Student Notebook: James W. Hanger
Date: 1855-56
Professor: John B. Minor
Collection: Law School Notebooks, RG 32/400

Transcribed: August 2020
Transcriber: Jane McBrian

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[bookplate Law Library, University of Virgina with seal University of Virginia 1819]

Gift of Leslie H. Buckler

[written on page, partially obsured by bookplate]

James P. Holcombe Prof. of Equity U. Va.

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[scribbles and illegible signatures and some notes in the page] J. M. Hanger J. M. Hanger

J. M. Hanger

J. M. Hanger

University of Va. Session of 44 & 5

J. M. Hanger J. M. Hanger J. M. Hanger J. M. Hanger

Augusta County April 22 22 Virginia [1828] University

Marshal - Hanger of Augusta J. M. Hanger a member of the senior class & a (...) Marshall yes & the Jack of Hanger Lecture Lecture

Parum claris lucom dare: Parturiunt montes; nascitur J. H. Hanger ridiculus mus: Finis.

Equity April 23rd For Hale S. Mer. Intro

University of Law library Virginia

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J. M. Hanger. Notes on Blackstone.

[scribble] copi(...) from W S H Baylor's notes

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[Seal] University of Virginia Law Library

3/4 [Hese] 5. Ct. Rep 79. 2 Leigh 512 6 Leigh 504 6 Rand. 194 11 Do. 1 7 Grat. 99 1 D 465 3 Cranch 228

Notes on Blackstone Copied & improved (...) W. S. H. Baylers Note [In] the Spring of 18{51}53 & 4

Notes on Blackstone, copied, & im— —proved. During the Session of 1853 & 4 Jas. Marshall Hanger Notes

University of Virginia. Question for next time — A father settled slaves upon an unmarried daughter. The slaves are under the control of a trustee at the marriage (...) daughter al(...) (...) (...) by him for a year before the expiration of the yr. The [husband dies] the Question rises (...) the (...) per(...) (...) (...) the [husband] & the wife as to hire & the slaves

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1.

Lecture 1st. Feb 9th 1854.

(Blackstone p.41) Having defined law in general as a rule of action, the Author proceeds to define municipal law: viz, that it is a rule of civil conduct prescribed by the supreme power in a state, commanding what is right & forbidding what is wrong. This definition is frequently objected to by American writers, as placing the legislative above the other departments of government & above the people. Prof. Minor thinks that if Blakstone were alive he would give that construction, but that the language does not seem to require it. Chancellor Kent defines municipal law to be {a} the rule of civil conduct prescribed by the supreme power of the state. 1 Kent S. 1 447. This does not embrace constitutional law which is founded on the assent of the ultimate supreme power. But Prof Minor differs from both as not being compatible with the distributive nature of our government & prefers the following viz, as a rule of civil conduct prescribed by the law making power in a state. (as to the [latter part] "commanding what is req'd &c" is rejected as superfluous) (p.44) The author begins by an examination of his defini— tion saying that it is a "rule" prescribed. This consideration ought to prevent the rage for legislative (1 Call 524 care of these consigned to cts. of chancery.) interference which too often makes their [enactments] , as is illustrated in the example of Va in the case of estates tail. Evils of this sort have been done away with by the abolishment of entails, in Va see (Tuck. Com) code 535 sec 1 to 12, & by committing infants & (3 Cok 1st, 2) lunatics to courts of Chancery. (Constn

of [51] Art. 4 §35. Committed to the cts. power of granting (...) &c. (p 45) Before printing was common in Va. the laws were published at the church doors by the preachers & proclaimed by the sheriffs at the county courts. Now thousands of the copies of the laws are printed published & distributed, as soon as enacted. By an act of Congress all the laws of the U. States

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Are required to be published under the direction of the Secretary of State, in the paper of the District of Columbia, & in not less than three papers in each state and territory of the union, & pamphlet copies to be sent to the Federal Officers, and distributed among the states in proportion to their representation in Lower House see (...) digest Execuiv Power, 32 1 Call p 524. (Rand 455) In Virginia a copy of the General Assembly is furnished to every Judge Commonwealth Attorney, Justice of the Peace, Sheriff, Clerk, & other officers, and provision is made for an inter— change with other states, Code 99 Sec. 6 to 15. Laws of Congress take effect from the time named in them, and if no time be named then from the time the receives the approval of the President. Laws in Virginia take effect from the time named in them, and if no time be fixed (Code 98 § 3) from the 1st of May, ensuing after their passage (p 46 relates always to Criminal Laws) ex post-facto, laws always unjust and un— justifiable have been prohibited by the Con— stitution of the U States and of Virginia. These laws relate solely to criminal justice and this interpretation of the phrase is sanctioned in 3 Dallas 386, 12 Wheaton 266, 2 Peters 830 6 Cranch 138. On this last case an (11 Peters 88) ex post facto law is defined by Chief Justice Marshall to be a law which renders an act punishable in a manner in which the act was not punish —able at the time when the act was committed. Civil laws having a retrospective op— eration, however odious and unjust they may be, are not forbidden to the Legislation, except where they impair the validity of contracts. 8 Peters 108 {(or 138)} Such laws however must not be construed to {have a} be retrospective unless it is so declared in them, and all statutes are prima facie prospective in their operation unless the legislature express it to be otherwise. see 3 Call {2(...)} (3 Call 268)

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Judge Tucker says it is inconsistent with the nation & definition of a law to be considered ret— rospective, & that all such may be pronounced void. For law, says he is a rule to regulate my conduct & how is it to regulate it if that conduct is {passed} past, 1 Tucker Com. p. 3. & cases above cited, ex post facto. But note the distinction between laws which relate to rights & those which relate to remedies. (If it relates to contracts and is unconstitution, if by state of Confederacy.) To change my right to my lands or interpose by permitting a contract to be avoided, would be retrospective, unjust and odious & perhaps void. — But to change remedies or to take away existing remedies, is a power certainly exercisable by all law making powers. The reason of this distinction though not obvious in its entire scope, seems to be to avoid tieing up the hands of the Govt; for new & different remedies may be required frequently & to create a remedy for each particular case would be to create an immense bundle of exceptions. But a

remedial act is never to be construed as retrospective, unless it be the plain intention of the legislation that it be so construed. 2. Hen. & Mun. 181. {2}1 Call 197 4 Munford {129} 109. 3 Call 277. Va code revised 800, S2.

(p. 58) The doctrine here laid down is not to be admitted; for it is the sacred duty of every man to reciprocate the protection which the laws offered him by obedience to their requirements. This conduct involves & affects the very foundation of society (See note 8th). (p 60) See note 12th on construction, {of} in pari materia. The first mode of interpreting is by examing the intent of the Legislation, by signs & inferences of the most probable kind; as the words, context subject matter effect and consequence and the {sp} spirit & reason of the law. Statutes in pari materia, must be construed with reference to each other, the whole together, with one view of the subject. The reason of this is that the

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the law given is (presumed) supposed to have one uniform system or (...) meaning. See Douglas Reports 27, 1. Mun. 206. The 4th rule come under the head of argumentum (This mode of interpreting employed only in [doubtful] cases) ab inconvenienti, which is deemed forcible in the law. — 1 Coke, Littleton 18 & 19. Note 10 — If the law is doubtful we must {not} look at its effects in (p.61) intepreting. Spirit and Reason of the Law. Herein arises equity, which according to Grotius, is the correction of that wherein the law by reason of its unvisersality it deficient. "Quod lex non exacte definit, sed abitrio boni viri permittet." Equity may be defined that portion of remedial justice which is exclusively administered in the courts of Chancery, in contra distinction to that portion of remedial justice administered in the Courts of Laws, or it may be defined a system of jurisprudence whereby remedies are afforded which could not be obtained at common law. {Hallem's} Holcomb's Equity pp 9-10, 3. Blak. p 430 & 6. The difference between courts of equity & courts of law, arises from the difference between the rights they recognize; the forms of remedy they apply & the modes of procedure they adopt.

Lecture 2nd. February 11th 1834. (p 68) In May 1776, the convention of Va declared that Va was {free &} independent & separate of G. Britain and framed a constitution. From a want of time to pass laws the convention declared by an ordinance that the common law & all statutes made in aid thereof, prior to the 4th yr. of James 1st & not be (...) but general in the application in the Kingdom of G. Britain, should be in full force in this state, until altered by the Legislature. 9. Hemmings Grotius at large 127. The reason why the 4th year of Jas 1st was selected, was because it (Sir Thomas Sate & others) was the date of colonial existence , the letters patent establishing the colony, being dates from that period. The terms of the ordinance adopted

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(1 Hen. Stat. 57) the common law as it existed in England but the courts construed it so as to adopt those portions only which were applicable to our situation. 6 Mun. 148. 4 H & M 19. 2 Peters 144. Soon after a new revisal was ordered & compiled in 1792 & by an act of the

Assembly many of the English statutes were included, & all such as were not were repealed. So that since 1792 no English statute has force in Va except such as have been re—enacted. By the revisal of 1849 it was declared that the common law of law of England in so for as it was not repugnant to the prin— ciples of the "Bill of Rights ", or Constitution or legislative acts made under the Consti— tution, continues in full force & it is the rule of {decission}decision, except in those respects, wherein it is or shall be altered by the Genl. Assembly (see Va Code p. 98 S. 1 & 2.) & the rights & benefits of all writs remedial & judicial given by any act of Parliament or statute made in aid of the common law, prior to the 4th year of James 1st, of a general nature (not local to England) shall still be retained so far as the same shall consist with the Bill of Rights & the Constitution of this state & the Acts of the Assembly (Va Code 98 See 1 & 2). (Our law consists of 1. The com. law is adopted to our situation. 2. Remedies (...) 3. Constn and state law) So that the whole of our law at (...) consists in the 1st. The common law as adapted to our situation. 2nd. Statutes enacted by the Genl Assembly & its Constitu— tion. The laws of the Fed. Gov. are in force of course as they are in all the states. The common law forms much the largest portion of the law & forms the bulk of the jurisprudence of all the states of the Union. Louisiana alone excepts where the civil law prevails.

End of Lec. I. Read Blk to (...) 74.

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(6)

(page 72) The author gives a list those who obtained much note as writers or law among whom the most celebrated are Glanvil, Bracton & Fleta. Glanvil in the reign of Henry 2nd composed (1187) a treatise, in Latin, styled a treatise of the laws & customs of the realm of England, but was in fact confined to such matters as who decided in "Curia regis". 1. Reeves Hist. of — Eng. Law 221. 2 Do 86. Bracton wrote a finished and systematic treatise giving a complete view of all the law of England about the year 1263 in the reign of Henry 3rd. This treatise was also composed in Latin in a style much superior to Glanvil, & was considered the ornament of the reign in which it was written. 2 Reeves Hist. of Eng. Law (...). Fleta was the work of an anonymous writer & was intended as a sup— plement to Bracton. It was composed in (1285 Date of Stat."De donis") the 13th year in the reign of Edward 1st in the year 1285, & was called Fleta from the fact that it was written in the prison of that name. 2. Reeves Hist. Eng. Law 279. 1 Kent 470 (V.C 445 §2) The earliest reports called yearbooks com— menced in the reign of Edward 2nd, 1307, & continued down to the 27th year of Henry 8th 1536. These yearbooks are divided into 11 parts — 4 of which were written in the time of Edward 1st & 2nd; 1 in the time of Henry 4th —2 in the time of Henry 6th — 1 in the time (Hoffman (...) Study 179.) of Edward 4th — 1 in the time of Edward 5th —1 in the time of Henry 7th, & 1— in the time of Henry 8th. 1 Kent 470 498. The year books being discontinued in the time of Henry 8th, were superseded by the reports of Judge Coke.

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Lecture 3, 14th Feb. 1854. {This page omitted by the (...) Prof,} (p. [18]) Lex mercatoria — has within a century under the direction of several able judges, among (V.C. 445 §2.) whom Lord Mansfield was the chief swelled to an enormous bulk & now should rather be called a part of the Common Law. ((...) or Civil Law Gibbons 6 oc. & Fall of Rom. Em. Ch 44) As the name implies, it has reference to mercantile affairs, & is not confined in its operation to England, but embraces the rules & principles of commerce as recognized by most of the civilized nations of the world. For does it (Kent 515) contain only the opinions of the English judges, but also opinions & decisions (Cooper's Justinian) of judges in other countries. In order to understand the the Lex mercatoria, we must study its history both in ancient (Brown Civil & (...) Law in the above authorities for explanations of the Civil Law) times, in the middle ages & in modern times. A good method of doing this would be as it has been done in the com— pendium of Smith, which be it remembered however is only an abstract. It has been much increased in bulk of late years, by the annotations of some American editors. It will resol— ve itself into the following heads viz 1. Contracts of partnership, manner of forming & dissolving partnership &c, on which see (...) Collin & Gowen. 2. Negotiable paper, c, c, so (...) used by merchants including bill of exchange & certain promissory notes. See Baily, Chitty or Story on bills. 3. Ownership of merchant vessels including transfers, liabilities of ownership, custom house doctrines &c. See Abbots Shipping. 4. Persons employed in the navigation of merchand ship, including authority of

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of the masters & others & the duties of masters officers, & seamen &c. &c. See Abbots Shipping. 5. Contracts of a freight including law of char— ter parties, bills of lading, carriage of goods, general overage &c. &c. See Abbots Shipping. 6. Marine insurance, including contracts to be made & the course of conduct to be pursued when a loss has ensued. See Phillips & Marshall — insurance. 7th Maritime Laws. See Marshall on insurance. 8th Insurance of lives & against fixes See 3 Kents Com. 363.

(p. 76) The phrase "memory of man" referred to the 1st yr of Richard 1st (1189), for explanation see note (1 Co Lyt 35.) 15th. Coke & Littleton both declared this con— trary to custom although for awhile adopted. The reason why the 1st yr of Richard 1st was (2 Bl. Com. [N (1) (u)]) chosen, was because that was the limitation of law suits. The law in reference to land suits was that no one should {be} sue{d} for land, the title of which accrued before the reign of (1189) of Richard 1st, but there is no necessity of any connexion between this & the rule estab— lishing immemorial customs. Immemorial (2 (...) 54) usage therefore has reference to no particular time. Let us here mark a difference (un— noticed by Bakstow) between a custom & a prescription. A custom is a local law. A prescription is a source of private title. Thus by usage — I may have a private right by prescription to cross my neighbor's field, but this right cannot be called an established custom. Customs cannot exist in Va but presump— tions may. The reason of this is that when we came here in (...), we brought the whole of the common law with us & any custom which has originated since that time is not

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—immemorial usage. But it may be asked does not prescription also depend upon immemorial usage? It does! But yet we may be certain that a right commenced since 1606. Although having no historic record, may be to all intents & purposes of immemorial °usage. (°Nor can we say with certainty whether (...) has any 3 Leigh 318. Private rights 2 Rob 606. propty priv (...)) 4th [Randolph?] 3. 3 Kent Com. 441. Harris (...) 1st Leigh. {632} Judge Tucker is of difference of opinion. He contends, that prescription, cannot anymore, than customs be established except on immemorial usage. 1. vol. Tucker's Com. 211. 1 Lomax Digest 524. (8 Coke 118(a)) In Va the civil law is applicable as it is in England. Is applicable here to whatever causes are (...) in Eng in Cr. where this law prevents, in whatever cts. (...) here. End of Lec 2. Read to 4.

(p. 86) Public & private acts. Our statutes some— what modify the principles herein given. (Kent 459) They decline that private acts may be introduced into courts without pleading. Va code 660 Sec. 1st. This however does not author— ise the court to notice private acts, unless given in evidence as facts. For as the statute require such acts to be given in evidence, {but} but only permits them as being of advantage to the party introducing them. Appellate courts are bound also to {notice} recognize such private acts as evidence, when found on record of the lower court as having been recognized by the ((...) by lower court?). See {3} 55 Munford 324. Se Granve v. (...) S. College. A private act however may be pleaded & some —times there is an advantage in so pleading it. For if his adversary denies the existence of such an act — he most join issue on (...) Record — which is decided by the court & not by the jury whereas if given in evidence the existence if it is left to the jury. In case cited Graves held that a private act which has been given in evidence in the court before, but which was not fully set

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forth in the record should be noticed by the courts above, provided it can be gathered from the record that such a stat. has been given in evidence. There are three ways of proving the authencity of private acts viz, 1. By a copy of the act certified bt the keeper of the rolls, whoever he may be. (In Va clerk of H. of Delegates). 2. By a copy sworn by a witness to correspond with the record. (he having seen them compared) 3. By those printed by the public printer, which last is a statute, V. C 98{9}, Se. [41], 99 Se— 5 to 15. [100?] See {17 to 18}, § 16 Printed copies of acts of Congress are held to be admissible & so printed copies of acts of the other states. (5 Leigh 471. , 1 Dallas 463.) (p 87) The author gives rules of construction of stat. Our code p 100 S17. lays down certain rules of construction. These rules are intended to do away unnecessary verbage & to give certainty to language. Of course these rules can apply only to the construction of stat. & not to contracts. (V C 101 § 18 . 8 Co. 118 (a) Dr. [Bonham] (...)) (p 91) (10) There is a great difference between our Judicial system & that of England arising out of our (3 [Brougham] Pac. Pm. 338) written constitution. The Judiciary decide upon the constitutionality of any act because the constn confers that power on them, see (large bracket to right of below list "state cases") 1 Va case 20 (4 Call 141 in 1788 first case) 2. " " {24} 34 . 6

Ran 245 4. Munford. 1. Hunter v Martin. 8. Leigh (120) (...) 6 Ran 245 9. " 109. 3. [Gratton] 247 5 [Gratton] 518 The reports of the Supreme Court. 1. Cranch 175 (First case in 1803. 2nd in 1810) {4} 6. " 87. 9 [Wheaton] 1 8 " 1 4 " {516} (or 316)

(1 Kent 448) Fed. No 78 (McCullough v (...) of Md)

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Political Liberty is the guaranty for the con— tinuance of civil liberty (Prof. Minor's Deftn)

(122) In addition to the division of rights by the Author Prof. Minor proposes two others viz. Perfect and (No counties (...) Eng at (...) 1836) Imperfect rights which have already been referred to in connection with Vattel. Perfect rights are those which do not depend upon the consent or decision of another. e.g. A right to money lent is a perfect one. An Imperfect one, is one which depends upon the existence of certain facts, & the consent of some other person. Rights of Aliens are Imperfect. (122 n(2)) The annotator has evidently {mistaken} misapprehended the meaning of Blackstone — he meant the rights which concern things & those which concern per— sons. Mr. Stephens has to some extent followed the Analysis of Blackstone, (which see) Com. 134 of Stephens. (124 n (3)) The annotator has again mistaken the mean —ing of Blackstone. He is not speaking of the moral rights & obligations, but of the absolute & relative duties. It is the publicity of drunkenness, that makes it offensive to human laws.

(120 (...)n (5).) The author has rightly defined civil liberty to be no other than the "Natural liberty of man so far restrained by human laws (& no farther) than is necessary & expedient for the general advantage of the public." But he is wrong in coombining political & civil liberty, which the annotator remarks, & defines Political liberty to be the security with which from the constitution form & nature of the es— tablished government the subjects enjoy civil liberty. (129) The Declaration of independence, Constitution of the U. States, & the Bill of Rights & Constitution of Va are the declarations of our rights & {lib} liberties. They all contain nearly the same

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in the substance. They differ from those of Eng— land in this that their are the declarations of Parliament & can be repealed at any time that Parliament chooses, whilst ours are the declarations of the people themselves & can only be repealed by the people, & besides their dec— larations only extend to the most important of their rights &c, whilst ours extend to all rights.

(133 n. (16)) There can be no abjuration of the Realm with us be— cause the right of sanctuary does not exist here. (6 John. 127) It existed only incidentally to availing ourself of the right of sanctuary wh was abold in England in the 21 yr of Jas. I. Absense of any one for seven years

raises a pre— sumption of death — we have no such thing as civil death however, though we have several statutory enactments which have nearly the same affect as civil death such as confinement in the Penitentiary for seven years, which is casue for diverse a vinculo — & absence from the county for seven years without any one knowing his whereabouts. The statutes of Va punish all Felonies by confinement in the Penitry, for a period fixed by Jury within the limits of the law except in cases of negroes who are tried by Justices of the Peace. See Va Code 191. Sec. 54 & 11. If the convict is to be confined more than one year his property is to be comitted to certain persons who shall give bond & security & after all debts are paid one-third of the rest is to revert to his wife, & if no one will take charge of the estate then the county court shall appoint the sheriff to do it. In N York it has been held that a person sentenced to the Penitentiary for life is not civilly dead.

(135) We have of course enacted the Habeas Corpus act. The Contitution of the U States declares "that the privilege of the writ of Habeas Corpus shall not be suspended unless when in cases of Rebellion

Insurrection or invasion, the public safety (613 (...) 1 - 12) may require it". The Constitution of Va is stronger and declares tha the privilege of the writ of Habeas Corpus shall not be suspended in any case whatever. Va Code. 40 Sec 11. Judge of Court of Appls, or Cty court or Disct Ct. in affidavit or any other evidence issue a writ of Habeas Corpus. The writ is the be served on the party who has the person in custody and that person is to obey whether his name is mentioned in the writ or not. A very heavy penalty is in— flicted on the Judge for any unnecessary delay in granting, the sheriff in serving it & the Jailer for not answering to the writ. V.C. 613, Sec 1 to 12 Acts of 51 & 52 p [52] - 55. 7 Leigh 438. The effects of this case is to show that when a colored man is restrained of his liberty he has a right to use this writ & his affidavit is good & will be recevied. But if he is claimed by his master, he can— —not sue out this writ of Habeus Corpus, but must sue in Forma Pauperis. It has never been att— empted but once to suspend this writ & that was in the case of Burr, — which attempt failed. It can only be suspended by Congress. This writ has be employed in Va, to take recruits out of the hands of recruiting officers of the U States. 2 Tuck (...) 219 Senate unanimoulsy agreed to suspend & House refuse almost [unanamously]. (Read to end of ch (...)) (Read to 346 (...) & note of code (...) used (...) an Equitable Bail) (137.) Writ "Ne exeat regnum". The provisions relating to this writ & to "Bail" are here no farther restrained than is done in the code. 716, Sec. 1 & 685, Sec 5, which see. Private property has its guaranties in the Constitution of the U States & of Va, as to when private property is to be taken for public uses. Such cannot be done with— —out the owners receiving full compensation. But if a pub— lic work will add the lands value through which or in which it is built, in estimating damages the increased value must be considered. [9] Le 313. 6 Rand. 245. ((...) Tuckers' Blak Part 2nd. (...)) In Tucker's Blak. a 4th kind {of right} of security or liberty is mentioned as a primary right viz,

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— Liberty of Conscience — The Constitution of Va, "Bill of Rights" declare that right shall be universal in this state, also the Habeas Corpus. Excessive bail is not allowed, nor excessive pun— —ishment. A man shall not be convicted of a high crime unless he is confronted with his ac— —cusers & he must be indicted by the Grand Jury ; neither his life nor his property to be wilfully put in jeopardy ; nor is a man to accuse himself & in a warrant to arrest a man &c, his person must be described or his name given. Freedom of speech & of the press is also guranteed. [2] Rights of Property, Private property cannot be taken to answer public pur— poses without a fair recompense. (...) (Subordinate Officers 339) 1. Sheriffs. The officers are the same in Va as in England. Escheat is not mentioned by Blackstone. Sheriffs are elected by the people (Constn 51 Art 6 §31)to continue in office for 2 years & after two suc— —essive terms, cannot hold the next term, & for (§23)one year after cant hold any political office. He holds his officntil his sucessor is appointed. V.C. 86 1, 2, 3, secn. Must give a bond {of} in the penalty (V.C [86] §1,2,3) of not less than 30,000, nor more than 90,000 dollars. V.C 88 S. 10. He must take the {oa} pre— scibed oaths of office viz of Fidelity to the Common— wealth, the oath against duelling, & of fidelity (V.C 247 § 7 to 9 244, n)in office. He must reside in the county & like all other officers, is subject to indict— ment before the superior court for malfeasance , misfeasance, or the neglect of his duty. For act— ing without taking the prescribed oaths of (Const Art 63 34) office he is liable to a fine of 100. dollars (to $1000). A sargeant takes the place of a sheriff in a corporation. (Elected by qualified voters or otherwise appointed) 2. The duties of a sheriff in Va. A sheriff with (Tucker Blk 1- p 46) us has little Judicial power. 2 Wash. 129. It has been held that he does not act in a judicial capacity in serving writs of

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(1) ad quod damnum or (2) Elegit. But he does ((1)2 Wash 129 4 John 69) (2)(1 [Tuck] Book 1. 46 Code 77 §2,3) act {act} in a judicial capacity in serving writs of dower & partition. In holding elections he does not exercise judicial powers, for commiss— ioners have been appointed to hold them, shall allowed no matter where — let all vote who are entitled to vote may swear any vote, ask any question concerning age, &c. (Code 73.) It has been a matter of some interest to decide between judicial & ministerial duties if judicial could not be exercised by deputy & if (Deputy may exercises (...) judicial or ministerial by virtue of (...)Code 248 §17)ministerial might be exercised by deputy with us the sheriff is the ministerial officer of the county & circuit courts, & keeper of the public peace & collecter of the revenue. We have no statute making the sheriff con— —servator of the public peace & it is supposed he is so by common law. For he is bound to arrest those charged with crime & to defend his county against any public enemy & for this (V Code 250 § 25) purpose he can summon the whole posse com— itatus & require the Col. of the Regiment to call out such of his command as may be necessary. The sheriffs of England have often defended their county against the enemy, Glanvil the Lawyer & warrior, while Sherriff deafeats the Scotts in 1174. 1. Campbell lives of the Chief Justice, {250} 20. 20 (345) Here is mentioned the King's Bailiff, correspon— ding officers in Va. is the collector of

fines & taxes. Sheriffs under officers at common law were deputies (bailiffs) & gaolers. In Va we have deputies & jailers, & it has been decided by Judge Lomax that if is competent to employ bailiffs on particular occasions. The deputies farms the sheriffalty ec, buys it, a process expressly prohibited as to all other offices, but permitted to this. Code. 85, S 5 & 7, 734 S. 4 & 5. The person to when he sell it must be confirmed by county court. The deputy is likewise required to take the customary oaths. Code P86 S 1 to 3.

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& the principal requires him to execute a bond to him with sufficient security to indem— (2 Call 273)nify him against any loss on account of improper conduct. If the principal improperly remove (V.C 253 § 40)him he may bring suit against him. 4 Mun. 154. 1[Dal] {1}49 At common law the death of (VC 254 §40 §42 9 Le 18 4 Lgh 664) of the principal determined the deputy {o} office. Otherwise in Va. unless removed by the rep— resentatives of the deceased of by order of the county court or corporation or any malfeasance of office is a breach of the bond of the decd (C. 248 Sec 17,18.) principal until his sucessor is (...). The liabilities of the deputies sec— urities only [entend] to the principal first term (2 Le 2 Lgn 283 2 Munf 280 V. Code 236 § 6 1 Dal 49 Code 255 § 3,4 6 Munf 81 9 Gr. 59, 64, 312, & 584.) jailers. The sheriff is the new jailer & his dep— —uty jailers are not responsible for any negligence. V.C 256 §6. Jails are to be kept in good con— —dition, neat & comfortable. A sheriff has been held accountable, for a runaway negroe's feet frozen through neglect of the jailer 4 Ran. 256. & for an escape 8 Leigh 442. If the party is convicted or charged with felony, then escapes by the fraud of the jailer, then the jailer is guilty of a felony & is punished with confinement in the penetentiary from 1 to 5 years. There must be a physician to inspect the jails in counties & corporations C 236. S. 4. The use of intoxicating is not to allowed to excess.

[At margin in pencil: If party who escapes is imprisoned for a charge or conviction of felony & escapes with jailer consent, it is a felony (...) jailor 735 § 9. 10.]

An Indenture between a jailer quitting his office & his sucessor or an {in} entry on record of county court setting forth the names of the several persons turned over to his sucessor, with the cause of their commit— —ment, discharge the former from all suits for any after escape. C. 238 S. 17. Criminal liability can attach to the jailer alone. It can exist only when the person is in custody (735 §9,10) for crime. Code 725 S 9-10. Penalty varies according to the magnitude of the crime (1 [Ruid] Code 550 §S 3 (...) Code 800 §1) for wh: the party is confined. Civil (...) is very much narrowed by the abolishment of imprisonment for debt. But may sometime happen. Com. Law (...) still remain in force

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(Coroners 346) Coroners are appointed by the Govenor. The Cty. Ct. recommends two persons, one of whom is selected by (Code 247 §10 §16,17)the Govenor. They must reside in the county where they are to serve as Coroner, holding office for good behavior. There is no provision in

the Constitution, as to coroners & Prof. Minor they they will be appointed as (4 Call 370 10, 538 1 Wash. 5) before. With the consent of the court he may ap— point a deputy, but he can not sell his office as sheriff can. He is like all other officers liable to be removed by indictment in circuit court. Const. Act. (348) 6. Sec. 33. His duties as in England are either judicial or ministerial. His judicial function (Code 757 §1) is to enquire, where any one appears to have come to his death by violence & not by casualty, concerning (758 §4 to 6 & 10) the cause of his death. On information being given to the coroner, he is to issue a warrant to any sheriff (§7 to 9) or constable of said county to the following effect. We (§11) Augusta Cty. to wit — you are hereby required to summon 12 jurors of said cty, to attend before me, a coroner of (Inquisition to be returned to co. or corp. ct.) county aforesaid, at the dwelling house of Jacob Warren {to} in said cty, at the hour of twelve, to enquire upon view how & by what means he came to his death given under my hand {& seal} this Feb. — 54 V.C. 7{8}57 (...) He may administer the oath to witnesses & take their testimony & (...) in to writing & then render the verdict, which is called an inquisition because it is a court of inquiry. The Common Law required a coroner (By unnatural circumstances com law) to hold an inquest over every body, which came to its death {by violence}. In Va only over bodies killed by violence. Witnessess are bound by recognizance to appear & testify at such court as may by the accused. If the accused be not in custody the coroner may issue a warrant just as a justice could, returnable before a justice &c. If the deceased be a stranger & the coroner thinks no inquest necessary, he may have the body decently buried & if the deceased has not to pay for his funeral & other expenses, they

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(Conservators of Peace 1. Those who ever be at C. Law Shiff Constable Coroner & the like 2. Those designed by Stat. viz every Judge throughout the Commonwlth every Justice or Commissioner in (...) his county 755 of Code) shall when allowed by county court or corp— oration be paid out the treasury. In other cases the deceased pays, or if the de— ceased be a servant, his master pays & if he is not able, the treasury makes up the deficiency. Code 758 §7—8—9. Physicians are to be examined & to give an opinion & to get therefore a reasonable compensation. If the Coroner fail to perform his duty, he forfeits 100 Dollars & if there be no Coroner a justice of the peace may act as Coroner & is to be entitled to the same fees & to be subject to the like penalties. V.C. 728 S 11. Proceedings may be had for summoning witnesses; By common Law an inquest could ("Dies non juridicus"°) not be held on °Sunday. By the statute can be held on Sunday as well as any (Code 755 §1) other day. See 12 Code p 758. The ministerial duties of the Coroner are only in place of the Sheriff. Code 249 §[19] — 249 §21 — 22 — 23 — 24. 248 §19, except that he cant collect revenue of any kind. (344) Justices of the Peace These officers are as important with us as they are in England. They are conservators of the peace. Their functions are judicial & ministerial. Their judicial functions are of a twofold nature. 1st as members of the cty court. 2. As members in their (To be commissioned by the Governor) individual capacity as justices. Each county is laid off into a number of districts & 4 justices are elected by the voters, in each district for 4 years. They have a $3 — per—diem compensation, for the days the serve in court — together with an allow— —ance for ministerial duties.Act (...) § 27, 28 of Const. Acts "/ 51&2 p 68 c71 §25

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As to the circumstances which causes a forfei— ture of office. They are 1st Removal from the county or district with in— (Acts 51.2 p 569 C73 §2) tention of changing his residence. V.C. 244 §5. As to what shall be deemed such a change when not expressly avowed. °See 2 Va cases 208. 2 Leigh 743. °[Chen] vs the Justices of Spotsylvania. 2nd Holding any incompatible state office, exp. Mayor, Alderman &c &c. 3 Leigh 802 , 244 §5 Code 3rd Holding an office under the U. S. V.C 244-5 — ex —cept members of Congress, military, pensioners of the U. S., militia officers or soldiers &c. V.C. 81. §2 & 3. 4 Leigh 643. Any office under foreign Govt. 4th Misbehavior in office, as drunkenness &c, as con— viction of felony which also determines {the} all (Art 6 §32 of Constn 57) other offices VC. 85 Sec. 4. 2 Leigh 724 & as was said above drunkenness — 1 Va. cases 156. 1 Va cases {308} 138. The proceeding in these cases is by indictment in circuit court on infor —mation & if convicted the Court passes an act of & motion from office. Functions of Justices of the Peace They shall be "ex officio" conservators of the peace & may require of persons of low fame, security for their good behavior for 1 year. V.C. 755 §1. Conservators of the peace are such as are so at common law as sheriff constable &c. & (...). Such as are so by statute as Judges, justices &c. Besides this they may exercise a large body of jurisdiction civil & criminal & individually & collectively. (Acts 51.2 [368] C72 §1) Singly — in all civil cases not amounting to more than twenty dollars, or if the parties (764 §1) consent, to {3}50 dollars. V.C. 595 {§1 616 §3} (786 § 1 &c) Collectively, e.g county court — In all cases of law & chancery in the county, except in criminal cases of free negroes the punishment whereof is death, or imprisonment in the penitentiary. In cases involving less than 20 dollars & in

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some special cases awarded to other courts C.616 §3. Singly, as to criminal juridiction, it is confined to small cases V.C. 227 §1 to 3. Such jurisdiction extends to slaves if punishable by stripes &c. V.C. 788 §13 to 16. Collectviely, c, c, — as county court — as to trial of white persons — all criminal cases to be tried before the circuit court are to be examined first before the county court. V.C. 764 §1 & follows as to trail of colored persons in cty court. See Code 786 §1 & (...)

(355) Constables- derived from "comes stabuli". In Va there there is one constable elected by the (Code 80 §1-3) qualified voters one in each magisterial district for 2 yrs. He is the {magisterial} ministerial officer of the {district} magistrates (249 §23) & may be sometimes substituted for the sheriff. He is required to execute a bond with security to the (...) (Acts 74 C 85) of not less than (V.C 247 §11,12,13,14 & 15), $2000 nor more than $10,000. (p 12 S 13) Art 6 §30 Con. Acts 51 & 2, p64 C 71 §1 & p74 C85 §[143] (357) Suveyors of Highways — These officers in Va are generally called "Overseers of the roads". For the regulations on this subject see Code 270 §23 to 24 & 25 to 32. §34 As to general duties of overseers of the road see VC. 270 to 273 §23 to {24} 34.

The laws of VA respecting the construction & maintenance of public roads & other public works are as follows I. As to the opening of roads see Va C. 266 to 269 §6 to 18 & 48. 5 Grattan 265. 3 Leigh 675. 4 Call {279} 374. When commissioners are called upon to act, it must appear upon record that they have been sworn. See 5 Leigh 611. A public higway vests nothing the public except the right of way & the freehold still remains in the proprietor, who has the re— versions, in case the road is discontinued & is entitled to all mines &c found upon it. See 3 Randolph 563. 4 Call 441. 248 §17.

