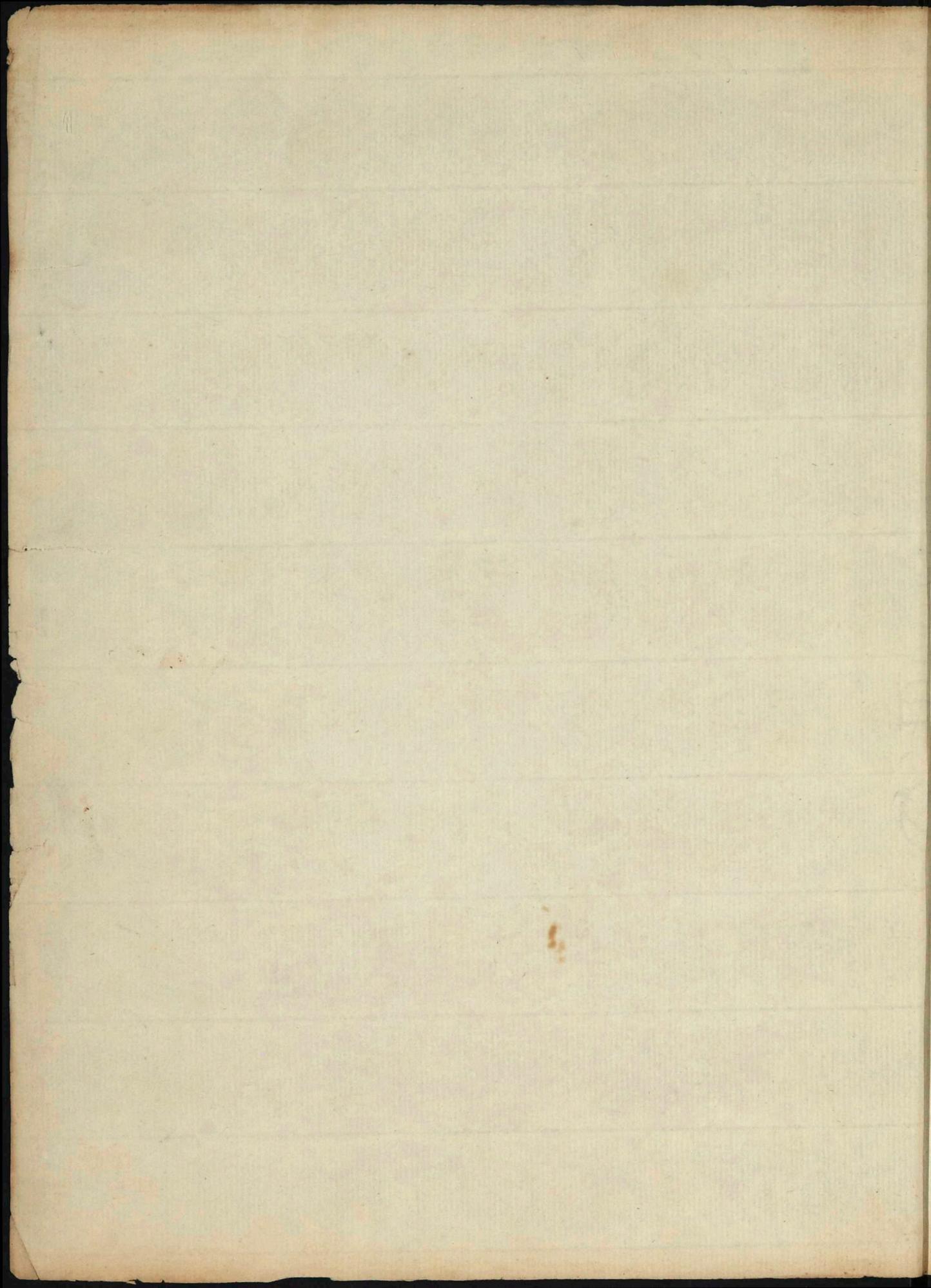


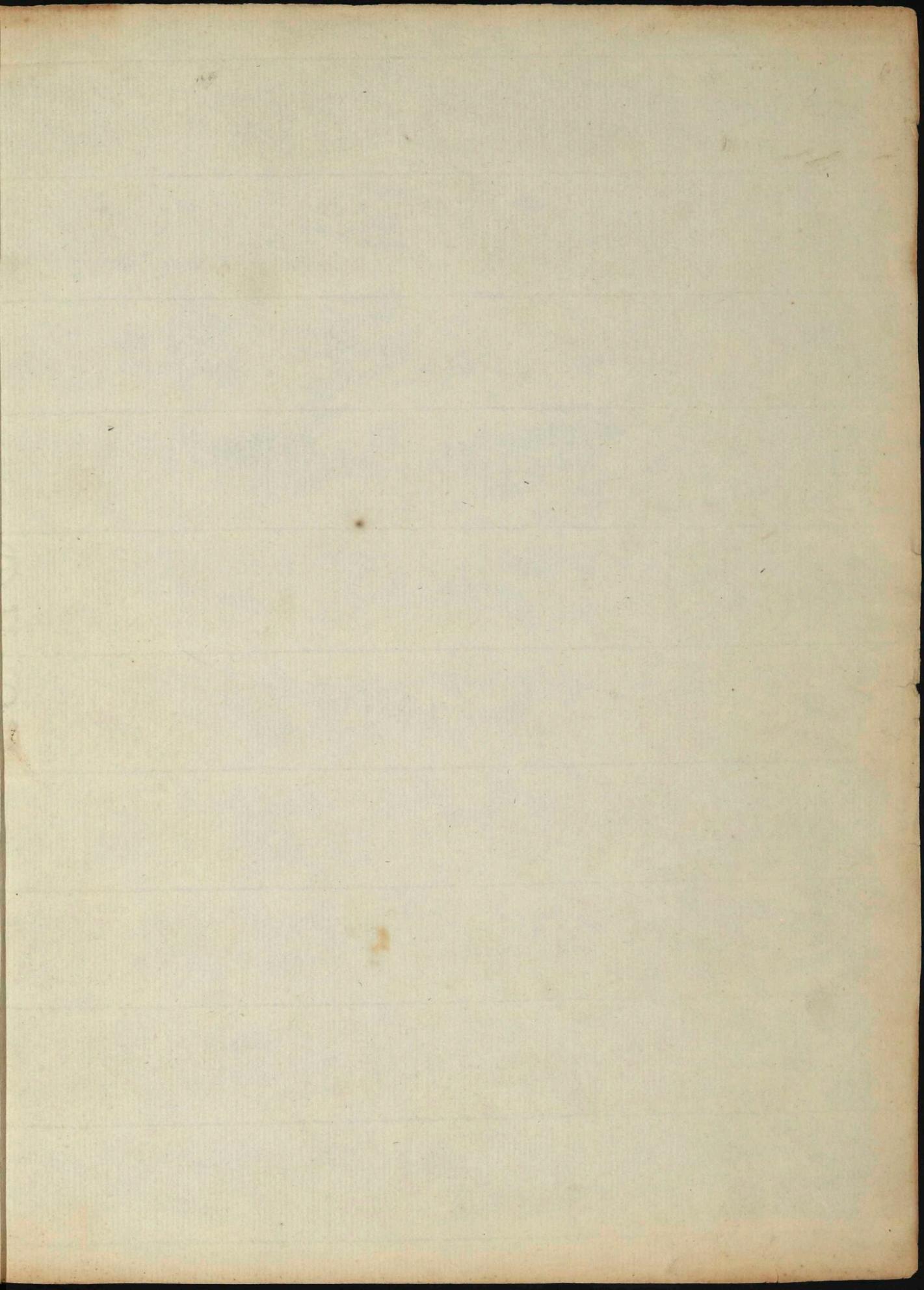
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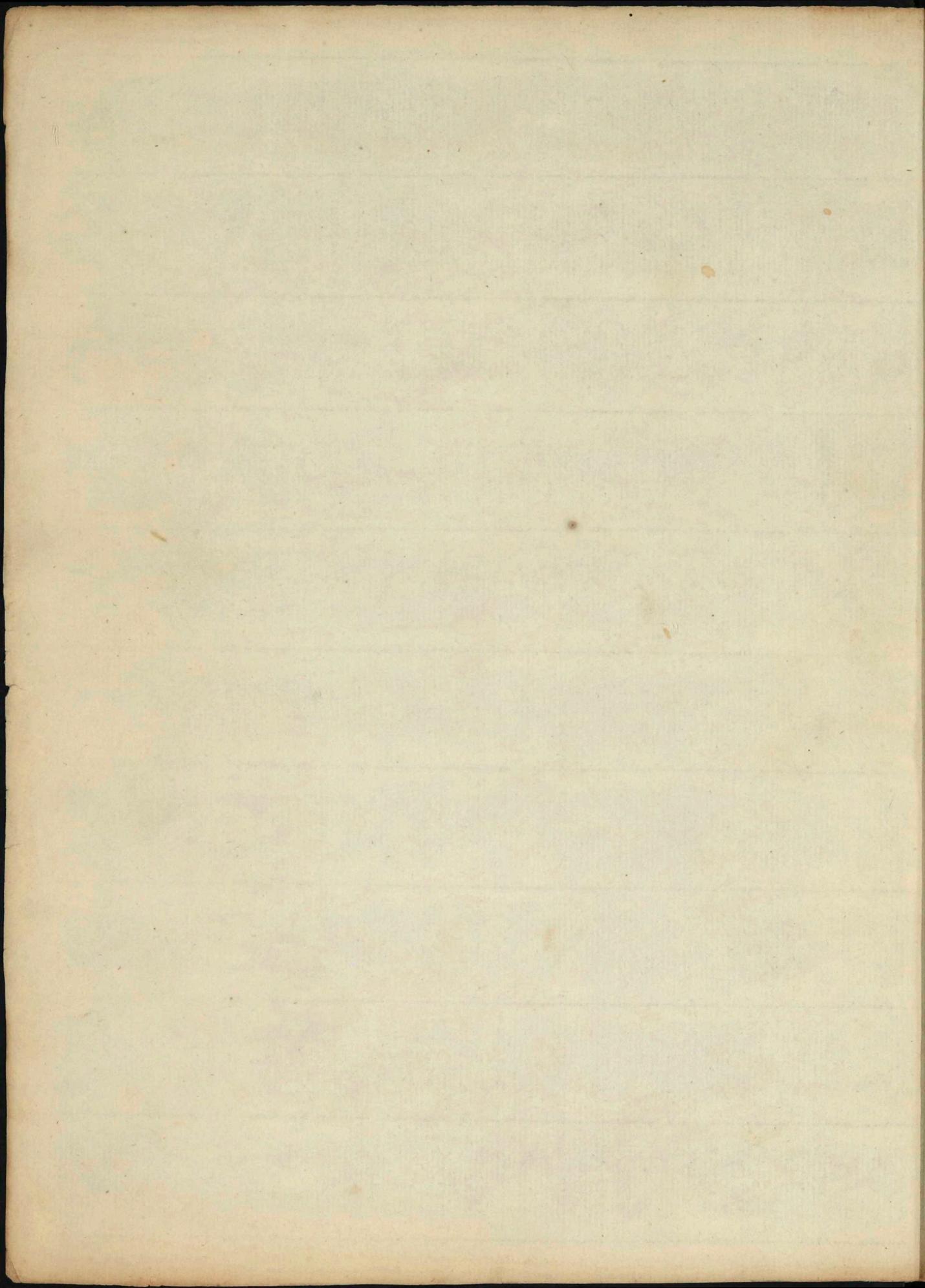
Chief Justice Reid's
Digest

2

H - W







Kings Proclamation.

The Kings proclamation is an act of State
of which all ought to take notice. *Ld Ray*? 283.
Wells v. Williams & Truby. ch. I. —

For it is a principle that every thing which
relates to The King, as King of this Country, is in
its nature public, and therefore a Gazette, which
contains any thing done by the King in his
character of King, or which has passed through
the Kings hands, is admissible evidence in a
Court of Law to prove such thing. *Rex v Holt*,
5 J. Rep. 445. & *Buller*. I. —

The King.

Costs..

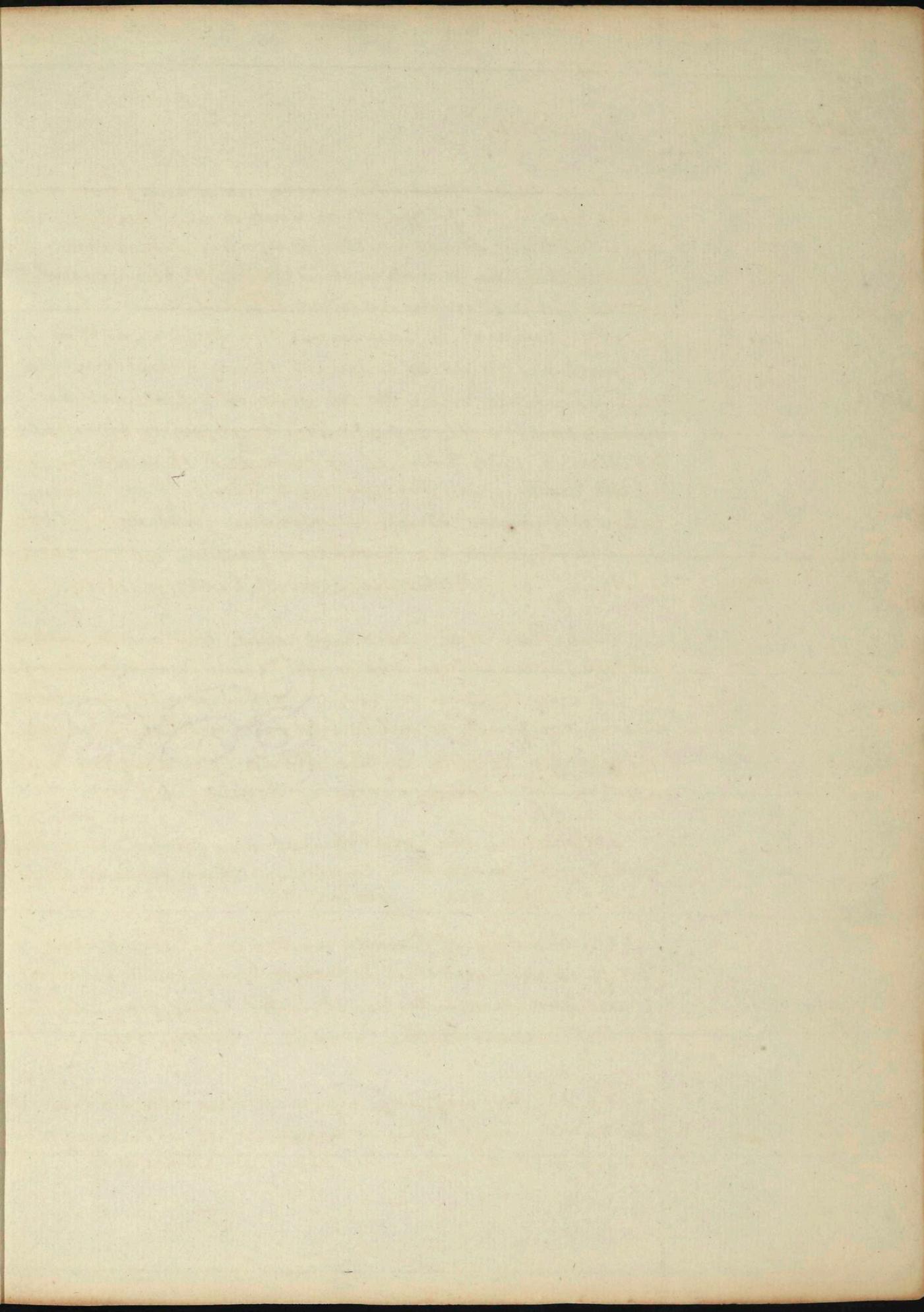
It is said that the King, and any person suing to his use, if the plaintiff be non-suited, or a verdict pass against him, shall neither pay nor receive costs; For besides that he is not included under the general words of the Statutes relative to Costs, as it is his prerogative not to pay them to a subject, so it is beneath his dignity to receive them; but true as this principle may be in general, it must be understood with some restriction, since by Stat: 33. Hen. 8. c. 39 s. 54. it is enacted, that the King in all Suits upon Specialties to himself, or to any other to his use, shall recover his just debts, Costs and damages, as common persons do in their Suits. — Hullock's Law of Costs, p. 18. 19. —

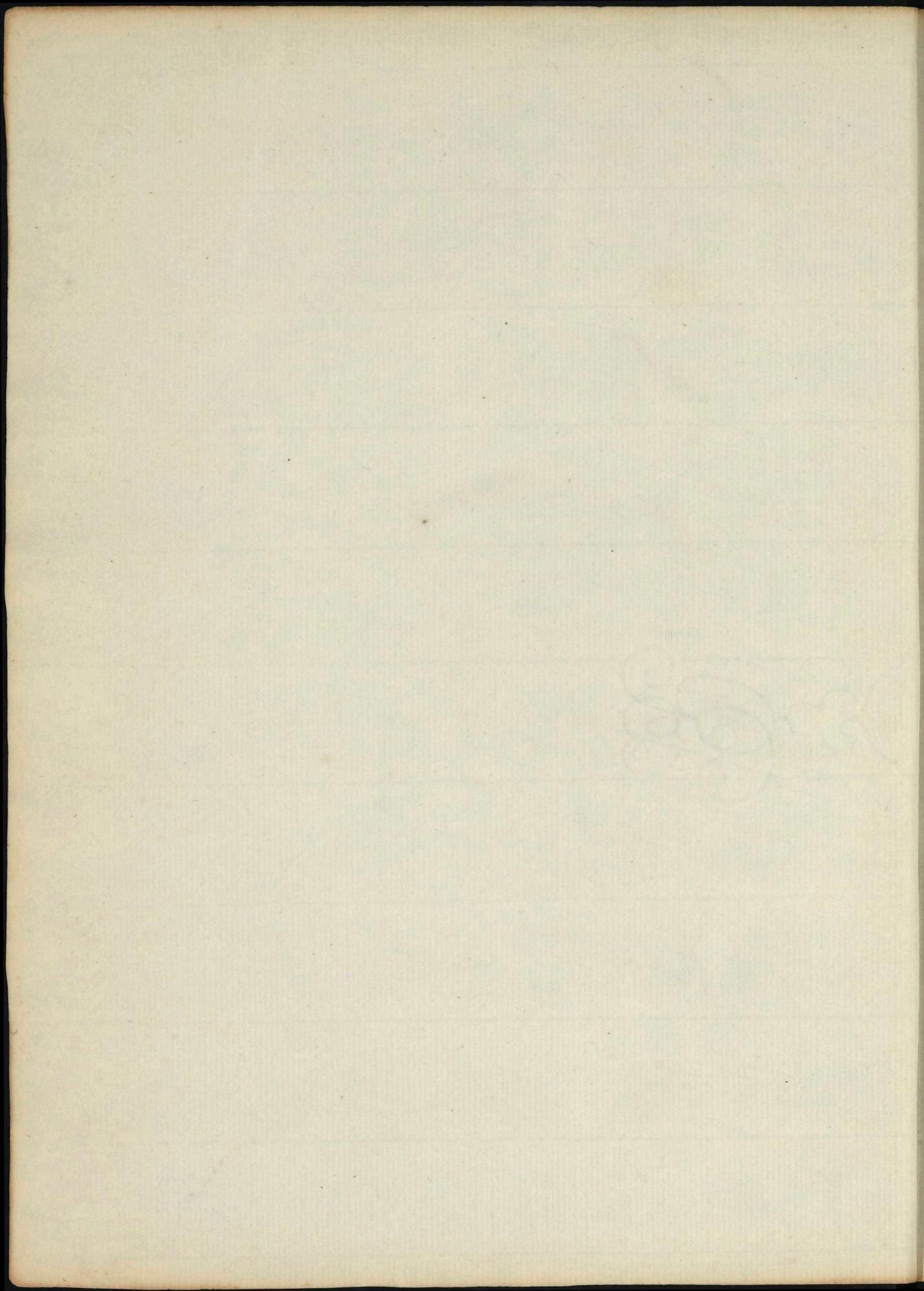
But this Stat. does not relate to simple contract debtors, even when their debts are rendered record by the inquisition on the Commission to find debts, but is confined to debts by bond or other specialty originally made to the King, or to any one to his use. — Chitty's Pres. of Crown. 310. 311. n

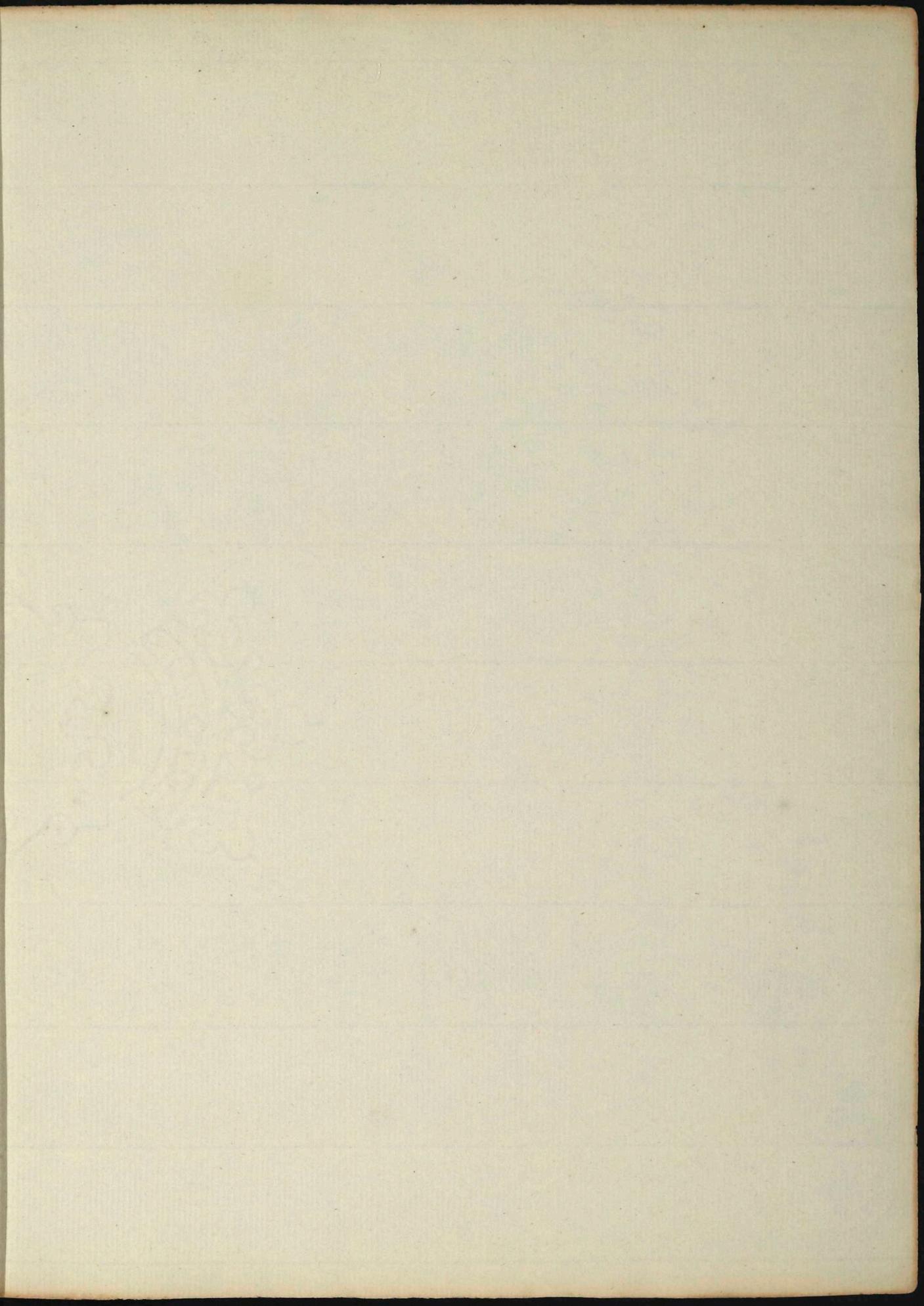
But when the Court grant any indulgence, they sometimes make it a Condition that costs shall be paid. — Price. 434. — Hardr. 136. —

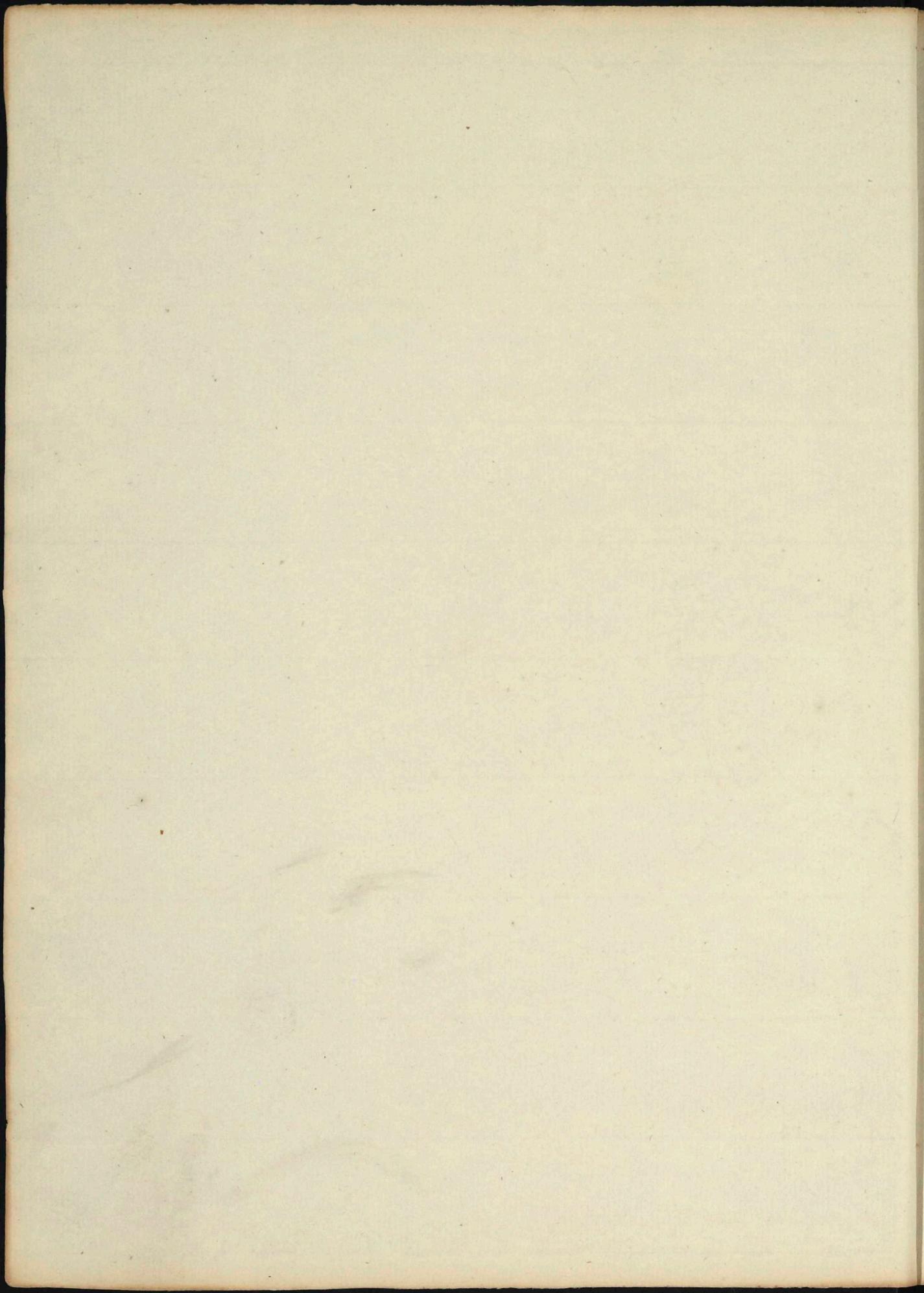
On the Sale of lands under an Extent, the Sheriff is not entitled to poundage, and therefore it cannot constitute an item of Costs payable by the defendant to the Crown. — Chitty. 311. —

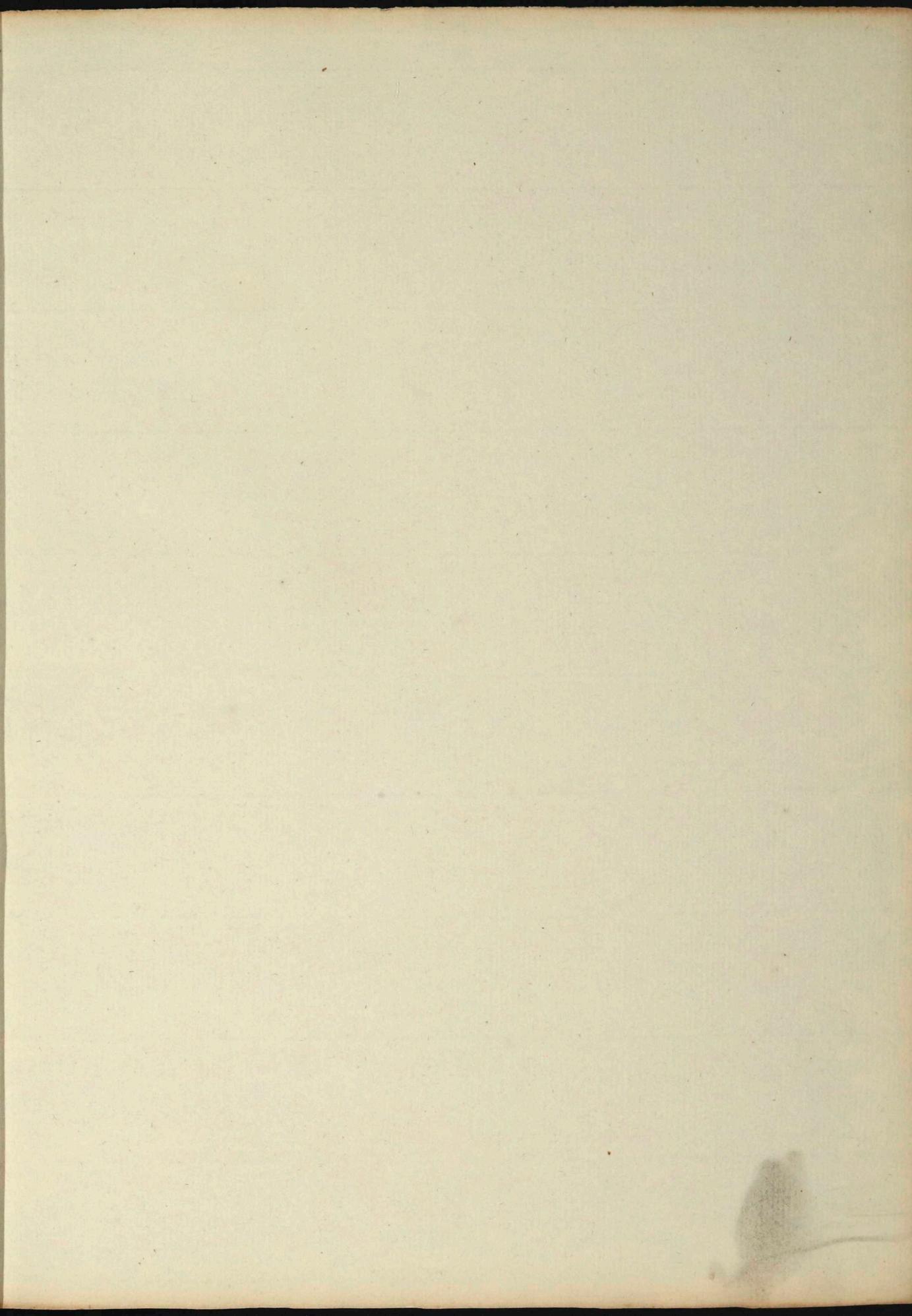
In the proceedings upon a Duo warrant the relator shall pay or receive costs according to the event of the Suit. Id. 338 — see 1 Bur. 462. —

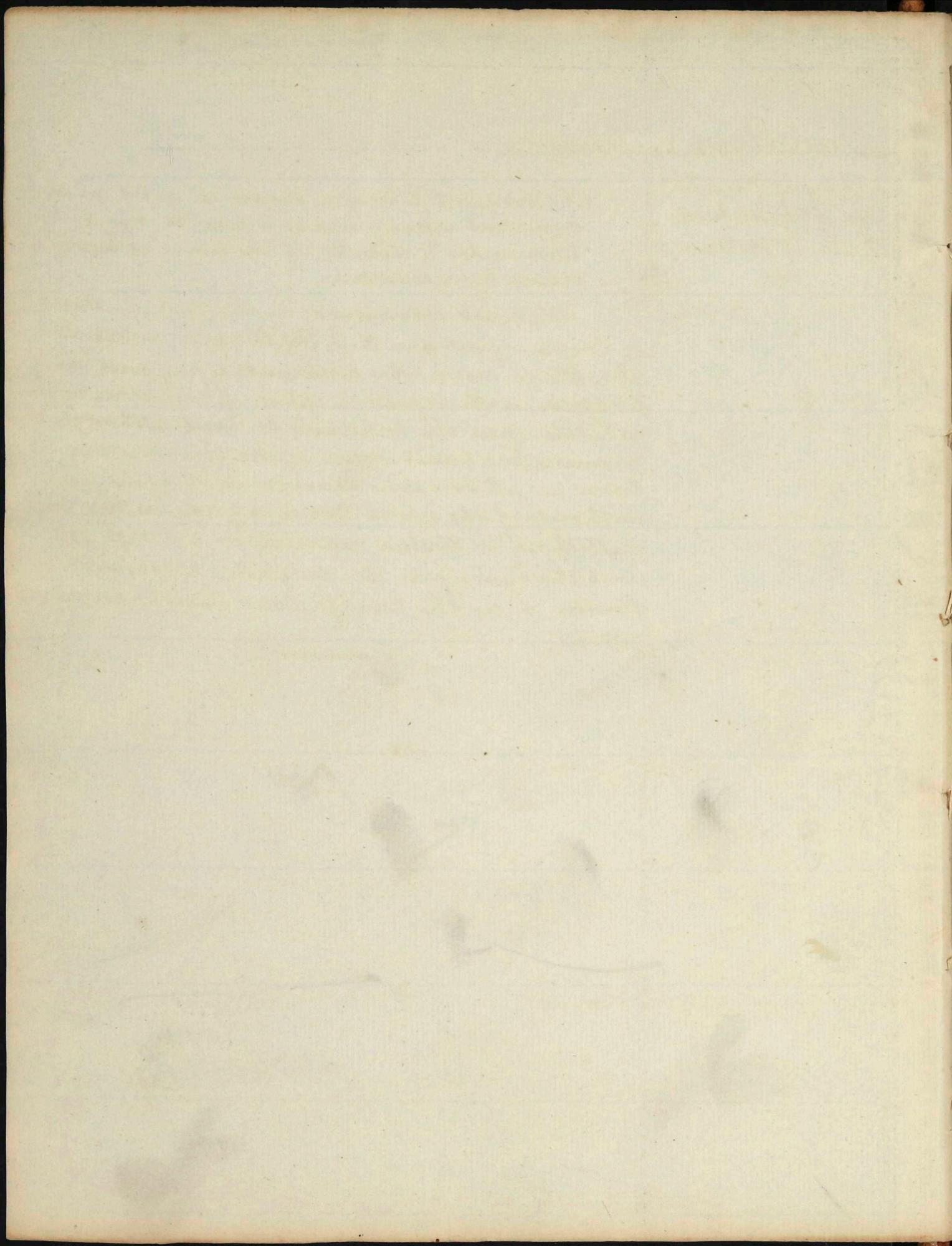










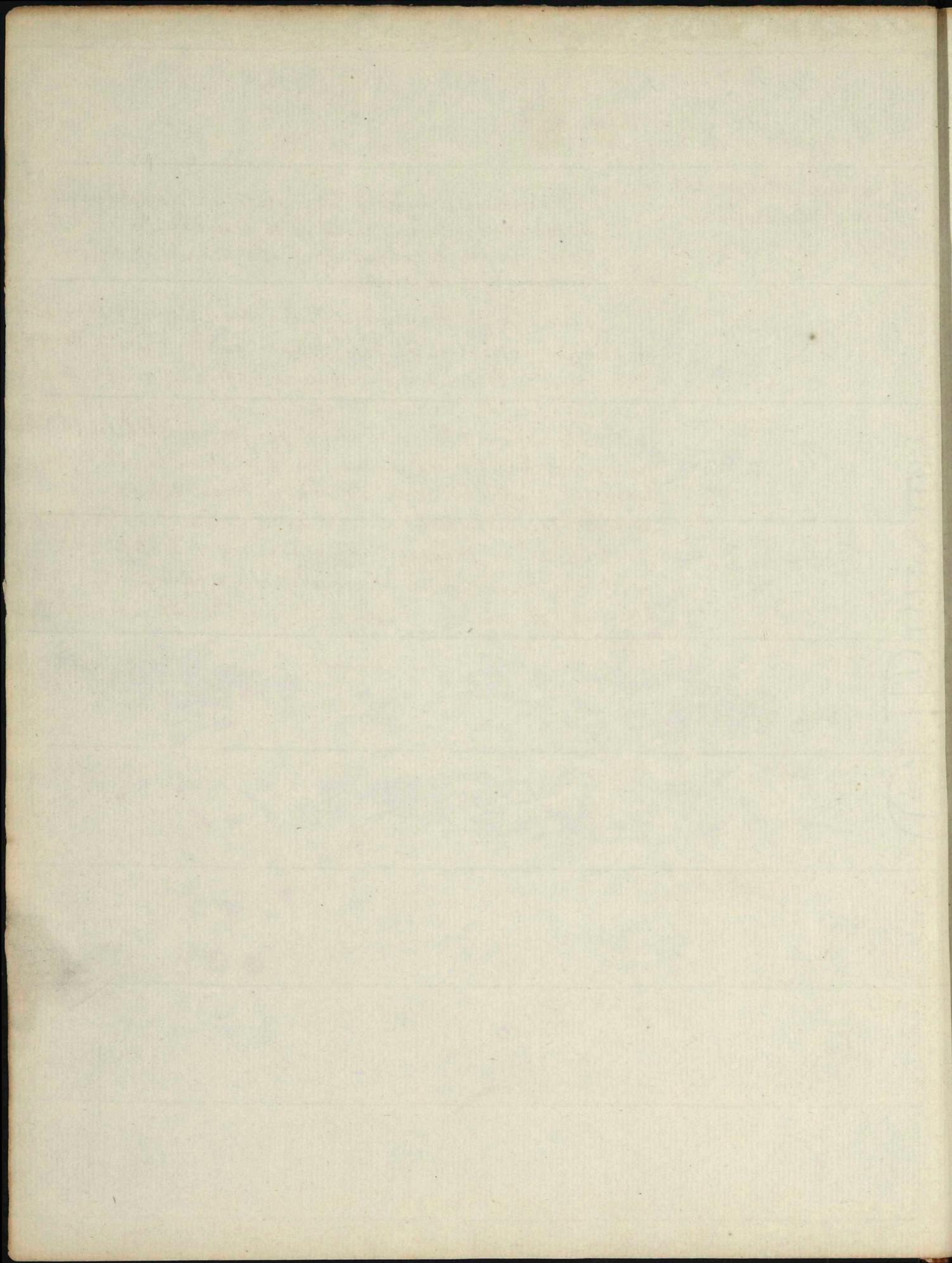


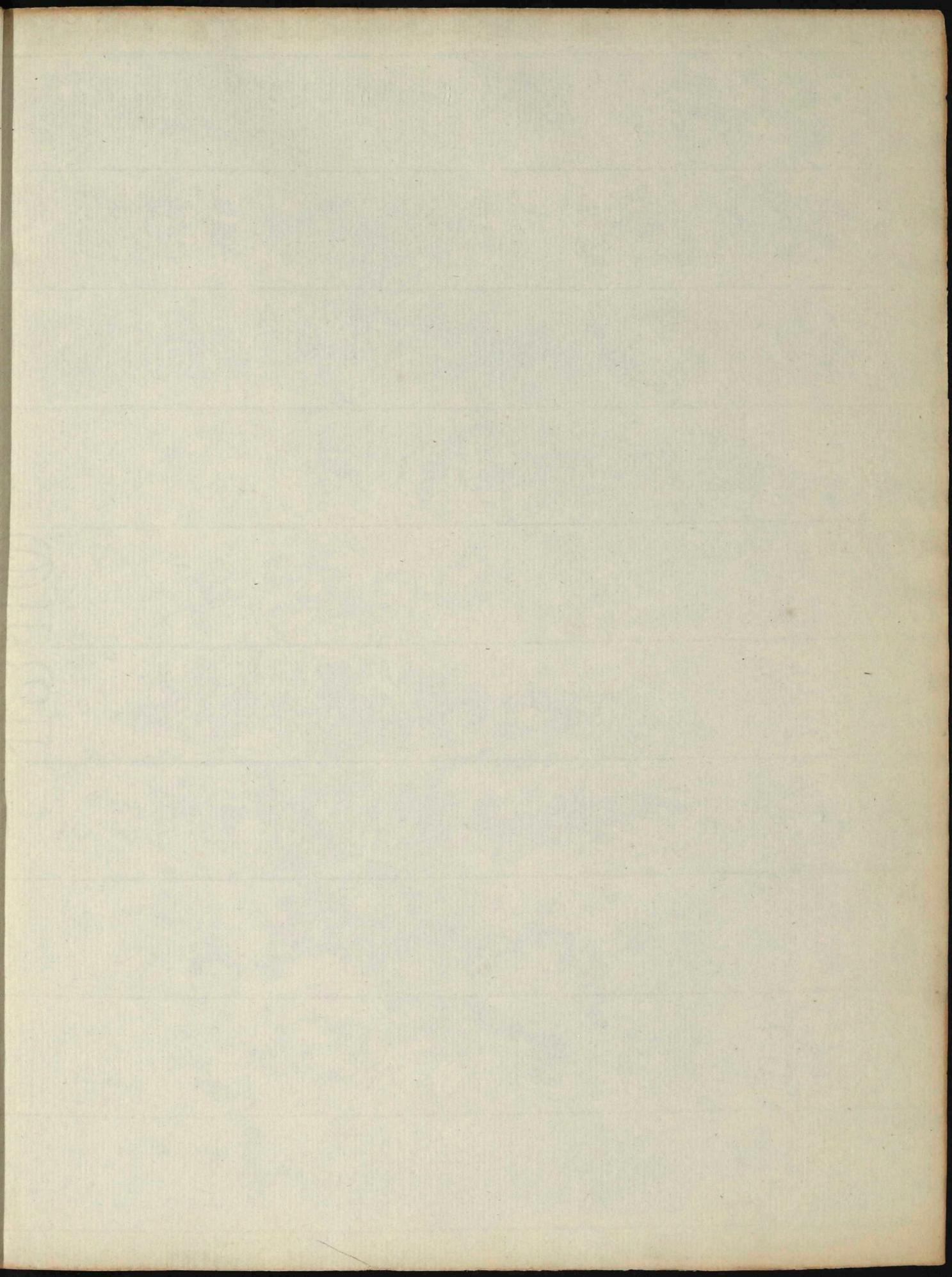
Landlord & Tenant.

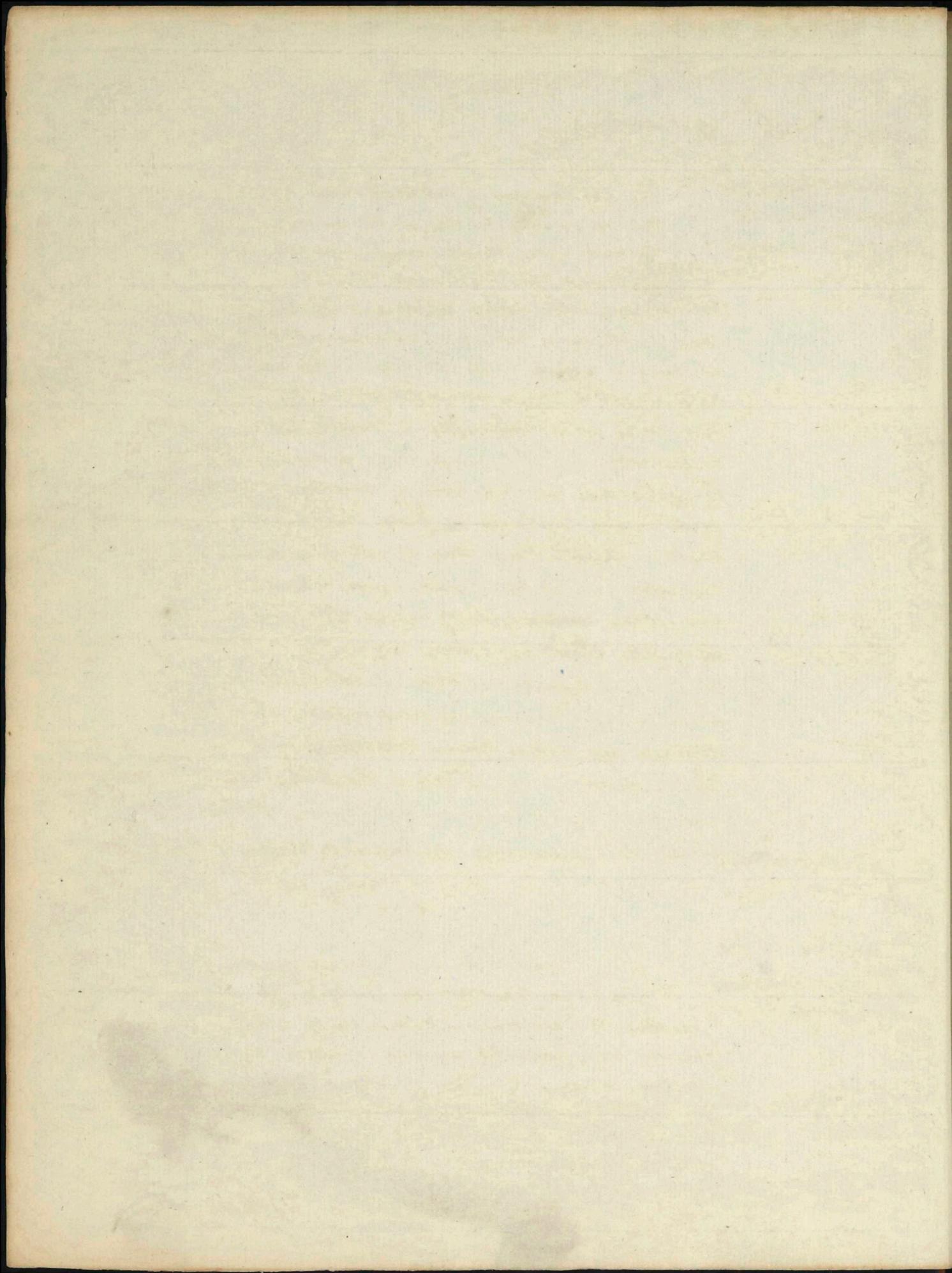
2. Comyn's Rep. 627.
Earl of Chesterfield
Duke of Bolton.—

A Covenant to keep a house in good and sufficient repair, and so to leave it, binds the covenantor to rebuild, if the house is burnt down by accident.—

The Court determined in the Case of Monk vs Cooper, reported in 2 L. Raym. 1477— and 2 Stra: 763, that a lessee who covenants to pay rent, and to repair, with express exception of casualties by fire is liable upon the covenant for rent, although the premises are burnt down and not rebuilt by the lessor.— A similar decision and upon the authority of the above Case was given in the Case of Belfour. vs Weston, reported in 1 T. Rep. 310.— and the law upon the subject is recognized by Buller. J. in the Case of Doe. vs Sandham. 1. T. Rep 710.—







Lex loci Contractus.

10. Barn: & Cress. 903.
The British Linen Co:-
Geo. Harley Drummond
v^r

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In an action of debt it was averred, that before the making of the instrument and obligation therein after mentioned, the plaintiffs carried on business in Scotland, and that one A. B. and the defendant were resident and domiciled therein: and that by a certain instrument and obligation in writing (which was set out) the said A. B. and the defendant became bound and obliged themselves — conjointly and severally, to pay to the plaintiffs the sum of £4000<sup>l</sup>. It was then averred that by the law of Scotland, at the time of making such instrument and thence hitherto in force, the time for bringing any suit, or instituting any legal proceeding by the Plaintiffs against the defendant upon the instrument, and the cause and right of action thereon, had not yet elapsed, that is to say, by virtue of the said law, the plaintiffs had the right and privilege of suing and bringing any action thereon, at any time within 40 years from the time of making & signing the bond. — Plea — that the cause of action did not accrue within six years. — Held — upon demurrer that the plea was an answer to the action. —

1. Barn: & Adolph. 284.  
De la Vega v. Vianna

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In a suit between parties resident in England on a contract made between them in a foreign country, the Contract is to be interpreted according to the foreign law, but the remedy must be taken according to the law here. — One foreigner may arrest another in England for a debt which accrued in Portugal while both resided there, although the Portuguese Law does not allow of arrest for debt. —

Lex loci Contractus.

