upon their own knowledge. 2. Hawk. 213. Wils. 300.— 1. Com. Dig. Vo Attachment for Contempt. (A.1.)

It appears generally, that an attachment may be granted by any of the Superior Courts of Westminster Hall, against any persons guilty of Contempts against them. — When a party not present in Court, publishes any Contemptuous expressions against the Court or its proceedings, the Court will, upon an Affidavit of the fact, make a rule upon him to shew Cause why an attachment should not be granted agt. him — And in some Cases, where the Offence is of a very flagrant nature, will grant an attachment in the first instance. — Starkie. 581.

A rule having been obtained to shew Cause why an inform.n should not be granted, the Defendt. on being served with the rule, shewed his disregard to it in very contemptuous language upon a motion for an attachment grounded upon this contempt, Northey, Attt. Genl. insisted, that he ought to be first heard to shew Cause agt. it, but the Court said, He shall answer it in Custody, for it is to no purpose to serve him with a second rule who has despised the first — it would be to expose the Court to further Contempt — 1. Salk. 84. —

On a note to this Case, it is made a Quere. If the attachment goes absolutely, when the contemptuous words are only sworn to by one witness — Vid. Str. 1068. In 3. Atkyns 219, the Court under

that

that circumstance only granted a rule to shew cause —. A person cannot come in and confess the Contempt and submit directly to the Judgment of the Court, but is obliged to answer Interrogatories; Rex. v. Beardmore. 2. Bur. 796 — except in case of a rescue and contempt in face of the Court. Rex. v. Elkins. 1 Bl. Rep. 640..

An Attachment was granted against the plaffs Attys for putting the name of an Atty of K.B. to the process without his authority. 1 Bur. 20. Openheim q. t. v. Harrison.

And where the Court apprehend that the attachment will be forcibly resisted, they will order the Sheriff of the County to take with him a force sufficient for its due execution — But it seems that the Court will not grant an attachment in the first instance unless the words be sworn to by two witnesses, since otherwise it would be in the power of one hardy man to hinder another of the Opportunity of defending himself before he was deprived of his liberty — And when Contemptuous words are spoken of the Court, the rule for attachment is granted in the first instance — but where they are spoken of its process, a rule to shew Cause only — And the Court will punish for Contemptuous words spoken on the delivery of a declaration in Ejectment Str. 567. —

1 Str. 185. —

Id. —
3 Atk. 219.
Sayer R. 11A.

Id. 428. —
Str. 185 — 1068.

All Courts of Record have a discretionary power over their own officers, and are to see that no abuses be committed by them which may bring disgrace on the Courts themselves; therefore if a Sheriff, or other Officer, be guilty of a corrupt practice in not serving a writ — as if he refuse to do it unless paid an unreasonable gratuity from the pltff, or receive a bribe from the Defendant, or give him notice to remove his person or effects in order to prevent the servic of any writ; the Court which awarded it, may punish such offences, in such manner as shall seem proper, by attach^t. 1 Bac. Abr. 283. —

Sheriffs and other Officers are liable to an attachment for an oppressive or illegal practice in the execution of a writ; as using needless force, violence or terror; treating persons under arrest basely and inhumanly, extorting money from them &c^a —, or making an arrest without due authority, as by color of a blank warrant filled up without the privity or subsequent agreement of the Sheriff. Id. — But there may be some special circumstances which may induce the Court to excuse it — as, that the practice was so, and that it was done to prevent the party's having notice of the arrest. 2. Hawk. 215. —

1. Com. Dig. Vº Attorney. (B. 13.) An Attorney being an officer of the Court, if he attempts any thing which he cannot or ought not to do, it will be a Contempt to the Court, for which an attachment shall go agt. him

Ib. So an attachment lies against any one who abuses, or does not pay obedience to the process or injunction of the Court.

" So if he misbehave himself in view of the Court. —

Ib. (B. 15) If he takes money of his client, and afterwards wholly refuses to intermeddle with his business, he shall be struck out of the roll. Mod. Ca. 187.

" If he refuse a re-delivery of writings entrusted to his perusal tho' some concern himself principally, he shall be obliged to re-deliver them. 1 Salk. 87.

" Or which were delivered to him by order of another person 2. Mod. Ca. 310. -

" So where they were entrusted to his care and he gives a receipt for them, to re-deliver them on demand. Str. 621.

" But if he deliver them to his own client from whom he received them, to make an assignment, the other party cannot call upon him for them. Str. 547.

" If a man does a thing, which deserves his being struck out of the Role, it may be examined and determined in a Summary way. per Holt. Mod. Ca. 187. -

So

H. So the Court will award an attachmt. agt. him for male & fraudulent practice. — And he shall pay costs thereupon. — or shall stand committed. —

" But an attachment shall not be granted before a day allowed for Cause. Mod. Ca. 16. —

" Nor will the Court proceed against him in a summary way, unless in Cases of gross negligence, ignorance, or — blameable intention. 4. B. M. 2060. 2 Bl. Rep. 780. —

" An Attorney is not punishable for letting a Judgt go for a just debt, tho' he has orders to plead. Barnes. 38.

Bridgman's Ab. Jur. Vo Contempt

Sup. Vin. Ab. Vo Contempt p. 237.

A publisher of an advertisement as to proceedings in the Court of Ch. was committed to the Fleet prison for a contempt — but was discharged on submission, disclosing every thing and paying costs — Farley's Case. 2. Vez. 520.

H. The calling an advertisement in the Gloucester Journal a hue and cry after a Commission of charitable uses — was held to be a libel in the printer, and the Court committed him. —

The inserting an advertisement in the Newspapers offering a reward of a £100. &c — to any one who will discover and make legal proof of a marriage in question in the Court of Chancery, and which marriage had been before adjudged

good

good in the Spiritual Court, and also in the Court of Delegates and a verdict given at the bar of the C. B. in its favor, was by L^d C. Parker held to be a reproach to the Justice of the nation and a thing insufferable, and a Contempt of the Court, and that in Justice the inserter must stand Committed. Wm^s Reps. 675. Pool. v^s Sacheverel

8 Mod. Rep. 123. King. v^s Wiatt.

Upon a motion for an attachment ag^t the Defend^t for publishing a libel against a D^r of Divinety in the University of Cambridge, a rule was made upon him to shew Cause on such a day why it should not be granted.— He now moved by his Counsel to discharge that rule upon an affidavit, that his fault was not wilful, but merely through ignorance; that he had the libel from one Crownfield a printer in Cambridge, that it was in latin, which the Defendant did not understand, and that he did not know who was the author otherwise than by a letter which he received from the printer, and which was now annexed to his affidavit, by which letter it appeared that one D^r Middleton was the author: So that having shewed how he came by this libel

and

and having told all that he knew of the author, for that reason it was insisted on his behalf that the rule should be discharged, and that the printer should be prosecuted. —

But the rule was continued on the Defendant until he made out his allegation against the printer, who was — therefore joined in the rule, that both of them might be before the Court —

In the next Term, Dr. Middleton appeared, and confessed in Court that he was the author of the book — and thereupon the rule was discharged against the Defendt and the printer; and the Doctor was committed until further consideration of the matter. — And within a few days afterwards he was brought into Court and fined fifty pounds, and bound to his good behaviour for a year. — Fort. Rep. 201. —

2. Barnard. 43. Mich. 8. Geo. 2. 1732. K. B. — Starkie on Libels 582. —

A rule was granted to shew Cause why an attachment should not issue against Elizabeth Mayer and Dowling, for publishing a libel on the proceedings of the Court in the trial of Lady Lawley. — Elizabeth Mayer produced an — affidavit, stating, that her husband kept a pamphlet shop, that in his absence Vaughan came to the Shop and asked for Lady Lawley's trial; that she did not know that it

was

was in the Shop, but searching found it, and refused to sell it to Vaughan, but permitted him to read it — The Court said, it was beyond all question that attachments had been granted in such cases, and particularly alluded to Dr Middleton's case — The Court in general agreed to discharge the rule as to her, and said they could not make the rule absolute as to Dowling — because there was no affidavit of Service. —

Sup. Vin. Abr. Vo Contempt. p. 236.