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II. As to the discontinuance of roads V.C 269 §19. (See V.C 273 §35 & 275 §43.) May discontinue any but post roads. III. Building of bridges & causeways. V.C. (Reference above) If the bridges be between two counties see §36-37 & 43. There is a like proceeding in the case of opening a new road between two counties. See §42 - 242 § 12 & 275 §3 & §43. And although under our for— mer statutes it was held that a "mandamus" would not lie from one county to another 2 (2Le 165) Leigh 165. Yet Prof. Minor thinks that it is now the proper remedy, if for no other reason than this: because it is a maxim in law that a "mandamus" will not lie if there is any other remedy at hand & there being no other remedy in this case it is supposed to be applicable. 2 Va pp 9 & 499 & 5 [Grattan] 251. 8 Grattan 652. 8 Grattan 632 (...) IV. Public lands. V.C. 267 See 6 & following. V. Erection of gates. V.C. 269-270 §20 & 21. VI. Police regulations of roads. V.C. 444 §1 to 4, 270 §22 to 25. 273 Sec 34. 227 Sec 1. 751 §11. End of Lecture 4th Read in Blk to C.10. (359) Overseers of the poor. The poor laws of Va are to some extent similar to those of England though somewhat modified & less voluminous. (2 Va Comp Diges of C. Justn 182—3) VC. 261 §13 to 20. 277 § 3 & 4. 264 §30. 261 §13 to 16. The commentator has mentioned several modes of obtaining a settlement but our statutes mention but one viz one whole year residence in counties. Prof. Minor thinks that both, birth (p. 363, 259 of Code Ch.51) parentage or marriage may give a right of settlement in Va. VC 261 Sec 10 to 20 & 530 Sec 3 to 5. Acts 51 2 {5} 64 C 71 §1. There is another class of {persons} officers existing both in this country & in England, which it would be proper to mention, though not mentioned by Blakstone. These are called Escheaters, of when there is one appointed of each county & corporation, whose business is to enquire whether any lands have escheated to the Commonwealth. See VC. 483 §1&2. 490 §4 to 16.

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(370) The People, whether as Aliens: Denizens or Natives.

(1. Citizens 1. native 2. Naturalized 2. Aliens) Blakstone observe that natural allegiance does not depend upon the will of the individual. No man in England is allowed "exuere patrium". This is a favorite maxim in England & sometimes leads to very absurd consequences. The topics of this chapter present several heads for dis— cussion here viz: 1st. The doctrine of allegiance & expatriation in Va. 2nd The Va laws of citizenship & the effect of the Revolution upon the right

of lands in both countries. 3rd The laws of naturalization in America. 4th. Right of aliens in Va with respect to lands. I. The doctrine of Allegiance & expatriation in Va. Allegiance is an obligation of the highest impor— tance, but the principle of the Common Law favors too much of that the state of villeinage whence it originiated. That children should follow the civil con— dition of their fathers is but natural; but the statute laws of the U.S. & G Britain go futher & say that all born within their limits should be citizens whether resident or not. It would be but just that all born thus in the limits should be at liberty to elect when they become capable of forming a judgement, whether or not they will continue citizens. Our laws declare that all persons born in Va shall be citizens of Va. The English law declares that all persons born without the realm, whose father or grand—father, on the father's side were citizens: to be citizens. Here it is obvious there may be a conflict of duty as a citizen of Va may at the same time be a citizen of England. If then the country should be involved in a war with England this twofold allegiance would make him a traitor should he espouse the cause of either: since the principle

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common law is once a citizen always a citizen & should he be taken prisoner by either of the opposing parties, he would be dealt with as a traitor. The only way to escape this inconvenient & unjust consequence is to allow the individual at the proper age to choose the place of his citizenship. But {natural} civil liberty does not require entire free— (Puf. Bk. 8th Ch 11 §1,4) — dom in assuming allegiance 1 Tuck. {Com} Blk part 2nd app [90]. To desert one's country in time of war is a great violation of moral duty & may well call for the arm of the civil magistrate. It the duty of every government to provide modes of expatriation subject only to such restrictions as the safety of the state may require. As early as 1792 there was a law in Va providing a way in which a man might expatriate himself & the present statute declares that whenever a person by deed in writing executed in the presence of & subscribed by two witnesses & proven by them in the court of the county where he resides or by open declaration in open ct entered of record that he relinquishes the character of citizen & depart out of the same, he shall from the time of his dep arture be considered as having exercised the right of expatriation so for as regards this state & is no longer regarded a citizen & when a citizen being 21 years of age shall reside elsewhere & {shall} in good faith become a citizen of another state in this Union or of a foreign state, he shall not whilst a citizen of such state be deemed a citizen of this state. But no such act shall of be in effect if done whilst this state or the U States are at war. V.C. 62 & 63 §2,3,4. The government of the U States have never legislated in this subject although it has been repeated recommended by the Suprem Ct &

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the want of some action has caused some (1 Tuck. Com. 72 says it is a Legislative right & not a natural one. & Ch. Kent also 2 Kent. 49) inconvenience. Though the exercise of such power has been (...) denied to Congress notwithstanding the Supreme Court. 2 Munford 396 [J. Roan] End of Lecture 9° through 10 Ch. The important questions to be determined here are 1. Is

expatriation a natural right which the Laws may modify but cant take away? 2. Does its existence depend upon the municipal law of the state & 1st. What is the relation a citizen of a state after having relinquished his citizenship bears to the Fedl (1 Tuck Blk. P II) Govt. Some say that a citizen of a state owes a seperate allegiance to the Fedl Govt; others say that it is absurd to speak of a citizen of (3 Dall 152) the U.S. otherwise than in the capacity of a citizen (2 Cranch 115) of some state. 1st Because the Govt is a federal (7 Wheat 347) government & no man can owe it allegiance except but through the states & territories; 2nd no power is given to Congress to legislate on this subject; 3rd that the common law is no part of the law or Consti— tution of the U.S. 2 Munford 404 & 396. 2 Lgh 170 2nd. Does the expatriation of a citizen of Va or of any state, amount to an expatriation of of the U States? This was discussed in 3 John p. 396. Without deciding the abstract question it was decided that the expatriation must be "bona fide", permanent & for a lawful end & of a mode is prescribed it must be done in accordance with 2 Leigh 170. (2 Munf 404 & 398) 2 Munford 396. 7 Wh. 347. 3 Dallas 152 3 & 164. This question also arose in 2 Cranch 115 both par— ties acknowledging the natural right of expatriation. Chancellor Kent is of opinion that a citizen of the US cannot expatriate himself without concurrence of government — 2 Kent 49 — but this idea may be questioned as it is founded on the prescrip— tion that the common law is part of the law of the land, which is an error. Art. 4 §2 Constn. U.S. citizens of one state entitled to all the privileges & immunites of "Citizens in another state" not political rights

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II. The Va laws of citizenship & the effect of the revolu— —tion on the tenure of lands in Va. ((...) page 373 - citizens in Eng. Code 62 §1 citizens here) There are five classes of persons recognized by the law of Va. as capable of holding lands in this state: viz: considered as citizens 1st. Those who are born in the state 2nd Those born in any other state if resident here 3 Those naturalized under the laws of the Union if resident here 4th Those entitled to citizenship under former laws 5 The children of citizens wherever born VC 62 §1 By the Constitution of the US, citizens of one state are entitled to all the privileges of citizens of any other state; but this means only a modified citizenship and it was not inten that they should exercise in those states the right of suffrage. 2 Run. 276 {264} 276. 4 [Blk] 460 (Agreed that vested rights were not disturbed by the Revoltn Calvin's case 7 Co.27.) We propose in this connexion to discuss the effect of the revolution on the lands in Va held by British subjects. In 1 Munf. 64 it was the opinion of the judges, that there was a difference between citizens of Va holding lands in Eng & citizens of England holding lands in Va prior to the revolution; because there was a time where citizens of Va owed allegiance to England; whereas citizens of Engld never owed allegiance to the U States & this doctrine confirms with the Calvin case 3 Coke 27 — and therefore although a British subject could not take lands by descent in Va an American could take lands by descent in England. 1 Coke 16 (a), 5 Call 189. 1 Munford 218. 4 Cranch 321. 3 Johns Cases 109. {4} (6 Call 60 Comwlth v. [Bristol]) 9 Cranch 50. 2 Kent 58. 5 Call 364. 6 Call 60. 9 Leigh 414. But this distinction is not admitted by text writers 1 Woodeson Sec 382 & is denied by the Judges. 2 (...) VC. 779 There is a difference of opinion between the U.S. & G. Britain as to the time of our separa— tion & independence. The U.S. contend that

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it took place on the 4th July 1776 on the declaration of Independence & G B that (1 Wheaton 300) it took place on the 3rd of {Dec.} Sept. 1783 upon (9 Do. 489) the treaty of peace. 2 Kent 59. 3 Peters 121 (4 Do. 433) & 242. 8 Wheaton 464. 1 Wheat 300. 4 Whe 452. (8 Do. 464) The treaty of 1794 provides that British sub— (9 Art. of [Jan] treaty only protected existing rights but not those afterward to accrue)—jects should not be considered as aliens as to subsisting interest & that after 1794 they might take such lands by devise & alien. 9 Leigh 414. Wh. 400. (...) Rep 244 & 267. 4 Wh. 453. 3 Peter 242. III. The Laws of Naturalization in America The power to pass laws of naturalization in the U.S. is vested exclusively in Congress upon the principle that unless the power was vested exclusively in Congress, they would not be uniform as required by the Constitution of the U.S. 2 Wh. 269. This does not mean however that no state shall allow aliens to enjoy certain privileges, such as holding lands &c - but no state can confer on any one citizenship of the U.S. VC 61 (note). Gor— dons Digest 312 "Title aliens" Act of Con 26 June 1848. The general rule of naturalization on the U.S. is as follows. 1st Any alien free white person may become a citizen of the U States if he declare on oath or affirmation, before some court of record state or Federal, at least two years before his admission, his intention "bona fide" of becoming a citizen of the U.S. and renounce all alleg— —iance to any foreign power & particularly by name the prince or foreign power of which he is at that time a subject. 2nd. He shall, when he applies to be admitted de— clare on oath that he will support the Const of the U.S. It must also appear on record 3rd that he has resided at least 5 years under the jursidiction of the U States

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(since abolished) "without having been at any time beyond its limits", except as a sailor & to have resided at least 1 year, preceeding his application, in the State where such court may be. 6 Cranch (7 Leigh 743.) 182. 7 Crch 420 & 5. It shall also appear on record that such alien is of good moral char— acter & attached to the principles of our Govt. 4th. If the alien seeking admission shall have borne any title or order of nobility he shall renounce them. 2 Kent 64. The infant children of naturalized persons are citizens "ipso facto" & if the alien dies after his declaration, but before his admission, his widow & children shall be considered as citizens. Gor Dig. 436-7

II. Rights of Aliens, with respect to lands in Va. At Common law, an alien might pur— chas lands, but he could not hold them them. The laws of Va have made very important modifications of this doctrine, but the general principles at the common law are still retained. They may be reduced to the six fol —lowing heads, viz: 1st. Any free white alien friend who shall before some court of record declare on oath that he intends to (continue to) reside in Va, upon such declaration being entered upon record if he actually reside therein, may inherit, purchase or hold real estate as if he there a citizen & any such alien may convey or devise any real estate so held by him, & if he die intestate it shall descend to his heirs, whether aliens or citizens, who

may take under such desc— —ent provided he shall, if an alien, come or be within state, 5 years after the descent & before some court of record thereof, declare that he intends to reside therein. V.C. 498 §142 2nd. If any such person having purchased

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or contracted to purchase any real estate of holding or having titl thereto, shall before the same as es— {2d}3d cheated, by an office found, become a citizen of the US, or sell or devise the same or die seized or possessed thereof, before any proceeding institutes for the purpose of escheating the same, such person, himself in the 1st case or in 2nd case the purchaser, heirs, &c. if a citizen of the U.S. shall hold the same free from any claim of the commonwealth, or literary fund by reason of such person having been an alien. Lec 3rd 4th. Any woman whose husband is a citizen of the US, & any person whose father or mother at the time of his birth was a citizen & thereof, may take & hold estate real or personal, by devise purchase or inheritance notwithstanding he or she may have been born but of the U.S. Lec 4th. 5th. Any alien friend may take & hold any personal property except chattels real & any such alien if he reside within this state, may take & hold lands for the purpose of residence: of occupation by himself or servants or for the purpose of any business trade &c. for a term not exceeding 21 years. Any alien holding section may take & hold with all the rights of a natural born citizen of the U State, except that he cannot vote at elections. Lec 5. 1 Coke Lyt. 92. (...) 6th. When by any treaty now in force between the U States & any foreign country, a citizen or subject of such country is allowed to sell real property in this state, such citizen or subject may sell & convey the same & receive the proceed thereof within the time prescribed by such treaty. Lec 6th. We have such treaties as are contemplated by the statute with the King of Wertemberg (Dec 1844) King of Bavaria (Jun 1845) King of (...) Jun. 1847. Grand Duke of Hesse & King of Saxony. Subject to these modifications & our treaty with England in 1794 the {rights} (...) of aliens are the same as at common law so that it

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acquire lands otherwise than by these provisions they shall upon office found escheat to the Com— monwealth 3 Leigh 492. 3 Wh. 589. 11 Wh. 356 & he may hold against the world until office (5 Coke 52. (...)) found. 7 Cranch 720(6), and even after office found he may hold until the officer of the commonwealth enters. It being a maxim of the common law that the commonwealth can neither take nor give except by record. If an alien dies, having only alien heirs, the freehold title vests immediately in the state & the possession of it an office found 1 Coke Lyt. 91 n(9). 5 Coke 52. 7 Cranch 621. The disabilities of an alien does not prevent him f rom taking and holding a personal estate, so that if a devise be made of the proceeds of Lands di— rected to be sold, a court of equity will consider it personal; it being a maxim in equity, that "what is directed to be done is considered as done". 5 Mun 117-160. 3 Wh. 376. 5 Munf 160. (Case in the (...) as titles Comyns Dig. Title (...) (C) 3.) As an alien cannot hold lands of himself neither can any other hold lands in trust for him ; a trustee being considered as the channel

through which an estate passes & if lands are so holden they will escheat. 3 Leigh 508. V.C. 493 §26. On the other hand it seem to be well setteled that an alien trustee may convey a good title 6 Munf. 308. In this connexion two questions have arisen. 1st. If an alien trustee dies without heirs & the trust estate escheats to the State, does it take subject to the trust? In England the King would take it discharged of the trust & Chancellor Kent thinks the common law doctrine has been transplanted here. 2 Kent 62. Judge Tucker holds the reverse. 1 Tuck. Comm. Bk I p 67. But our statutes remove all doubt on the subject V.C 493 §26. Est shall not escheat. 2nd. If cestui que trust trust dies without heirs, does his interest escheat to the state or devolve upon his trustee? Upon this question,

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have varied in England — some holding that the King might compel an execution of the trust in its favor. But See Gilbert on Uses 86 & 104. 3 Leigh 442. 2 Kent 62. 1 Tucker Common Bk I. 88. But this question too has been settled in Va by statute. VC 493 Sec 26. The restrictions on aliens do{es} not prevent their taking a mortgage &c. to secure debt. 9 Wh. 489. End. Read 9 Ch. Read in Blk from 14 Ch through it. (A Master is one who has the lawful right to the services of another & that other is his servant.) {Am(...) the} Lecture 6th {37 page (...)} (424) Blakstone gives the reasons why slavery cant exist by contract. 1st Because no equivalent can be given for liberty. 2 Because the price agreed upon in the sale devolves "ipso facto" upon the master himself. The 1st of these is the true reason for the 2nd can be avoided by making the consideration payable to a third person, in which case it would not devolve upon the mas— ter. Prof. Minor thinks that a contract for an indefinite time cannot be enforced , for if enforced at all it must be an ac— –tion by contract & a jury would be disposed to give only nominal damages & the court would be likely to instruct them to that effect. A master is one who has lawful right to the services if an other & that other is the servant. ((...) slavery p 8-33. 4 Jeff Mem. (425 (n/3)) This is not the first case in which it was decided that a heathen negro owes no services to a master (2 (...) 666) when brought into England. There was a decision in 1706 to the same effect and also another in Scotland 6 yrs after that in (2. Harris Prin of [Jeff] 134) England. The common law does not emanci— pate slaves either in England or any of the states, but it does not recognize the relation: it affords no remedy to enforce slavery. 3 B & 6 (or 7) 369. 1 Leigh 181. But if a slave returns with his master

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(10 Gratt 492 (...) v. [Fraster?])

to a place where the relation is recognized (10 Grath. 492. Foster's Admt'rs v. Foster) it will be enforced. Gilmer 143. 1 Leigh 181. 5 Leigh 615. There is a destinction to be made between the residence of a master (1 Rand 21-23 12 (...) 5 Le 614 (...) 454 (...) 32) & his temporary sojourning. If a master (...) in the first place, takes his slave to a place where the institution is not rec— —ognized the status of the slave is changed & after his master returns to his former

place or rather slave state the slave may assert his freedom. 1 Randolph 15, (21). But in the 2nd place the status of the slave is not changed. A master is one who has a legal right to the services of another & that other is the servant. 4 Le 178. (Note 4) — Negroes receiving their freedom can recover no damages for the time they were in bondage in an implied contract. (3 B & P 69. 18 Rck 224. 1 Le 181. 5 [Cr] 12) The reason of this apparent hardship as given by Judge Tucker is that it is prob— able the expense of raising them & attendance during sickness &c. fully balances the profits & as it would be both inconvenient and uncertain to make the master give an account of his expenditure for them, the law has established this rule. 4 Leigh 176. In 5 Grattan 12. Judge Baldwin refers the reason to different ground. He says the judgement for [1st] time ascertains the status of freedom & up to that time he was enti— tled to nothing & that after that time he certainly could be entitled to nothing. (Note 5.) A general hire of all kinds of servants is presumed to be for one year. But this presumption may be controlled by special agree— —ment or by general custom. But in the case of menial servants their engagements may be determined by a month's notice or a month's wages, though this

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(along left margin large vertical zigzag ⦚ with letters left, top to bottom, APROOC and right HABRH) too may be controled by special agreement or general customs. Chitty on Contracts 576. End (426.) Apprentices — It is to be remembered that at common Law, apprentices could be bound by deed indented only: whilst lands &c. might be conveyed without deed. By deed indented is meant any deed between two parties. It is called indented because formerly the margin of the paper on which the deed was written was indented thus (horizontal zigzag). The laws of Va with regard to apprentices may be found in VC & seem to require a simple writing only 330 Sec 1 to 16. (1 H & M 413).The trust imposed on the master at com— mon law was merely a personal one & (Code [3 262] §19-20) hence he could not assign over his appren— tice. V.C. 531 § 8 9-11,12,14. But this is allowed by the statute on leave of ct. (4 Leigh 495 & 6) It was always the law that an apprentice could not be taken out of his county or cor— (Leigh 560) poration & this was settled at a very early ((...) 729.) period. The Common Law would not allow an apprentice to be taken out of the com— (3 (...) & Rall 115. (...) 3 Munf 183) monwealth by his master & if he did so the apprentice was discharged. 12 [Pick] 107. V.C 532 §13. But the contract may be dissolved by mutual consent of parties. V.C 262 §19, 20 (p 428) It has been adjudged by our courts that an indictment cannot be {maintained by} sustained against (Code 532 §13,15,16) a master who maliciously cruelly or excessively beats his slave. 5 Randolph 678 & 680. (5 Gratt. 303. 530 §2 [& 4of 3 Coke) This principle is founded on the following consideration viz (Chitty Con. 1 581. 4 Rand 425.) (omitted) 1st. That slavery was a new condition not recognized by the common law. (§6, §7 2 [Va Cases] 275. 4 Gratt 176.) 2nd. Among those nations where slavery existed as the Romans, Greek, &c. masters were not punishable for any cruelty exercised on slaves. 3rd In 1788 all distinctions of injury amo unting to maiming between master &

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33 servant were abolished. (Line around below 4th—3rd on right margin with words "omitted omitted") 4th. That if the common law ever recognized such principle it has been nullified by statute & was not restored by this repeal Judge Brockenbrough a member of the court who has objections to this doctrine assigned the following reasons 1st. That slaves were both persons & things. If injured as persons they were entitled to the protection of the laws & hence the master should be punished: but if in— jured as things master should be held as responsible. 2nd. The legislation of 1669 introduced dif— —ferent principles but the fact of such introduction proves conclusively that the law was as he said. 3rd. That the ferocious & sanguinary legislation of 1669 was repealed by statute of 1778, by which the common law was revived & its protection extended to all. VC 140 §16. As yet we have no legisla— tion upon the subject. We have passed laws punishing cruelty to animals but none for cruelty to human beings in the form of slaves. Which of the opinions of the Judges above is most conformable to law & humanity is left to the diligent & learned student. 2 H & Munf. 5 Munf. 483. That it is a covenant to return the slaves & only to use due diligence. ("Owner & not the hirer is the responsible for Medical Bills tho physician may make the hirer responsible to him. (...) may be(...) the owner.")

(8 Le 566. 7 Do 383.) Lecture 10th Feb. 1854. (p 429) It must be observed if the beating is creully & (5 Munf. 680) publicly done it is punishable as interrupting the peace & harmony of society. If a servant be beaten by one who is not his master, the master can sue for loss of service & the servant for personal injury. This does not apply to slaves & in such cases the master must always sue since slaves are "non sui juris"

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In some cases the master is bound to pay for medical attendance on his servant. Chitty on Contracts 581 & this has been decided in Va in 4 Ran 425, but generally he is not bound. Slaves stand upon the same footing. 4 Grattan 176. 4 Ran. 425. The hired servant is only bound in the 1st instance when he asks medical aid & then he may recover the amount (18) paid, from his master. The general rule with us is, that slaves are hired by the year & though they be sick all the time, the hirer is bound for the hire for the whole time, but if the slave die the hire is apportioned according to the time. 2 Hen. & Mun 5. It is usual to insert in bonds for the hire of slaves that they shall be returned & well (*5 Mun 483) clothed. * In Harris vs. Nicholas the question (Harris & Nicholas) first arose whether this covenant exten— —ded to the return of the slave under all circumstances but the court held it not (4 Le 231) to extend to all possible contingencies. If a slave dies or is miamed for a beating by a stranger some say the master loses his action, for the trespass is merged into felony & if felony is pardoned the action for trespass (4 Munf 447) revives. But this has been doubled by some. By the VC 750 §6 the commission of a (6 Rand 223) felony will in no case merge the civil injury. If a slave be hired for agricultu— —ral purposes & is made a boatman & is dro— —wned the hired is responsible. 8 Leigh 566. ⌊Spencer vs Pilcher⌋ and although there be an agreement between the parties as for what the slave is to be employed, if an injury hap— —pen to the slave in that employment the hirer

must show that he used every nec— —essary means & precaution 7 Leigh 383 ⌊Randolph vs. Hill⌋, but the court was divided in opinion. The hirer of a runaway slave is liable

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(At left margin: Bacon Abrid., Litle [Musta] (0). 1 Tucker (...) Book II)

to the master upon the ground that by ha— ving the slave he is doing an injury to somebody for he must know that he is the slave of some one from his color, if he has not the written testimony (record evidence) of his freedom. 4 Mun 447. 6 Ran. 223. V.C 747 §30 750 §6. (p 430 note (23)) This principle has been recognized in Va in the Superior Court of the US. 1 Call 112 ⌊Simm v.s. Butler⌋. 2 Call 233. 1 Cranch 345. viz, that the agent of the government is not liable, but the government itself. (p 431 (n)(26)) If a servant does an act wilfully the master is not liable. If done negligently in the master's service the master is liable 4 Blak &c. 592. If it be not in the master's employ but by his orders both will be liable 2 Kent 259. 5 Munf. 589. 4 Barnwall & Alderson 592. Masters are as much liable for the acts of their slaves as for those of other servants. 4 Leigh 231. 3 M. [Con] 410. S. Carolina. 11 Com Ben 867. Principal & Agent. See 2 Kent 613. Chitty on Contracts 209. 1 Tucker's Com. Bk 1 p 85. We do not here intend to go into this subject but will only lay down some general rules. 1st. Agencies are either express or implied. Express when created in plain terms. Implied from the recognition by the principal of some act done by the Agent or necessarily incident to some conferred authority. 2nd. Express agents may be created by writing or par— —ol; but it is sometimes necessary that they be created by deed (as power to deliver (Lands & to execute a sealed instrument). 3rd. Express agents are either general or special — general when they are entrusted with the general business of the principal. Special when appointed for a special purpose & with limited powers. Both must be governed strictly by the authority given them. Act of general agent will bind the prin

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—cipal if within the scope of his authority, as even though they are done contrary to private instruction & this is to prevent fraud. But he who trades with a special agent does it at his own risk & ought to see therefore that the agent does not exceed his powers. If one by words or act authorize another to perform certain acts or him he is liable for the implied agency. 4th. In order to bind the principal there must be a necessary connexion between the power given & that assumed. 5th. Agents ought to contract in the name of the principal; but if he contracts it is immaterial whether he contracts as agent or principal, whether principal by the agent or agent for the principle. (V.C 500 §3) Language used is very material. 6th. An agent is not personally liable unless under the following circumstances. 1st. When he contracts in his own name & omits to disclose the name of his principal. A government agent although contracting in his own name is not personally liable, for it is presumed that persons intend to trust the government & not him. It is a gen— —eral rule of agency, that unless the agent submit a responsibile principal;

he is him— —self liable. 1 Call 112. 3 Do 233. 1 Cranch 345. 2nd. When contracts under seal when he has no authority to do so his agency being by parol. 3rd. When he contracts without authority or exceeds his powers. 4th. When he contracts for an unincorporated asso— ciation. 7th. When an agent undertakes to transact (11 Gr. 269 & 281) business for another he cannot (with regard to the subject matter) in law act for his own benefit to the injury of principal. 8th. An agency is (determined) terminated;

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(Est. of principal is not bound by contract made 6 (...) 453 after his death, his death cancelling the authority. 1 [Stak.] Rep 121) 1st. By death of the agent or employed. 2nd. By the performance of the business with which he was entrusted. 3rd. By change in the relation of the parties as by marriage in the case of a female — lunacy Bankruptcy &c. 4th. By express revocation & can always be revoked. ✔ 1 Lecture 11th 1854.

To the 4 classes of servants (viz minials apprentices laborers & Steward) mentioned by Blakstone may be added a 5th which exist in Va & the other south— ern states. This class are slaves in the strident sense of the term; & the right to them is founded on inexorable political necessity. Prof. Minor proposes to discuss in this connexion.

1st. The History of Slavery in Virginia. 2. What persons are slave in Va by existing laws. 3. Slavery in its relation to the Fed Govt., including the abolition of the slave trade. 4th. The probabilities that it will {soon} cease to exist in Va. if not in all the states. 1st. The History of Slavery in Va In August 1620 a Dutch man of war landed about 20 slaves in Va. An earlier period has been assigned by some later historians. (See historical register of Va). The slave trade having been thus begun it was encouraged by the raising of tobacco. In 1671 in a population of 40,000 inhabitants there were 6000 indented, white servants & 2000 slaves: see Sir Wm Beverly Report, 2 Hennings statues 515. In 1632 the colonial Govt. becoming alarmed attempted to discourage impor— tation of slaves by imposing a tax of 1st of 5 pr ct & afterwards in 1640 of 10 prct on the value of the slave, which was [now] afterward reduced. Between the years 1699 & [1732] 23 acts were passed in order to discourage the importation. On 1772 the last

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colonial act restraining slavery was passed, in which the King (12 Bck Apx p2 p 49 84.) was petitioned to grant power to the colony to prohibit the trade entirely. This petition was not granted & the degree of importance attached to this grievance by the people may be surmised from the fact that the preamble to her Constn of 1776 complains of his having prompted those negroes to rise in arms against us. Those very negroes whom by his negative he had refused us permission to exclude, for the trade was still carried on by the English & new Englanders & so we are responsible only for receiving them. V.C. 36. The first use Va made of her independence was in (Oct 1778) (See 9 Hen. Statute at Large 471) to pass an act prohibiting the importation of

slaves, with a penalty upon the importer of 1000 lbs of tobaco for each slave imported & freedom to the slave. This was the first antislave trade movement in the world. Since 1778 the coloured pop— ulation has been confined to its natural incre— ase & this increase has been drained by continual exportations to other states. In 1790 there were in Va 293,000 slaves showing a ratio of increase since 1630 of 1 to 146. In 1790 the whites numbered 450,000, showing for the same time a ratio of increase of 1 to 13 to give some idea of the amount of drain caused by exportation to other states it is only necessary that we should remember that Judge Tucker estimate founded on this natural increase (leaving out the exportation to other states) was that 60 years from that time ((...) 1850) there would be in Va 1,200,000 slaves; whereas the census of 1850 only reports 450,000.

We subjoin a table showing that the number of slaves to the whole population has since [1800] been diminishing.

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A statement showing the actual increase of each class of population in Va & of the whole population in each of the great districts of the state (viz that East & West of the Blue Ridge) since 1840 as ascertained by the census of 1850. East - Increase of Whites ... .09 " " " F Cold ... .08 " " " Slaves ... 04 Whole Increase ... .07 West - Increase of Whites ... .33 " " " F Cold ... {08} 03 " " " Slaves ... {.17} .18 Whole increase ... {.15} .31

Prior to 1670 American slaves consisted exclusively of African negroes, when an act was passed de— —claring that Indian captives could be made slaves. In April 1691 there was an act passed (VA Code 456 (note)) declaring that there should be free & open trade with all Indians whatsoever (reenacted in [revisal] of 1705) after which all the courts have held that no American Indians could be reduced to slavery. 4 Ran 623 & 635. Tucker Blak. pt 2nd vol 1st. appendix 47. See also V.C. 456 note. Ch. 103. In 1669 an act was passed declaring that the (2 H Stat) death of a slave resisting his master or other per— son correcting him by his order, happening by extremity of correction was no felony, for it not to be presumed that any man will wilfully destroy his own property. On 1672 it was enacted that if any one pursued a runaway slave by

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(6 Hen. Stat 42.) virtue of hue & cry & killed him, was not to be punished for the same 2 Hen. Stat. 270. In 1705, it was enacted that a runaway slave (one (At left margin: 7 Gr. 681 excessive whipping by wh death ensued was decided to be murder in first degree) addicted to running away) could be dismembered (castrated) (not touching life) at the discretion of the cty court. The county court could also outlaw a runaway & after outlawry any one might kill a runaway. 1 Tuck Rek 56 note*. In 1769 the power of dismembering even at the discretion of the cty court was restricted to the single offence of trying to ravish a white woman. V.C 123 §1. In 1772 it was enacted that runaways could not be outlawed , unless lying out & doing mischief. In 1788

all those acts were rep —ealed & in 1792 the act authorizing outlawry was expunged from the Code. 5 Ran 678, V.C. 740 §14. The act of 1786 confirmed by that of 1792, con— —stitutes the Justices, Judges of slaves, without whose unanimous decision they could not be condemned. 8 Hen Stat. 318. At present the lives & limbs of slaves are protected by law; but excessive beating of a slave is not yet a punishable offense 5 Ran. 678. In 7 Grat. {7}681. It was decided that whipping to death {made homicide} was murder in 1st degree. But (...) V.C. 723 §1 doubtful. Manumission - It is supposed that prior (4 Hen 132) to 1723 no restrictions were placed in the manumission of slaves; but it was then prohibited on any pretence whatever, except meritorius service to be adjudged by the Govenor & Council & thus the law continued until 1782, when master was again allowed to man— —umit his slave (10 Hen. Stat. 39) with the restriction that, those who were not sound in body or mind or were above the age of 45 yrs &c., in short all those chargeable or likely to become changeable on the county should be supported out of the es— —tate of the master. (V.C. 459 §9) The manumission could be permitted either by will or deed under the hand

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& seal of the party acknowledged by him or proved by 2 witnesses in the court of the county in which he resides. Our present statute allows it to be done by will or by deed recorded in the court of his county or corporation. V.C 458 §9. Such wri— —ting recorded like other deeds. V.C 512 §2 & 3. The constitution of "5{0}1 forbids emancipation (by legislature) without owner's consent & that those eman— —cipated forfeit their freedom, by remaining over one year in the commonwealth, & empowers the legislature to pass laws & make restriction as they see proper, for emancipation. Act 4 §19 to 21. 2nd. What persons are slaves in Va by the existing laws. 1st. Those who were slaves 1st July 1850. 2nd. Free negroes sold as slaves pursuant to law. 3. Slaves lawfully brought into Va V.C. 457 §1. 4. Future descendents of female slaves. Those are considered slaves lawfully brought into Va who are born within the limits of the U States, if resident within these limits at the time of removal & not therefore convicted or transported for any crime VC 457 §2. This statute has been in existence since 1819. The acts from 1782 & 1785 to 1800 were much stricter than the present. By them slaves could not be introduced from another state un— —less the owner came to reside or unless he claimed them by marriage, devise or descent. See 1 Statute at large new series 122 Directing slaves to be sold & forfeit $400 by master. 3 [Statute at large new series] 251 — 282. The relaxation began in 1811 & was consummated in 1819. A negro or mulatto is one who has 1/4 part or more of negro blood in him. Code 458 §3. V.C 464 §1 to 9. end. Read Ch. 14. 3rd. Slavery in its relations to the Fed Govt inclu— —ding the prohibition of the African slave trade. The word slave does not occur in the Federal Constitution, but that class of per— —sons are distinctly referred to in 3 places. 1st Article 1st. Section 2nd Clause 3rd, where

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it apportions direct taxes & representation to the whole number of free whites & 3/5 of all other per— —sons which cant mean any but slaves. 2nd. Article 1st Sec 9th Clause 1st prohibits Congress from preventing until 1808 the importation of slaves. But a tax or duty nor exceeding 10 dollar per head may be levied. 3rd. Article 4th Sec 3rd declares that persons held° (° bound might have [imported] a voluntary obligation) to labor or service in one state who shall have fled into another state, shall be delivered up. As to the 1st of these (Article 1{4}st Sec 2nd Clause 3rd) the apportion— —ment of representation was one of the most difficult to adjust that came before the convention. Madison's Paper vol 2d (73) 1052 to 1066—to—1087 — 1090 to 94 1227— to 1233 vol 3rd 1261 & 1544. As to the 2nd (Art. 1st Sec 9th to Cl. 5) with reference to the prohibition of the slave trade by congress; there was no such power in the 1st draft of the Constitution. 2 Mad Pap. 1234 & 3 Mad Pap. 1261. On the 21st of August 1787 Mr. Luther Martin of Maryland proposed this clause & founded it on these 3 grounds viz — 1st. If 3/5 of the slaves are to be represented their in —crease is giving an increase to political power; will encourage their importation in large num— —bers & as it produces such an effect it should be taxed or prohibited. 2nd. It should be discouraged inasmuch as it weak —ened the slave-holding states thereby making the protections guarantied by the constitution from all the states to each other a burden to the Northern States. 3rd. Permitting the importation of the slaves was contrary to the principles of the revolution & a disgrace to the American character. South Carolina & Georgia opposed the motion bitterly, declaring that if this clause were en— grafted upon the Constitution, they would

not join the Confederacy (Mad Pap. 1388) sug— gesting that whilst it never would be necessary to call on the northern states for assistance in keeping down our slaves or in otherwise protecting them; the importation of slaves would increase the products of the south, which would be exceedingly beneficial to the North, who would have the carrying trade. (Henry Remarks in Va Convention in 1788. 2. Elliots Devates 432) The New England del— —egate united with the South in opposing the proposition, declaring that the morality of the slave trade was to be determined by each of the states severally for themselves. 3 Mad Pap. 1388.,1389,1392. Col. Mason, Mr. Randolph & Mr. Madison gave their warmest support to the motion. 3 Mad Pap. 1390. After repeated discussion it was at length agreed to prevent Congress laying any restriction on the importation of slaves prior to 1818 (20 yrs) until which time they might lay a tax of 10 dollars pr head on each slave so imported. 3 Mad Pap 1430—1427. End of Lect Ch. one Master & Servant Soon after the organization of the Government laws were passed prohibiting the citizens of the U.S. from transporting slaves from the U.S. to foreign countries or from one foreign country to another un— —der a penalty of fine & imprisonment. 1 Story (...) § 319. The present law prohibits {(1. Those wh tends (...) prohi)} 1st. Any person whether citizen or other person from bringing slaves into the U.S. from any foreign country under a penalty of $1,000 to $10,000 fine & from 3 to 7 years confinement in the penetentiary. Gor. Dig. 453 title Polit. Code. 2nd. Prohibits any U S. citizen or any seaman in a U S. ship from engaging in the slave trade — (1 [Bob. Nie.] 15 to 20) considered Piracy — Penalty death. Gor. Dig. 791 title criminal code. officers vs individuals As to the 3rd. (Art 4. Sec 2. Clause

3) with reference to ([adjornd] 17 Sept. 1787.) the delivery of fugitives slaves it was not intro— duced till late in August, when being moved by the S. Carolina delegates (Butler & Pinckney) it was unanimously adopted. Mad Papers 1447, 1556.