2. Vernon. 540. 1.
Dupleix. vs De Roven.

If a man recovers a Judgment or Sentence in France, for money due to him, the debt must be considered here (in England) only as a debt on simple Contract, and the Statute of Limitation will run upon it. —

8th Term Rep. 595.
Innes. vs Dunlops

The assignee of a Scotch Bond, may maintain an action of assumpsit in England against the obligor, in his own name. —

3. Esp. Reps. p. 163.
Male. vs Roberts.

When the Cause of action accrued in Scotland, and infancy pleaded, the Defendant must shew that infancy is a legal defence to the demand, by proving the law of that Country in that respect. —

^{cf} The note on this case ought rather to be that the Plaintiff ought to shew, by proving the laws of the Country where the Contract was made, that his action could be maintained, if ~~by~~ the law of the Country where the action is brought was adverse to it. —

1 East. Reps. 515
Inglis & al. vs Usherwood

A delivery by the Consignor of goods on board a ship chartered by the Consignee is a delivery to him, and the Consignor cannot afterwards stop them in transitu, according to the law of England — But where the delivery was made on board such a ship in Russia and by a law of that Country, the owner of goods in case

Lex loci Contractus.

case of the bankruptcy of the Vendee may sue out process to retake his goods on board such ship, the Captain acting in conformity to the orders of the Consignors under this law of Russia, bound to comply therewith on the arrival of the goods in England.—

Cf See what Mr Kenyon says in regard of this law of Russia — "The law of Russia in this respect is a very equitable law, and I have often lamented that our own Code was defective in the same particular: For every man contracting to supply another with goods acts on the presumption that that other is in a condition to pay for them, and therefore when the condition of the Consignee is altered at the time of the delivery, and he is insolvent and no longer capable of performing his part of the contract, honesty and good faith require that the contract should be rescinded &c"

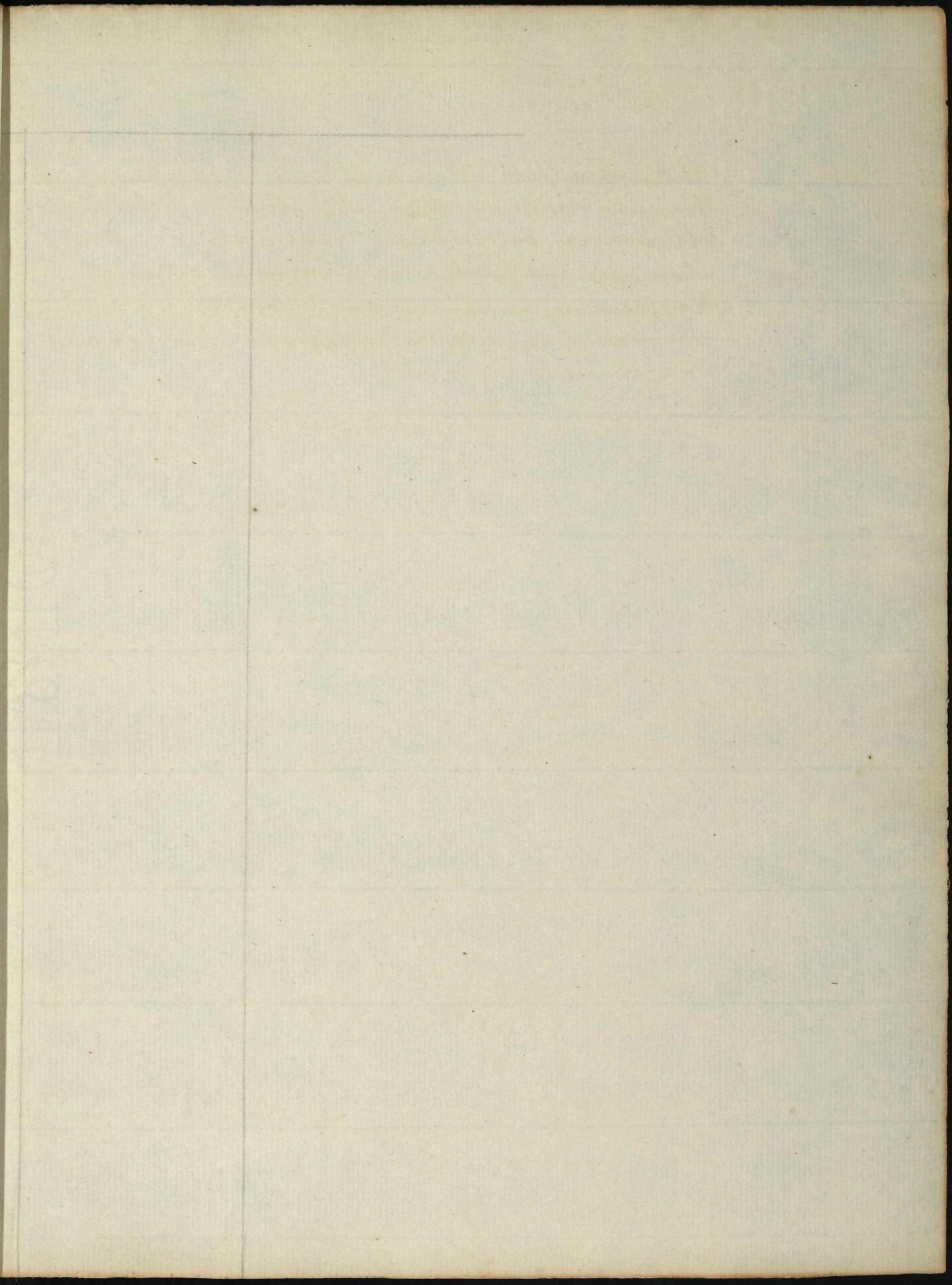
2. Stra: Rep. 733.
Burrows v. Semino

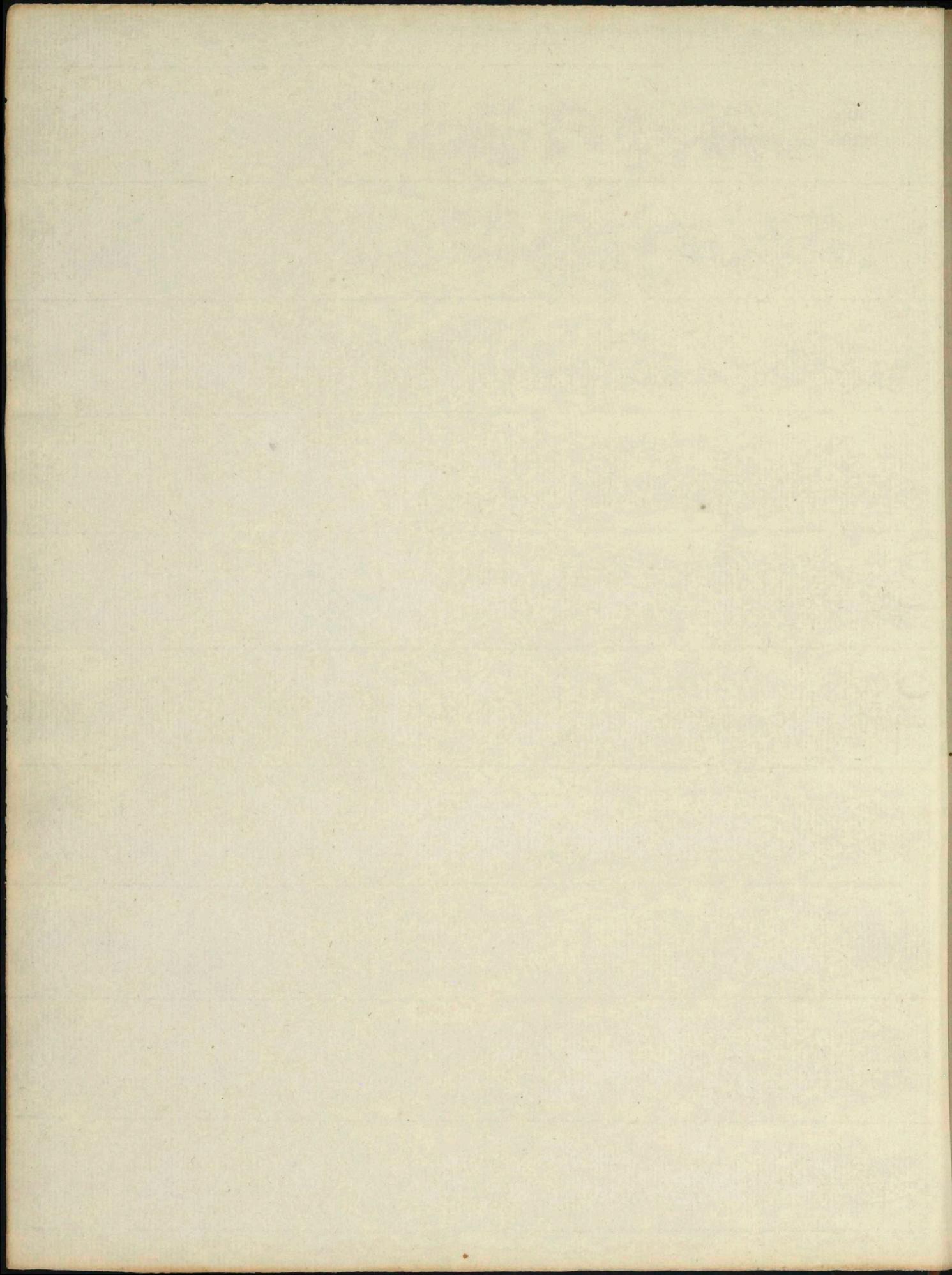
A man cannot be sued in England on his acceptance of a bill of exchange abroad after he has been discharged by the laws of that country where the acceptance was made.—

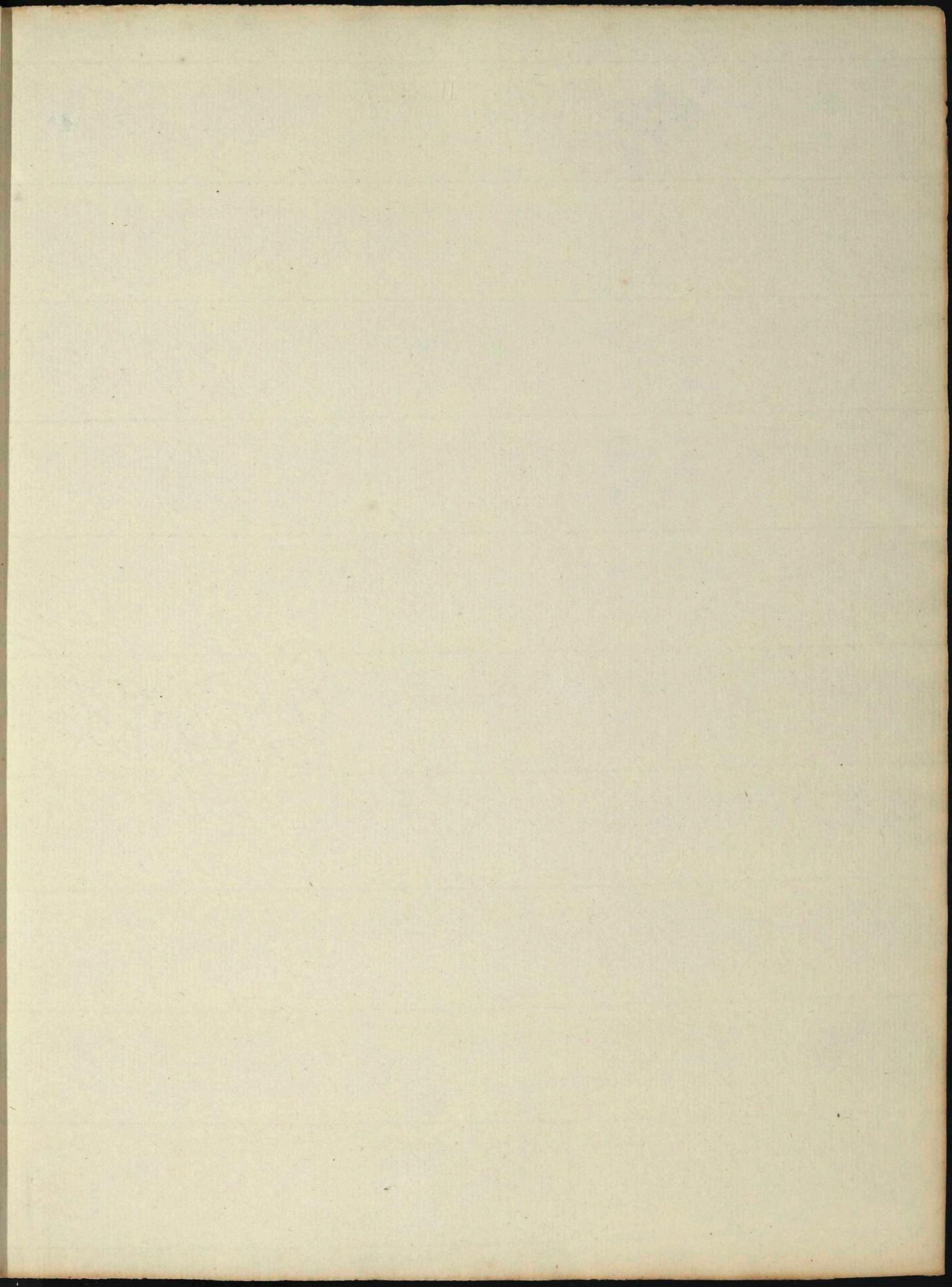
5. East's Rep. 124
Potter v. Brown.

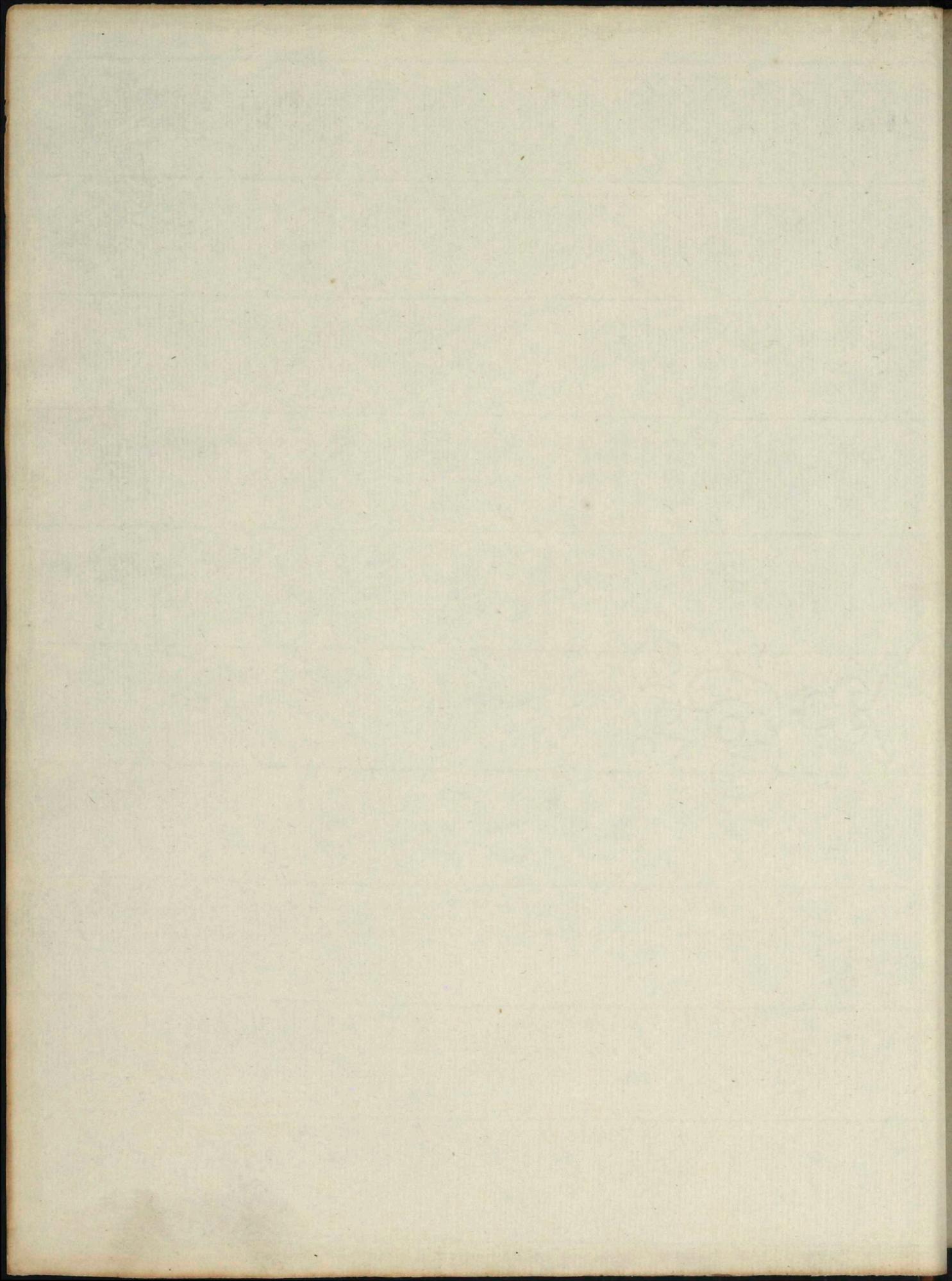
Where the Defendt gave the plif in a foreign Country (Baltimore in America) where both were resident, a bill of exchange drawn by the Defendt upon a person in England, which bill was afterwards protested there for non-acceptance, and the

the Defendant afterwards while still abroad, — becomes bankrupt there, and obtained a certificate of discharge by the law of that State — Held, that such Certificate was a bar to an action in — England, upon an implied assumption to pay the amount of the bill in consequence of such non-acceptance in England. —









Libel.

A Member of the House of Commons may be convicted upon an Indictment for a Libel, in publishing in a newspaper the report of a speech delivered by him in that House, if it contain libellous matter, although the publication be a correct report of such speech and be made in consequence of an incorrect publication having appeared in that and other newspapers. — 1 M. & Selv. 273. The King v. Creevey. Esq. M. P. u

If a letter containing a libel is sent sealed to another or to the party himself against whom it is made, it is a publication. 2 Bl. Reps. 1038. — 2 Term Reps. 110. — Though the contrary seemed to have been holden formerly. 3 Bac. Ab. Libell (B) and Hob. 62. Barrow. v. Stewettin. — Ibid. 225. Hickes's Case. —

3. Barn: & Ald
Rep. 167,
King. v. Carlisle

It is not lawful to publish even a correct account of the proceedings in a Court of Justice, if such an account contain matter of a scandalous, blasphemous or indecent nature. —

1 Brod: & Bing: Rep
548.

Butt v. Conant

A Justice of peace has authority to issue his warrant for the arrest of a party charged with having published a libel, and upon the neglect of the party so arrested to find Sureties, may commit him to prison there to remain till he be delivered by due course of law. —

Libel.

4. Barn. & Cress. Rep.

p. 473.

Fleist. vs. Biske

—

In an action for a libel, which purported to be a report of a trial, the Defendant pleaded, that the supposed libel was in substance a true account and report of the trial — Held, upon demurrer, that this plea was bad —

Sembler, that although it be lawful for a counsel in the discharge of his duty to utter — matter injurious to individuals, yet the subsequent publication of such slanderous matter is not justifiable, unless it be shown, that it was — published for the purpose of giving the public information which it was fit and proper for them to receive, and that it was warranted by the evidence —

3. Carrington & Payne's

N. P. Rep. 383. —

Pattison. vs. Jones

—

If a master in giving the character of a servant in a letter, state certain facts, the master in the defense of an action brought by the servant for libel is not bound to prove the truth of every fact he stated; it is enough that he give such evidence as convinces the Jury that he wrote what he did with an honest intention and belief of its truth. — Sembler — that a character of a servant, if given bona fide, is a privileged communication, although it had not been applied for. —

Libel.

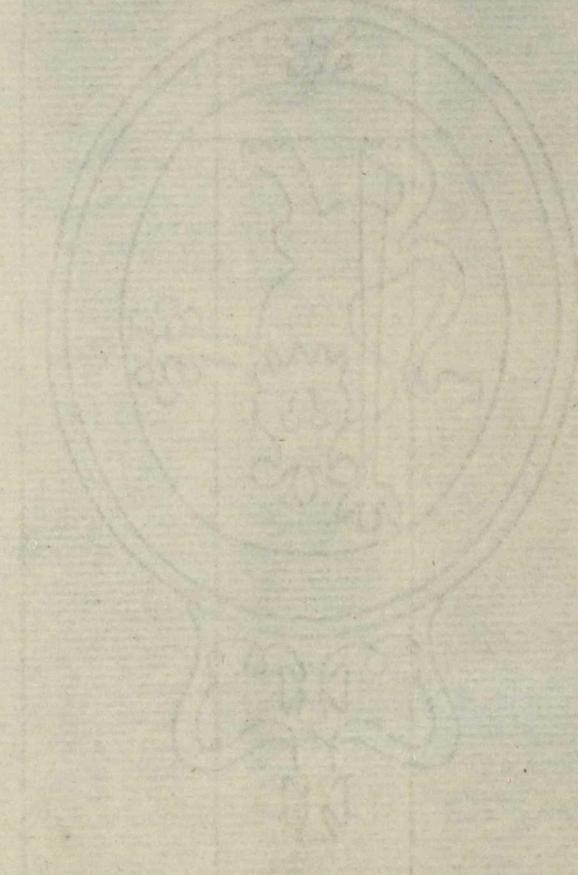
6 Bing. Rep. 213.
Saunders v. Mills. —

3 Moore & Payne's Rep.
520. S. C. —

A statement in a newspaper of the circumstances of a Cause tried in a Court of Justice, given as from the mouth of counsel, instead of being accompanied or corrected by the evidence, is not such a report of the proceedings of a Court of Justice, as a newspaper is privileged to publish. —

In mitigation of damages the Defendant was allowed under the general issue to shew that he had copied this statement from another newspaper — but was not allowed to shew that it had appeared currently in several other newspapers. —

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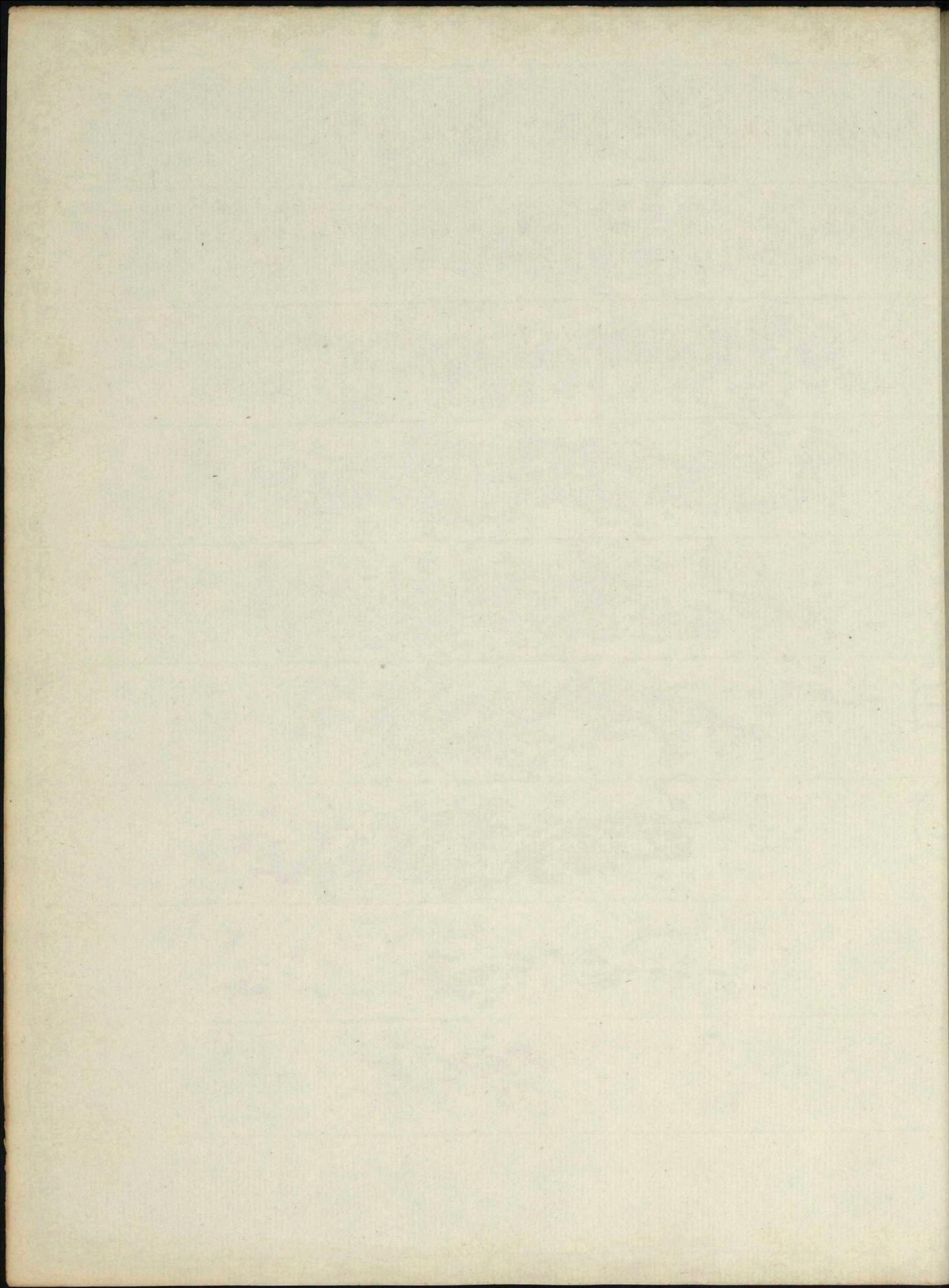


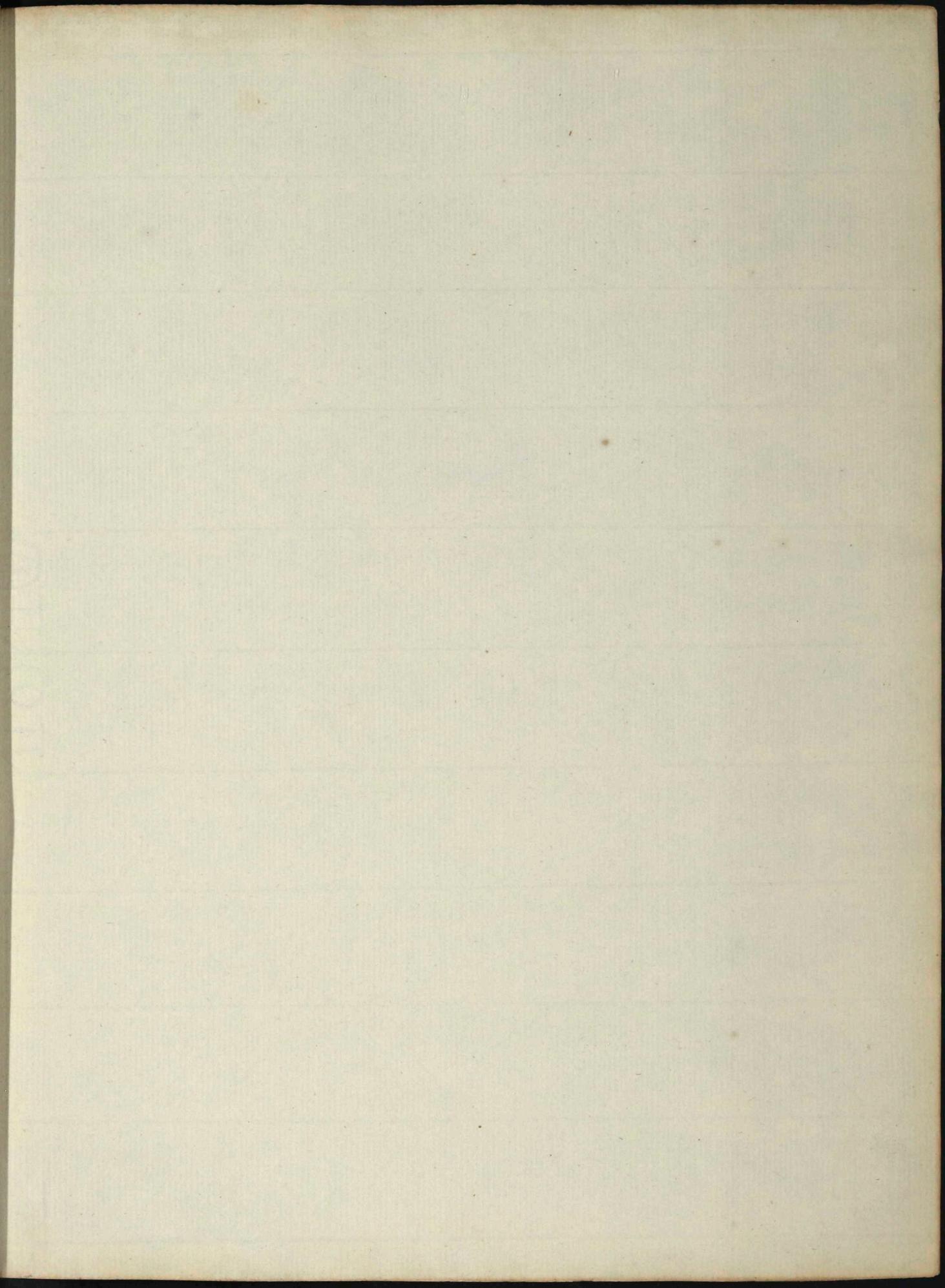


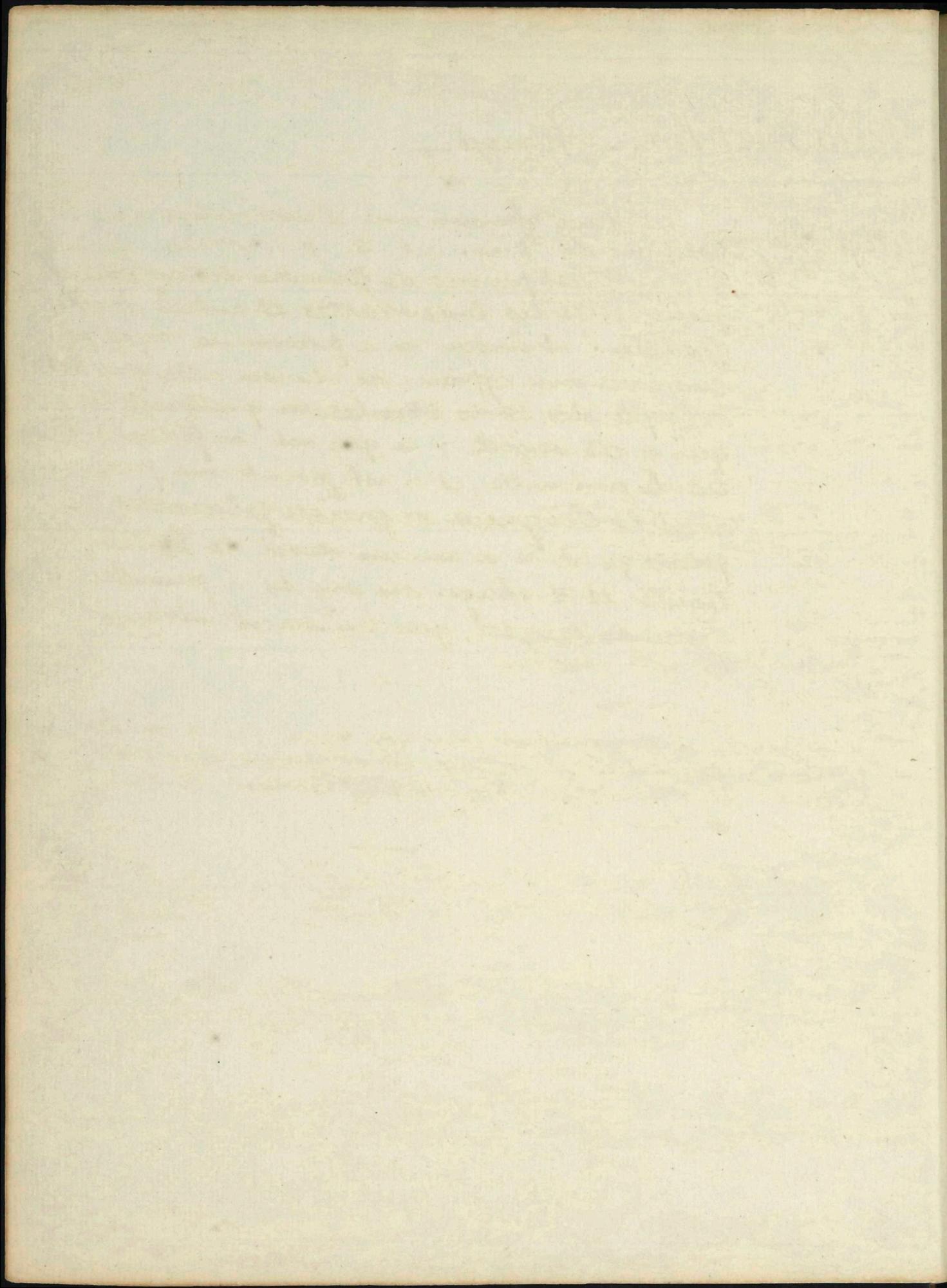
Limitations - Stat. of see. Statute of Limitations -

2. Barn: & Adolph.
Helps & another
Winterbottom.

431.
Goods were sold at six months credit — payment to be then made by a bill at two or three months at the purchaser's option — Held — That this was in effect, a nine months credit, and consequently that an action for goods sold and delivered commenced within six years from the end of the nine months, was in time to save the Statute of Limitations.







Lods & Ventes... fraud.

Cl. Pog. de Livonny
Tr. des Tiefs
liv. 3. ch. 10.
p. 263.-

Il faut observer avec Durnoulin sur la Coutume de Paris. art. 32. gl. 1. N° 104. gl. 2. N° 29. qu'il est permis de prendre des expedients pour eviter les lods & ventes et autres droits feodaux; et lorsqu'on a plusieurs voies pour terminer une affaire, de choisir celle qui est exempte des Lods & Ventes, en quittant celle qui y est sujette; ce qui est conforme à la liberte naturelle, et n'est point une fraude dont le Seigneur se puisse plaindre, — parce qu'il n'a aucun droit de forcer cette liberte, et d'obligier ses sujets à prendre le genre de negoce, qui lui seroit utile. —

Arrets de Sovel.
v° Lots & Ventes
p. 456. N° 45.

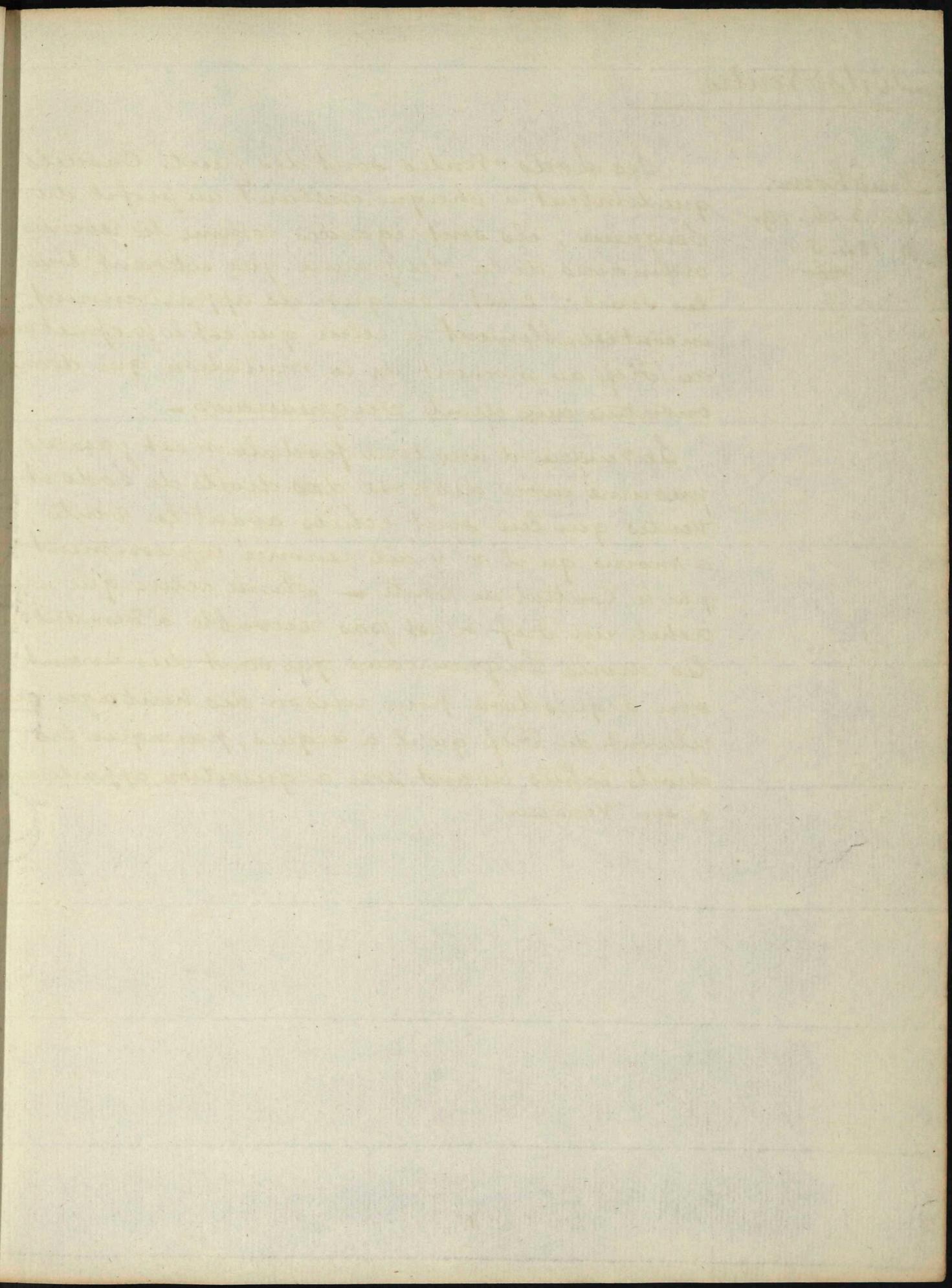
—
L'acquereur de celui qui avoit acheté du Roi, a été condamné de payer Lods & Ventes. le 1 Aout. 1573. et 15. Mai 1578. rapporté par Bacquet, Tr. des Droits de Justice. chap. 12. N° 22. —

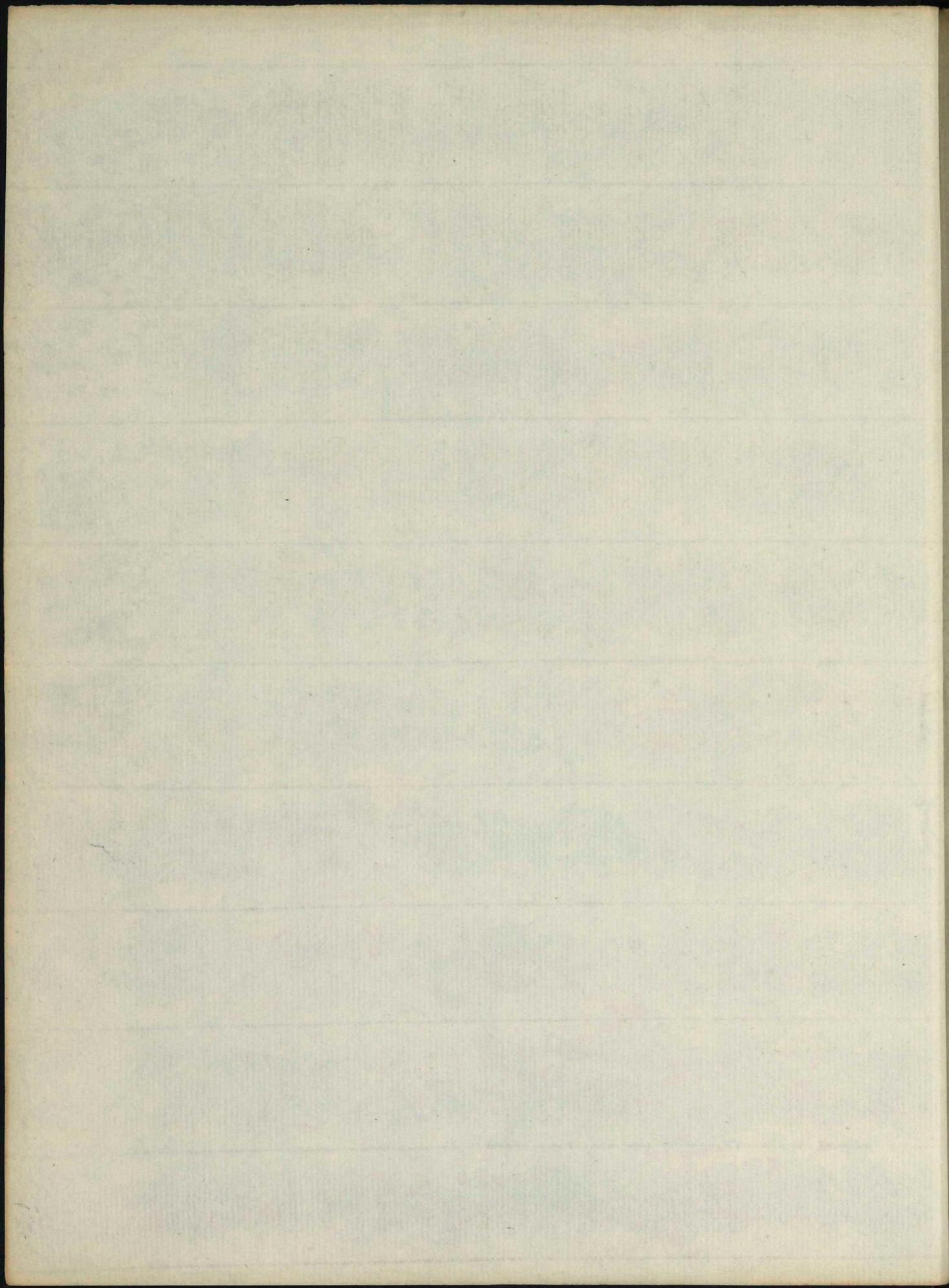
Lods & Ventes

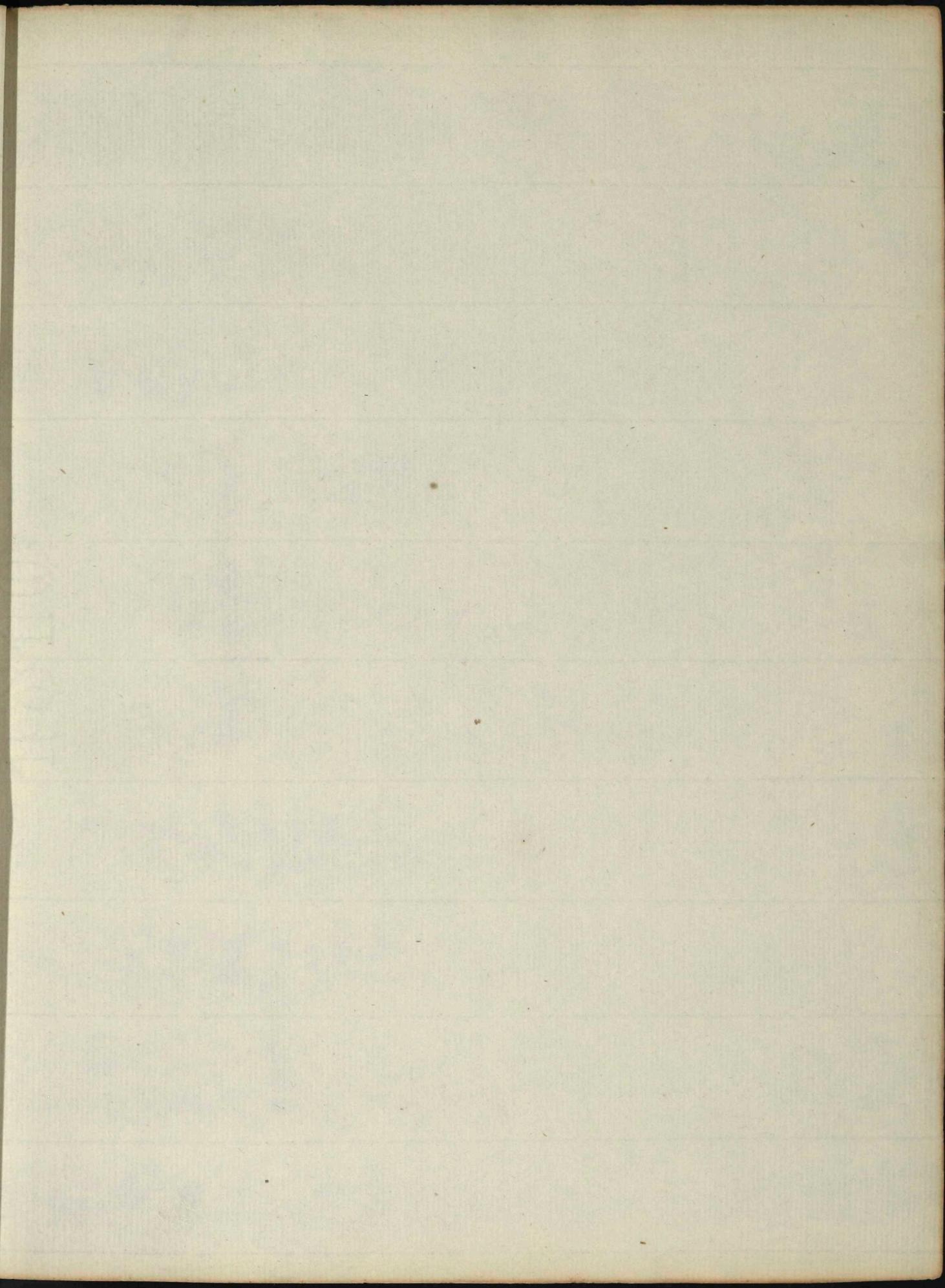
Prudhom.
liv. 3. ch. 19.
p. 184. 5.

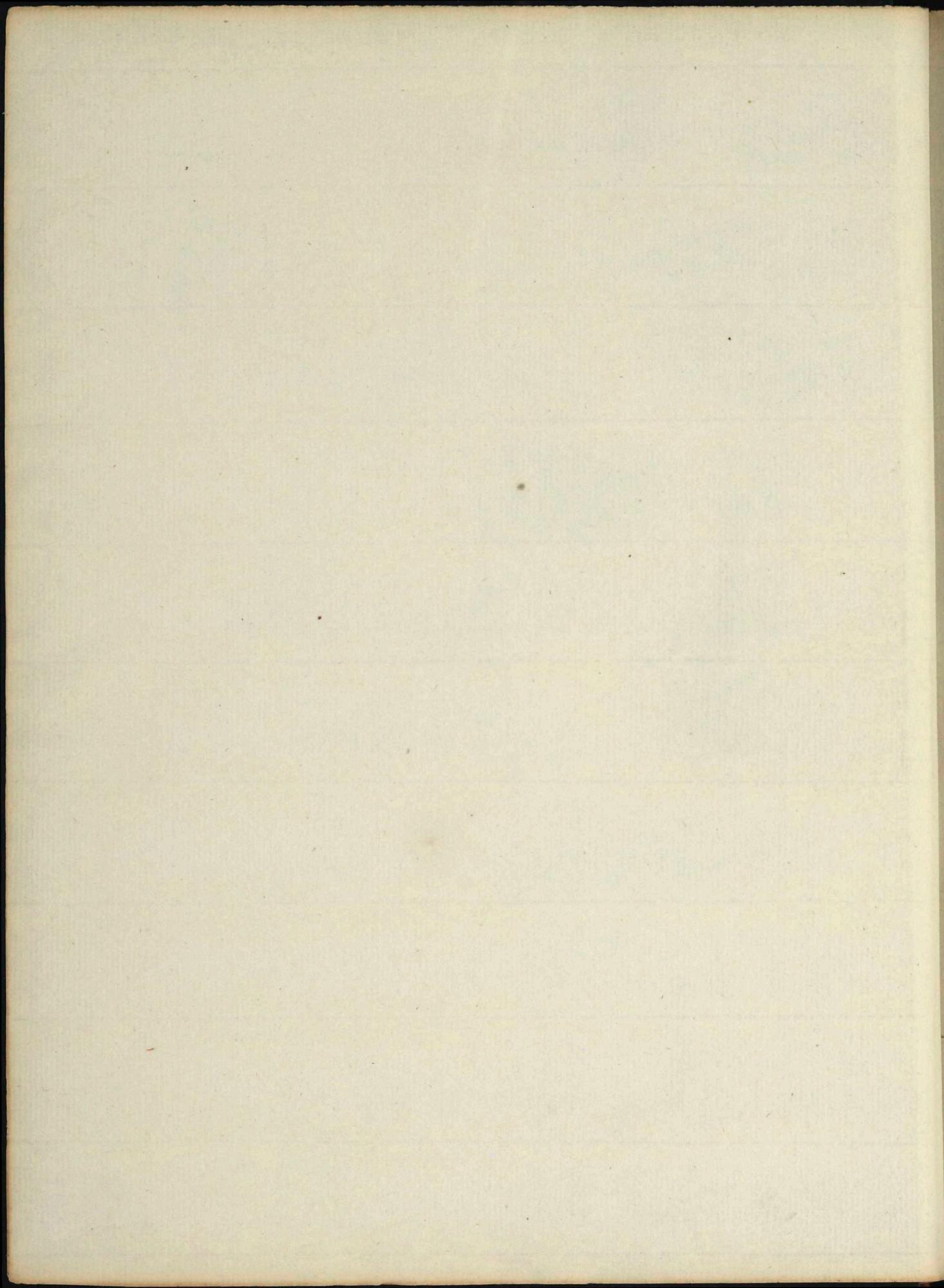
Les Lods & Ventes sont des fruits Casuels qui tombent à chaque instant au profit du Seigneur, ils sont regardés comme les revenus ordinaires de la Seigneurie qui échoient tous les jours ; c'est pourquoi ils appartiennent incontestablement à celui qui est le propriétaire du Fief au moment de la mutation qui donne ouverture aux droits Seigneuriaux.

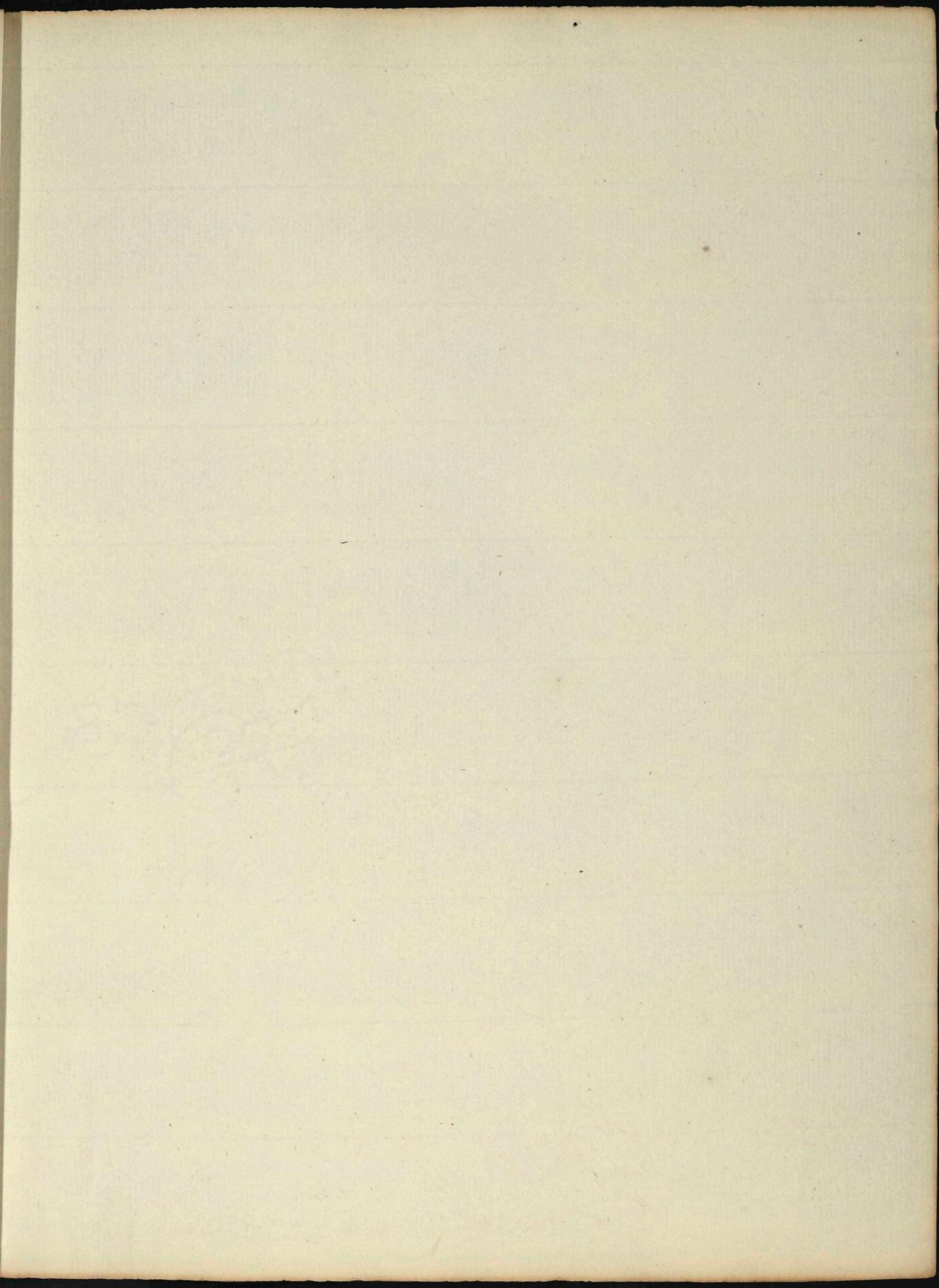
Le Vendeur d'une terre féodale n'est jamais presumé avoir disposé des droits de Lods et Ventes qui lui sont échus avant la vente, à moins qu'il n'y ait renoncé expressément par le Contrat de vente. Ainsi celui qui achète un Fief n'est pas recevable à demander les droits Seigneuriaux qui sont dus avant son acquisition pour raison des héritages qu'elles relèvent du Fief qu'il a acquis, parceque les droits échus avant son acquisition appartiennent à son Vendeur.

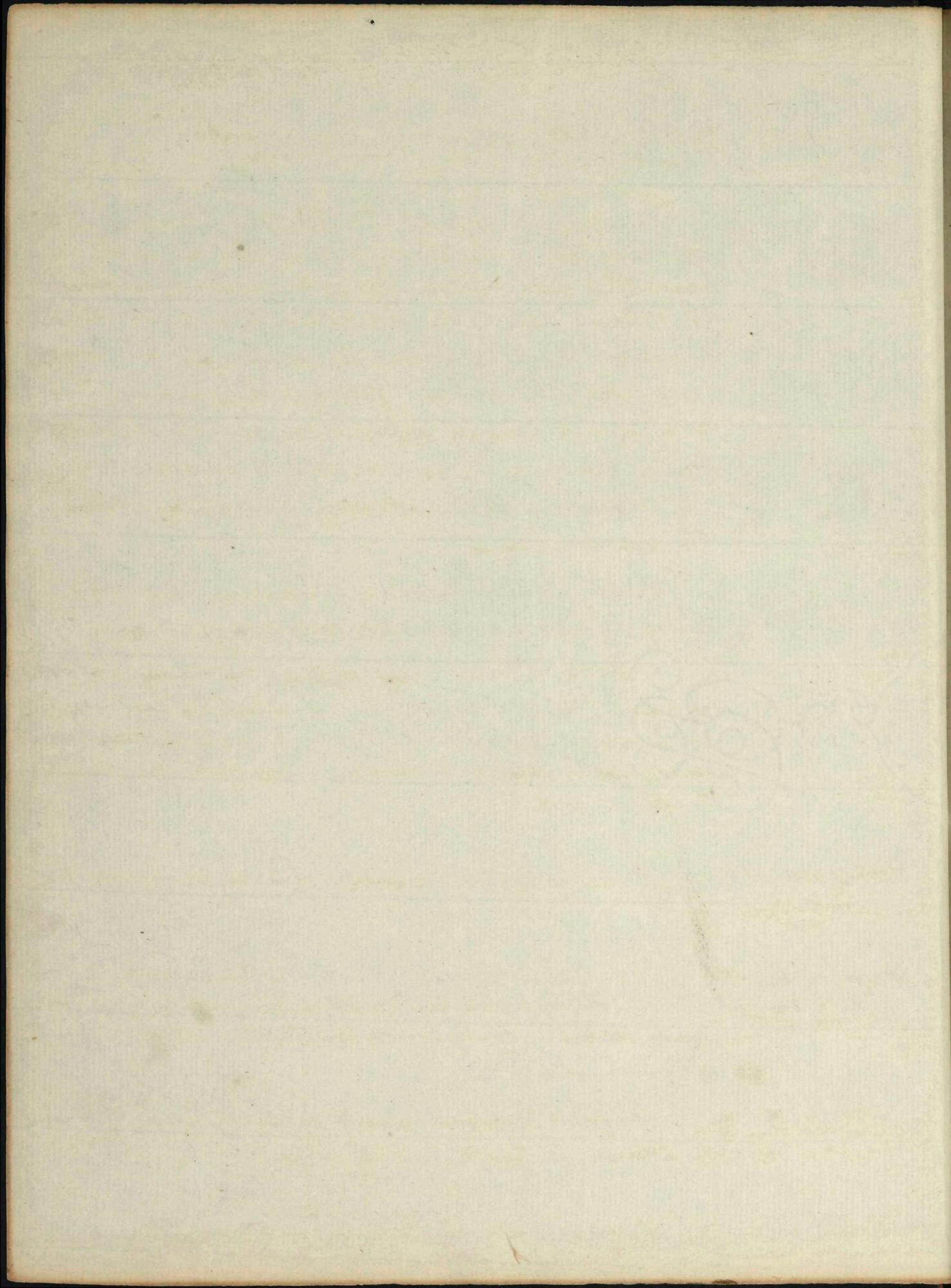












Loyers - privilege - Droit de Suite.

The privilege of the Landlord holds on the effects of the Tenant only while they are in the house rented — but if these effects be removed without the knowledge of the Landlord, he may within a reasonable delay follow the same, & maintain his privilege thereon — What this delay ought to be is not clearly defined by the Custom of Paris, leaving it as a matter to be settled by the discretion of the Judge according to the circumstances —

Some Commentators conceive that the delay ought to be limited to 8 days — see

Port. Proc. Crv. 193 — S'usage a réglé ce délai à huit jours pour les meubles enlevés de la maison de ville — et à quarante jours pour ceux enlevés des mairies, à compter du jour de l'enlèvement —

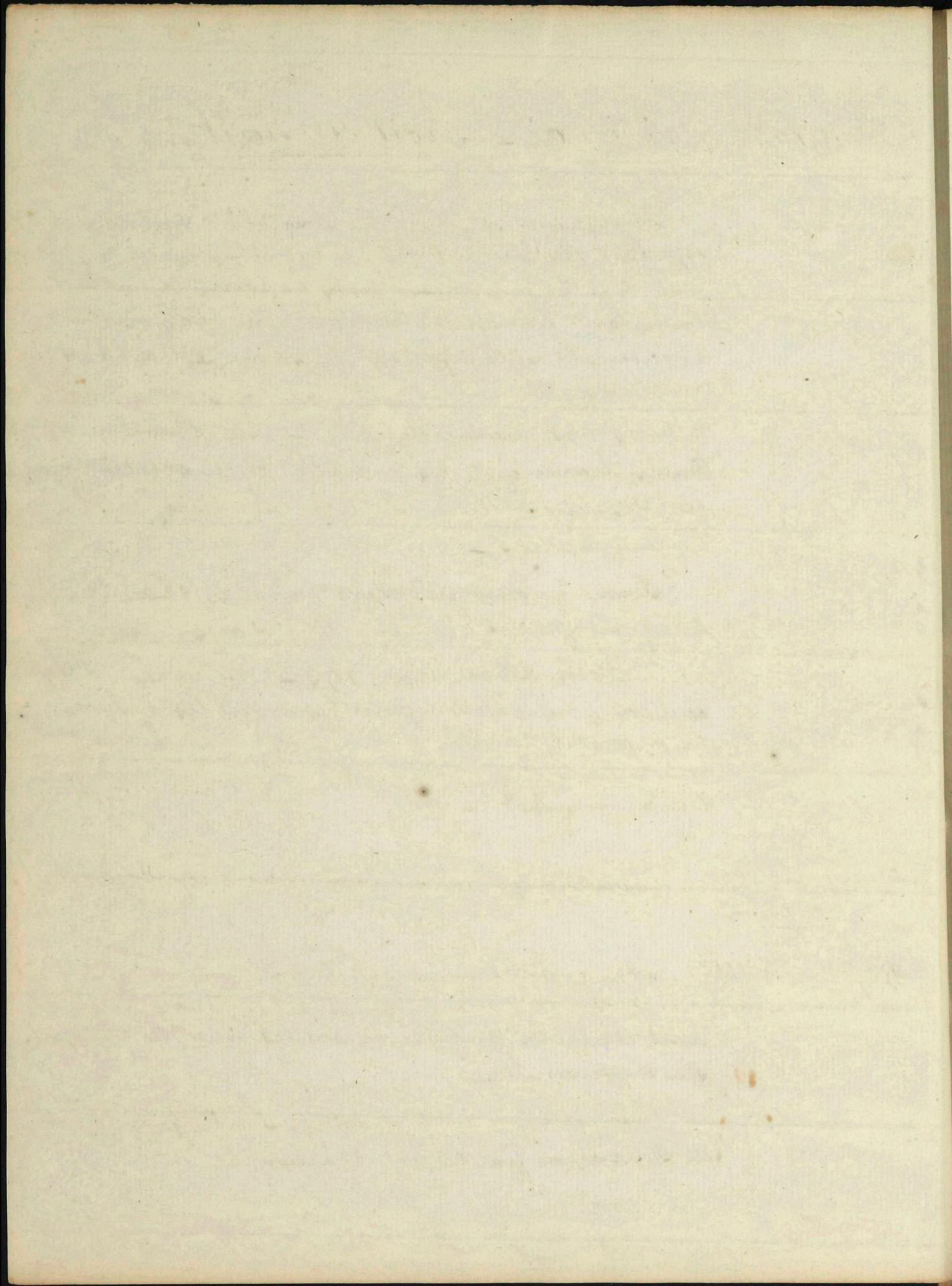
2. Bourjon. 565
art. 18.