Upon a motion against the printers of two public papers, that the one, who was then in the Fleet, might be committed a close prisoner; and that the other, who was at large, might be committed to the fleet, for publishing a libel against parties to a Cause then depending, by taxing them with turning affidavit men &c.; it was insisted that the publishing such a paper was a high Contempt of the Court, for which the publishers ought to be committed. — Per Ld Ch. Hardwicke. — Nothing is more incumbent upon Courts of Justice than to preserve their proceedings from being misrepresented; nor is there any thing of more pernicious consequence than to prejudice

the

the minds of the public against persons concerned as parties in Causes, before the Cause is finally heard. That it had always been his opinion, as well as that of his predecessors, that such a proceeding should be discountenanced. But, that notwithstanding it should be a libel, yet, unless it was a contempt of the Court, he had no cognizance of it; For whether it was a libel against public or private persons the only method was to proceed at law. — That upon the whole there was no doubt this was a contempt of the Court. That if these printers had disclosed the name of the person who brought the paper to them, there might have been something said in mitigation of their offence; but as they thought proper to conceal it, His Lordship ordered the party at large to be committed to the Fleet, and the other to be taken into close custody of the Warden.
2. Atk. 469. —

Vin. Ab. Sup. Vo contempt. p. 225. —

Two people put in bail in feigned names, and because there were no such persons, they could not be prosecuted for personating bail on St. 21. Jac. 1. c. 26. — So the Court ordered them, and the attorney to be set in the Pillory, which

which was done accordingly. C.B. Str. 384.—

H. p. 227. An attachment was granted against the Constables of Scarborough for not obeying the Ch. Justices warrant directed to all Constables throughout England, to arrest a man for felony.— Disobedience to a Judges — warrant is a Contempt of the Court.— Rex. v. White & al. T. T. 7. Geo. 2. Rep. temp. Hardwicke. 42.—

H. p. 230. It is a contempt to impose on the Court a — fictitious action, though the action be upon a real demand; for the reality of the debt does not make a material difference, if the action be brought in deceit of the Court; and in the principal case, the attachment issued both against the pltf & Defendt and the attorney who acted for both parties. Cox. v. Phillips. E. 9. Geo. 2. Rep. temp. Hard. 237.—

H. p. 236. And the trying of a feigned issue without the consent of the Court, is a Contempt of the Court, and after such a trial they will stay the proceedings. Hoskins. v. Ld. Berkley. 4. T. Rep. 402.—

Ib. p. 232. Where a Sollicitor has been negligent in managing a clients business, the Court of Chancery, like the Courts of law, can grant an attachment against him. — Floyds. v. Nangle. 3. Atk. 568. —

Ib. p. 233. In regard of persons irregularly summoned to appear as witnesses — Wright. J. said, a person not properly subponad is to be looked upon only a Stander-by — and it is no contempt of a Court of N. Prius, for a Standerby to refuse to be examined, much less of this Court — Bowles. v. Johnson. Bl. Rep. 36. —

Ib. p. 234. It is a contempt in a bailiff, to refuse to make an affidavit of the service of a Subpona upon a party to appear and give evidence to the Grand Jury, such an affidavit being necessary in order to found a motion for an attachment against that party for his non-appearance there: for a bailiff is in a very different situation from another man, being an Officer of the Court — And if such refusals were justifiable, and it were left to the — bailiffs option to prove or not the service at his pleasure, parties who apply for Justice would be in a very unsafe condition — The King. v. Rudge. Bl. Rep. 432. —

It is a contempt of the Court, for a person to shout or to wave his hat, or halloo there; and one who did so, upon the acquittal of a prisoner was taken into Custody and fined £20. — Thompson's Case, 6 Term R. 330. —

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1 Raym. 148, King. v. Burdett

It is a great contempt to circulate papers relative to the merits of a Cause upon the eve of its trial —

It is a contempt in the Jury to take any evidence with them upon retiring from the bar without either the leave of the Court or consent of the parties. —

1 Com. Dig. 577 (A. A) Attach.t;

Application is generally made on affidavit for a rule to shew cause and answer the matters of the affidavit. — So it may be absolute in the first instance, as where Defend.t treated the process of the Court contemptuously — Str. 185. — Also if there be more than one affidavit. Id. 1068. —

Id. —

Motions and affidavits for attachments in Civil Suits are proceedings on the Civil side of the Court of B. R. until the attachments issue, and are to be entitled with the names of the parties. — As soon as the attachments issue the proceedings are on the Crown side, and from that time the King is to be named as prosecutor. 3. T. R. 253. —

On a rule being made absolute the party must appear and enter into a recognizance to answer to interrogatories and is then sworn to make true answer to them — He cannot acknowledge the Contempt and submit to the Judgment of the Court, especially if the Offence be complicated, for there is nothing to which he can plead guilty till Interrogatories are filed; nor is he considered as in Contempt till he be so reported. 2. Bur. 792. — 4 Bur. 2105. — see also. 5. T. R. 362. — King. v. Horsley.

Starkie. 584

It is said in some of the Books, that when the party

party has been brought into Court, he is either committed in order to answer interrogatories, or is permitted to enter into a recognizance with two Sureties, in such sum as the Court shall direct, to appear and make answer upon oath to such Interrogatories as shall be exhibited against him.— Hawk. P. C. c. 22. s. 1. Barnard. K. B. 58.— See also. 1. Bac. Abr. Vo Attachment (B). p. 286.—

1 Com. Dig. p. 577. 8.

"Whereas it sometimes happens, that persons against whom attachments have been ordered by this Court, escape the punishment due to their offences in consequence of the insufficiency of the interrogatories exhibited to them and whereas it is essential to the due administration of Justice, that Interrogatories should be so framed as to procure a full, fair, and bona fide investigation of the whole subject of alledged criminality— It is ordered, that for the future, all Interrogatories filed and exhibited in consequence of any rule or order of this Court, shall be signed by Counsel.— Reg. Gen. B. R. M. 34. Geo. 3.— 5. T. Rep. 474.

Id. — When a defendant is brought up on an attachment for a rescue, it is the practice of the Court to put interrogatories to him, though he do not deny the charge in the affidavit, unless the prosecutor waive putting them. Rex. v. Horsley, 5. T. R. 362. —

Id. — If no interrogatories be filed within four days after the recognizance, it may be discharged on motion; yet if the party do not make such motion, and the Interrogatories be exhibited after the four days, the Court will compel him to answer them. 2. Hawk. 2 eath. 214. —

Id. — After examination, application is made to the Court, to have the Interrogatories with answers, referred to the proper officer to make his report. — When the officer is ready, Counsel moves that he may report. If he report that the party is in contempt, he may either be committed, or by consent be continued on his recognizance to a future day, and then Sentence pronounced. 2. Bur. 792. — 3. Bur. 1256. —

But

Id. — But if the party fully purge himself upon oath, in his answer to the Interrogatories of the whole matter charged upon him, the Court will discharge him of the Contempt, and leave the prosecutor to proceed against him for the perjury, if he think fit. 2. Hawk. 214.

Id. — But if he confess part of the contempts in his answer and deny others, the Court will not discharge him from the Contempts so denied, but will proceed further to examine the truth of them. Id. & Barnes. 258. —

Id. But he is not obliged to answer an Interrogatory that may convict him of another Offence. Str. 444.