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By a law of Feb. 1793, the exercise of this pro— —vision was entrusted to the state officers, which was its defect. Many of the states opposed it. (5 Sargt. & [Rule] 63. (2 Pick 19 J. Parker. 12 Wend 316 J. Nelson.) Pennsylvania passed an act declaring that no one should arrest a fugitive from service. [Priggs] vs the Comm— —onwealth of Pa., 16 Peters 539. Sup. Ct. of U. States decided that the passage of the Constit. contemplated a right wh the state Legislatures could neither qualify, regulate or restrain. Owner had the same rgt to slaves as in his own Stat. On the 18th of Sept. 1850 the present fugitive slave law was passed. Its provisions are embraced in —10 Sections. Its execution is entrusted to the Fedl. Authorities & has proved an efficient remedy. The 1st 2nd & 3rd sections provide for the appointment of commissioners by the Circuit & District Courts of the U. S. & territories, who may exercise the powers of justices of the peace —as to bailing— to be competent as to taking depositions in civil causes under the laws of the U States— arresting, imprisoning &c for offence, against the U.S. & shall promptly discharge the duties imposed upon them by this act with reference to the delivery of fugitive slaves. Sect. 4th gives them severally & col— —lectively concurrent jurisdiction with the circuit & district courts of the U. States and of the Superior Courts of the territories in term— —time & vacation & enjoins them to grant cer— —tificates to such claimants upon satisfactory proof being made, with authority to remove under certain regulations such fugitives from service or labor, to the states or territories from which they have fled or escaped. Sec 10th. allows his master to prove his owner— —ship & the identity of the slave before the Judge of any court of record (or other person authorized to cause fugitives to be d delivered up) in the state to which he has fled, by means of a record made in his own state, by order of a court of record or judge thereof in vacation,

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to the effect that such slave owed service to the claimant & containing a general description of the slave — such record being attested by the Clerk & seal of such court is conclusive proof of such escape & {(...)}identity. Upon the presentation (Acts of 1850—1 p 37.) of such record & the introduction of other evid— —ence, either oral or by affidavit if necessary, the commissioners or &c, shall order the said slave to be delivered up, shall grant certificate of the claimants right to the fugitive as iden— —tified & shall authorize the seizure &c of such fugitive. The production of the record is not ([20608]) absolutely required, but in its absence the claim shall be heard & determined on other satisfactory (Sec 5) proofs. {1 }The law subject the Marshall (Sheriff) to a penalty of $1000 to be for benefit of claimant, for want of diligence and if a slave escapes through his negligence he is liable to a suit on his official bond, for the full value of the slave to claimant to be assessed in the U.S circuit & district cts. Acts of 50/51 p 37. Sec 6th.

authorizes a master or his attorney, with or without process to approached the fugitive & take (Map. 2 Peck 19. 2 [Wend] 385 N. T.) him before the Commissioner &c., who shall hear the claim & determine it in a summary manner & if upon proper evidence the owner— —ship of the master & the identity of the slave be proved, such commissioner shall grant certificate of such facts, with the authority to such claimant to use reasonable force to carry the slave back to the state from which he fled. The certificate is conclusive of the abobe facts & shall protect the master {from} or claimant from all molestation. In no trial can the testimony of the fugitive be introduced as (Sec 7) evidence. Sec. 7th subjects all persons hindering the claimant in reclaiming his slave, rescuing or harboring - to imprisionment not excluding 6 months & a fine of $1000, & imprisonment not exceeding 6 mo., and to the payment of $1000 by way of civil damages to the master. 1 Rob. (...) 4 S et Seqt.

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Sec 8th prescribes fees to be paid to the officers for their services. The claimant is liable for the whole if the fugitives is dis —charged & whether the slave is delivered up to him or not he must pay the fees for such ser— —vices as were rendered to him exclusively in the arrest, custody & delivery of such fugitive. Sec 9th provides that on affidavit of dan— —ger of a rescue before he gets out of state where arrest occured it shall be the duty of the officer making the arrest to retain the fu— —gitive in custody & to remove him to the state whence he fled & for this purpose he may employ such force as is requisite & the expense is to be paid out of the Fedl Treasury. {Prof. Minor thinks this section defective, because it makes provision to provide only against {the} a rescue in the state which the arrest was made and no provision is made against a rescue, in a state through which the fugitive may pass on his way to the state whence he fled.}

4th. The Possibility of Slavery's Ceasing to Exist in Va.

(1 Jef Men 3 & 39) Mr. Jefferson in 1769 attempted to bring about emancipation; although it is doubted whether the emancipation he was laboring for was of a general character or only the liberty to in— —dividuals to emancipate their slaves. In 1779 at the revisal of the laws of Va he submitted a proposition providing for emancipation. He always wished emancipation to be accompanied with transportation 1 Jeff. Mem. 39. Washington also was in favor of emancipation of the slaves. His views may be seen in a letter to Sir Jno. St. Clair 12 Wash. Writings 326. In 1786 in a letter to Robt. Morris of Philadelphia, he ensures the proceeding of an emancipation convention as doing more harm than good, but at the same time lamented the existence of the institution. He thought

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the legislative authority of the slave state was the only proper way to effect emancipation. Wash's Writings 9 vol 158 & 163. (10 [Do.] 224—5.

Jefferson thought that emancipation must be accompanied with deportation — that legislative action was the only means of effecting it & in his notes on Va (written 1781) p 143 he proposes as the best mode of doing so, a legislative act declaring all slaves born after a certain fix— —ed time to be free. As late as 1821 & 1824 this subject engaged his thoughts. The expense he considered as the greatest (1 Tucker Blak [ht.] 2. appendix 76 note* 81 Den on slavery [40]-72 99 et Seq.) obstacle to his plan. He propsed to defray this expense by an appropriation of the proceeds of the public lands 4 Jeff Men. 389 — 90.

At intervals this class of our population have created considerable alarm. 1st. in 1800 the in— surrection of the near Richmond, headed by one Gabriel, whose attack on Richmond was pre— —vented by the rising of a small stream. 2 Hon. Va. 391. 2nd. In 1831, the insurrection in Southampton under Nat. Turner. Lec 2 Howinson's Hist. of Va p 439. In the early part of the session of 1831 & 2 a motion to consider slavery &c was introduced (by Mr. Broadnax of Dinwiddie). On the 11th Jan. Mr. Goode of Meck— —lenburg moved to discharge the committee from considering slavery. As an amendment to Mr. Goode' motion, Mr. T. J. Randolph of Albemarle moved that the committee be instructed to re— —port a plan for the slaves, suggested that all slaves born after the 4th July 1840 should be de— —clared to be the property of the commonwealth if they remained therein — the males when they reached 21 & the females at 18 — —that they should be hired out until their wages would amount to a sum sufficient for their depor— —tation. This amendment served as the nucleus of a protracted debate. Broadnax opposed both of

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these motions —Mr. Goode's because he thought that the subject deserved consideration — Mr. R's because he considered that gentleman's plan as violating the 3 polar propositions (as he believed) to any effective or just scheme of emancipation viz, 1st. That emancipation should always be accom— —panied with immediate deportation. 2nd. That the legislature should not by its actions seriously affect the value of property. 3rd. That no slave should ever be emancipated without the owners consent. The committe reported it inexpedient to take any action on the subject for the present. Mr. Preston of (Montgomery) moved to substitute expedient— lost by ayes 58 — noes 73. Mr. {Price's} Bryce of Goochland preamble was that it was desirable to get ride of the slave population, yet that fund requisite for their deportation would exhaust the treasury. Although the immediate aboli— —tionists were in the minority those in favor (Refit of Comm: adopted. Ayes 64, nays 59.)of prospective abolition were in the majority adopted ayes 67 noes 60. Another class — the free negroes —demand from ser— ious considerations the intepretations of legis— —lation. Mr. (R. J.) Walker's estimate (pamphlet on Texas) 1844 of the comparative condition of slaves & free negroes. (Dew. p. 77, p. 83, et seq. Tuck Prof. U.S. p. 79.) 1st. Number of deaf, dumb, blind, idiot & insane ne— —groes of the non—slaveholding states is 1 out of every 96. In the slaveholding states 1 out of 672 or 7 to 1 in favor of the slaves as compared with the free blacks. 2nd. Number of whites deaf, dumb &c in the non—slave— —holding states 1 in every 561 — being nearly 6 to 1 against the F Blacks in same states. 3rd. Number of negroes deaf, dumb &c including paupers & those in prison in

non—slaveholding states is 1 in every 6 — & in the slaveholding states 1 in 154, or 2{2}6 to 1 against the free blacks as compared

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with the slaves. Some allowance should be made for this statement as in the nonslaveholding states there is imprisonment for crimes, which are punished by whipping in the slaveholding states. 4th. Taking the extremes: in Maine the No. of negroes, deaf dumb, blind idiots & insane by the census of 1840 was 1 out of 12; — & in Florida 1 out of 1105 or 92 to 1 in favor of the slaves. 5th. In Massachusetts by the census of 1840 & also by their own official returns to the state legislature, it ap— —pears that the no. of freeblacks deaf, dumb, blind idiot & insane or in prison was 1 out of 13. (Prof Minor added 7th) The Govr of Va in his message (1846) states that out of 226 convicts in the penetentiary, 32 (52) were free negroes, 50 mulattoes & 144 white. Yet the number of whites in the state is 740,968 & of free—blacks only 49,840 (Negroes 1 in 608 in Penet of Whites 1 in 5000 in Penet'ry). (6th) Mr. Walker computes the cost to the people of to adjacent states to slave states; of supporting & protect— —ing society against freeblacks. In 1853, at $3,333, 300, — in 1863 at $6,666,600 — in 1890 at, $13,333,300. Prof. Minor thinks colonization the only means of get— (Tucker's Progress of U.S [10] to 116) —ting rid of this population whether of slaves or free—blacks. As to the slaves any legislative act with reference to them is next to impossible on account of Northern Fanaticism. 1 Tucker' Jef. 112. Tucker's progress of the U.S. 115. In his calculation he come to the conclusion that slavery will cease to exist in about (Dew on slavery p.112 also 77 to (...) &c.) 1920, basing his estimate on the proposition that slavery cannot exist profitably after the popula— —tion have reached a certain number to the square mile=50. It is believed by Clay & many others that slavery in this country is {the} a means which Providence has selected to enlighten Africa. A number of sucessive events would seem to indicate some great design— the introduction of the Protestant religion into England in 1508 — the settlement of our ancestors in America in 1606, whos motto was "liberty of conscience & freedom of speech", the introduction

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of slaves in 1620 — the prosperity of Liberia, & a movement of the public mind in favor of colonization are subjects worthy of profound thought and deep reflection.

Husband & Wife

(p 434) By the ecclesiastical courts of England certain circumstan— (McIntosh Essays p36.) —ces were supposed & held to render marriage sinful & these courts "pro salute omnium" prohibited all marriages under such circumstances. The circumstances were consequent— —ly called canonical disabilities or sometimes more correct— —ly canonical impediments. As stated in the text, they (Who says that property & marriage are the foundation of society &c.) were Precontract Consanguinity — Affinity & incurable imbecility impotency of body at the time of marriage. These by the common law only rendered the mar— —riage voidable & not void "ab

initio". There are certain other disabilities which being cog— nizable in courts of law are called Legal disabilities in contradiction to those above named. The effect of these is to render the marriage void "ab initio" without any proceedings whatever. There are no ecclesiastical courts in Va; nor any impediments called canonical or civil; Although we have no Ecclesiastical Courts yet these canonical impediments are taken notice of by cts of Chancery. As to the circumstances which render marriage void in Va, they are (1) marriage between a white person & negro (2) prior marriage of either party wife or husband then living & 3. Between persons under age. (4. Marriages within the degrees of kin prohibited by law & all mar —riages solemnized when either of the parties was insane or incapable from physical causes of entering into the marriage state, shall be void from the time of a decree of divorce. V.C. 471 §1,2,3, &c) (Children of marriage wh. age 4 void are legitimate on the prin that [parent] age is [certain]) It is important to observe what our law does not as the English bastardize the issue of marriages which are void "ab initio" V.C 523 §7 & 5 Call 183. I. Canonical impediments or disabilities 1. Precontract does not exist in Va & probably not

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51 (Precontract is a contract with some solemnities of religion, so considered an incipient marriage.)

now in England see 1 Tucker's Comm Bl p. {8}94. Bk I. Consanguinity affinity & incurable impotency of body existing at the time of marriage are however recognized in Va. VC 470 §10 & 11 — 471 & 2 §1,4,8 & 739 §3 The degrees of affinity & consanguinity which con —stitute impediments in our law are the same (1 C. Lyt 128 n (H)) as those mentioned in the text all within the 4th degree or within the degree of first cousins. Degrees not named but to which a parity of reasoning will apply are prohibited acts "50 & 57 p 35 . Text 435 note 4 - code 470 §10 & 11. II. Of Legal Disabilities 1. Prior marriage — which exists in Va & called biga— —my and is punished as such* (*Confinement in Pen. from 1 to 5 yrs) VC 739 §1. Except in those cases in which those whose consorts have been continually absent from the {country} commonwealth for 7 years & not known to be living; or when there has been a divorce "a vinculo"; or when the for— —mer marriage has been contracted within the age of consent {declare void by some com— —petent authority} V.C 739 §1,2,3. 4 Johnson {22} 52, Fenton vs. Reid. 2. Want of Age. This exists in Va. At common Law this did not of itself make marriage void; but only voidable when either party came to the age of con— —sent. 1 Coke {6}123 & 569. VC 472 §3 ([V.C] 409 ch 108 §1, 2, 3) 3rd. Want of Consent of Parents or Guardians. This did not exist at common law, but arose from a statute which prior to the present revisal (1849) had not been adopted in Va. Previous to the revisal all marr— —iages were valid if solemnized by clergyman or other {4th}lawfully authorized person. 1 Tucker Com. Bl. p 966{8}, 2 Bk Kent 90. 9 Leigh 639. 4th. Want of Reason. Every license for a marriage shall be issued by the clerk of the court of the county or corporation in which the female to be married usually resides; or if the office of the clerk be vacant, by the senior Jus tice of such county or corporation, who shall make ([6] Leigh [6 §6]) a return thereof to the court as soon as there make If any clerk issue knowingly a license contrary to law fined $500 & confined in jail not more than 1 yr.

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be one. Every license so issued shall be registered in a book to be kept by the clerk for that purpose. If any person intending to marry be under 21 yrs of age & has not been previously married, the con— sent of the father or guardian or if there be none of the mother of such person, shall be given either personally to the clerk or justice or in writing to be subscribed by a witness, who shall oath before the clerk or justice that the said writing was signed or acknowledged in his presence by such father mother or guardian as the case may be. When a minister of the Gospel shall before the court of any county or corporation in this state produce proof of his ordination, and of his being in regular communion with the religious society of which he is reputed a number & give bond in the penalty of $1500, such court shall make an order authorizing to celebrate the rites of mar— riage. The court of any county which deems it expedient may appoint one or more persons resident in such county to celebrate the rites of marriage within the same or a particular district (8. B. VC.) thereof & upon any person so appointed giving a like bond as is required of an ordained minister, may make a like order authorizing him to celebrate the ((...) (a) (D)) rites of marriage in such county or district as the case may be. Any order made under this or pre— ceeding section may be rescinded at any future term. Marriage between persons belonging to any religious society which has no ordained minister may be solemnized by the persons & the manner prescribed by & practiced in any such society. End of Lect. Every marriage in this state shall be under a license & solemnized in the manner herein provided : but no marriage solemnized by any person professing to be authorized to solemnized the same shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected on account of any want of authority in such persons, if the marrige be in all other

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respect lawful, & be consummated with a full belief on the part of the persons so married or either of them that they have been lawfully joined in marriage. A certificate of every marriage hereafter solemnized signed by the minister or other person celebrating the marriage; or in the case of societies that solemn— —ize their marriages by the consent of the parties in open congregation, by the clerk of the meeting, shall be transmitted by such minister, person, or clerk of the meeting, to the clerk of the court of the county or corporation in which the marriage is solemnized, within {3}2 months thereafter; which certificate shall be recorded by the clerk within (twenty) {thirty} — days after its receipt, in a book to be kept (1 ct (...) 2.5 (...) 40 ch 25 2.3.5.) for that purpose, with a proper index thereto, & a copy thereof from such record shall be evidence of such marriage. If any minister or other person celebrating a marrige or the clerk of any such meeting or of any court shall fail to perform what is hereby (9 Le 659. 6 Do 636.) required of him he shall for each failure forfeit {sixty} $10 dollars & in case of minister making a false return &c not less than $110 nor more than $500. Any person authorized to celebrate the rites of marriage shall be paid by the husband a fee of one dollar in each case. Any person exacting a greater fee shall forfeit to the party ag— grieved {sixty} $50 dollars. VC

469—70 §1 to 9. The statues make no provision for a case in which the consent of the father cannot be had on account of his being "non compos mentis" & cases (...) (437) The statute of 4 & 5. Philip & Mary was adopted at an early period in Va; but our present statute has materially altered its provisions. Our statute provides: that if any white per— son take away or detain against her will a white female with intent to marry or defile her or cause her to be married or de— filed by another person; or take from any person having lawful charge of her any a female child under 12 yrs. old for the purpose of prostitution or concubinage shall be confined in the penetentiary not less than three nor more than ten years. V.C 725 §16. If a (code 471 §13) female between the age of 12 & 14 is married agst {paren} consent of parent or guard, a (...) by cir. ct.

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(p 435) Our former statute inflicted a penalty on all indented who married & the marrying them without their mas— ters consent was subject to a fine of $300 250. (& servant must serve 1 yr after term of service is over or pay $20 dol). As there is no provision in our present law we may suppose the whole law obsolete. Slaves are considered as in— —capable of contracting marriage unless there is some special act on the subject 5 Cowen 397 and any white person intermarrying with a negro or mulatto is punishable by confinement in the {penetentiary} jail not more than one year & fined not exceeding $100 VC 740 §8 — & any person who shall perform the ceremony of marriage between a white person & a negro shall forfeit $200, of which the informer shall have one half. §9 (20 Johns 1. 4 [Depessou Ref 266]) It may be collected from our statutes that every mar— —riage (VC 409 §1,3,5-7) is valid that is celebrated by the proper author— —ity perhaps without a (...) between persons of the proper age, consenting, single of the same color, & of sound mind {in the proper degree &c} 469-(...). If any female of {under} the age of twelve & under fourteen years shall marry without the consent of her father or guardian or if she have none, of her mother, the circuit court in which she resided at the time of such marriage, shall upon the petition of her near friend commit her estate to a receiver, who shall give bond before the court, & shall hold the said estate & pay out the rents & profits thereof to her seperate use, under the direction of the court during such coverture & after the determination thereof all such estate shall be delivered into the possession of the female & her heirs & distributees other than the husband.

(440) A marriage which is valid by the "lex loci contractus" is valid everywhere. Some of the civil lawyers say that where persons leave their country to contract a marriage which could not be contracted there such mar— —riage is not valid. This idea is nonrepudiated both in England & in this country; thus marriage in Md. & NC (2 Hay (...) Rep 203 & 54) are valid in Va & vice versa. 2 Kent [com.] 91. Story Con— flict of law 85 & 87. 16 Mass Rep 157. This comity of principle has been carried so far as to makes marriages

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valid which were within the prohibited degrees of con— —sanguinity — i.e. those prohibited by the laws of the state in which the persons reside, but not by the general law & sense of mankind (1 [Yerger] 110) 2 Kent 85 n(a). Story Con. Law. 105. (6 Mass. 378) For the same reason persons divorced "a vinculo" in one state & not there permitted by the laws of that state to marry again, may marry in another state where no such impediments exist & the marriage will be valid in the state where the divorce took place. 1 Tucker 1 [Yerger] 110. Story Con. Laws 185. Mass Rep 110. Our statutes 739 §3 makes an exception. It provides that if any persons resident in this state & within the degrees of relationship go out of the state for the purpose of marrying, with the intention of returning, & be married out of it & afterward return to & reside in it cohabitating as man & wife, they shall be as guilty & be punished as if the marriage had been in this state. The fact of their cohabiting here as man & wife shall be evidence of their marriage. See also Code 472 §2. (Now in Va, a man may marry the sister of his dead wife — not so formerly) ([Stak] 352 crim. con) The proof of the marriage depends on the nature of the suit wherein the marriage comes in question. In all civil ((...) Starkie Evidence 705 & (...)) actions except in criminal conversation, nothing need be proved but the cohabitation of the parties & their being (Kent & Mun [507]) generally recognized as man & wife. But in criminal cases as bigamy incest &c, & in all civil actions for crim. (8 John 346) con. an actual witness or record of the marriage is required & must be produced together with identity of (3 H&M 230) the persons 9 Leigh 639. 2 Va cases 95. 1 East Pleas of the Comm 470. ([VC] 470 §8) Total & partial divorces — "a vinculo" & a "mensa". Divorces in England are employed merely for canonical impediments. Civil disabilities render the marriage (2 [Gr] (...) §[491]) void ab initio. Heretofore it has been so in Va. No marriages were void without the intervention of the court, but divorces were decreed in all these cases. (Va cases [95]) The revised statutes makes marriages void in 3 instances as already mentioned viz: (1) marriage between a white person & negro, (2) prior marriage & (3) when the persons as (V.C 171-2 (...)) married during non—age & seperate before the age of consent. In all {these} { cases} other cases there must be a decree of a court.

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([Bac. Abr.] Marriage & Div (...) (3)) of competent jurisdiction. To the legal disabilities that of fraud may be added. Divorces are decreed on application of one or both of the parties. In case of consanguinity or affinity the po— —lice of the county interferes as in these cases the par— —ties are not expected to make application themselves (VC 472 §1,4,8) there is therefore no provision for avoiding marriage within the prohibited degrees at the suit of the parties, but the revised statutes allows it by suit (739 §3) in Chancery. These marriages are viewed as crimes & it is the duty of the Circuit Superior Courts, having (VC 472 §[6]) jurisdiction of the parties to have them indicted, to punish them by fine & to declare nullidy of marriage. Our laws formerly punished a man for marrying his deceased wife's sister. The revised code says nothing about this. In case of corporal infirmity prior marriage & want of reason one of the parties may sue for a divorce. The suit is to instituted where the parties last cohabited or at the plaintiffs option where the defendant resides. The proceedings in these cases are the same as in other cases except roue is never to be taken for confessed & that any confessions the parties may make are not to be taken as evidence. The circuit court sitting on the Chancery side has ([Acts] of "52.3

p47 Ch 28 §(...) & 31) jurisdiction of this matter. V.C. 472 §1,4,8 [739?] §3 The causes for divorce "a vinculo" are 1st adultery. 2nd Natural & incurable impotency of body existing at the time of marriage. 3rd Sentence of either party to the pententiary for any length of time & not for 7 yrs or more as formerly, the law having been lately changed, & no pardon granted after divorce shall restore conjugal rights VC 472 §6. 4th Conviction of an enormous crime (infamous offence) prior to marriage without the knowledge of the other party. 5th Wilful abandonment for a period of 5 years. 6th The wife's pregnancy by any other person than the husband at the time of the marriage & without his knowledge. 7th The wife's having been a notorious prostitute without the husbands knowledge. 8. Consanguinity or Affinity. To these causes we may add want of age or reason. [At margin: (10 Want of Age. 9 Want of Reason)]

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Though with strange neglect that are not men— —tioned in the code (V.C. 472 §6, 1, {2} 4). After divorce for adultery the parties may marry again, but the court may prohibit the guilty party from marrying again. In cases of adultery the divorce will not be granted if it appear that the parties voluntarily cohabited (V.C. 473 §14. Acts of "52. 3 p. 48 Ch 28 §3. Do p 47 ch 28. 5 Call123) after the knowledge of the fact of adultery; or if it was commited more than 5 years before the institution of the suit; so that it was com— —mitted by the procurement or connivance of the plaintiff V.C 473 — §§11&14. A divorce "a mensa" may be decreed for the 1st — cruelty. —2nd — Reasonable apprehension of bodily hurt & — 3rd — Abandonment or disertion. V.C 472 (523) §7. In all these cases of divorce the court may make such decree as it shall think proper with regard to the estate, & for the maintenance of both or either of the parties & their children &c. V.C. 473 §12. In granting a divorce "a mensa" the court may declare a perpetual separation. 478 §13 — which decree may be revoked by another decree of the court §15. There are several other causes for di— —vorce which may be inferred though not enumerated in the code, as, conviction of fel— —ony, incurable insanity happening after marriage & irreconcilable incongruity of temper. (§) Formerly when a divorce was wanted for causes not (§) mentioned in the statues application must be had to the legislature, but it is now prohibited by the (Art 4 §35 Constn 50 & 51) Constitution of "50 & "51; giving the power to the courts. To prevent application for frivolous causes it was provided by {a} the former statutes, that previous to the application a jury or ct. of Chancery must ascertain the fact of the case. There is no provision of this kind in the new code & the Professor hopes that this is an indication that the Legislature intends no longer to exercise jurisdiction over marriage & divorce.

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(441) Alimony —There are other cases besides appli— cation for a divorce in which alimony may be {granted} decreed. It may be granted as well (4 H & M 507 —) where there is no application for a divorce, {(...)} or even no application for one, as where there is on the part of the Husband misconduct &c. In divorce "a vinculo" as well as disabilities which render the

marriage absolutely void, no alimony is allowed. 4 Ran. 662. 5 Grattan 479. 4 Hen & Mun 509. V.C 473 §10. In 4 Wheaton 629 there is reported an opinion of Judge Marshall on the effect of the Consttn. of U States on the divorce laws of the several States. He said the clause in the Consttn, guaranteeing the validity of contract had in view only such con— —tracts as related to property. Besides that a decree of divorce was only an act of declaring that (V.C. 472 §3, 4) the contract had already been violated one party thus setting the other party free. The policy of the different state is various as to divorces 2 Kent 108. This diversity has often led persons of one state to go to another to get a divorce when they could not get it in their own state (3 Blk Com. 93) & thus some perplexing questions have sprung up. There is a question whether such questions can be allowed. The Cts. of England & Scotland disagree (20 (...)) on this subject. The English Cts. say a Eng'h marriage can not be dissolved except by the English law. The Scotch on the other hand maintain that (2 Kent 105.) the domicil of the pary at the time of applying for a divorce ought to decide the manner of (Acts "52 & 3, 47 §2) dissolving the marriage. Story Con. L. 178 227 & 230 (...) The American doctrine is that the "bona fide" "lex domicilii" decides the matter without reference (V.C 473 §8) to the "lex loci contractus", same as the Scotch law. Jactation of marriage, is where a person boasts of being married to a certain person & a court will institute proceedings in order find out whether the marriage (1 Leigh 16) is true & if not will stop the boasting. (...) did not exist in Va but it does now. VC 472 §4,5 (59)

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(Jno. B. Minor Prof of Law. Univ of Va) The domicil of the husband is usually the domicil of the wife; but not so as to trust the (cts. & their jurisdiction) wife of the protection which the laws of her own state would afford her Story. C.L. {150} 230 (a). 10 Mass Reg. 265 14 Pick (...) 181. The Federal Consttn. declares that full faith & credit is to be given by each state to the decrees of the others 2 Kent 109 (...). (15.) It is difficult to determine the affect of a divorce obtained in Md by persons who go from Va for that special purpose — since Md. would (10 Grat 259.) not be the "bona fide" domicil of the parties. According to our general principle the divorce would be void. But in that case what would become of the principle in the Fedl Consttn just mentioned? If only a husband go to another state to get a divorce, the divorce is void for the juris —diction of that state does not extend to the wife. (442) A woman may bind her husband in two ways, either on the ground of duty or on the ground of agency. A wife may act as agent for her husband either on express or implied authority. Implied authority may be proved by either of the four following ways. 1. From the usage of the parties; as if the wife had been accustomed to act for her husband. 2nd. From the custom of the neighborhood. 3rd. From the husbands voluntarily & knowingly taking the benefit of the contract by the wife. 4th. From the peculiar circumstances of the husband's family as when the husband is absent on a long journey &c. (...) Dom. Rel. [79]. (Note 42.) The Author refers to the liability of the husband for the {acts} necessaries of the wife. In {the} case of purchase of necessaries by (2 Smiths Le Cases 249) the wife the liability grows not out of implied {(...)} authority, but from the husbands duty. But this liability may be dispensed with when the duty (3 B VC 631) is discharged, as by the misconduct of the wife as if she elope with an adulterer 2 Smiths Le Cases §[273.9]. (5 (...) {228} 288 —) At

common Law a married woman possessing separate estate {could not bind it by any act of her own}, but [Bound] it by Bond as she could not bind her person.

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(1 (...) 4.) American doctrine seems to be that she can not except so far as the instrument touching it will allow {End} (2 Smith 444) 1 White & Tudors Le. cases 324 & 343, 434. 8 Leigh 320. William— —son vs Becker. 3 Perry & Davidson 326. Eastwood vs Kent. Note 45. Criminal acts done by the wife in the presence (Le Case 273 & 279 —) of her husband are presumed to be at his coercion and he is liable; but this does not apply to treason {felonies} felonious homicides & keeping a brothel. (11 Gr. 32) (1 Brown Ch. Cases 16) It does not apply to treason {felonies &} felonious homicides because of their enormity; nor to keeping a brothel because that is supposed to the under (4 Vesey 143—4) the particular care of the wife. Other exceptions to the rule have been suggested but have not been (3 Mill & Keen 209) sustained by authorities. Davies 'Crim. Law [322] 4 Blk. Com {39} 29. Reeve's Dom. Rel. no. 72. If the wife be under the command of the husband he (2 [Phil] 110) is then responsible, but if she be alone he is not responsible, but she is then liable. {Reeves} 6 Gr. 706. (2 (...) 252) There is no such offense recognized in Va as petty treason. Benefit of clergy is abolished with respect to whites & now entirely abolished {but} now does not exists with regard to slaves. (8 Leigh 320) V.C [750] §4. (445 N 49.) Blakstone remarks the partiality of the English law to women. Note 49 gives the cases in which (6 Leigh 123.) there is a difference between men & woman. No differences between the sexes exists here in criminal cases; but there are many civil dif— (V.C 542 §9.) ferences as mentioned in the note some of which exist here & some do not. 1st. That the son though younger than the daughter should inherit the estate. This is abolished in Va. No distinction as to inheriting property is made in Va except in the ascending line V.C 522 §1. 2nd That a woman's personal property vests absolutely in her husband. This is established is Va & exists at common law. — Then revised code provides that in case of the death of the husband, the widow shall be absolutely entitled to such slaves & other personal property acquired by deed in virtue of his marriage

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with & which remains in kind after his death which shall be subject to funeral expenses, charge of administration & debts, so far only as the other personal estate may be insufficient for the satisfaction thereof. VC 524 §10 3rd. "That the Baron" is absolutely master of the profits of the feme's real estate during coverture &c exists here as at common law. V.C. 523 §10 4th. "That the husband could be tenant by curtesy of the wife's trust" estate but the wife could not be endowed by that of the husband" is abolished here & there exists no difference between curtesy & dower. V.C. 502 §17 5th. "That a woman's property is taxed & she not repre— — sented" is also recognized here. (...) By revised statute action may be brought for seduction without alleging loss of service thereby. V.C. 589 §1 6th. Slander of female virtue is actionable in our courts. "All words which form their usual acceptation are considered insulting or tend to

a breach of the peace shall be actionable & no demurrer shall prevent {the} a jury from passing thereon. VC 589 §2 (3 Co. Lyl 305 to 315 & notes thereto.) Parent & Child — Note 1st. p 448 the author (448) lays down the strange doctrine that the Father is under no legal obligation to support his child. This opinion is expressed by 1 Tucker's Com. [Bak] 1st 126. We must discriminate between adults & infants. The parent is not probably obliged to support the former, yet doubtless he is under many obligations to support the latter. There are several considerations in support of this opinion. 1st If the father have property of the infant in his poss— —ession & have property of his own, he cannot appro— —priate the property of the infant to its support. 1 Browns Rep. 387. 4 Mass Rep. 98. {2} 3 Brown. 416 2nd Our statutes compel the father to support his illegitimate child. Therefore "a fortiori" we infer

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that he much more obliged to support his legitimate children. Our statute provides that the court may bind out to apprenticeship the children of parents who are unfit or unable to support & raise them up in a proper manner. The inference from this is that the statute recognizes the obligation of those who are able to support their children. As to the support of bastards the statute provides "that the court shall order the father of any illegitimate child, to pay to the overseers of the poor of the county or corporation when it is born, such sums, as it may deem proper, for each year, for the maintenance of the child, until such time as the court may appoint, unless it die sooner." V.C 529 §5. Our statute provides also for the support of insane infants, the expenses of whose removal, main— —tenance or care, shall be paid, to the treasurer of the asylum or into the public treasury as the case may be, by his guardian if there be one who has {one} sufficient estate in his hands or if no guar— —dian, & there be not sufficient estate of the infant then by his father; & if no father, by his mother. The expense in the case of an insane woman is to be paid by her husband & of an insane slave by his mas— ter. V.C 395 §50 3rd. The common Law is common reason & enforces every natural duty that is sufficiently specific to be enforced. 4th. The parent is entitled to the earnings & custody of the child & is consequently bound to maintain it. 5th. Numerous cases recognize this doctrine, as 13 Johns 480 6 Ran. 444. 2 Kent. 190 to 192. 5 Leigh 222. (451) The duty of education has been already sufficiently discussed. For a general system of poor schools see (1 Jef Mem 38.9) V. C. 371. Ch.81. For {a general} particular system see V.C. 376. Ch 82. 2 vol Hen Stat. N. S. p 3. On petition of 1/4 of the white male citizen aged 21 — who are entitled to vote for a delegate from a county, the

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poll shall be opened by the county court, that the votes for and against the free school system (2 Stat at Large N Ser p 3) may be taken & if 2/3 of the votes be in favor of free schools the court shall have the fact en— —tered on the minutes of their proceedings & a copy is to be delivered to the school commissioner of such county. VC {4}376 Ch. 82. Those who are (1 Jef Mem p 40.) entitled to vote are the constitutional voters & those who have assessed of part of

the county levy & have paid the same. In the case cited above 5 Leigh 222 {3}. It was (Acts 52, 3 p.43 Ch 26.) decided that an heir could not be disinherited by vague & indefinite words. This case was that of a man who making a will said that his two sisters should have nothing, but did not say to whom the property was to go, & it was held that the will was not good. 3 Grat 595 (453.) The father has no power of the property of the son except as trustee. The father is guardian by nature of the son, only as respects his person. In other respects he must be regularly appointed (1 (...) 285) by the court. This principle has been carried so far that if a legacy be left to a child & the executor pay it over to the father, who has not been regular— —ly appointed guardian, it is at his own risk (3 BrowC. Cases 96.) & he is liable to pay it over again, though the testator directed it to be so paid. By revised code if a person is appointed guardian he shall have custody of his ward & the possession (2 Russell p.1.) care & management of his estate, real & personal & out of the proceeds of such estate shall provide for the maintenance & education of his ward. But the father of the minor if living & in case of his death, the mother while she remains unmarried shall if fit for the trust, shall be entitled to the custody of the ward's person & with the case of his education. V.C. 53304 §7. 3 Brown's Chancery Cases 96. (Note 9) The natural custody of the child is in the father,

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but the court of the chancery may for good cause, or cruelty &c. take it away & vest it elsewhere. The Va code provides that the circuit county & corporation courts may make any order for the custody & tuition of an infant & for the management & preservation of his estate. V.C 535 §11. 1 [P] Williams 285. 3 Brown Ch. (...) {1}96} 2 [Radm] practice [154]. There is no obligation on the part of an infant to support his parents. (454) Our law has here adopted the notion of the civil law, & allows children born before marriage to to be legitimated by the subsequent marriage of the parties & acknowledgement of the child by the father, & this acknowledgement may be made even after the death of the bastard. 2 Grattan 203. In Va a child is considered legitimate when both of it parent are legally ascertained. In England it must be born in wedlock & when so born, it is presumed to be legitimate. (457) If the husband be beyond the seas "extra quatuor marea" for more than 9 months, so that it is impossible for him to have access to his wife, the issue born during such time shall be illegitimate; but generally during the coverture access shall be presumed unless the contrary be proved 1. [Th.] Coke Lit. 139 notes 1 & 13. & Hargraves notes 2, 2 Brokenbrough 258. 10 Leigh {544} 574. The case in Leigh was this, the husband & wife were both white & the wife was delivered of a colored child. It was held that it was illegitimate, because according to the laws of Physiology, it is impossible that a white man & woman could generate a negro child. And also if the impo— —tency of the husband be proven, & if it be shown that he is incapable of begetting a child a child born under such circumstances would be illegitimate. 1 Co. Lyt. 139 Notes (1 & 13) & 2. (458) For our statutes relating to the maintenance of bastard, see VC. 528. Ch. 125.