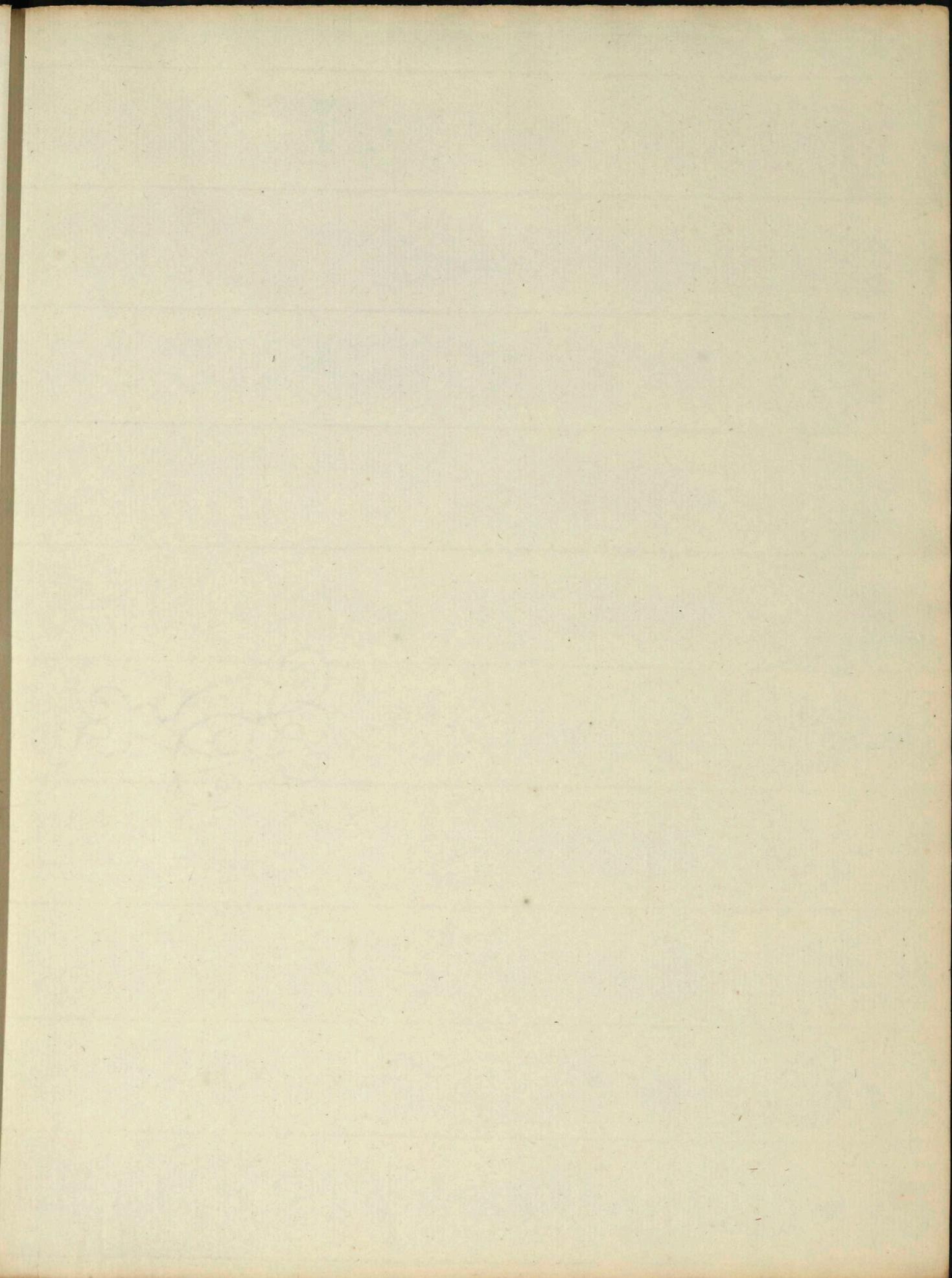
Pourvu qu'il agisse dans un temps bref

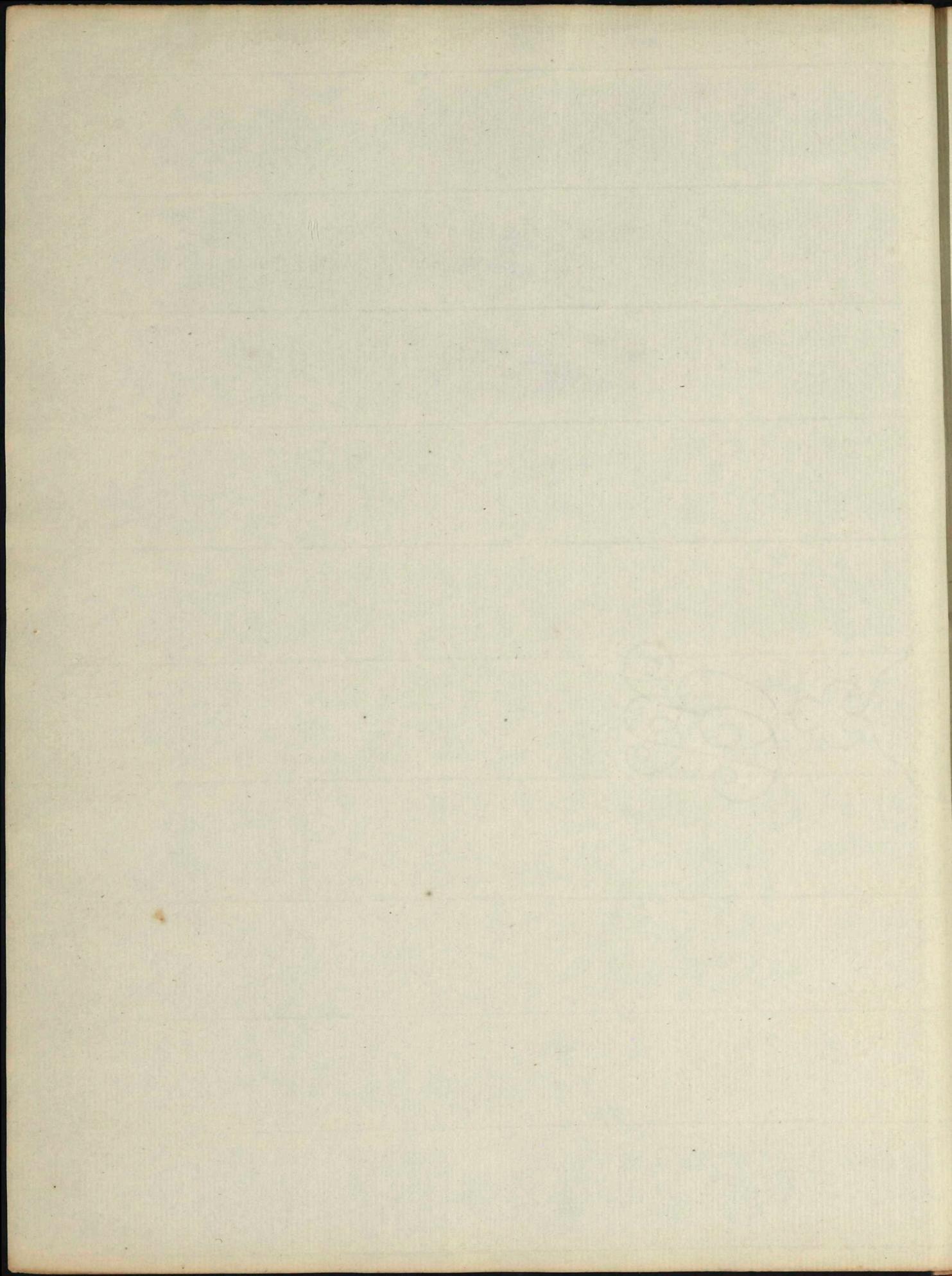
Repr. v. Bail
p. 23 & 24.

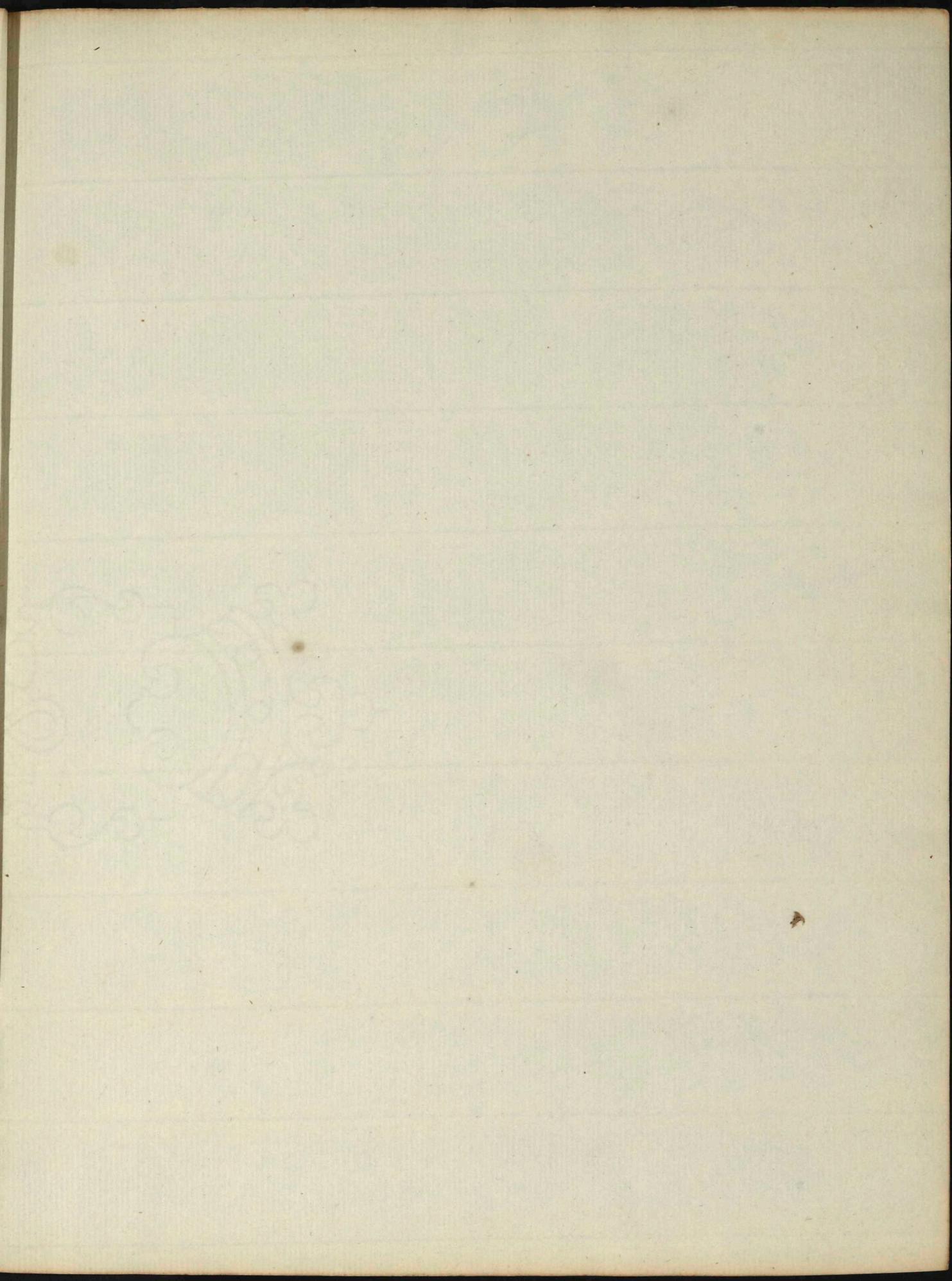
Au reste il faut que le bailleur exerce le droit de Suite dans un court délai, sans grève, & droit, & celui de préférence sur les meubles transportés & évanouissants —

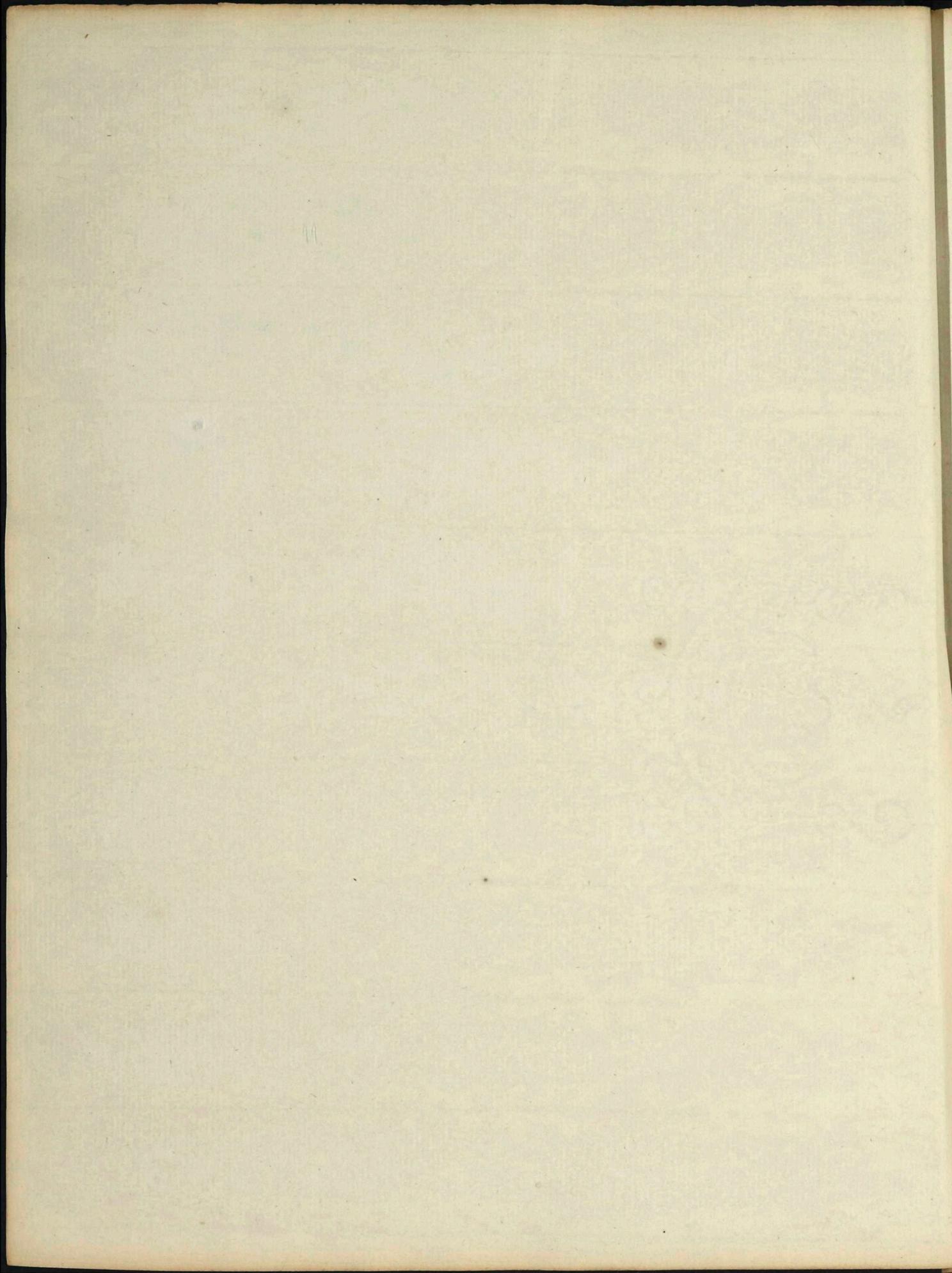
On peut exercer le droit de Suite par la voie de Scorie, ou par la voie d'action —

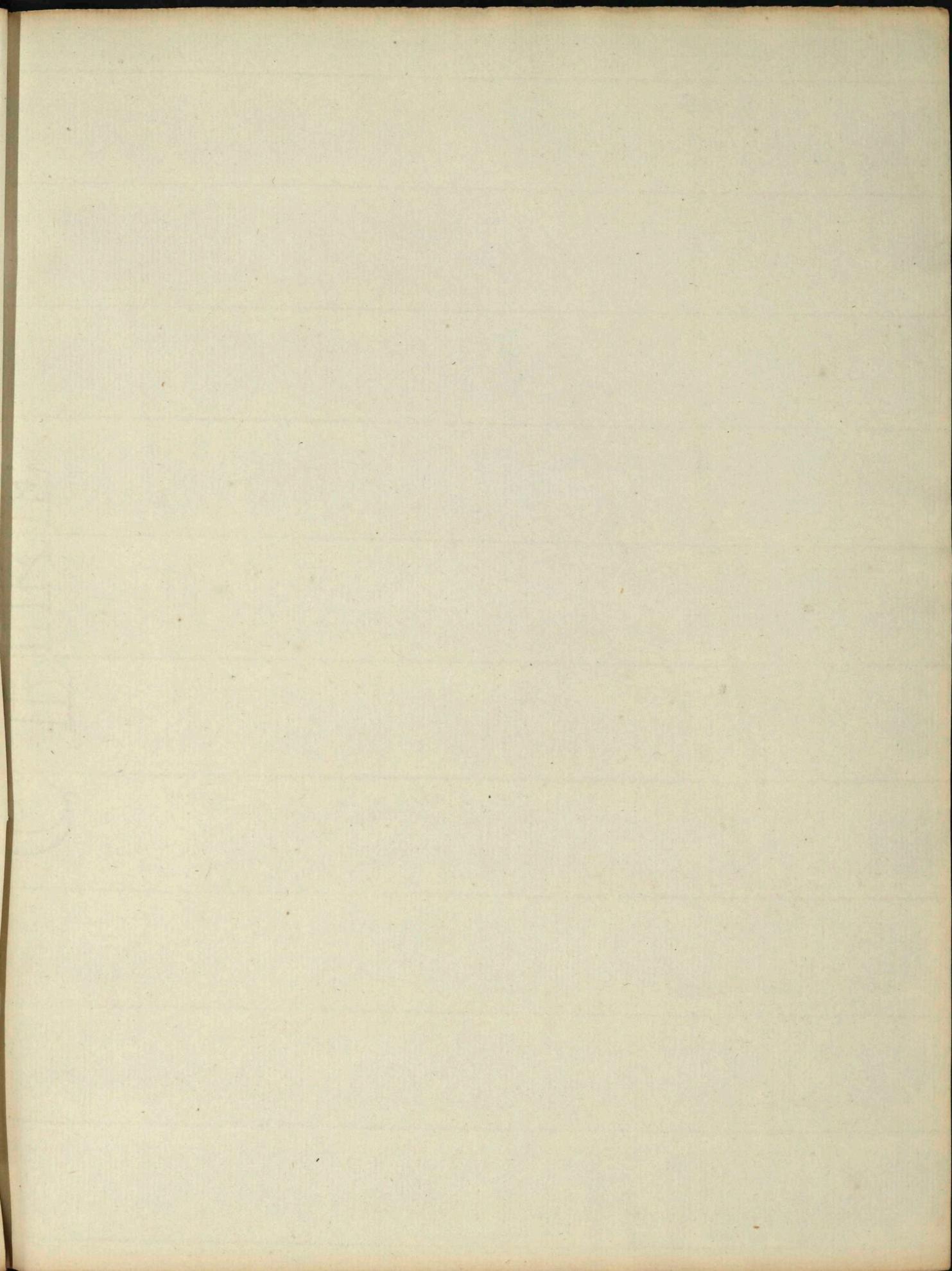


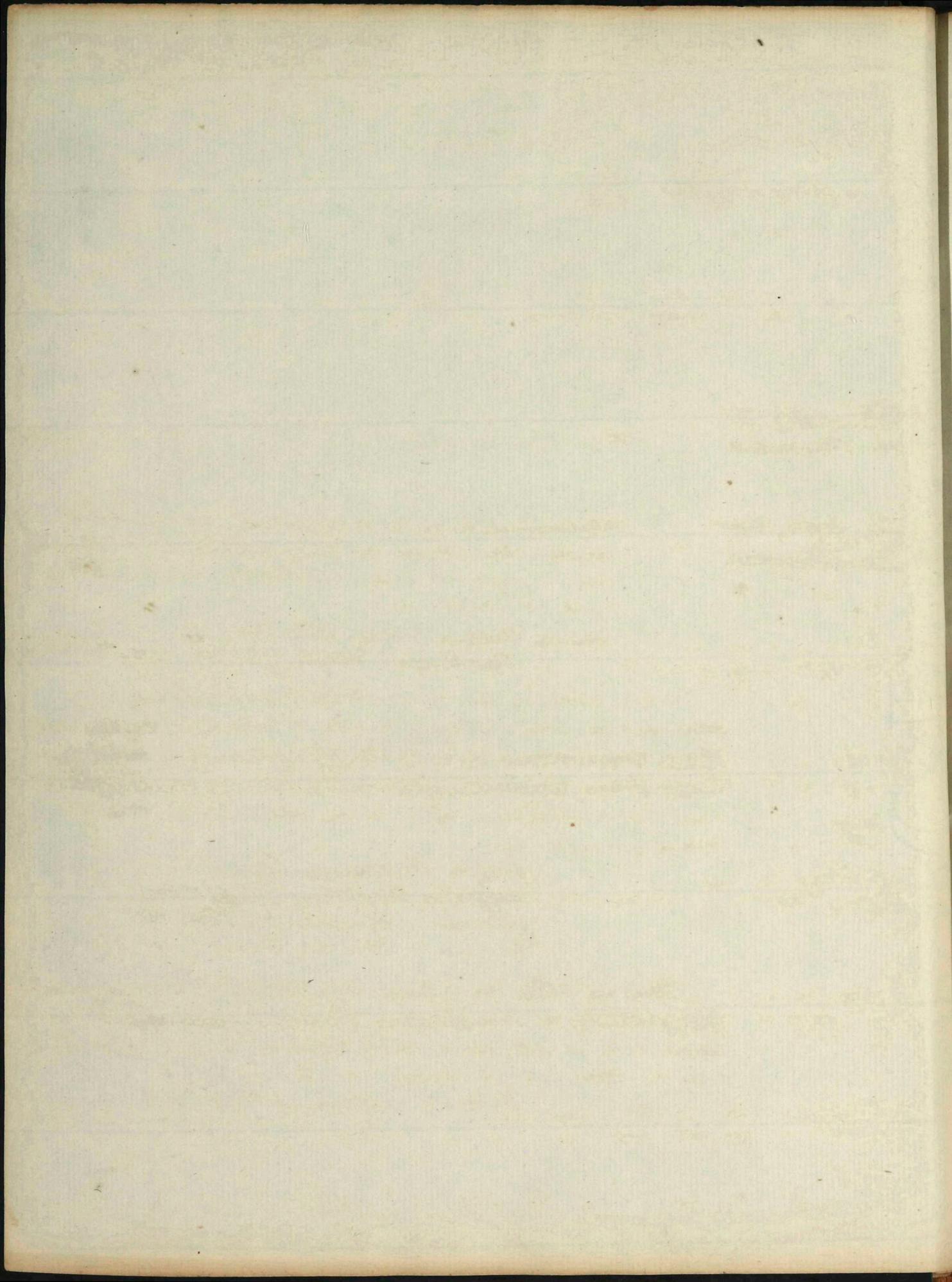












Magistrate - action agt.

2. Bingham Rep. 483

Wickes v. Clutterbuck

—

If a warrant of Commitment does not shew an offence over which the magistrate who issued it has jurisdiction, an action lies against him for the commitment, although there might have been a previous regular conviction. —

10. Moore Rep. 63.

Wickes v. Clutterbuck

Same Case as above. —

Dow's N.P.C. 164

Brittain v. Kurnau
etal. —

—

A conviction by a magistrate, on a subject-matter over which he has jurisdiction, is in an action against him, conclusive evidence of the facts contained in it. —

see also Fuller v. Fitch. Holt's Rep. 287. —

Strickland v. Ward. — 7 T. Rep. 633. — (n)

Where however the magistrate has assumed a jurisdiction over a subject-matter which is altogether out of his cognizance, or is guilty of a plain and manifest excess of his jurisdiction, the subsistence of the conviction will not protect him against an action at the suit of the party injured. — see

Hill v. Bateman. Stra. 710.

Cripps v. Durden. C. W. 640

Morgan v. Hughes. 2 T. Rep. 225. —

Groome v. Forrester. 18. on Ev. 4 edl. 352. —

But in cases over which the magistrate has general jurisdiction, it should seem that evidence dehors the conviction is not admissible to prove that in the particular case he drew an erroneous conclusion. —

Gray v. Cookson. 16 East. 21. —

Magistrate. action ag^t

2. Man. & Ryl. Mag.
Cases. 301. 307.

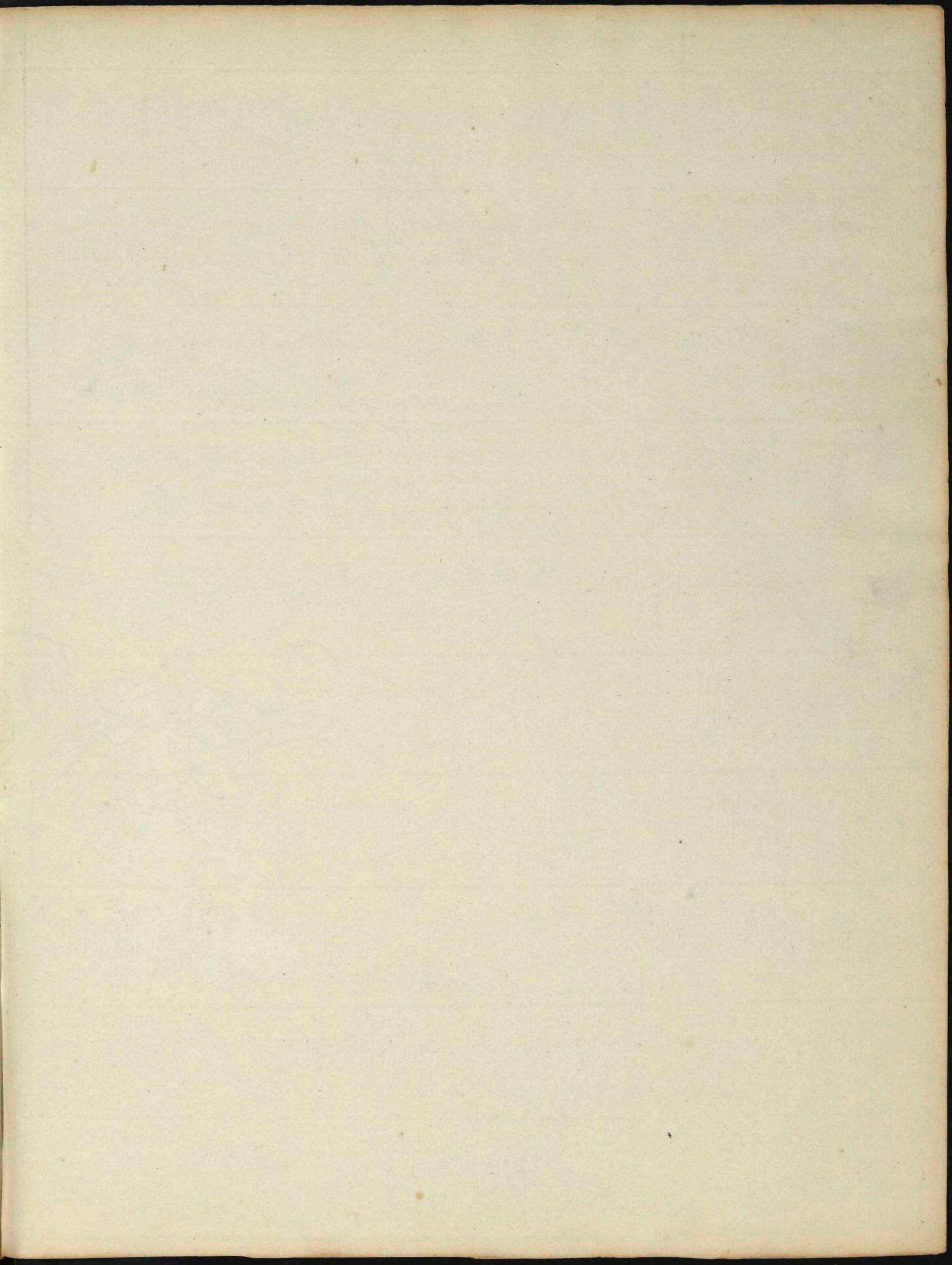
Hardy. v. Ryle.
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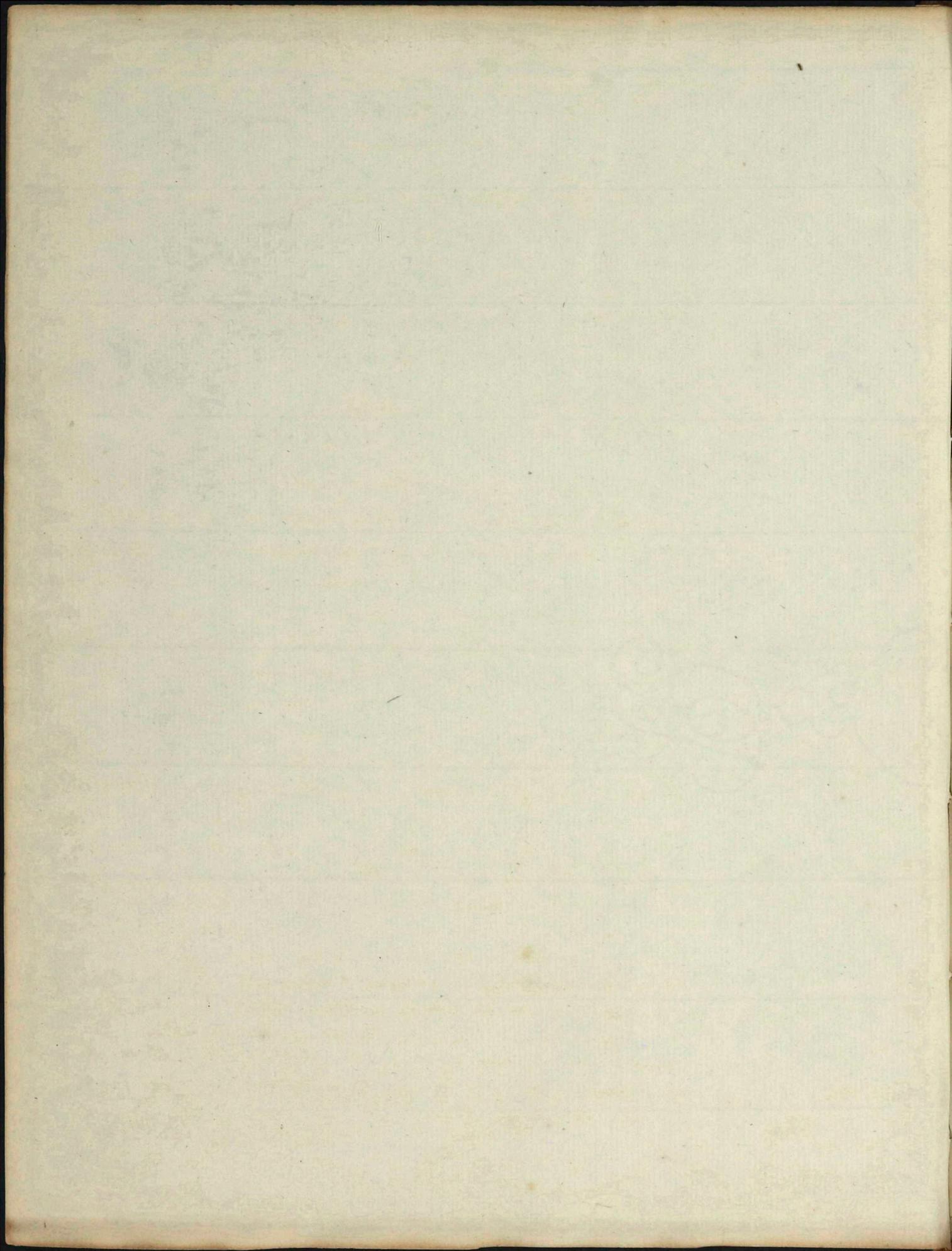
As to the mode of compelling the time
within which the action ought to be instituted
and the notice thereof given to the magistrate.

4. Carr. & Payne. 134.
Davis. v. Capper.
—

If a party is committed for further examination
for an unreasonable time, his remedy is by an action
of trespass against the committing magistrate.—

If a magistrate commit a prisoner for 15 days for
further examination, it is illegal. —





Malicious arrest — action for.

In an action for a malicious arrest, the Plaintiff can recover no damages for extra costs, nor any damages unless malice be proved, of which the first action being non-privileged, is not of itself evidence — Sinclair v. Eldred. 4 Taunt. 7. n

A slight degree of confusion has arisen upon this subject, from, malice, and want of probable Cause, being sometimes considered as synonymous and interchangeable terms — but it is clear, from an attentive consideration of the Cases, that they are two distinct ingredients which are both necessary to support an action for a malicious prosecution. — Although evidence be given of the Defendant having been actuated by the most rancorous malice, the plaintiff must still go on to give evidence of the want of probable Cause. — Anon. 6. Mod. 73. Golding v. Crowle But. N.P. 14. Incledon v. Berry, Camp. N.P. Rep. 203. note (a) — And to such a degree is the public interested, that under suspicious circumstances prosecutions should be instituted, whatever may be the private motives of the prosecutor, that the rules of evidence have been very much relaxed to enable the Defendant to prove that there was a probable Cause, and so to secure his own impunity — For this purpose proof of the evidence given by the defendant on the Indictment has been received — Cobb v. Car. Bull. N.P. 14 and in one case, where there was not any person present

at

at the time when the supposed Offence was committed except the defendants wife. Holt. Ch. I. held the evidence of the wife given at the trial of the Indictment as good evidence to prove a felony has been committed. Johnson v. Browning. 6. Mod.

216 -

There appears to be this difference between "malice" and "want of probable Cause", that though they must both concur to support the action, it is not always necessary to give positive evidence of the malice, but it may in some instances be inferred from want of probable Cause - Sutton v. Johnson 1 J. Rep. 545. -

In Hunter v. French. Willes. 520. the rule is laid down that, where a person is acquitted by a Jury malice need not be proved at first on the part of the plaintiff; but that where the Indictment is quashed, it is necessary to prove express malice -

Another distinction has been taken as to the nature of the Offence with which the plaintiff was charged, viz - that where the Indictment was for Felony, the defendant cannot object that express malice is not proved - but on Indictments for misdemeanors evidence of express malice must be given. Tilwal v. Smallman. Hereford Summer Assises 1753. Selw. N. P. 938. -

There is likewise this difference between "malice" and the "want of probable Cause" - that the one is a question of fact, and the other a question of law - Both must generally be submitted to the Jury - but when the facts to shew a probable cause, are ascertained, whether they amount to a defence or not, is to be decided by the Judge -

Smith

Smith v. McDonald. 3 Esp. Ca. 7. Sutton v. Johnston
1 J. Rep. 545. — Golding v. Crowle. Bull. N.P. 14. no

2 Bos. & Pull.

129.

Gibson v. Chatton

—

In an action for maliciously holding to bail it is not sufficient to prove that the writ was sued out after payment of the debt, if the circumstances afford no inference of malice — but in such case evidence of actual malice must be given.

N. Denizt.
re Dom. & Int.

No. 9. § 1.
—

Dommages et Interets.

Les proces injustes portant le trouble dans les familles, et causant toujours un dommage reel par les faux frais et le derangement qu'ils occasionnent, devroient aussi, ce semble, entraîner constamment une condamnation en dommages et interets contre celui qui les a suscités — Les Romains en avoient fait une loi expresse : Improbus litigator, et damnum et impensas litis inferre adversario suo cogatur. Institut. liv. 4. tit. 16. — Cette loi a été renouvelée parmi nous par Franc. 1^{er}

L'Ordonnance de 1539. art. 88. porte — Du en toutes matieres reelles, personnelles, et possessoires, Civiles, et Criminelles, y aura adjudication de dommages et interets, procedans de l'instance et de la calomnie ou temerite de celui qui succombera en icelles..... pourvu toutes fois que les dits dommages et interets ayent été demandés par la partie qui aura obtenu.

per —

Mais

Mais cette disposition est presque tombée en desuetude. Il faut que les Juges voient des preuves bien claires de la vexation occasionnée par le Procès, pour se déterminer à prononcer pour cela seul, des dommages et intérêts — contre celui qui l'a intenté. —

D'ailleurs on ne sauroit regarder un procès comme terminé par la seule raison que son auteur auroit succombé ; il faudroit qu'il parut une mauvaise foi manifeste ; et alors l'officier qui aura dirigé la procédure ne seroit pas moins reprehensible que la partie qui lui auroit donné pouvoir. —



Malicious prosecution.

1. Dowl^s & Ryl.
Rep. p. 28.

Elsev. v Smith
in error.

Falsely, maliciously, and without any probable cause, procuring the warrant of a Justice to search the premises and apprehend the person of A. on suspicion of felony, and thereby causing his premises to be searched, and his person imprisoned, is properly the subject of an action on the case and not trespass. — But it is trespass in the magistrate if he grant the warrant illegally.

6. Dowl^s & Ryl:
p. 8. —

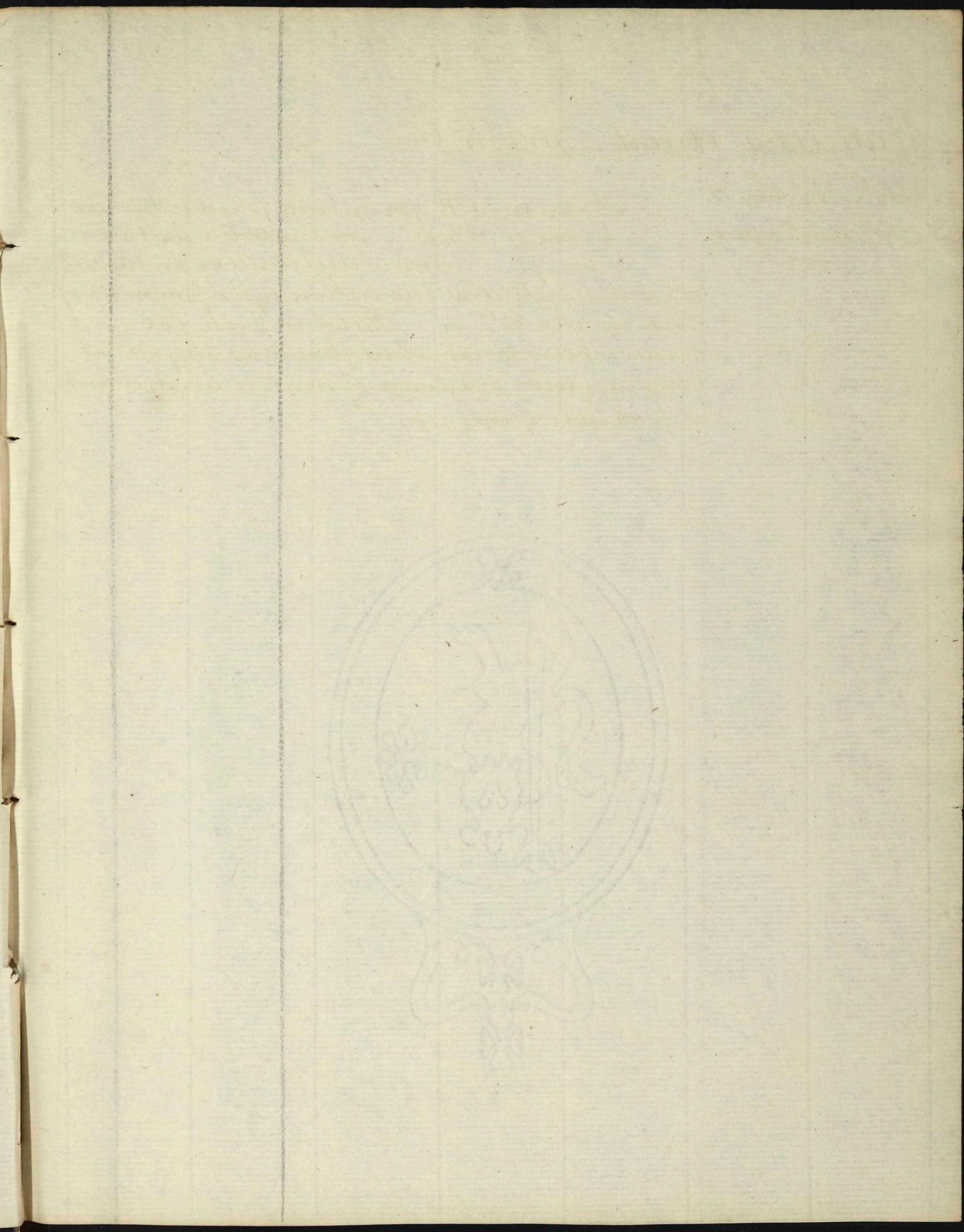
Cohen v Morgan

Where a person having lost a bill of exchange which he supposes to have been stolen, goes before a magistrate, and relates the circumstance of the loss, and the magistrate grants his warrant to apprehend A. B. on a charge of having feloniously stolen, taken, and carried away, the bill of exchange, (language which the complainant did not use when he laid his information,) and upon subsequent investigation of the case it turned out to be no felony. — Held — That case would not lie for maliciously procuring the magistrate to grant his warrant — To sustain the averment of malice, the charge must be wilfully false. — Informations before Magistrates, must be taken as nearly as possible in the language used by the party.

Malicious arrest. ^{proⁿ} & cœur

6. Dowl. & Ryl. Rep. 12.
Nicholson v. Coghill
--

A. arrested B. for money paid to his use
on the 10th Dec^r — was ruled to declare on
the 17th — filed a declaration on the 24th
and discontinued his action upon payment of
costs on the 31st — Held in case for a
malicious arrest, that this was sufficient
prima facie evidence of malice and want
of probable cause. —





Mandamus.

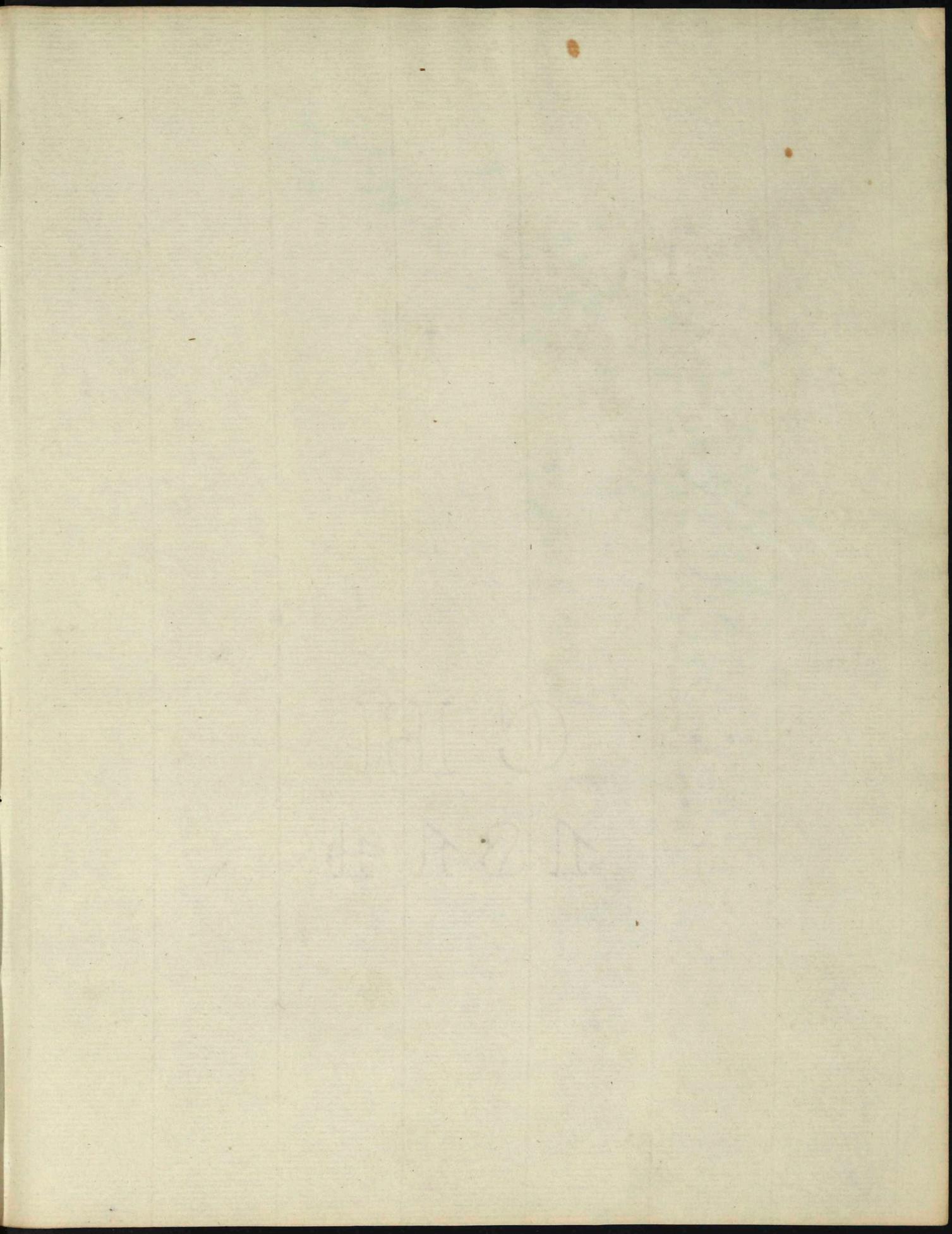
The court will not grant a Mandamus to the Justices at Sessions to re-hear an appeal against an order of removal after Judgment given by them, and entered by the Clerk of the Peace for quashing the order; upon the ground that the Justices at Sessions were divided in opinion, and that the Judgment was entered by mistake instead of an adjournment of the appeal -

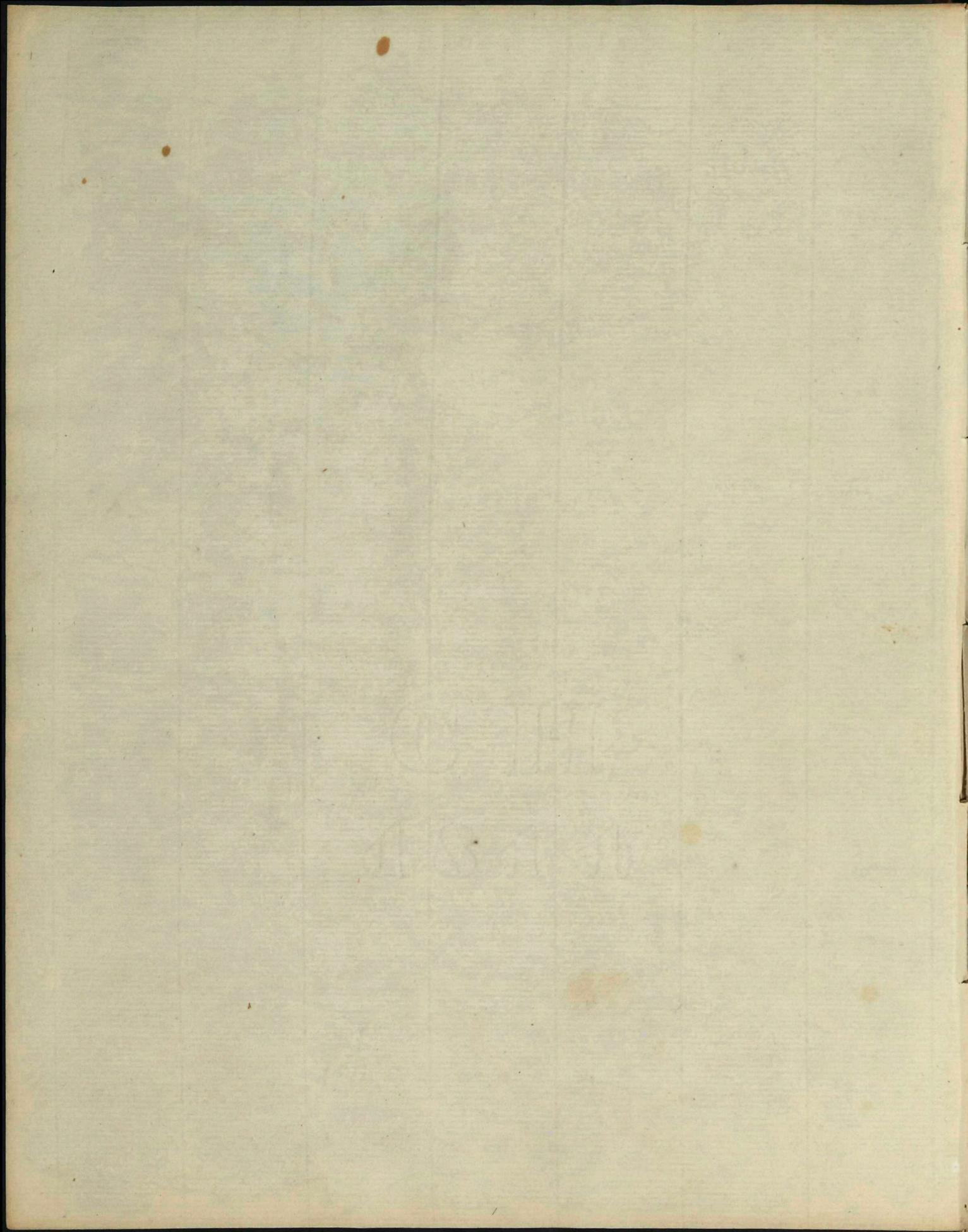
The Justices at Sessions may alter their Judgment during the continuance of the Sessions. -

L. Ellenborough observed - If any error was made in the entry of the Clerk of the Peace, that error should have been pointed out at the Sessions while the Court was sitting and competent to reform its own errors, and to draw out a more correct Judgment. -

1. M. & Selv. 442. The King v. Justices of Leicestershire.







Marchands — de ceux qui sont reputés march^{ds} Négociants &c.

Ceux qui ne font ni négocie, ni trafic, ni marchandise ne sont point soumis aux règles qui ne sont établies que pour le fait du Commerce. — Mais tous ceux qui s'immiscent dans un négocie, dans un trafic, dans un métier, ou dans la marchandise ou dans des manufactions, sont reputés marchands, négociants, ou artisans, encore qu'ils n'aient été ni apprentis, ni reçus maîtres, ou qu'ils ayez des professions différentes du Commerce. —

Un Bourgeois de Paris, qui n'est ni marchand, ni artisan, et qui ne prend la qualité que de Curieux mais qui se mêle d'acheter et de revendre, est reputé marchand, quoiqu'il n'ait ni boutique ni magasin, ni registre, ni les autres marques qui font distinguer les marchands. — Un Officier du Roi, ou de Judicature, un Ecclesiastique même, et d'autres personnes qui font négocie, sont reputés négociants et renoncent tacitement à leurs priviléges, pour se soumettre aux règlements qui concernent le Commerce, ou la bonne foi, et la sûreté publique doivent être conservées. —

Les laboureurs, vignerons, Fermiers ou métayers maîtres de Forges, et autres gens qui tiennent des ateliers, sont reputés marchands, parcequ'ils achetent

achètent les choses qui sont nécessaires à leur
négocie, ou à leur profession, et vendent celles qui
en proviennent; Il en est de même des messagers
et des voituriers. — Practicien des Juges Consuls
ed. 1742. p. 12. — liv. 1. ch. 5. —

Id. liv. 3. ch. 3.
p. 262. 3. —

De la Compétence des Juges-Consuls.

Les Juges et Consuls connoissent, entre toutes
sortes de personnes, des lettres de changes, ou
remises d'argent faites de place en place (c'est à dire
d'un lieu en un autre) parce que c'est un Commune
qui rendent ceux qui tirent, acceptent, ou endossent
des lettres de change; justiciables des Consuls. —
De même, de tous les billets de change fait entre
négocians & marchands, et dont ils doivent
la valeur. —

Ils connoissent aussi de tous différends au
sujet des ventes faites par des marchands,
artisans et gens de métier, afin de revendre, et
de travailler de leur profession — comme des Tailleurs
d'habits pour des étoffes, passemens, gallons, &
toutes autres fournitures. — Des boulanger et
pâtissiers, pour blé, farine, four, oufs —
Maçons, pour pierre, moellon, et plâtre —
Charpentiers, menuisiers, charons, tonneliers

et

et Tourneurs pour bois, fus, outils, &c. Ferruriers, Marechaux, Taillandiers, et Armuriers pour fers; Plombiers et Fontainiers pour plomb, fer, Cuivre ou

Des gages, Salaires, et pensions des Commissionnaires, Facteurs, ou Serviteurs des Marchands, pour le fait du Commerce seulement. —

De l'exécution des lettres patentes du Roi lorsqu'elles sont incidentes aux affaires de leur Compétence, hors le Cas où il s'agit de l'état, et de la qualité des personnes. —

Les Gens d'Eglise, Gentilshommes & bourgeois labourciers et Vignerons & autres, peuvent faire assigner pour vingt de blé, vin, bestiaux, et toutes autres denrées qui proviennent de leur cru, ou par devant les Juges Ordinaires, ou par devant les Juges et Consuls, si les ventes ont été faites à des marchands, ou autres artisans faisant profession de revendre. —

De l'Incompétence des Juges - Consuls

Les Juges et Consuls ne peuvent connoître des billets de change entre particuliers, autres que

que des négocians et Marchands, ou dont ils ne doivent point la valeur, pour lesquels billets les parties se doivent pourvoir — par devant les juges Ordinaires, ainsi que pour de simples promesses. —

Des Contestations pour nourritures, — entretiens et emmublemens, même entre marchands, si ce n'est qu'ils en fassent profession, comme des Merciers, tapissiers, patissiers, Cabaretiers, Marchands de bois Mennuiers; Maçons, pour pierre, moellon et plâtre; Plombiers, fontainiers, pour plomb, et autres semblables. — (a)

Ils doivent s'abstenir de connoître des Inscriptions de faux, incidentes aux instances pendant pardevours eux, qu'ils doivent renvoyer aux Juges Ordinaires

Des rébellions à l'exécution de leurs Sentences parce qu'il n'appartient qu'aux Juges — Ordinaires, d'informer et de décretur. —

Id. p. 281.