Id. — If the Defendant has in the Course of the proceedings paid very severe Costs, and the Court be unwilling to punish him further, yet unwilling to have slight sentence on record for an obstinate Contempt, they may waive giving Judgment for the Contempt, and order his recognizance to be discharged — 3. Bur. 1256. —

In

In cases of great Contempts where the party is examined on interrogatories and denies the contempt, the Court have given liberty to the other side to examine witnesses to falsify his examination.— But, nota, this is only in great contempts (for the practice of the K. B. & C. B. is otherwise). In a case before the Court of Exchequer, leave was given for the person in contempt to move for an order for liberty to examine witnesses on his part to fortify his denial of the Contempt— Wilkins. v. Edson. Bunb. 244.—

Sup: to Vin. ab. v° Contempt. p. 245. pl. 38

The practice of the Court of K. B. is, that if the Defend^t. by his Affidavit fully denies the charge on which the rule for an attachment was granted, that is sufficient.— The weight of the evidence, or the credibility of what is sworn is never considered; but if the defend^t. is hardy enough to swear falsely, he is left to be punished by Indictment.— In Chancery they proceed differently— They examine the Dft^o on Interrogatories, and also examine witnesses on both sides, and then decide upon the truth of the charge.— Per L^d. Mansfield. C. J. in Rex. v^s Vaughan. Doug. 516.—

On an attachment for a contempt, it was moved to estreat the recognizance, because the Defendt. has not appeared to answer Interrogatories.— For the Defendt. it was alledged that the Interrogatories had not been filed in due time for his examination — The Court declared that the Defdt ought to have moved to be discharged if Interrogatories were not filed in four days according to the rule, but he not having applied for that purpose, the Court ordered that he should answer the Interrogatories in a week, or the recognizance should be estreated — King. v. Gibbon. Rep. Cas. Prac. C.B. 51. —

It is not usual to allow costs to a party who purges himself of a contempt with which he is charged — but where the charge has appeared quite groundless and vexatious, the Court has given them. Rex. v. Plunkett 3. Bur. 1329. —

Where the attachment is for the non-paymt of money &c., the party remains in custody — without proceeding to examine him on Interrogatories, until he either complies with the order, for the

non=

non-performance of which the writ issued, or is discharged under an insolvent act, or a Commission of bankruptcy

Hands Prac. 598. –

It is usual to oblige the Defendant to pay the costs of the proceedings occasioned by his misbehaviour, & to tax them liberally – Ibid.

The Court waived giving Judgment, by consent –
3. Burr. 1258. –

The power of punishing all contempts by fine, interdiction &c^a committed by barristers, attornies, or individuals in Court, is vested in the Judges by the Ordinance of 1535. ch. 1. art. 91. See Jousse Instruc: Civil 2. vol. p. 10. N^o 23. – and 1 vol. p. 180. N^o 31 to 36. and

Note – It is said in N^o 31. & 32. that all contempts in Court may be punished instanter, "sans aucune "instruction reglée, ni forme de procedure" – and the instances given of this power are, that this may be done whenever the Case requires "une punition "legere" – ex. gr. une amende ou Interdiction, ou "la prison, contre un huissier, procureur ou autre, "qui en faisant ses fonctions manqueroit de respect "au Juge par desobeissance, irreverence, paroles

"peu

"peu mesurées ou autrement, et dans ces cas, tous
"Juges sans exception, peuvent user de ce droit
"de punition, meme les Juges Consuls".—

Jousse. Just. Civ. p. 180. Nº 31. 232.
Loiseau— Tr. des Offices. liv. 1. ch. 7. Nº 17. a

See an instance of interdiction instanter, in the case of a huissier, in Dareau Tr. d'Injure. p.

—

Every contempt of process, order, or decree, committed out of Court, may be punished by the Court out of which such process was issued unless the Court, 1st has two setts of Judges, one for the civil, and another for the Criminal Jurisdiction— "Des chambres distinctes & Separées" and 2d where the Contempt is also committed under Circumstances which render the persons without reference to the mere contempt, guilty of an indictable Offence. 1 Jousse. Just. Civile. 178. Nº 28. & seq.

The Courts of Westminster Hall exercise a Summary Jurisdiction over their officers, an equitable practice, as it is called

1 Selwyn. 612. — 7 East. 148.
2. Bos. & Pull. p. 47. —

La Connoissance des malversations des Officiers de Judicature appartient à leurs Superieurs. —

13. Repre 474. —

C'est au Juge qui est le Superieur des Officiers de Justice, à qui la connoissance de ce Crime, (malversation dans les fonctions de leurs Offices) appartient, Car il est naturel que des Officiers — Inferieures repondent devant leurs Superieurs de ce qui concerne les fonctions de leurs offices.

7 Potts. p. 364.

The power of punishing Contempts, is by the laws of France as well as by the Laws of England incident to every court, even those of mere Civil Jurisdiction. —

Ravant. 100. — 1 Pigeau. 277. 603.
Serpillon. 385–6. 8. D'agueseau. 23. 198.
N. Denizt. Vo "Competence". No 19. p. 12.
Jurisp: Consulaire. p. 4. —
Actes de Notoriété. p. 300. N. a. 4. & 5.

It is certain, they were punishable by fine, (arbitrary)

(arbitrary) and imprisonment. —

Nouv. Denizt. vo Amende. sec. 7. No 1A.
2. Domat. 205. Repertre
1 Bac. Abr. 180 to 183. —

See instances of Commitments for Contempts by Libels in a Newspaper

2 Atkins. 469. — 7 East. 493.
2. Vez. 520. — 1. Bos. & Pul. 525.
2 Camp. N. P. 563. — 8 T. Rep. 293. —

See also 3. Anstruther's Rep. 773. —

Les Juges ne doivent point souffrir que les avocats, procureurs, ou autres personnes leur manquent de respect en plaidant, et ils doivent punir par amendes, interdictions, ou autres peines, ceux qui manquent à cet egard

Ordre du mois d'Octobre 1535. ch. 1. art. 91. —

Ils doivent aussi punir les avocats & procureurs par la faute des quels, les Causes ne seront point plaidées. —

Ordre de Moulins — art. 67. —
Ordre de Blois — art 125. & 142.
2. Jousse Adm. Justice. p. 10. —

Contempt.—

7. Taunt: Rep. 63.
Mayhew. v. Locke.

A Justice of the Peace committing for a Contempt of himself in his office, cannot commit for punishment unless by warrant in writing.—

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4. Barn: & Ald. 218
The King. v. Clement.

A Court of General Gaol Delivery has the power to make an order to prohibit the publication of the proceedings pending a trial likely to continue for several successive days, and to punish disobedience to such order by fine.—

11. Price. 69.

This Case, and also that of Pool. v. Sacheverell 1. Peere. W. 675- referred to in the argument, establishes, that a contempt may be committed by a person out of Court pending a proceeding in Court.— also that it is not necessary that the party should be present at the time the fine is imposed, after being summoned to attend and his not attending.—

In this Case. Bayley. J. said— The rule which requires personal service in order to ground an attachment, is merely a rule of practice, of which every Court judges for itself.—

Id.— p. 329
The King. v. Davison

A Judge at Nisi Prius, has the power of fining a Defendant for a Contempt committed by him in the course of addressing the Jury in his defence.—

Contempt.

Dowl.[3] & Ryl: Rep. 8. Vol. p. 4. — Wilson v. Bodkin

Bail was committed to Newgate for one month for prevarication as to the state of his circumstances and property, on coming up to justify. —

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1 Comyn's Rep. 264. Field. v. Workhouse.