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1st. Who is to make a complaint Sec 1st. Mother alone. 2. When complaint is to be made " 1st. When any un— married white woman has been delivered of a bastard child. But in 8 Grattan 20, it was held that a married woman delivered of a bastard child would come under this statute. 8 East 193. 3rd. Where the complaint is to be made sec 1st.[3] In the county or corporation where the woman has resided the next preceeding year. 4th. Before whom the complaint is to be made. §1—. Before a justice of the county or corporation in which she has ((...) Mun. 452) resided for the next preceeding year. The said jus— (Ran. 464)—tice shall examine her under oath & reduce her statement to writing & sign. 5th. How subsequent proceedings are to be made §1 &c. On such examination unless the child appear to be seven years old, a warrant may be issued, requi— —ring the person so accused to be apprehended, & brought before a justice of the county or corporation where he may be found, & he shall require him to enter into a recognizance with one or more sufficient sure— —ties in not less than fifty nor more than two— hundred dollars — to appear at the next court for the county or corporation where the warrant issued & to abide the order of the court. (Jno B Minor) After such accusation shall have been made proceedings may be had therein either at the (3 Munf 490.) instance of the woman or of an overseer of the poor. At the hearing the woman shall be a competent witness unless before convicted of any crime which would render her incompetent in another cause. And if the party accused desire it, he may be examined on oath & his statement weighed along with hers. If the court shall adjudge the accused to be the father of such bastard, it {may} shall order him to pay to overseers of poor such sums of money for each year as it may deem proper for the main— —tenance of the child, until such time as it may appoint; unless it dies sooner. {As often} The court,

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shall order the father to give bond with such pen— (5 Grat 139.) —alties & such sureties as it may deem sufficient for the performance of said order, & shall order (not necessary that the overseers shd have actually paid, but only that shd have become liable) him to jail until such bond be given in court or filed in the clerk's office or the woman or the said overseers consent to his discharge as he be otherwise legally discharged. As often as the conditions of such bonds be broken, a motion may be made before the court & judgement may be given in the name of the said overseers against the said father & his sureties & against his & their personal representatives for the money due with lawful interest thereon, from the time or times when the sums ought to have been paid. The attorney for the court or corporation shall appear on behalf of the woman or the overseers in every case under [their] chapter V.C. chapt. 125. The proceeding in these cases is not intended to prevent incontinence but only to prevent such children becoming a charge upon the parish. The putative father is not entitled to the custody of his child unless against stran— —gers. 2 Johns 375. 15 [Do]. 209. So under special circumstances the custody of the child may be taken from the mother. 2 Johns 375, 5 Johns 355; 3 Munf. 495. Hale vs. Overseers of the poor of Augusta. (A leading case) (459) The common Law in most cases so judicious and reasonable seems to be little less than absurd & ridic— ulous in its restrictions on bastards, since they are not allowed to inherit nor to transmit inheritance. The only reason assigned by Ch. Baron Gilbert p 37 — is that the Lords would not

allow themselves to be served by persons having such a stain as (5 Wheat 255.) illegitimacy upon them. This severity was mod— —ified by one of the earliest statutes in Va & bastards are capable of inheriting & transmitting inheritance in the part of their mother as if lawfully begotten. V.C 523 §5. 8 Leigh 316. Garland v. Harrison

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(5 Wheat {262} 255) This statute was intended to enable bastards to trans— —mit their property to their maternal relations. A contrary construction was put upon it by the Sup. Ct. (8 Le. 368. 4 Kent 414—15) of the U. States, which was that the statute only intended that the bastard should be entitled to receive property from & transmit it to his mother, & that he could not transmit to his maternal relations. 5 W. 253. But our courts held other— —wise, & at the first opportunity overruled this (3 Gibbon's (...) p 174—(...)) decision. 8 Leigh 368. In 5 Wh. 266, there is appended a note by the reporter {wh} concerning the law of bastards which is worthy of observation. Many of the states adhere to the common Law doctrine Ch. Kent says that in Maine, N. Hampshire, Mass, NJ, Penn, Del, Md, S. Car, Ga, Ala, & Miss, bastards are placed under the disabilities of the common law. But in Md, Ga, Ala, La, Ken, Mo, Ind, & Ohio, bastards may be rendered legitimate by the subsequent marriage of parties & recognition of the child 2 Kent 209 — note (...). The states which allow bastards to inherit are Va, Vert, RI, Ky, Ohio, Ind, Mo. In Connt, Ill, N Car, Ten, & La, the same principle prevails with some mod— —ifications. In N Car. bastards inherit to their mothers if there be no legitimate children. Bastard brothers & sisters inherit to each other, excluding however the mother, probably as a punishment for her incontinency. Tenn. very much resembles N. Car. In La, which is governed by the civil law, the law is far more indulgent. Bastards there may be inherit to their mother, if there be no legitimate children & to the father if he acknowledge them & have no legal heirs; & the father & mother may inherit to their bastard offspring. 4 Kent 414 & 15.

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(461) Guardian & Ward

We propose to give an account of the different kinds that exist now & have ever existed in England & then such as exist in Va. I. Guardians by nature These were recognized by the common Law. To this guardianship the father has the 1st right — the mother the — 2nd — 3rd and any of the lineal ancestors who first get possession of the child the — 3rd —. The common idea of a guardian suppose the death of the father before [there?] can be a guar— —dian. But this is not the legal idea for there may be a guardian during the lifetime of the parents. The laws understands by a guardian any one who takes upon himself the care of the child. This kind of guardianship in Engd applies only to the heir apparent until he at— —tain the age of 21 — & not to the other children, and it extends only to the person of the infant and not to his property. II. Guardians for nurture: This {was} is for the pur— pose of supporting the younger children & seems to belong to the parents "only" & does not extend beyond the age of fourteen

(14). It embraces only the custody of the infants person. 10 [Yesy] 53. In both of these guardianships (nature & nurture) the Ct. of Chancery may interfere & remove the child from the custody of the parents, when it deems him unfit for the trust imposed upon him. 1 Pr Wm [85] 705. 2 Russel 1. In this case Lord Seldon said a bad character was a sufficient reason for removing the child & the "House of Lords" sustained him in this opinion.

III. Guardians in Chivalry This resulted from tenure by knight service & was vested in the Lord of the fief, and,

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applies only where infant (...) lands by descent wh were held {to servants} by knight services. They were

1. Socage = Where the amt. of services was ¹ certain. 1. Free { 2. Chivalry or knight service = Where the amts. ² uncertain.

1. Villain Socage = Where the amt. of services ¹ certain 2. Base { 2. Pure Villainage = Where the amt. sers. ² uncertain

It extends not only to the care of the person of the infant, but also to the care of his estates, which were held of the Lords. It applies to males under 21 & continued until 21 — at their ancestors death, & to females under 14 & until 16 or marriage. (continued The Lord was bound to maintain & Educate the infant) The pecularity of this species of guardianship is that it is for the benefit of the guardian, who receives all the profits & might sell it the guardianship to a stranger whether in— terested in the ward or not, & if not so disposed of it went to his heirs. The facility with which this guardianship could be abated can alone account for the time it endured, (for it was not abolished until "12" Charles II.) for the father might have conveyed his estate or have devised it & then the guardian in chivalry was not allowed. IV. Guardians in Socage: This also springs out of tenure. It takes place where the infant holds by socage, which the most common tenure in England, so much so that it is called free & common socage. The right of this guardianship is in the next of kin who cannot by any possibility inherit the lands & this was to take away all inducement to remove the heir by unfair means. Ch. Kent thinks this savors to much of a distrust of the frailties of human nature. 1 Th., Coke Litt. 163 note 14. Such is also the opinion of Prof Minor. Unlike guardian in chivaldry it is in no respect

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for the benefit of the guardian {Lord} & cannot therefore be aliened. This guardian must account for the profits when the heir attains age & it carries with it both the custody of the person & of the estate but lasts no longer than until the age of fourteen (14). V. Guardians by Election This arises only when there is no other guardian. It must be of Com— mon Law origin, not having been established by any statute, yet it must be of rather recent date as it was never

mentioned by any writer before Lord Coke (except Swinburn). Lord Coke mentions it in such a manner as to induce the belief that it was not lawful. It is create usually by election before a Judge (or court) but sometimes by deed. 1 Coke 15{8}7 — 8. Note. 6. VI. Guardians Appointed by Ld Chancellor It is difficult to determine how the power of appointing guardians came to be vested in the hands of the Lord Chancellor. Some think that the King as parens patriae, having power to appoint guardians in all cases has deputed part of his authority to the Ld Chancellor. VII. Guardians Appointed by the Ecclesiastical Courts We merely give the name of these, since it is doubtful whether the courts have the author— ity to appoint. 1 Coke Litt. 159 n 1. VIII. Guardians Appointed under the Statutes of 4th & 5th Philip & Mary: The intention of this statute is to present the carrying off & marrying girls under 16 without the consent of their parents. But it has been construed to imply the custody and education of such girls belong to the father or mother or person appointed. This guardianship applies to persons under 16, & this application

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results solely from implication. The guardian con— —tinues until the infant arrives at the age of 21 yrs. IX. Guardians Appointed by the father under the Statute of 12th Charles II. This statutes per— mits the father, by deed or will, to appoint in the presence of the witnesses, those whom he chooses except popish recusants. X. Guardians by Custom of particular places Nothing said about these by the Prof J B Minor Esq. XI. Guardians, ad litem. These are appointed to assist & maintain infants in suits at law. His power extends only to the particular case for which he was appointed, & a new guardian must be appointed for each new case. 2 Kent Comm. 2{67}17. 1 Coke Litt. 151 n 1-6. Bacon's Abrid —gement. "Guardian" A 1,2, & 3. We are next to consider which of these species of guardians exist in Va. I. Guardians by nature, which extends to all the children alike, since they all inherit alike & are equally heir apparent —& cannot be made to apply to the eldest son as in England. II. Guardians for nurture are superseded by the preceding one, for it embraces all the childen. III. Guardians in Chivalry does not exist here because we have no tenure by knight service to which it was incident. IV. Guardians in Socage — for the same reason does not exist in Va. Our statutes prior to the last revisal spoke of these in 2 instances & in one instance authorized the court to take bond of such guardians. This mistake pro— ceeded partly from inadvertence, partly from Blk's bad definition of the guardianship & partly from the reason that the statutue was enacted in 1785, when it was uncertain whether the socage tenure was abolished or not, especially as the

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King had declared that all the lands should be held in free & common socage like the lands of East Greenwich. All the lands in Va are allodial & not held by common socage tenure. There are no guardians in Va by socage, not only because there is no socage tenure of lands, but also because there is no next of kin disinheritable in whom the guardianship may vest. V. Guardians by Election are recognized in Va. The election must always heretofore, have been made in court

& by the party over 14 years of age. By V.C. the infant over (14) fourteen & may in presence of the court or before a justice in writing nominate his own guardian, who if approved by the court shall be appointed accordingly. V.C 533 §4. 2 Va Cases [204] VI. Guardians appointed by the Chancellor. The county & superior courts of the wards (V.C. 534 §11) residence are authorized to appoint, control & suspend guardians & to take cognizance of all acts arising out of the relation of guardian & ward. The courts exercise this jurisdiction as courts of Chancery. The power to appoint is directly derived from the statute. 2 Va Case 204. After a guardian shall have been appointed by the court & until he shall have given bond, the ct. may from time to time appoint a curator who shall give bond & during the continuance of his trust shall have all the powers & per— form all the duties of guardian & be re— sponsible in the same way. V.C 533 §6 VII. Guardians appointed by the Ecclesiastical cts, do not exist in Va because we have no such courts. VIII. Guardians appointed by the statute of 4 & 5 Philip & Mary, are superseded by guardians by nature as that guardianship is applicable to all the children 1 Tucks Com. 138 Bk I. See VC 725 §16 provisio for [stealing] a white woman undr 14.

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IX. Guardians appointed by the father exist here as in England, our statute having closely con— —formed to {29} 12 Char. II. Some changes have been made VC 533 §1 & 2 where the appointment is to be made by will only & not by deed. X. Guardians by particular customs of places does not exist here, since we have no local customs. XI. Guardians ad litem exist here as in England, with this difference however that they may be com— —pelled to serve, but in England they cannot. But they are not liable for costs of suits & shall be allowed reasonable compensation which the party on whose motion the appointment was made shall pay. V.C 648 §16. Of all these guardians only three (3) (viz. those ap— —pointed by the ct. those by election & those by the father) are charged with the care of the infant's property & consequently they alone are required to give bond & security. And if in either of these cases the court neglect to require {to} security of the guardian before he qualifies it is liable to the ward for all losses from such neglect. V.C. 533 §2,5,6. It remains next to consider when &c each of the dif— —ferent kinds of guardians are appointed & when they determine. The father is guardian by nature in the— 1st right or if he be dead & appoint no guardian by will then — 2nd the mother, or if the mother too be dead then — 3rd the nearest lineal ancestor. If there be no guardian by will, the court if the infant is under 14, appoints one. The question is whether if the ct. appoints a guardian independently of the will of the infant, it would pursue the principle which requires the guar— —dian in socage to be disinheritable blood. (...) After an examination of authorities we presume the socage principle would be disregarded. If the infant has made his election or the

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court has appointed a guardian, he cannot be removed or superseded except for good cause. 1 John's Ch. Rep. 25. Guardians may resign (Ct. allowing them to do so) or be removed or his

duties cease upon the infant's attaining if a male 21 years of age or if a female 21 or marriage or in the case of a testamen— —tary guardianship, he may continue in of— —fice until the time limited therefor. V.C 534 §7. Judge Brokenbrough is of opinion that the testamentary guardianship is not superseded by the marriage of the female, but exists as long as the time limited by the will. See same statute, last clause of §7. But Prof Minor says that marriage as to females put an end to the guardianship both as to person & property, if the husband be an adult & if not then the estate goes into the hands of her husband's guardian. 7. Leigh 366. As to males if the husband be under age when he is married his property & that acquired by (Act. "51—2 p 79 C. 96 §1.2.) marriage is continued in the hands of his guardian. As to transferring effects in this state to persons in another state see V.C. 538 §2 & following —. Reeve's Dom. Relations 358. (462) Powers & reciprocal duties of Guardian & Ward. 1st. As to the custody of the ward's person, the (*See asterisk next page) statute provides that the guardian shall have the custody of his ward. 533 §7 — and the guar— —dian may bind him apprentice, with the consent entered of record of the county or corporation in which the minor resides or without such consent if the minor being 14 years of age agree in writing to be so bound. 530 §1 & 2, nor can he marry without the consent of his guardian 469 §3. 2nd. As to the management of the ward's estate. The statute provides that the guardian shall have the possession care & management of the

ward's estate real & personal & out of the proceeds of such estate shall provide for his maintenance & education. 533 §7. As a general rule the guardian can only apply profits to the maintenance of the child, unless deed or will authorizes him to dispose of the principal. No exception is made however as to real estate; which however may be sold by a decree of the circuit court, in Chancery. It must be shown to the satisfaction of the court that the interest of the infant will be benefited by such sale & no one injured, before a court will grant a decree of real estate or any part thereof. VC 536 §§2,5,7,12. At the death of the infant the money arising from such sale will pass as real estate. As to the principal of (...) no disbursements by the guardian shall be allowed except in the two following cases: viz, 1st. Where the infant is too young or too infirm in health to be bound out as an apprentice or no suit— —able person will take him as such. —end. 2nd. When although old enough to be bound out as an ap— —prentice, it shall be deemed best for the ward (6 Rand 444. 3 Legh 12. 11 Do 439. 1 Grat 144) that the principal of his personal estate or a portion thereof, should be applied towards his education & maintenance, & the courts before which the accounts of the guardians may be settled, shall be satisfied that such expenditure was actually made & was judicious & proper, & shall allow the same. V.C 534 §8 & 9. (It should have been mentioned (*,refers to left hand page) under the head of "custody of the ward's person", that when the ward is illegally confined the guardian can attain custody of his person, by a writ (4 A & (...) 624. 5 Do 441) of "habeas corpus" or a "writ of ravishment of ward". But the most common way is "filing a bill" in Chancery. The benefit to these writs is sec— —ured by statute VC 98 §2, which provides that " the right & benefit of all writs,

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remedial & judicial given by any statute or act of parliament made in aid of the Com— (V.C 500 §3,4) —mon Law, prior to the 4 yr of the reign of Jas I of a general character not local to England, shall still be saved so far as the same may (6 Rand 588) consist with the "bill of rights" & constitution of this state & the acts of the assembly .) (6 Lgh 399) The guardian or person acting in that capacity is (7 John C Rep 155) required to pay compound interest, on money retained in their hands more than 6 months without investment. 1 Munford 132. This is a severe (1 Wash 90) condition, but nevertheless is just. 4 Call 453. The reason of it is the weakness & imbecility of the (1 Joh C Rep (...) 155) infant & the capacity in part of the guardian to injure the infant. This is one of the few cases in (1 Do 5.) which interest on interest is allowed. 11 Gr. 111 3rd Accounts & allowances to be rendered to the ward — (V.C. 500 §3,4) The guardian is required to settle his accounts an— —nually before court or commissioners appointed by (VC. 534 §11) the ct. In England a guardian reseives no pay with us they are allowed reasonable compensation (547—8 §3—5 §7—9) for their services, commonly 5 pr ct. commission or all actual receipts & if this is too little it will be increased by the commissioners, but as a (548 §6) general thing it is at the discretion of the ct. (534 §[10]) 6 Leigh 699. But if the guardian sell or unnecess— —arily (551 §18 & cases cited) convert the property of his ward into money he shall not receive his compensation. Reasona— (527 Ch 132) —ble time is allowed the guardian to put the money out at interest, usually 6 months, but they (1 Rob 196) commonly close accounts other end of {the} every year & charge interest on the balance. 1 Munf 132. (1 Grat 144.) A guardian may {bear} lease the estate of his ward during his minority, but he cannot sell the land & the (2 Leigh 14.) person buying cannot acquire a good title to it. Yet the title of person buying personal property is good & the guardian is responsible for the pro— priety of his conduct in selling it. 1 Wash 90, 1 John' Chan. Rep. 5. 6 Ran 538. 7 John 152. 6 Leigh

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77 399 — where is was decided that a guardian has some power as executor over personal estate. & the purchaser has good, title, if he buys "bona fide", though the guar— —dian is responsible to the ward. The guardian is liable to the ward if he commit waste of the estate; & if it shall be found by a jury that the waste was wanton he is liable for threefold damages. V. C. 566 §§ 3 & 4. If a guardian sell he must get the consent of the court, for he cannot appropriate the principal of his ward's estate without a decree from the Ct. These settlements of a guardian' accounts are closely & rigidly examined by the Ct. An infant shortly after coming of age & before settlement made cannot release to his guardian. For if he does though the thing be (...) done, the Ct. suspects fraud so vehemently that it will annul the contract. See a remarkable case in 2 Leigh 14. Amstead vs. (...). This is identical with the rule that an agent cannot contract for his own benefit in an (...) undertaken for his prin— cipal. We subjoin the form of an acct rendered by the guardian. ([Dv] 1848) U Ward in acep. with. C.Careful Guardian Cr.

Nov 10th 1848 Dec. 15th To disbursement for pr. (...) filed $450 By cash recd from 1849 executor or ward's Nov 1. " do " do " do " do $150 father $10,000 " 9th Guardians Commission on Recpts $11.500 @ 5 pr.ct $575 " Int. after 6 mo. on $10.000 .300 Balance due ward $10.325

" Profits of lands this year 1.000 " Estimate profits of slaves 200 $11.500 $11.500 1849 1849 Nov 28. To this sum paid judgement of 6 Smith on Ward $5.000 Nov By balance of $10,325 10th. last year Dec 20 To Disbursements for Ward 1850 for vouchers filed .210 Nov. " Profits of lands. . 950 9th. this year [Oct.] 17th. " do " do " do " do .200 " Estimated profits .170 of slaves Nov. 9. " Int. on $1000 from time of distribution .285 " Int. on balance 619.50 of last year " Guardian comns. on recept. $1739.50 @ 5pct. 36.99 $12,064.50

" Balance due Ward $6,282.99 $12,064.50 Nov 10th By balance of last yeaar $6,282.50

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(463) The text states the different ages at which persons infants are allowed to act in different capacities; at which they may dispose of property by will or otherwise. The text states that an infant at 17 may be ex— —ecutor. This common Law would prevail here if the law did not require the executor to enter into a bond, for a minor cannot enter into a bond, until 21 yrs of age. VC 540 §102. Minors of the age of 18 & upwards may dispose of personal estate by will. 576 §3. (462 or 12) The proposition is laid down that a man is 21 on the day preceding his anniversary or birth day. (2 (...) Raymd 10 94) This proposition though often repeated is a mere (...), [teen] contrary to common sense & cannot be Law. The reason given for it, (that the law (1 [Saen] 44)knows no fraction of a day) is futile; for by that mode of reasoning, a man might be (3 Wilson 2{3}74) made 21 the day after his birth. 1 (...) Rayd 480. The true version is that he is 21, after the last moment of the day preceding his anni— —versary, or on the 1st minute of his anniversary. (464-) Suits are not brought in the name of the next friend, but in the name of the infant by his next friend, for he is obliged to sue always in his own name. In Va an infant may sue by his guardian, as will as by his next and also defend, by him. Code 535 §12. If an infant appear by attorney when he ought to appear by guardian the error will not work to the in — jury of the infant. It is not held to be wrong if he defend by his regular guardian, yet it seems a guardian ad litem ought to be ap— pointed for that purpose. 6 Mun. 103. 4 Mun. 439. The acquiescence of the ct. is deemed (...) appointment. (465) The statutes here referred to (viz. 7 Anne & 4 Geo III) have not been in terms reenacted by us, but we have statutes analogous, touching leases, suggested in 1 {Washington} William 4th 65th {p.} Ch. {4th Chapt.} See VC 535 §§1&2 which applies not only to infants, but to persons insane, & dower & coverture. (...)

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Though not in terms reenacted Prof. Minor thinks there can be no doubt, that these statutes referred to would give the guardian power to direct the sale of an estate when the infant was trustee. End.

(466) The law touching infants with regard to the contracts they may make & the distinction between contracts which are void; or voidable by the infant when he comes of age is in a very unsettled state. The best dissertation on the subject is to be found in 2 Henry Blk. 511. 2 Kent 233. 1 Mason 82.

There are three classes of cases in which such contracts are either valid, void, or voidable respectively.

1st. When the ct can pronounce an act or a class of acts, to which one belongs as prejudicial to allow the infant to make, it is void & the infant can not make it valid by affirming it.

2nd. When the ct. can pronounce an act or a class of acts as beneficial to allow the infant to make it is valid.

3rd. When an act is of a doubtful tendency it is voidable at the election of the infant. We propose in this connection to consider

I. What contracts of an infant are valid, void, or voidable.

II. What confirmation is necessary for those contracts which are voidable.

III. The acts of an infant which are not contracts & for which the infant is liable — such as torts (...) assaults slander deceit &c.

I. What contracts are valid void or voidable. [Bingham?] on [Enforce?]

((...) Hen [Blk?] 511—)1st. Contracts which are valid.

1st. Contracts for necessaries, are valid because it is beneficial to allow the infant to make ((...) Kent (...) 226) such contracts. 2 Kent 239 — Necessaries may be defined to be such reasonable supplies, which are profitable {supplies} for the infant, suitable to his station & not supplied from any other [source?]. According to Lord Coke, 1 Coke 175 n((...)), necessaries include victuals, clothes, & education & good

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instruction which may profit him afterwards. The supplies whatever they are must correspond (19. Pick 492.) to the infants real, & not apparent position in society. 2 Kent 236. 5 {Burough} Bighams, New Cases, 198—231, 6 Mass. Rep. 78—80. — Uniform & equipments have been held to necessaries for a captain in the army, but in 1 Holt 77, a chronometer was not held (1 Holt 77) to be necessary for a Lieutenant in the Navy. Nor soda water, pastry, jellies & candies, for a (6 [Carring] & Paine) student at college. 1. Munf. & Granger 550, de— cided that horses hired by a student, at Oxford, the son of a gentleman was not necessaries. (16 Mass. Rep 528.) All such articles as are purely ornamental & are not useful, are not necessaries & for then the infant is not responsible. But if not (6 (...) 42.) of this character, the question is whether they are not necessary in order for him to support his position in society & if so he is responsible. (Ch. Con. 150—1 [Do] 144.) Although an infant is responsible for money paid for necessaries, yet he is not responsible for money lent to him to be so laid out, because he is not of sufficient discretion to ap— —ply it. The lender however may recover in equity, by substituting himself in the place of the creditor, a fortiori then he is not responsible for articles purchased to carry on a trade. Text 466 n 17 —. 2nd. Contracts for marriage settlement are valid (3 Hen. & Munf. 399 —

5 Grat 540. 2 Kent 240. 2 Lomax Dig. [{1}12] §9 .) on principles of policy because it is of great advantage to the state & themselves to allow them to make such contract. But this does not author— —ize guardians to enter into such marriage contracts, for the infant is in nowise bound to comply with such. See case in Lomax referred to above. Whether infants may bind themselves in respect to lands, as in other contracts, is yet a matter of doubt. 2 Ken. Com. 244. 5 Gr. [57]

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3rd. Contracts for apprenticeship are valid & might have been referred to the head of necessaries. 4 Leigh {692} 493. — But while an infant may bind him— —self for an apprenticeship, he cannot bind himself for an amount of services not amount— —ing to apprenticeship. 2 Picks. 332, 12 Do. 110. 4th. Such acts as the law obliges him to do at any rate are valid e.g. assignment of dower — make partition — military service, — which latter is valid because it is the duty which every citizen owes to his county in times of danger. 3 Grat. 405, 4 Do 41, 1 Rob. 615 —. 2nd. Contracts which are void. All contracts which it is prejudicial to allow the infant to make are void. To this class be— (15 Pick [7], 10 John 33) long all penalties, forfeitures, releases & convey— ances to guardian, negotiable notes & acceptances therein, & accounts stated. A negotiable note made by an infant is said to be void — though a prom— ((...) Rep 40.) —issory note is only voidable. 2 Kent. 235—6, 14 Mass Rep 457 —. It is important to observe that whether (6 Yerg 1) assurances are void or voidable it is immaterial if the original consideration be necessaries. You may recover upon the necessaries though not upon the assurances & in this case it is best to have 2 count setting forth the cause of complaint in each —. Contracts with infants which are void are not binding in either party for the obligation must be reciprocal in order that the contract be binding. Those which are voidable are binding on the adult, at the discretion of the infant. 3rd. Those contracts which cannot be said to be either beneficial or prejudicial are voidable at the (Co. 176.) election of the infant. This class embraces the great bulk of the business in which persons are engaged, such as, simple promissory notes, or— dinary bonds without a penalty, ordinary convey— —ances of lands &c. 2 Ran. 478, 2 Kent 235—6 —.

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II. What confirmations are necessary for those contracts which are voidable. (Ch. Cont 152. [Bac. Adv Title Infancy (D) 8.)) Confirmations applies only to voidable contracts. The common law held that all infants contracts of record had to be avoided during infancy, because his infancy had to be determined by inspection of the Ct. which could only be done during non— —age. If at common Law, any act of confir— —mation be necessary to make a voidable contract (Except in continuing contr wh. are void unless dis—affirmed) valid, very slight circumstances were held su— —fficient, but it is doubtful whether any confir— —mation is necessary; for as some think the contract is valid, unless disaffirmed by the infant on his arrival at age. Some say he must disaffirm to make void & affirm to make valid. 2 Kent 237—8. 9 Mass Rep 62. In NY the

rule goes much further & says, that of all voidable contracts unless the infant within reasonable time after coming of age, re— —pudiate them, he will be bound by them. The embarrassment is obviated in Va, by a statute first enacted in [1837] — see V.C. 579 §1. III. Acts not contract for which the infant is li— —able called torts. Such as assualt, slander, deceit &c. An infant is liable for all sorts of torts. Nor does infancy protect him from his fraudulent acts, — hence if he has entered into a contract for a valuable consideration & then resolves to declare the contract void, he must return the consideration. If he pays money on a contract during infancy & then wishes to get clear of the contract he cannot recover the money paid 2 Kent. 240. — He cannot have the benefit of a contract on one side without return— —ing an equivalent on the other. His infancy is to be used as shield & not as a sword. 15 Munf 359. 13 Do 254. —. 2 Kent 240. 2 Hen Blk. 511. (Leading case)

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Corporations.—. All personal rights says Blackstone die with the persons that hold them. It was necessary to perpetuate rights in some in— —stances & hence the necessity of creating corporation or artificial persons who cannot die. (468) The honor of inventing corporation says Blackstone belongs to the Romans; but Ch. Kent affirms that they were found in the Pandects of Solon & from them introduced into the Roman Law 1. Kent 525 note b. 2 Kent 268. (475.) A name must be given says Blackstone to each corporation when created & when so formed it acquires many rights, privileges, capacities & on cap —acities. The rights of course belonged to them at Com. Law, but it is not to be imagined that they may not be enlarged, limited, re— —strained or prohibited by their charter. Our statutes point out specifically the rights of corporations, when the said rights are not laid down in its charter. Charters are granted here only by the legislative authority. In England they were granted by the King & sometimes by parliament. Our statutes points out that attribute of corporations, which unless restricted by their charters are the same as those mentioned in the text, viz: 1st To have perpetual succession. 2nd To sue & be sued, to implead & be impleaded &c. 3rd To purchas lands & hold them for the benefit of themselves & their successors & 4th To have a common seal. 5th To make by—laws for their government, provided the do not con— —flict with the laws of the country or of the state & U States. V.C. 291 §1 & 2. 3 1st. To have perpetual succession. Corporations in Va are not however perpetual generally; but for a definite time specified in their charter, & when they are perpetual there is generally a clause inserted subjecting them to the

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direction of the legislature. If there is no such clause the charter is irrepealable & perpetual, except by virtue of eminent domain with just compensation. 2nd The power to sue & be sued &c. is generally conferred subject to modification particularly the right to receive in the corporate name. 3rd To purchase lands &c. is always {included} limited in our charter unless otherwise specially provided. In England the power to purchase & hold lands is exceedingly

circumscribed, by a long series of general statutes commencing as early as Ed. I & have continued down to Elizabeth, declaring that land shall not be held "in mortuo manu" or in mortmain. (These stat: of mortmain extended from Mar. Char. 1215, down to reign of Geo: II. J.B.M & J.W.M). It was always limited in America & sometimes prohibited yet this must be stip— ulated in the charter. When granted the ex— ercise of it is regarded with great severity by the cts. 3 Ran. 141. (Corporation allowed to purchase neighboring property & render it fire proof) 4th To have a common seal. This was always con— —tained in our statutes; but it is not admitted that no act of corporation is valid, which has not the seal profixed; 3 Ran 141 — 5 Mun. 324 (9 [Pm Wm] 655.) 2 Kent 290—1 N([B]). It is now decided that the acts of majority entered on the corporation book & all acts of its agents authorized by a vote of the corporation are as valid & binding as if done under the seal of the corporation. (3 Ran 141) 7 Cranch 305. 3 Grattan 215. In this last (5 Munf [324]) case it was decided that a corporation may make a deed of trust in favor of its own mem— bers, as creditors in case of insolvency & also 8. Wash 338 5th To make by—laws. This is universally bestowed with the proviso that they shall not be inconsistent with the laws of the country. 1 Coke Litt 184 Note (c). End. (475 n 3.) Capacitites of foreign corporations. They may sue in their corporate name in other countries. See 2 Ld Raymond 1532, Henriquez vs. Dutch West Indies Company.