(a) Si un aubergiste fournit des nourritures à un marchand ou artisan, un Cabaretier du

vin, un frippier ou tapissier un ameublement par vente ou louage, et qu'il y ait contestation, les Juges & Consuls n'en doivent point connoître, parce que ce n'est point un trafic dont le débiteur se moque. Mais si le marchand, ou artisan se mêloit de faire auberge, ou de tenir chambre garnie, l'affaire seroit Consulaire —

See also — Boucher - Institutions Commerciales . 1801 —
p. 13. & seq — ch. 3. Des Neogocians, Marchands,
et ceux reputés tels. —

P. 16. un cordonnier, un forgeron, un menuisier, un charpentier, tous autres artisans, sont considérés comme marchands pour les engagements qu'ils font relativement aux matières qu'ils fabriquent — Ceci résulte de l'article 4. du Tit. 12 de l'ordonnance qui veut que les Juges & Consuls connaissent des différends pour ventes faites entre marchands, artisans et gens de métier, afin de revendre ou de travailler de leur profession, &c —

The French law seems to look more particularly to the trade and condition of the purchaser, for if an individual purchased an article for his own use or consumption, even from a merchant, this was not cognizable by the Juges & Consuls —

See Id. p. N° 82 — and 85 — La déclaration du 20 Juillet 1566 va plus loin; elle veut, que les Juges & Consuls ne puissent connoître de ce qui sera acheté pour l'usage des personnes, encore qu'ils soient marchands, comme pour vin, pain, viande, vêtemens, chausses & autres telles, pour servir à l'usage de la personne. —

N° 89. Si un aubergiste fournit des aliments à un

un marchand ou artisan - un Cabaretier du vin,
un frippier, menuisier, tapissier, des meubles, par
vente ou louage, par Compte, ou par billet à ordre
portant la valeur réelle, et qu'il survienne à ce sujet
quelques contestations, les tribunaux de Commerce n'en
pourront connaître, parce que le marchand ou artisan
n'a point fait l'achat de ces objets pour les revendre
mais pour l'usage de sa maison -

N° 92. Mais si le marchand, artisan, ou autre
avaient acheté du vin, acheté ou loué des meubles
comme étant aubergiste, ou louant en chambre
garnie - que cela soit par Compte, ou par billet portant
la valeur réelle, s'il s'élèvent quelques contestations
sur lesquelles l'une des parties voudra procéder, elles
devront être portées au Tribunal de Commerce. -

N° 93. Enfin toute personne, qui achète une
chose pour la revendre, quelque soit sa nature,
est réputée marchande par rapport à cette chose :
Et toutes personnes, négociants, marchands ou
autres qui achètent une chose, quelque soit sa
nature, pour son usage, n'est point ~~reputé~~
marchand pour cette chose. - On doit donc
conclure, que tout ce qui est acheté à l'usage de
l'ouvrier, artisan, artiste, manufacturier, marchand
et négociant, comme outils, metiers, comptoirs &
livres, doit en cas de réclamation judiciaire, être
portés devant les Juges Ordinaires, et non au
Tribunal de Commerce. 2

Marchande Publique. — vide. Femme.

1000 2000 3000 4000

1000 2000 3000 4000

Marchande Publique.

It is a point upon which several authors differ in opinion, whether the marchande publique can sue, and be sued without the husband —

3. Gr. Com^m. p. 359

on art. 234. —

Glose 2. N° 3.

De plus, la femme, marchande publique, peut sans être autorisée de son mari, poursuivre les marchands qui lui doivent pour le fait de la marchandise dont elle se mêle, par devant les Juges Consuls, et y être poursuivie à cause du négocié qu'elle fait, qui la rend justiciable de cette Jurisdiction. —

Troncon on the 236^{te} art. after Custom, says nearly the same — La femme marchande publique peut aussi, sans être autorisée de son mari pour le fait de la marchandise dont elle se mêle, poursuivre les marchands par devant les Juges Consuls, et y peut-être être poursuivie — passivement &c. —

1 Pigeau. 77. —

La femme marchande publique n'a pas besoin du consentement ni de la présence de son mari pour procéder en Justice, pour raison de son Commerce &c. su reason —

Id. —

83. —

Puisqu'ils peuvent attaquer (parlant des mineurs en certains cas) ils peuvent se défendre — Tout ce que nous avons dit ci-dessus sur la capacité d'actionner, s'applique ici en raison inverse. —

Marchande Publique.

3. Grand. Comr
p. 375. N° 5.

Il faut demeurer dans les règles, que celui qui veut agir contre une Marchande publique non séparée, ni autorisée, doit appeler le mari et le mettre en Cause pour la validité de la procédure et du Jugement qui sera rendu. —

Id. p. 359. art. 234,
Glos. 2. N° 3.

De plus, la femme marchande publique peut sans être autorisée de son mari, poursuivre les marchands, qui lui doivent pour le fait de la marchandise dont elle se mêle, par devant les Juges Consuls, et y être poursuivie à cause du négoci qu'elle fait qui la rend justiciable à cette Jurisdiction. —

Toubœuf. Institute
du Dr. Cons. liv. I.
Tit. 15. p. 343. n

Sur quoi il faut pourtant remarquer avec Toubœuf sur la Coutume de Maine qui dit après Bartole, qu'un seul acte ne rend pas la femme marchande publique, qu'il faut qu'il y ait plusieurs gemmes

Holt's N.P. Rep.
p. 221.
Newland v Bell.

In England, one instance of buying & selling for profit, would be such a trading as to make a man liable to the bankrupt laws - and the smallness of the profit makes no difference - H Gibbs. Ch. J. +

Tourneau, liv. I.
Tit. 15. p. 339

Mais en France il n'en est pas de même, de
tout temps les femmes ont pu faire la marchandise
et être convenues devant les Juges pour fait de leur
commerce — au moins nous en avons un ancien et
authentique témoignage dans les établissements de St
Louis donnés depuis peu au public par M. Ducange
cts. 145. et qu'elles peuvent aussi pour le fait de
leur commerce procéder sans être autorisées par leurs
mariés, en voici les termes — nulle femme n'a réponse
en Cour Laisse puisque elle a Seigneur, si ce n'est du fait de
son Corps — Mais qui l'auroit battue ou ^{dit} folie, ou
autre d'avarice, en telle manière elle a réponse sans son
Seigneur, ou si elle étoit marchande, elle auroit bien la réponse
des choses qu'elle auroit baillées de sa marchandise, et
autrement non. —

Gagnon.
Metras.
Metras opp^t

On opposition afin d'annuler.—

Quest. Whether a second Opposition with new and more ample conclusions can be received, after a prior opposⁿ partly with the same conclusions & for the same object has been dismissed. —

Sousse on Tit. 14. art. 4. Ord^e 1667. p. 161 says—

Mais on ne doit jamais étre reçu opposant à un Jugement qui a debouté d'une première Opposition, quoique ce Jugement ait été rendue par défaut. — npus to Tit. 35. art. 3. not 2^e.

1 Pigeau. 497. Il faut observer, que ce debouté est fatal (of an opposition to a Judge) c'est à dire, que si il est par défaut, on ne peut y former opposition du moins au Palais, au chalé de Paris, & dans nombre de tribunaux — autrement une partie pourroit faire durer une contestation à l'infini, en se laissant toujours condamner par défaut, et formant ensuite opposition. —

Frost & Porter
H. Y. McKenzie

On imputation of payments where
a Caution is concerned. —

Repr^e v^e Imputation. p. 91. first Col.

Entre les dettes civiles, l'imputation doit se faire sur la dette qui produit des intérêts plutôt que sur celle qui n'en produit point ; sur la dette hypothécaire, plutôt que sur celle qui n'est que chirographaire ; sur la dette pour laquelle le débiteur a donné une Caution, plutôt que sur celle qu'il a contracté seul. — ~~de~~

Repr^e v^e Compensation
bottom 1^{re} Col. p 272. 4

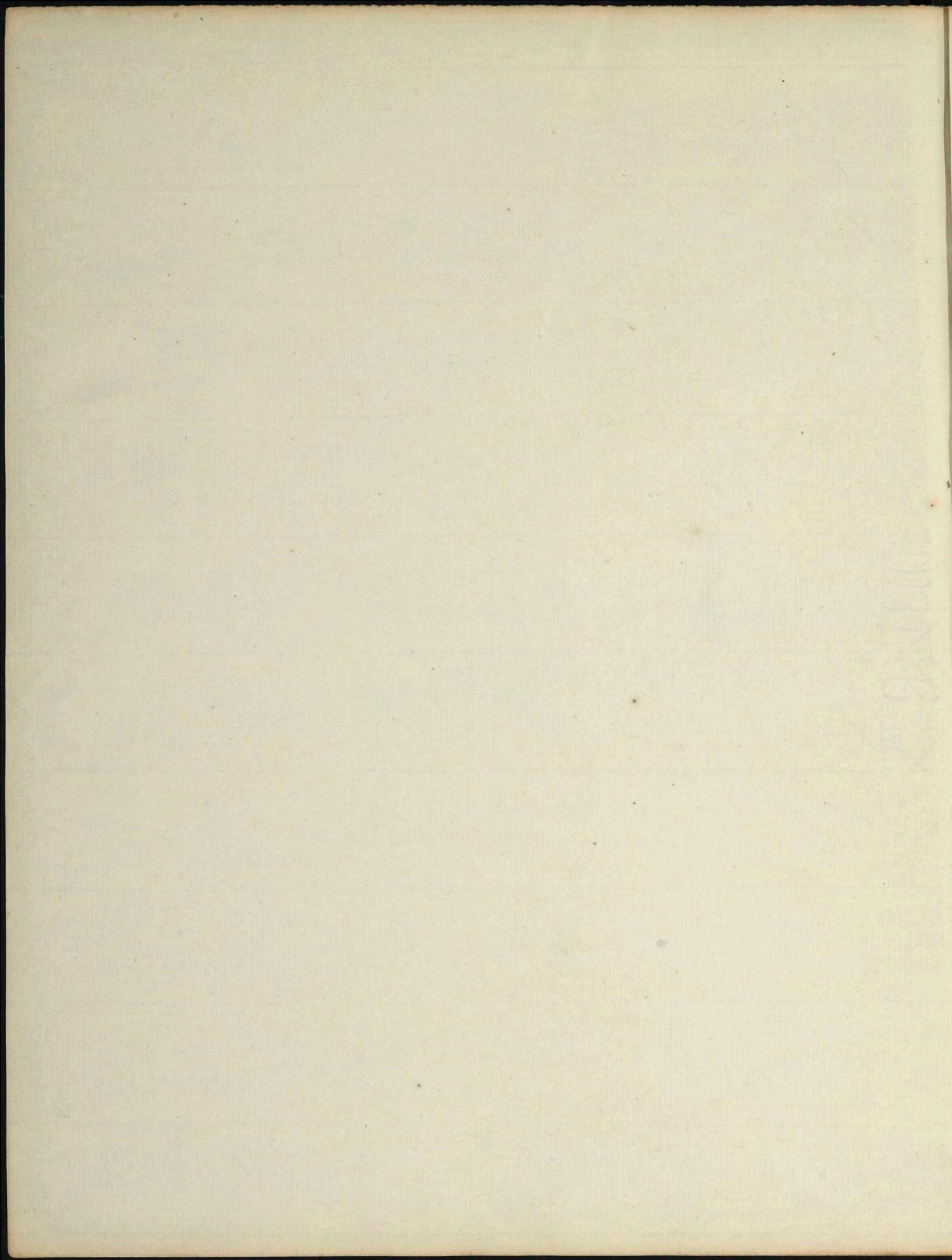
Par une suite de la faveur due à la compensation il est de règle, que lorsqu'une dette peut se compenser avec plusieurs autres, la compensation s'impute toujours par préférence sur la dette la plus dure et la plus onéreuse ; sur une dette par exemple privilégiée et chargée d'hypothèque, plutôt que sur celle qui ne l'est pas ; sur celle encore qui produit des intérêts plutôt que sur celle qui en est exempté ; sur la dette pour laquelle on a une Caution, avant celle qui a été contractée sans caution. —

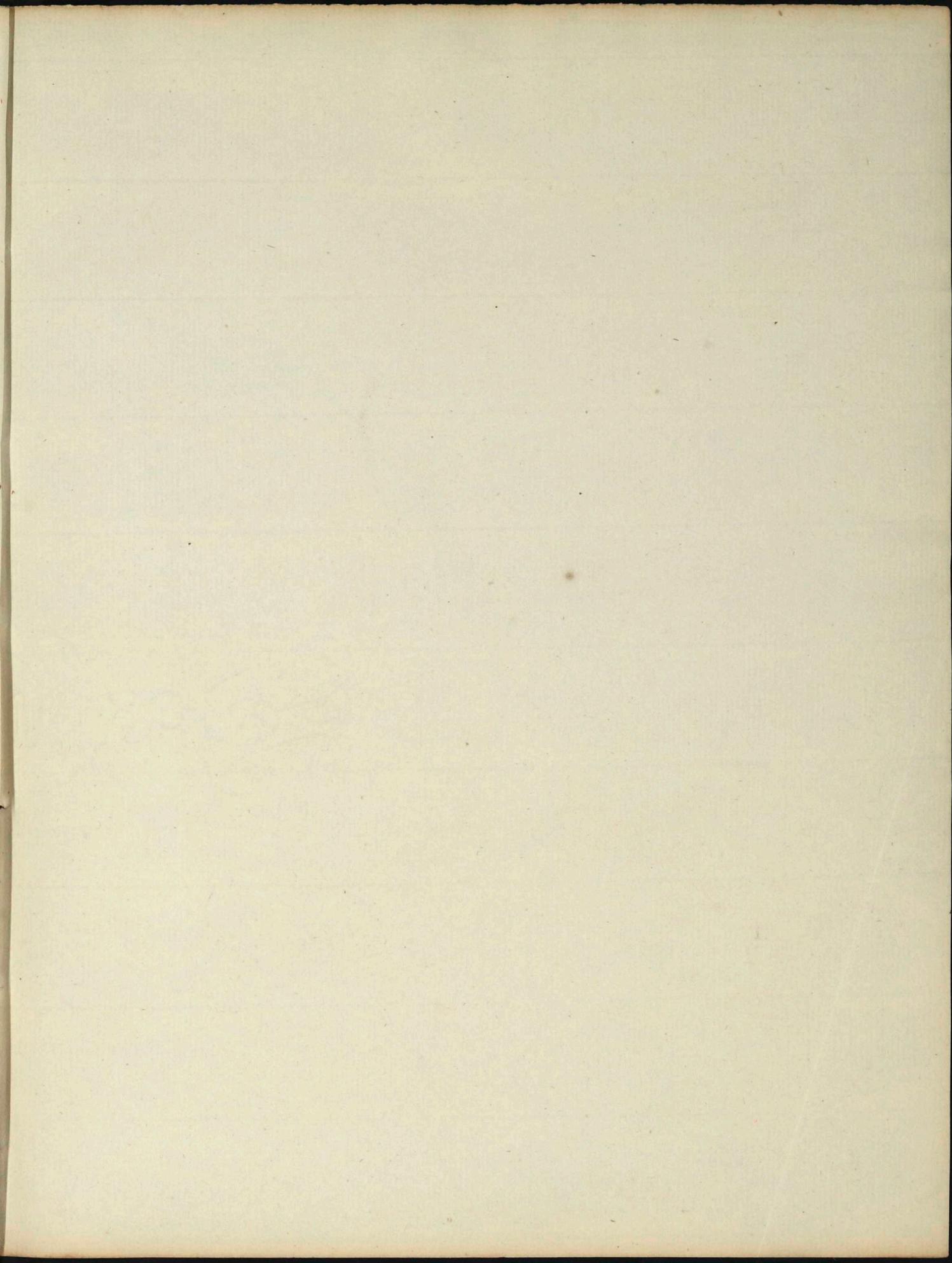
Post. obl. N^o 567
Cor. 5. —

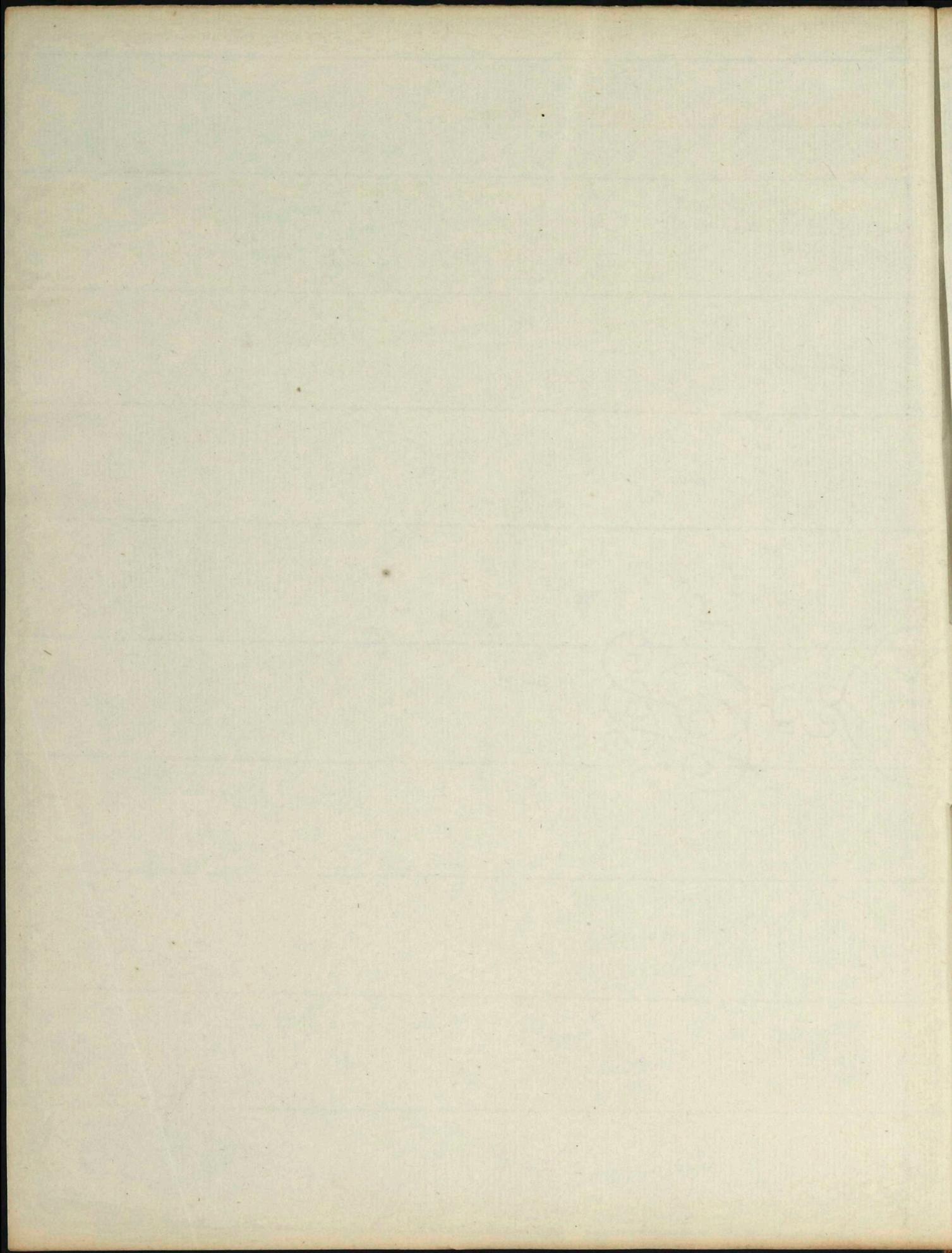
L'imputation se fait plutôt sur la dette pour laquelle le débiteur avait donné des Cautions, que sur celles qu'il doit seul — La raison est, qu'en l'acquittant il se décharge envers deux Créditeurs, envers son Créditeur principal, et envers sa caution qu'il est obligé d'indemniser — or on a plus d'intérêt de s'acquitter envers deux, qu'envers un seul.

Denr^t. v^e Imputⁿ
N^o 6. —

Si le débiteur de plusieurs sommes envers un même particulier, et qui a donné Caution pour l'une fait







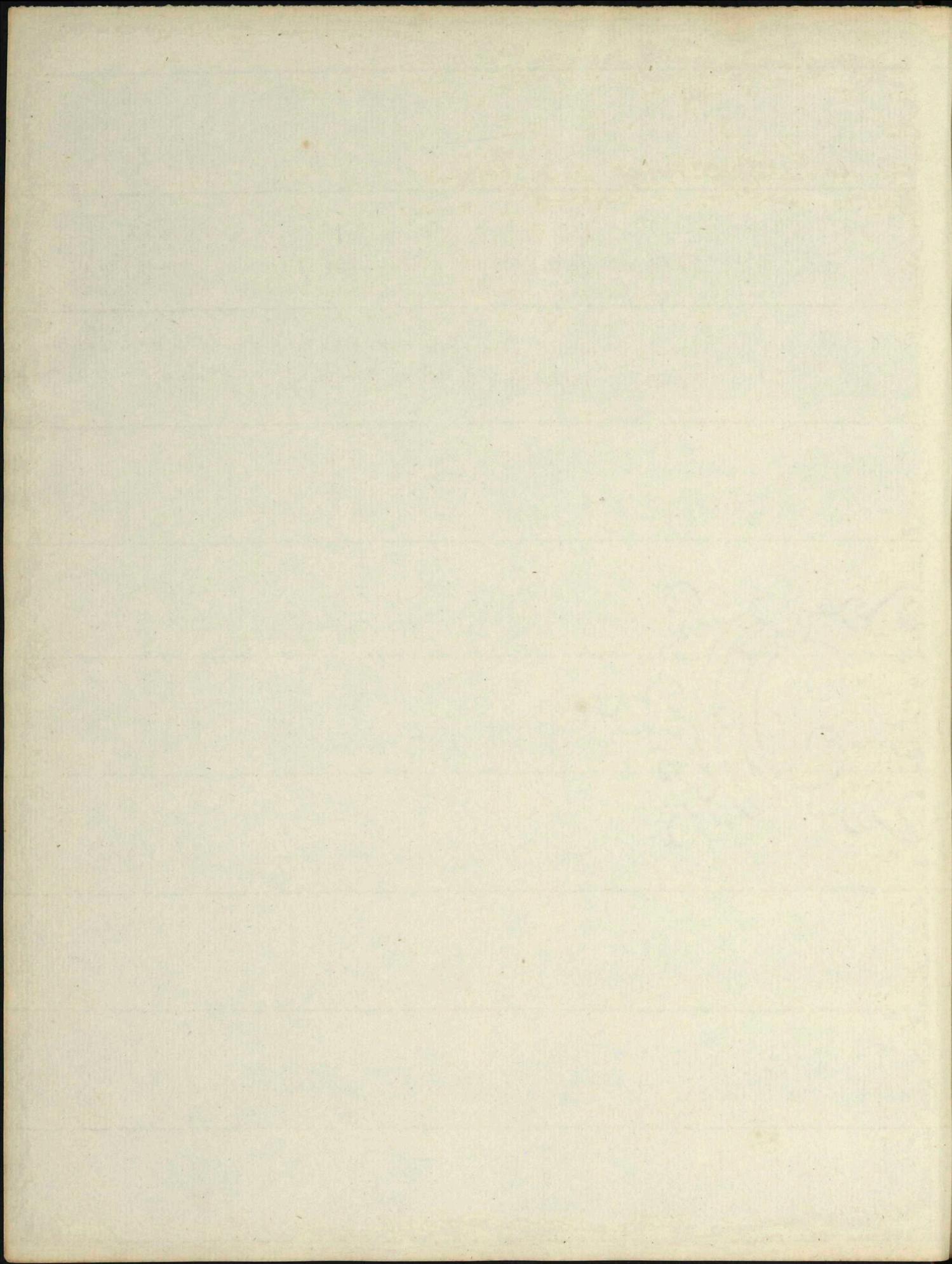
Master & Servant.

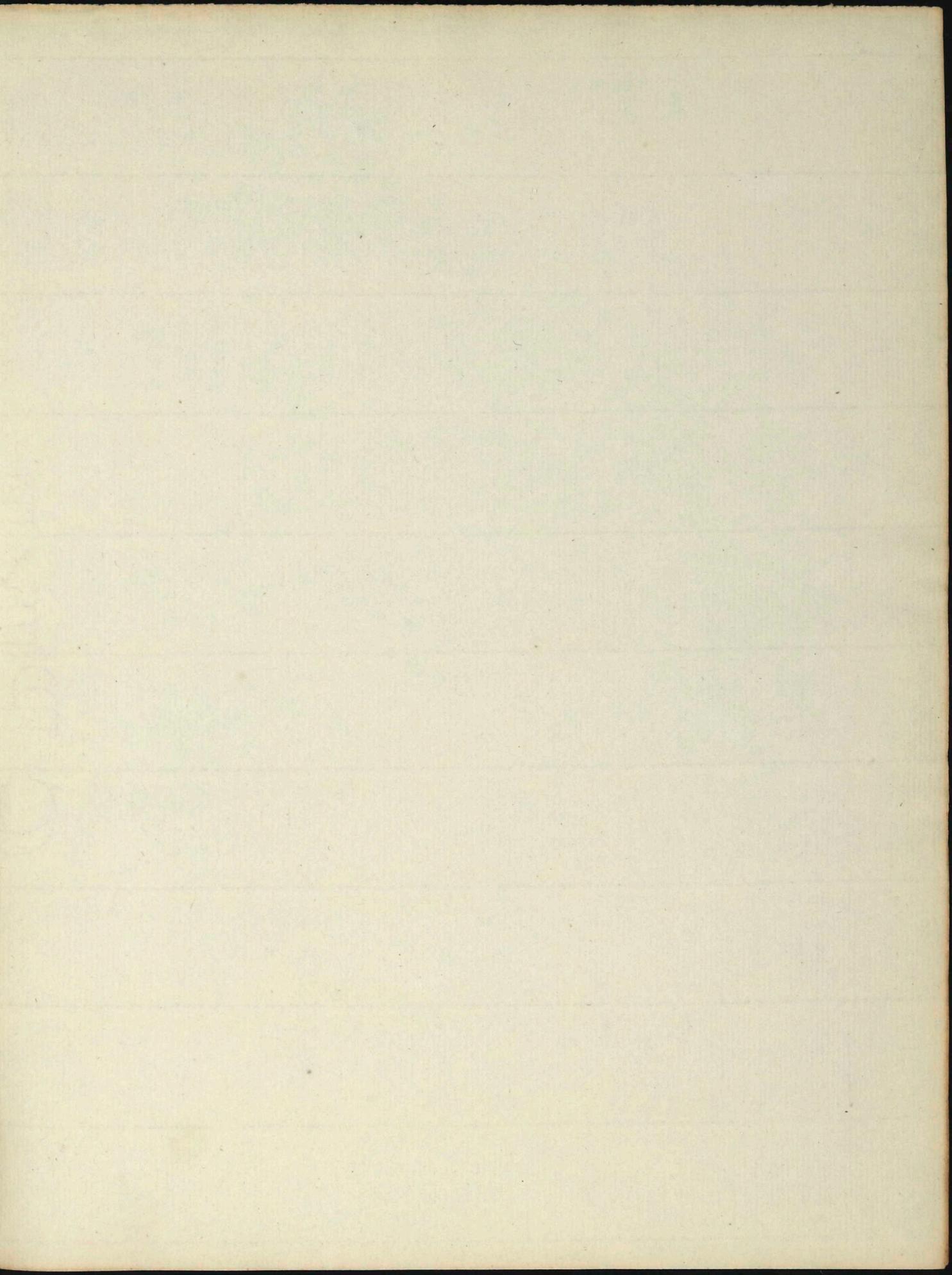
1. Tyrwhitt's Rep. 41

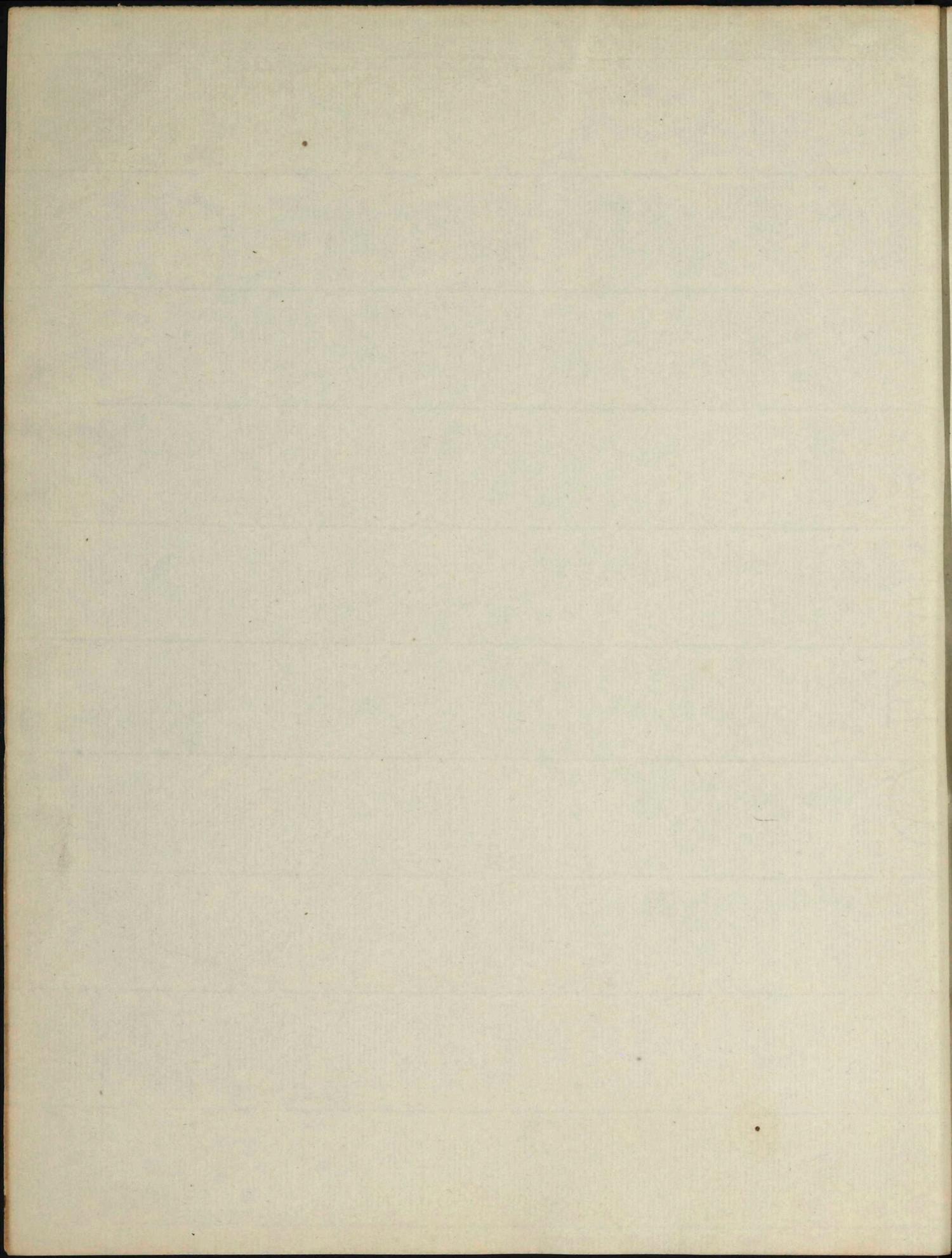
The Att^g. General
Siddon v^r Binns

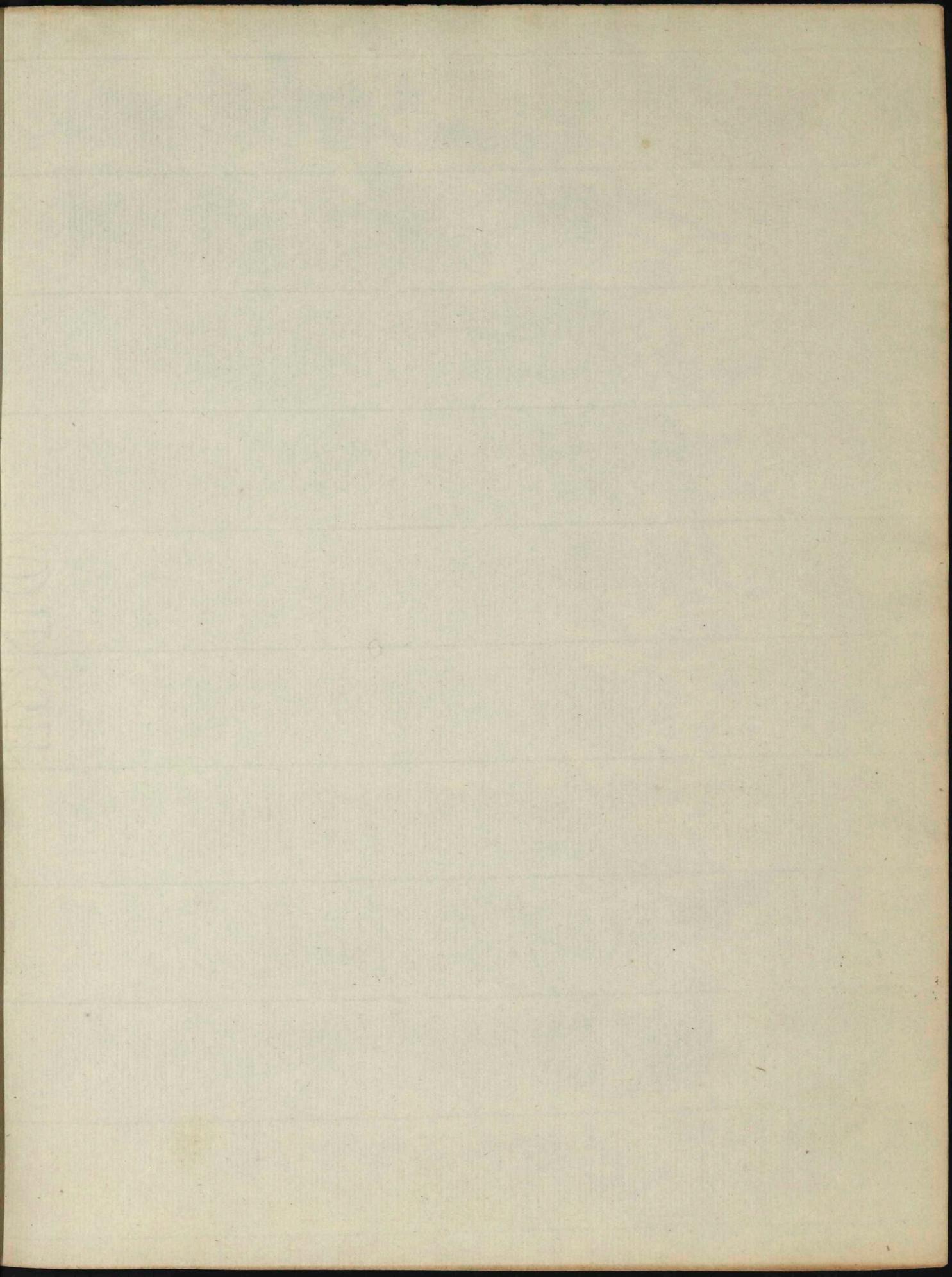
A Master is answerable for the illegal act of his servant, if within the scope of his probable authority, and done for the master's benefit.—

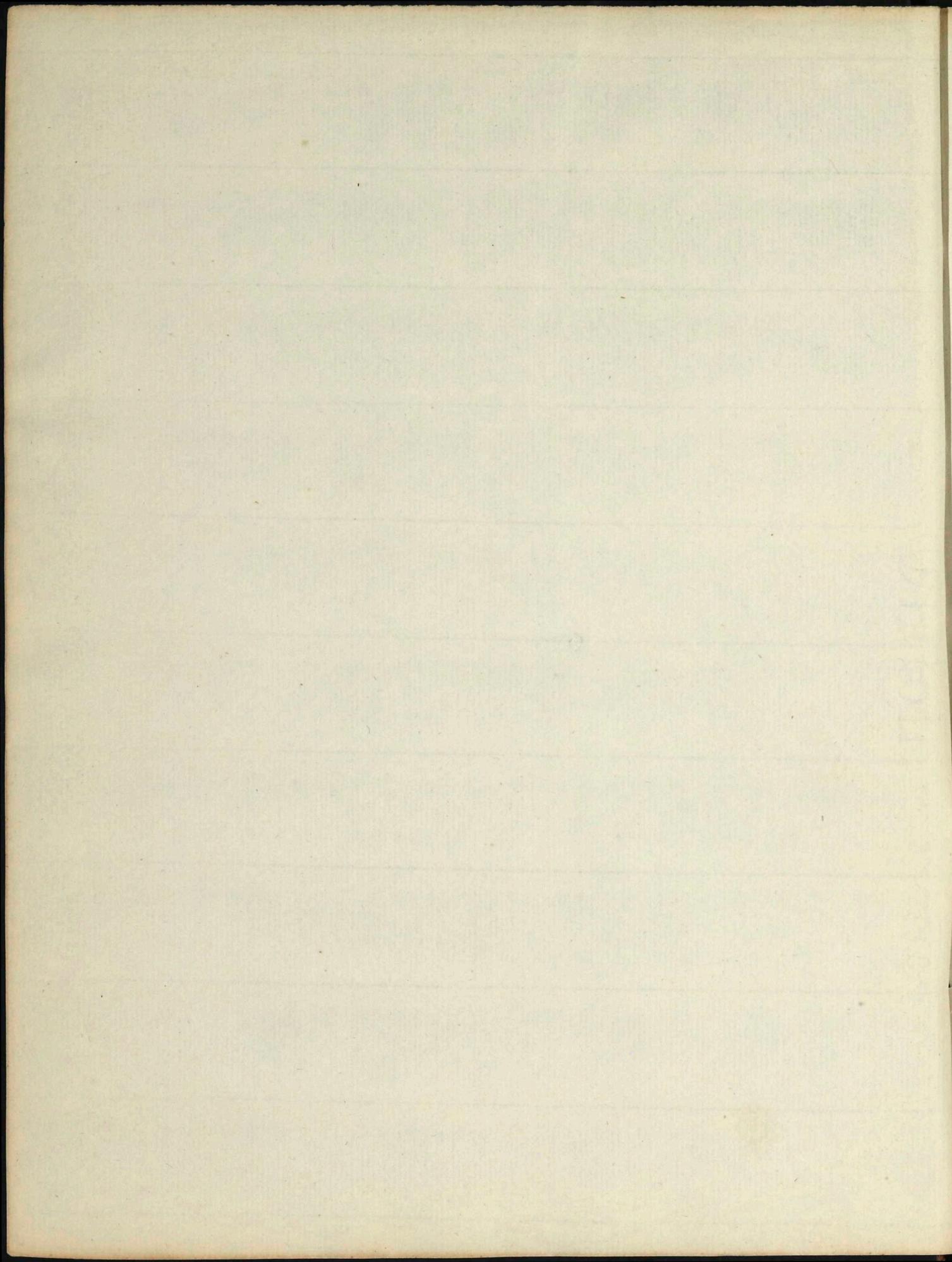
Thus where after the detection of smuggled goods — concealed in a cellar, a servant in his master's absence procured a permit, by which he intended to protect the goods from seizure, the master was held liable for the penalty attached to the offence of unduly using a permit.—

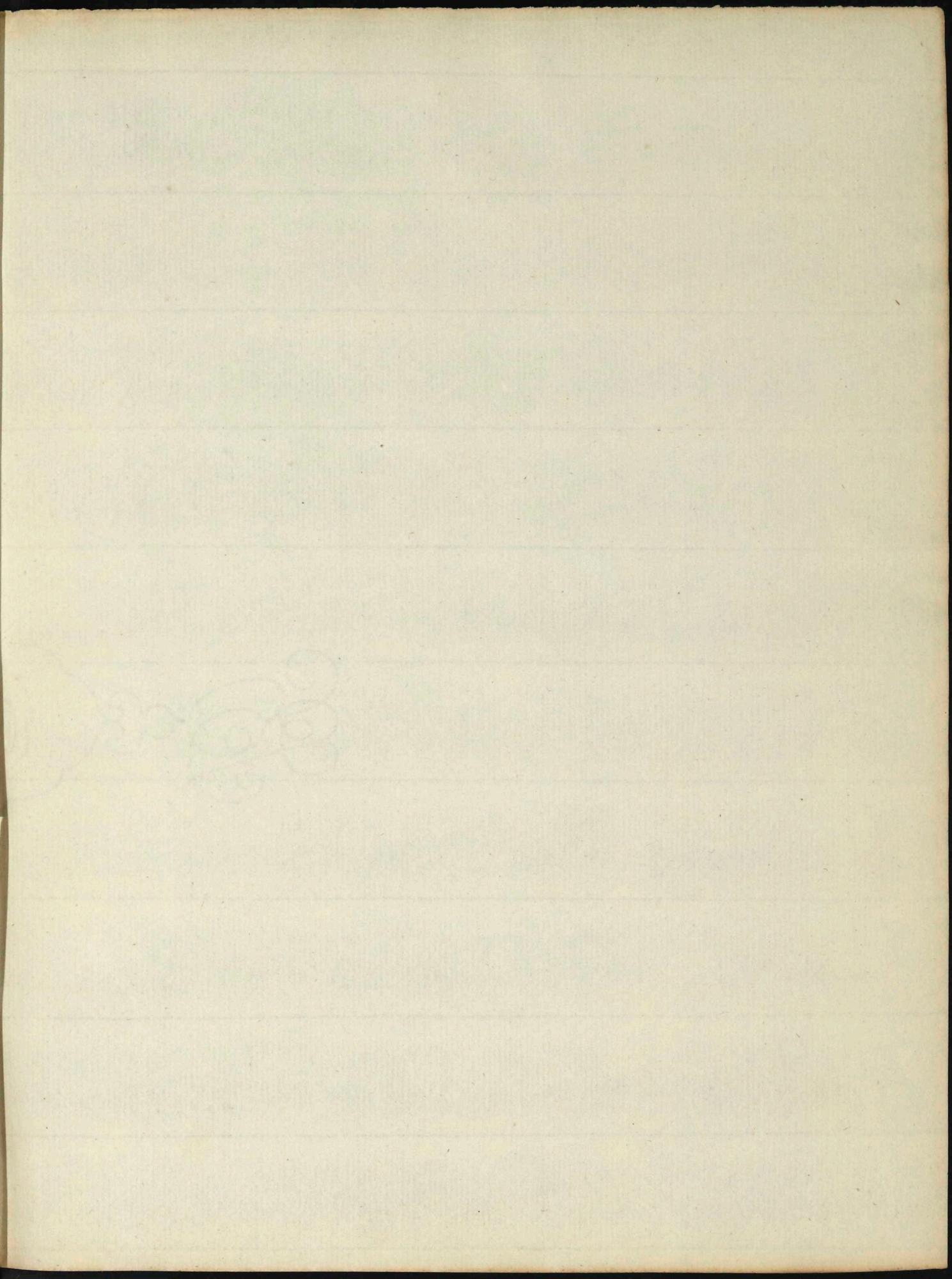


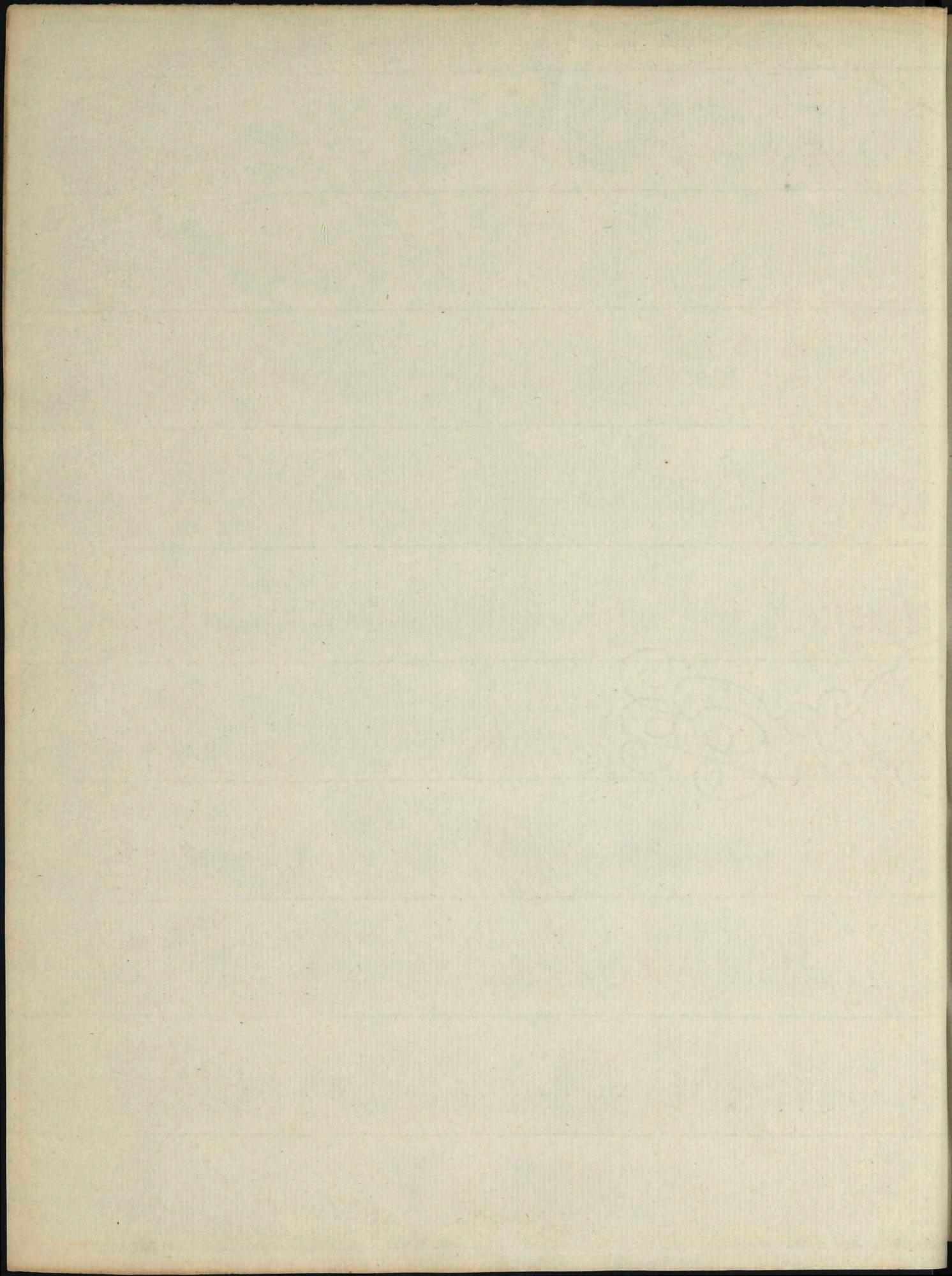












Merchant. - Trader - who so reputed

7. Jaunt. Rep
Aug. -

A person who buys any article for the purpose of mixing it with his own produce, with a view to sell the mixture more advantageously than his own produce could be sold unmixed, does not thereby become a Trader. -

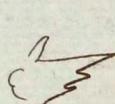
A person who buys pigs, or other stock with a view to the re-sale of them, as ancillary to the profitable occupation of his farm, and in the interval feeds them wholly or principally on the produce of his farm; does not thereby become a Trader. u

A farmer bought Rye grass seed, mixed it with seed of his own growth, and sold the mixture. - He bought pigs, put them on his farm, fed them on the stubbles, and resold them, some after a week, some after longer periods - Held that neither of these was an act of trading. -

1 Holt's N. P.
Rep. p. 221.
Newland v. Bell

A. (an officer of the army) retires to the country, where rents a dwelling house and three acres of land - buys pigs, and consumes part in his family, and sells the rest at a neighbouring market - He makes no show as a dealer, and is proved not to have bought more than fourteen pigs in any one year. - Held that he was a Trader within the bankrupt laws. u

The smallness of the profit, is no consideration and one act of buying and selling is sufficient to constitute a Trader. u



See notes on this Case. -

Marchandise - Argent. de

Toussaint. Liv. I. Tit.
17. p. 401 -

La Marchandise est generique, et c'est une espice de Corps qui se perpetue et renouvelle tous les Jours, comme un troupeau, de sorte, qu'etant quelquesfois en argent et quelquesfois en marchandises, on peut dire qu'elle est quelquesfois en essence, et qualche^{est} en puissance quand elle est en argent due ou en argent comptant; Car en un même moment l'argent est en espice et en marchandise. -

C'est sûrement sous cette maxime — qu' Innocent, Jason, Bartole, Salicet, Angelus, & tretinus, & Stracha, disent même qu'une Somme prêtée purement & simplement à un Marchand, est si fort presumée être pour employer en marchandise et que cette presumption de droit est si forte qu'elle equipolle à une preuve — de sorte que le Debiteur marchand peut être convenu — par devant les Juges & Consuls, comme s'il étoit spécifié par la promesse que le prêt eut été fait pour employer en Marchandises, quoique les obligations soient passées sous le Seel que les autres Juges ont prétendu leur être attributif de Jurisdiction —

Id.

p. 410. Sed Vide. Declaration du Roi du 2. Octobre 1610
ré registrée au Parlement de Paris le 18 Juillet 1611,
qui fait inhibition aux Juges & Consul de prendre
aucune connoissance des Proces et differens pour
promesses

Merchant — Trader

Promesses, cedules et obligations pour deniers de
pur prêt, qui ne seroient causées pour vente de
merchandises. —

See also subsequent declarations varying and in
part revoking the foregoing —

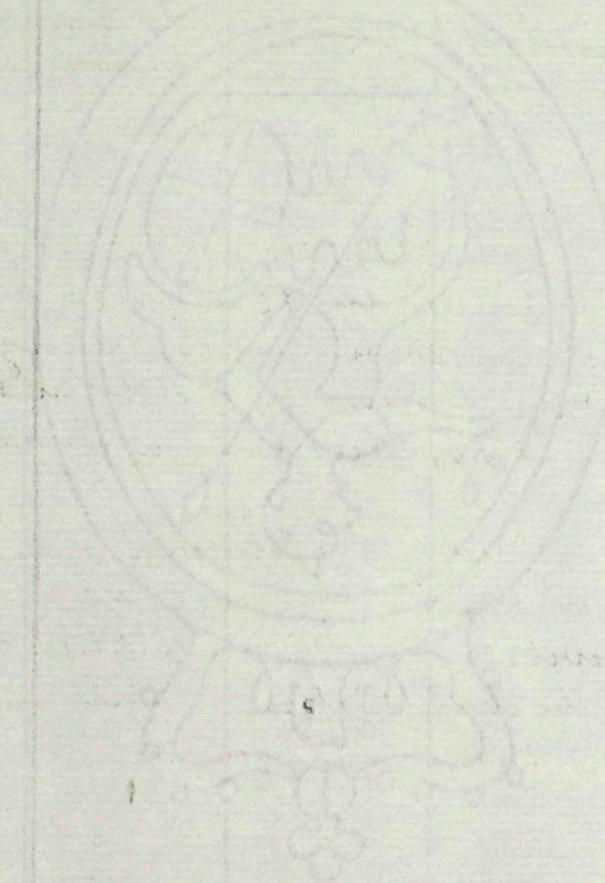
4. Barn; 2 Ald. 418.
Allen v. Cannon
etal. —

A person living in the Isle of Man, going
from time to time to England, and buying
goods which are afterwards sold in the
Isle of Man, is a trader against whom a Commission
of Bankrupt may issue in England, although he
in fact never sold any goods in England. —

2. Chittys Rep. 651.
Willet & al. v. Thomas
—

An Inn-Keeper as such, is not a Trader
under the Bankrupt Laws — neither is
an Inn-Keeper, selling wine and brandy
and other liquors by the dozen to Customers, out
of his Inn, necessarily a Trader —

But if a victualler or an Inn-Keeper,
deal in wine or liquors, as a distinct business
however small the quantities sold may be, they
may be bankrupts. 3. Wils. 146. 1 Term. Rep.
572 — Patman v Vaughan. —



Marriage - Celebration of

8. Taunt: 830.-
Latour val. r Teesdale
val: -
--

A marriage between two British subjects
solemnized by a Roman Catholic Priest at
Madras, according to the rites of the Catholic
church, followed by cohabitation, but without the
licence of the Governor, which it had been uniformly
the custom to obtain, is valid. --

1. Roll: Abr: Tit: Baron & Feme. 341. pl. 21, it is
laid down - "If a man and woman be married
" by a priest in a place which is not a church or
" Chapel, and without any form of the celebration of
" Mass, still it is a good marriage and they are
" man and wife". See Burn's Ecc: Law. 2 Vol. 1, 22.