A Sheriff cannot take a bail bond upon an attachment for a Contempt. —

1 Moody & Malkins N. P. Ca. p. 165. Rex. v. Gilham

Exhibiting in an Assize Town inflammatory publications, respecting a crime about to be tried at the assizes, is not a contempt which the Judge of assize can interfere to stop, by committing the party exhibiting. —

The above noted case of Rex. v. Clement. 4. Barn. & Ald. 218. & 11 Price 69. were cited on argumt.

Contract — contrary to Law. —

The Court will not lend its aid to carry into effect a Contract made contrary to law. 1. M. & Selw. 593. Langton & al. v. Hughes & al' —

L^d Ellenborough — So if a person sell goods with a knowledge and in furtherance of the buyer's intention to convey them upon a smuggling adventure, he is not permitted by the policy of the law to recover upon such a Sale. —

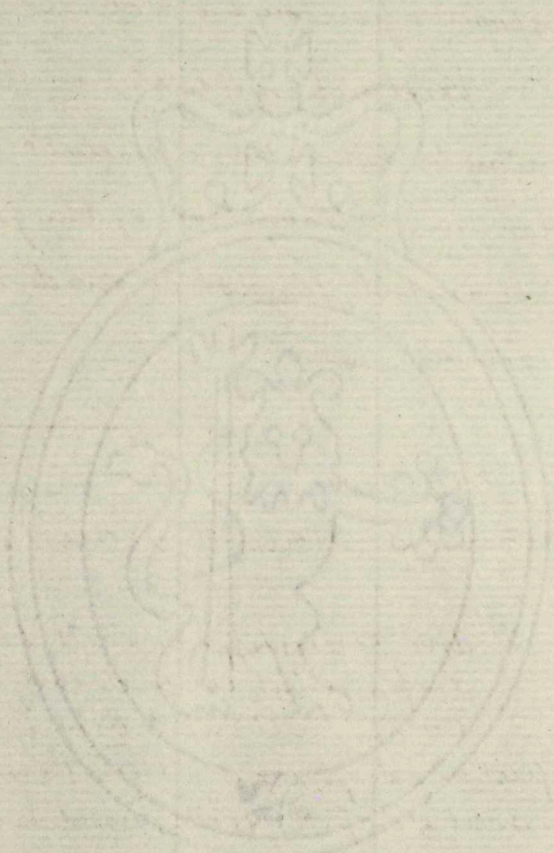
Without multiplying instances of this sort, it may be taken as a received rule of law, that what is done in contravention of the provisions of an act of parliament, cannot be made the subject matter of an action. —

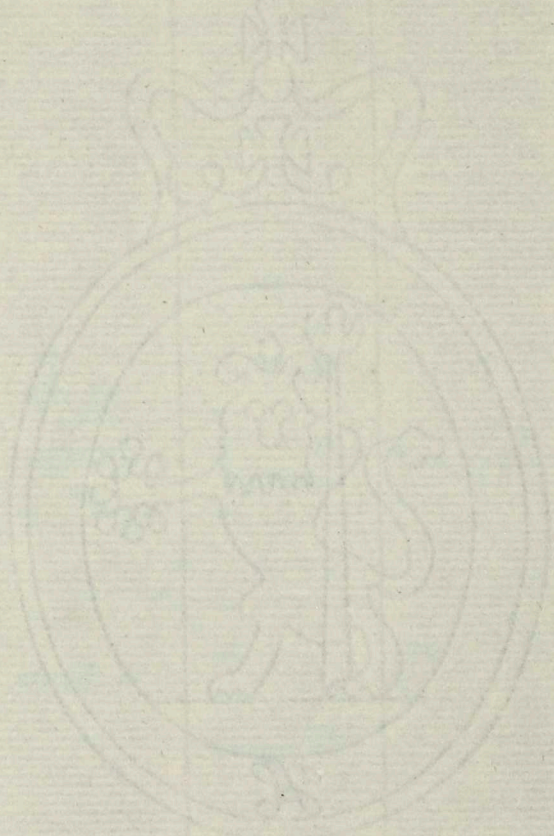
Contract in writing — Stat: of Frauds —

1 Car: Payne's N. P. Rep. 51.
Cobbold v. Caston

The Plaintiff agreed by parol, that if the Defendant would employ his ship to carry corn, he would bring him Coals at a stipulated price. — This Contract is not within the Statute of Frauds, and need not be in writing, nor is part delivery, or part payment necessary to make it binding —

This would seem to be a contrat de louage, and not of sale. —





Contrainte Depôt.—

Arrets de Jovet
Vo Depot.
p. 202. No 5. & 10.

Par arret du parlement de Paris du 22 Janvier 1550. rapporté par le Judicieux Coquille, sur la Coutume de Nivernois, art. 5. de Justice et droit d'icelle, in verbo, Par Prisons. a été jugé que le Depositaire de chose privée aussi bien que du public, devoit rendre le Depot par Corps— La raison en est, que le refus est un furt, et un dol, suivant la loi trois. cod. dep. et que tout dol merite punition extraordinaire en France.—

Copy when evidence, & when not

4. Barn: & Cress. Rep. p. 25.

Ewer vs Ambrose & Baker

Where a witness in a trial at law gave evidence, at variance with what he had previously sworn in an answer in Chancery. — Held, that an examined copy of that answer was admissible to contradict him, and that it was not necessary to produce the original answer. —

Id. — p. 401.

Palmer & another vs Forsyth & Bell —

When a Certiorari issued to remove a cause from the Inferior Court, and the Court below returned a Copy of the Record and not the Record itself, the K.B. quashed the writ and return, and awarded a procedendo

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Ryan & Moodie's N. P. Ca. p.

Dartnall v. Howard & another

An examined copy of an answer in Chancery may be identified by a witness who has seen the handwriting of the Defendant to the original, although the original document is not produced at the time that he speaks to his belief of the Defendant's signature to it. —

see. 16 East. 334. Dartmouth v Roberts. —
1. B. & A. 182. Hennell v Lyon. —

In the above case of Ewer v Ambrose & Baker the plaintiff produced a Witness one Samuel Baker, who swore he had never been in partnership with the Defendant Ambrose — In answer to this evidence and for the purpose of contradicting it

the

the Defendant produced an examined Copy of an answer to a bill in Chancery, sworn to by S. Baker in which he had admitted the Partnership This was admitted and the Defend: had a verdict

The Pltff moved for a new trial, contending that the original answer of the Witness in Chancery should have been produced, and that the examined copy was insufficient — That the object of producing this answer was to shew that the Witness had been guilty of perjury, in which view the case ought to be considered as a criminal proceeding and consequently the original only could be received in evidence — cited cases of Rex. v. Morris. 2. Burr. 1189. — Lady Dartmouth. v. Roberts. 16 East. 334. — and Rex. v. Benson. 2 Camp. 508. a

Bayley, J. — I am of opinion that in this particular Case, the Copy of the answer was properly received in evidence, it being proved that that which purported to be a copy was identified. — I take the distinction between a Civil and a Criminal proceeding with reference to this rule of evidence to be this — In a Civil suit, not in any respect partaking of a criminal nature, if it be ascertained by other means, that the answer is identified, a copy of it will be sufficient for the purpose of contradicting the Witness; but upon an Indictment for perjury, or in a case which to a certain degree partakes of a Criminal proceeding, such as an action on the Case for a malicious prosecution, there the original must be produced, but in every other Case it is sufficient to produce the examined Copy.

Holroyd

Holroyd. J. concurred, and observed, that where the identity of the person and of the answer is ascertained, the copy offered was sufficient —

New trial refused

3. Doug. Rep. 75. —

Crook. v. Dowling.

S. C. cited. Bull. N. P. 14.

In an action for maliciously holding the Plff to bail, the declaration stated, that the Defendt had sued out the writ, which he had caused to be indorsed for bail, by virtue of an affidavit for that purpose filed. — Held — that a copy of the affidavit was admissible in support of this allegation. —

Corporation.