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The general principle as laid down by Judge Story, in his conflict of laws {(470)} §565 is that all foreigners, sovereigns & corporations sui juris, if not otherwise disabled by the laws of the place where the suit is brought, maintain a suit to vindicate their rights & redress their wrongs. If the corporation is competent to make a contract it is generally competent to sue on it one. In most countries foreign corporations are prohibited by the laws to do certain acts & from entering into a certain class of suits which are contrary to public policy. Thus a bank of Ohio can't validly lend money to a citizen of Va, in Va, — nor can it recover such money lent, but it may lawfully lend to a citizen of Va in Ohio & can recover it all in a ct. of Va. 2 Ran 465. 5 Leigh 475.—. If money is loaned to a citizen of Va in Ohio, by a bank there, that citizen having a "bona fide" intention of remaining & for greater security takes a mortgage in lands in Va, the cts of Va will be bound to give effect to it, 4 Johnson Ch. Rep. 372. Silverlake bank vs. North. These limitations growing exclusive— —ly out of the prohibition of foreign corporations trading in other states gives rise to two ques— —tions with regard to the legality of such acts, 1st. Whether the charter allowed the contracts. 2. Whether there was any thing in the laws of the country where it was made & where the suit is instituted to prevent such contracts. 4 Howard 16 — 13 Peters 589—. Bk Augusta v Earle. If both of these questions can be answered satisfactorily the cts. are bound to enforce the contract. See 13 Peters 289 leading case —. (Note 3) says an "assumpsit" does not lie against a corporation. This has been overruled by more recent authorities & no objection seems to have been made by the Sup. Ct. of the U.S. to allowing assumsit for work done on a banking house. See 7 Cranch 302.

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It is true that formerly when all acts of a corporation were required to be under seal in order to be valid, assumsit would not lie; since an act of assumsit is an act to recover on a contract not under seal. 14 Johnson 118 —. But when it became settled that corporations might make lawful contracts not under seal, it be— —came necessary that assumsit should lie as an appropriate remedy. The case cited by the annotation was indeed a case of assumpsit. "But the rule is now es— tablished that while a corporation acts within the just scope of its authority all parol contracts made by its authorized agents are express promises & all duties imposed & benefits conferred at its request raise implied contracts for the enforce— —ment of which an action lies." 2 Ld Ray— —mond 1532. 4 Ran. 578. 5 Leigh {3}475. 14 John 118. Observe that when a corporation is plain— (5 Gr. 132.) —tiff it must be prepared to prove (unless the pleadings admit it) its corporate existence not only by showing its charter, but by proving its compliance with the terms of charter. 4 Ran 5{9}78. 9 Leigh 240. 9 Grat. 109. (476) The author here speaks of the privilege & dis— —abilities of corporations "arising which he say that corporations can commit no wrong. But this doctrine though plausible is contrary to common sense, & it is now es— —tablished that corporations are liable for (1 Car. & Marsh. 606. {2 Kent.}) all torts trespasses &c. commited by its au— —thorized agents. The leading case is in 16 East Rep 6. See also 41 Eng. C Law. Rep 530. 43 Va Cases 337. 2 Kent 284. (477) It is here said that a corporation cannot be an executor or adminr or perform any (...) &c because having no soul" it cannot take an oath. There are

however authorites in power of the capability of a "corporation aggregate" being an Executor & it is now settled that in such a corporation being so named it may appoint persons styled ([Tollers] Execut 30 —1. Gilbert's [uses] [7.n.1]) "Syndics" to recieve administrations with the will annexed 1 Williams Extr 113. Execut. [A.2.] Bac Ab. "Manners of bringing corporations before ct." "cant be impris— oned" —. Our revised statutes authorize suits to be brought against a corporation & the method to be pursued. It says that any action at law or {in} (Bacon's uses, 57) suit in equity may be brought against a corpora— —tion, wherein its principal office or wherein its Mayor (2 Coke Lyt. 706.n.) Rector or President or other chief officer resides V.C 641 §1 & 2. — It also provides that it shall be sufficient to serve any process against or (2 Kent 279.) notice to a corporation in its Mayor rector Presi— —dent or other chief officer, or in his absense from the county or corporation in which he resides, or in which the principal office of the corporation is, if it be a city or town, service on the president of the council or board of trustees, or in his ab— —sense on the recorder or any alderman or trustee shall be sufficient, & if it be not a city or town, on the cashier or treasurer, or if there be none such, or he be absenst, on a member of the board of directors, trustees. or vistors. If the case be against a bank of circulation & be in a county wherein the bank has a branch service on the president or cashier of such bank shall be sufficient. If the case be against a corporation other than a bank, service on the agent of the corporation against which the process is & a publication of the process shall be sufficient. Service against any person under this section shall be in the county or cor— —poration where he resides: & the return shall show this, & state on whom and when the service, was, otherwise the service shall not be valid, VC 643 — 4 §7.

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"It cannot be seized of lands", says the text. It is certainly true that a corporation being a political person cannot generally do anything y et it is perfectly settled that it may be seized; (2 Kent 279 — 80. 2 Coke Lit) as trustee.

(478) Author discusses "the way in which corporations may act". In aggregate corporations the act of the majority is the act of the whole. In Va it is laid down in the Charter what shall be a legal meeting of a corporation & what shall be a legal majority of that meeting.

(480.) "How corporations may be visited". In England are either "Ecclesiastical", which are visited by the bishop of the diocese; or "Lay", which are either 1st Eleemosynary visited by the founder his heirs or anyone as the founder directs or 2nd. Civil, which are visited by the King. We have no Ecclesiastical corporations in Va (Trinity College NY is an ecclesiastical corporation) (worth 3 mil. $ in property)) & so far as they are recognized in the U States they are visited as Eleemosynary. 2 Kent 300. Eleemosynary corporations if endowed by the public in part or whole, for purposes, are subject to the control of the court of law, who exercise (*College of Wm & Mary) their authority by writs of "quo warranto" & "mandamus" 1 Call 134. If they are endowed (1 [Call] 164) private persons for private purposes they are subject to the control of visitors appointed by the founders, 2 Kent 302. Civil corporations are always sub— —ject to the control of the cts. whether they be public or private 2 Kent 304. 2 Va Case 190. But cts of Chancery will compel corporations of all kinds to discharge honestly the pecu— —niary trust confided to them 2 Kent 303 — 4 — 5;

(484.) *"How corporations may be dissolved" —, a (a No action at common law) At com. Law upon the dissolution of a cor— poration lands &c held by them, vested to those who had granted them & all debts to or from the corporation were discharged. To guard agst this they were assigned to trustees.

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(They assigned their effect & chosen in action to trustee) 89

& this doctrine has heretofore be confirmed in Va. (2 Robin 56.) 7 Leigh 154. Our statutes obviate the difficulty aris— —ing out of this law. Our statute provides that when any corporation shall expire or be dissolved or its corporate rights & privileges shall have ceased, all its works & property & debts due it shall be subject to the payment of debts due by it; & then to distribution among the members according to their respective inter— ests; and such corporation may sue & be sued as before for the purpose of collecting debts due to it, pros— —ecuting rights under previous contracts with it, & enforcing its liabilities & distributing the proceeds of its work, property, & debts among those entitled thereto. Va. C. 298 §28.—. Lands do not revert to the grantors but they are sold & the proceeds dis— —tributed among the members of the corporations. But if none of the members be living, it then reverts to the grantors. No action can be brought by or against a corporation after its discontinuance except that which is absolutely necessary to the closing up of their business. (485.) "In England

corpations are disssolved by the Parliament. A very important question arises here, viz; whether a legislature having granted a charter may modify or annul it, before the period limited for its expira— —tion. The Sup. Ct. has distinguished, between public (1 Call 104) or private, corporations & has decided that a pub— —lic corporations may be altered at the will of (Wm & Mary College) the legislature; but that charter of a private corporation cannot be altered on the ground that (*Dartmouth College vs Woodward. (...)Webster's works. cannot take away a charter nor create rival) they are contracts. 4* Wheaton 518 *9 Cranch 52 2 Kent 305, this doctrine was denied in Va. 4 Hen. & Mun. 3{14}48. The N York cases carry this doctrine much farther & say that you cannot create a rival corporation for it operates as a fraud on a prior grant & goes to defect it. 5 Johnson Ch. Rep 111 — 4 Do. 160. But this is not santioned by the Sup. Ct. 11 Peters 420, also by the Va cts. They say that there must be a special clause of monopoly in the Charter

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to prevent the establishment of another company as a rival, & A monopoly is never understood (except) when it so is expressed. 11 Leigh 69 Tuckahoe vs Tuc(...). It is important to understand & be familiar (1 Leigh 521) with the case in 11 Leigh 69 — where it is de— —cided that the policy of our law is opposed (3 Do 337.) to creating exclusive franchises. Lastly corporations may be dissolved by — 1st. By act of the Legislature; with qualifications mentioned {(...)} if it be a public one &c &c or a condition for it if private or 3. By making compensation. 2. By the nature death of all its members. 3. By surrender of its franchises. 4. By forfeiture of its charter through neglect or abuse of its privileges.

Decided by the Sup. Ct. that any privilege to become exclusive must be so declared in the Charter. 11 Peters 420.

I. Definition, Nature & Kinds of Real Property II. The Tenures by which they are [holder] III. The Estates therein IV. The Manner of transmitting title thereto

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Synopsis of Blackstone. Book I.

I. Rights of things. (i.e. which concern things). Book II 2 Ken 317. II. Rights which concern things or property. 1. Real property — wherein consider 1. The several sorts of real property 1. Lands — "A solo ad usque coelum" 2. Tenements — whatever may be holden of a superior. 3. Hereditaments — whatever may be inherited or goes to the heir, in contradistinction to the executor, Hereditaments (embracing all manner of real property) are, 1. Corporal — as lands houses, &c. 2. Incorporal — wherein of, 1. Advowsons — which are 1st. Presentative 2nd. Collative & 3 Donative. 2. Tithes, wherein consider 1st Their origin. 2nd. To whom paid & 3rd How discharged. ([reperage] = nor only a house, but a yard & a garden & a curtilage. Curtilage = means the space included in the fence wh. {sucar} surrounds a house & any out houses that

may be included) 3. Commons. 4. Ways. 5. Offices. 6. Diginities. 7. Franchises. 8. Corodies — or Pensions. 9. Annuities. 10. Rents. 2. The tenures whereby real property is holden, wherein of, 1. The feudal system. 2. The ancient tenure which are 1. Free; wherein of such as are 1. Certain; as free & common socage. 2. Uncertain; as a chivalry or knight service. 2. Base; wherein of such as are, 1. Certain; villein — socage. 2. Uncertain pure villeinage. 3. The modern tenures 1. In England chiefly free & common socage. 2. In Va & generally in the U.S. — allodial [all— totum, & (...) proprietas, e.g. no tenure at all of any superior in fee simple estate.]

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°3. The estates which may be had in real property wherein consider 1. The quantity of interest, wherein of, 1. Freeholds, i.e of indefinite duration, 1. Of inheritance 1. Of fee simple 1. Absolute 2. Qualified or base 3. Conditional {2} 4. In fee — tail. 2. Not of inheritance 1. Estate tail after possibility of issue extinct. 2. Curtesy 3. Dower 4. Life estate by acts of the parties 2. Less than Free holds 1. Estate for years any {in} definite time 2. Estate at will 3. Estate by suffrance 3. Estates in condition 2. Time of enjoyment wherein of estates 1. In possession 2. In future i.e expectancy 1. Remainders 2. Reversions 3. Executory devises & limitation, under the statute of (27 Hen 8th) uses or 7 & 8 Victoria 3. The number & connexion of the tenants wherein of estate in 1. Severalty 2. Joint—ownership therein of 1. Joint tenants 2. Coparceners — joint heirs 3. Tenants in common °4. The title of real property how tranferred from one to another, wherein of (gained or lost by) 1. Act of the law — Descent from the ancestor to the heir 2. Act of the party — alone concurring with the law, known, as purchase, wherein of 1. Escheat

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2. Occupancy 3. Prescription 4. Forfeiture 5. Alienation by common asssurances; wherein of, 1. Deeds, or matter in pais; & therein of (deed required) 1. The general nature of deeds of all kinds 2. Several species of deeds of conveyance 1. At Common Law, 1. Original or primary 1. Feoffment, conveys a fee simple 2. Gift conveys a fee tail 3. Grant, " an incorporeal hereditament 4. Lease an estate for life or years 5. Exchange mere swap of lands 6. Partition (...) among joint owners 2. Secondary or [derivative] 1. Release, by wh. a larger estate falls upon a lesser 2. Surrender, by wh. a smaller estate falls upon a larger 3. Confirmation, " strengthening of title 4. Assignment, " transfer of title 5. Defeazance conditions by wh. the estate voids 2. Under statute of uses (27 Hen. 8th) 1. Bargain & sale 2. Covenant to stand seized 3. Lease & Release 2. *Matter of record* (By statute of 7 & 8 Victoria) 1. Private acts of the Legislature 2. King's (or Commonwealth) grants 3. Fines 4. Recovery 3. Special custom of particular places. (Dont exist here) and 4. By will 2. Personal property — wherein of 1. The several sorts of chattels; 1st Chattels real 2nd. (Chattels personal) 2. Property; & therein of, 1. Absolute — as in money, horses —tame cattle, 2. Qualified — as in running water & wild animals 3. Title to chattels; how transferred &c; gained or lost by 1. Occupancy 2. Preogative

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3 Forfeiture 4 Custom 5. Succession 6 Marriage 7 Judgement 8 Contracts — including gifts & grants 9 Bankruptcy 10 Testament 11 Administration

Adverse is the right of calling a person to a parish by him who has the right to {do so} the presentation (advocatis).

1. Common of Pasture. 2 of Fishery 3. of Turbary & 4. Estovers

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95 Book II. Rights of Things. ([1] Bancroft Hist U.S.) Advonsons are 2 of kinds — 1st The right of presen— (2 Kent 328 n (4))—tation to a church. 2nd — Tithes. Neither of these exist in Va. Prior to the Amer. Revolution the knowledge was of some practical importance. There was then an established church (Episcopal) (2 Do 317) though the right of presentation in no case belonged to private individuals but was exercised by the vestry. The stipend of a parson was (McIntosh p 36.) 80 pounds sterling a year to be paid in Tobaco out of [levies?] on all the male & white per— (2 Kent 317 Et Seq) —sons & all slaves over a certain age; (hence the origin of the word titheables) & these tithes were collected by the church wardens. Tobaco constituted the currency & was a legal tender (corn ten shillings pr barrel) in Va until 1849. This stipend of Tobaco was legal at the rate of 12 shillings pr hundred, until 1748 — when the price of tobaco depre— —ciated & the minister was entitled to 16000 lbs. of Tobaco. 2 Hen. Stat 88. This was the origin of the famous case in which P Henry distin— —guishes himself, the clergy claiming instead of 80 pounds sterling, 16000 lbs of tobaco when it was selling at the rate of 60 shillings pr cent. (...) life of Henry 38 to 49. (32) 1. Commons are of 4 kinds 1. Common of Pasture. (wh. are) 1. Common appendant, being of feudal origin & depending on tenure does not exist in Va, or U. S. as we have no tenures. It arose in Eng. when a lord let lands to a tenant, the right of pasturage accompanied{ying} it, because otherwise he would have no place to pasture his beasts when his lands were under cul— —tivation.

2. Common appurtenat — according to Blk. can only arise by immemorial usage or by pre— — scription; but as prescription presupposes a grant there seems to be no reason

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(See ante of this Book p 8—9) why it should it not exist here & Prof Minor thinks it does; Judge Tucker to the contrary notwithstanding; 1 Tucker B. II p 3. 15 East 113. 1 Coke Litt 228 N (6). 3 Kent 443—4. 4 Ran 58. 3 Leigh 334. (Tenant might put as many cattle upon the Lords (...) waste as the land he had in possession ad. raise food for during the winter) 1 Lomax 512. Common appurtenance when founder on grant may exist in Va; contrary to Blakstone, it may {exist} arise even in England out of a grant as will as by prescription & let us here remark prescription means, not that a time cannot be named when a custom did not exist, nor according to

Blackstone, from the time of Richard I; but for a time whereof the memory of man runneth not to the contrary — thus the establishment of advonsons in England, must have been subsequent to the period of the introduction of Christianity into England, which latter period cannot be accurately ascertained, yet the introduction {is said} of advonsons is said to be by prescription because the precise period of their {introduction} establishment is not known. Long enjoyment give a right in America: 20 (3 Kent 443.) years enjoyment though not proof positive, is prima facie evidence of right & in some cases conclusive evidence of right. 1 Co Lyt 35—8. 3. Common because of vicinage has a precise parallel in Va, as to fence law. V. C. {478} 447 §1&4?. We do not call it common because of vicinage yet it is in reality the same. 4. Common in grass exists here as in England. The right always belongs to the person & follows the person wherever he goes. Such is the abundance of lands here as yet, that few cases of common of pasture have arisen for authorities. See 11 Johnson 495. 16 John. 14 & 30. 3 Kent 406. 10 Wendall 639. (34) 2nd & 3rd Common of Piscary & Common of Turbary Of the former of these we know but little here & of the latter nothing. A right of fishery, below tide water mark in all

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streams is a common right of the citizens of the commonwealth; & if any one claims a prescription right he must show how & by what means he attained it, i.e. his prescription title or position grant. 3 Kent 418. The common Law definition of navigable riv— —ers are all those whose tides ebb & flow (below high water mark). The right to fish in navigable rivers is com— —mon to all: If the waters are not navigable (i.e. not tide water) each riparium owner has the exclusive right to fish on his own side, & to the middes of the stream, (ad filum flumenis) unless someone claims the right by grant or (3 Kent 418 To lower water mark) prescription. These rights are however sub— —ject to the public right of way. In Va, we have 2 statutes on this subject. V. C. 326 §1 & 2 & 527 §10 & 12. Although a man may fish in navigable rivers opposite lands, yet he may not land without the consent of the owner. It has been suggested in the Pa & S Car. that such majestic rivers as the Mississippi, Ohio & Susquehana &c. should be deemed navigable rivers. (Begin) 2 (...) 475. 1 McCord {508} 580. 6 Ran 680. (End (...)) (35.) 4. Common Estovers, we must here attend to the distinction between right of estovers & com— —mon of estovers. The tenant by right of estovers take wood &c. from land which he has rented, — by common of estovers he may take the same necessaries from {his lord}, the land of his lord. The Tenant unless he be restrained by the lease may use as much wood for timber & fuel, in the land as he chooses. See 6 Mun. 137. (Note 28) 4th. Ways, are of 2 kinds; viz Public & Private (4 Call 374.) The methods by which we we may acquire a right of way over another's lands are by (1 Rob 186) 1st Grant. 2nd Presciption. 3rd. Custom. 4th Necessity & 5th Reservation as implied in grant (2 Va Cases 135) of land. In 2 Douglass 749 Justice (...) 8 Gratt. 632.

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said that in a private way of necessity; a man might go over adjoining {land} ground. 4 Call 374. 1 Rob 186. 2 Va Cases 135. 8 Grat 6{1}32. (36) 5th. Offices. Blackstone's definition is imper— (1

Tuck C. Book II p 9.) fect because it refers not {only} to the duty but only to the right. Ch. Kent defines it to be a right & corresponding duty to excercise a public {trust} or private trust & take the fees & emoluments arising there from 3 Kent 454. It is very important to settle the exact meaning of the term (Public officers in Va are not hereditary) office since a distinction is drawn in our Constn, where an officer is disqualified from holding any other office under the govt, &c. & also because it is very difficult to distinguish between an officer & an agent on the one hand & an attorney on the other. 1 Mun 479. (Art 4th § 10). This distinction is however important on account of the oath of office, particularly since the duelling law. In Mr Leigh's case (1 Mun 479) in the Ct. of appeals it was decided that an attorney was not of— —ficer within the statute. In this case Mr Leigh applied to qualify as attorney in the Ct. of Appeals, he was required to take the anti—duelling oath, which he could not as having been once engaged in a duel & the case was argued & decided as above. It has been decided that a Reporter in that Ct. is not an officer & is eligible to the legislature. But a deputy, sheriff or county surveyor is in— —eligible. Another distinction in officer should (Acts (...) 2 Ch 105 §1 to 5.) here be made; viz; those whose duties are (2) ministerial & those whose duties are (1) Judicial. By our Constn & Bill of Rights public offices are not inheritable & hence are not hereditaments, & (anti duelling oath) private offices are not inherited though they (37) may be made so by grant. See VC. 84. Sec 1,2,3,5 (6 & 7) 734 §5. The sheriff alone may (1 Leigh 42. 10 Do 632.) farm his office, before he is commissioned.

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6th (...). none. 7th Franchises - Corporations are franchises. (...) &c. In 4 Ran 466, freedom was held as franchise to a colored man, when a franchise is forfeited, either by misuse disuse or non use the remedy is by writ of "quo warrante" (by what warrant they hold the franchise) 2 Va Cases 190 & 57. (40) 8. Corodies are in practice unknown here, though there is nothing in the nature of the laws to pre— —vent their existence. 9th. Annuities may exist in Va. An annuity is (Co. Lyt 449) a certain yearly payment granted to another (...) fee & may be a rent charge or an annuity at the election of the grant{or}ee, when a clause of distress is given in the grant, thus if he dis— train it will afterwards be a rent charge, but if he bring an action for an annuity it will still be an annuity. 1 Co Litt {(45)} 450. There is a difference between the hereditaments & the profits arising thereform, though they are often confounded. e.g. money received is different from the right of rent upon which it is received though both are called rent. Corodies & annuities cannot be called real property for any other reason than that they are inheritable. (41) A Rent (redditus) is a certain (profit) sum issuing yearly (or rather periodically) out of lands or tenements corporeal in retribution for the land that passes. A payment to come under the [denomination] of a Rent, must conform to the above def— —inition, but it must not be inferred from this that because a payment is not properly a Rent & consequently not capable of living en— —forced like a Rent that it cannot be enforced in any other way. From the above definition flow the following principle as to what pay— —ment is a rent. 1st. If the payment due be not ascertained or not

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capable of being ascertained — certain (...) certain [reddepossit] — it is not a rent. good as a contract 2nd. To be a rent it must issue periodically at regular periods. If the sum be payable at several times, but not periodically during the continuance of the estate it is no rent, but good as a contract. 3rd. It must issue out of Lands & Tenements corporeal. If it issue out of things incorporeal the payment may be enforced some other way, but not as a rent. The reason given for this is that you cannot enter upon an incorporeal hereditament to distrain power of distress being thus rendered essential to the idea of Rent. Ch. Glibert gives as the true reason that as incorporeal heredita— —ments were originally created for public conveni— —ence, it was not permitted to make them subservient to private advantage. 4th. No payment properly a rent except where some land or some tenement or Hereditament cor— poreal passes — as where a mere right unaccom— —panied by the possession passes, a payment thereon reserved does not come under the def— —inition of a rent, which is a retribution for land that passes. 5th To be a rent payment must be reserved to the grantor & or his heirs & not to a 3rd person otherwise it would not be a return for the land. 6th. Originally a yearly or periodical payment granted did not come under the denomination of Rent for in such case no land passed and a *Rent could only be reserved from lands that passed these returns being, for the most part military services and as such being frequently necessarily required on the instant the were inforced by the very summary process called Distress which in general may be defined a seizure of the tenants chattels to compel the payment of the sum due, from the fact that the Rents (...) or Returns on lands let were most com— monly military services Rents reserved gradualy (*7. (...) Is a [reservation] of a part of the profits of the lands that passes (...) a part of the thing granted.)

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acquired the name of Rent service, this is the most complex species of Rents its complexity arising princi— pally from the fact that the original notion of a Rent is not adhered to. In Progress of time and at a very early period it became usual for holders of lands to grant yearly payments chargeable on their lands, if such lands contained a clause empowering the grantee to distrain for the payment the payment granted was called a Rent Charge but if there was no such clause of Distress a Rent seck which Rent seck though it could it so be enforced by Distress might still be enforced in some other way a Right of Distress was formerly vested in the Lords who exercised it by seizing the chattels {for} from those from whom the Rent was due in much the same way as our sheriff seized good & to compel the payment of taxes from what has been said it will appear that three kinds of Rents there be — viz Rent service Rent charge & Rent seck the two former recoverable by Distress or action; the latter by action only. Rents charge & seck were granted out of Lands in which the grantee of the Rent had no revisionary interest. Rent service were reserved on land passing into the possession of the te{n}nant. Rent service or Rents reserved were more favoured at common law than Rents granted for whilst the former implied a new tenant and thereby an acquisition of strength to the Kingdom the latter on the

other hand bespke a Diminution of the capacity of the then tenant to render the required services to the Lord and of course had a tendency to weaken the Lord's power. Rents granted were not absolutely prohibited though considered against the common right i.e. the common good but the rules of the laws as to them were exceedingly strict, so that if the relation of grantor & grantee was so modified (as by the grantee's purchase of a portion of the land out of which the rents issued) as to render the rent unreasonable — the rent granted ceased, the

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102 (1 July 1850) ct. refusing to enforce. Down to our late revisal in Va. the grantee's purchase of part of the lands whence the rents issued, destroyed the Rent. The rent is now apportioned, both where the grantee of the rent purchases part of the land & where the holder of the land purchases part of the Rent. V. C. 574 §4. End of Lect. go to 6 Ch. (*This stat enacted, that vendee shd hold frm the Chief Ld of the fee & not from the vendor. The stat operating to destroy the reversion) These distinctions were generally established as to Rents granted & reserved — when the stat. of Quia *Emptores terrarum (so called from the words from {which} with which commenced) 18 Ed. I. — abolished all tenure between the vendor & vendee of a fee simple — the vendor holding of the Chief Lord. Hence on such a purchase no rent could be reserved to the vendor (unless it was done expressly by deed) there being no reversion in vendor. Such Rent was no longer rent service — but although reserved was denom— —inated Rent charge if the deed contained a clause of distress. Rent seck if there was no such clause. In Va we have no reenactment of the Stat of 18 Ed I., but still we have a Stat much more extended abolishing Tenure entirely a vendor sells lands in fee simple & reserve a Rent, such Rent is not a Rent service — since there is no reversion in vendor nor a Rent granted, because it is {granted} reserved and called a Rent charge, which may be dis— —trained by virtue of a clause in the deed.

The aboliton of all Tenure produced a similar affect on Rents in Va, as the Stat Quia Em— — tores did in England. Rent reserved on a conveyance in fee simple is a Rent seck, there being no reversion in the vendor, unless made a Rent charge by virtue of a Deed. Rent service being originally connected with the necessities of the state, its defence &c. it is not singular that the Lord might compel its payment by the summary mode

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of distress — even in Rents reserved there is {no} some reason for giving Landlord the power of distress — since thus poor tenants, who could not give other security are enabled to get a home. But as to Rents charge & seck considered as rent granted no such reason (V. C. 574 §1) exists, & the policy of 4 Geo II. which enforces them by distress is to be wondered at; much less our own stat. VC. 568 §7 which enforces the payment of all kinds of Rents by distress. Cod 874. 2 The Tenures by which lands are holden. As our law having at its basis the Com. Law is very much like English Law, the History of England commands the earliest attention of the American Law student. The Com. Law indeed exists here with fewer modification than it does in Engd. & as the Com. Law a great body of natural reason, originating no knows where & not the Acts of

Parliament — grew up with the English nation adapting itself to the var— —ious changes in society. You cannot perfectly understand its history, without understand— —ing the history of that county whence it sprung. (...) The doctrine of Feuds should be mas— —tered as the foundation of the Law of Real property and to effect this it will be necess— —ary for the student to extend his studies to (2 Ch. & 8 Ch Hallams Middle ages. [Sullivans] Lectures) Feuds as they existed in the continent. To effect this object or at least to begin its pursuit the Prof. recommends 1 Vol "Hume's England, app" 172. "Introduction to Robertson's Charles V. " "3rd. Hallam's Middle Ages" Ch. 2nd. "Montesquieu Spirit of Laws" {Ch} Bk. 30 — 31. "D'Lome's English Constitution". "Dalrymple on Feuds". "Gilberts Tenures" - 1 Vol Tho. Coke 244. n3 (Hargrave & Butler' appendix 913). 1 Coke Litt. 213 [Hargrave] notes). Reeves His. Engh Law. (Say Saxon) ([socage] p79 Blk p (...) & 80)Saxon Tenures {say saxon} — Some among them Blk. consider these a species of Feuds — others more properly think they were al— —lodial. See Sullivan's Lectures 27. p 257 & 254.

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Virginia Tenures Mr. Jeffersom suggested that lands in the colonies were always allodial. 1 Jef. Mem 11 (...) but he is not sustained by any respectable authorities in an opinion which is refuted by the terms of the crown grant to [individuals] as well as the the royal charters to the colonies which declares that Lands thereby granted shall be held in free & common socage, as the King's Manor of East Greenwich. The Legistlature certainly did not think with Mr. Jefferson or they would not have abolished tenures by the act of 1779 (May) which reads — "and that the proprietors of lands in this commonwealth may not longer be subject to any service. Feudal or precarious tenure, & to prevent the danger of a free state from per— —petual revenue; Be it enacted that the res— —ervation of royal mines, if quit rents & all other reservations in the patents or grants of Land from the crown of Engd. or G. Britain or under the former Govt "shall be & are hereby declared null & void; and that all lands thereby respectively granted shall be held in absolute & unconditional property to all intents & pur— —poses, whatsoever in the same manner with the lands hereafter to be granted by the com'wlth by virtue of this act." 10 Hen. Stat at large 64. 3 Kent Com 511 n(B) 488. Until the revolution lands in Va were held in free & common soc— —age — since 1779 the possession of all lands has become allodial. 1 Wash 101. 2 Tuck. Com. 18 & [40]. 3 The Interest or Estates which may be held in Lands (107) Fee is used of Estates of Inhertiance — "a fee may be in obeyance ie in Expectation remembrance & contemplation of Law — there being no person in esse in whom it can rest or abide", says the commentator. The notes 7, 8 & 9, show con— clusively that there is no such thing as (Go to 7 ch.)

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([Est] to [A.] wd in Va be a fee simple since 1787.)

a fee in obeyance, but that the estate must be vested somewhere. VC 501 &c. (108) The wrd of limitation — Heirs has not been necessary to create an estate of Inheritance since the act of 1785 passed to take effect 1 Jan. 1787 — which construed all estates granted without words restraining them to be estates of Inheritance or at least all the interest which the grantor had a right to pass. V.C 501 §8. (viz a fee simple) An exception to the rule of law prior to 1787 was held to exist in the case of Devises, which were not construed so strictly, but which might pass as an Inheritance without the words— Heirs. Cases of devises may be found in 1 Wash. 98. 1 Call 127. 1 Mun 537. 2 Mun 458. Few of such cases have arisen since our statute. It is universally true of Deeds that the word — heir — must be used.

(109.) There is not reason why a base or qualified fee might not exist in Va (3. Hen stat at large 320) though they rarely occur. Instance the case of Balling vs Mayor of Petersburg. 8 Leigh 224.

(Est became absolute or 3 persons. 1 [alone] to change to forfeit in Treason) Fee Conditional — The most usual of this species was an estate to a man and particular heirs of his body — and as soon as those heirs were born the condition was considered as performed & for three purposes at least — and a fee though not absolute — yet so to many purposes vested. The Tenant in such case was in the habit of aliening his lands — (a power which the performed condition gave him a right to (...) do) — and taking back an absolute fee. The Lords finding themselves thus deprived of their lands & Tenants procured

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106 (13 Ed. I) (*this stat applied only to tenements) the passage of the statute. *"De Donis" - unluckily for both King & People — which declared that the gift must follow strictly the terms of the donation or revert to the Grantor. (Two things necessary for the application of the stat. 1. Subject matter shd be lands or tenements 2. Est. must be of inheritance 1 Co Lyt 515 note 7. 2 Blk. 398. 3 Call 506. 10 Leigh. Dunbar vs Woodcock's Ex'tr's) Thus e.g. an English estate to a man & the heirs of his body when there is a failure of such heirs the Estate went back to the Donor. The Estates thus created were called Estates-Tail a mutilated Inheritance so called {tithes} because the heirs generally were cut off, or because the estate was divided into two parts the reversion in the Lord and the fee-tail in the Donee. The Stat, De Donis was so skilfully contrived as to bar alienation & no means to evade this effect of the stat. were {contrived} devised until 200 yrs. after its enact —ment — when Fines & Recoveries were Resorted to succesfully. (End. Read 4 to Est. in Dower p 129) Estates tail with the same incidents as in Eng. subsisted in Va, until 1705 (1 Queen Anne) when strange to say our Legislature (2 Hen. stat. at large 320 [220]) prohibited the barring of Estates tail, even by fines & recoveries — the only method being an act of the (1 Co Lyt 538. 9 Do. 519, 544 note) Legislature. As this was excessively annoying to the Legislature as well as burdensome to the small tenants the policy was changed in 1734, when small "entailed Estates not exceeding (4 H Stat 400) 200 (...) in value", were authorized to be barred by a proceeding {under} a writ similar to a writ of "ad quod damnun" as prescribed by an act of that year. Still Estate —tail larger than 200 (...) & est. adjacent to other estates tail could only be barred by a special act of the Legislature. In this position the subject [remains]

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until the act of the 7th Oct. 1776, when (Est. (...) after an [est-tail] (...) omitted afterward supplied) Estates—tail on the motion of Mr. Jefferson were abolished by an act converting them into estates in fee—simple. 9 Hen Stat 226. The Revd code contains a similar provision. V.C. 501 S. 9. 1 Lomax ' Dig. 25. Estates— tail & Primogeniture, the main props of Aristocracy were both abolished at the (1 Jef Mem. 40.) motion of Mr. Jefferson, who was opposed in many of his reforms by Mr. Edward Pendleton. (Pendleton & Wythe were the architects of most of our Laws) There are 3 observations which may be made with regard to our statutes abolishing est—tail viz; 1st. It applies in terms to no other real property but Lands. By V.C. "Lands" includes lands, tenements & hereditaments & all right thereto & interest therein other than a chattel interest. V.C 101 S. 17 §10. 2nd. The statute converts Estates—tail only into fee—simple. 3rd. The stat De Donis is confined to tenements — fees— conditional in property wh. {are} is not tenements {&} are not made Estates—tail by the stat, De Donis; therefore our statutes do not convert fees—conditional into fee—simple Estates. In short our Stat. converts nothing into fee simple which the stat, De Donis {effected} has not made a fee—tail. The Legal idea of a freehold is an estate to last for an indeterminate period. If the Estate is definite then it is not a freehold but an estate for years. Every esate in Va is an estate in fee simple unless specially limited in the conveyance to a less estate. (Ch. VIII) [1] Common Law, as to Emblements, where the estate for life or for any other uncertain int —erest, e.g. the lease of such tenant for life determines by act of God or by any other way excepy by tenants own default — such tenants & his executors shall have the Emblements

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(Emblements take plea under our law in 3 class cases. 1. Where the est. is determined, by the death of the tenant. V. C. 574. §3. 2. Where the est. is determined other than by the death of the tenant. 3. Is in the case an [under] tenant.) fruits of annual industry growing upon the land, at such determination of his estate & shall have free egress & ingress to take them off. In Va when the tenant for life &c, dies between the 31st of Dec. & the 1st of March, the person taking the next estate shall have the emblements. But when the tenant for life &c of lands or slaves dies between the 1st of March 1st & the 31st Dec. his personal representatives may at his discretion hold on till the 31st Dec. & all emblements which he severs before that time will be assets in his hands or he may depose of such rights to the land, slaves &c until the 31st Dec. to the best advantage of the decedents Estate, & in either case shall pay out of the assets a reasonable rent or hire to those next entitled from the death of the decedent to the 31st Dec (...). This only applies when the estate is deter– mined by the death of the the tenant for life. In all other cases emblements are as at Com. Law. The under lessee of such tenant for life or any other uncertain interest, when the estate of his lessee is determined in any way whatsoever, may hold on to the land or slaves to the end of the current year of the tenancy of hiring, apportioning the money, if any, between his lessor or the rep— —resentatives of his lessor & the person next entitled. If the rent be in kind the whole to be paid to the lessor, or to the

representative who shall pay to the next owner, a reasonable rent in money for the land from the (...) of the estate to that of the current year. Such under lessee is entitled to the emblements as at common law whether severed or not during the year. See pp. 118 & 140 past.