It would seem that in England, before the Stat:
26. Geo. 2^d. ch. 33. an irregular celebration of
marriage by a priest was mere matter of ecclesiastical
discipline; but in Courts of law, irregular marriages
were perfectly valid. in Ryan & Moodie's N.P.C.
p. 82. n. -

Marriage - Children born before -

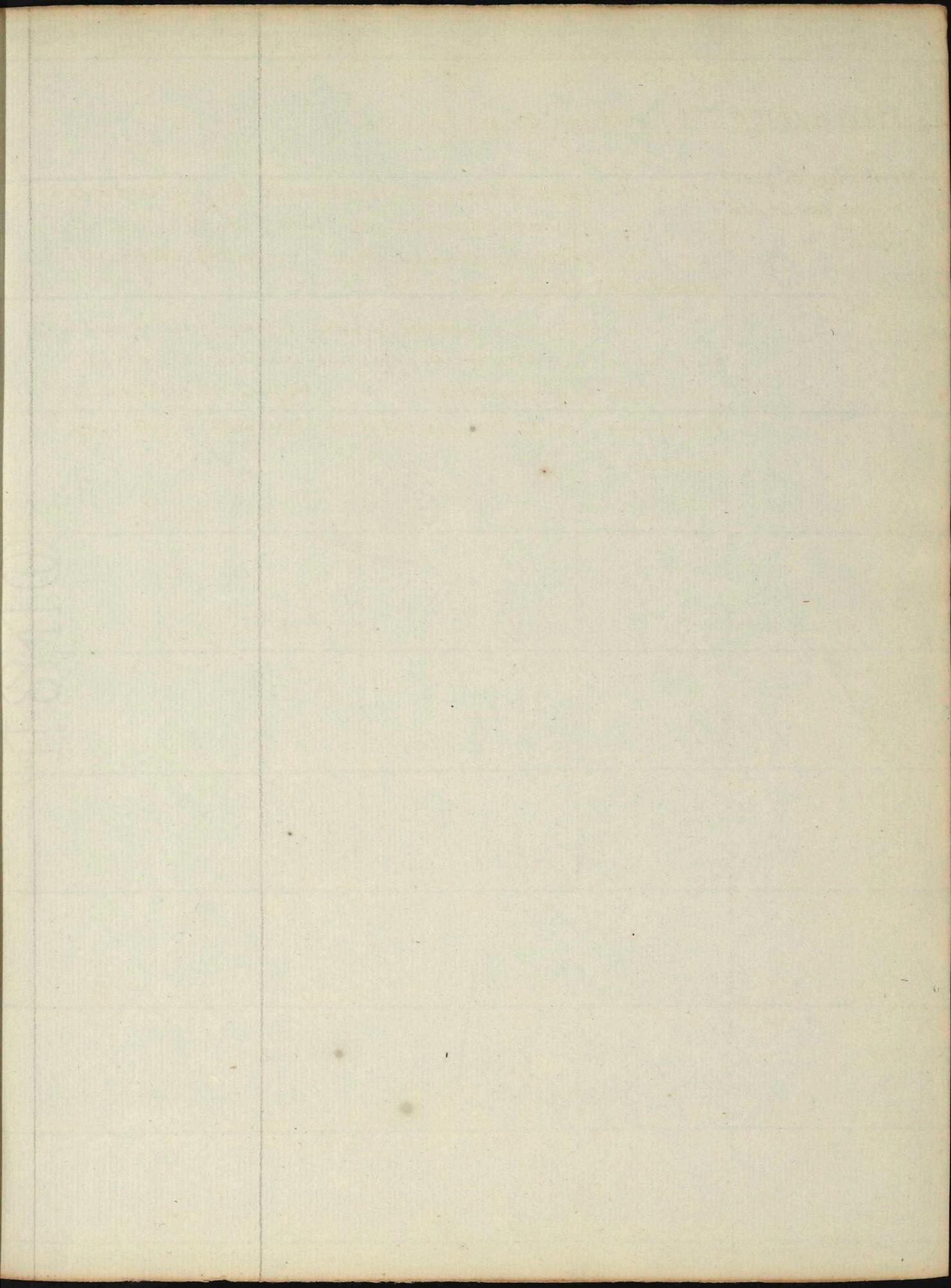
8. Dowl. & Ryl. Rep. 185

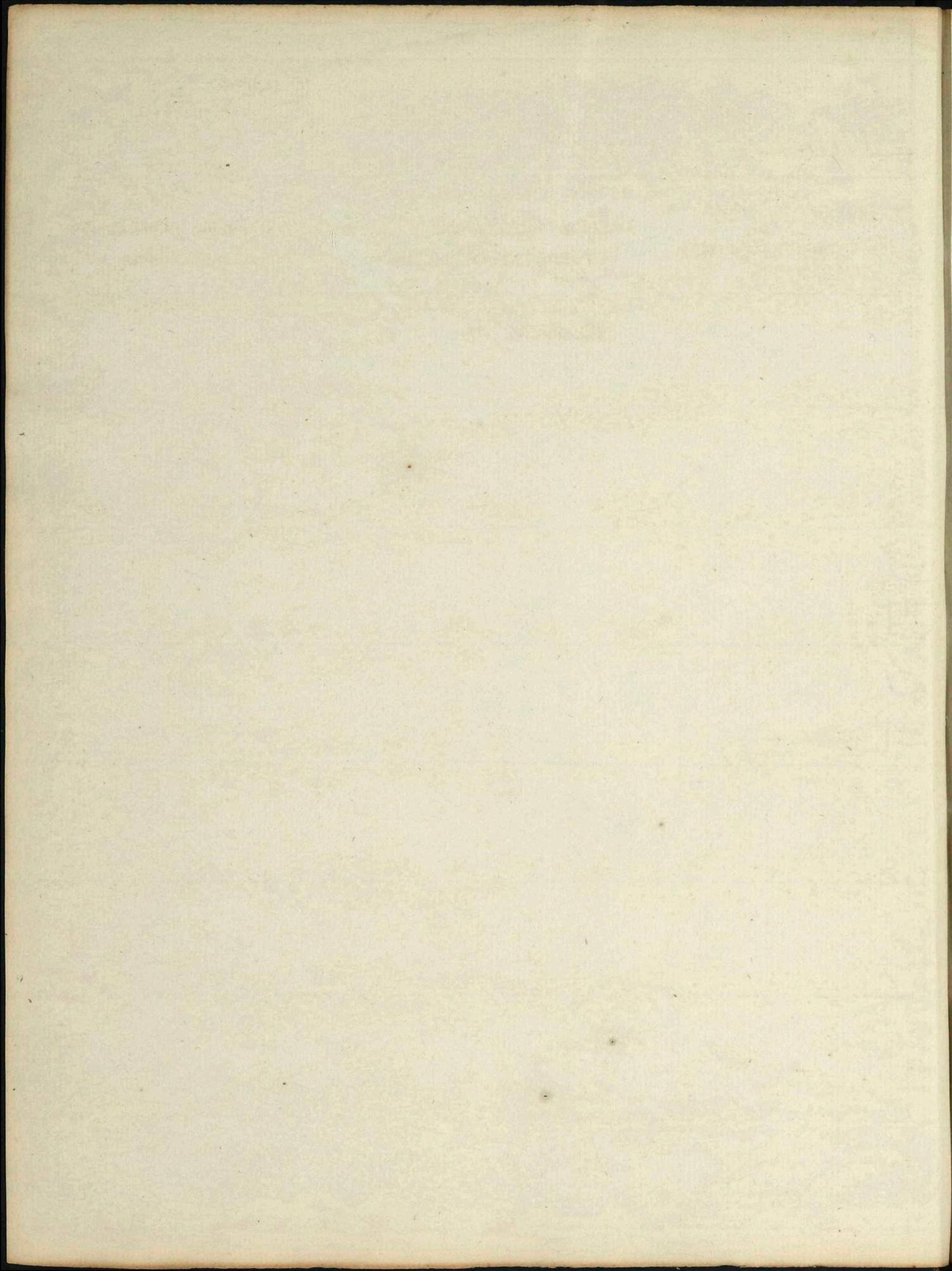
Dec on dem: Birthwhistle

Vardill.

A child born in Scotland before marriage
of parents domiciled there, and who
afterwards marry there, cannot inherit
lands in England. +

In Canada however this principle would
not hold, as the subsequent marriage of the
parents legitimates the issue before marriage -
Sed quare - as to lands held in free and common
succession?





Mayhem.

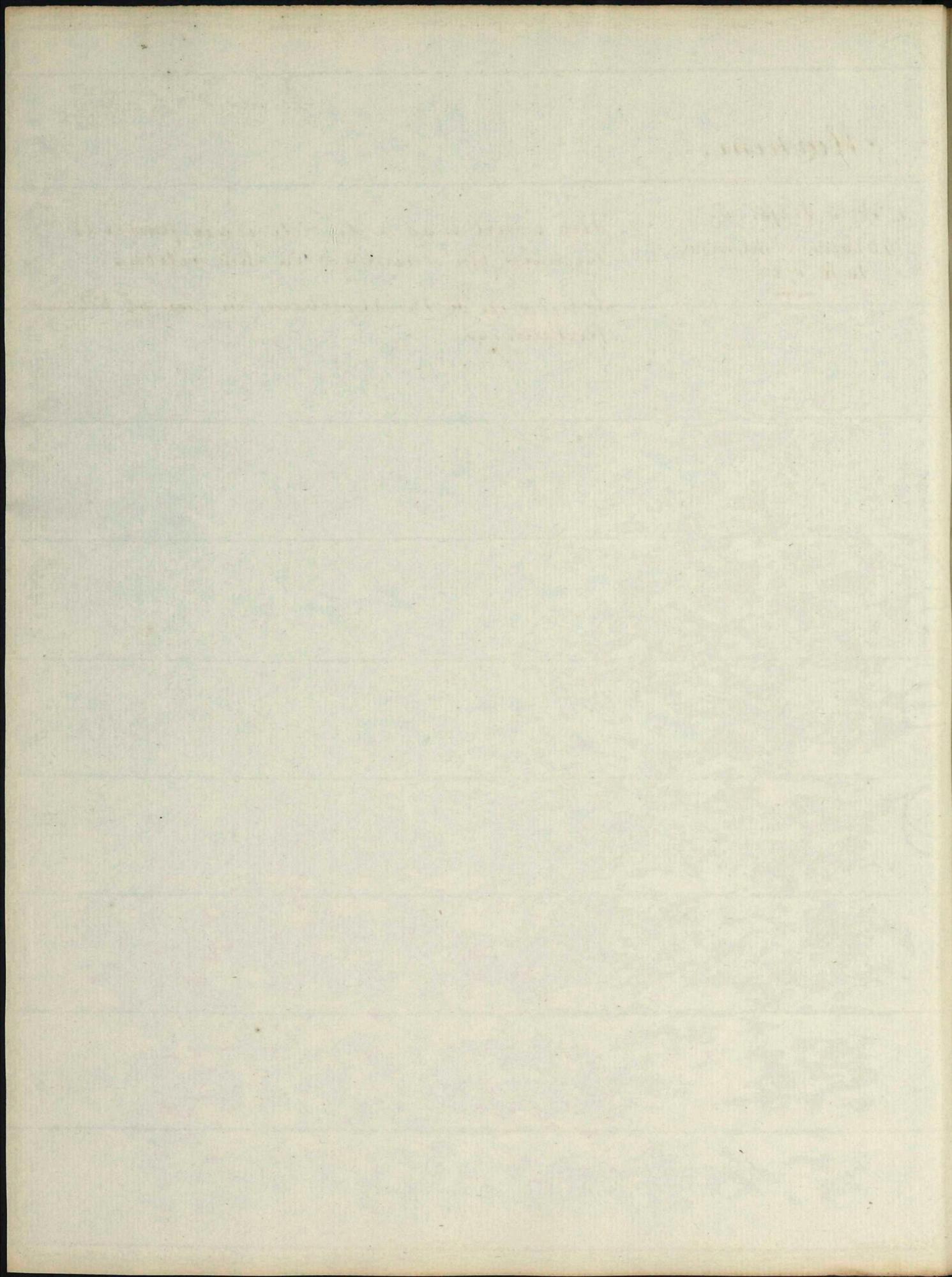
1. Wils. Reps. 5.

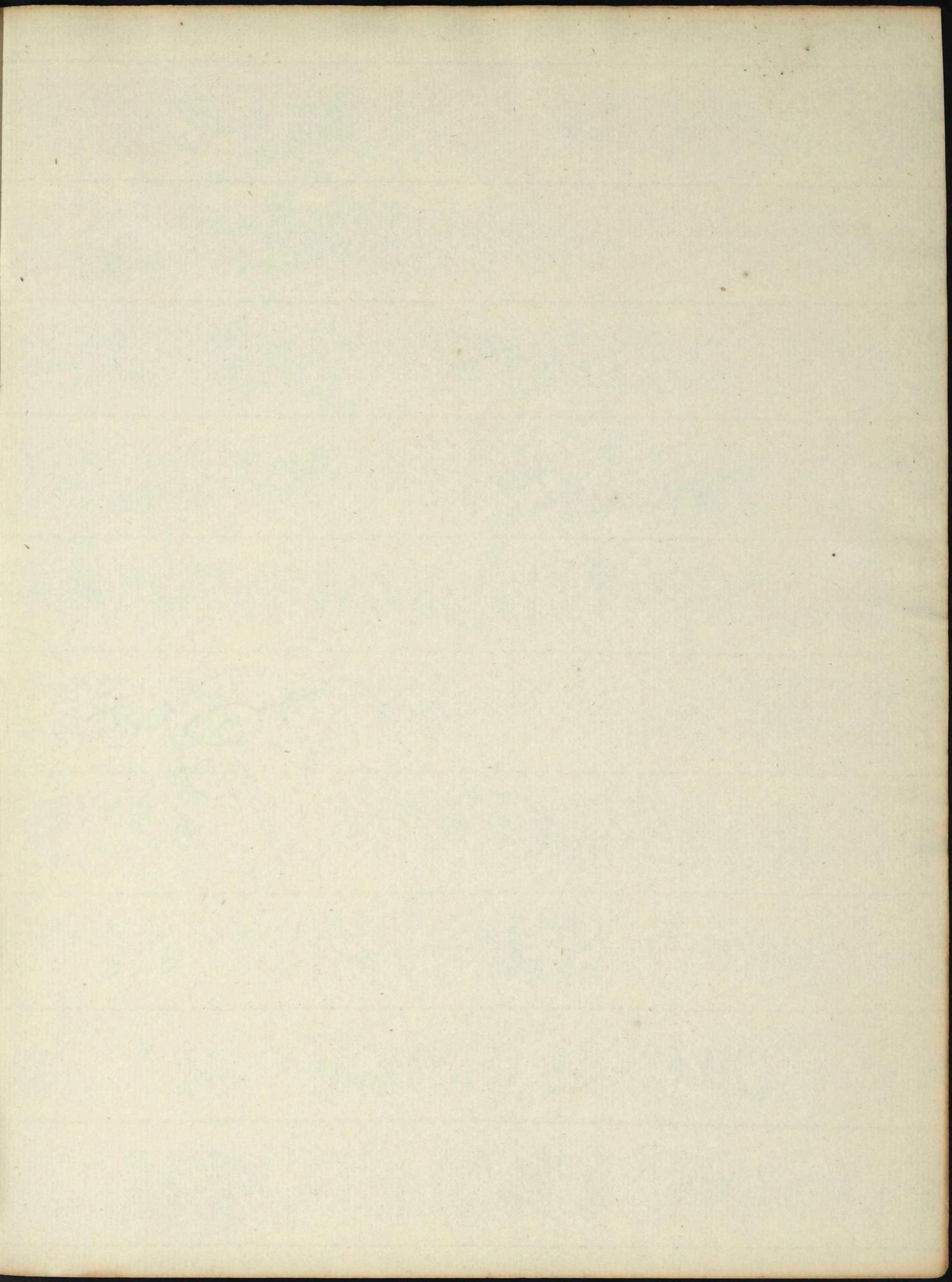
Brown v. Seymour
D. R. 1742.

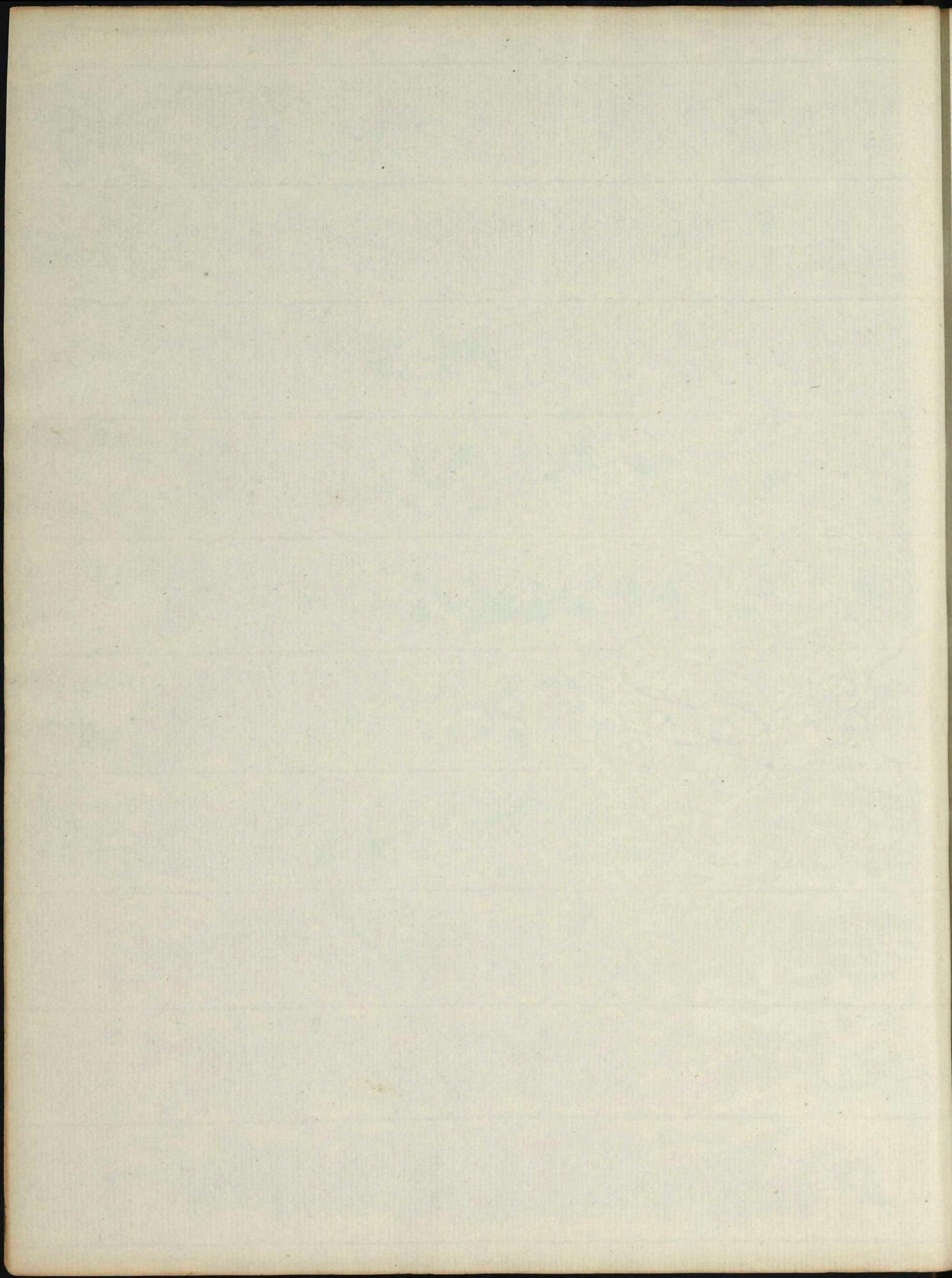
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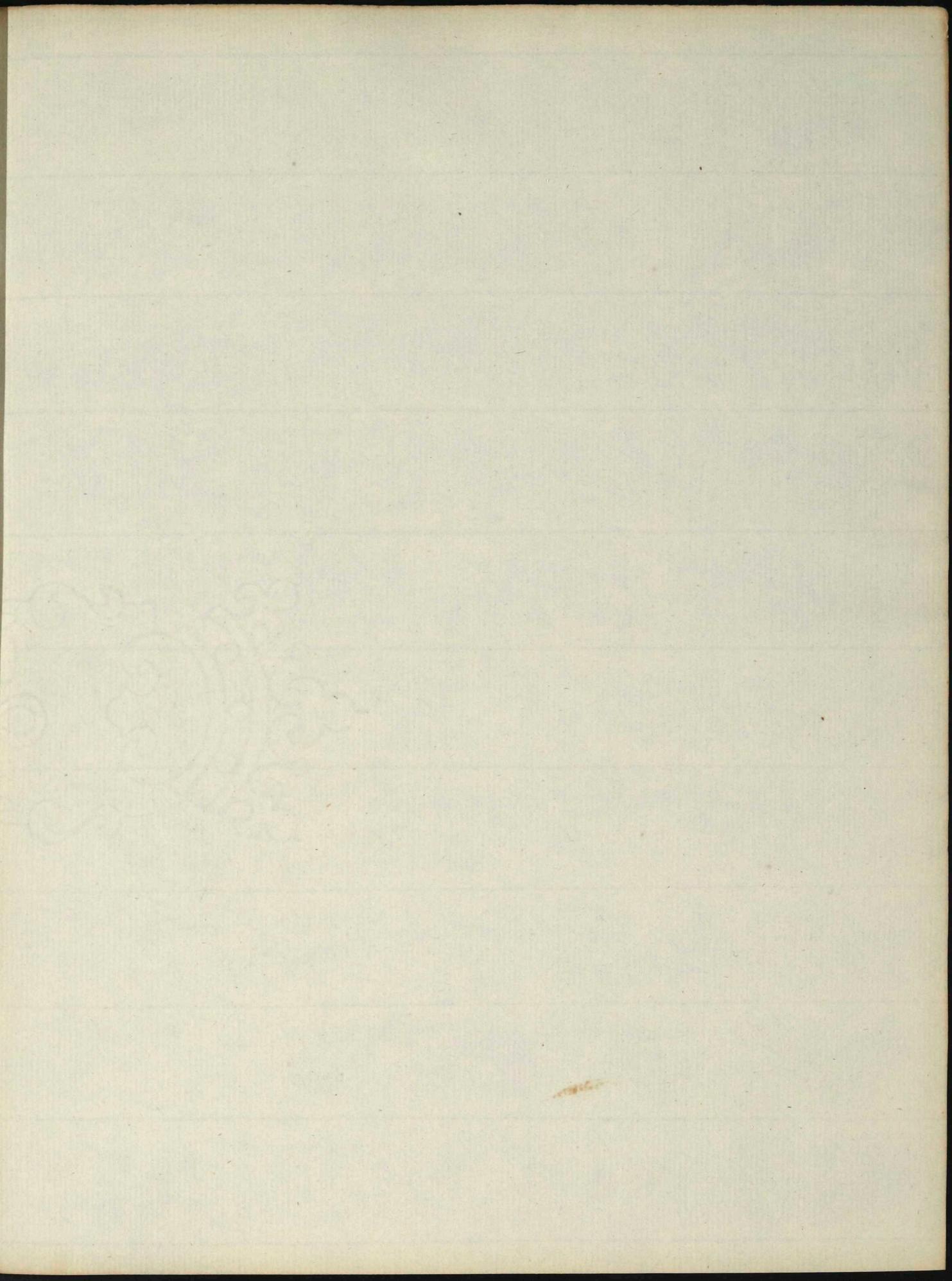
The Court has a discretionary power to increase the damages in this action.

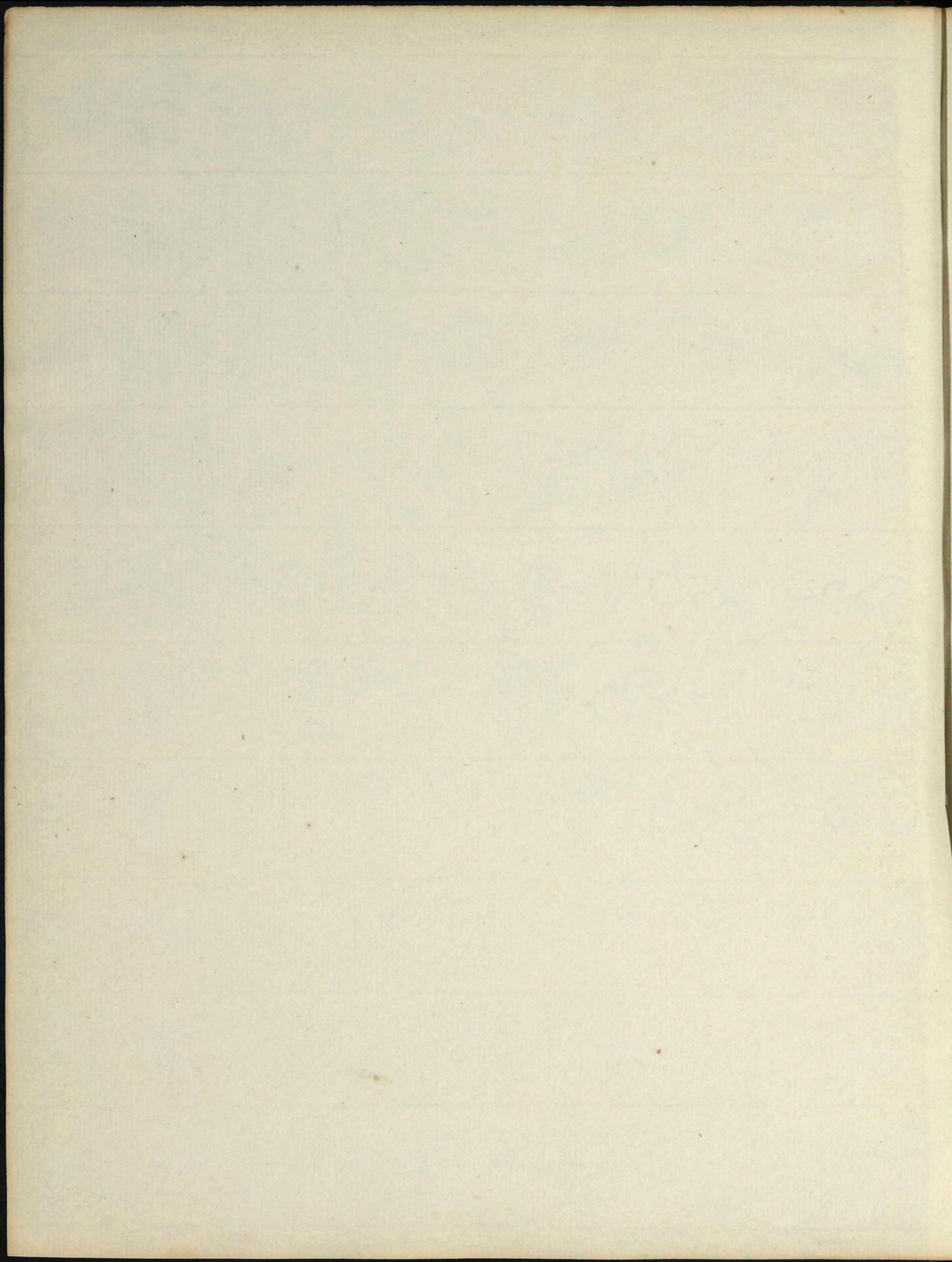
So held in H. B. Montreal in case of Edge v. Ricketts. an.

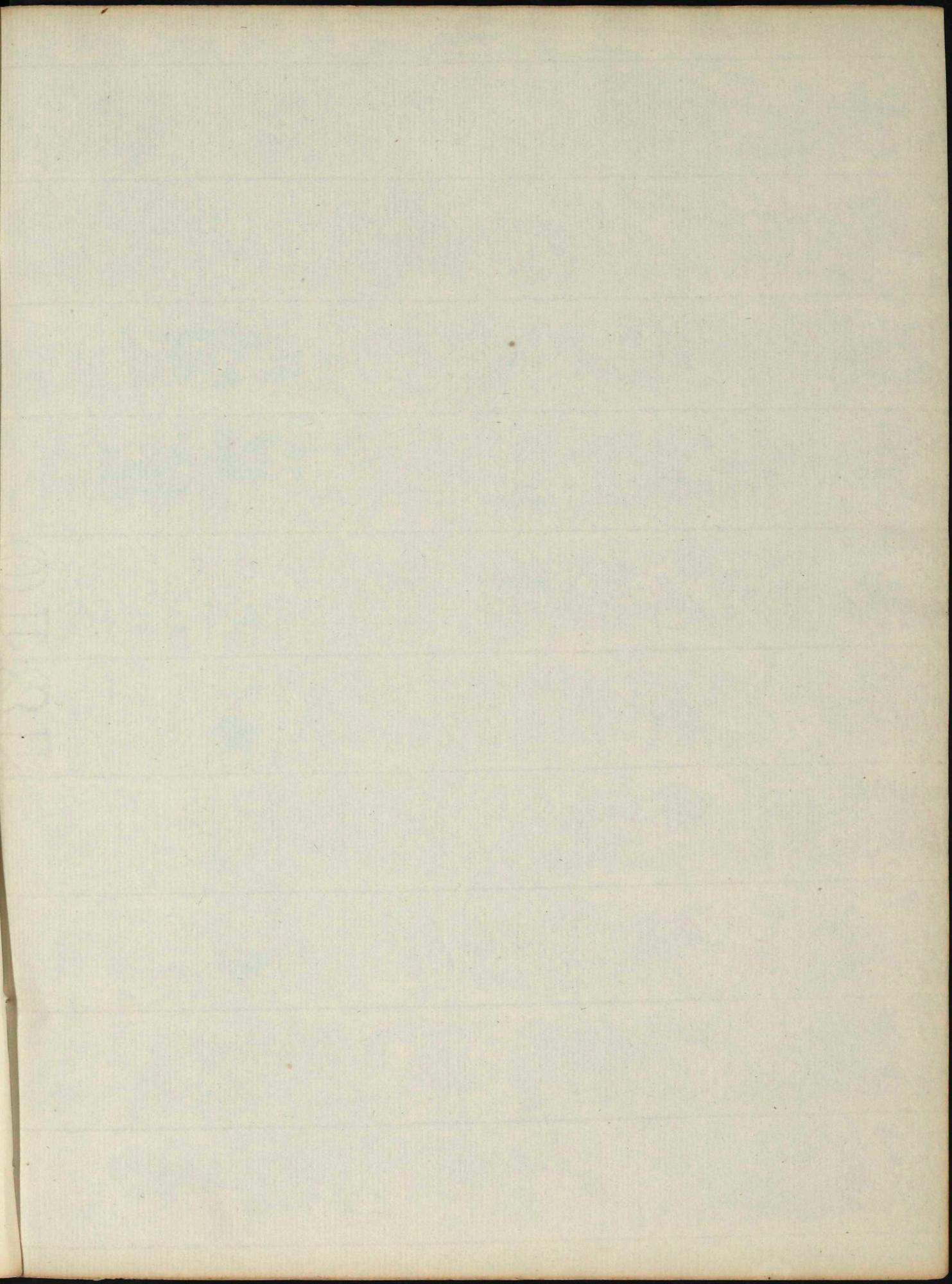


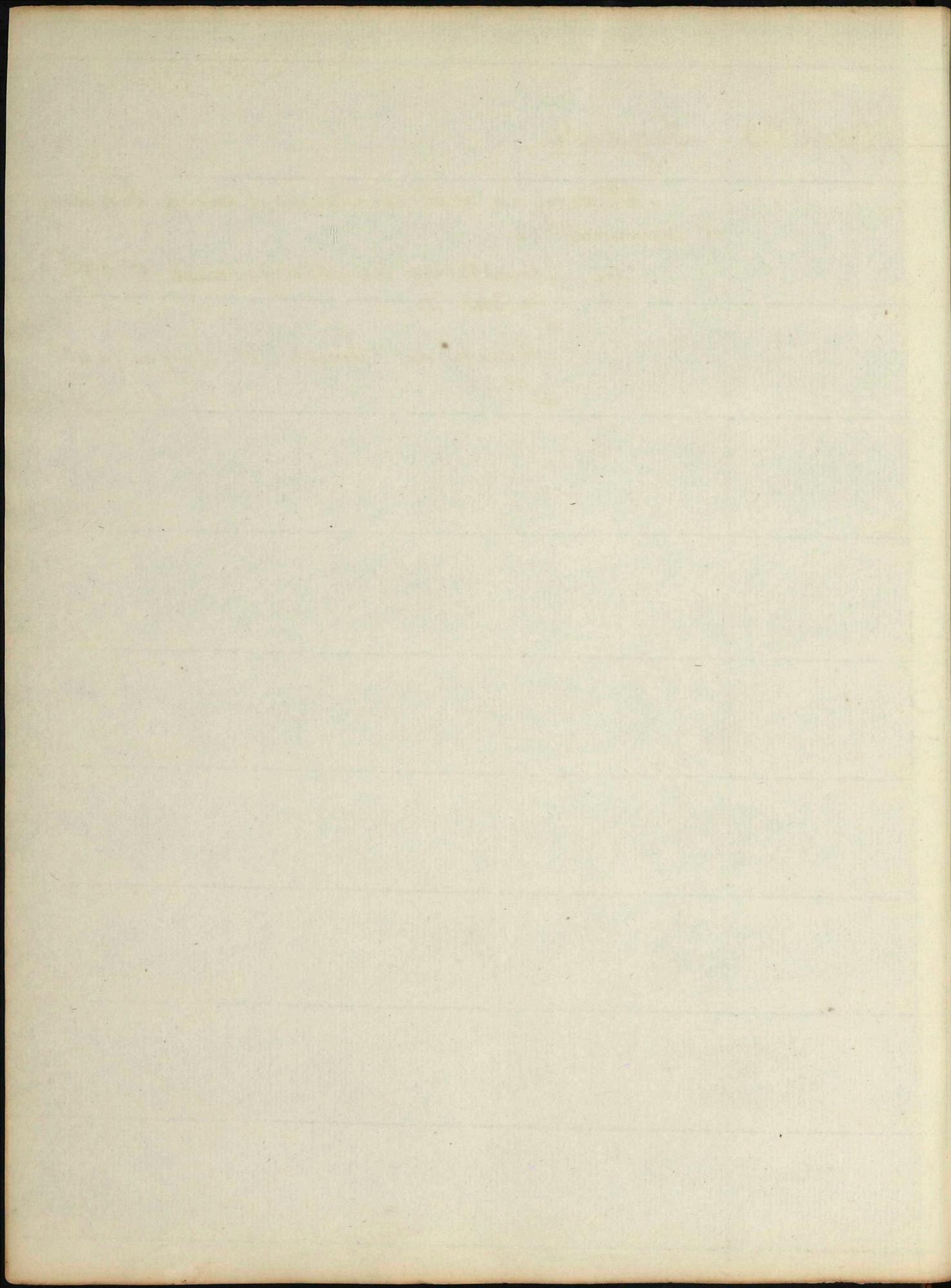










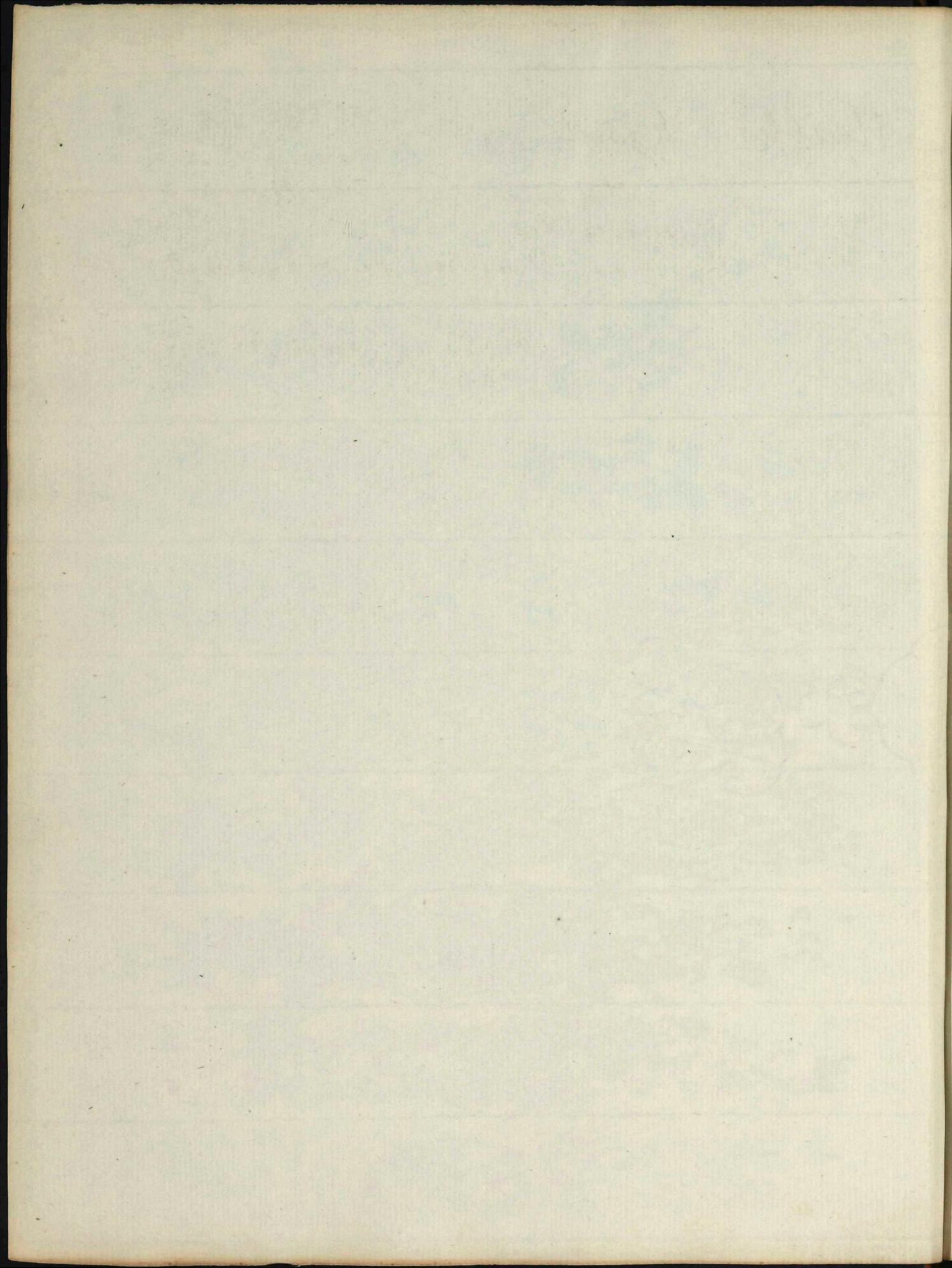


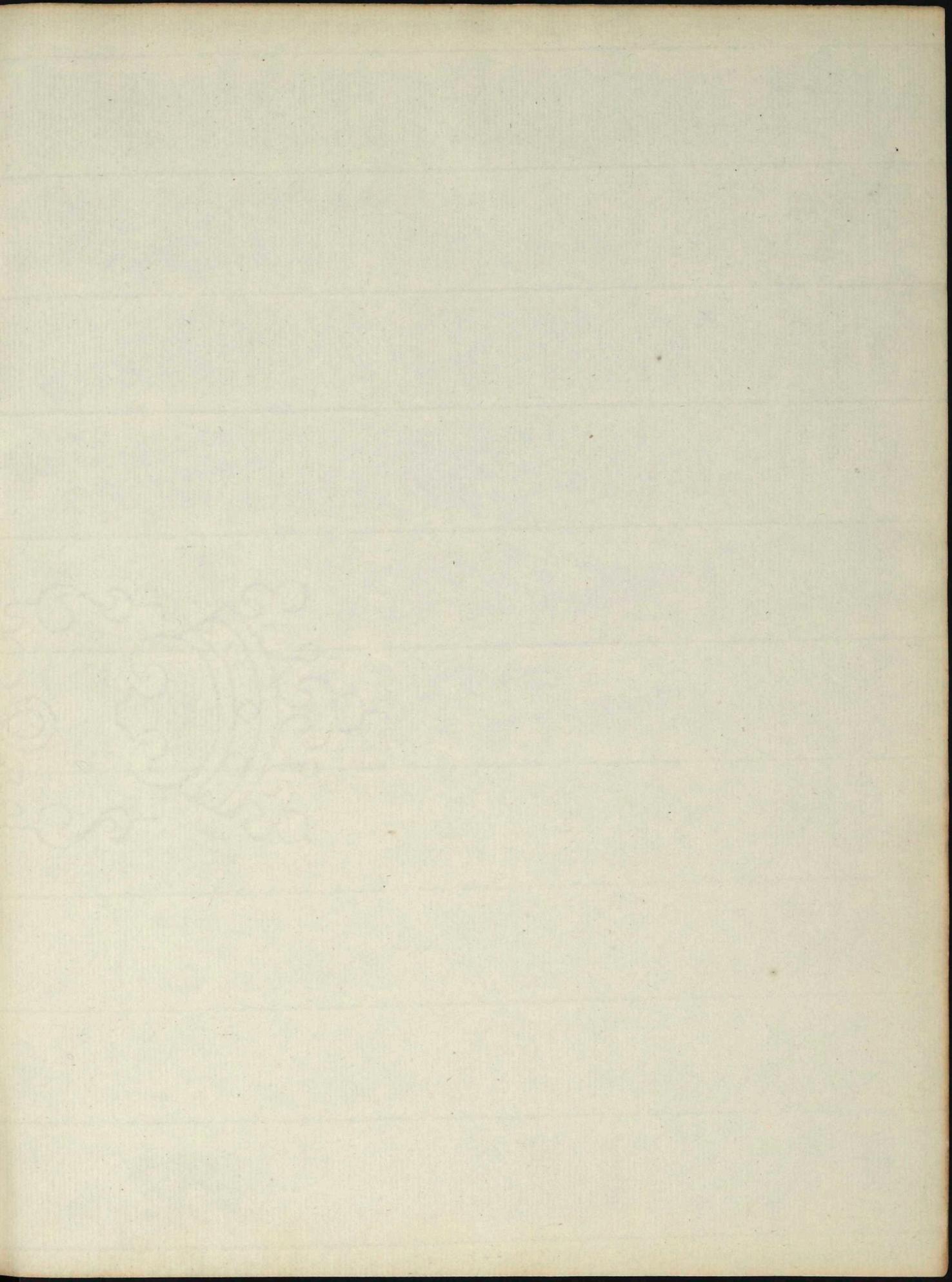
Muebles - Segs de

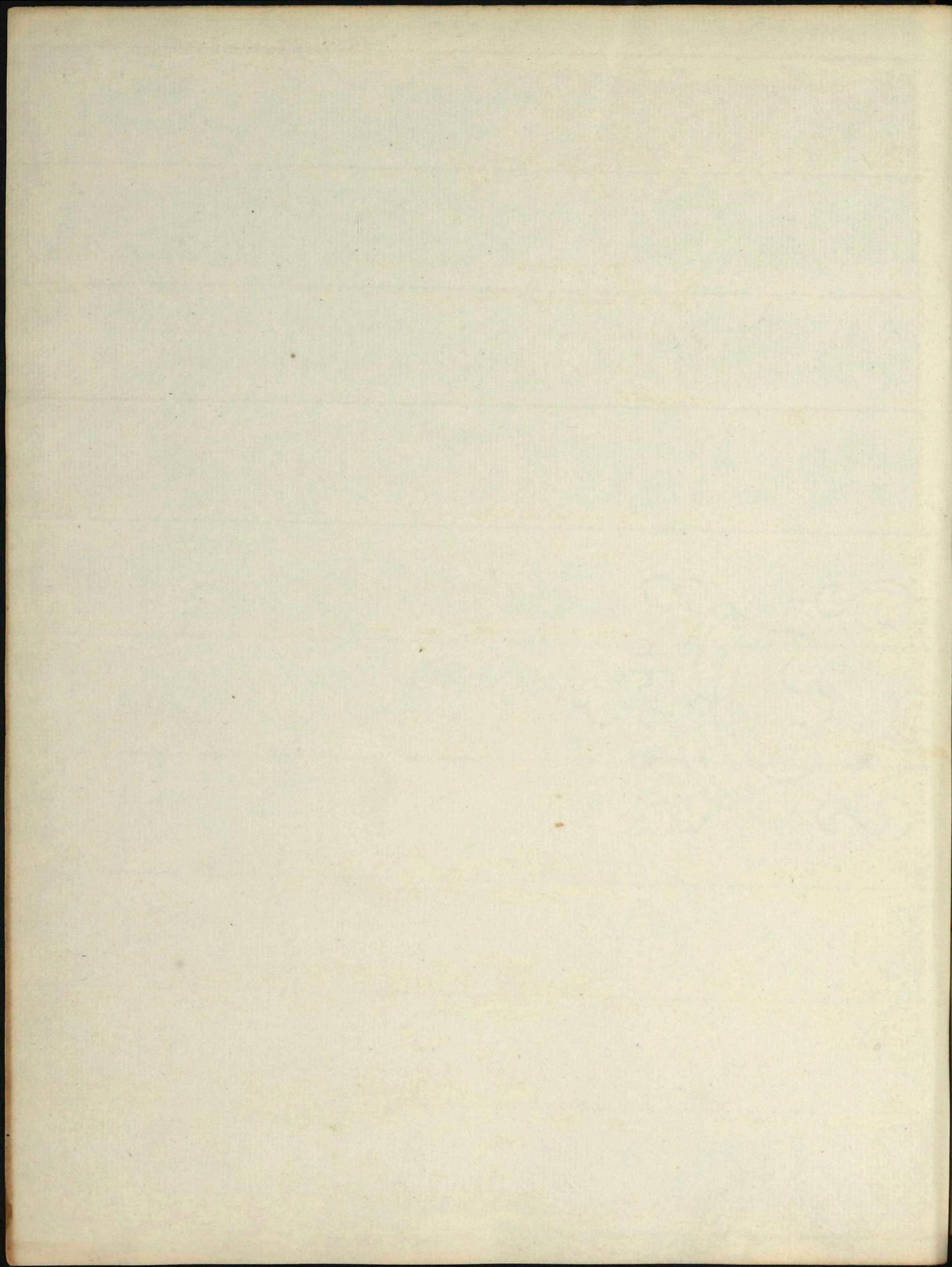
Money is not included in a legacy
of moveables.-

su. Questions de Maynard 1^{re} Vol.
p. 841. 2.

=
Arrets de Sovet. v^e Legg. p. 436
N^o 32.-







Military Officer - action by Inferior ag^t a Sup^r.

An action of Trespass lies for an Inferior Military Officer against his Superior Officer (both being under martial law) who imprisons him for disobedience to an order made under colour, but not within the Scope of Military authority — Although the imprisonment be followed by a trial by a Court martial —

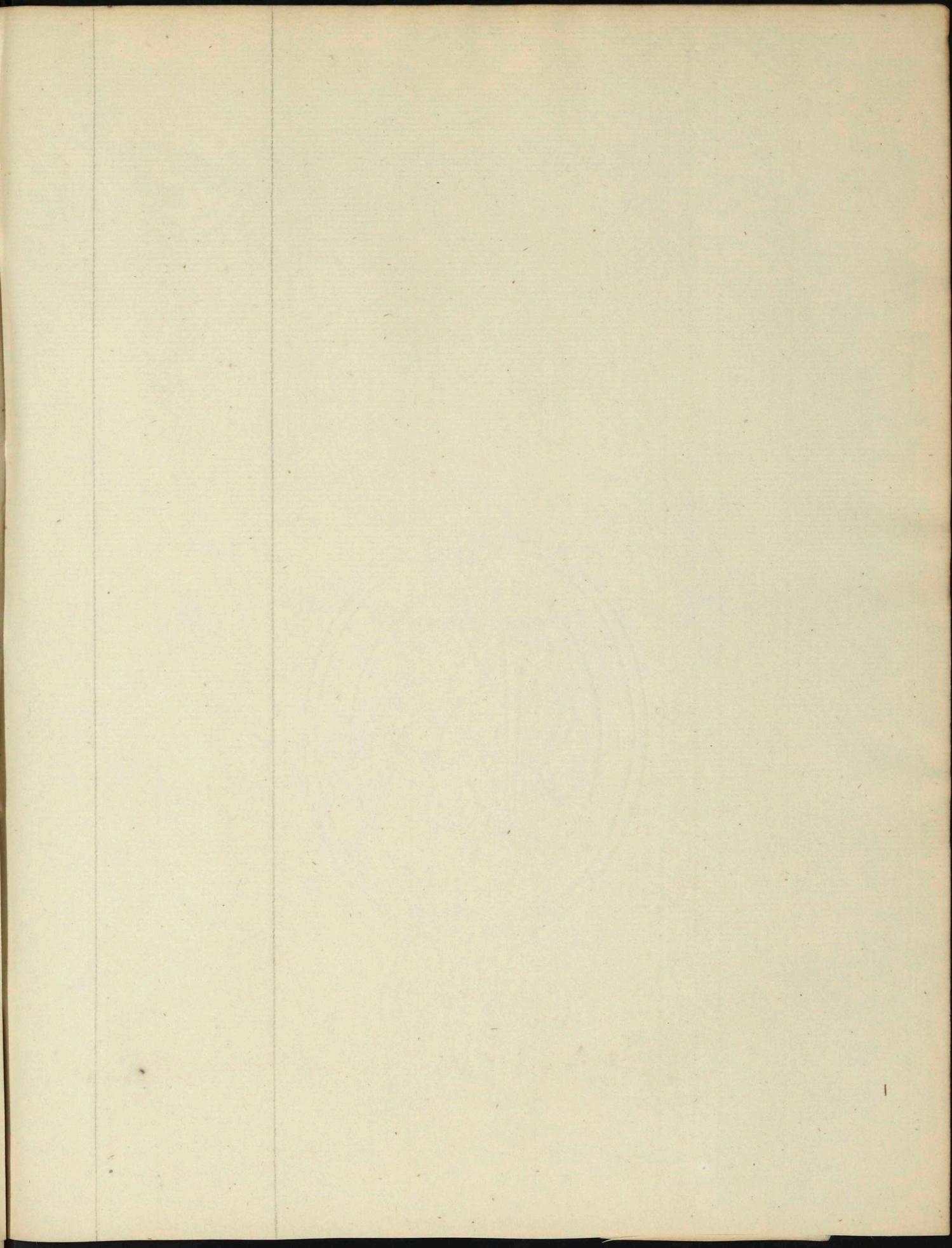
The Colonel of a Regiment has no authority to order his Sergeant to pay money towards lighting & warming a Regimental School and Schoolmaster's Salary, — nor as it seems, to order him to attend school, to learn to read and write. — A. Taunt. 67. Warden v. Bailey.

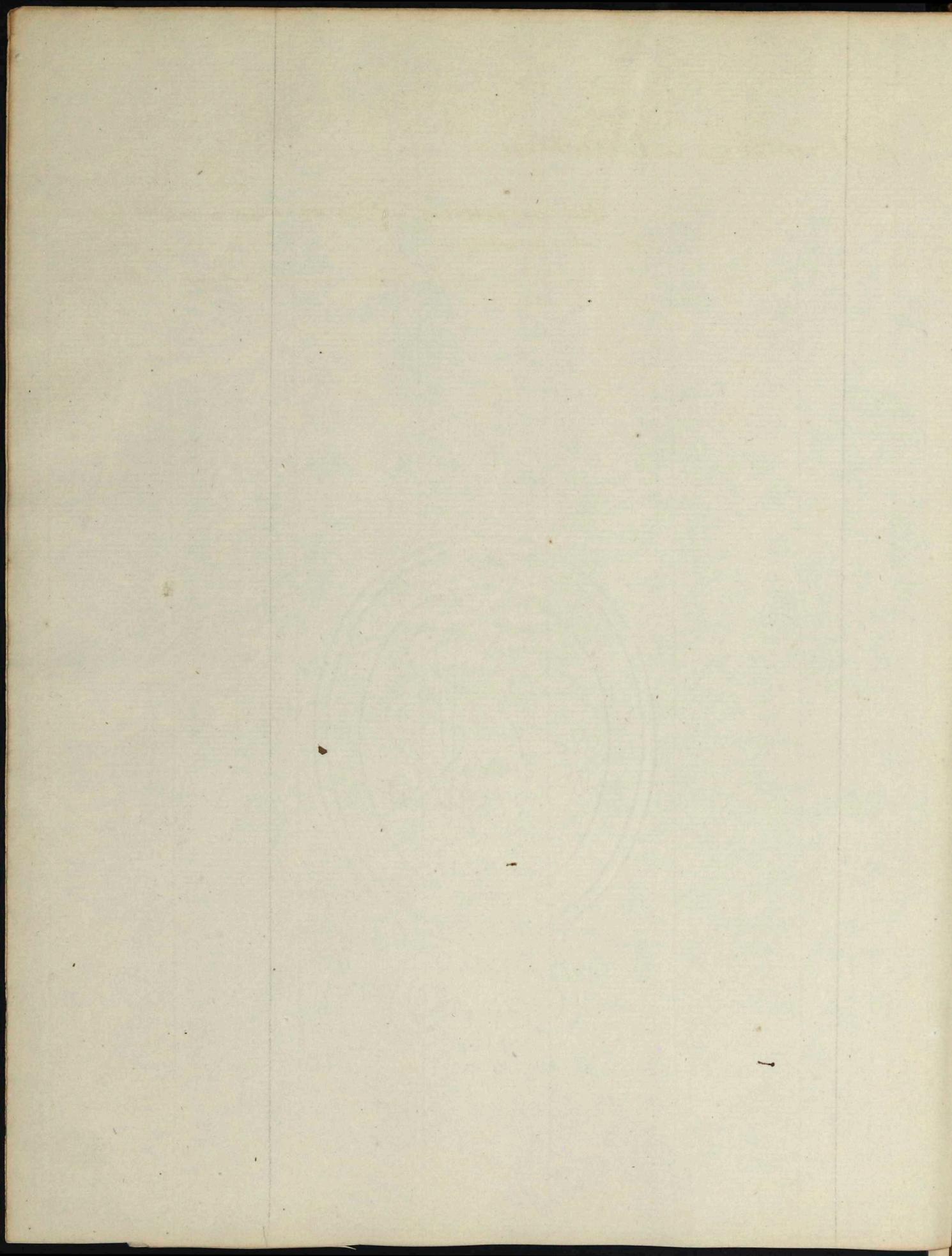
See case of Lieut. Frye, referred to. Appendix to McCullagh's Court M. 2 Vol. p. 344. 3^d edit.