Ryan & Moodie's N. P. C. p. 190.

National Bank of St. Charles. — Vt. De Bernales. — —

A Foreign Corporation may sue in — England by their Corporate name. —

1. Bos. & Pull. 40. The Mayor of Burgesses of Stafford. v. Bolton. —

Corporation

1. Comyn's Reps. 86.
Rex. v. Corporation of Rippon. in B.R.

An action lies against the members of a Corporation by their private names, for a false return to a Mandamus by their Corporate name.—

Costs – Witness.

The costs of bringing over a Witness from the Continent to this Country (England) are allowed, but not the costs of his return. – 4. Taunt. Rep. 55. Cotton. v^s Witt.

When upon setting aside a Verdict for the plaintiff the Costs are directed to abide the event, and then the plaintiff discontinues his action; the Defendant is not entitled to the Costs of the trial. – 6. Taunt. 566 – Howarth. v: Samuel. –

Costs – Security for.

7 Taunt. Rep. 307. – Anonymous

If one Plaintiff be in England and liable for Costs, though another is resident abroad the Court will not compel the latter to give Security for the Costs. –

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3. Burr. 1329 Rex. v: Plunket

Costs were granted on an attachment for a Contempt. –

Costs.

1 Wilson. 331.—
Tempest. v. Metcalf
13. R. — 1752

If one issue be found for the plaintiff he must have his Costs.—

1 Coups.— 407.
Cameron. v Reynolds

Where a plaintiff is non-suited, the Defendant is entitled to Costs — when Judgment is arrested each party pays his own Costs.—

L'on trouve dans la Gazette des Tribuncaux un arret du 28 Decr 1777, par lequel il a eté jugé que le debiteur qui a fait cession, ne peut intenter aucun proces, sans donner caution de satisfaire aux Condamnations qui pourront etre prononcées contre lui

Costs to the King...

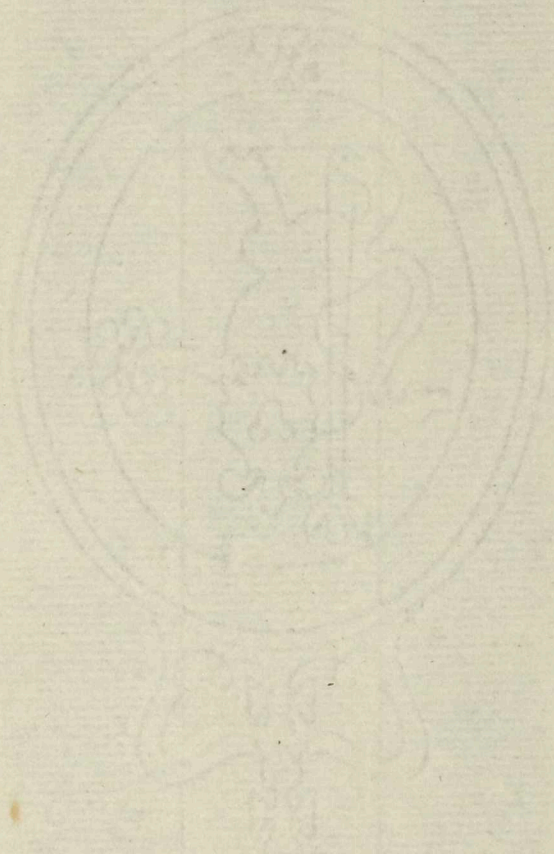
Parkers Rep. in Exchequer. 91.
Att. General
vs
Thos. Munn

The Attorney General as well as the Officer is entitled to Costs by the act 8. An. ch. 7. where there is Judgment for the King. —

This was a Case on Information by a Custom House Officer on a Seizure of several parcels of tobacco Stalks as forfeited, by being imported contrary to the act 12. Geo. 1. C. 28. Sec. 13. —

M^cClelands Rep. in Exch. p. 105.
The King. ag^t. the Estate of Geo. Hassell. —

The Crown may receive Costs on the refusal of a motion. +



Courts. — erection of

2 Raym. 1344. —
Rex. v. Chancellor &c of Cambridge —

It was said, arguendo, That the Crown cannot erect a Court to proceed according to the Civil Law by charter, but that an act of Parliament is necessary. — see. 10 Mod. 125. 126. —

4

Power of —

4. Barn. & Ald. 218
Rex. v. Clement.

A Court of General Gaol Delivery has the power to make an order to prohibit the publication of the proceedings pending a trial likely to continue for several successive days, and to punish disobedience to such order by fine. —

Service of an order of such Court, calling upon the Editor of a newspaper to answer for contemptuously publishing such proceedings, at the office at which the newspaper was published, is good service within 38 Geo. 3. ch. 78. s. 12. — and the Editor not having appeared, the fine was held to be properly imposed on him in his absence —

The trial here alluded to was that of — Arthur Thistlewood and James Ings for High Treason — and the Editor of the Paper (observer) was fined £500 — for thus disobeying the order of the Court. —

Id. — — p. 329.
King. v. Davison.

A Judge at Nisi Prius has the power of fining a Defendant for a contempt committed by him in the course of addressing the Jury.

Creancier — Subrogation. 1er

The law seems to vest in the Creditor all the rights of his debtor, and to entitle the Creditor to exercise the same for his benefit, by a kind of tacit subrogation. —

Denis: 2e. V° Creancier N° 2. — Le Creancier peut non seulement poursuivre son debiteur par des voies licites, pour s'en faire payer mais encore poursuivre les droits et les actions de ce meme debiteur, si celui-ci neglige de les poursuivre lui même

N°3. Ainsi par example, un créancier peut former opposition à un decret dans lequel son debiteur a des droits à faire valoir — en un mot, les actions et les privileges — personnels du debiteur peuvent être exercés par ses — créanciers, quand l'exercice ne demande pas une — acceptation precise de la personne à qui le privilege est accordé. —

N°4. Un debiteur ne peut au prejudice de ses Créanciers, renoncer à une Succession qui lui est echüe. —

Dic: de Ferriere V° Créancier. In his observations on the word Créancier.

La 2e. Que les créanciers n'ayant pas d'autre moyen de se faire payer, peuvent dans le tems de l'ordonnance se servir au nom de leur debiteur du benefice de restitution en entier, pour lesion d'outre moitié, contre celui qui auroit acheté de leur debiteur un heritage plus de moitié moins qu'il ne vaut, à l'effet que le Contrat de vente soit nul, et les parties remises en l'etat qu'elles etoient avant, si mieux n'aime l'acquereur payer le supplement du juste prix. — Charondas liv. 9. Rep: 29. — Maynard liv. 3. ch. 70. —

La 3e. Que les Créanciers peuvent recueillir au nom de

de leur debiteur, eo etiam invito, une succession a lui echüe, en baillant caution de l'acquitter des charges. Auzanet sur l'art. 307. de la Coutume.

Repre v° Creancier p. 156.

Same principle laid down, and nearly in the same words.—

Lacombe. v° Creancier N° 8.—

Un creancier peut exercer les droits de son debiteur.

N. Denizt. v° Creance. §. 2. N° 7.

Les droits et actions faisant partie des biens, les creanciers peuvent en certains cas, exercer les droits qui appartiennent à leur debiteur, ce qui s'opere par une espece de subrogation.—

Arrets de Soret 1er vol. p. 334.