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[interleave page] Lomax (p 39.) lease here given is that of one est. with several limitations; & a merger can take place only when there are several estates. If there is an Est. to A for life Rem. to B for life & A acquires B' interest or B acquires A "there (...) be a merger of one est. into the other". Incidents of life estates 1. Estovers — Must distinguish this from Commons of Estovers. 2. Emblements, wh. are the crops growing upon a man' land. Now when a man' estate terminates suddenly there were considerations of justice to allow him the crops, the fruits of industry & also considerations of policy, for otherwise lands might go untilled. Rules of the C Law on the subject were very plain. Our Stat. have made important changes. It contemplates 3 cases — 1. Where the Est. is determined by the death of the life tenant he himself then occupying the land. 2. Where the est. being for life of other uncertain interest is determined by the death of cestuis qui vie or in general by any other means other than by death of tenant himself.

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[interleave page]

3. Where the Est. whether for one's own or another's life is leased to another at the time it is determined. In the first case if a man holding an Est. for life or other uncertain interest dies on or after the 1st day of March his per. Rep. may continue to occupy the lands to the 31st Dec. following paying rent to the heir for occupancy; or if he choose he may rent it out the (...) last day of December. In either case to pay rent to. If death occurs before the 1st of March the Com Law applies. Stat. applies the same rules whether the Est. be for life or other uncertain interest. In the Second case, where the Est. ends by any other means than by death of the tenant, no Stat provision is made & it continues as at C. Law. In the third case where the Est. is in possession of Lessee at the time it is determined he may hold the Land to the end of the current year of the tenancy paying rent therefor & he has also all the Em— —blements wh. the C. Law gave him. Several advantages are gained under the Stat. 1. Where the Est. of tenant for life expired at C. Law the maxim that the Law wd. never apportion periodical payments as to time excused the tenant from paying any

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[intersleeve page]

rent since the last rent day unless the event wh. determined the Est. happened on a rent day. Our Stat. obliges him to pay rent to the end of the current year of the tenancy. VC 573 §1 — 574 §1. 2. The Com. Law ejected the Lessee imme— —diately on the determination of Lesser's

Est. giving him the emblements. Our stat. allows him to occupy the premises to the end of the current year of the tenancy & also to take Emblements. 3. Com. Law never deprived Lessee of any part of the promises on wh. emblements were growing. Out Stat. allows him entitled to enter & plough up the land making compensation therefor to Lessee, if the Lessee's Est. determined before 1st August. 4. Our Stat. secures full compensation to Lessee for any preparation of land for sowing. Lastly, it applies the same principles exactly to slaves. p 51 §20. Author says tenant for life is not subject to any of the principal sum of any charges on the Est. but he must keep down the interest. Now if he is liable for interest of course if incumbrances demands the whole charge the tenant for life must pay his proportions.

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[intersleeve page]

p. 54. Author is citing the causes of forfeiture in tenant for life says that disclaimer in a ct. of Record in real actions [does] not work a forfeiture here, as all real actions are abolished. It is not true that all Real actions are abolished & forfeiture for disclaimer is not abold. Waste is of two sorts. 1. Permissive. 2. Voluntary. Permissive is that wh. the tenant suffers to be done without actually doing it. Voluntary where he actually commits waste. Waste is any destruction of the premises wh. prejudices him who has the inheritance. Many things considered waste at. C. Law, wh. wd. be considered doubtful here. Thus at C. Law to convert pasture land into arable or the reverse, to pull down an old house & build a new or even to change the chambers in a house &c. Whether voluntary or permissive those tenants alone were liable for it who came in by act of the Law as tenants by Curtesy, by Dower & by Chivalry. Those who came in by act of the parties were liable only so far as they were restrained by covenants. 2 Gr. 408. V.C 566 §1 — 4. By stat [Marelridge] 52 Hen. III. all tenants for life or years were made liable in single [da— —mages] for waste. By stat. of Gloucester 6 Ed. I. the penalty for waste was forfeiture of place wasted & treble damages.

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But when severed after the end of the year he shall pay a reasonable rent for the time to those next to those next taking the land. V.C 572 — 3 sec. 12 & 13. 1 Co Lyt 476 [or P(1)] The Tenant in Dower may bequeath the growing crops at the time of her death. A Va statute passed some years ago apportioning rents & hires according to time. The new code extends this to all period— —ical payments. End {544 §1} V.C. 574 §1. (128.) Necessity of actual seisin to give husband curtesy. Coke gives as a reason for this that issue to be born must be such as could inherit & they can only inherit from the person last seized. A better reason is that it will induce the {wife} husband to reduce the wife's prop— —erty to possession. The 1st reason cannot ((...) M [Hay]) exist in Va where no actual seisin ((...) Co. [Lyt] 559 & 574) is required. But the 2nd does exist here. 1 Co. Lit. 577 — 8. V.C. 522 §1. (...) 502 §18. (129.) Tenant in Dower. In Va the widow (Do 560 note (E)) is entitled to be endowed of 1/3 of all real estate of which the husband or any other to his use was seized at any time during coverture. V.C 474 §1 & §2. (130.) (1. Who may be endowed.) 1. Capacity of Husbands to endow. All men, except idiots, aliens & persons

attainted & not pardoned. In Eng. idiotcy renders the marriage void at once. In Va the marriage is void from the time of the divorce. ((...) Co Lyt. 71 n(C) (...) 569. attainder (...)) V.C. 472 §1. Such divorce must be pro— nounced in the parties lifetime. Whenever an alien is allowed by Va Law to hold land, he may endow his widow & the alien widow of a citizen may be endowed. V.C. 498 §1 & 2. 750 §5. 2. All women over 9 yrs old may be en— —dowed except idiots aliens & persons attainted and not pardons &c. The Va. statutes,

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(1 Co Lyt 569.) do not in terms mention alien [blank space] but these are probably included in the act allowing an alien upon certain condition to hold land. V.C. 499. §4. End. go [thro] Dower. 3. Valid subsisting marriages. In Va. a divorce a vinculo must generally be pronounced during the husbands life (1 Lom. Dig. 77.) to have the effect of barring dower under the V. Code. 471 §1—3 a prior (1) marriage — want of age (2)— & separation during non— —age & marriage between (3) a black (V.C 471. §1. 3 Do. 472 §7.) person & a white one make the marriage void at once—of course then in these cases no right of dowers is acquired. Divorce a mensa &c, & {divorce} decree of perpetual separation will bar dower, at least as to after acquired property. V.C. 473 §§12, 13 & 15. (131 (...) 21) Of what endowed. The husband must be seized of lands and tenements — a fee—simple, fee—tail general—or as [been] in special tail. 1st Coke Lit. 569. V.C. 474 §1.

1st. The subject matter of which Dower is (no other real est but land & tenement since 1792) allowed. By Common Law lands and tenements. By Va law till 1850 lands tenements & {hereditaments} and other {natural} real estate. (slaves formerly) There can be no dower of annuity 1. Lomax [dig] 81 By present Va statute, real estate. (1 Co. Lyt 583) (3 [H Stat] 374. (...) 333.) 2nd. Seisin of husband, at common law a legal seisin not an equitable ownership & a seisin in law was & is enough as well as a seisin in fact. Our statute (3 H & M 322. 12 Hen Stat 157) allows dower of an equitable estate and the new code extends this to rights of entry and of action. {Though} So that here is a beneficial seisin during the coverture (502 §7 of V.C 474 §2.) the time of such seisin or its duration is of no consequence. But a (...)

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Waste (continued)

Com Law held that destruction by God or by the public enemy was not waste. 3 Co. Lyt 236 n(f). Every other act of de— struction is waste—yet it has been held that if a house is uncovered by tempest the tenant must replace it before further injury ensues or he will be liable for any damage that ensues. Lomax p 63. Must not confound this liability for waste wh. the Law annexes, with covenants to repair. This covenant to repair has long been construed to mean to rebuild. 3 Call 306 Ross vs Overton. This being considered a great hardship has at length been remedial by Stat. wh. declares that "No covenant or promise by lessee that he will leave the premises in good repair, shall have the effect if the buildings are destroyed by fire or otherwise,

without fault or negligence on his part of binding him to erect such buildings again, unless there be other undo showing it to be the intention of the parties that he shd. be so bound." V.C 506 §9. Equitable waste, being such waste as though destruc— —tive of the value of the premises, of wh. a Ct. of Law will take no notice, yet will be remedied in a Ct. of Equity as destruction of ornamental shrubbery &c. 2 Story' Eq'ty §916. p 62 & 3, as to what things may be taken away by tenant see subject of Fixtures [before] treated of — — — —

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Tenant by Curtesy. The idea of tenancy by curtesy is when a man takes a wife who is seised of an est. of inheritance & has issue by her & then the wife dies. Her husband has a life Est. In Va every issue can take any Est. of inheritance. In Barker vs Barker 2 Simon 240, there is a case where there was an Est. to a woman & her issue & if she had issue then the est. to go to her issue. There was no curtesy, because the issue did not take as heirs & it is indispensable that there shd be an Est. of inheritance. There are four requisites for an Est. by curtesy. 1 Marriage. 2 Seisin of the wife. 3 Issue born alive 4 Death of the wife. With respect to the marriage it must be between persons capable of contracting together & duly celebrated. As to the seisin it must be actual seisin & not seisin in Law, while seisin in Law was all that was necessary for Dower. This seisin in deed is necessary to enable the heir to take the inheritance, for it was a principle of the C. Law that no one cd. take as heir of another, unless that other was seised in deed at the time of his death. This is not the {chief} only reason & it has been plausibly suggested that the chief reason is to stimulate the husband to reduce the lands into actual possession; & this suggested is confirmed

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by Coke, when he says that the Law will excuse impossibility to obtain actual poss'n & will allow the Husband Curtesy. Actual seisin is not requisite with us for the descent of Lands. VC 522 §1. As to this seisin the Husband must have the first Est. of freehold in possession, & the next Est. of inheritance, without any interm— —ediate vested Est. of freehold. p 79. There is a doubt suggested as to whether a husbd will be entitled to curtesy in a rent where the wife has let her Est. for life before marriage for a rent. It is certain that the husbd can't have curtesy of the Land because there is no freehold in possession & not of the rent because it is not an Est. of inheritance. p 84 Lomax states in §17 & 18 contradictory Law. The distinction is between Est. being defeated (as it is by condition or by title paramount) & the Est. coming to an end by original limitation. If it come to an end by last mode the husband is entitled to curtesy for his Est. is added on to that wh. is {def} ended by the limitations. 8 Co. 34(a) When Executory devises & shifting uses were brought about if the husband "Est. was terminated by the event on wh. the Est. was made to depend", it was debated whether the husbd wd. be entitled to Curtesy & the wife to Dower. In 1740 in the case [blank space] it was determined that the wife was not dowable & that the husbd cd. not have Curtesy.

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Ld Mansfield held that widow was dowable & husbd. cd. have Curtesy. Authority of this case was questioned by elementary writer as Parker on Dower 179. Sugden on Powers 338. 3 Prestons Abstract of Title 372. 1 Bright H & W 35 & 349. Yet altho' this question was followed in case cited by Preston. 2 Bingham 447 in the Com. Pleas & by Ct. of App's in Va. 4 Call 321. It seems then that altho the Est. terminate by Limitation under an Exec— utory devise & shifting [use], the wife has Dower & the husbd Curtesy. As to Base or qualified fees it is clearly settled that a wife is entitled to Dower. 1 B & [P] 192, 3 Do 643. 4 Term Rep. 39. 7 Vesy 567. 10 Do 246. Husband has Curtesy in the trust est. of his wife: but the wife has no dower in his trust Est. at C. Law. This difference originated thus, Dower & Curtesy being legal interests were at first both disallowed in equitable interests. At length the cts. adopted a different principle as to Curtesy. For a man in buying the trust. est. of the husband wd. not have got the wife to join in the Conveyance & for the cts. to have changed this policy wd. have been to subject all such purchases to dower. But in buying a trust est. from a woman he wd. not have failed to get the husbd. to unite in the conveyance because the wife cd. do nothing without the husbd: Legis. ought to have interfered & subjected all future est. to dower. Our Stat. allows the wife dower in the trust est. of her husbd & the husbd curtesy in the wife's trust est. V.C 502 §17.

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(11 Grat. 441 Blair vs Thompson)

([V.C. 502] §17) legal and not a beneficial seisin gives no available title to dower. The widow might indeed recover Dower of trustee's est at Common (Rand 441) law but equity would enjoin her. 1 Lomax Dig. {95} 101. As where a man buys land and (2 Leigh 265) intends to give a deed of trust to secure the purchase money but does not execute ((...) Co. Lyt [74] (...)) it for a long time after equity will regard the whole as a transaction & the widows dower will not prevail over the deed. 8 (5)Mun 246 (346). 4 Leigh 30. Gilmer 200. 15 Johnson 458. Same principle (is true) as to implied lien of the vendor of this land the wife cannot be endowed to the exclusion of vendor. 2 Rol. 384. ((...) 476 (...) 13) Here the ct. also said that where any lien is paramount to the wife's title to dower & is {expressed} closed in the husband's lifetime, any surplus which may be will be personal property & the wife will not be dowable out of it. The V.C. says that in such case, though the wife be not dowable out of the land she shall be dowable out of the sur— —plus. V.C. 474 §2,3. Cp 110. 476 §13. End. 3rd. Nature of husbands estate. He must be seized during coverture of an immediate estate in possession with his freehold or in ((...) [Barker vs Barker]) right possession an the {next} first estate of inheritance without intermediate vested est —ate of freehold. 1 Co Lit 578 to 582. N(M) and in England & here it must be such [an] seisin that the issue may by possibility inherit. {This last rule is of no use here where any issue may inherit}. So that there can be no ((...)) dower where the husband is seized only of reversion unless it be a remainder after an estate for years. 12 Leigh 248. e.g. in an estate to A. for life the remainder to B. & his heirs there can be no dower to B's wife unless A dies before B. because there is no Estate of freehold vested in B.

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But in case of an estate to A. for one hundred years, remainder to B & his heirs. B's wife may be endowed out of it, because B has an immediate estate of freehold. Again in the case of an estate to A for life remainder to B for life remainder to the heirs of A. neither A's nor B's wife can be endowed, because neither of them hold an estate of freehold. From this last case (1 Brights (...) wife 352/3) have grown up the maxim, "dos de doti peti non debet" E.G. If A. the heir of B. dies during the life of B's widow his widow (A's) cannot receive dower of the whole estate inherited from B. but only (1 Co. Lyt 574.) of the two thirds remaining after the dower has been assigned to B's widow, because A was seized of that two thirds only. But if B grant (1 Rand 344.) land to A. and then dies his widow is en— —dowed of one third of the land granted; & if A dies his widow is also en— —dowed of 1/3 of the land granted: & if A dies his wido is also endowed of 1/3 of all the land, not however to the prejudice of B's widow. V.C 502 [S. o.] 17. 474 §2. 1 Ran. 344. At Com. Law the "jus accrescendi" in joint estates prevented the wife's being endowed out of them. This survivorship is abolished in Va. V.C 502 §18 & 19. Dower will be given though the husband's estate is determined in some way at or before his death. 1 Co Lit 561 & 581, so also the curtesy 1. Mutatis Mut— andis". 1 Lom. Dig. § 3.2.8. (132) [4] The Manner in which a wife is to be endowed. (1) Upon the death of the ancestor it is the duty of the heir though an infant to assign dower. 1 Co. Lit 606, and he is bound by the assignment probably of a stranger certainly of his guardian unless the assignment be clearly proved to be unjust and then he may have a writ of admeasurement of dower on coming of age. At common law the widow cannot enter upon the land before the assign —ment. Our statutes do indeed give her a

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[A 1 by 4 table with the first box that reads "Husbd widow". The fourth box reads "Ancestor's widow".]

It is a maxim of the C. Law that "Dos de dote peti non debet" that dower is not to be demanded of dower. As where ancestor dies & lands descend to a married man. Now if he endows his ancestor's widow & dies, his widow is entitled to only 1/3 of the remaining 2/3, because the husband's seisin is destroyed in that part assign— —ed as from the beginning. But if the heir is delinquent & never assigns ancestor's widow anything; then his widow is entitled to 1/3 of the whole. But there are exceptions to the rule dos de dote peti non debet. 1) If the heir takes as purchaser & not by descent & assigns dower to his ancestor's widow & then dies, his widow is en— titled to dower of 1/3 of the whole, because the husband's seisin in this case is not destroyed as from the beginning. [A 1 by 3 table with the first box that reads "Hd wid" and the last box reads "widow".] 2) So if the heir takes as purchaser & dies without assigning dower to ancestor's widow, then both widow are entitled to 1/3 of the whole, so that there will be only one remaining third to descent to his heir. Text p 105, 84, & 97. [A 1 row, 3 column table with the first box that reads "Hd widow" and the last box reads "A widow".] 1 Bright's Husbd & Wife

352. Amount of damages wh. may be recovered by widow for detention of her dower are determined by Stat Merton 20th Hen. III. If the husband die seised damages are allowed agst the heir or devisee from the time of his death so as not to exceed 5 yrs in any case. Agst the alienee of the husbd. {of the husbd.} damages are allowed from the commen— cement of the suit. In [all] case to be computed up to the time of recovery. V.C 475 & 11.

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There is not limitation in terms to the recovery of Dower, yet it is thought that the same period bars dower that bars recovery of Lands by any other title viz: 15 yrs. VC 590 §1.

It is doubtful whether a male infant may make a marriage settlement, because his pecuniary interest are always compromised. But a female infant can make a binding marriage settlement, because her pecuniary interest are always promoted, the property being reserved to her.

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right of occupancy to certain portions, but otherwise it is the same as at common law. The widow must ([Rand 8]) assent to the assignment of court in behalf of the in— fants unless the share is unequal. V.C. 475. Sec. 9. 2nd Ran. 418. If the heir is not in [possion] of the freehold (Lyt n(Z)) dower must be assigned by him who has the freehold, though he hold it wrongfully. 1 H. & M. 372. ((...) 539)(2) This assigment may be done in all cases either by parole or by deed but the latter from its greater Surety is better. In in England & here also where (Lyt.) the property is capable of being severed the assign— —ment must be made by metes & bounds & if incapable of being severed it must be assigned in some special manner. Also {in} in England if there are several tracts or tracts of various kinds, one third of each must be assigned. But in the U. S. the widow must have one third in quantity & quality and it may be given as is best for the interest of all parties. When the property is entire it may be given by a sum of money in gross or by an annual payment which is a rent charged and may be distrained for of common right. Such ((...) p66 (...) 69) payment ought to issue out of lands of wh. she is dowable. 1. C. Lit 589 & 4. At Common Law in assigning dower the value at the time of assignment was considered. 1 Co. Lyt.583. Our courts admit this against the heir but not against the purchaser from the husband with waranty because the remedy which the purchaser has upon the husbands warranty is measured by the value at the time of such warr— —anty. 4 Leigh 498. V. 6. 475. Sec 11. The new code follows the common law rule in all cases, but allow the court of Equity to restrain the widow from recovering one third of the property on the purchaser giving security to pay her inter —est from the commencement of the suit on one third of the value of the land at the time of the {sale} husbd's death. V.C 476. Sec. 12. Deducting the value of improvements wh. purchaser has put there.

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(4a) Remedies in England and Virginia to enforce the assignment of dower. At com. L. the widow might resort to the (1) writ of dower "unde nihil habet" or the (2) writ of right of dower; the former when [one] part of dower had been assigned or the widow's right [was] disputed; the latter when no part of the dower had [been] assigned. The former being a tedious procedure, the difficulty was obviated by statute 3rd Ed. 1st (West 1st (...)) allowing the writ of dower to be had unless part of [the] dower had been assigned out of the same lands, in same town, or village & by the same person. By the Magna Charta 9th H. 3rd. (the widow was allowed to remain in her mansion house 40 days (...) is called a (3) quarantine) during which time her dower was to be assigned. But this provision was of no effect, as there was no penalty for non assignment. But this was obviated by the Statute of Merton which enacted that the widow should recover damages on a writ of dower against the heir from the time of her husband's death. The Statute of Merton was thus construed. 1st. The husband must die seized. 2nd. The action of recovery must be under a writ [of] dower ("unde nihil habet".) because no damages can be recovered under a writ of right for that was contrary to the dignity of a droitural action. 3rd. It applies only to dower at common Law dower "ex [assensee]" and "ad ostium" were not included under it for they did not require assignment in order that the widow might enter. 4th. The demand must be made speedily after the husbands death. 1 C. Lit 584. (4) All these methods have given way to application to chancery which will appoint commissioners to assign, and will give the same relief only in a different way. 2nd. [Lyt.] 457. If chancery be resorted to; to recover dower equity will follow the law in all things and of course will give no damage unless the husband be seized

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How Dower may be barred in Engd 1. Divorce a vinculo; in any circumstanceses that make the marriage void from the beginning. 2. Elopement & continuing with an adulterer. 1 Co Lyt 604 3. Recovery by stranger by title paramount or any other means by wh. the husbd's seisin is destroyed as from the beginning. Here distinguish between estates defeated & those expiring by limitations. 4. Alienage of husbd or wife. 5. Death of husbd before the wife attains the age of 9 yrs. 6. Detention of title Deeds. 1 Co Lyt. 610 n(H)1. 7. By releasing her dower to him from when she has a right to demand it. 8. By procuring an assignment of terms for years created prior to the marriage & attendent upon the inheritance. (Explained past) 9. By Sundry devices, dependent upon these princi— ples (maintained by 2 Co. Lyt. 292 n(1).) as follows. 1. Device was founded on the principle that a widow was not dowable of a joint Est. It was accomplished thus; Husbd bought lands for him— self & another, but as to that other in trust for the husband. It was liable to the objection that if survived the {husband} husbd survived the trustee, he is sole seised & widow is entitled to Dower. But if trustee survived the Husbd Wife's dower was defeated. This device is not available in Va. becuase the wife is dowable of joint Estates. 2. Device was founded on the that the Husbd

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must have a legal & not an equitable estate of inheritance. It was accomplished by convey— — ing land to Husbd & a trustee but after that to trustee & his heirs in trust for the husbd & his

heirs. Objection to this was that husbd cd not sell without concurrence of trustee. This device is not available in Va becuase the wife is dowable of trust Estates of husband. 3. Device depends on the principle that the widow is not dowable of trust Est. It was accomplished thus; a conveyance to trustee & his heirs in trust for the Husbd & his heirs. This was liable to same objection as preceding. Does not exist in Va because wife is dowable of trust Estates. 4. Device depended on the principle that the husbd must have the immediate Est. of freehold. Accomplished thus the land wd. be conveyed to such uses as the husbd shd. appoint & if he made no appointments then to the trustee & his heirs in trust for the husbd & his heirs. Less liable to objection than preceding not available here to the extent it is in Engd tho' it has same effect. 5. Device depends on the principle that the husbd must have the freehold in possn. & the next est. of inheritance, without any intermediate [vested] Est. of freehold. It may be made available in Va. & is accomplished by interprosing a trust est. thus; "Est. to such uses as husband shall

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shall appoint & independent of apointments to H. for life & if that Est. to H shd. by any means come to an end in H's life—time, to A for residue of H's life & after H's death to [Husband] & his heirs." Here there is an intermediate vested est. of freehold & dower wd. be defeated. 10. By wife uniting with husbd in conveying land in manner prescribed by Law. 11. By jointure 12. By attainted of husbd for Treason or felony. As to the 8th mode of barring dower, viz: by procuring an assignment of terms for years, created before marriage & attendant after the inheritance. Let us suppose a purchaser to lay out money in land & he then discovers that a widow of some one previous to the one from whom he bought, has a claim to Dower. He finds that long ago there was (...) term for years in the Est. & vested in trustees, & finds that the objects of the terms have been satisfied. He goes to the trustees & procures an assignment of the terms to himself or to trustees for him, & then having an equal equity with the widow, & also the legal title, the widow's claim will be defeated. 1 Tuck. Com. Bk 2. p 71. 4 Kent. Com. 89. As to the 10th mode viz. the wife uniting with th husbd in conveying in the manner prescribed by Law. At C. Law the wife cd. make no conveyance indepen— —dent of her husband. But Land might be recivd. of her by 1. Fine. 2. Recovery. There have been dispensed with here & we adopt an examination of wife to see if she

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act[s] freely. The whole proceeding is in derogation of the C Law & must be construed strictly & rigor— —ously. (See Stat. Code 513 §4). The following principles are are derived from the Stat. & adjudged cases. 1. The Deed must be a deed of conveyance & nothing else — not a power of attorney. 5 Gr. 110 2. Husbd as well as wife must be a party to the deed & both must sign in it. 3 Randl. 468. 4 Le 498. 3. Wife must be above the age of 21 yrs: & free from —any other disability 6 Le. 9. 16 Wendall 617. 4. If the authority before when the examination (...) place, be two justices, they must be together & in their own county. Bac. Abr. Title J. P. E. (5). 5. Wife must be examined by some one or other of the authorities privily & apart from her husbd & having the writing explained must acknowledge it to be her act & must declare that she

willingly executes it & that she does not wish to retract. All these facts must be certified by the authorities & the certificate is conclusive as to the facts if no fraud is imputed. 11 Le 294. 12 Le 445. 5: Gr 414. V. C. 513 § 4. 6. Privy examination, acknowledgement & declaration must be delivered to the proper clerk & admitted to Record. V. C. 514 § 17. 1 Peters 338. 16 John. 100. When all these requisites have been complied with the writing operates to pass the woman's right of Dower.

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115 The statutes in Va. for the recovery of dower are more efficient than those in Engd for 1st. The widow is allowed to occupy the mansion house & curtilage & to take 1/3 of the rents & profits of all the real estate until dower be assigned. V. C. 475 § 8. 2 Legh 451. 2. The widow is not in deed allowed the right of entry before the assignment of (...) dower, but she may use such remedies for the recovery of dower, as one entitled to {possession} right of entry — would use at Law for re— —covery of possession, ejectment &c. V. C. 475 §10. 3. She may recover dower by "a bill {of} in (wife's) Equity." (...) This is the most usual & convenient method both in End. & Va. 4 Leigh 498. 4. Writ of dower "unide nihil habet" may be resorted to by the reserving clause of V. Code 98 § 2. The "writ of right of dower" is abolished in Va. as is all other "writs of rights." V. C. 563 §38. As to damages see V. C. 475 § 11. 4 Leigh 507. 2 Rob 534. V. C. 563 § 38. (36) 5a. How Dower may be barred. In Va it may be done as follows. 1st. A divorce "a vinculo" bars dower, but not a divorce " a mensa," unless the court insert a clause to that effect in the decree of divorce. V. C. 473 § 13. 2. Elopement & living with an adulterer unless the husband becomes reconciled bars dower. Code 475 § 7. 3. Title Paramount or any other means by which the husbands seisin is destroyed. 4. By alienage of husband or wife beyond the limits allowed in our Statutes. V. C. 498 § 1 to 3, 499 § 4 (by wh. there is (...)). 5. By husband's death before the wife attains the age of 9 yrs. 6. By the widow's detaining from the heir the title deed of the estate. In Eng. this only suspended dower & in Va it is probable it has the same effect, if any at all.

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7th. By release of her dower after her husband's death to the one who ought to assign it. 8th. By procurring the assignment of trust terms for years created prior to the marriage are attendant upon the inheritance. 1 Tuck. Com. Book II 71-2, 4 Kent 89. 1 Lomax Dig. 365. 9. By various devices which may be seen in 2 Co. Lit. 29n. N(1) as to which the 1st, 2nd, & 3rd would certainly be insufficient for that purpose here, but the other two may. All these depend upon the principle that the husband must be sole seised of an immediate, legal, freehold estate of inheritance. 2 Blk. 137. n. 7. 10. By the wife's uniting with the husband in conveying the land 6 Leigh 9. V. C. 513 §4. 11. By Jointure. It is enacted in Va. Stat. that if any estate real or personal (5 Grat. 110, 3 Rand 468, 4 Leigh 498. 475.§6) intended to be in lien of her dower shall be conveyed or devised {intended to be} for the jointure of the wife, such converyance or devise shall but her dower of the real estate or the residue thereof. V. C.474 & 5. 6 § 4 & 5. The chief

difference between the English & Va Laws of jointure are as follows. ((...) Just. E(5)) 1. In Va. the widow may waive all jointure & claim her dower. In Eng. she is indeed allowed to waive jointures made after, but not one (5 Grat. 414) made before marriage. (11 Leigh 294, 12 Do. 445, 5 Grat. 14, V.C. 514 § 7) 2. Here proof (7 (...) 377) of the intent to make the jointure in lieu of dower 4 H & Mun 23 may be made by averment. In Eng. must be expressed to be in lieu of dower. 3. Our Stat. allows it to be in an estate of Realty or personalty. In Eng. it must be of Real estate & for (...) life — not so in Va. 4 Kent 574. 8. (1 Co. Ly 611—15) 4. In Eng. it must be by grant. Here it may be by devise. 7 Leigh 279. [At margin:] (& 12 [Attainder] of the Husb. for Treason — does not exist in Va.)

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117 The Differences between Dower & Curtesy are as follows. ((...)Lom. Dig. 112, 123 § 35. 41. 51) 1. Dower is one third of husband's Estate. Curtesy is of the whole of the wife's. 2. Seisin in Law is sufficient for dower whilst seisin in fact is requisite for Curtesy. (8 Grot. 83) 3. No issue is required for dower, but issue born alive is necessary for Curtesy. (2 Blk. p275) 4. Dower must be assigned but the husband may enter without assignment. (2 Co. 207) 5. The wife forfeits her dower by adultery, the Husband does not forfeit his curtesy thereby. 141. Estates for years i.e. for any limited period. (Est less than Freehold viz. For Tenure at Will & by Sufferance) (V.C. 501 § 7) The proposition of the Author, that at Com. Law a month is a lunar month unless otherwise specified, is true of Deed. & all other contracts, as well as stat. unless it can be collected from the context or from the particular business to which it relates as E.G. in Merchants Bills of Exchange, that a calendar month is meant. It has been doubted whether the Common Law priniciple prevails in the U. S. But the principle has be expressly recognized in (...). 15 Johnson 120. But it has been doubted with (Constnl. Rep. 602 S: Car.) in Penn. & S. Car. 4 Dal. 143. 6 N. Case in Va leans to the Doctrine that a calendar month is the legal month. 5 Grat. 285, ((...) case) 2 Va Cases. 275. It is {held} created in Va. that in construing statutes the calendar month is understood. V. C. 100 §17 — clau. 7. Manner in which time is to be calculated inclusive or exclusive. When a contract requires any thing to be done in so many days or to take effect from a certain time, that day is excluded from which it dates. If this were not so a note payable one day after date would be due the the moment of its execution 3 Kent 95. n(10)

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(15 Vesy 253) Such is also the rule for construing statutes in Virginia. V. C 101. § 17. claus 8. ([Balig on Bill] n. 65) The case is different when an interest passes & is to take effect from a certain day which day is then included & this is because a (1 Ld Rayd 265.) grant is to be construed most strongly against the grantor. 1. Com. 18. N.(E). 9 Cranch. 119. (Do. 84) A note is not due till 12 o'c at night but to take advantage of a condition or to save a forfeiture it must be discharged before sunset. (1. Saunder 287.n.16. (Shd. have this (...))) (As to have (...) to (...) (...) as everybody is not presumed to have (...)) 143. If no day is mentioned for the beginning of the estate, it begins from the delivery of the Deed. At Com. Law, an estate for so many years as one shall live, is void as an estate for years, because the time is indertermi— —nate, but it would be good as an estate for life if livery of seisin be made. 144. An estate of freehold cannot be made

(8 & 9 Victoria) to commence in future in Eng. This is al— —tered in Va. V. C. 500 §4, 5. (not true as to incorp. [her'dt] as C. Law) 145. Emblements. The alterations on the Com Law in regard to Emblements are beneficial & are as follows. 573 § 1 of Code. (There are 2 (...) to est. for yrs. 1 Estovers 2. Emblements.) 1. At Com. Law when an estate of uncertain duration was determined by eviction, or if the lease expired before the time of payment, the tenant was excused from paying the rent. But our stat. obliges the tenant to pay the rent until the tenancy expires, & if he enters or holds over for the purpose of reaping the emblements, it will apportion the rent, to the time that he yields up the possession. 573 §1. 2nd. The Com. Law ejected the tenant imme— —diately, but allowed him the emblements & ingress & egress & regress to take them away. Our stat enables the tenant to retain possession of the estate & take the emblements growing at the expiration of the tenancy.

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As to the 11th mode of barring Dower. viz by Jointure. At C. Law dower cd. not be barred by any uniting before marriage; because no right cd. be barred before it accrued; nor after marriage; because (11) married woman is incapable of entering into any contract. (21 because no estate of freehold can be barred by any collateral satisfactions.) Lastly a settlement after marriage cd. not bar dower because of maxim that est. of freehold cd. not be barred by a collateral satisfaction. Accordingly every woman on marriage became abso— —lutely entitled to 1/3 of husbd Est. This was the reason that so much of the land in Engd was conveyed to uses of wh. she cd. not be endowed. Accordingly when a woman was about to be married a portion of his est. was withdrawn from those uses & settled to use of himself & wife for their joint lives & if she survived him she wd. be entitled for life. But by 27 Hen. 8th uses were abolished & all land wh. before the stat. was held to use, became at once the legal est. of husbd, & wife wd. thus have had a [double] dower, but for another provision in the Stat. that Jointure shd. bar dower in such estates. Bac. Abr. Jointure (A) & (B). In both Engd & Va. there is what is called an equitable join— —ture wh. prevents the widow taking both Dower & the Settlements. 8 Gr. 83. 2 Blk. p 153 n,33. Do. 140(n) 3. Half a year is 182 days. Quarter of a year is 91 days. Day generally means the space of a natural day 24 Hours. Artificial day is the time the sun is above the horizon.

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Copy hold Est. a species of Est. known to the C Law are merely estates at Will, but this will to be determined by the custom of the Manor to wh. the est. belongs & is to be evidenced by Copy of the Ct. roll of the Manor. Sometimes called an est. by the verge, because it was passed by the delivery of a twig. 1 Co. Lyt. 653. 2 Blk. 147.