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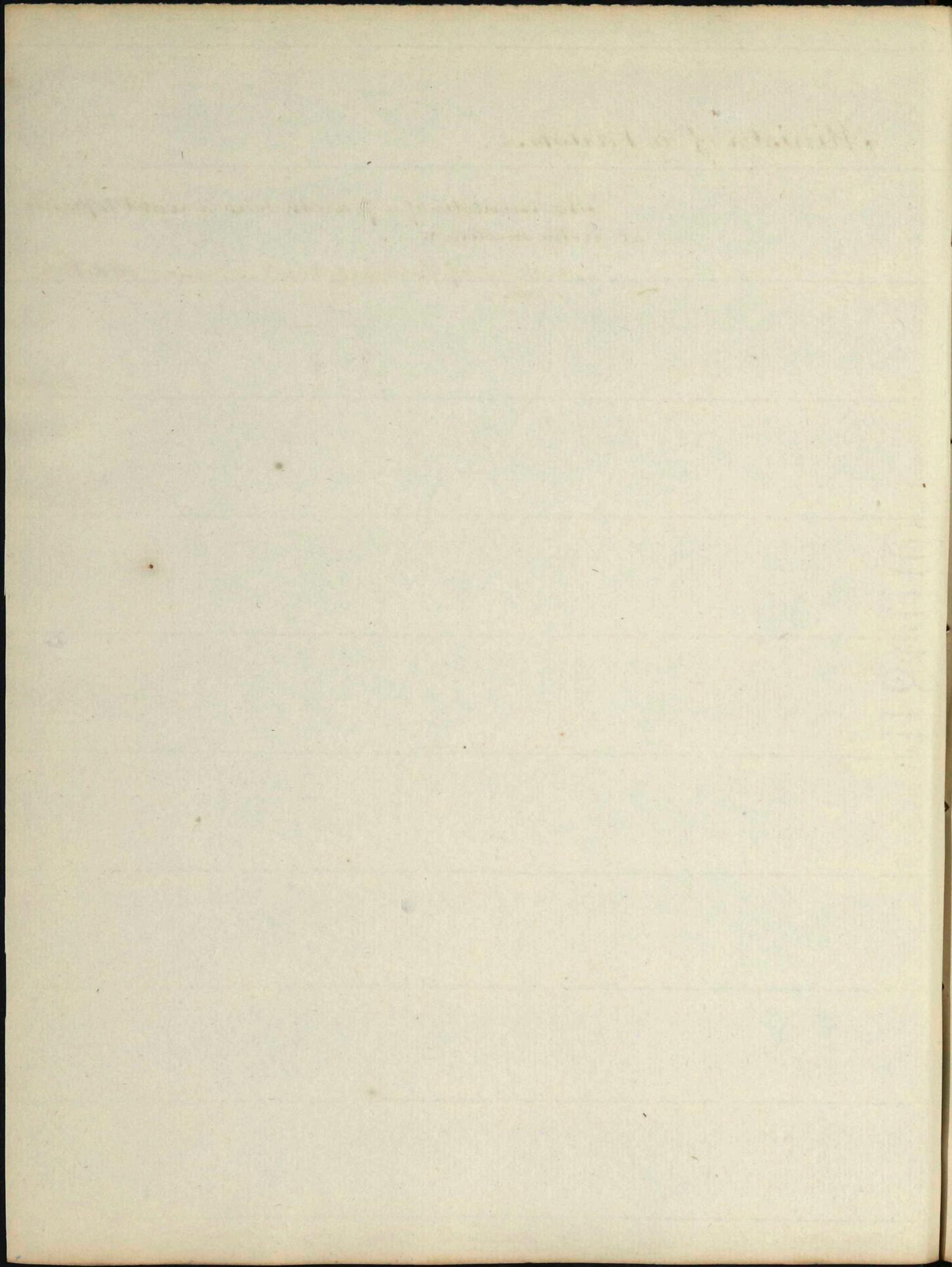


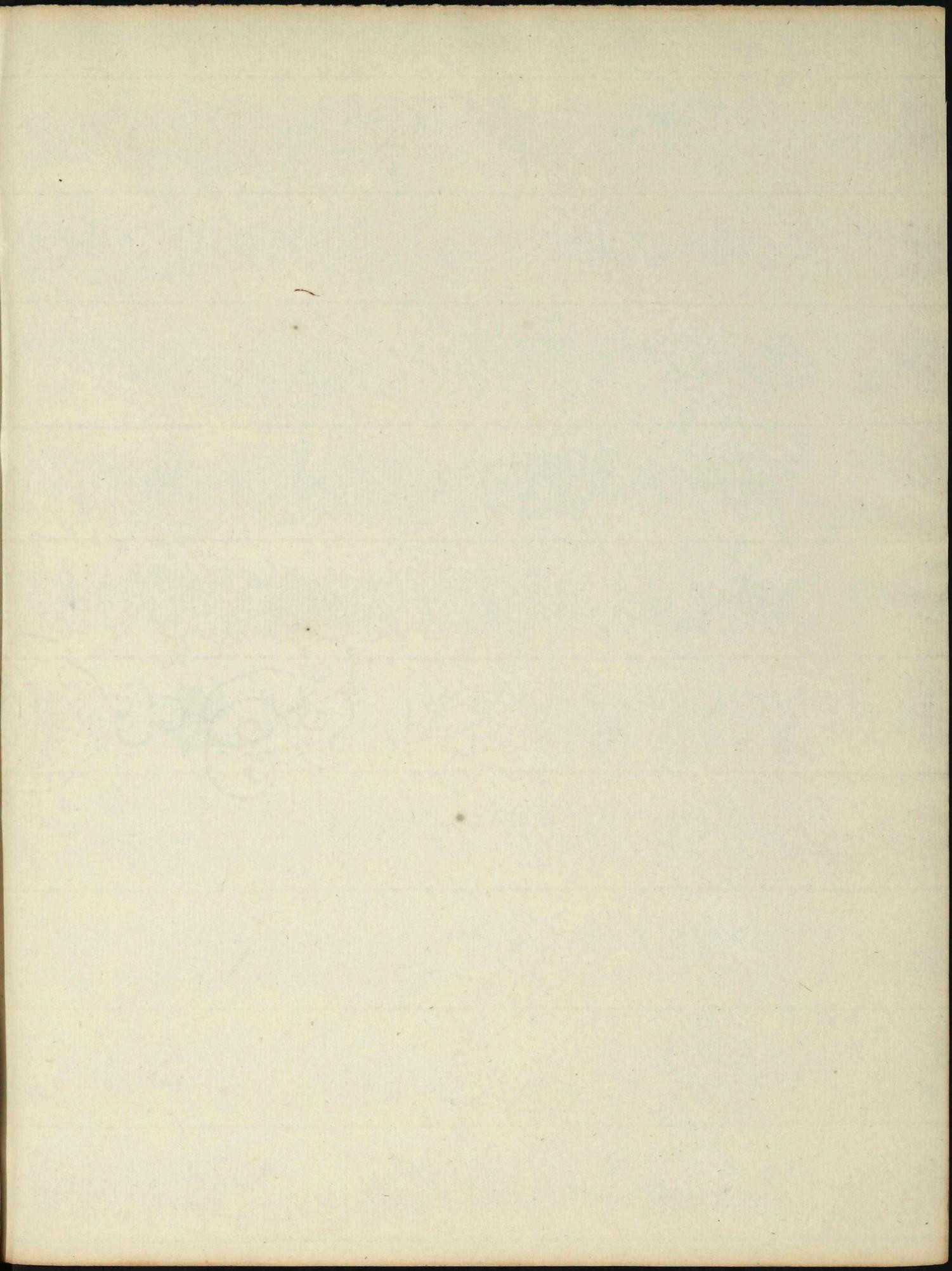


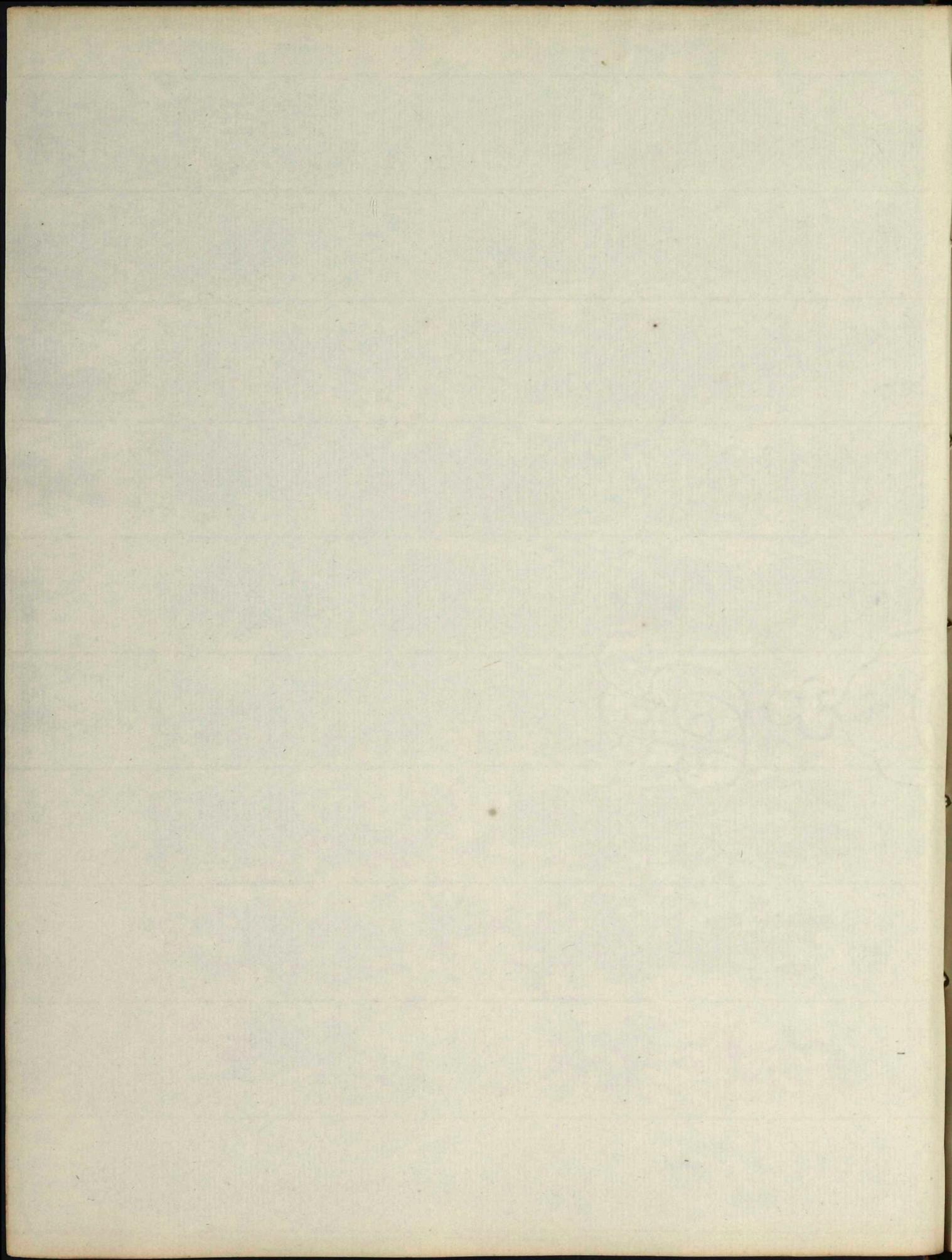
Minister of a Parish.

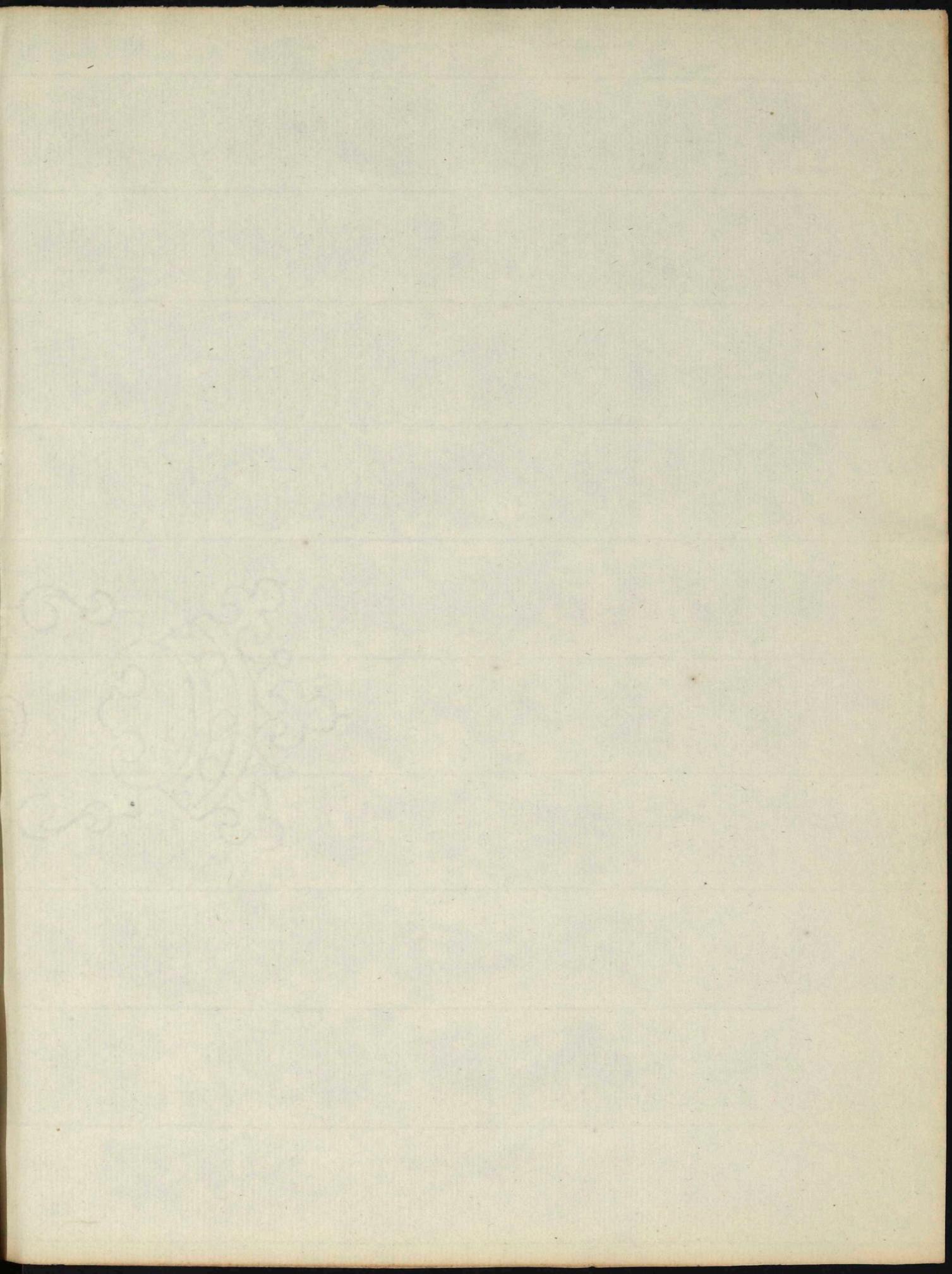
The minister of a parish has a right to preside
at Vestry meetings.—

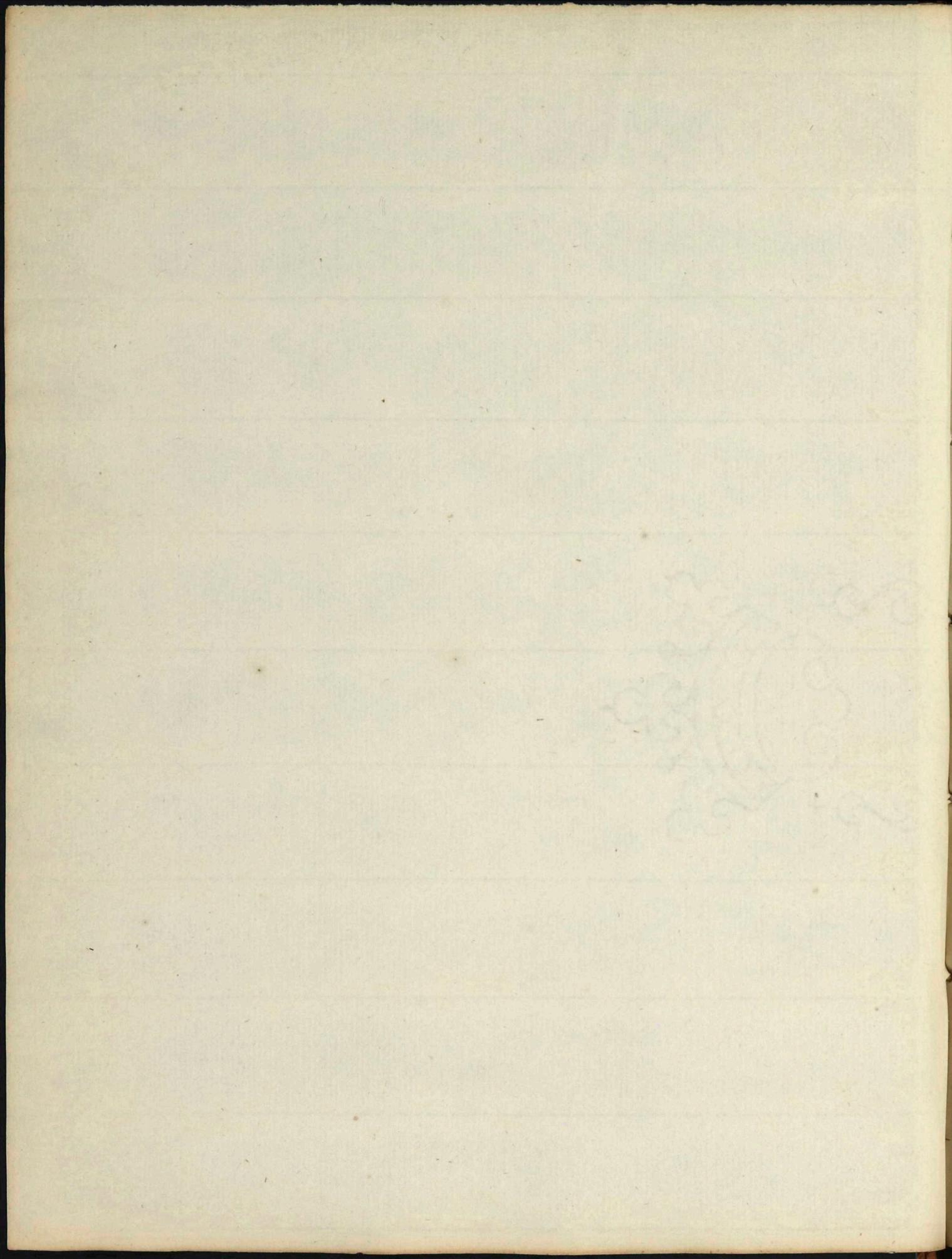
See Judg^t. of Sir John Nicoll. 3 Barn: & Ald. Rep.,
p. 244. —

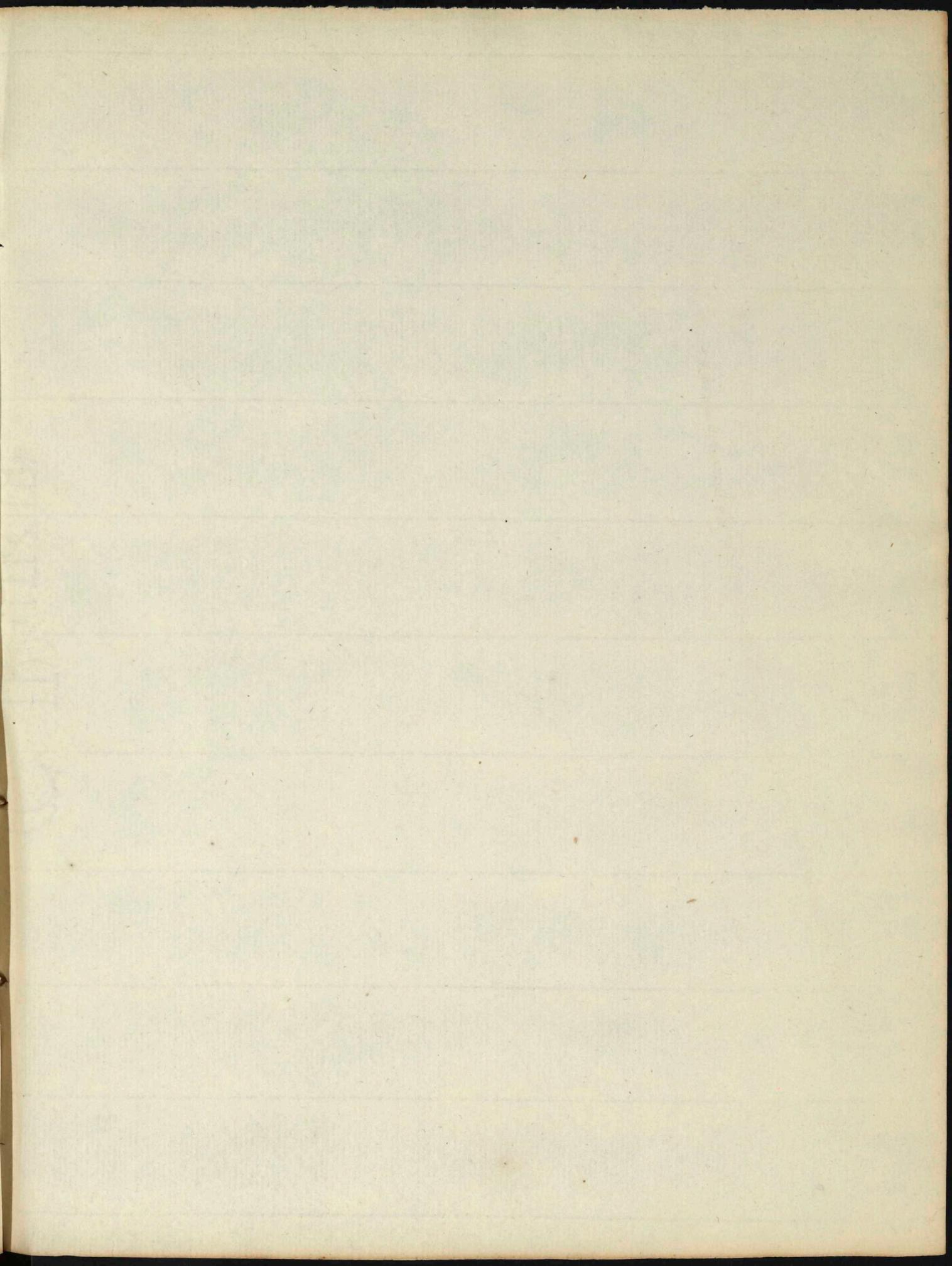


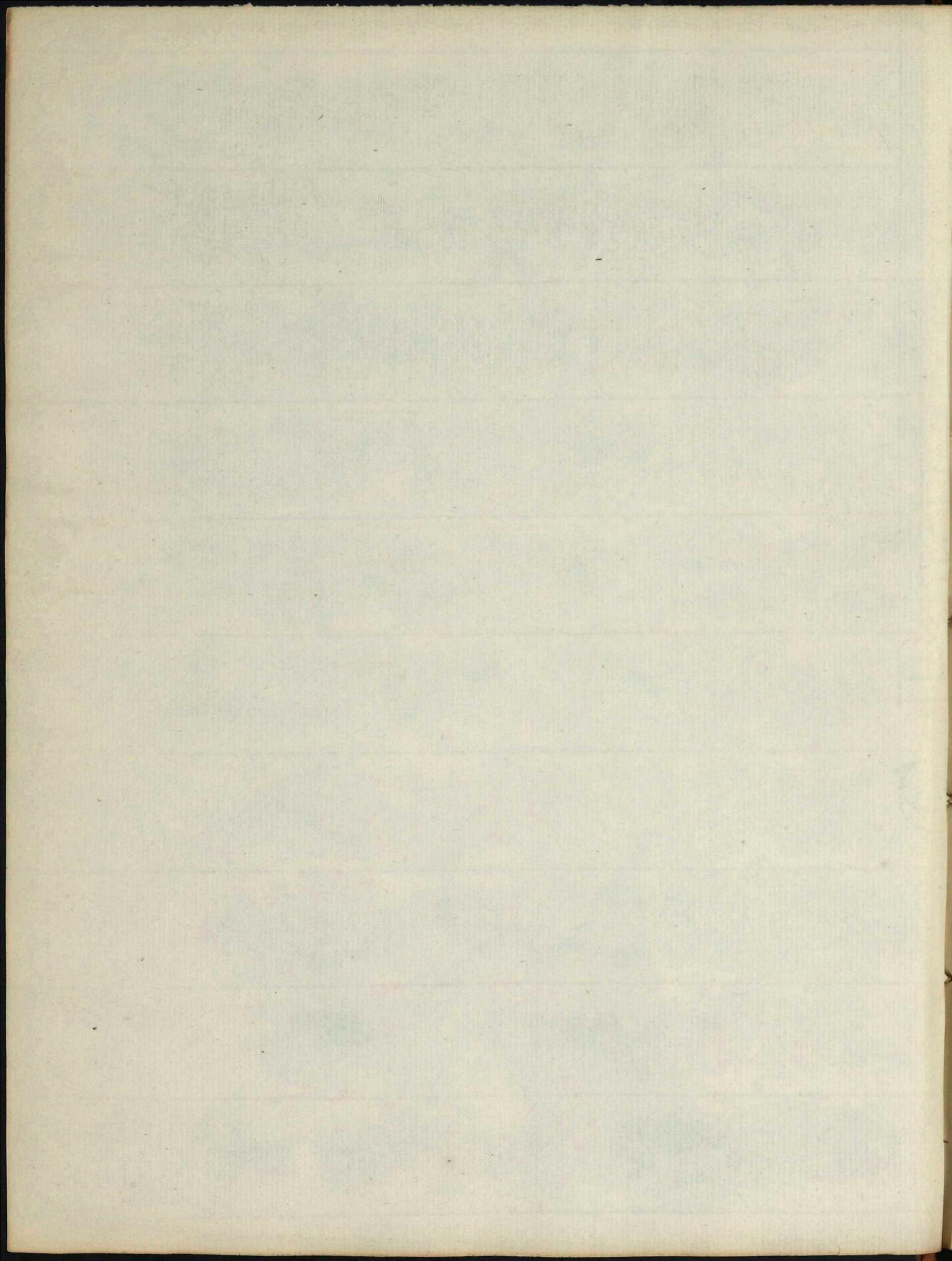












Misdemeanor.

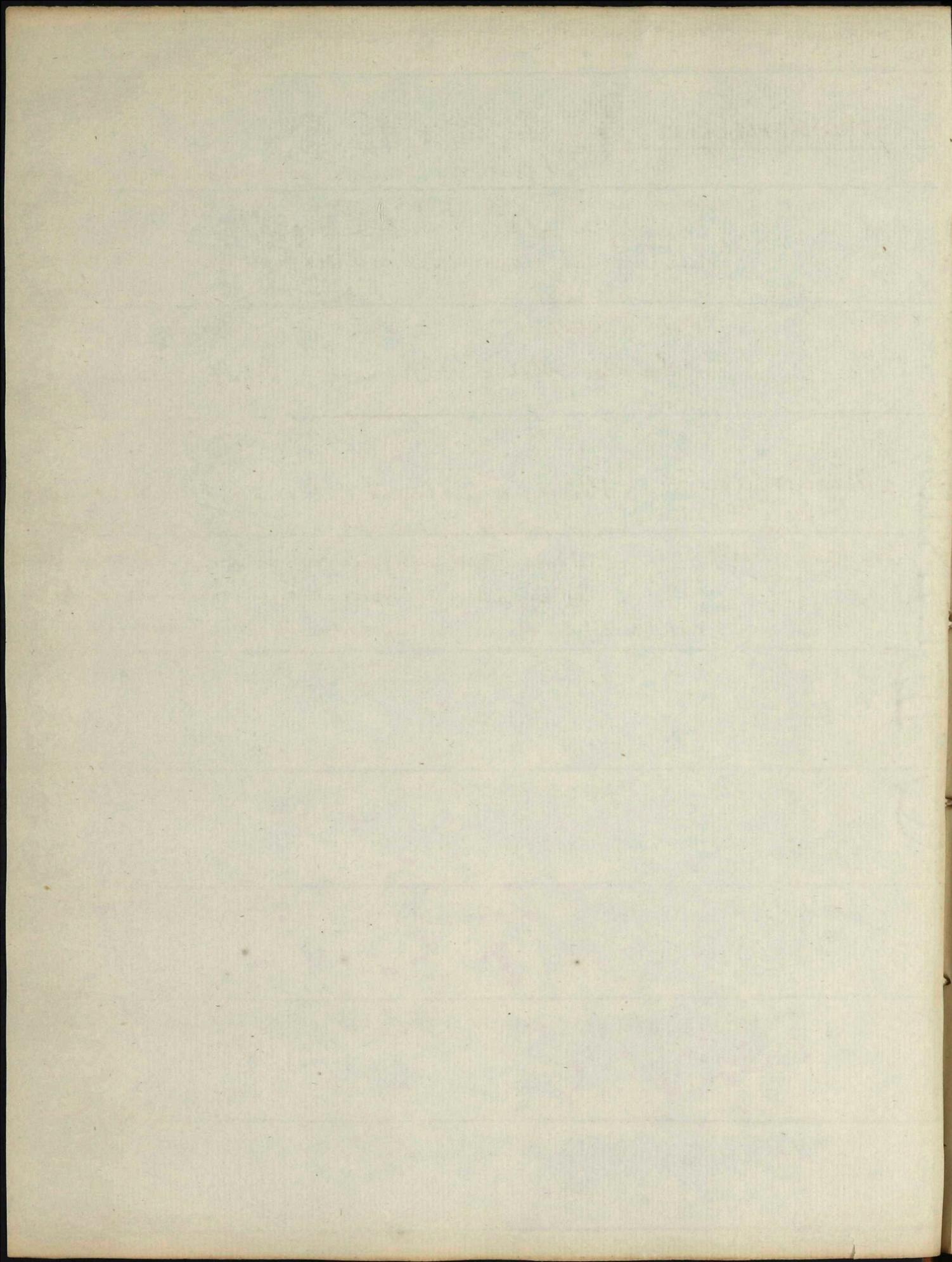
A person may be indicted for unlawfully and injuriously carrying a child infected with the Small-pox along a public highway in which persons are passing, and near to the habitations of the King's Subjects. 4. Manc. & Sel. 73. King v. Vantandillo. u

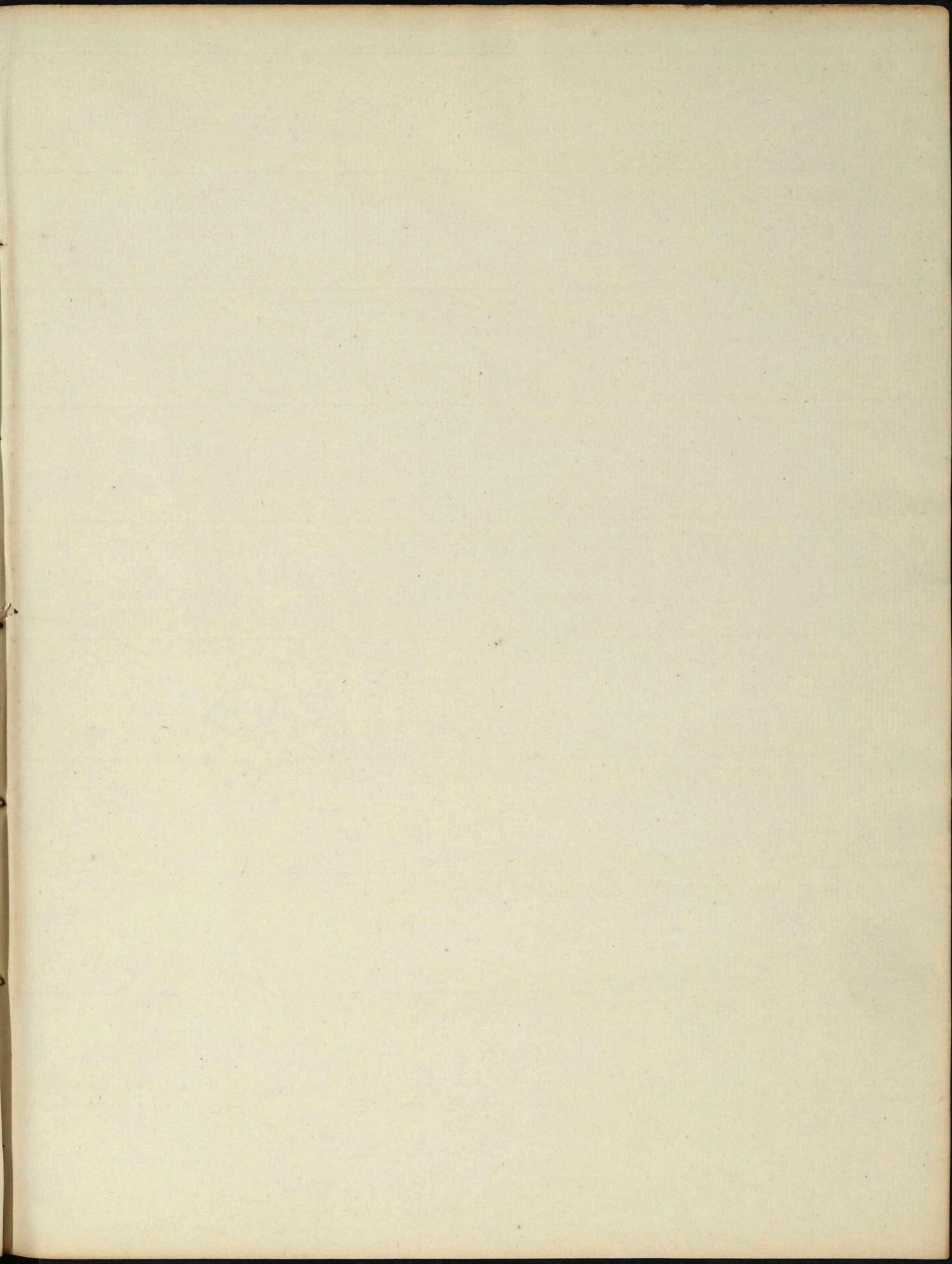
See also. King v. Burnett. Id. p. 272. u

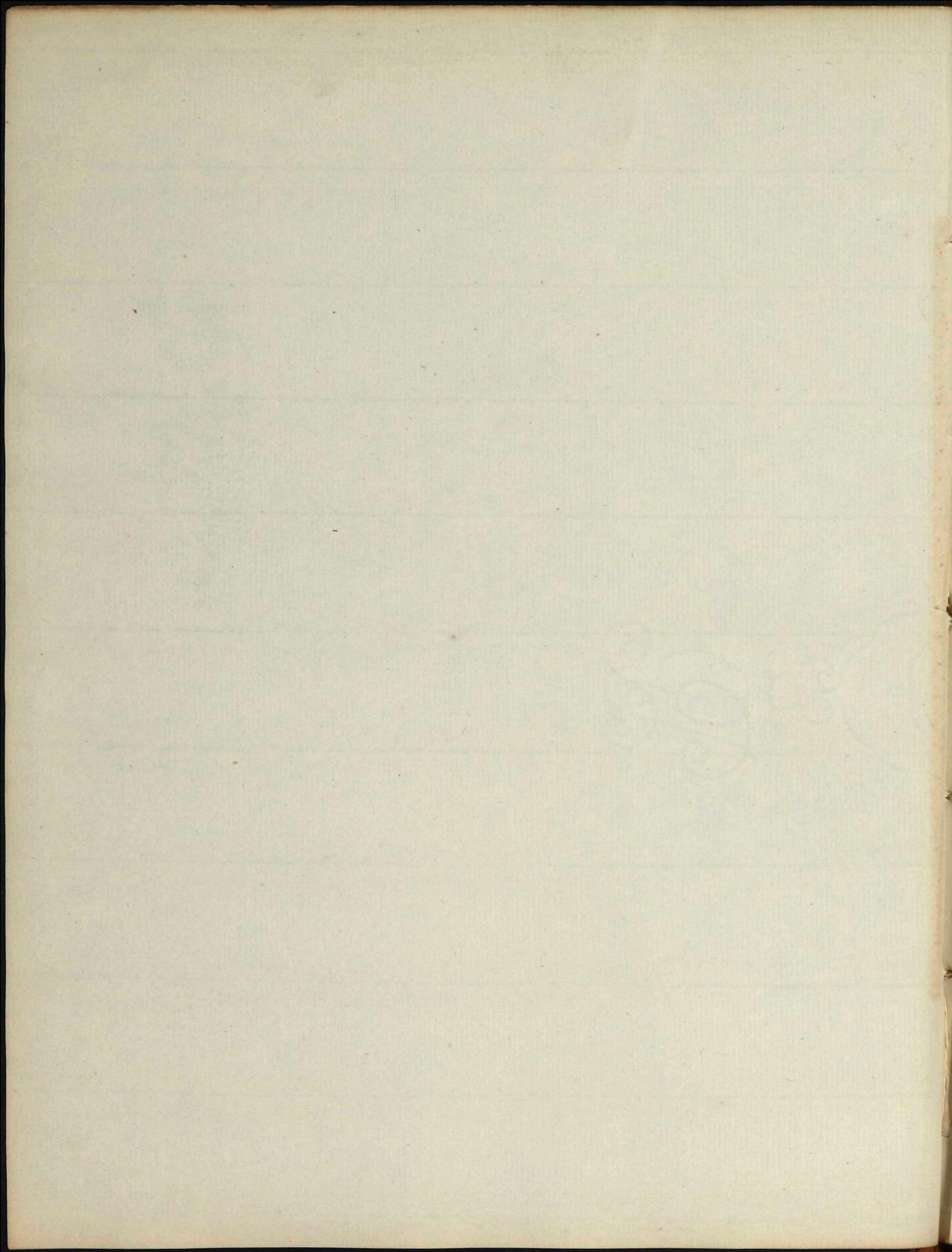
2. Barn: & Ald.
Rep. p. 609

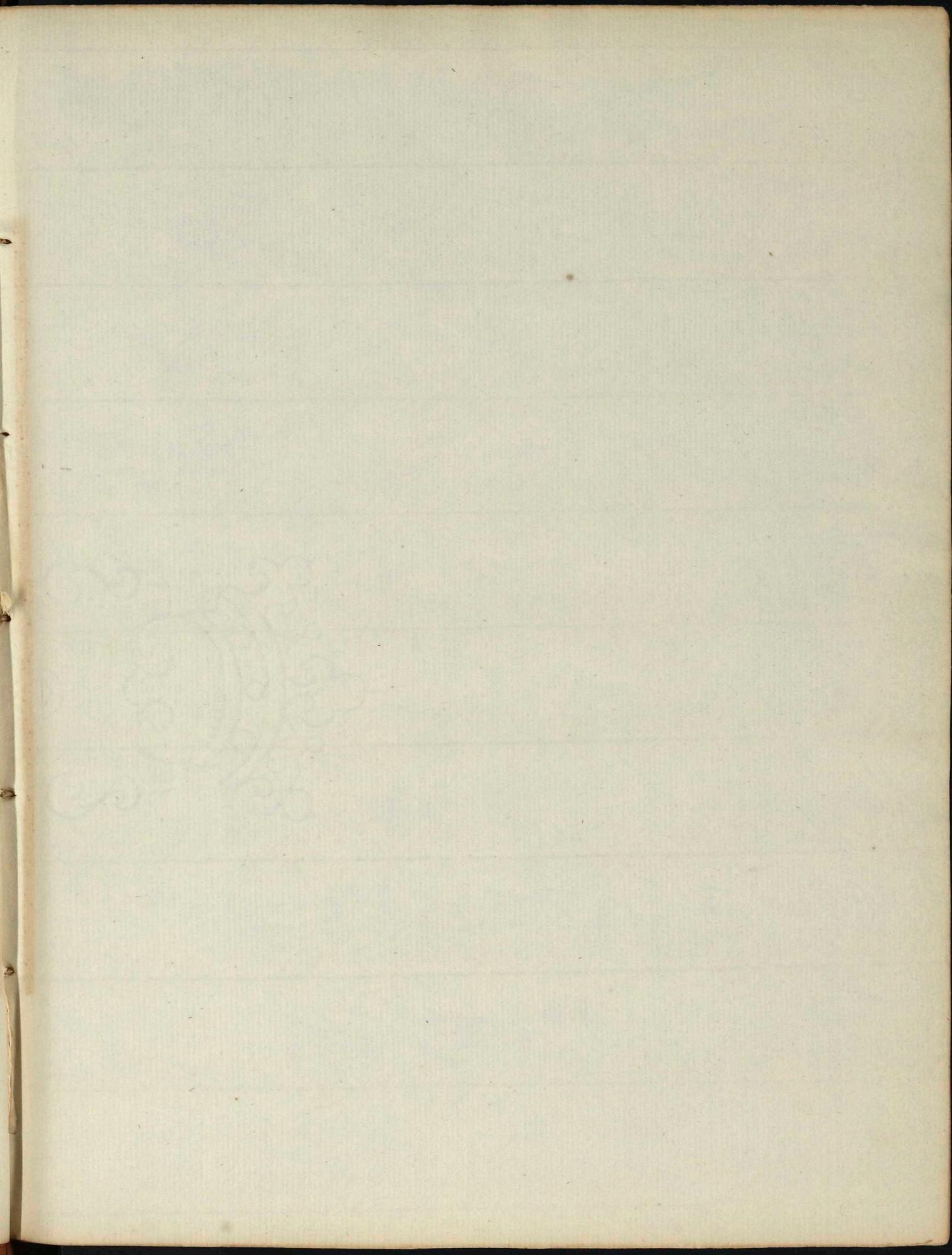
The King v. Woolf

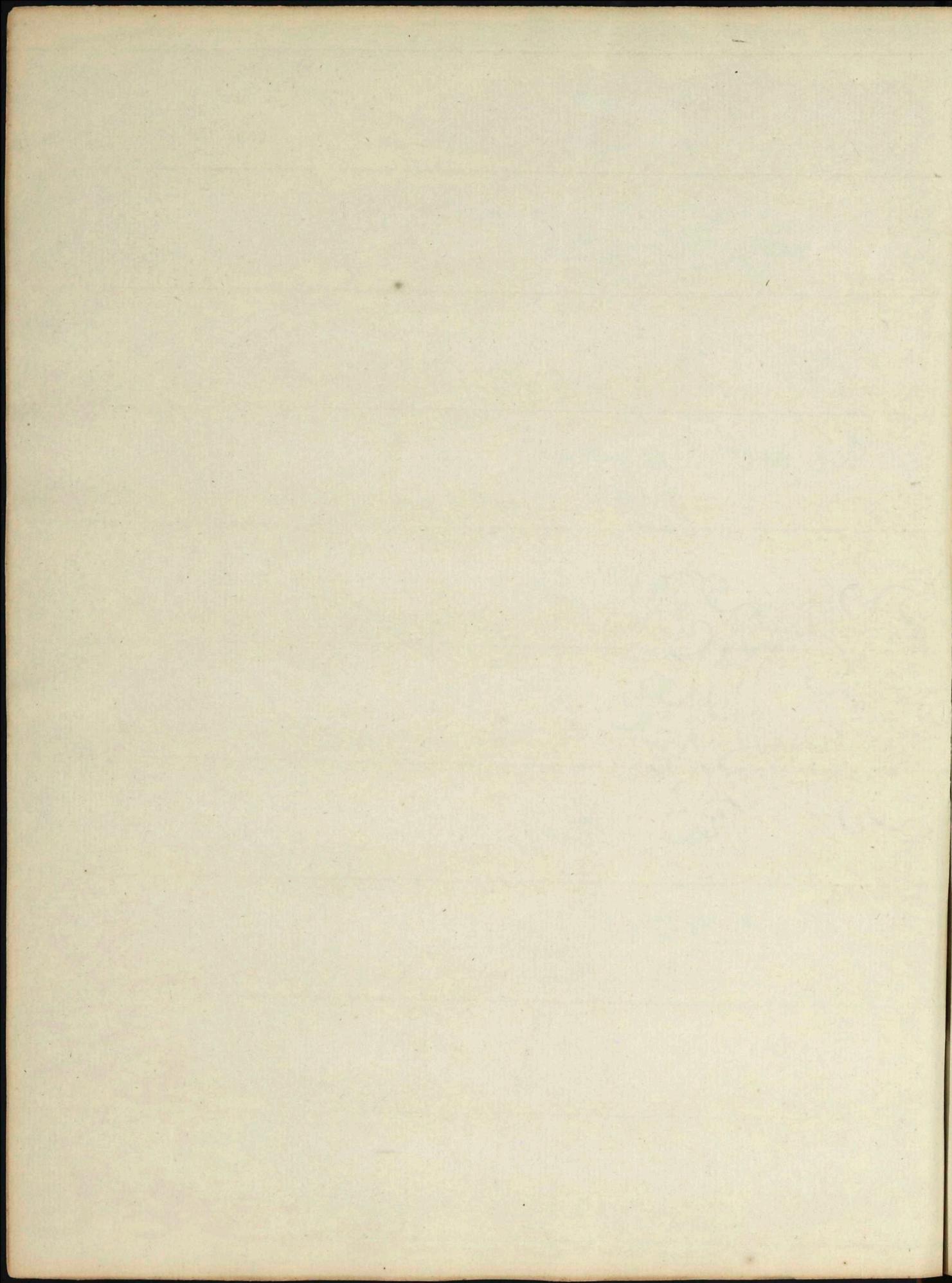
Where a Defendant in an Indictment for a misdemeanor, has received Judgment of Fine and imprisonment. — Held — that a levi facias may issue immediately to take his goods in execution for the fine. u

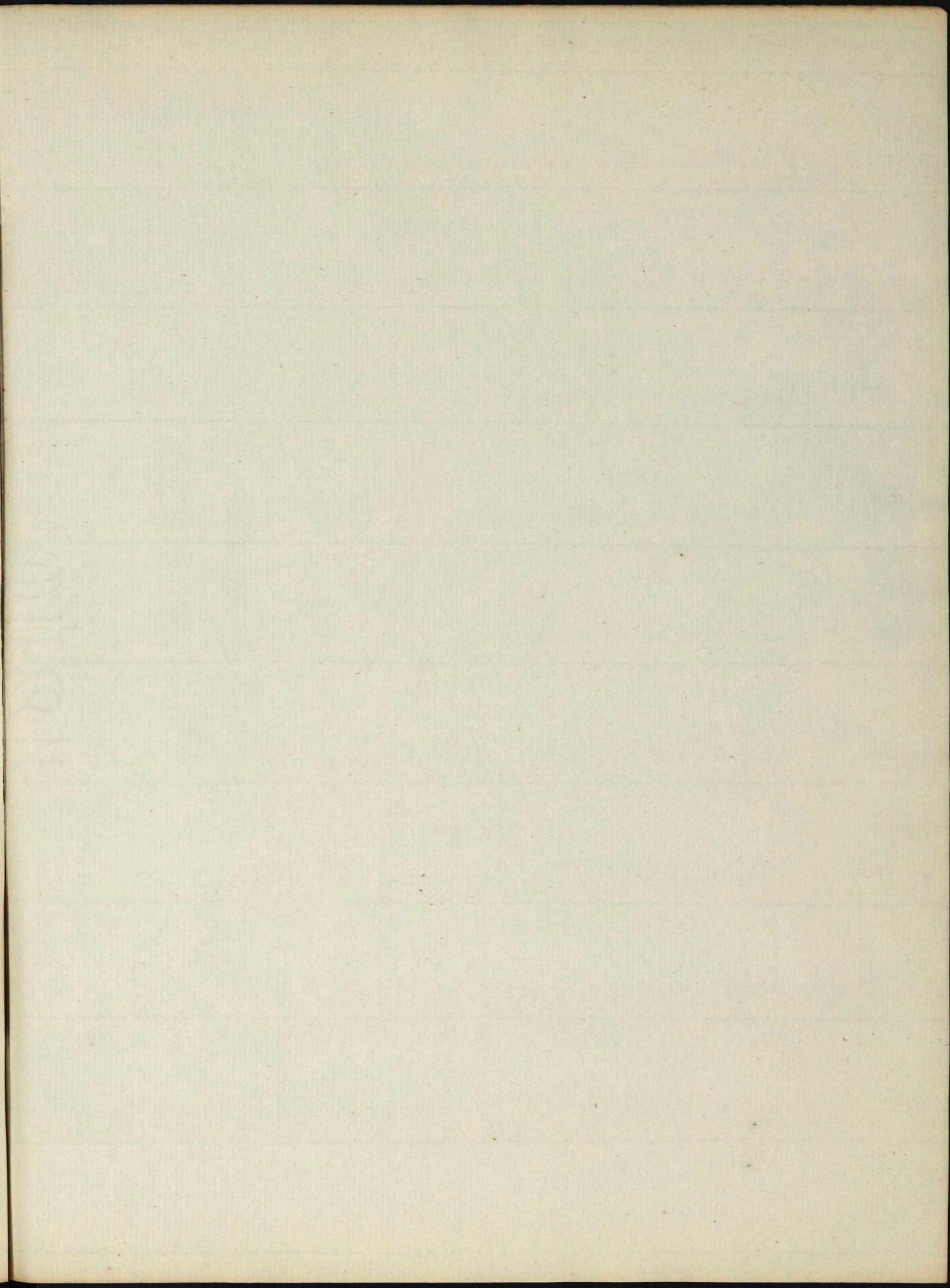


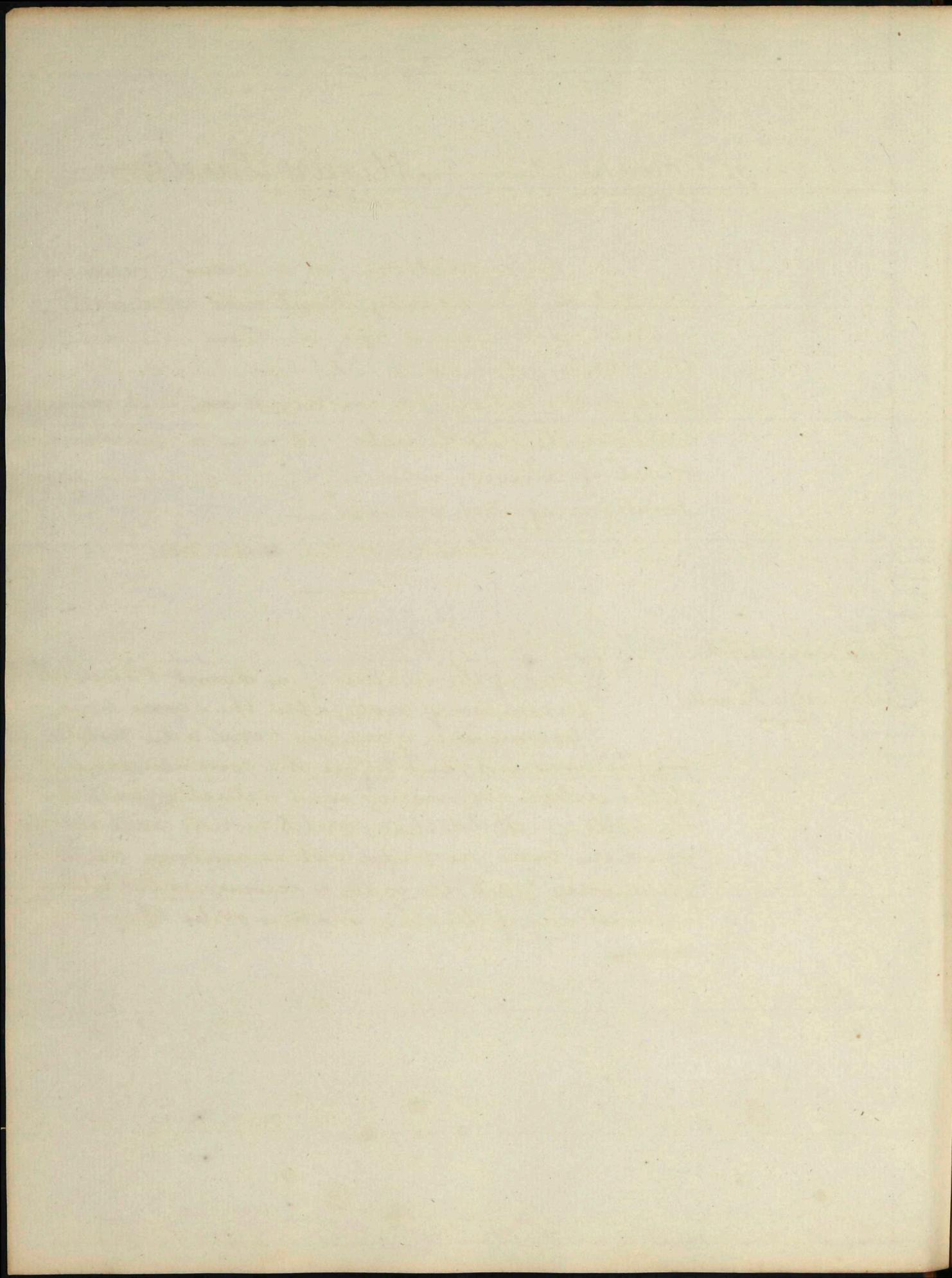












Money Counts &c.

Money Paid &c

On a motion for a new trial in
an action for money had and received

The Court refused the motion and observed
that attempts had of late been made to —
stretch the action for money had and received
beyond its due limits; it was a devouring
kind of action, which, if encouraged, would
swallow up all others. —

1 Starkie's N.P. Reps. 482

2 Barn. & Ald.

51.—

Maxwell v Jamison

One of the makers of a Joint & Several
promissory note, after the same had
become due, gave his bond to the holder
for the amount, but before the commencement
of the action no money was actually paid on
the bond — Held that, until he had paid money
upon the bond, he could not maintain an action
for money paid, in order to recover contribution
against any of the other makers of the original
note. —

Money Counts.

Gow's N.P. Rep. 22.
Wells. v Gurling
on note. —

In an action at the suit of the payee of a bill ag^t. the drawer, and in an action at the suit of the payee of a note against the maker, the Count, for money lent, is proper, the instruments themselves being evidence of money lent by the payee to the drawer of the one, and the maker of the other. —

Clerke. v. Martin. 2 L^d Raym. 758. —

Grant. v Vaughan. 3 Burr. 1525. —

Marshall. v. Cooke. 13 East. 100. & L^d Ellenborough
Bayley on Bills. 3^d edit. 163. —

So an indorsee may recover, under the Count for money lent, in an action against his immediate indorser

Kessebower. v. Tims. Bayley on bills. 164 n. 6. —

And in an action against the acceptor at the suit of the drawer of a bill of Exchange, which is made payable to his (the drawer's) own order, the bill is evidence under the Count, for money had and received. —

Thompson. v. Morgan. 3 Camp. 101. —

But in general, the payee, or holder of a bill of exchange, in an action against the acceptor, cannot resort to the Count for money paid.