Par arret du 9 Juillet 1698 du Parlement de Paris rendu au rapport de Mr Chassepot de Beaumont qui a prononcé sur 19 differentes questions, entre autres, sur celle de savoir, si un Créancier peut exercer les droits de son debiteur.— Il a été jugé pour l'affirmative. voy. le Journal des Audes tom. 5. liv. 14. ch. 8.—

Arrets de Soret 2. vol. p. 507. Sellu. R. Somme 19. N° 4.— also p. 508. Somme 20. cit. 4.—

Les Créanciers du pere, peuvent agir sur la legitime qui lui est due sur l'heritage de son fils. Ibe

But it would seem that the Debtor, in such cases, ought to be made a party.—

see. 1 Pigeau. 654.— and Serpillon on Tit. 33. of ordre 1667. art. 1. N° 9. p. 614.—

Creancier. Subrogation.

Mr Toullier, who is well stiled the Pothier of the present day, in an excellent treatise on the Droit Civil Francois. 6e Vol. Liv. 3. Tit. 3. Ch. 3. "de l'effet des obligations" Nº 372. — in stating what the law now is in France on this subject, and what it always had been. — says —

"Les Créanciers peuvent aussi exercer à leurs "risques et perils, toutes les reprises legales ou "conventionnelles, tous les droits que leur debiteur "negligeroit d'exercer dans une Communauté "conjugale — Pour tout dire, en un mot, les — "Créanciers peuvent exercer tous les droits, toutes les "actions personnelles reelles ou mixtes qui appartiennent "à leur debiteur, meme l'action pour le faire "declarer legitime." — Citis 6e plaidoyer de d'Agueseau. tom. II. p. 111. —

See also another Writer of note, DuParc Poullain — Principes du Droit Francois. 7e Vol. p. 282. & seq. — En general les Créanciers peuvent exercer toutes les actions personnelles, reelles, et mixtes qui appartiennent à leur debiteur, à l'exception des droits absolument personnels, tels que le retrait lignager &c qui ne pouvant pas etre cédés à des etrangers, ne peuvent être exércés par eux. —

See also — Maynard. Questions de Droit. 1er Vol Liv. 3. ch. 70. p. 337 & 338. —

Credit — giving — on false representation of a third person

1 Holt. Rep. 387
Ashlin. v. White

In an action on the Case for falsely representing the character of another, by reason of which false representation, he obtained credit of the plff — it is necessary to prove against the Defendant, both fraud and falsehood, viz. that the representation which he made was false, and that the Defd knew it to be false at the time he made it. — Falsehood without fraud is not sufficient —

see cases referred to on note —
Pasley. v Freeman. 3. T. Rep. 51. —
Vernon v Keyes — 12 East 632. when Judgt was affirmed on writ of Error. 4 Taunt. 488. c —
Eyre. v. Durnford 1 East 318 —
Tapp — v. Lee — 3. BoP. 367
Hamar v Alexander 2. N. Rep. 241.
Hutchison. v Bell — 1 Taunt. 558. —

Creditors. — composition among. — &c

3. Moore & Payne's Rep. 18. —
Knight v. Hunt.

The plaintiff having refused to sign an agreemt. to accept from his debtor a composition of ten shillings in the pound, the brother of the latter offered to supply the plaintiff with goods to the amount of one half of his demand, on which he signed the agreement — the composition was secured by a promy. note, and the goods having been supplied. — Held — that as the stipulation with respect to the goods had been kept secret from the other Creditors, it was a fraud upon them, and that the plaintiff could not recover on the note, although he was the last Creditor who signed the agreement for the Composition, and although the brother of the debtor offered to supply the goods at his own instance, without being requested so to do, either by the plaintiff or by the insolvent. —

Dº — Dº — p. 77.
Britten & al. v. Hughes

The plaintiffs together with several Creditors of the Defendant executed a Composition deed, by which they consented to take ten shillings in the pound in full of their respective debts. — The amount of the sums due to the several Creditors was inserted opposite to their respective names in a schedule at the foot of the deed. — The deed contained a general release of the Defendt. by all the Creditors who had signed. — The plaintiffs were the holders of two bills of exchange drawn by the Defendt. and overdue when they signed the deed, and they at the request of the Defendt. inserted only the amount of one of them in the schedule, as he said the plaintiffs might recover the amount of the other from the acceptor; but the latter having refused payment, the plaintiffs sued the Defendant, as drawer. — Held. — that they were not

entitled

entitled to recover, as the concealment of a part of their debt, was a fraud on the rest of the Creditors, and that the general words of the release were not restrained by a previous recital in the deed, that the Defendt. was indebted to his Creditors in the several sums set opposite to their names in the Schedule. —

Damages – de incremento

1 Raym. 176.
Cook. v. Beal.

In an action for a battery, if the wound was visible, and the damages are inadequate, the Court will encrease them either after Verdict – or writ of Enquiry. Tho' the wound was not technically described in the declaration as a maihem – and even though in fact it was not one – provided the declaration particularizes it – or the Judge at Nisi Prius made a Certificate of it – either by indorsement on the postea, – or, (if a Judge of the Court) by word of mouth – But not unless the plaintiff appears in person. –

The Judge at Nisi Prius cannot encrease the damages –

Liquidated Damages. –

3. Car: & Payne's N.P. Rep. 240.
Crisdee v. Bolton

In an agreement for the sale of a public house it was stipulated that the Seller should not be concerned in carrying on the business of a publican within a mile from the house he had parted with, under the penal sum of £500–, the same to be recoverable as and for liquidated damages. – Notwithstanding this, he opened a public house about three quarters of a mile off. – No evidence of actual damage was given by the plaintiff, but for the Defendant some Witnesses stated that the plaintiff had spoken of the injury as not considerable – It was held at Nisi Prius, that the whole sum was recoverable as stipulated damages, but left to the Jury to state what was the actual damage. – The Jury found for the whole sum – and the Court of Common Pleas refused to grant a new trial. –

Damages — Mitigation of &c —

2 Bos. & Pull. 224. Watson v. Christie

In trespass for assault & battery — and not guilty pleaded, the Jury are not at liberty to take into consideration the circumstances of the assault and battery, with a view to reduce the verdict below the amount of the damage actually sustained if those circumstances could have been pleaded —

L^d Eldon. Ch. J. — said — That although the beating in question, however severe, might possibly be justified on the ground of the necessity of maintaining discipline on board the Ship, yet that such defence could not be resorted to unless put upon the record in the shape of a Special Justification. —

3 Starkie on Ev: p. 1460.

See also on note (a) — opinion of Price, Baron in a case of Denis v Pawling. 1716. Vin. abr. Tit. Evidence (I. b.) pl. 16. — who in case for words, refused to admit any thing in evidence, which tended to justify the words though in mitigation of damages only, saying that any thing which tended to shew a provocation or any transaction between the parties giving occasion for speaking the words was proper in the Defendant to make out — because these matters cannot be pleaded —

In the Case of Underwood. v. Parkes. 2 Str. 1200. Lee. Ch. J. refused to allow the truth

truth of words spoken to be proved in mitigation of damages, saying, that at a meeting of all the Judges, a large majority of them had determined not to allow it in future, but that it should be pleaded, and that this was now a general rule. —

see Willis' Rep. 20.
Smith. v. Richardson.

In support of that part of the proposition laid down by Price, Baron —, that what cannot be pleaded may be given in evidence, the Case of Coote. v. Berty. 12. Mod. 232. may be referred to where it was said, that in trespass for criminal conversation with the plaintiffs wife, licence of the husband, or the bad character of the wife could not be pleaded in bar, but that these matters might be given in evidence in mitigation of damages. —

2 Camp. N. P. Rep. 251.
Earl of Leicester. v. Walter

In an action for a libel, the Defendt. under the general issue, may prove in mitigation of damages, that before and at the time of the publication of the libel, the pltff was generally suspected to be guilty of the crime thereby imputed to him, and that on account of this suspicion, his relations and acquaintances had ceased to associate with him. a

see also
Peake's Ev. p. 328.
Knobel. v. Fuller.