Uses were not considered as subjected to any of the feudal restrictions, because it was not the legal est. that passed, but only an inter— —est in the land. A use cd. therefore be devised & cd.

be conveyed without livery of Seisin & also by annexing conditions that determined the use without any entry, it being imposs— —ible to enter upon a use. p174. A Corporation can't be a feeoffic to uses, because not within the Stat. But may be a cestuis qui use. The reason by the Author is not a true one. p206. That no person cd. take under a deed unless he was a party thereto seems to have been a universal principle of the C Law. In Va. changed by Stat. V. C. 500 § 2. p208. In the 27 year of Hen. 8th the Stat. of uses was passed converting all uses into legal est. when uses were thus brought within the stat. of Mortmain. The Engh stat. of uses contemplates all

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all manner of uses in whatsoever manner raised. Stat. said that whenever land was con— — veyed to uses, the person who has the use shd have the same Est. in the land that he had in the use. Our Stat. is very much less comprehensive & applies only to uses raised by three instruments 1. Bargain & Sale 2. Covenant to stand seised to use 3. Lease & Release — in which cases the stat. executes the use, by which is meant in transfer of possession is the use. But uses may be created in other ways which our Stat. does not execute — (as by will). (Feoffment) Engh stat. executes uses in whatsoever manner raised. Some of the Conveyance wh. created uses may transfer the poss'n to third persons as "feoffment to uses", "fine & recovery." These are said to be conveyances wh. operate under the stat. of uses by transmutation of possession. If the use be raised by some conveyance that does not transfer the poss'n, as by "Bargain & Sale" "Covenant to stand seised"; that Conveyance is said to operate without transmutation of poss'n. All our conveyances operate without transmutations of poss'n.

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In modern times, feoffer to uses {it} is a kind of reser voir to serve any uses that may arise afterwards for purposes of marriages settlement & other pur —poses & are not used merely to transfer the legal title. Let us explain our several species of Convey. 1. Bargain & Sale — means nothing but a bargain for the sale of land, under seal & for a valuable considerations to take effect immediately. Has been supposed by some that a money considtn was nec— essary. But this is not true: it need only be a val. con. See 4 Kent 496. 2. Covenant to stand seised explains itself. It is a Covenant to stand seised to the use of another for other than a valuable considtn as natural love & affection, but must not be for remote relations. Gilbert's Uses 40 — 475. 4 Kent 492. 3. Lease & Release. 4 Kent 494. It consists of a lease, whereby the tenant is put in poss'n & then there is a release of the Landlord's" outstand —ing {poss'n} reversion, whereby tenant's est. is en —larged. The Stat. put the tenant in poss'n without entry & being statutorily in poss'n is capable of re— —ceiving a release. If is the Lease wh. operates under the Stat. for the release operates as C. Law. The Stat. of uses has the effect to substitute a constructive delivery for the "pedis positio" of the C. Law. The principle of the C. Law remain intact that there must be an actual or constructive delivery. But it is declared by Code of "50 that freehold as to the poss'n

thereof shall lie in grant as well as in livery. 500 § 4. When the Stat. does not execute a use they are called trusts.

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Trusts, may be regarded as uses unexecuted & are recognized only in a Ct. of Ch'y. — yet they were not synonomous with uses. At page 207 of Lect. Ld Bacon says. Uses is where the feoffer had the legal title, but the beneficial ownership & entire control of the est. was in the Cestui qui use. Trust is when the trustee had no beneficial own— —ership, but had discretion in the management of the est. & to receive the profits for a specific purpose marked out in the deed creating the trust 1 Lomax 207. 1 Stp. Com. 343. What uses are unexecuted & are "trusts." Uses may be created by direct & indirect modes. 1. The direct modes in Engd. The Stat. 27 Hen. 8th was held not to apply to three classes of Cases viz. 2 Blk. 335 Lect 223. 1. Those Equitable est. wh. before the Stat. were technical trusts, for Ch'y. had declined to compel the trustee to surrender the Est. to the Cestui qui trust because that wd. have been to defeat the discretion lodged in the trustee. Lect. 224. 224. 2. Uses limited upon a use, the state did not exe— cute. e.g. A is seised of land & "bargains to stand seised to the use of B to the use of C." These uses limited upon a use the Cts. held the Stat. did not execute. The Est. is taken out of A & vested in B & C is cestui qui trust. Lect 223. It is difficult to explain the grounds of this scruple being merely technical. 1 [Stp] Com. 343.

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The reason stated by Bacon, that the words of the stat. executed uses declared on lands & tenements, & not those declared on uses don't apply, because as soon as the first use is ex— —ecuted B is seised of the land & there is no reason why the second use may not then be executed. Perhaps the reason may have been, that the Cts. might have held that there was a repugnancy & inasmuch as the use to C was void before the Stat., there— fore they wd. not executed it under the Stat. In 1 Atkins 591. Ld Hardwick said that the only effect of a Stat. studiously intended to abolish all uses, was to make a man use [three] more words in a Conveyance thus "I bargain for a valuable consideration to stand seised {to the} of Blackacre [to the use of B & his heir] in trust for C & his heir." 3. Uses declared on Est. less than freehold & for a like principle uses in Chattels. This ex— —ception arises from the words of the Stat. wh. uses the word Seised, wh. [imparts] a freehold. As if A had a term for 50 yrs. he can bargain to stand possessed to the use of B, the stat. does not execute the use & A is an aquitable est. 2. So to what uses are executed in Va. Our Stat. as has been said is less comprehensive the the Engh, & executes only those uses raised by Bargain & Sale.

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Covenants stand seised & {Rel} Lease & Release The Exceptions to executed uses under Va. Stat. 1. Those equitable estates wh. as C. Law were technical trusts. These exist here as in Engd for same reasons 1 Lom. 224. 2. Use limited on a use. Exist here & for same reason. 2d. 3. Uses declared in est. less than freehold. There is a difference of opinion entertained here. Either of three constructions is plausible. 1. It is plausible to consider that the Bargains to uses must be seised in fee. 2. That he must be seised of an est. of freehold. 3. There is a plausibility that he may be possessed of a term for years. Let us look further at each construction. 1. That the Bargainer be seised in fee. It is said that the feoffee to uses must be seised in fee. 2 Co. 573(n). As the Va. stat. does not say that the person whose poss'n is to be transferred must be seised the C. Law must prevail. It may be replied that the use of the word enfeoffed authorizes the construction; but this is too technical to meet with much favor. 2. In favor of this it is said that the poss'n of the bargainer is to be transferred to bargainee as perfect —ly as if he were enfeofeed, is as operative as the word seised as C Law. It is insisted that when the Legislature referred to phrase lease & release. Bargain & Sale & Covenant to Stand seised, they meant to adopt

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them as they were understood amongst us, as well as in Engd, especially as the Stat. provides for the past as well as the future. Said further that the covenant to stand seised referred to a freehold as no livery was required convey terms. So that the better opinion seems to be that trusts in terms for years are still trust est. with us. 3. It may be contended that the Va. stat. transfers the poss'n of bargainer to bargainee, whatever be his estate. 1 Tuck. B 2 note. 4. Exception in Va is that uses declared on other than those conveyances, maintained in the stat. are still trusts as before the stat. Hence a use on a feoffment is still a trust. So all uses created by Devise [Doubtful whether the stat. executes a use cre— —ated by Devise in Engd because the stat. of wills followed the stat. of uses]. 2 Le 359. 1 Lom. 225. Yet if no particular object is to be effected by keeping the legal est. in trustee Cts. of Ch'y will decree it to be conveyed to cestui que trust. As to the direct modes of creating trusts the Engh Stat. of frauds requires all declarations of trust in lands to be in writing. We have not re—enacted this Stat. in terms & it does not appear reasonable to construe, the 4 Sec. of Stat. of [parcel] conveyances,wh. requires contracts for the sale or lease of Lands to be in writing, as including trusts, tho' there has been a disposition to that effect manifested by the Ct. of Appeals. 1 Munf. 510. 1 Lom. 230.

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2. As to the indirect modes of creating trusts. These are where trusts arise from the evident intent of the parties or from the nature of the transaction. They are called (1)Resulting trusts, Trusts by (2)Implication & (3)Constructive trusts. Engh Stat. specially reserved such trusts & Va Law is the same according to Lomax 232. They arise where it wd. be contrary to the principles of Eq'ty that he who has the property shd. have it other than as trustee. This sometimes arises from the intent of the parties & sometimes by operation of Law in being forced upon the

conscience of the party. Implied & Resulting trust arise from presumed intention. An implied trust arises from the common case of a contract for the sale of land wh. is not yet completed & the purchase money has been paid, there the vendor is considered a trustee for the vendee. Implied trusts are always in favor of third persons. Resulting trusts are always in favor of grantor or his heirs. Constructive trusts depend on conclusions of Law & are generally imposed in invitum on the conscience of the party 1 Lom. 233. These trusts are divided into 13 classes wh. are more or less homogenous. 1. Class are those that arise from an equitable conversion of land into money or money into land. Here Eq'ty acting upon the general principle

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of looking upon things as done that ought to be done raises a constructive trust. So also where land is devised charged with the payment of money. 2. Where an est. is purchased in the name of one person & the consideration is paid by another. An implied trust is raised & not resulting as stated by Lomax. Where the presumption fails no trust arises, as where a purchase is made by a parent in the name of his child or husbd for wife the presumption is repelled by the relationship but parol testimony is freely admissible to support the presumption. 3. Where a conveyance is made of land without any con— sideration or declaration of uses. Conveyance must be one wh. operates at C. Law & if such a conveyance is made the trust results to the grantor. Lect 246 as "Feoffmt to A." Here A is trustee only as there is no consideration expressed or uses declared & it is therefore a resulting trust. J. B. Minor thinks it a doubtful principle, as it can't be so construed without doing violence to the language. (...) 2 Spence's Eq'ty Jurisdn 198. 4. Where a conveyance is made of land in trust decalred as to part & the conveyance is silent as to residue— "as Feoffmt A {& this heirs to use of B & his heirs} in fee to use of B for life." A is trustee for life of B & as to the residue of the Est. it results to owner as a resulting trust. 5. Where a conveyance of land is made upon such trusts as shall be appointed & there is a default of appointment — as "Feoffmt to A to such uses as grantor shall appoint." A is meant only to be trustee & if he made

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(no) appointment the trust results to grantor. 6. Where an est. is conveyed on particular trusts wh. fail of taking effect. As feoffment to A & his heirs to use of (...) & his heirs when he shall marry. A is intended only to be a trustee & if B dies without marrying there is a resulting trust to grantor & his heirs. 7. Where the trustee lays out the trust money in land. Here the land stands as money & there is an implied trust for the owner of the money — Text 250 8. Where a purchase of real est. is made by partners with partnership funds. A trust arises by implications for the benefit of the partnership & is liable for their debts & in respect to the partners is regarded as personalty, but as to heirs & widow is regarded as realty. Text 252. This is the recd. doctrine in Engd & America. 1 M & K 649. 3 Do. 443. 2 Sem. 271. In Va 10 Le 406. 12 Do. 273. 1 Gr. 396. There is a distinc —tion between a joint ownership of Lands & a use in Common for part— nership purposes. 9. Where a renewal of a lease is obtained by a trustee or other person

[stam— —ing] in some confidential relation. The renewed lease is subject to former trust. 1 Lom. 256. 10. Where purchases are made of outstanding claims upon an est. by trustees. A trust is implied in all these cases for the owner of the lands or more properly a constructive trust independent of inten— —tions. [2d.] 259. 11. Where fraud has been committed in obtaining a conveyance. Here the grantee is a trustee for the person who has been defrauded. It is a constructive trust. Text 262. 12. Where a purchas has been made of land without a satisfaction of the purchase money to the vendor. Here there is an implied trust in the vendee to secure the purchase money. [2d] 264. This implied lien is abolishd in Va unless retained in the deed of Conveyance. V. C. 510 §1. Even NC. Law this implied lein prevailed only ag'st the vendee & his heirs & those who purchased from him without {notice} paying any consideration or with notice of the lein. It is an implied trust. 13. Where a joint purchase has been made by several & some have paid beyond their proportion of the purchase money— an implied trust. Text 274.

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Rules by wh. trusts of freehold are governed. Trusts are unex —ecuted uses & wd. therefore seem to be governed by the same rules as uses before the Stat. But those rules having been found inconvenient have been essentially modified. The effect has been to assimilate these trust to legal est. the only difference between them being the forum where contracted & recognized. So that whatever you can do with a legal est. can be done with an equitable est. Text 276. Thus trust est. are liable to (...), intrusion, & abatement, & are [convey] by the same ceremonies, are subject to curtesy & dower. V C 502 § 16-17 & may merge in legal est. where both unite in the same person. Question often arises in marriage settlements as to capacity of C of trust to alien or change in advance. 1 Lom. 281. 4 Le 279. Markham v [Guerrant]. As a general rule he who sues in a ct. of Law must [re— —cover] on a legal title — hence a c. of trust cd. not recover at Law in Ejectment in his equitable title, notforthstanding he might have a complete right in Eq'ty to have the conveyance made to him. But lapse of time conjoined with the incon— —sistency that legal title is outstanding where c of trust is in poss'n of land may avail. 1 Lom 284. Has been modified by Stat. in Va. Where the objects of the trust have been sat— —isified deft. may on 60 days notice avail himself of this defence at Law, wherever he wd. Eq'ty be entitled to a decree revesting the legal title in him & where there is a writing stating the purchase of lands & everything has been performed on the part of the vendee as wd. in Eq'ty entitle him to a conveyance of the legal title, the same shall pre— vent the vendor or any person claiming under him from recovering at Law. V. C 560 §20, 22.

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3rd. Com. Law never allowed the lessee to be deprived of any part of the land upon which the emblements were growing they protecting the land. But our Statute requires the tenant to allow the lessor or reversion or (if his Estate determines before the 1st of August) to sow the land after that period. 4th. If the tenant at Com. law had made any preparation for Sowing the

land as by ploughing manuring &c and his estate was determined before the land (Douglas Rep. (...)) was sown, he could not claim compensation for his trouble. Our Statute allows compensation. V. C. 572—3 §1. In other case the Com. law remains in force in Va. In the Valley of Va. there sprung up a custom of allowing the tenant what was called the "May going Crop". This custom cannot be so construed as to defeat the law as no custom can exist in Va. But it may be admitted to explain ambigous contracts. Harris vs. Carson 7 Leigh 632. 146. Estates at Will are determeined at the will of either party. If at the will of the tenant he must pay rent to the end of the current year or quarter &c. If at the will of the Landlord the tenant has the growing emblements. 1 Co. Lyt 648 & notes. 147. N(8) Tenancies at will are construed in Va as tenancies from year to year, and for the manner in which they are transmitted. See V. C. 568 §5. 147. Copyhold estates do not exist in Va becuase we have no customary Courts and no manors. 151. Tenants By Sufferance. The Statute 4. & 11. Geo. 2nd have not been reenacted in Va. But 11. Geo. 2nd has in sub— —stance been reenacted. V. C. 568 § 6. [Ld.] 551 § 1. 153. Estates on Condition. No estate can be conveyed in Va for a longer term than the grantor has in it & therefore there can be no forfeiture for this. V. C. 501 §7. 154 or 157. There is no provision made by our statute for condition broken. But on ejectment the right of reentry when & how excessized. See V. C. 570 to 572 § 16 to 25. 156. Impossible conditions are void by com law. The most important distinction to be noted is between condition precedent & condition subsequent. Read those conditions.

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1st. When there is a precendent impossible condition no estate can vest until such condition is perfomed; even if such condition is rendered impossible by the act of the grantor or of God. 2 Co. Lyt. 18—19. 24(n.p.) 19(n)(K). (To defeat the est. it is indispensable (...) the Grantor (...) his heirs (...) upon the land.) 2nd. If the condition be subsequent, we are to consider when and how it become impossible. If the condition be impossible at its creation it is void & the estate is absolute. If it become impossible after its creation by act of God, of the foeffer the estate is also absolute, because the act of God worketh injury to no one, & the foeffer shall not take advantage of his own wrong. If the condition be rendered impossible by the act of the foeffer the estate is avoided altogether. (37 Hen. VIII) The effect of an impossible condition in a bond differs but little from those above noted. If the condition be impossible at the time of execution and was known to be so by the obligor the bond is absolute. (3 Grat. 148) If it become impossible afterward by the act of God or by the act of the obligee the obligation is {void} saved. So also the obligation is {void} saved if the condition is illegal. If the condtn. became imposible by act of obeyer the Bond is absolute. V. C. 567 § 1, 2. 570 § 16 to 25. § 17 20. 157. Estates in Vadio Mortgages by our Statutes are declared (1 Story 39. §2 §3) to be lawful securities, but are governed by the rules of Com law. They are {almost} however almost entirely superseded by "deds of trust" which are much more (V.C. 578 §2. 576 §4, 5) convenient and which are conveyances of land &c from one person to another for the purpose of securing a debt due to a third person. (Compensation to trustee is 5 prct. on first 300 Dollars & 2 prct. on (...) of sale.) 159 n.(10) The Stat of 4 & 5. W & M. does not exist in Virginia. But the statute of 7 Geo. the 2nd has been reenacted. See V. C. 561 § 21 & 22. V. C. 504 § 6. Do. 675 §6. 502 § 19.

160 N.(13) The experiment here spoken of has been long tried in (1 Co Lyt 738) the U. S. with success and is now adopted in England. Our Statutes require every deed of trust, mortage &c. to be recorded in the county or corporation where the estate lies &c. for which see V. C. 508 § 5 to 9. Do. 548 § 7, 8. Statute Merchant and Statutes Staple. We have not reenacted this statute of 13 Ed. I De mercatoribus nor 27th Ed. 3 which estate the statute merchants & staple originated. We have no such a statute & no such Estate.

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Illegal Conditions, are reduced to three heads 1. To do something malum in se or malum prohibitum. 2. To omit the doing of some duty. 3. To encourage such crimes or omissions. Such conditions the Law will always defeat being concerned to remove all inducements & tempations to those crimes. Four classes of cases are governed by these principles 1. Conditions "pro turpi causa" as that the parties shall live together in fornication. Of it is past cohabitation it is a good condition provided either party were unmarried. 2. Conditions in retraint of trade. General rule is that all such conditions are bad. But this is not without exceptions, as where the restraint is partial as to time & place. 3. Conditions affecting the freedome of marriage. To this class belong marriage Brocage contract, wh. are considr. void as affecting the happiness of one or both parties. If the condition is precedent the est. will never vest & of subsequent will never be defeated. Conditions in restraint of marriage annexed to Leg— —acies & Devices of Land are void. Civil Law regarded all such conditions as void. C Law did nt go so far & considered that conditions that did not actually prohibit marriage, but only restricted it reasonably in respect to time

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place & person were good. Legacies payable but of personal est. were recoverable formerly only in the Ecc. Cts. wh. ct. acting on the Civil Law held all conditions void: & when afterwards Ch'y assumed concurrent jurisdtn. they adopted the same rules to some extent. But the Ec. cts. never exercised jurisdtn. over devises, but they were always cog— nizable in Ch'y & they held those that prohibited marriage as void, but those that restrained it as to time, place, & person as valid. Cts. of Ch'y adopted the rule of the Ecc. Cts. as to legacies in (...) only hence the confusion. In all cases of Legacies the first inquiry is whether it is payable out of personal or real est. 1. If payable out of real est. i. e. being land or charged upon Land. If condition is precedent then altho' the condition is entirely prohibitory of Marriage it must be complied with or no est will ever vest. If condition is subsequent then its validity depends on its consistency or inconsistency with C. Law principles. If condition is in total restraint of marriage it is void & the est. is absolute. If partial only then the condition is good. 11 Gr. 804 is case where an est. was on condition restraining a woman to marriage with three or four marriageable men. Condition held void & est. absolute. 2. If payable out of personal est — must first consider whether the est. is given over if condition not complies

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with. If est is so given our condition whether precedent or subsequent must be complied with un— less entirely restrictive of marriage. If est. is not so given over if it is a condition subsequent, it is of no consequence & if illegal it is void & if legal is "in terrorem" merely. If condtion is precedent & not too restrictive of marriage it must be complied with. & if its is too restrictive the est. is absolute. 1 Atkins 381. 1 Story Eq'ty 283—291. 2 Wms [Ex'trs] 791. Fonble Eq'ty 209 n(q). 4 Gr. 804. 2 White & Tudor's Le Cases part 1st 263—337. 4. Conditions involving considerations rendered void by Stat. as gaming & usury &c. 2 Co Lyt. 24 n(p). In all cases of these conditions annexed to Bonds, the Bond is void because thereby the act is most discouraged. Whereas if annexed to an est. — if precedent the est. is void & if subsequent the est. is absolute, becuase thereby the act is most discouraged. Repugnant Conditions. If a man make a feoofm't in fee—simple on condition that feoffee shall not alien the condition is repugnant & therefore void. But when the condition is annexed to a collateral thing as if I am seised of Blk. A & A convey me White A. on Condition that I keep Blk A. the condition is good being annexed to a collateral thing. So a Bond on condition not to sell a fee simple est. is good. In like manner when the condition restrains alienation to a particular person or in a a limited time, it is good. However the

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repugnancy comes about the condition is void as a Lease to A, B, & C on condition that C [shall] receive the profits the condition is void. But a lease for life or years may have such a condition not to alien annexed to it as it is not necessary incident to such interest to alienate & as the interest of the Landd. is concerned. But they are strictly construed & [are] not viewed with much favor. 1 [Lun.] 336.

Distinctions between a Mortgage & a Con— ditional Sale — The true character of the transaction depends on whether it was a security for money. The are three ways of distinguishing. 1. Whether the vendor remains in poss'n, wh. is usual in a Mortgage. But in a Conditional sale there is a transfer of poss'n. 2. Whether there is a Covenant for the repayment of the purchase money. In a mortgage there is such a cove— —nant not probable that in a conditional there is one. 3. Whether a price for the property is named or con— —templated. In a mortgage no price is named. In a conditional sale ther is. 1 Wash 127. 1 Rand. 125. 6 Gr. 204. When the object is to secure money there attached immediately an Equity of Redemption.

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Deed of Trust is a conveyance to some individual the mutual friend of the Grantor & Grantee & therfore strictly impartial, generally accompanied by a declaration of trusts which are 1. That the grantee will permit the grantor to remain in poss'n & take the profits until default is made

in payments. 2. That as soon after such deafult as convenient the Trustee shall sell the property, — pay the debt. & the surplus if any to the Gr. VC 504 & 6 4 Munf. 259. Trustee is the impartial agent of both parties & for this reason has power to sell. Trustee takes the legal title & a conveyance from him con— vey o the legal title absolutely at Law, altho' defensible in Eq'ty 6 Munf. 366. & 368. 5 Le 370, 1 Call 514. If {of} every —thing is fair tho' not in strict conformity with the deed, it may be allowed to stand. In Engd. the trustee receives no compenation unless it is stipulated for in the deed, it being considered an act of friendship. In Va the compensation before a stat. was usually 5 pr ct. on the debt or so much thereof as the proceeds of the sale relinquished. But this was not an {onfld} inflexible rule & might have been more or less in discretion of Ct. according to the difficulty of executing the trust. 4 Munf. 415. But now there is a stat. wh. says that the compensation shall 5 pr. ct. be the first $ 300 & 2 pr. ct. on the residue of the proceeds of the sale & thus trustee is tempted to sell as much as possible in order to get a larger compensation.

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Trustee being the agent of both parties ought not to permit the {ureg} urgency of either to force a sale, but he ought to consider himself as bound to act impartialy & he may apply to a Ct. of Eq'ty to assist him & to adjust accounts & to remove impediments to the execution of the trust & this is true of all fiduciaries. Gilmer 132. 2 Deas. 369 (S.C.). If the trustee fail to take these proper measure the party injured has an unquestionable right to do so Gil 132. 11 Le 547 & it is the duty of the trustee {to lut} until these measure are taken to delay sale of the property & if he do not do so he will be restrained by injunction. A trustee is aften obliged to resort to Eq'ty for his own safety to know how to distribute {a} funds, where lands are conveyed to pay debts generally. True of all fiduciaries. Effect of death of Trustee, Debtor or Creditor in the carrying out the trust. 1. If Cr. dies. this produces no other effect than to make the money payable to his per. Rep. 2. If Dr. dies, it has been thought to determine the trustees power to sell & this opinion is referred to with favor by J. Tucker in 5 Le 474. Text 426. This principle must be regarded as changed by code wh. enacts that the trustee is to sell pay the debt & the surplus if any to heir. 504 §6 of Code. 3. Death of Trustee devols the legal title on his heir or devise, but as the trust was confidential his heir or devise cant execute, & also for reason of their number infancy &c. Text 427. Proper course (...) to

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apply to a Ct. of Chy have a trustee appointed {& to file a Bill to foreclose the} {Eq'ty of (...)demption & obtain an order of sale} Stat. says that the per. Rep. shall execute the trust unless the deed declare otherwise or a trustee is ap— —pointed by a Ct. of Ch'y. YC 675 § 6. & the Stat of 1853 say that a new trustee may be appointed on motion to Cir., Co. or Corptn. Ct. Act of 1853 p 24 Ch 30 §1. (In that Stat. grantee is used instead of Grantor & reference cite code hd. be 167. instead of 177). As to all trusts created since 1850 trustee is required to render an account before a com— —missioner of the Co. or Corp" Ct., within the year & every

succeding year {&} or forfeit his commission. VC 548 § 7 & 8. Usury in a Mortgage. If there is usury in a Mortgage & the creditor presents himself & usury is pleaded he is just as much barred as he wd. be in a Ct. of Law. But if Debtor presents himself for relief he must do Equity & give proper measure of relief. At C. Law proper measure of relief was payment of principal & Legal interest. Our Stat. principal without any interest. Marks vs Morris leading case. [blank space] The Debtor had given a deed of trust wh. he said he cd. prove usurious Trustee was about to sell & Dr. applied to Ct. of Ch'y to restrain the sale & said he was full handed with proof to establish the usury. But Ct. below dismissed the Bill. But the Ct. of Appeals sd that Dr. was entitled to just such relief as he asked & Ct. was enjoined from selling and compelled to sue in Bond & thus allow the Dr.

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to prove the usury. This case was decided in 1812 & continued the Law down to 1850 when in the case of Bank of Washington v. Arthur a blow was aimed at doctrine of Marks v Morris. But the doctrine is new enacted in Substance into the Code. Foreclosure of a a Mortgage in Engd puts the Creditor in final and absolute posession of the land. Here in Va foreclosure only causes the land to be sold & after the debt is paid with interest, then the surplus if any to paid to the Debtor. It is settled that cr. may sue the debtor for balance if the value of the est. be less than the debts. Does it open up the decree of foreclosure & admit the Dr. to redeem, if the cr after forclosure takes our procep on a counter security, as a Bond? If the cr has sold the land this Eq'ty does not exist but if the land remains in the hands of the creditor it does exist. We escape all of these difficulties by accruing a sale. [scribbles]

1st. A remainder is the remnant of a gift after a preceedent part of the estate has been given away. 2nd. There must be a particular estate, but the particular estate does not support the estate — it grows out of it. Remainder must pass out of the Grantor at the time of the particular est.

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(1/11) Statute Elegit. 13 Ed I. We have estates by Eligit as in Eng. (uses for mortgages) Though by recent statute it has been altered See: D. C. 762 § 7 to 10. (2 Gratt [298]) The differences between Elegit in Engl. & Va are as follows. 1st. Ours does not embrace goods & chattels: the English does. (5 Do 352) 2nd. Ours takes all the real estate. The English takes only half. Ours seem to include estates for years from the (Woodson W5.) use of the term "possessed". 3rd. Ours takes real estate only the English personal also. 162 Blackstone gives Cokes reason why an Elegit is (Perkins 6 Munf 556.) not a freehold. The reason which the author, himself, gives is not the true reason vis that this estate being merely a Security for money or a debt due the (3 Leigh) deceased, it goes to the Executor & not to the heirs (Boswell vs. Buchanan) because they are liable for the debts due by the decedant. The true reason is because the utmost period of its duration is limited by the Valuation of the rent awarded by the jury & is an Est. for years.

This valuation is technically called an "extent." If the estate be not certain at first, it is certainly made so by the calculation of the time required to pay the rent after its valuation is fixed. The only thing which makes the estate uncertain is that the defendant may come and make a tender of the money or the debt may be satisfied by some casualty as the finding of a mine &c. Bac. abr. Executor. B. 7. 115 Estates in possion & in Futuro (Lecture Dec 30th) The latter ar of three kinds — vis Estates in Remainder. Reversion and Executory limitations. Remainders. The author says that no estate of freehold can be created, to commence in futuro, because at Com. law. livery of Seisen was necessary. But this rule does not hold in Va. as freehold may be made to commence in futuro & as well by deed as by Will V. C. 500. § 4 & 5. It has been supposed that the Va. Statute meant the estate should be created by feoffment, and that livery of seisen was dispensed with. The Com. law reason of this rule was —

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122 1st. That the lord of the [fee] might know who to call upon to accompany him to war in defence of the realm. 2nd. That a stranger might know whom to bring his action against for recovery of the land by Writ of Right! which could only be bought against the tenant of the freehold. But if they were permitted to commence 'in futuro' then the freehold would be in abeyance to the Commencement of the Estate. When the conveyance is made to operate under the Statute of uses it transfers only so much as is mentioned in the deed & the use underposed of remains in the grantor until the contingency happens. So that the freehold is not without a tenant. 167 If the particular estate is void at its creation or is defeated afterwards the remainder supported thereby is also defeated. This is only true as to Executory or Contigent remainder, unless the Estate was void at its creation. Mr. Fearne limits the preservation of vested remainders to very few cases, when the particular estate is destroyed. Whenever a remainder is once vested by a good title the destruction of the partic— —ular estate will not divest it. Fearne 308. Ba. Abds. Rem. & Rev. But our statute has abolished all doubts on this point V. C. 502 § 13 & 12 169 Vested & Contigent Remainders. Blackstones definition is defective. The best one is given in Note 10 from Mr. Fearne. vis The present capacity to take effect in posession if the particular estate were to determine makes vested remainders; and the {event} want of the present capacity to take effect in [possn] the particular estate were to determine the contingent rem— —ainders. This incapacity may arise in various ways as by limiting the estate to an uncertain person, or on an uncertain event, or on an event which though it must happen, yet may

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Remainders. As to the time of enjoyment estates are either in poss'n or in expectancy. There are several sorts of estatutes in expectancy 1. Remainders 2 Reversions & 3 Executory Limitations, under the Stats. of Wills, of Uses & 8 & 9 Victoria. The only est. in expectancy at C. Law were remainders & Reversions. If the remainder is created by Will it is called an Executory Devise. If under the Stat. of Uses it is called a shifting use. If under 8 & 9 Vic an Executory limitation. 1. The first essential of a remainder is that there must be a precedent est. The word remainder is a relative term & there must necessarily be a precedent est. & it has reference to

that precedent est. & not to what is to come & it has relation to the whole of the gift & not of the est. & it ought to await the regular termination of the precedent est. 2. Requisite is that the rem. must commence or rather be cre— —ated at the same time with the particular est. 3. If results also that it must vest during the continuance of the particular est. or the very moment that it determines & if it happen that there is a gap it destroys the oneness of the gift & prevents the subsequent gift taking effect as a Remainder. p. 538. "A fee cant be limited after a fee by way of Rem." Yet one fee may be substituted upon a contingency for another ((...) 540) & is called a contingency with a double aspect & if the first limitation shd. vest, the reat ast Com. Law are necessarily void. As "Grant to A

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for life & if A leave children to them & their heirs, but if he leave no children to B & his heirs." Here if the first fee vest at C Law the second is forever void. But by Executery devise or conveyance to a uses or under the 8 & 9 Victoria a fee may be limited after a fee, [ex] that altho' the first shall become virtual, the subsequent may await still its contigent termination. 542. "If a term wh is {be} limited be so short". Whether the limitation wd be good or not served depends on whether there was a precedent est. limited or not. (See [Shelly's] case) If there was a precedent est. limitation altho con— —tingent the subsequent limitation wd. not be evidt. "New in Va an est of freehold may be made to commense in futuro by deed" &c. VC 500 § 3, and any est. wh. wd. be good as an executory Devise, wd. be good if created by deed. 543. Rule in Shelly's Case. "Whereas a man by deed a will takes an est. of the freehold & there is a limitation over in the same instrument either mediately or immediately, to his heirs or heirs of his body, the words heirs or heirs of his body shall be words of limitation & not of purchase." The reasons of the rule. 1. The Lord of the fee would have been deprived of his wardship & marriage, of the heir took as purchaser. Puerly a feudal reason. 2. That the limitation to heir if considered as a Rem. wd be contingent & the {freehold} inheritance wd. be in abeyance, to hold that the word heir was one of purchase. 3. If it were a contigent Rem. no alienation of the

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inheritance cd regularly take place during the ancestor's life. And 4th is added by Hargrave viz: to preserve the marked distinction between {the marked} descent & purchase & to prevent title by Descent being stripped of its proper incidents. Hargrave regards the rules as not designed to discover the intention of the Testator; but where there are contrary intentions to give effect to that intention most compatible with public policy 2 Cody T. 151 n(P) "con est. to A for life rem. to B for life rem to A's heirs." Now if A's heirs are purchasers, he wd. transmit to heirs in perpetual succession, but not so as to change the inheritance. Our legislature {means} attempted to abolish the Rule, but did not succed. Now the Stat. says "that wherever an {est.} ancestor takes an est. for his life & there is a limitation over to his heirs that he shall only take an est. for his life." V.C 501 §11. Now this Stat. applies only to an est. for {grantor} ancestor's life, & does not apply to any est. for life, other than his own life. It is therefore only partially

abolished. Joint—tenancies. We come new to the number connex— —ion of tenants. The normal condition of est. is that there are held in severalty. They may also be held in joint— —tenancy coparcenary & in Common. They differ in most particulars, but agree in there being a com mon possession. On joint tenancies they depend

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on four unities. 1 Unity of interest. 2 of Time 3. of title. 4. Of Posession. In Coparcenary there must be all these unities, but unity of time. In tenancy in common, none of them necessary but unity of possession. At Com. Law the presumption is, where an est. is given to several that it is an joint-tenancy & not tenancy in Common. Joint—tenants & tenants in Common derive their est. always by grant. Coparcenary derive their est. by Descent & are co—heirs 616. An alien may cut off the commonwealth by be— —coming a citizen and also by taking the oath of in— —tention to continue to reside, as well as by selling to a Citizen. V.C 498 §3. In a gift to Husbd & wife they are tenants by entireties. Survivorship is now abolished in this case also. V.C 502 § 18. Case of (...) v (...) 3 Ran. is confirmed by 5 Gr. 63. 625. Writ of partition is till reserved — & partition may also be had by Bill in Ch'y. Joint tenant & tenants in Common cd. not be compelled to make partition at C. Law, but co—heirs cd. be. Reason was that co heirs came in by act of the law & it was not reasonable that they shd. not be advised to sep— —arate if convenient to them. On partition law cd. be divided but cd. not be sold. Our stat. allows the premises to be sold. 627 - "If either [title] disputed party sent to a Ct of Law." A Ct. of Eq'ty may settle all questions of Law that arise V.C 526 § 1

post. p. 146 for "Release"

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not happen during the continuance of the particular estate. "A vested remainder is one so limited either to a certain person, or on a certain event as to possess the present capacity to take effect in possession if the possession were to become vacant." "A Contigent Remainder is one limited to an un— —certain person or on uncertain events, or so limited to certain person or on a certain event, as not to possess the present capacity to take effect in possession if the possession mere to become vacant." Mr. Fearne has divided contigent remainders into four classes, viz 1st. When contigency is on an uncertain event con— —nected with the determination of preceding estate as an estate to A. until C. returns from Rome and after C.'s return to B. 2nd. When contingency is an uncertain event un— —connected with determination of predecing estate as lease for life to A. B. & C. and if B survives C. the remainder to B. in fee. 3rd. When the event must happen, but the contingency consists in its happening during the continuance of the particular estate as lease to A for life and after Bs death to C. 4 Where the contingency consists in the non exis —tance or uncertainty of persons as lease to A for life remainder to the heir, or B, or to the eldest son of B. who has no son. To the 3 & 4th classes above mentioned are the following exceptions— (...) class 1st. Grant to A for life remainder to B for life remainder to A's heirs— rule in Shelly's case. 1st Co. rep. 104. This rule has been partially abolished in VA. V. C. 501 § 11. 2nd Grant to A for life remainder to grantor's heirs

which is not a remainder but his old reversion. 3rd. Grant to A for life remainder to B's heirs now living when "heirs now living" is designatio personasum.