Gibson. v. Minet. 1 H. Bl. 602. —

Indeed the rule does not seem to apply, where there is no privity between the plaintiff and the defendant as between the indorsee and acceptor of a bill, and the

Money Counts.

the indorsee and the maker of a note, between whom, if the plaintiff cannot succeed on the Count on the bill or note, and there be no express promise to pay the amount the Common Courts are usually of no avail.—

- Johnson. v. Collings. 1 East. 98.—
Barlow. v. Bishop. Id. — 433.—
Houle — v. Baxter. — 3 East. 177.—
Waynham. v. Bend. 1 Camb. 175.
Exon. vs Russell. — 4 M. & Selw. 505.—

Where a bill or note is not properly stamped, the plaintiff may, if he has evidence of the consideration passing from himself to the Defendant, and counts in his declaration adapted to it, as in the case of goods sold, money lent &c give evidence of that consideration, and recover on those counts; for though the instrument is void, the law implies a promise to pay the money due on the consideration.—

- Alves. v. Hodgson. 7 T. Rep. 241.—
Wilson. v. Kennedy. 1 Esp. N.P.C. 245.—
Tyte. — v Jones. — 1 East. 58. n(a)
Brown. v. Watts — 1 Taunt. 353.—

To entitle a plaintiff to resort to the common Courts in order to supply the omission or defect of the Count on the bill or note, it is necessary that the particulars of his demand should state the consideration of the instrument.—

- Wade. v. Beasley. 4 Esp. N.P.C. 7.—
Selwyns N.P. 4th edit. 354. n. 62.—

And

Money Counts

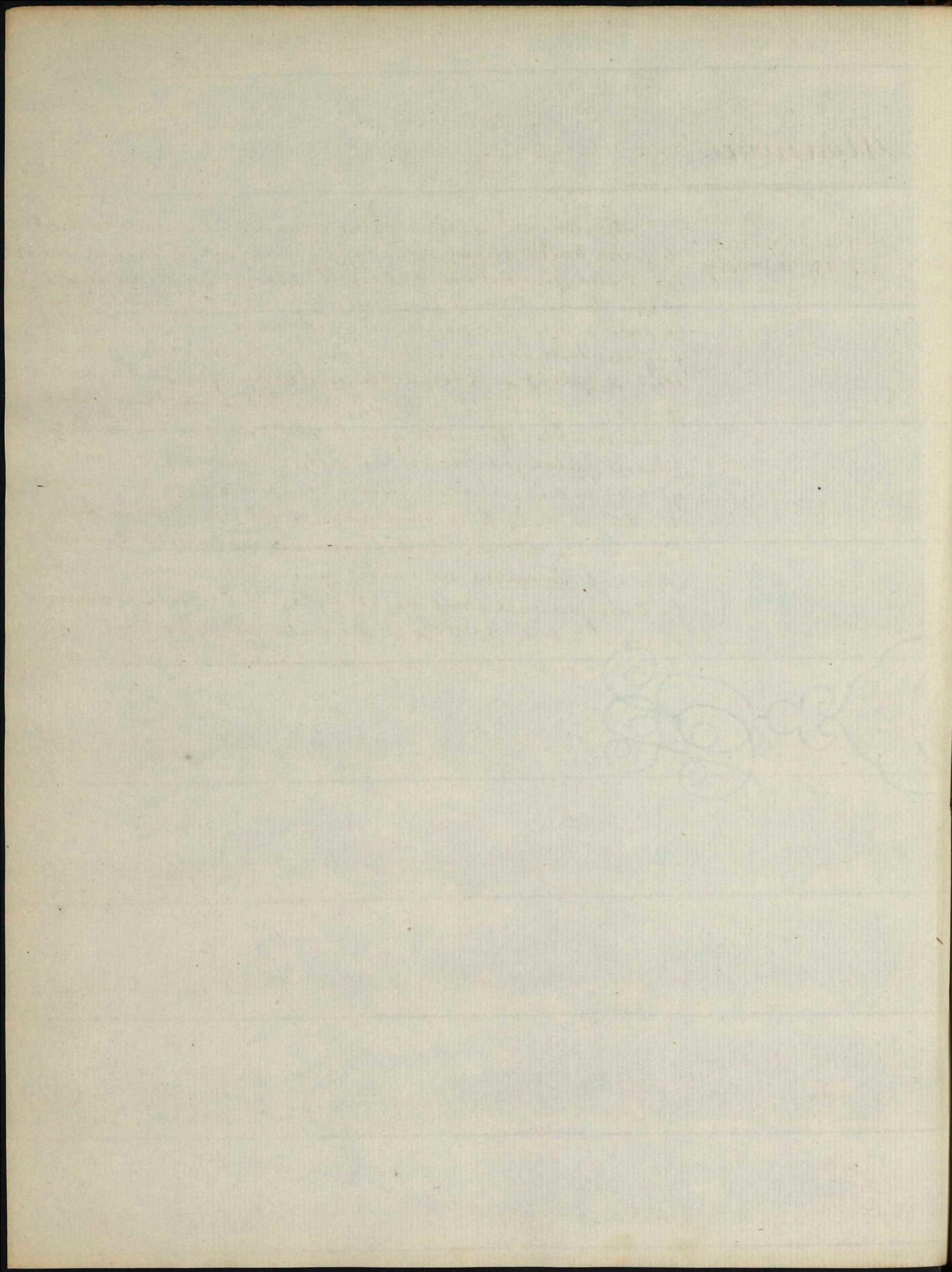
And the demand should be noticed in the
Counsel's opening of the Case on the trial.—

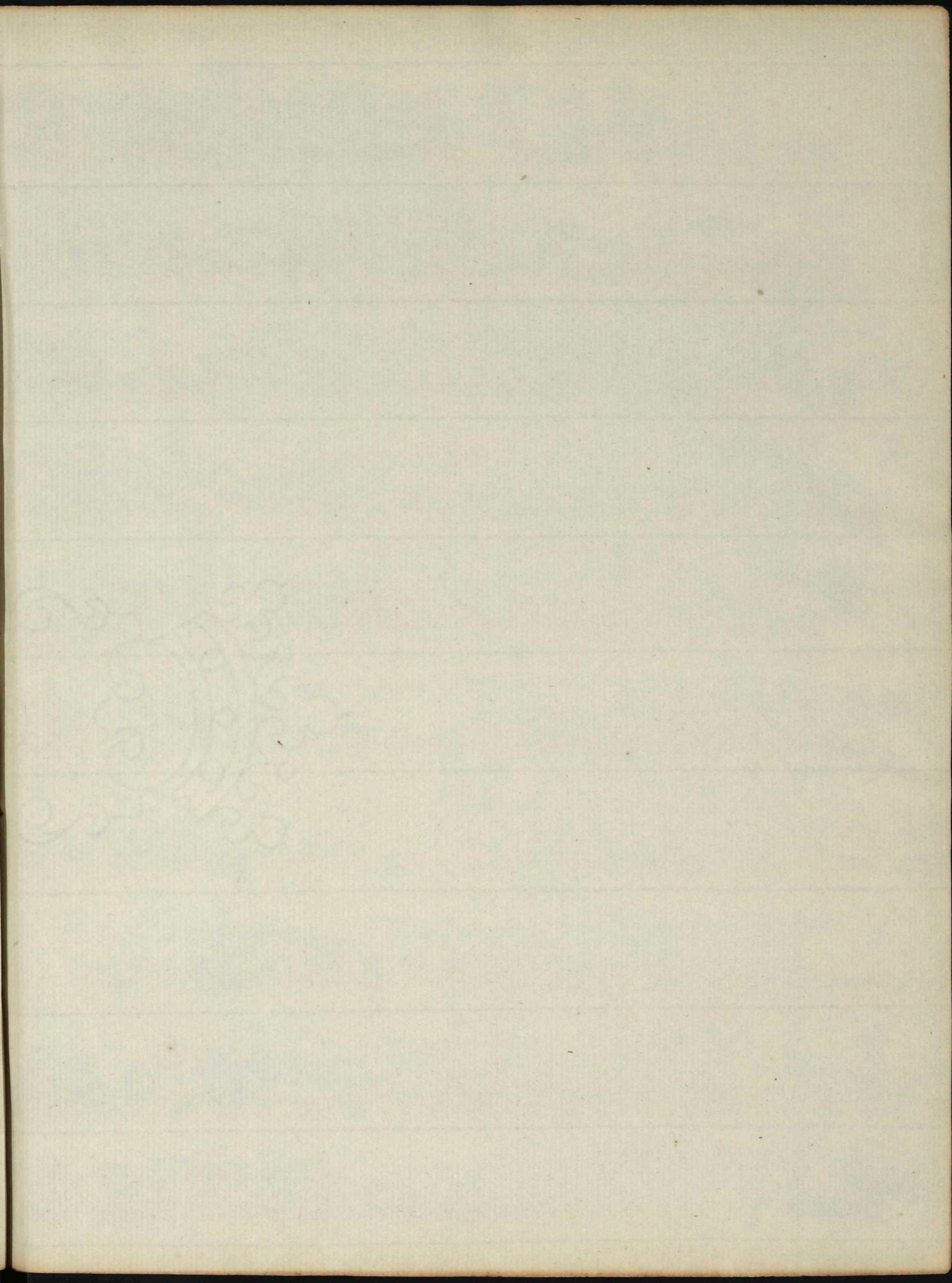
Paterson. vs. Zuchariah. 1 Starkie's N.P.C. 72.

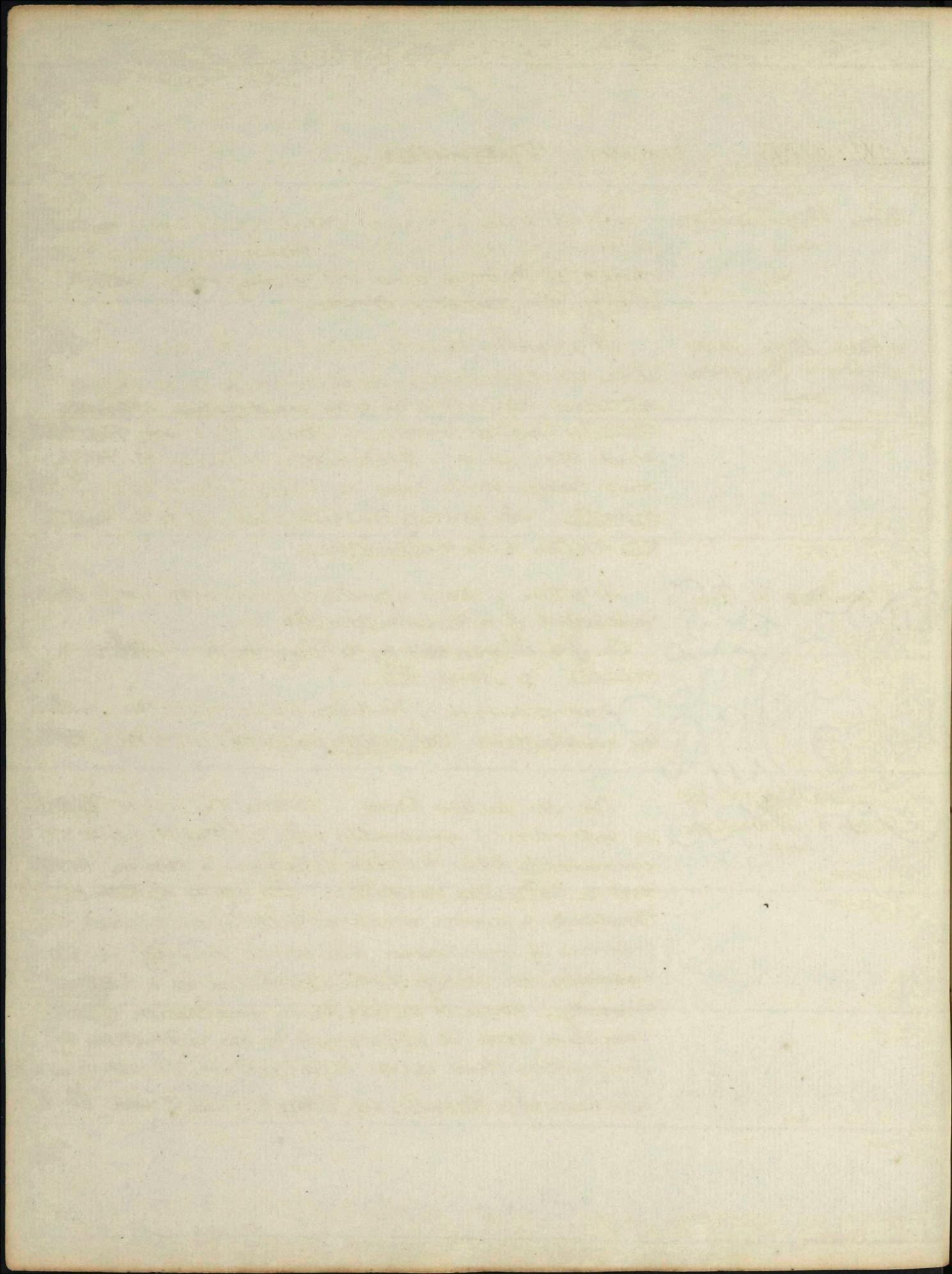
Monnoye.

Salle sur Tit. 17.
art. 18. Ord. 1667

Avant que le Roi se fut réservé à lui seul le droit de faire battre monnoye, et qu'il eut par ce moyen, réduit les espèces qui ont cours dans le Commerce à un seul et même taux dans le Royaume, plusieurs Grands Seigneurs et enti' autres plusieurs Evêques jouissaient du droit de la faire battre chacun dans leur district, et le taux en étoit différent — Ainsi la monnoye qui se faisoit à Paris de l'autorité de l'Evêque étoit à un taux plus considérable, que celle que l'Archevêque de Tours faisoit fabriquer dans sa ville, la différence étoit d'un quart en sus, c'est ce qui a occasionné la distinction du sol, et de la livre Tournois, et du sol et de la livre Paris — Ainsi le sol parisis valoit 15 deniers, et le sol Tournois, ne valoit que 12 deniers — De même la livre parisis étoit de 25 Sols, et la livre Tournois seulement de 20 Sols — De sorte qu'il falloit cinq livres Tournois, pour faire 4 livres parisis. —







Month - Lunar - Calendar.

Com. Dig. Tit. Ann. In all cases where a statute speaks of a month, it shall be intended of a Lunar month, which contains 28 days and not of any other. cites. 6. J. Rep. 224. Saxon v. Hooper. —

3. Bur. Reps. 1455.
Tullet v. Linfield
—
A months time to plead is a Lunar month. — Here the Court were unanimously and clearly of opinion, that it was to be understood a Lunar month, or four weeks. — And Mr Just. Denison said, there was a distinction between the temporal and Ecclesiastical law in interpreting this term month, — the former understands it to be Lunar, the latter, to be Calendar. —

Com. Dig. tit. Ann. — So where a deed speaks of a month, it shall be intended of a Lunar month. —

So if a Covenant be to pay £500 — within a month — 4 Mod. 185. —

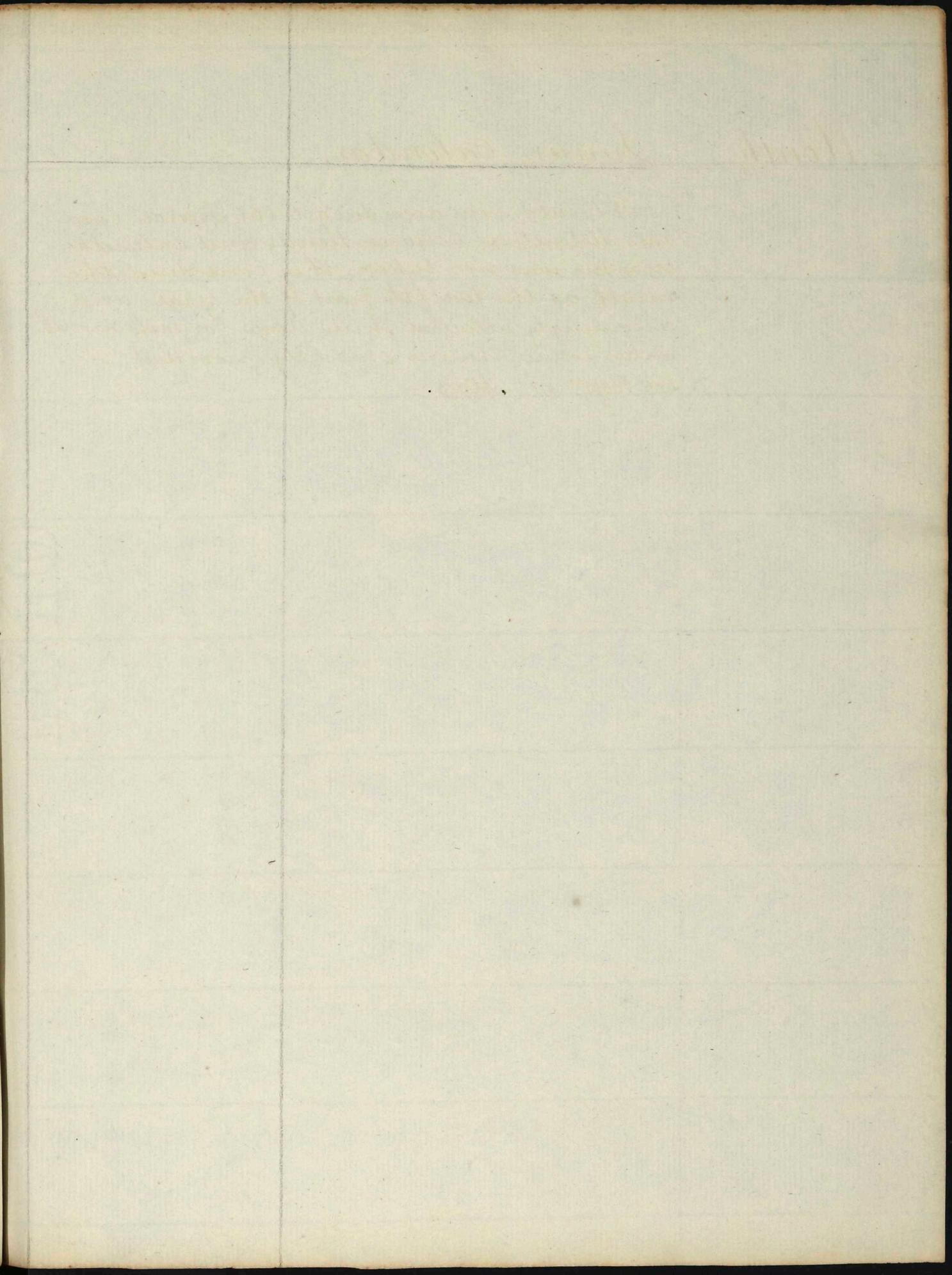
But if money is lent for nine months, it shall be understood, Calendar months. see 3. Bur. 1455. —

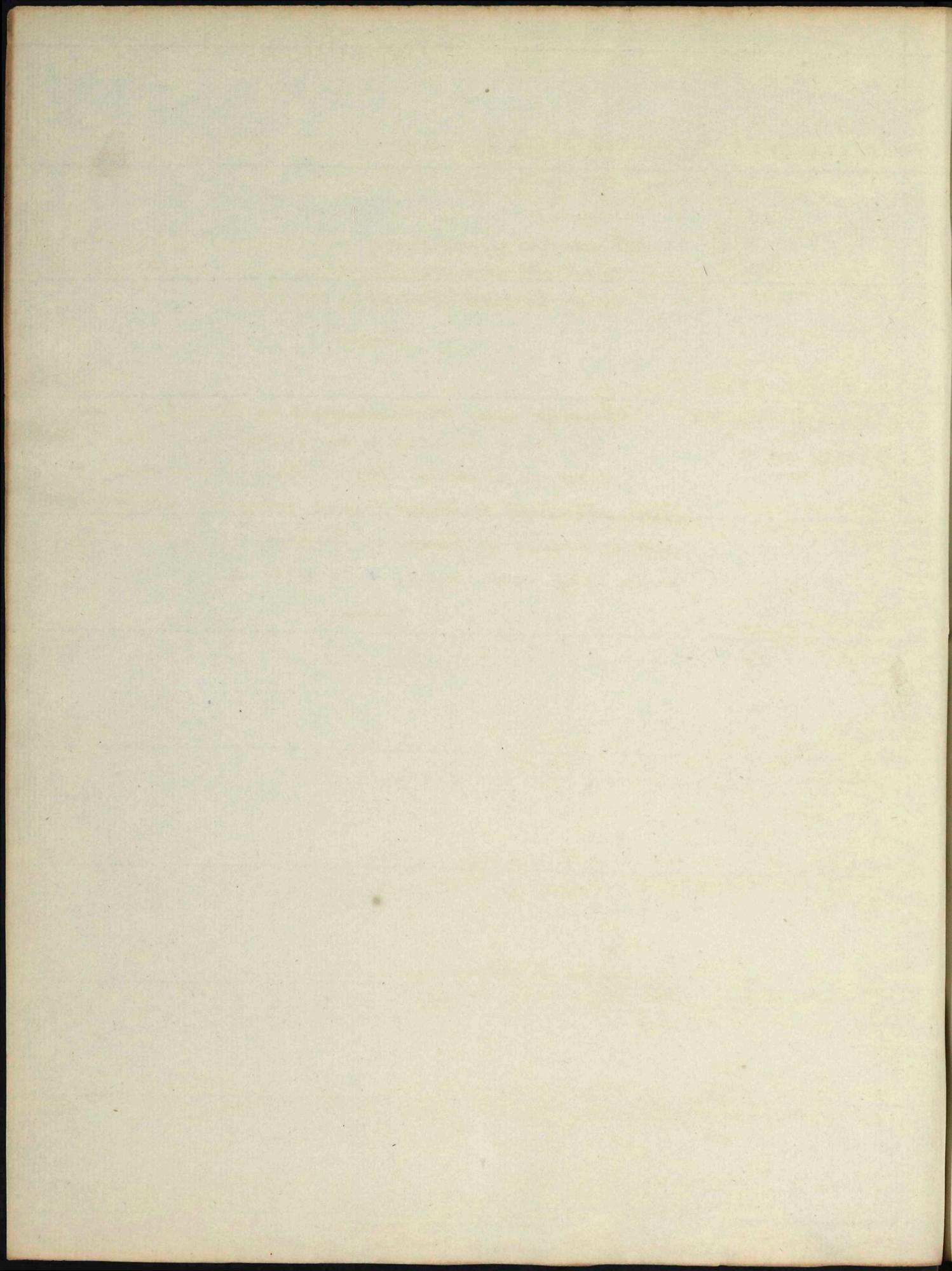
8. Moore's Rep. C.P. 272.
Crooke. v. M. Tavish.
—
By Mr Justice Park. — Where the word Month is introduced generally into a Statute, it has invariably been holden to mean a Lunar, and not a Calendar month. — In cases of mercantile Contracts however, such as bills of exchange and policies of insurance, the word, month, is by commercial usage to be construed as a Calendar month — and it must be so considered, if on the face of a deed, it appears to be the intention of the parties that such construction should prevail.
In case of a Bond — see. Titus. v. Lady Preston. Str. 652.

Month.

Lunar, Calendar.

It would seem according to the French law this distinction between lunar and calendar months was not taken, they considered the month as the twelfth part of the year, and accordingly allowed thirty days for each month unless where otherwise specially provided
see Repⁿ v^r Mois. -





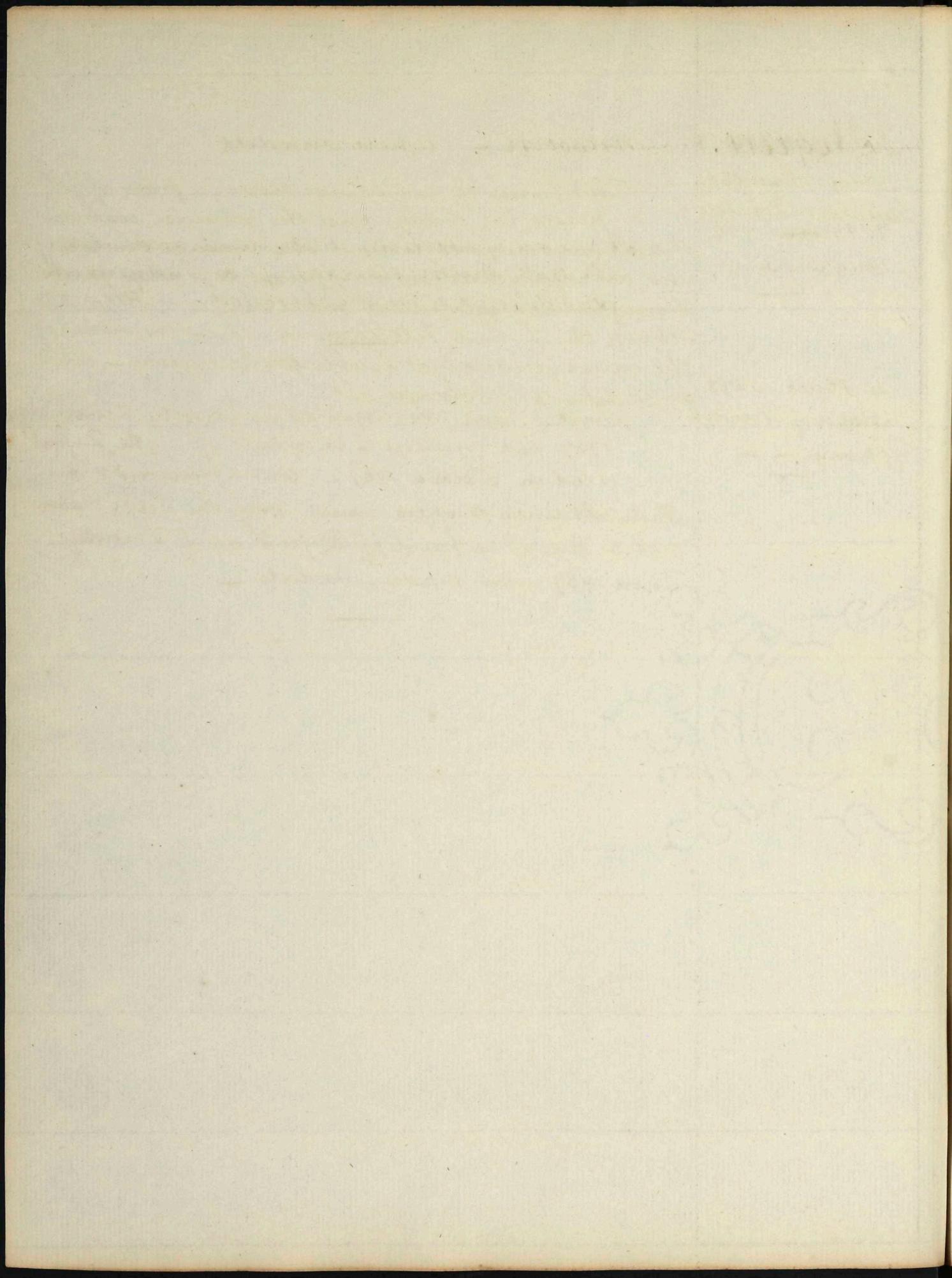
Neglect & Omission - where remedied

2. Burr. 722. -
Douglass v. Yallop
—

A neglect of entering Judgment, and a loss of
the Roll struck, the Clerk of the Judgments
was directed to supply the defect. —

4. Burr. 2277
Mayor of Norwich
Berry, one vs
—

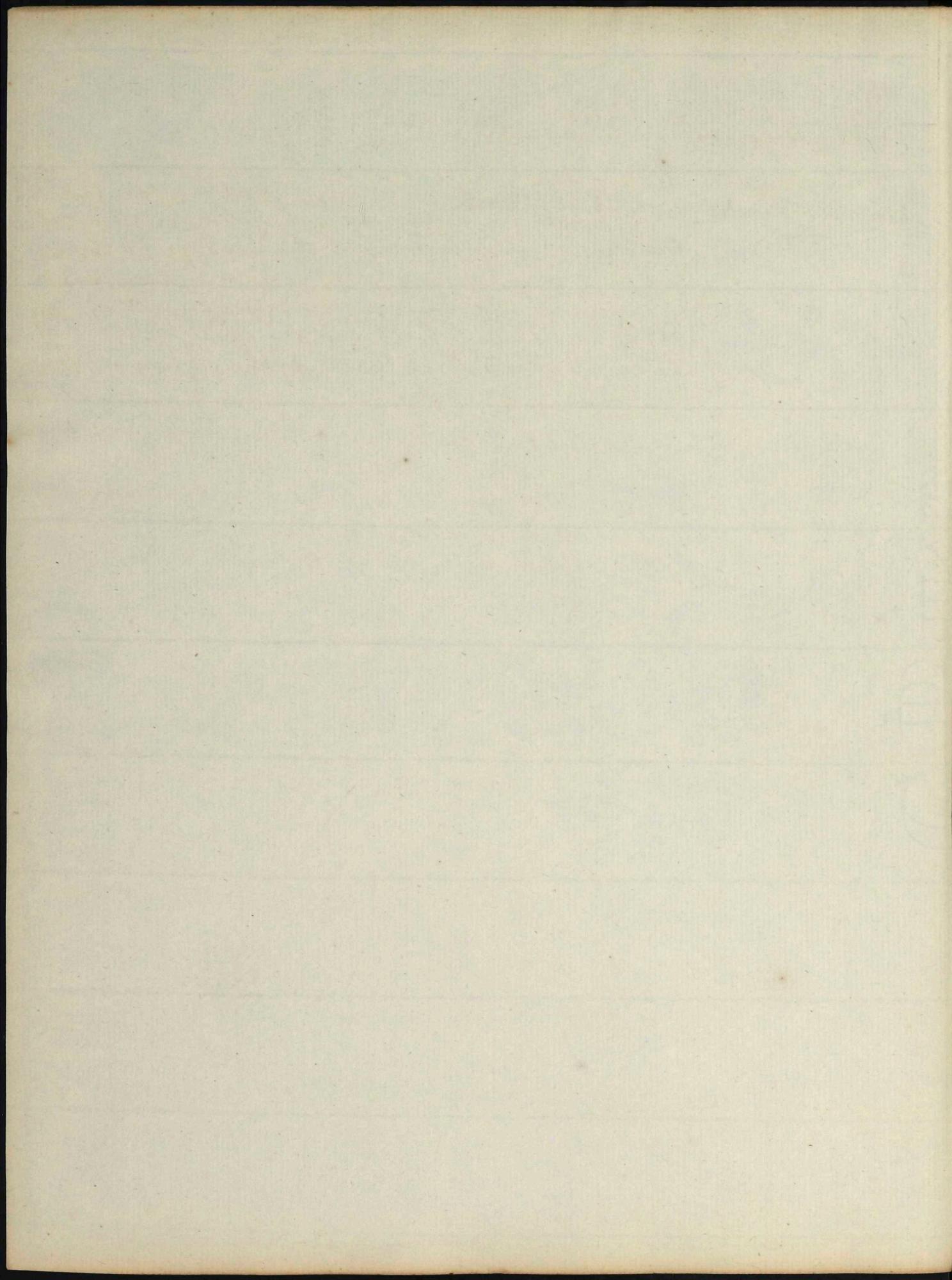
Judg^t. was pronounced in Trinity Term
1767, but omitted to be entered up - The Defend^d
died in October 1767 - and afterwards a
Rule obtained to shew cause why the Judg^t should
not be entered in favor of Defend^d. as of Trinity
Term 1767. was made absolute. —



Negligence.

8. Dowl. & Ryl. 556.
Saugher v. Pointer
—

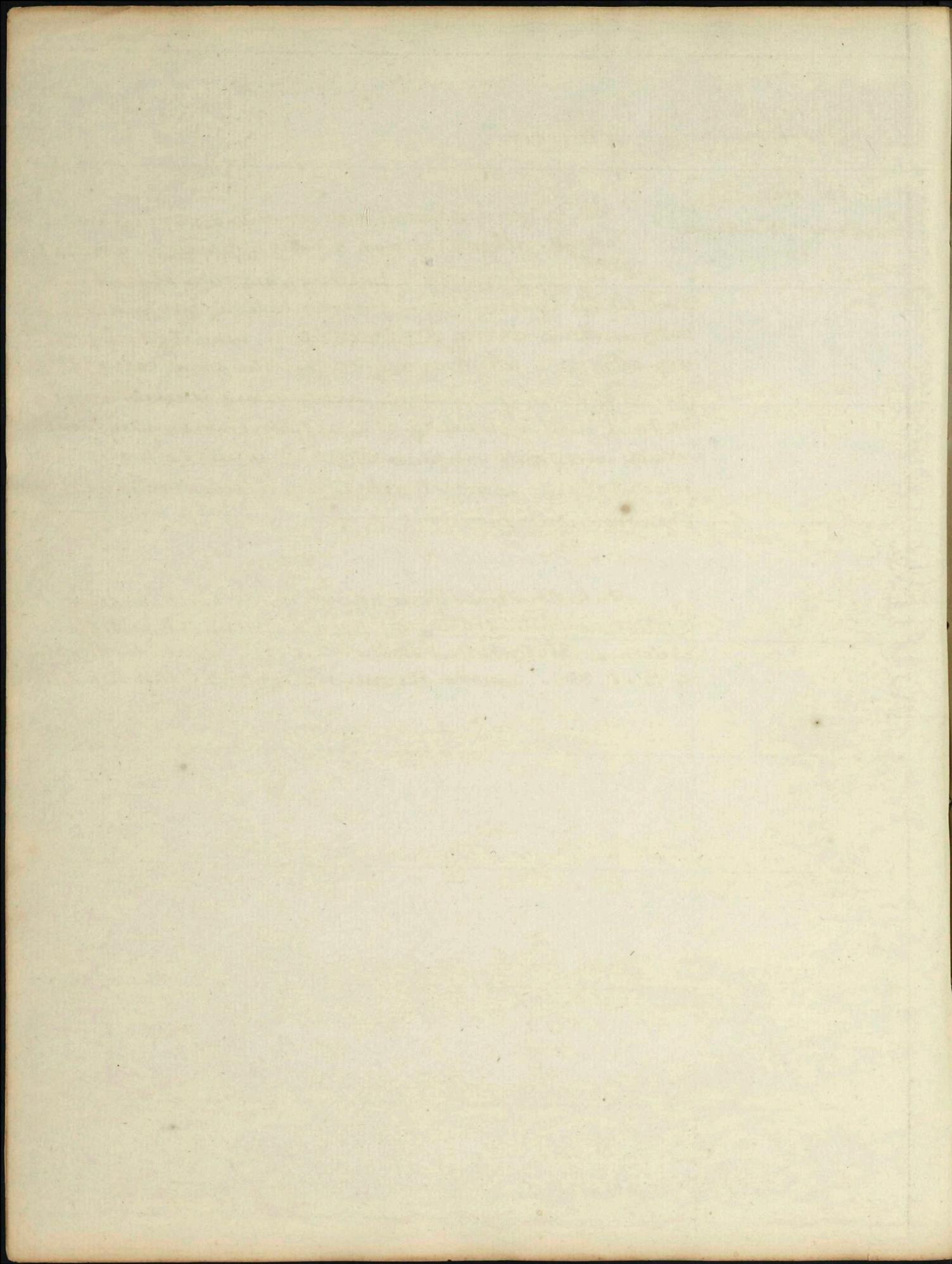
The owner of a carriage hired a pair of job horses for a day, and the jobman sent one of his own servants to drive the carriage & horses, and an injury having happened to a third person through the negligence of the driver — Held ~~ff~~ Abbot. Ch. I. and Littldale I. — that the owner of the carriage was not liable for the injury — Alior & Bailey & Colroyd. I.^o —



Negligence in Office.

In Herbert. vs. Paget. 1 Levins. 64. it was held by two Judges that an action lies against the Custos brevium who keeps the records in his office so negligently, that they are altered, though they do not appear to be so by his consent; and attorneys have always — recourse to the records there. — And this opinion of the two Judges is referred to with approbation by S^r. Ch. Baron Comyns in his Digest, Tit. Action upon the Case for Negligence (A. 2), and in the same title he lays it down in the words used by S^r. Holt in Ashby. vs White. Salk. 18. that in every case where an officer is entrusted by the common law, or by Statute, an action lies against him for a neglect of the duty of his office. —

see 2. Barn. & Cress. Reps. 45. —



Negligence in a Bailee.

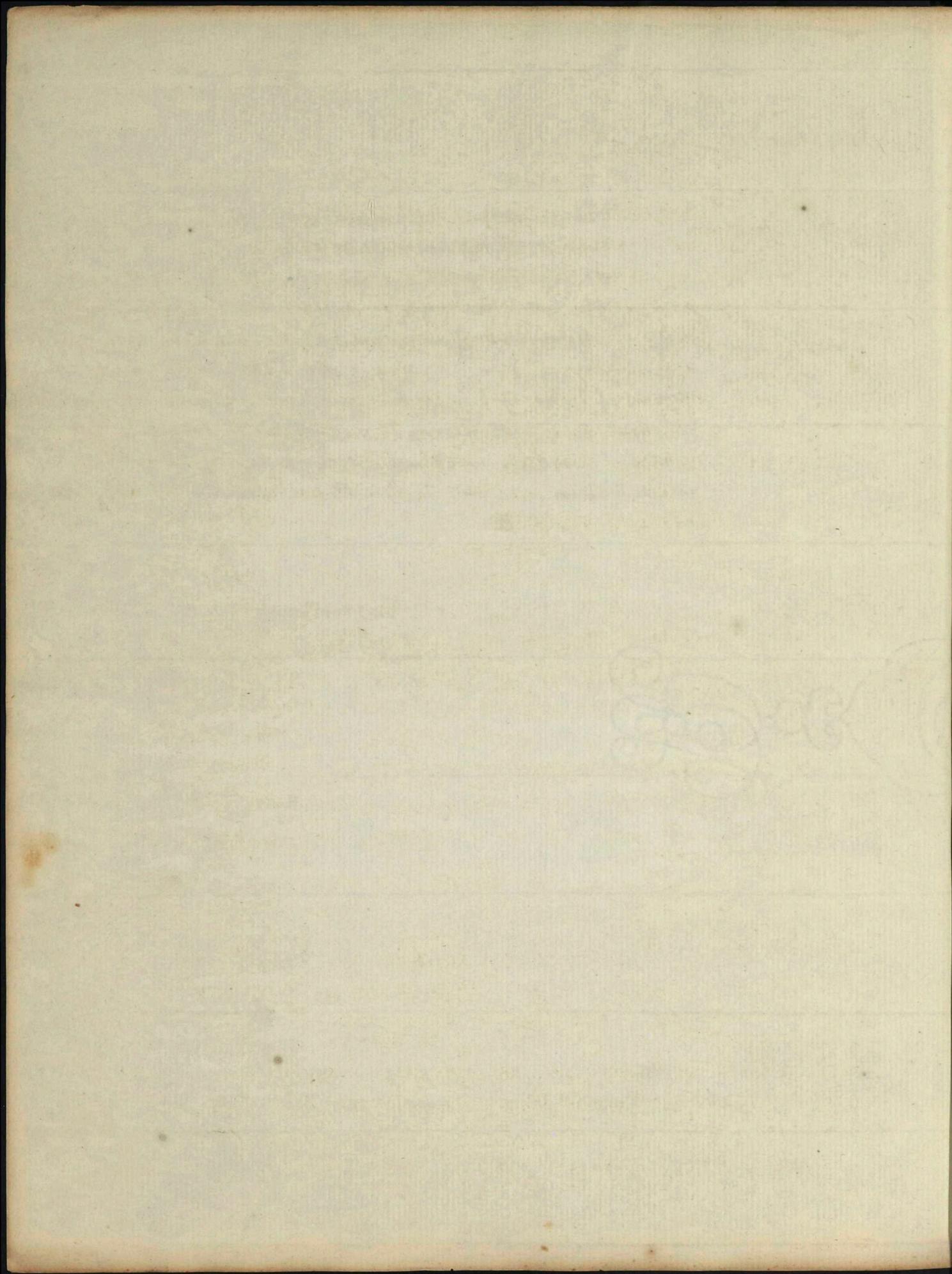
1. 4th Bl. Rep. 159.

Shiells v. Blackburne

—

A. a general merchant undertakes voluntarily and without reward to enter a parcel of goods of B, together with a parcel of his own of the same sort, at the Custom House for exportation, but makes the entry under a wrong denomination, whereby both parcels are seized.— A. having taken the same care of the goods of B. as of his own, not having received any reward, and not being of a profession or employment which necessarily implied skill in what he had undertaken, is not liable to an action for the loss occasioned to B.—

As to the degree of negligence which will render a gratuitous bailee liable— see Rooth. v. Wilson. 1 B. & A. 59.— Nelson. v. Macintosh. 1 Stark. N. P. C. 237.— Dartnell. v. Howard 4. B. & C. 350.— see also Bourne. v Diggles. 2 Chitty's Rep. 311.—



New Trial.

Verdict though against evidence, if found for the defendant, and the action be vexatious, new trial refused. - 1 Bur. R. 12. Macrow. v. Hull. - see also case. p. 54. Farewell. v. Chaffey. ~~v.~~

2. Ver. 440.

Granted where the Jury had drawn a wrong conclusion on facts admitted on both sides. - 1 Bur. 391. -

Grounds on which they ought to be granted
Ibid. -

Where a legal objection is taken at the trial, and over-ruled by the Judge without reserving the point and the Court are afterwards of opinion that that objection was a good ground of Non-Suit, they will grant a new trial only, and will not permit a Non-Suit to be entered. 6. Taunt. 252. Minchin v. Clement

In an action for a malicious prosecution, in preferring a bill of Indictment agst. Plaintiff for forging a note of hand. - Verdict in favor of the Defendant. - refused to be set aside although agst. evidence. - 1 Cowp. 37. Norris. v. Tyler.

New Trial

1. Bing: Rep. 145.

Richardson v. Fisher

7 Moore Rep. 546.

S.C.

On affidavit from a material witness that he had made a mistake in giving his testimony, the Court granted a new trial. —

See Title. Insurance - Thurtell v Beaumont

2 Bing: Rep. 483

Wickes v. Clutterbuck

A direction to the Jury, partially incorrect is not a ground for a New Trial, where the verdict is consistent with the Justice of the Case. —

9. Moore's Rep. 581.

Proctor v. Simmons.

An affidavit by the defendant that the plaintiff's witnesses had been guilty of perjury, is no ground for a new trial in an action for an assault. —

In Feise v. Parkinson. 4 Taunt. 640. a new trial was refused on the mere affidavit of one party contradicting the witnesses on the other side, although the Judge directed the Jury, contrary to their finding. — Sprague v. Mitchell. 2 Chit. 271. And in Pott. v. Parker. ed. 269. it was held that an Indictment for perjury found against witnesses who gave evidence, was no ground for a new trial. — See also Tidd's Prac. 2^o. Vol. 914 7^o edit. —

4 Bing: Rep. 561.
Seeley v. Mayhew

The Court will not grant a new trial, on the ground that witnesses, by whose testimony the verdict was obtained, have been indicted for perjury in the cause. —

12 Moore Rep. 393
Kellen v. Bennett

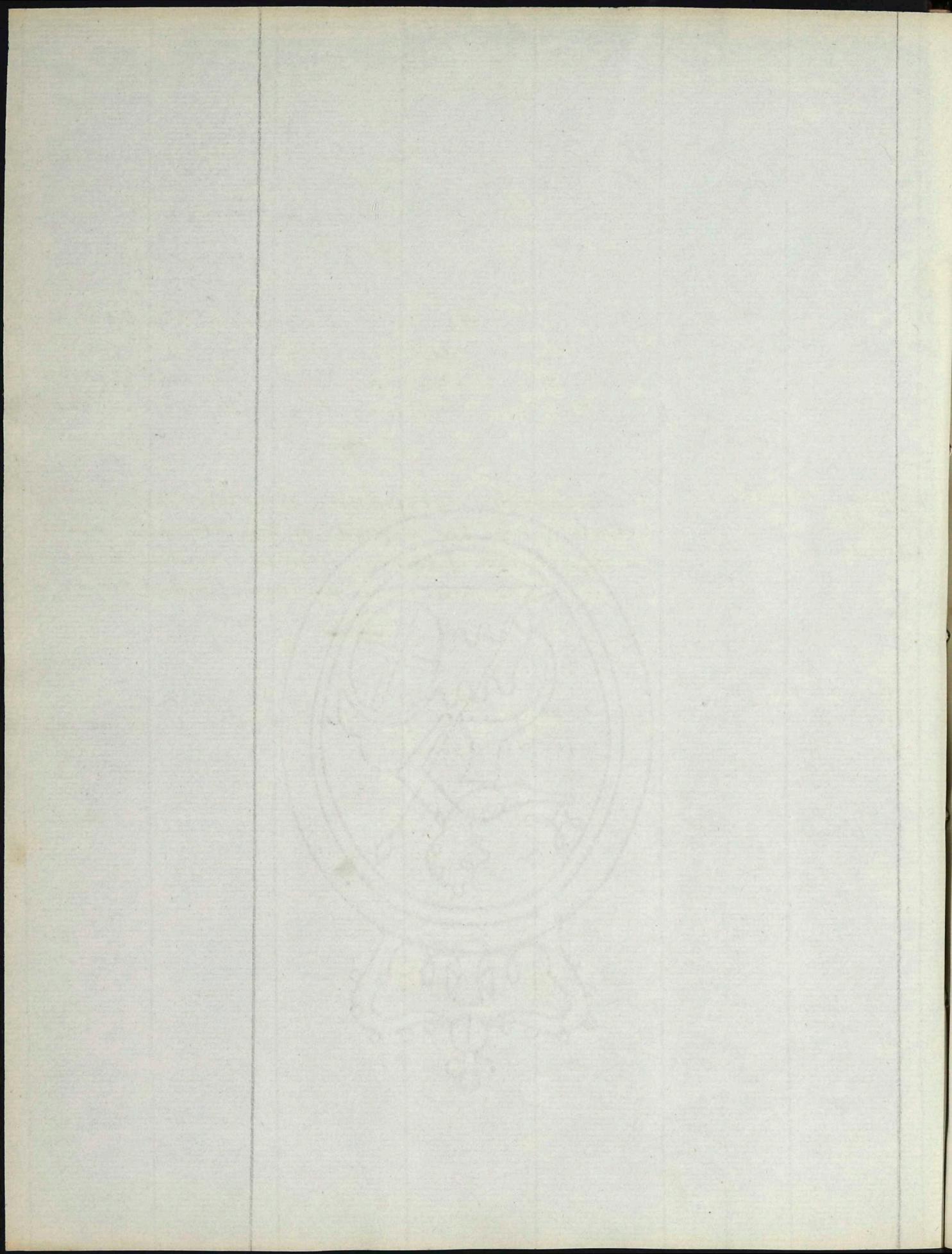
Where a witness had declined at the trial to release his interest, the Court refused to grant a new trial on the ground that he had mis-apprehended the effect of the release, and was then ready to execute one. —

7. Burghs. Rep. 224
Breach. — }
Casterton & al

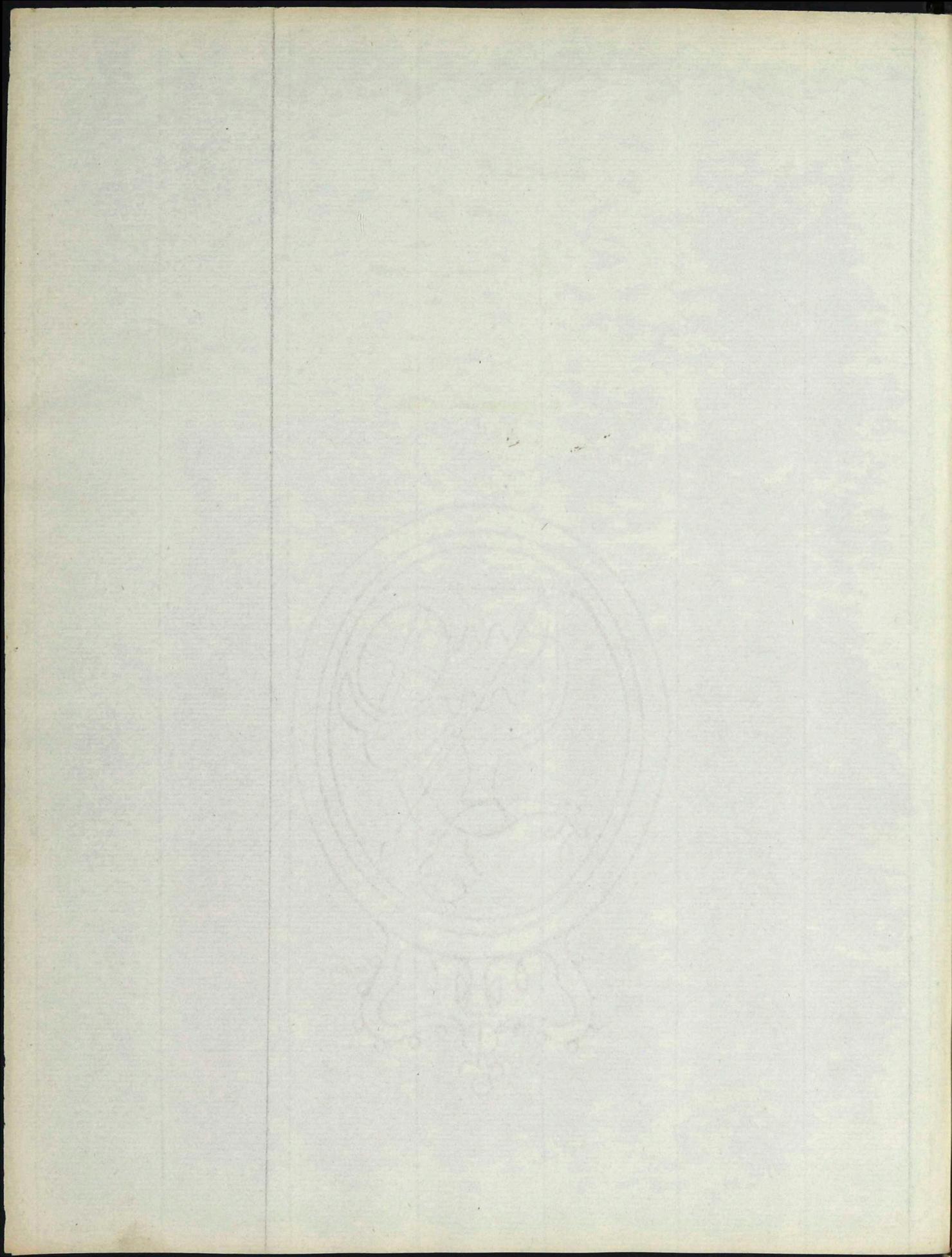
The Court will not grant a new trial, even on pay^t of Costs, where the Defendant or his attorney, having an opportunity of trying, permits a verdict to be taken against him as in an undefended cause. —

4 Moore & Payne. 250.
Price v. Severne.

New trial granted for excessive damages, in an action for an assault. +

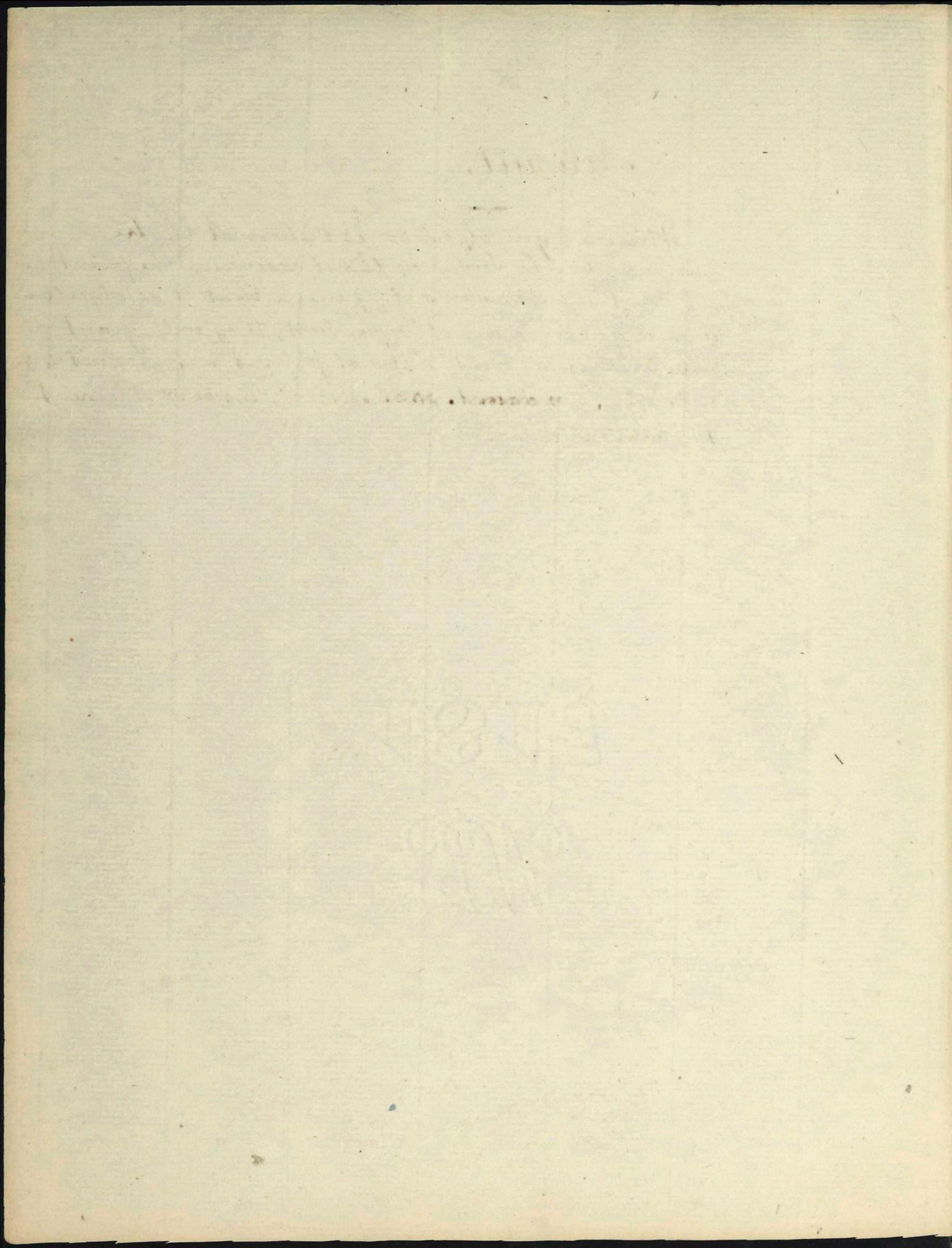


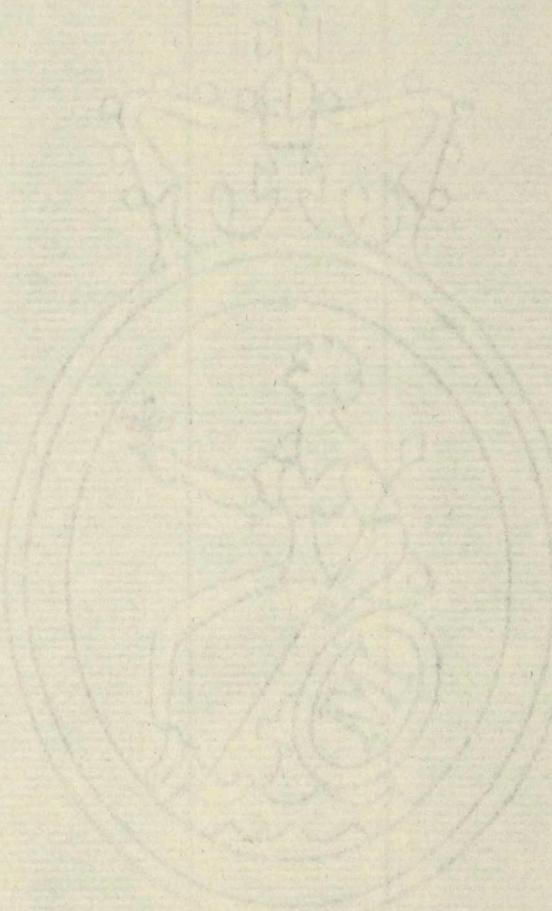




Nonsuit.

Where a legal objection is taken at the trial, and overruled by the Judge without reserving the point, and the Court are afterwards of opinion that that objection was a good ground of non-Suit, they will grant a new trial only, and will not permit a non-Suit to be entered. ~~in~~ Minchin & al. v. Clement, 1 Barn. & Ald. 252. n.