2. Phil. Ev. p. 163.

This evidence has been thought to be admissible on the ground, that a person of disparaged fame is not entitled to the same measure of damages, as another whose character is unblemished — cites 1 Maule & Sel. 286 - & case above —

And

Ph. Ev. p. 163.— And L^d Ellenborough is reported to have held in a late case. (Williams. v. Callender. Holt N.P.C. 307- see also words of Gibbs C.J. in Holt. 535) that although there was no justification, yet the Defend^t might give in evidence somewhat of the real character of the pl^ff, to shew that it was not unblemished and entire-

Id.— In an action for a libel, it may be proved also in mitigation of damages that the Pl^ff was in the habit of libelling the defendant Finnerty. v Tipper. 2 Camp. 77.—

Holts. N.P.C. 299 Wyatt. v Gore — In an action on a libel to which the general issue is pleaded, and where there is no justification, the Defendant may give in evidence in mitigation of damages not only that there were rumours and reports (of the same tenor as the libel) previously current, but that the substance of the libellous matter had been published in a newspaper and he is not required to lay a basis for this evidence, by producing such newspaper at the trial —

11^th Price's Rep. 235. Jones. v. Stevens.— In an action for a libel on the plaintiff — tending to injure his credit and reputation in his profession and business of an attorney, general evidence of the plaintiffs bad character and ill

ill repute repute in his business as a practising attorney cannot be admitted, either to contradict the allegation in the declaration, that the plaintiff during &c. exercised and carried on the business of an attorney with great credit and reputation, with a view to mitigating damages on the general issue, or in support of averments in the Defendants pleas, pleaded by way of justification, that the plaintiff was a disreputable professor and practitioner in the law.—

The Case of the Earl of Leicester v. Waller (2 Camps. N. P. C. 251.) denied to be law.—

1 Moody & Malkin N. P. Ca. 46.— East. v. Chapman

In an action for a libel, purporting to be a report of a Coroner's Inquest, evidence of the correctness of the report is admissible, under the general issue, in mitigation of damages — but no evidence of the truth or falsehood of the facts stated at the Inquest, is admissible on either side.—

Date.

St Vâst. Comm^re sur les Coutumes &c 4 Vol. p. 315.

Un créancier qui rapporte deux obligations d'un même debiteur de meme date, ou de differentes dates, peut exiger le paiement de l'une et de l'autre, quoique dans la dernière il n'y ait aucune reserve de la premiere, une même personne ayant pû contracter deux obligations dans le même tems.

Debtor in Gaol — payt. of weekly allowance. —

7. Taunt. 7.
Agutter v. Wilson

If a Creditor who detains a Defendant 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 a spurious Coin in part of the prisoner's allowance, he can bind the prisoner. — see. Alimentary allowance. —

Debt — locus in quo, Contracted. —

4 Barn: & ald. 654
Lewis & al. v. Owen

A bill of Exchange drawn by Defendt. in Ireland and accepted and paid by Plaintiffs in England is a debt contracted in England, and cannot therefore be discharged by a Certificate under an Irish Commission of Bankruptcy. —

Debtor in Gaol. allowance to.

1 New. Rep. 111.
Parsons. v. Salomon

Payment of the weekly allowance to a Prisoner under the Lords act, to the person who opens the door of the prison, is a sufficient paymt to the prisoner within the meaning of the act.

Chambre. J. — The act of Parlt. requires paymt to the debtor, but the Courts in construing the act have considered payment to the turnkey as payment to the debtor.

Declaration — Count. —

2 Saund. Rep 121. c. on Note (2.)

It would seem that the common Counts in a declaration may be contained in one Count, stating, that the Defendant was indebted to the plaintiff in a given sum (large enough to comprehend all the money which the plaintiff can possibly recover) say in £1000 — for instance, as well for goods sold and delivered by the Plaintiff to the Defendant, as for money lent and advanced, and money paid by the Plaintiff to the Defendt and money had and received by the Defendant for the Plaintiff and that in consideration thereof the Defendt promised to pay. Cro. Jac. 285. Rooke. v. Rooke. and it would seem, that it is not necessary for the Plaintiff to prove all the different Causes of action so included in the same Count, or in other words, to prove the whole consideration laid in order to entitle himself to recover, any more than it is when they are contained in different Counts; but if he proves any one or more of the different Causes of action, it is enough; for the Defendant being indebted to the plaintiff in any one Cause, appears to be a sufficient consideration for the promise (which the law raises) of the Defendant to pay the money. —

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1 Raym. 233. Llewelly n. v. Pinock

The signification of Welsh (& ead: vat: French) — words, need not be explained in a Count in which that language is understood. —

This was the case of a libel, in which the words in Welsh were set-out in the declaration — without any averment of the signification, with an anglice. —

Declaration.

2. Chitty's Rep. 517.
Bowerbank & alius
Walker & alius. —

On the removal of a Cause by Habeas Corpus, from an Inferior to a Superior Court, if the plaintiff declares de novo, he is not bound to declare in the same form of action, as that in the Inferior Court. —

Demande. — Conclusions. &c.

Il est important sur tout de n'omettre dans les Conclusions, même des objets litigieux sur lesquels on a interet de faire statuer par le Juge, car il ne pourroit avoir aucun egard en prononçant à ce qui n'y seroit expressement compris, quand même la demande se trouveroit enoncée dans le corps de la requête — Il est de regle en cette matiere que le Juge saisi d'une contestation ne decide que sur ce qui est porté aux Conclusions, c'est à dire, dans cette partie de la requete qui suit l'exposé des faits et la discussion des moyens — Le Juge ne pourroit même dans le prononcé ou le dispositif de Son Jugement suppléer aux demandes sur lesquelles une des parties auroit omis de conclure, ni lui juger ce qu'elle n'auroit pas expressement demandé, quelque juste que la chose fut d'ailleurs, parce qu'il en resulteroit un *Ultra petita*, qui suivant les Ordonnances opere la nullité des Jugements et necessite même la Cassation des arrets des Cours lorsqu'on y decouvre un pareil vice. — Le Juge peut rejetter, accorder, ou modifier les conclusions prises par les parties. —

Though a Plaintiff pray a wrong Judgment, the Court must give such Judgment as he is entitled to by Law. Will. Rep. 410. Rayner. v. Pointer. —

See also Campbell. v French in Error. 6 T. Rep. 200 and Addison v Overend. 6 T. Rep. 766. —

Depens

Dic. de Merlin v.° Depens. §.2

Lorsqu'il y a plusieurs chefs de demande portés par l'assignation, et que le Demandeur gagne les uns et perd les autres; il faut en compenser les depens Si le demandeur perd autant de chefs qu'il en gagne et que ces chefs n'ayent point occasionnés plus de depens que les autres; on condamne la partie qui perd plus de chefs à une certaine portion de depens. —

Quand les depens sont compensés, la partie qui a avancé les frais d'un arret ou Jugem.t Interlocutoire, ou d'un Procès verbal de visite, de rapport, ou descente sur les lieux contentieux, ou les epices, vacations et cout de Jugement definitif, n'en peut rien repeter contre l'autre partie, si cela n'est porté expressement par l'arret ou le Jugement qui compense les depens. —

§.6. Le droit de copie d'un Jugement appartient au procureur qui occupoit lorsque le Jugement est intervenu quand bien même il aurait été revoqué avant la levée de l'arret — C'est ce qui a été jugé en faveur de M.e Louveau Procureur au Parlement de Paris. par arret du 17 Juillet 1734.