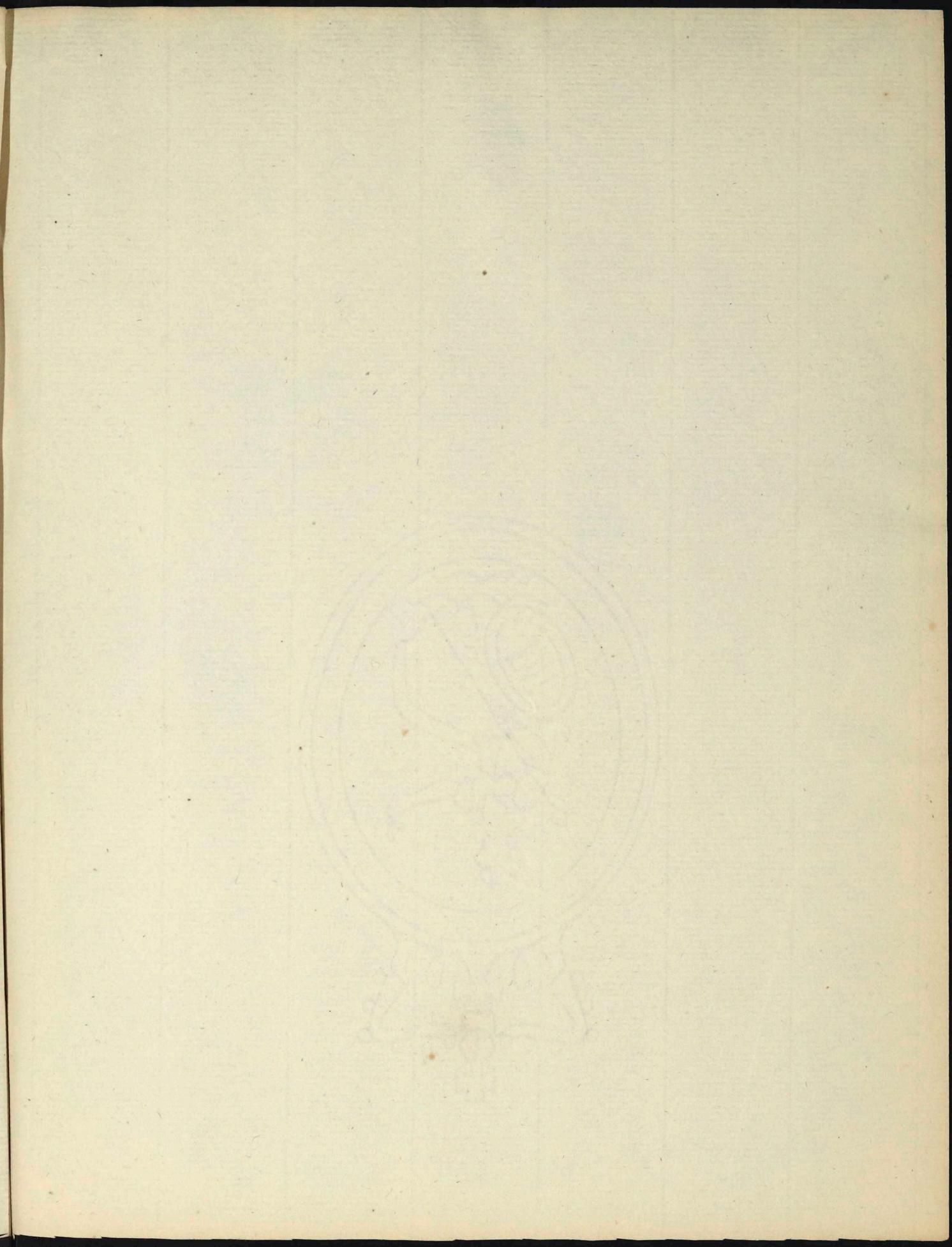


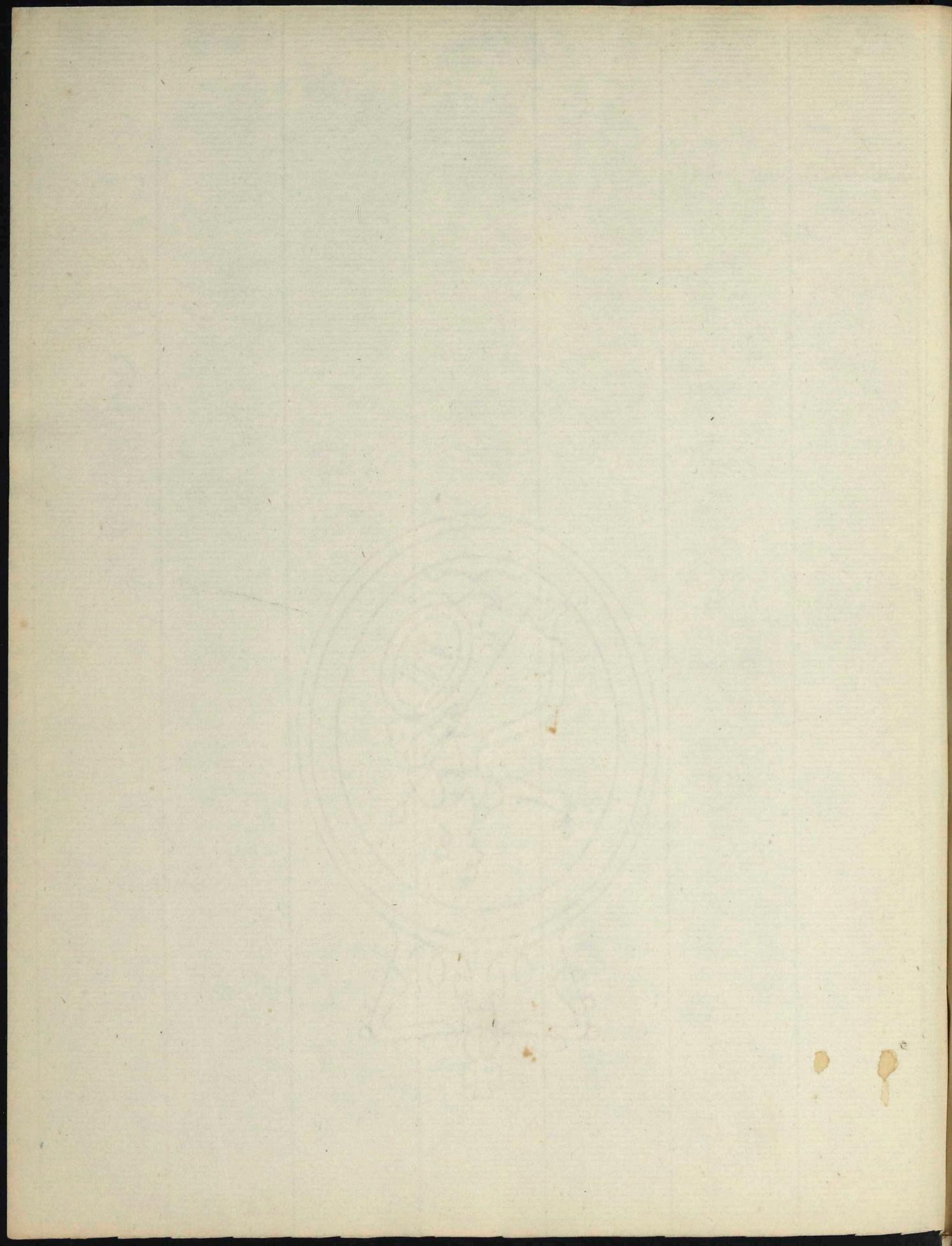


Notary Public

6. Ver. Juv. Rep. 823. A Notary Public has credit every where,
but the Certificate of a magistrate of a Colony
Hutcheon v2 Mannington abroad, requires evidence of his character. ^{at}
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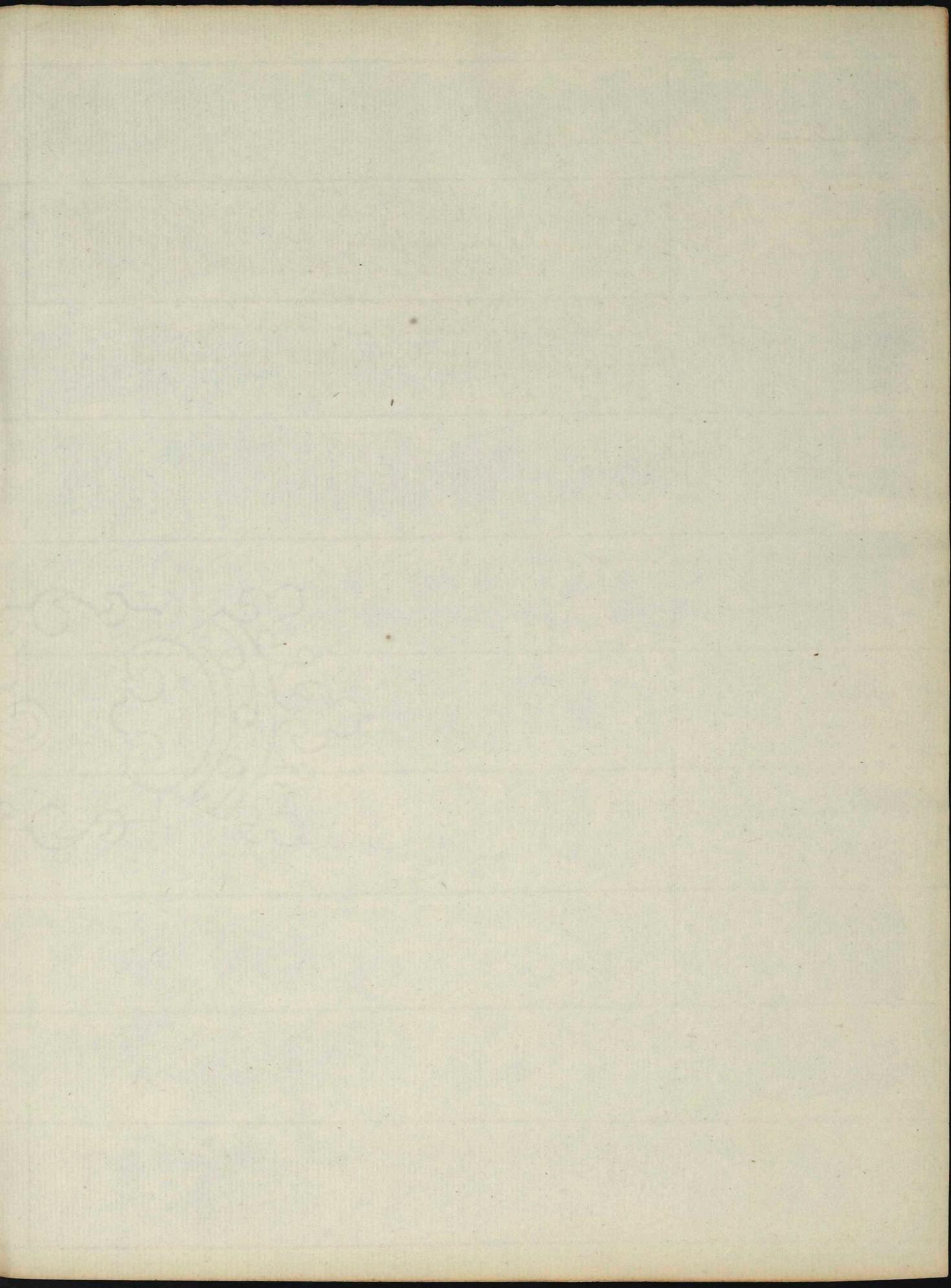
Notice of Action.

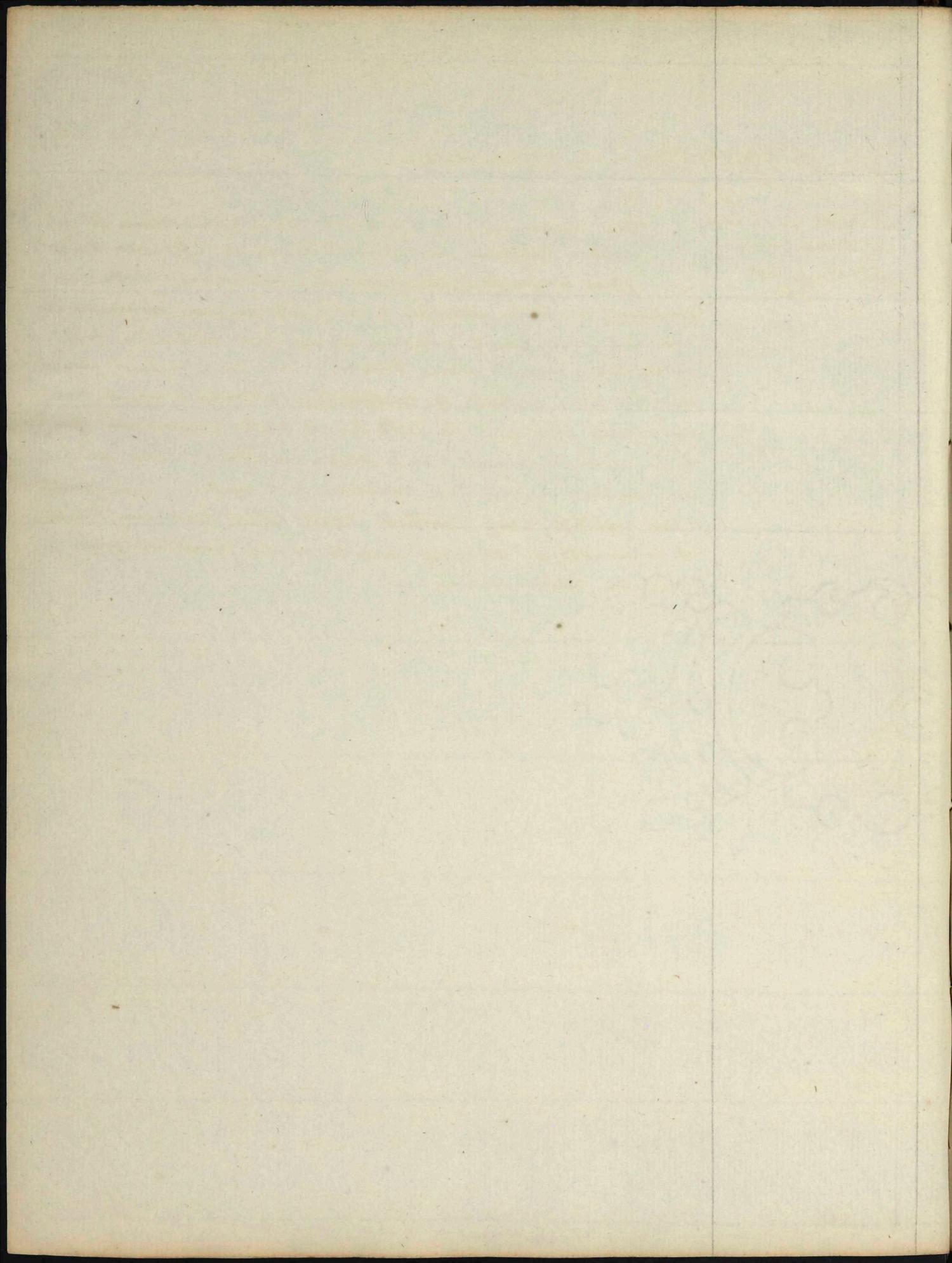
3. Barn; & Ald. Rep. A constable acting under a warrant, commands
him to take the goods of A. takes the goods of B. believing
380. them to belong to A.—Steld, that he was entitled to the
protection of the St. 24. Geo. 2. ch. 4A. s. 8. — and that an
action against him must be brought within six calendar
months. —

Notice, liability under.

3. Bing. Reps. 2.
Rowley vs Horne
—

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. —

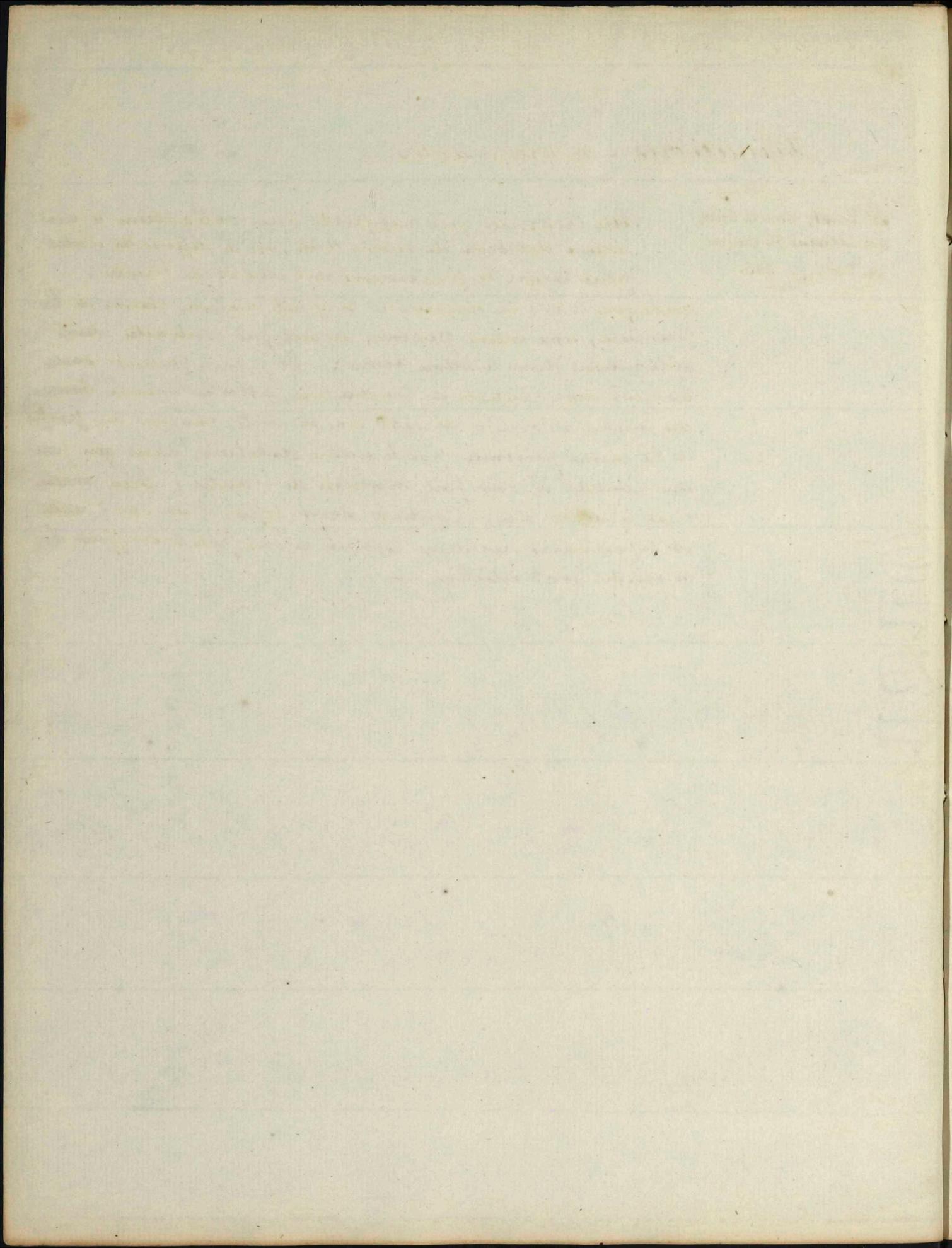


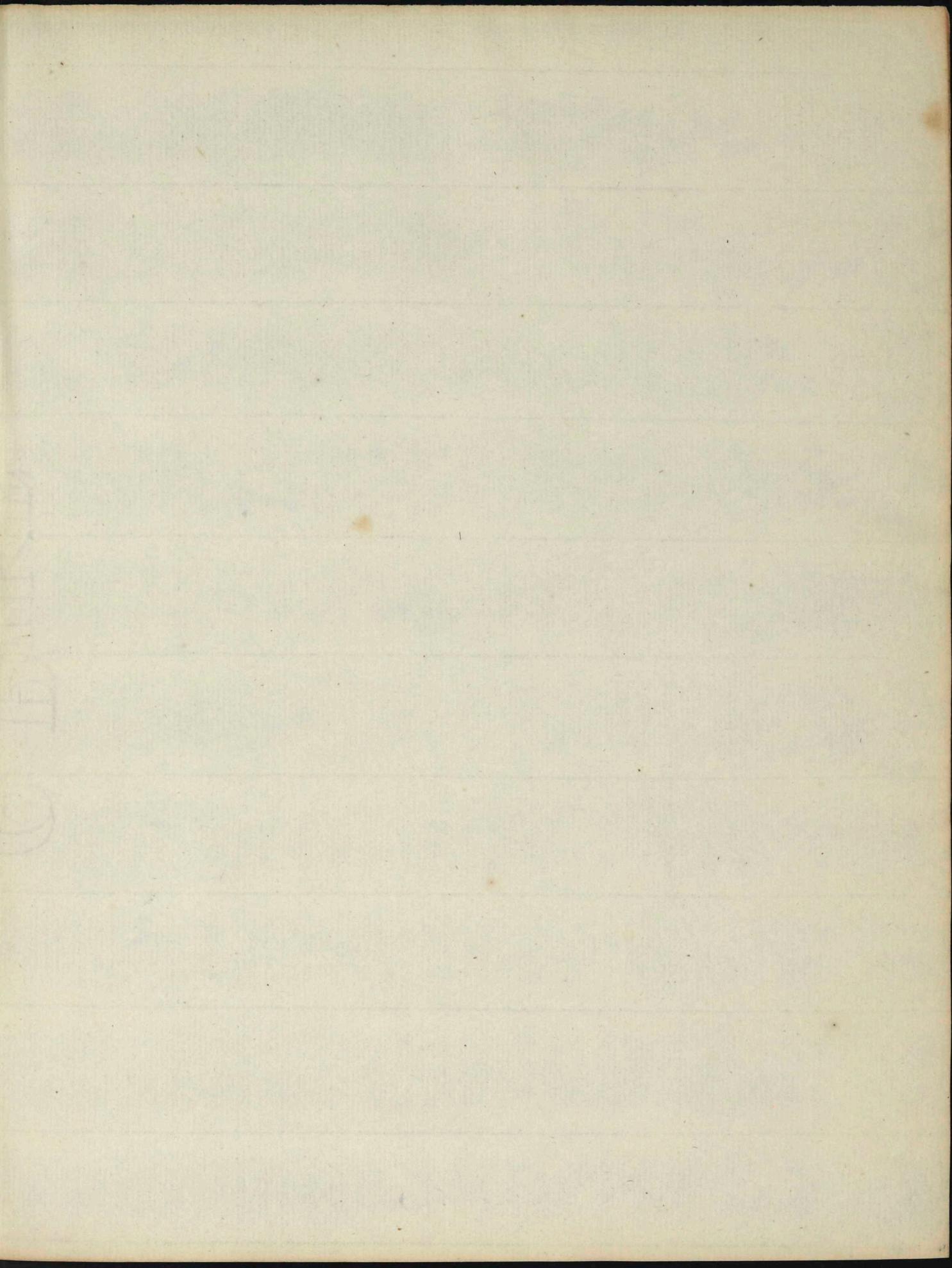


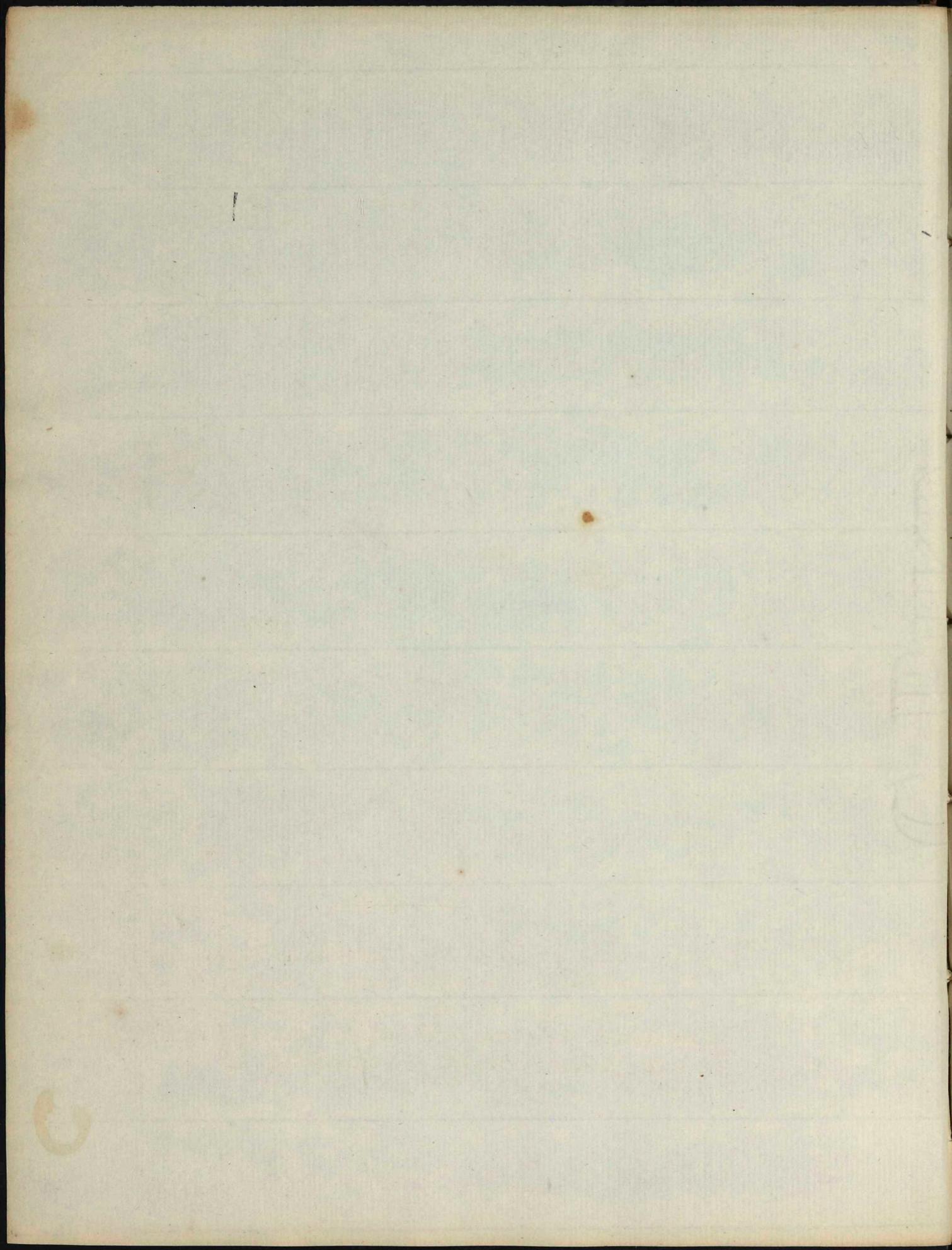
Obligations - de même date. —

St Vast, sur le Cour.
du Maine & d'Anjou
A. Vol. p. 315.

Un créancier qui rapporte deux obligations d'un même débiteur de même date, ou de différentes dates peut exiger le paiement de l'une et de l'autre, — quoique dans la dernière il n'y ait aucune réserve de la première, une même personne ayant pu contracter deux obligations dans le même temps : Et j'ai à présent sous les yeux deux Contrats de Constitution, attestés le même jour, du même Notaire de 1250 liv. de rente chacun au profit de la même personne par le même débiteur, sans que par un Contrat il soit fait mention de l'autre ; bien mieux c'est que les deux Contrats sont copiés l'un sur l'autre et cependant ces deux Contrats n'ont point souffert la moindre contradiction —







Office Copy - evidence.

2. c Moore. Rep. 60
Casburn. v. Reid.
—

In an action against a Sheriff for an escape, the plaintiff averred in his declaration that a writ was indorsed for bail, by virtue of an affidavit of the plaintiff's cause of action, before then made and duly filed of record. — Held, that the production of an office copy of the affidavit was sufficient to prove such averment.

W. I. Dallas. — without referring to other authorities, the distinction between the production of an original or office copies of affidavits is drawn in the Case of Croke. v. Dowling (Bull. N. P. 14) which was an action for maliciously holding to bail. — The Court held, that if the declaration had averred that an affidavit to hold to bail had been made, an office copy of it would have been sufficient — but if it were stated to have been made by the Defendant himself, perhaps the original affidavit must be produced and proved. —

3 Moore. Rep. 231.
Carpenter. v. White
—

A paper purporting to be a copy of the original discharge of an insolvent, and signed by the Clerk of the proper Officer of that Court, with the impression of the seal affixed to it, is admissible in evidence to prove such discharge without the production of the certificate thereof, one proof of its being an examined or attested copy. —

2 Dowl. & Ryl. Rep.
347. +
Studdy. v. Sanders
et al. —
—

In an action against three Defendants as partners, the office copy of answer to a bill in Chancery filed by one against the others, is admissible evidence without producing the original in order to establish the partnership. —

Office Copy - Evidence

Forrests Rep. in Exch.

Wightwick v. Bankes

p. 153.

—

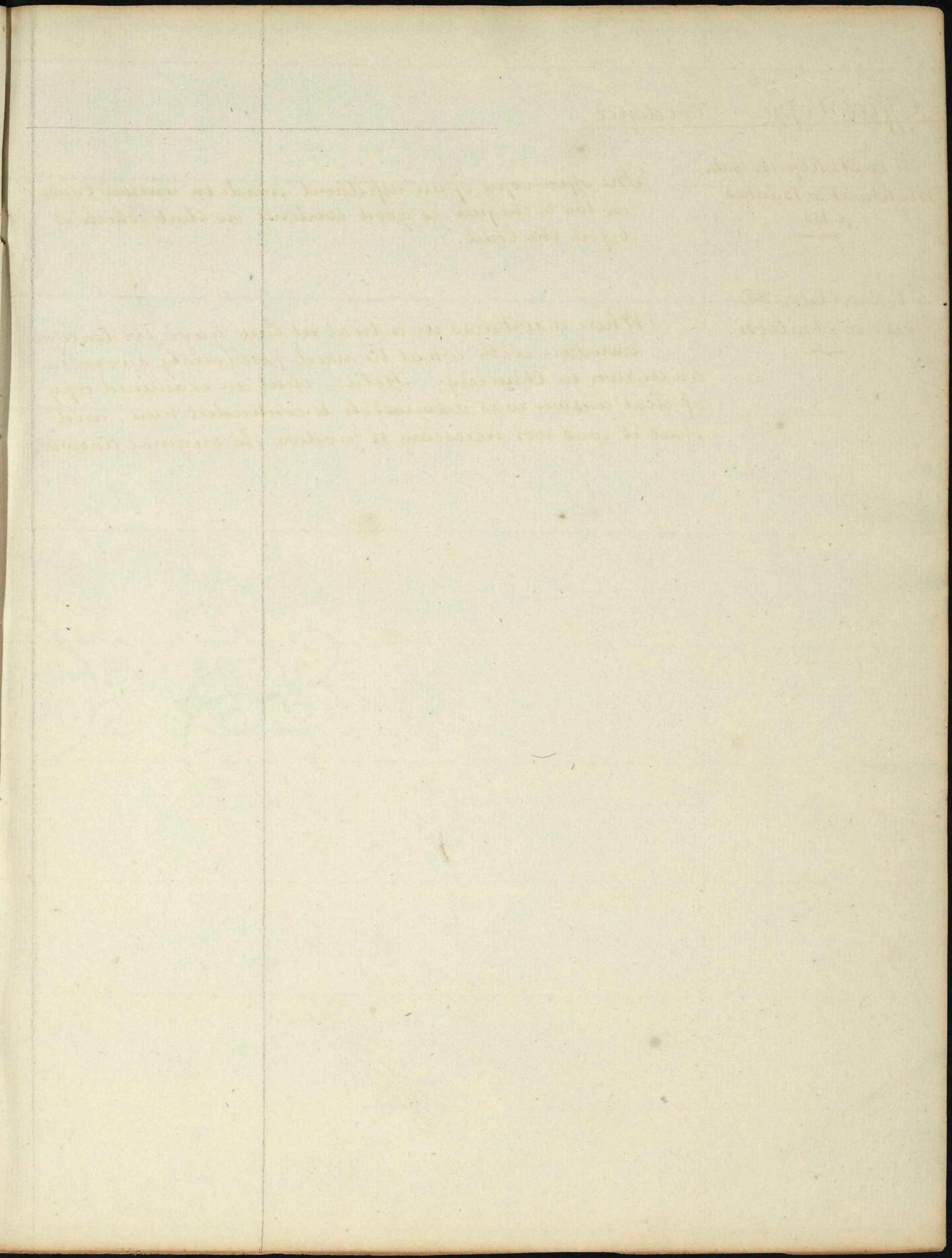
4. Barn. & Cres. 25. —

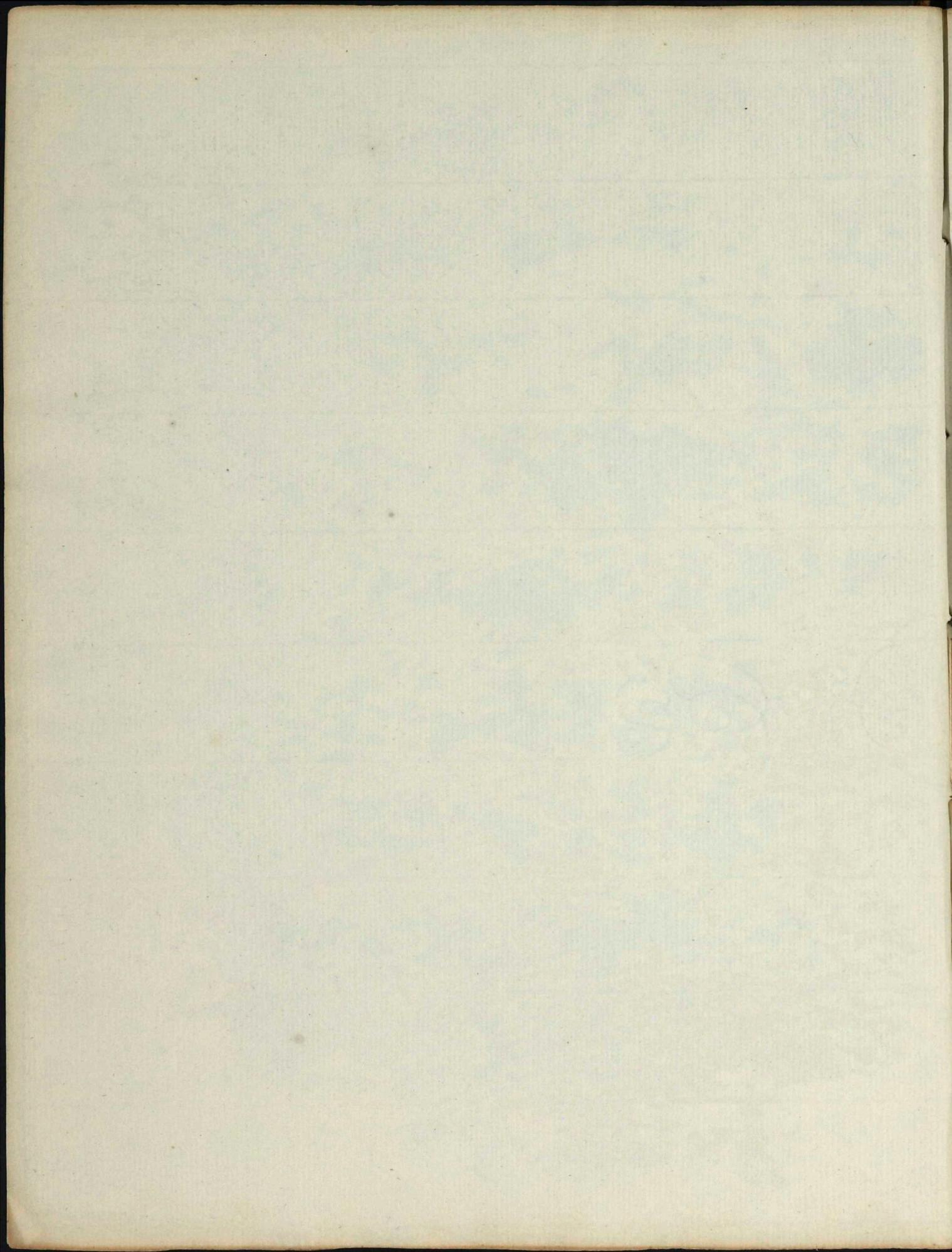
Ewer v. Ambrose.

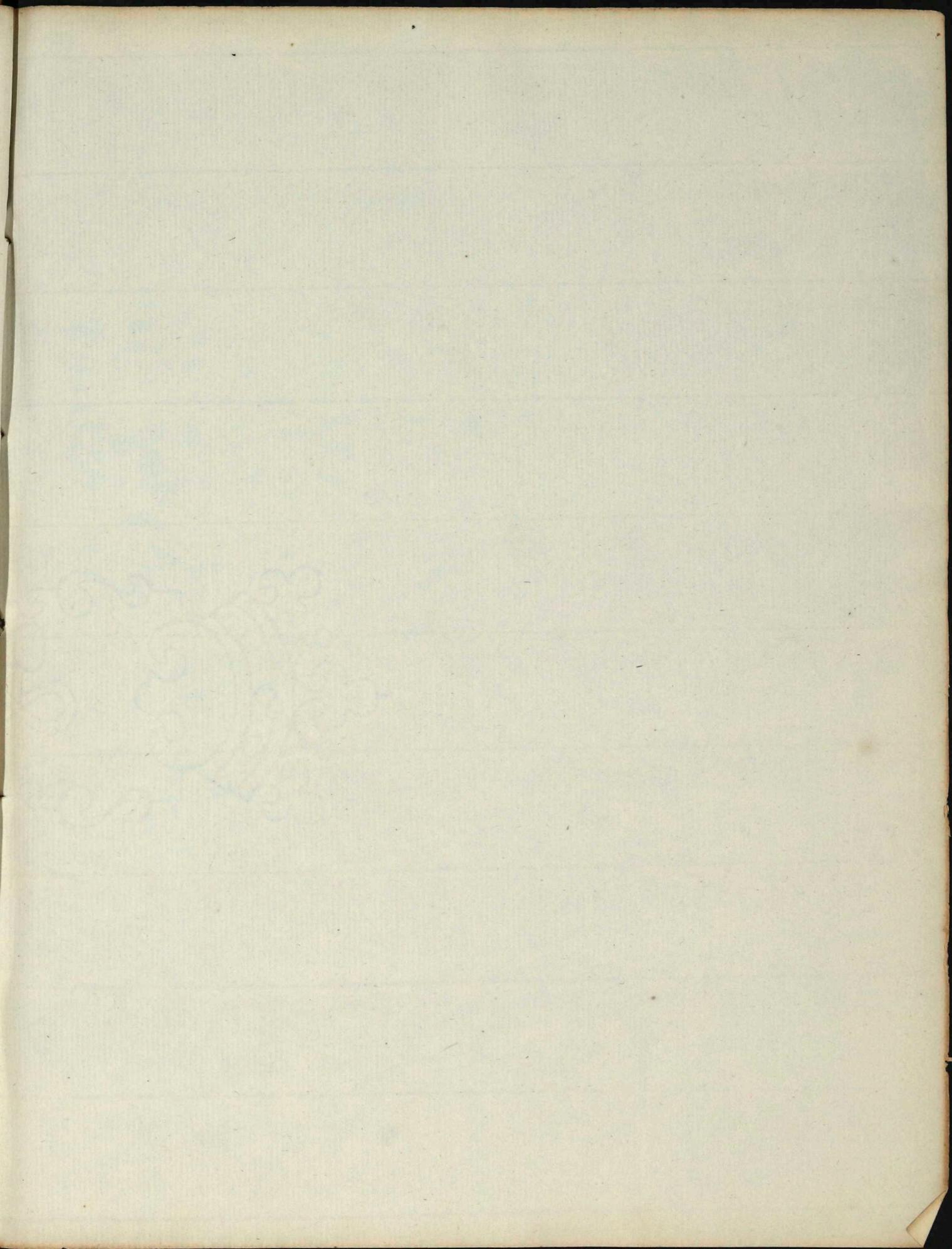
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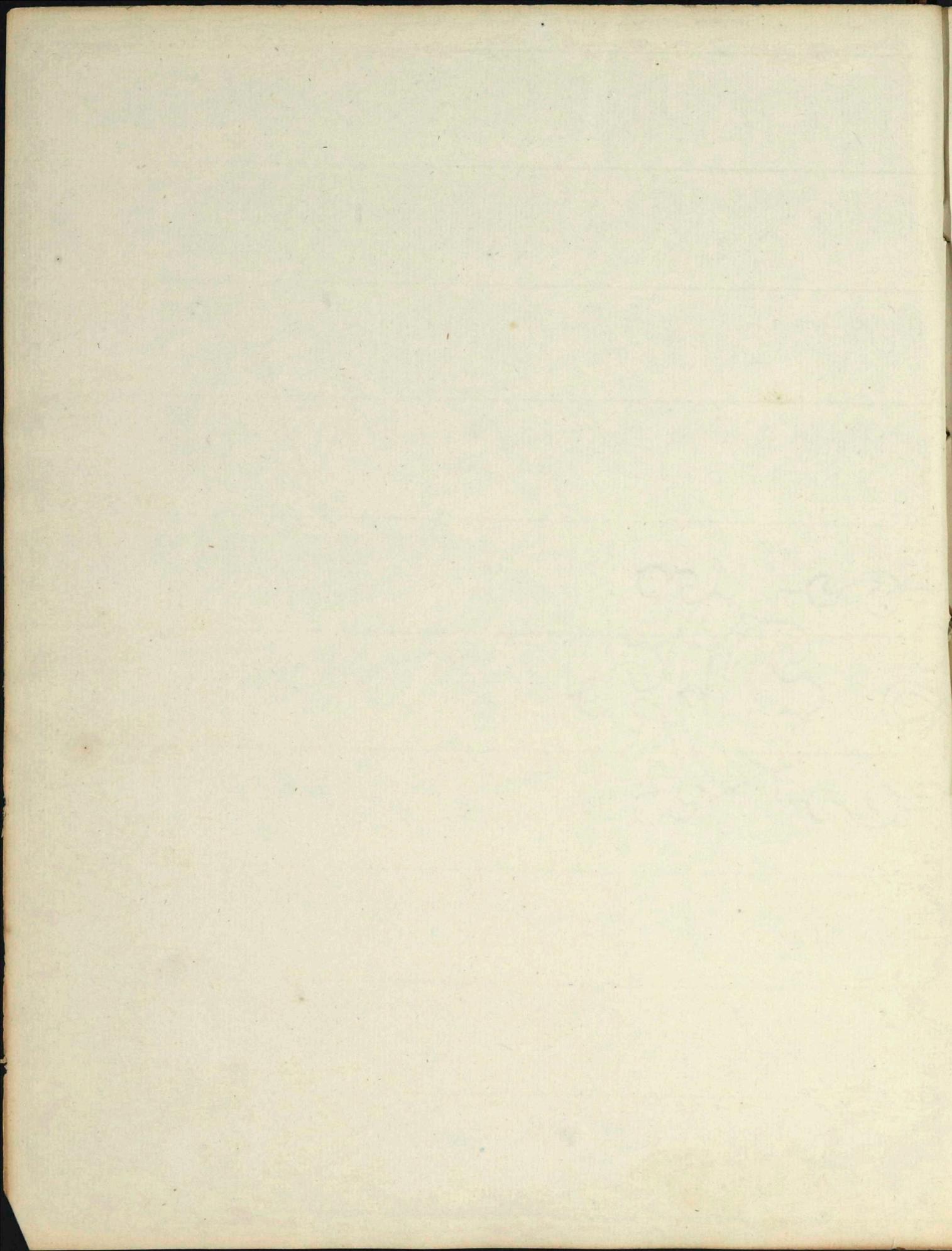
The office copy of an affidavit made in another cause in the Exchequer, is good evidence in that which is before the Court. —

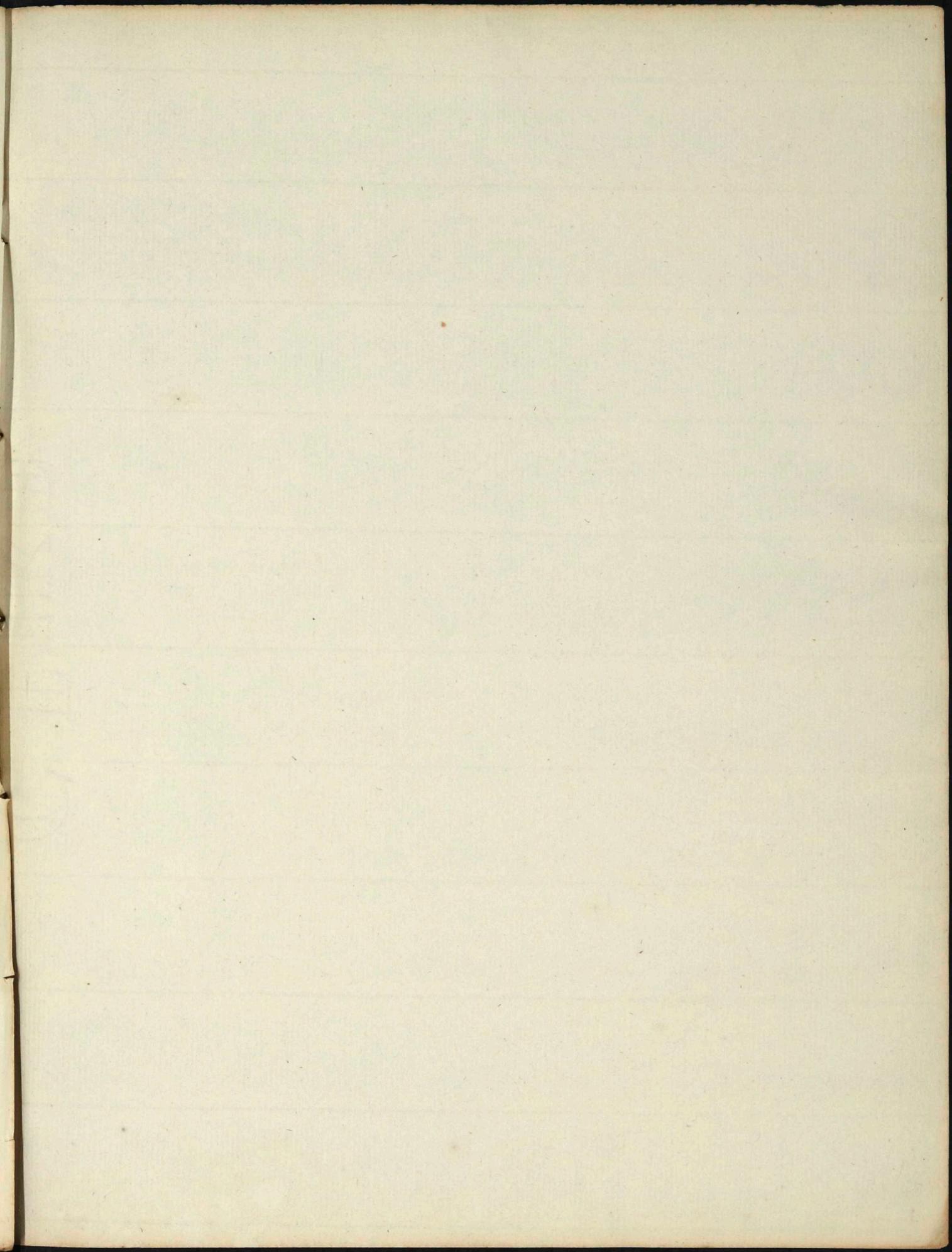
Where a witness in a trial at law gave evidence at variance with what he had previously sworn in an answer in Chancery; Held — that an examined copy of that answer was admissible to contradict him, and that it was not necessary to produce the original answer.

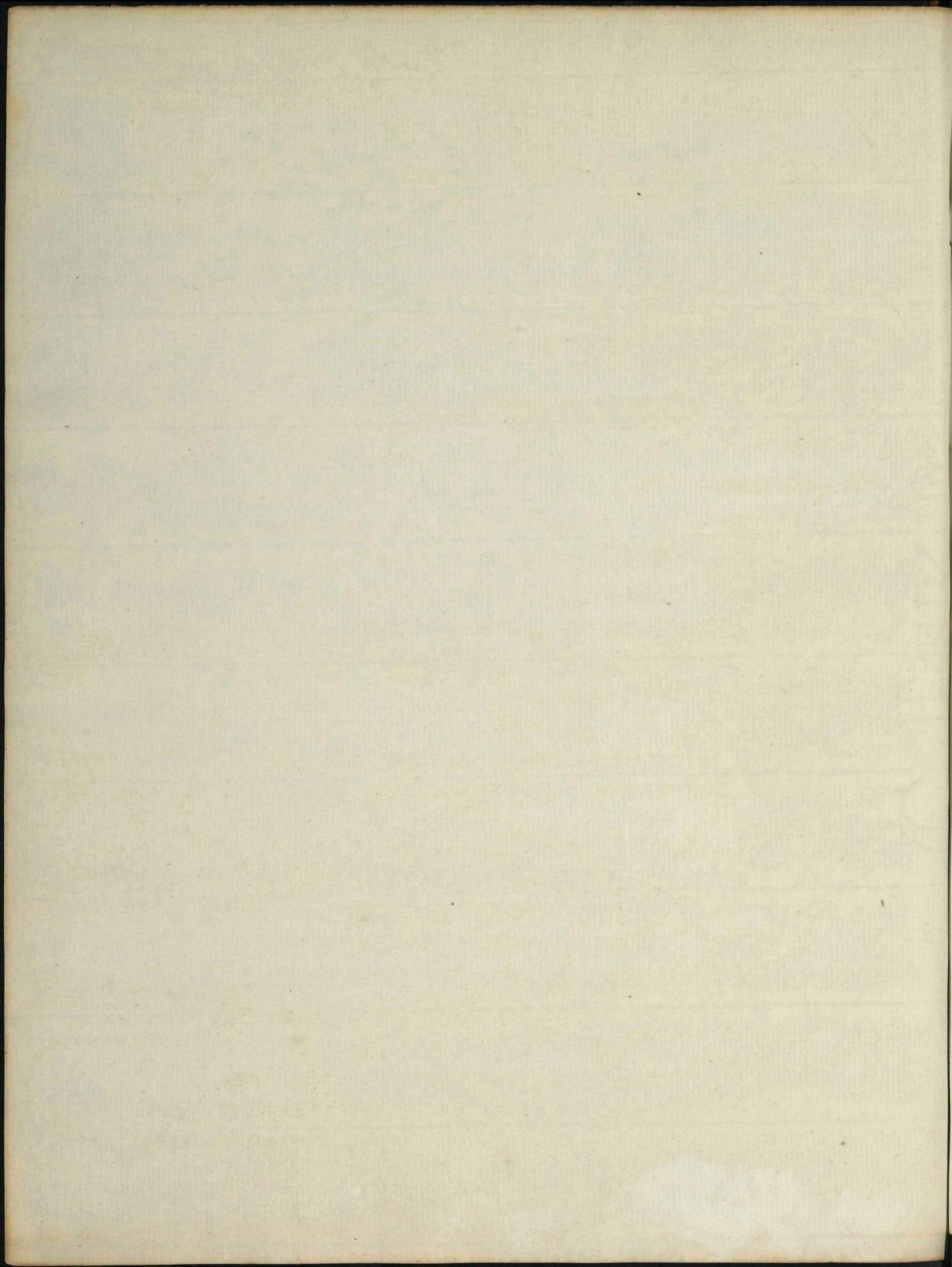












Officier Public. — *Faith to be given to his acts & arms*

Bouckel - Bib: du Droit Frans - V^e Preuve.

Un des effets de la puissance publique donnée à un Officier, est, qu'il est cru au rapport qu'il fait par un écrit, de ce qui dépend précisément & directement de sa charge, principalement lorsqu'il n'y va nullement de son intérêt particulier : Pour ce qu'ayant prêté serment à Justice, et étant approuvé du public par une réception solennelle, il est bien raisonnable qu'on se fie en lui de la charge qui lui est commise. De là vient, que les écrits des Officiers, chacun au fait de sa charge, sont publiés, aussi bien que leurs personnes : C'est à dire, qu'étant en bonne forme, ils sont munis et assistés de la foi publique, et par conséquent font pleine foi entre toutes personnes — comme les Procès verbaux des Juges — les actes des Greffiers, Notaires, Sergens, et même les acquits des Officiers de Finance, et autres semblables — même en France, tous ces actes ne sont sujets à reconnaissance ni vérification, ainsi faciunt per se probatum probatum, comme parlent nos Practiciens — ce qui n'étoit à Rome, témoin la Novelle 72, qui prescrit la forme de vérifier les Contrats des notaires — mais à nous ils font preuve sans vérification — même il n'y a autre moyen de les impugner, que par la maintenue et accusation de faux, au hazard d'une grande punition,

si la fausseté n'est bien prouée : mais aussi si
elle est prouvée, il y va de la vie de l'Officier, qui
contre son Serment, et au prejudice de la foi publique
à lui commise, a commis fausseté en acte public,
comme il est porté par l'ordonne du Roi François I.
de l'an 1531. u

Appointment of -

Bac. Ab. Jur. Offices. If the King should grant an office in 13. R.
(I). p. 203. on note, the Judges may remove such an officer for
insufficiency, because they are proper persons to
judge of his abilities. - A. Mod. 30. -

Office Copy.

2 Starkie Rep. 6.

Appleton v. L. Braybrook

—
and

Black. v. L. Braybrook

p. 7. —

There is a distinction to be taken between an office copy of a Judgment of a foreign Court when made by the proper officer & under the Seal of the Court, and when made without the Seal — in the first case it is considered as an exemplification and is received as evidence, but in the latter, proof of the comparison with the original seems requisite —

4 Camb. 28.

Alves. v. Bunbury

—

Held, In an action on a foreign Judgment, the Judgment produced at the trial must be authenticated by the Seal of the foreign Court; or evidence must be given that the Court has no seal, and then the Judgment may be established by proving the signature of the Judge. —

By the Comitis gentium, the Courts of different Countries will recognize and enforce the Judgments of each other; but these Judgments are to be authenticated under the Seals of the Courts by which they are pronounced,
J. L. Ellenborough

3. East Rep. 221.

Henry. v. Adey

—

In an action on a foreign Judgment it is not sufficient to prove the Judge's handwriting — subscribed to it without proving that the seal affixed thereto is the seal of the Court. —

The Court held that they could not take judicial notice that the seal affixed was the seal of the Court which was necessary to be shewn in order to prove the Judgment which it purported to authenticate.

Office Copy.

1 Camps. 469-
Reid v. Sheriff of Sussex

In proving a copy of a record, it is enough if the person producing it swear that he examined the copy whilst another person read the original, for it is not necessary that he himself should read the original, but the other side may show it is not a true copy. —

Officier qualité.

En l'audience de la Grande Chambre de l'Edict, du 6 Avril 1661. a été juge, que des Officiers qui s'étoient obligés en cette qualité de payer une somme de deniers, des amendes et confiscations de leur siège, ne sont pas personnellement obligés, "qui enim contraxit nomine officii, finito officio, non tenetur". —