§.7. Les depens sont personnels en general, et non — solidaires entre ceux qui y sont condamnés —

La division des depens se fait par tête en matiere Civile, et non pas à proportion de l'interet que chacun avoit de contester. —

§.8. Ceux qui ne sont condamnés aux depens que comme agissant pour autrui, tels que les Tuteurs, Curateurs, Sequestres Commissaires, heritiers beneficiaires &c — ne doivent pas les depens en leur nom, à moins que pour leurs mauvaises Contestations ils n'y ayent été condamnés personnellement. —

Celui qui reprend le proces au lieu d'un autre, tel qu'un heritier

Depens.

heritier, ou un Successeur à titre universel, est tenu pour les depens faits par son auteur ; mais le Successeur à titre particulier qui intervient dans un Proces n'est tenu que des depens fait contre lui, a moins qu'il n'y ait convention au contraire, entre lui et son predecesseur.

Le Garant ne doit les depens au Garanté, que du Jour que la demande Originaire lui a été denoncée.—

§.14 Lorsque les avocats, Procureurs, ou autres, ont bien voulu travailler gratuitement pour une partie cela n'empêche pas qu'elle ne puisse répeter dans la taxe, ce qu'il en aurait couté pour leurs honoraires & droits. —

S^t. Vast_ Comm^r. sur les Cout. en 4 Vol. p. 457.

L'on trouve dans la Gazette des Tribunaux, un Arret du 24 Dec^re 1777, par lequel il a eté jugé, que le debiteur qui a fait Cession, ne peut intenter aucun proces, sans donner caution de satisfaire aux condamnations qui pourroient etre prononcés contre lui. —

Depositions.—

In order to make the deposition of a deceased witness evidence against a prisoner charged with murder, or other felony, it seems that the deposition should be taken in the presence of the Pris^r so as to give him an opportunity to cross-examine the party if he thought fit.—

2 Starkie – 208.
Rex. v. Smith.

Held – That in order to warrant the admission of a deposition of the deceased against the P^r on an Indictment for murder, it is not necessary that the P^r should have been present the whole of the time during which the deposition was taken – the deponent having been re-sworn in the presence of the P^r, and the part of the deposition which had already been taken having been read over to the P^r and sworn by the Depon^t to be true and the P^r asked whether he chose to put any questions to the deceased, which he declined

Richards. C.B. was of opinion that the deposition was admissible in evidence, since the deceased had been re-sworn in the presence of the Pris^r and had repeated what he had stated before, and the Pr^r therefore had an opportunity of cross-examining him – His Lordship also cited the Case of the King v^s Radbarne. 1 Leach Ca. 512. where the deceased had been examined in the presence of the Pris^r and the deposition read upon the trial. —

Detinue. — Revendication. —

Great certainty and accuracy in the description of the things demanded, is required in Detinue, because the plaintiff may desire to recover the specific things themselves, which can only be done in this action — Willes's Rep. 120. Kettle v. Bromfall. —

Devise

It is clear that a devised interest vests in the devisee by presumption of law before entry — Co. Lit. 111. a.— & Ch. J. Abbott 6 Barn. & Cress. Rep 116. Smyth. v Smyth.—

Dimanches & Fêtes.

1. Pigeau. 119.

On peut faire la Saisie-Revendication un dimanche, ou une fête. — On la demande, & le Juge permet de la faire hors les heures du Service divin.

Discussion – plea of –

The plea of Discussion is a dilatory plea and not a plea to the merits, or peremptoire en droit. so held in Case of Archambault & al. v Fullum. – 19 April 1822. –

see. Repre V° Discussion – & model of plea on note it corresponds with 1 Pigeau. p. 186. 187. –

– Repre V° Caution. p. 773. 1st Col.

– 2 Bourj. p. 432. –

– Poth. Obl. N° 410 –

– 2 Argou. ch. 13. p. 475. –

– Case of Vve Baillé v Brunelle 4 Oct 1810 –

– Ravant. Proc. du Chatlet. p. 21. –

– St Vast. Comre sur les Cout. d'Anjou & maine 4e Vol. p. 377. –

Donation — Survenance d'enfans. —

2. Raviot sur Perrier Quest. 264. p 349. 350. —

On ne peut valablement renoncer au benifice de la Loi, Si unquam, et iamsi in donatione de liberis cogitatum fuerit. — Telles renonciations sont nulles, contraires au droit public, et aux bonnes mours. —

See also on Quest. 116. Nos 14 & 30. —

Election for Memb: of Parlt.

2. Raym. 938. —
Ashby. v. White & al

A man who has a right to vote at an election for Members of Parliamt. may maintain an action against the returning officer for refusing to admit his vote. — Salk. 19. 3 — Dº — 17 —

Tho' his right was never determined in parliament And though the persons for whom he offered to vote were elected. —

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2 Wilson, 395.
Rigg. v. Curgenven.
C. B. 1769

In an action on the Statute for bribing a person to give his vote at an election for Members of Parliament, it is not necessary to prove, that the person bribed had a right to vote. —

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2 Starkie — 577
Cullen. v. Morris

In an action against a returning officer for refusing a vote, the malice of the Defendant is an essential engredient to support the action. —

Every question as to the right of voting is for the peculiar consideration and determination of the — House of Commons, and no decision in any Court of Law is at all binding upon that House. —

An action is not maintainable for merely refusing the vote of a person who appears afterwards to have really had a right to vote, unless it also appears that the refusal resulted from a malicious & improper motive, and that if the officer acted honestly and uprightly according to the best of his Judgment, he is not amenable in an action for damages

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The returning officer is to a certain degree a ministerial one, but he is not so to all intents and purposes; neither is he wholly a Judicial Officer, his duties are neither entirely ministerial, nor wholly judicial, they are of a mixed nature — It cannot be contended that he is to exercise no Judgment, no discretion whatsoever in the admission or rejection of votes; the greatest confusion would prevail if such a discretion were not to be exercised. — On the other hand, the Officer could not discharge his duty without great peril and apprehension, if in consequence of a mistake, he became liable to an action. —

If a vote be refused with a view to prejudice either the party entitled to vote, or the Candidate for whom he tenders his vote, the motive is an improper one, and an action is maintainable. —

1. Barn: & Cress. Reps. 297.
L^d Huntingtower. vs Gardiner. —

Where a voter received money after an Election for having voted for a particular candidate but no agreement for any such payment was made before the election — Held that this was not an offence within 2. Geo. 2. ch. 24. s. 7.

Error, writ of.

1 Raym. 347.
Hunt. v Lawson

A writ of Error to remove a record, between A. Pltff. and B. Defendant, will remove a Record between A. Pltff. and B. together with others, Defendants vid. Stra. 200.

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9. Bingham's Rep. 125.
Mellish v. Richardson
In Dom: Proc.

It is not competent to a Court of Error, to revise amendments in the record, made by a Court of Record.

Error — Court of

4. Barn: & Adolp. 90,
Castledine & al. v. Mundy

A Court of Error will give Judgment of reversal if there be error in law apparent on the face of the record, though error in fact only, be alledged

Escape. — Sheriff — Ca: Sa: &c.

A bond from one in execution — "to be a true prisoner and not to escape," is good, if not for ease or favor. — 1 Sand. 161. Lenthall. vs Cook. — see also note (1). —

A Bond to save the Sheriff harmless from Escapes, is against Law. + Plow: 60. Dive + Maningham. — Obs. —

See Tit. Ca. Sa. — discharge. —

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2. Wilson. 294
Ravensroft. + Eyles

An action upon the Case for an escape upon mesne process, the prisoner returns to the Fleet the same day, and the plaintiff proceeds to final Judgment, yet the action lies against the warden for damages. a

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Ca: temp. Hard: by Lee. p. 310
Wilkinson. vs Sheriffs of London

Where a prisoner entrusted by the Gaoler with the keys, is seen without the Gaol, the Sheriff becomes liable as for a voluntary escape, to an action of debt, for which he cannot justify, by alledging a recaption: aliter, had the escape been through negligence. a