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124 (3 Class) 1. Lease to A for life. rem. to B for 99 yrs. if he should live so long. Rem. after B.s death to C. when C.s Rem. is vested. 171 — Contigent Remainders Defeated. (Fearne L. 30, 35, 37, 40, 74, 36, 38, 53, 77, 149, 178, 154.) The alienation here mentioned as defeating Remainders is tortuous alienation by some (2 Rolls abridg. 418) Com. Law Conveyance,, as feoffment, fine &c. But alienation under the Stat of Uses does (Perrin vs. Blake) not defeat them (for reasons see p 274 Text) (1 Mn. Black Rep. 1 Tuck Comm. bk. 2, p. 135)Remainders cannot thus be defeated in Va. V. C. 502 § 12 & 13. 175. The reason given by Lord Kinyon is note 21 for the limitation of executory devises, as V.C. 501, § 11. to their vesting to a life or lives in (...) & 21 years & 9 months is worthy of observation viz: in conformity to legal limitations as in marriage settlements. The Stat. 39 (...) Geo. III refered to in the same note, forbiding accumulative settlements, beyond a certain period, arose from an extraordinary case, rep— —orted in 4 Vesey (...) 227. We have not re— —enacted this statute. {181} Joint Estates. Their incidents &c. Unity of time. This principle note 8 is 1 Tuck Com. Book 2. p. [110] much shaken by the authorities in the note The annotator considers the vesting at the same time only in conveyances at Com. Law, as material & as not affecting conveyances under the Stat. of uses, & devises. (1 [Lom Dig.]) When an estate is granted for use of children it remains in the grantor, until the application of it arises & as often an occa— —sion the old estate is supplanted by these joint estate. Thus the differentes [blank space] may arise at different times & still vest at the same time. 1 Lomax Dig., 475—6. 181 n(10) This note is important. If an estate be give to a man & his wife in fee, they are properly neither joint—tenants, nor

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tenants in common, but they are seised by entireties & their right of survivership is incident to it. This estate may exist in Va without right of survivership. 3 Ran. 179. 5 Grat 63. This is abolished by the New Code, which directs that when an estate is thus given to a man and his wife upon the death of either a moity shall go to his or her heirs subject to debts &c.; but this does not apply to joint executors or trustees or when it appears from the face of the instrument that {there} it was intended that those should be surviveship. 502 18 & 19 of Code. 182. At Com. Law there could not be surviveship of capital & stocks in trade. 1 Co. Lit. 737 n (H) 4 Kent 362, 18 & 19 §§. 1 Co Lyt. 398. 183. The Stat West 2. allowed actions of waste against each other only to tenants in Common. But as joint—tenants were within the same (Munf 30. Com. Dig. 480 (...)) mischief the stat. has been construed to extend to them also. We have re-enacted the stat. here & the same construction would follow V. C 566 §2. — The stat. of 4 Anne giv— ing joint—tenants an action of account against each other has also been re—enacted V. C. 586 § 14. 195 The Author that joint—tenants may make partition by agreement, but they cannot be compelled to make it, founding his opinion in ((...) 526 1 & 2) the old maxim, "that it takes two to un— make us well as to make a bargain". But (Co. Lyt (...)) by Stat. 31 & 32. Hen. 8th. joint— tenants may by writ be compelled to make partition. (Do. 788 (...)) By our statute of

conveyance, all conveyances of estates of inheritance or of freehold or for a longer term than five years must be by deed— hence a partition must be (Grat. (...)) by deed V. C. 500 (526) § 1. 5 Grat 499.

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126 (V.C. 302 § 17. 4 Kent 362) If the parties be of full age & under no disability & the partition be made by mutual consent, without fraud, it is binding though unequal. 4. H & M, 184 3. Call 558. 1 Co. Lyt. 753. 187. Coparcenary may take place here between both males & females in view of our Stat of descent. Parceners are compelled to make partition & they may do it by parole or by deed unless when immediate livery of seisin, which may obviate the necessity by deed. See further V. C. 526 § 1 & 2. The Stat of West, 2 giving action of waste to joint—tenants & tenants in common, does not extend to parceners, as there was no necessity. 1 Co Lit 705, 788. The Stat of Va gives an action of waste & abolishes all privileges of election & priority. Code 566 § 2. 190 The Law of Hotch—pot. exists here in consequence of our statute of descents & distribution to a much greater extent than it does in Engd. since 1819. Previous to 1819, real estate was only brought into hotch—pot with real estate & personal estate with personal estate. As to the law since 1819. See V. C. 525 § [10]. When a father dies intestate any of his descendents {children} who may have received an ad— vancement, whether of real or of personal property for the purpose of starting in life & who may wish to come into division with the other children must put their advancement into hotch-pot & mingle it (4 Kent,) with the rest & then the division is made of the whole. The law applies {only} to {children or} issue of intestate who may wish to share after an advancement is made to them. It is important to settle what an advancement is. See [Toler] Executor, 337.

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money for maintenance or education or a gift of money without a view to start the son in life is no advancement, nor is it an advance— —ment when money is given for traveling, to buy a horse, & watch &c. 4 Rob. 488. It is settled that advancements are to be valued as at the time when made. & rent & profits from the time of advancement are not to be taken into consideration 1 Wash 224. 2 Ran. 120. 3 Ran. 559. 3 Leigh 30. 8 Veesy 62. 4 Grat 348. V. C. 525 § 15. 191. Lord Coke mentions several methods of dis— —solving an estate in coparcenary by act of law, which are nor mentioned by Blackstone. 1 Th. Co. Lit 708. 1 Lomax 492 & 3. 566. 552 586. 554. 194. By Stat 32 Hen. 8th & West 3. tenants in common like joint—tenants are compelled to make partition. We have enacted those Statutes in substance. V. C. 826 § 1. At Com. Law partitions as to parceners could be made by deed or parol, but partition of joint—tenants must be made by deed. Here all partitions must be by deed except perhaps in the case of parceners 1 Lomax Dig. 492 & 3. & see 566 Code § 2. 586 § 14. But the most usual & most convenient mode of partition is by bill in chancery[.] The applicants files his bill & all who are concerned are summoned & the decree is given ex debito justitiae. V. C. 526 § 1. By thus giving chancery jurisdiction the Stat. provides for one case of great dif— —ficulty & which could not be reached by the Cts. of law — viz. when some of the parties are not known by name or when

the share are not known. V. C. 526 § 4. 644. §10—14. Our statute have allowed tenants—in common to join or to be joined as plaintiffs or defendant. V. C. 640 § 2.

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Title to Real Property The text speaks of several stages to complete a title to land 1st. Possession, 2nd Right of Possession & 3rd Right of Property. The 1st of these may take place when there is a mere naked possession as when a stranger without even a shadow of right enters & keeps out of possession the rightful owner & easy remedy to recover possession is afforded by our statute of forcible entry & detainer which [is] applicable in 3 cases vis 1st When he enters having no right to enter. 2nd. When he enters having a right but forcibly as with a strong hand having a multitude of people. 3rd. Where he enters having right but at the expiration of such right hold over VC 556 § 1 to 4 — to be acted upon within 3 years. It may be proper here to mention that the term disseisin means forcibly turning out the rightful owner. Abatements means comeing in between the ancestor & the heir, an intrusion means comeing in between the remainder—man & the holder of the particular estate. 196. 2nd. Author here discusses how mere poss— —esion may mature into right of possession. The maxim of "descent toles the entry" (toles {(...)} from Tollese) &c was the law in Va until 1849 when it was changed. See V. C. 556 § 4 originated from feudal system. 198. 3rd Right of Property The periods of limitation have been shortened both in this country & Engd. in Va the right of entry is limited to 15 years. V. C. 590 § 1—4. All writs of right are abolished in Va and ejectment is now substituted in place of them.

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129 The Remedies to Recover Lands During the Various Stages of Title. 1 When ther is mere possession the remedies are 1st by entry x 15 yrs. 2nd By writ of forcible entry or unlawful detainer 3 yrs. 3 By Ejectment — 15 yrs. 4th By methods to be hereafter mentioned.

([V]C 563, §8) 2. When the title is apparent right of possession the remedy {is} formerly by possessory action, as a writ of assize. 1. By Ejectment. 2 Writ of Assize. 3. When the title is mere right of property the remedy {is} was droitural actions. This is more fully explained in 3rd Book 180 to 197 & 3 C. Litt. 147. (1) Ejectment (558 § 2). 2 (...) (...) (...) The difference between a possessory and a droitural action, is, that the former is brought to recover possession only; the latter to ascertain in whom the right of property resides. These remedies were used in Va previous to 1849 but now they are as follows. For the 1st Class — By peaceable entry by unlawful entry and detainer and by action of Ejectment. 590 §1 2nd Class — By Ejectment and perhaps assize. V. C. 556 §1. 3rd Class — By Ejectment. V.C. 558 § 2. [Do] 98 § 2 op 14. Titles are acquired either by act of law i e by descent or by act of the parties i.e. by purchase. Descent From the first existence of Va as a colony in 1606 until the Revolution the com law rules of descent prevailed. All ((...) 59) the Canons mentioned by Blackstone were in force. These canons were the creatures of the Feudal System and existed entirely in England until 3 and 4 Wm. the 4th (1854). To the great admiration of the most eminent English Lawyers as the boast

of their Jurispru— —dence, notwithstanding their being contrary to affection, to natural reason and to Repub— —lican principals. 2 Blk. 208.

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A Law was passed in Va. to revise the State Code. The Gentlemen appointed for that purpose were Messrs. Jefferson, Wythe, Pendleton, Mason & Lee. The two latter excused themselves on the ground that they were not Lawyers. Mr. Jefferson in his memoirs, has preserved an account of their labors. He says that the Com. Law. with the statute made in aid therefore prior to the 4th year of Jas. I was assigned to himself. The subsequent English Statutes to Mr. Wythe & the Va Stat. to Mr. Pendleton. Mr. Jefferson wished to abolish primogeniture. Mr. Pendleton to preserve it but finding he could not he proposed to adopt the hebrew rule giving the oldest son a double portion. Mr. Jefferson replied that if he could show that the eldest son could eat twice as much so that he needed or could work twice as much so that he deserved a double por— —tion then he would consent. But if his necessities nor deserts entitled him to more he ought to be placed in an equal footing with the rest. The other commissioners sustained Mr Jefferson views & so the doctrine of primogeniture was abolished. The Stat. of descents was enacted in Oct. 1785, & took effect 1st Jan 1787. The terms of the Stat. were so clear & precise that no legislation arose on it until 40 yrs after, when two new section were added in 1792 which were the source of strife 4 Call 404. 6 Ran. 363. 409. 433. 202. There are two modes of reckoning con— sanguinity. 1st. By the Com. Law. 2nd. By Civil Law. The Com. Law reckon from the remote ancestor (i e Grand— —father) and reckoned with regard to marriage. The Civil law counted up to the remote

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ancestor & then down & was for purposes of distribution of property. 1. Canon of Descent. Actual Seisin of the ances— —tor was not requires in Va Code 522. § 1 This section also abolishes the 2nd Clause of of 1st Canon. The first person selected to succeed after failure of issue is the father 1 Lomax Leig. 594. 2nd. Canon. Our Stat. gives no preference to males over females in the descending or collateral lines; though they do in the ascending lines prefering the Father to the Mother & the Grand—father to the Grand mother. 3rd Canon. Primogeniture is totally abolished in Va. 4th Canon. Jus Representationis. Here is the only source (reemploy this [only] to (...) certain (...) shares [at] each (...) is to (...)) of difficulty that exists in our Stat. with regard to descents. The Com. Law says that the heir shall stand exactly in the same case that the ancestor would if living, in all cases. Our Stat. provides for this right in some cases expressly, but is silent as to others. The doubt is whether the principles of the Com. Law shall be preserved in cases for which our Stat. do not provide or wheth— (2) —ther such cases shall be decided by analogy to cases provided for in our statutes. The latter opinion hgas prevailed. Davis vs. Rowe 6 Ran. 363, 371. 5th Canon. On failure of descent the inheritance goes to the collatorals &c. Our Stat. declare that the inheritance shall go to the children & their issue. If no issue or children then in the first place to the father, & then 2nd to the mother, Brothers &

sisters & their issue & 3rd On failure of these the inheritance is to be divided into two moeities, one of which shall go to the Paternal & the other to the Mat— —ernal line. Our Stat. prefers the blood of the first purchaser in one case only

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and that is when an infant dies without issue, having title to real estate of inher— —itance, derived by gift, devise, or inheritance from either parent, in which case only it goes to the side of that parent from when it was derived & the other side cannot take so long as there are any living on such side V. C. 523 § 7. This is one of the interpretations adopted in 1790 & the greater part of the litigation on the statute of descents has arisen on this provision. 13 Hen. Stat. 790. 1 Tuck Com 197 no (...) 6th Canon. By our Stat. those of the half blood are not excluded, but take a half portion when they come into partition with the whole blood, but if all that take be of half blood they take equally, only giving the ascendants if any there be a double portion. The 6th Canon was meant principally in finding out the heir of the blood of the 1st purchaser. Here it is not necessary that the collateral heir should be of the blood of the 1st purchaser except in the case of infants above mentioned. V. C. 529 § 9 so there is no reason for excluding the half blood. 7th Canon. The object of this is also to fund the next collat— —eral kinsman of the whole blood of the 1st purchaser. No preference is given by our Stat. to males over females but the estate is divided into two moieties one going to the paternal, the other to the maternal line, and the estate is not to be divided again. The following is a general view of our Statutes of descents. Sec. 1st. This clause at once abolishes the Com. law principle 1st. Requiring actual seisen; for it says "having title". 2nd. It also abolishes Primogeniture. 1 Lomax Dig. 524 3rd. It abolishes preferences of males over females. Sec. 1st. 1st. Clause. The inheritance descends 1st to the children & their descendants, and if none, to the father. 2nd Clause. Their abolishing the Com. law principle that inheritance

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133 shall never lineally ascend. 3rd. If no Father then to the Mother brothers & Sisters & their descendants. 4th. This clause abolishes the Com law preference of the paternal to the Maternal line — and provides that the estate being divided into two moieties shall descend in the following Course. See Clauses 5.6.7.8 & 9. c. 9 Gives the preference to the blood of the 1st purchaser in the case of infants. Has occasioned great controversy. c. 8 At com. law the birth of a posthumous son divests ((...) be (...) mere death [ancestor])the inheritance from the daughter & so far is this principle carried before it comes to the heir apparent these fluctuations, to say nothing of the harships were very inconvenient. But they cannot occur in Va from the provision of V. C. abolishing primogeniture & preference of males over females 522 § 8. 2 Bl. Com. p. 207 (n)9. 1st Clause 10 This is but another instance of the total disregard of the Com. law and our Statute has provided for every possi— —ble case of descent to present an escheat to the commonwealth. 5 Call 481. 2 & 3. The purpose of this section was to prescribe in what proportion the heirs should take when they take by classes of which there are two. 1st Children & 2nd Mother, Brothers & Sisters or Grandmothers, Uncles & (* [Case not contemplated the] (...) [where all of a class are dead]) Aunts &c. The statute provides for two cases.* 1st where all

of a class are living there they shall take "per capita" then the issue of those death shall take "per stirpes" that is by stocks viz the shares of their deceased ancestors. The intention of the statute was to provide for every possible case that could arise but unluck— —ily there was one case which it did not contem— —plate, and that was where all of a class were dead leaving issue. In this case the question is shall the issue take "per capita" dividing the inheritance between them equally, or shall they take "per stirpes" giving to the issue of each one the share that their parent would have taken if living? The 1st and only case in which the question has arisen was that of Davis vs. Rowe 6 Ran, 355 (363) The case is as follows Anthony Gardner died in 1819 intestate and without issue seized and possessed

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134 Rand. 363 of a large estate personal and real. He had a brother and a sister both of whom died before him, the brother leaving one daughter (Mrs. Davis who survived A. G.). The sister leaving four children, two of them (Mrs. Boyd & Mrs. Shackleford) died before A. G. Mrs. Boyd leaving two children and Mrs. Shackleford six. See plan 6 Rand 363 — 5

6 Rand. 363 A. Gardiner 6 Rand. 363 Sister of A. G. Brother of A. G. A. G. Rowe Mrs. Boyd F Rowe Mrs. Shackleford Mr. Davis Wm Boyd Lucy Boyd Martha S Auth S. Eliza S Jane S Sallie S. C Chas. S

6 Rand 363 The question was Shall Mrs. Davis take half of the estate as representing her father or one {third} 1/15 only as parcena— —ry with her cousins, the children of Mr. Boyd and Mrs. Shackleford. If the statute only altered the Com law in some respects and left the particulars wherein it was silent to be regulated by the principles of that law Mrs Davis was entitled to one half the estate according to the "Jus representationis." But if the Statute was understood as wholely repealing the Com law of descents and substituting an entirely new System then the case must be determined by the principles and analogies of the Statute itself. The court took the latter view of the subject and determin— —ed that they could not look to the abrogated doctrine of the Com. Law to supply a Clew to the interpretation of the Statute. It was considered that as to the proportions in which the persons and classes designated are to take the statute lays down two rules. 1st. What the estate shall descent in parcenary that is in equal shares, thus establishing one of the grand principles of the Va Statutes viz — Equality.

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2nd. That the statute was founded on and pursued the affection of the heart as they flow in the natural currents presuming that those who are nearest in blood are nearest in affection. In the same class are degrees of (Rand ...99, ...02, ...65, ...70, ...71.) propinquity & remoteness as descendants of children, Brothers &c. & while the Stat. did not mean to exclude the remote branches of a class called to the inheritance, the same principle of natural affection required that those who are nearest the intestate should have the largest portion. To effectuate (Lom Dig. 597) this object & to settle the proportion among the different branches of the same class & for this end alone the Stat. has called to its aid the "Jus representationis". As expressed in the

3 see V. C. 522 & the gen— —eral rule thus broadly expressed is: "that whenever several persons succeed to the inheritance at the same time, if they are all in the same degree, they shall take per capita; but if part of them be more remote, they shall take the share of their deceased ancestor". Upon these grounds it was decided that Mrs. Davis should take 1/5 of A. Gardiner's estate; that A. G. & F. Rowe should also have 1/5 each & that the children of Mrs Boyd & Mrs Shackleford should respectively take 1/5 as representatives of their mothers. The rule established by this case is this: If all the heirs are of the same degree they take equally; if of different degrees, the more remote shall take only what his or her parents would have been entitled to if living. This obviates the difficulty with regard to collaterals & a provision in accordance with this decision has been incorporated in the revisal of 1849. V. C. 523 § 3.

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Sec. 15 — Speaks of advancement. 4 Kent 419 & V. C 525 § 15 " 4 — Provides that it shall be no bar to a party claiming an inheritance, that his title is devoid through an ancestor who is or hath been an alien. 2 Leigh 109. " 5 Provides that bastards shall be capable of inheriting & transmitting inher— —itance on he part of their mother as if lawfully begotten. 2 Leigh 109. 8 Leigh 368, Decided that land should pass to Mother & two bastard brothers. 2 Grat. 20 (" 6 Subsequent marriage & acknowlmt legitimize issue 242 n(2)) (sec 7, Issue of marriage void in law shall (...) legitimize.) (2 Gt. 203. Recognition may be after death of Bastard so that issue of his may [take]). The Stat. of 3rd Wm. & M. giving action to specialty creditors against a divisor has been enacted in Va. Both the Eng. & Va Stat. originally exposed the heir & devisor to an action for debt only; not to covenant but both have been modified and now the devise is exposed to an action as heir & devisee to which an heir is liable. 243. The difference between an estate by purchase. 1st. By purchase the estate acquires a non— inheritable quality. This has been abolished in Va by our laws of descents in all cases {as to all} {adult descendants & also all infant deced—} {—ents, with this exception: that when an} {infant has received an inheritance by gift} {inheritance or devise from either parent, it} {shall go to that side in exclusion to the other.} {In this case the estate does acquire a new} {inheritable quality. The descent to when} {the side whence it came takes place in Engd.} 2nd. That an estate by purchase does not make the heir liable for the debts or acts of the ancestor This is not affected by our law of descent. V. C 545 §3. 244 The Act mentions Escheat as a measure of acquiring an estate by purchase. Though it admits its impropriety. There are several estates which in strictness cannot be

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referred either to purchaser or descent: as estate by escheat. By Curtesy & Dower. An escheat as it descends along with the seig— —nary & like an estate by descent is liable to the changes of the last tenant, does not acquire any new inheritable quality & also belongs rather to estates by purchase; strictly to neither. (God. Dig. [title] [Criminal] Code. Indictment 155) 245. The only cause of escheat in Va is failure of heirs: "propter defectum sanguinis" V. C. 750 § 5. (V.C 490 [§ 4] & 366 § 2) Escheats propter delictum tenentis are abolished by our stat. which declare that

no conviction of treason or felony shall induce a forfeiture to the Commth. V. C. 489—494 § 1, 5—8, 15—18, 26—29. ((...) U. S. (...) III § 3rd.) The law of the U. S. is nearly the same & extend to almost all cases of felony. Escheats in Va go. to the Commth, in Engd. to the King. Escheat is a ([1 Leigh] 368. [V.]C. 498 §1—6) positive provision of our law. The debts of the last owner as well as all trusts & terms for years are by our laws charged upon the estate. Escheat in Engd. is by consequence of tenure. ([46 n(7)]) The question intended to be presented in this note is whether if the [Cestey] que trust dies without (Co Lyt(...) Escheats V.C. 489 494 §1 & 5—8, 15—18, 26—29) heirs, the beneficial trust shall escheat & the trustee be trustee for the Commonth or shall it go to the trustee. The weight of authority as well as of principle seem to favor an escheat regarding the trustee as nothing more than as conduit through which the title flows and not taking any benefit himself. By Equity the trust in such case will be enforced in favor of the Lord & heirs in favor ot the Commonth. (Tuck (...) Book 66 Kent 425) V. C. 493 § 26. 3 Leigh 509. 2 Kent 62. [Gibb.] Trust 84-404. A parellel question is whether if the {the} trustee die without heirs, will the legal estate estate escheat to the Comwlth. subject or discharged of the trust: for the Lord by escheat became possessed of a superior estare: but by an English Stat., it is now made subject to the trust. (Lomax (...)) {We have no such Stat. & the old Eng. would hold that it (...) discharged of the trust.} V. C. 493 § 26. 1 Tuck. [b.] 1. 66

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247. The com. Law in respect to bastards has been much modified in Va. Here they may inherit from their mother & transmit her inheritance or on the part of the mother. 8 Leigh 868. V. C. 523 § 5 & 6. Our law makes them legitimate if the parents afterwards marry {or} the father acknowledge them. In Engd. the child of a second marriage {is} while the former husband or wife lives is a bastard. We have no such law for even though the marriage is null & void the children are legitimate for the father is sufficiently certain & that seems to be all our stat. require. V. C. 523 § 7. 249. Lands purchased by aliens escheat to the (Sup 27 ante of this book) Commonth. by the "Old Law," but lands de— scended on such do not if they come within the requisitions of the Stat. For provision on this subject see V. C. 498 § 2 & 3. 498 § 1 & 2. 251. At Com. Law conviction of treason or felony was held to corrupt the blood, so as to bar the inheritance — this was called attaind[er]. This conviction was sometimes passed by Parliament in Eng. thus converting the leg— islature into a judicial body. Attainder in Va is no bar to the inheritance of those convicted & they may also inherit. V. C. 750 § 5. (...) Gor. Dig. 756 § 26 83 & 64. 2 Leigh 109. Con. W. S. AM 1 § [101]. 257. At this page the author lays down the strange doctrine that when a corporation dies {the} its lands go to the grantor & do not escheat. This seem still to be the American doctrine when not provided for by Stat. 2 Kent Com. 307. This question is one of importance to us, changed by V. C. 298 § 29. 259. Any estate for the life of another shall go to the personal representatives of the party entitled to the estate & be assets in his hands & be applied and distributed as the personal estate of such party. V. C. 548 § 18.

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139 (Com of Va W Va since 1802) E [V] [Sn] 1792 262. Alluvion. The common law prevails here on this subject. The question in these cases (V.C. [100] § 5) is "Is the bed of the rivers public?".

If so all formation below low water mark blong to the Commnth. If the bed of the river is provate than the alluvion belongs to the riparian owner. 1 Ran. 435. 3 Ran. 33. 6 Ran. 435. 6 Ran. 245. 4 Call 441. *Prescrip— (See * (...)9 ante of this book) —tion can exist in Va. Custom cannot. See former notes. 4 Ran. 64. 3 Leigh 318. 4 Kent 44{1}. Recognize title by long uninterrupted, adverse & honest possession. 3 Kent 441. Title by Forfeiture. The test mentions 8 methods, in Va there are only four means of forfeiture. (1st (V. C. 566 § 1.4. Constn. (...) Art. § 3.){Alienation of pretense title}. 2nd By alienation contrary to law, as to an alien). 2/3rd Non— performance of Condition. {4th Waste}. All forfeiture for crimes is abolished here & there are no restrictions on corpo— —rations except such as are contained in their charter. The forfeiture of an estate of an alien must be distinguished from Escheat. V. C. 750 § 5. Gord. § 2683. (...)74. In Eng. the lands escheat from an alien in consequence of his disability to take as an heir. Those which he purchase are forfeited for his presumption in purchasing. ([But] two (...) forfeiture in Va Alienatn contrary (...) Law (...) Non (...) conditions) Independent of legislation it was held to be no forfeiture to convey in trust to an alien trustee. 6 Mun. 305. But the case is different if the person for whose benefit the trust is convey by the cestuy que in trust — is an alien for this is forfeiture 3 Leigh 509. V. C. 493 § 26. Alienation of a particular {estate} tenant of a greater estate, than he has does not in Va cause a forfeiture, but passes only such estate as he can of right convey V. C. 201, 501 § 7. (Aliter in England) V. C. 929 (...) waste corportations. 975. Judge Lomax thinks the effect of a disclaimer in Va would be the same as in England viz a forfeiture 1 Lomax Leig {262} 642. Prof. Minor knows of no adjudications on this point & if Judge Lomax is correct we must add this as the other cause of for— —feiture in addition to those above named. (...)81. Forfeiture for breach of conditions is here as in England

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(Waste time on waste. Waste. Waste Waste, waste. Waste. Waste Waste) (Waste Waste Waste Waste) Waste — being defined whatever does lasting damage is different according to the circumstances & situation of the estate, as cutting down trees in an old & thickly settled country is waste; (6 Munf 142.) but if in a new country it is not waste 1 John. 232 The history of the law of waste is worthy of attention. (2 [Rob] 527—07) At Com. Law only those tenants were liable for an action of waste who came in by action of the law: as Guardians in Chilvary, tenants in (1 Rand 258) Dower, & by Curtesy. Those who came in by act of the parties were liable only so far as they (2 Saund. 252(n)7) bound themselves by agreement & no further. Stat. of Marlbridge 52 Hen III. made all tenants for life or yrs. 6 Ed. I liable for waste. This was changed by the Stat. of Gloucester, which (11 Leigh. 559) enacted that all tenants for life {should} or years should be liable for waste & forfeit place wasted & treble damages 3 Co. Litt. 235. But as (5 Grat. 499.) this Stat exposed the tenant to oppression the Stat. of 6 Anne modified it by enacting that no action should be against the tenant for ac— cidental burning {waste} save by special agreement. (Writ of Estressment is recognized by our Stat. 566 § 5) We have have re-enacted the Stat. of Gloucester. V. C. 566 § 1 — but not that of 6 Anne & the tenant is liable for all kinds of waste including accidental burning. Chan. Kent says that entire absense of adjudication on this point plainly shows that the country is opposed to it. 4 Kent 82. V. C. 566 § 1—4. 285. There is no bankrupt Law either in the Fedl. or State Govts. Be it remembered that is

one of the subjects conferred by the Fedl. Constn. on the U. S. Govt. The States have power to pass laws in this subject in the absence of enactments by Congress. N. York has long had a bankrupt law in oper— —ation & Mass. also. Congress has passed two the 1st in 1800 which lasted only three years & has then repealed amidst a storm of execration. Most of the states have insolvent laws. These apply to persons

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held in custody on an action of debt who give up all their property for the purpose of regaining their liberty: yet they are not compelled to take this step; if they choose they can remain in prison. Imprisonment for debt having been established in Va it may well be doubted whether we can have any insolvent laws. The difference between an insolvent law & a bankrupt law is this: that by a bankrupt law a debtor is discharged from all his debts & begins the world a new man; while by an insolvent law the ((...) damages) debtor is only discharged from that execution and the creditor of he can show another claim may bring another action against him immediately. 290. The doctrines of attornment remained longer than any other restraint on alienation; but they have been finally abolished. Attornment has also been abolished in Va. See V. C. 567 § 3. Note 6 mentions the Stat. 32 Hen. VIII said to be ([show anyow interetst] in (...)) in opposition to the Com. Law, which enacts that no person shall sell any lands &c. unless he has been in possession 12 months before the contract. Prior to the revisal of (Code (...) § 6 (...) 66 § 3) 1849 we had a similar Stat. in which the title acquire by such conveyance was called a pretence title. It declare that ((...) §5) no person shall convey land unless he has been in possession 12 months preceding & if any such con— veyance be made in violation of the act the estate shall be forfeited 1/2 to the Commonth. and the other half to the party injured. It will be observed that the Stat. imposes a penalty for the violation, but does not declare the contract void, leaving that to be settled ac— (Leigh 19. Kent 447 8) cording to the principles of the Com. Law, and those require that he who makes the contract shall be in possession & if he be nothing more is required. 3 Call 480—366.

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So the question as to the penalty incurred is whether the vendor or the persons under whom he claims have been in possession 12 months preceding? The technical reason laid down for the rule does not extend to equitable estates or titles, which are in fact incapable of reduced in possession. The Stat. applies to legal titles only & not to equitable ones. 291. The Author lays down the doctrine that no man is allowed to stultify himself and plead his own disability. This strange rule (513 V.C. 176. 4 Munf 566) founded on yet a Stranger reason was early complained of by equity lawyers, who said it was contrary to natural reason and the policy of civilized men. Nevertheless it maintained its ground for a long time (in theory at least) but it was finally abolished in both law & equity: 5 Ch. 566. 15 John 504. 2 Kent 457. 1 Story's Equity {232} § 227. 293. In Va femes covert convey & relinquish their titles according to statute. With have dispensed with the fictitious suit for fine & recovery in order to enable femes covert to convey

& {its} in its place merely provide that she be examined by one of the justices of the court or by the clerk, previly & apart from her husband &c. V. C. 513 Sec 4. This Stat. applies — 1st. to conveyances of property only & not a power of attorney to {convey} another person to convey. 5 Gr. 2nd. The husband must be a party so well as the wife & both must sign. 3 Mun 468 [Le] 498. 3rd. The wife must be over 21 years & free from all other {engagements} disabilities. 6 La 9—16 (...) 4th. If the authority before whom the examination of the wife takes place be two justices they shall be present together during the examination of the wife. Bac. Abr. J (...) 5 & in their own county. 5th. The wife must be examined by some one of the authorities mentioned in the Stat.

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(11 Le 294) apart from her husband & declare that she has executed the conveyance willingly &c. V. C. 573 § 4 The authorities before whom the examination of the wife is to be made are — 1st. If the examination be made within Va. it must be made Ct. of Registry by the clerk of the Court of {Equity} Registry in his office before two justices or a notary public {of that court}. V. C. 513 § 4. 2nd. When executed out of Va but in the U. States the authorities are two justices or a notary public or a commissioner appointed by the Governor of this state. 541 § 2. 3rd. When out of the U. States the wife may appear before any minister plenipotentiary, Charge d'Affi., Consul General, Consul, Vice Consul or Commer— —cial agent appointed by the govt. of U. States, to any foreign country or the mayor or any {other} chief Magistrate of any city town or corporation therein; any of whom shall give a certificate under his official seal of said examination, expla— —nation & declaration. 6th. All these conditions being complied with the con— veyance operates {separates} in the same way as if the woman were unmarried, when (...) to clk to be recorded. 294. Even at Com. Law an alien is allowed to take a mortgage to secure a debt, but he could not pur— chase the land when sold under that mort— —gage. In Va aliens are liable to no dis— —abilities with respect to personal chattels. 295. The essential difference betwen a deed in— dented & a deed poll is that the former is between two or more parties & the latter where there is but one party. It is not necessary in order to create the former that it should be intended or that it should begin with the words "This Indenture." 296. The thing principally to be regarded in the "consideration" is whether it is good or bad. The badness of the consideration only will avoid the deed & not the entire want of its

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At Com. Law no consideration was necessary in a deed because the conveyance was thereby of itself complete & executed & not executory. But the introduction of uses making these conveyances executory merely, a consideration became nec— essary & without the courts of equity would not enforce the contract. This continued the case after the Stat. of Uses 27 Hen. VIII. Its legality or illegality is the chief & most important point in regard to the consideration. Considerations are valuable or voluntary only: which last embrace what is called the good consideration. Viz: natural love & affection. The Stat. of 13 & 27 Elizabeth called the Stat. of

fraudulent conveyances were enacted to prevent a fraud— ulent transfer of property. The 13 Elizabeth (2 Lomax p 20 § 21) is in favor of [crs.] & embraced both real & per property {purchasers} & 27 Elizabeth {both} {of Creditors &} applied to purchasers & {both} only Real {& per sonal} property (21 Cok Lit. 239 (n)(C) — included. We have both these Statutes embodied in one V. C. 507 § 1—3 called the Stat. of fraudulent conveyances. The object of these statutes secon to have been 1st. To avoid, as to every one except the parties, all conveyances made with fraudulent intent. 1 Ran 214. 4 Ran 282. 2nd. To avoid all mere voluntary deeds as to some creditors & subsequent purchasers for valuable consideration without notice. If the grantor be indebted at the time of the conveyance that is "prima facie" evidence of fraud{udulent}. But if it can be proved that the grantor made provision in the deed for existing debts or that he conveyed part only of his state this will be sufficient to disprove fraud. Hereafter therfore in Va Ch. Kent construction will prevail viz. that of the person making the conveyance is indebted at the time, the law infers fraud: but as to subsequent debts the fraud must be proved V. C. 508 § 2. 10 Leigh 324 800. 372.

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145 (There is no liability on part of seller of land for the [title] any further than he has unwanted except for fraud & mistake.)

297. The author mentions the Stat. of 29 Charles II, which is the "Stat. of frauds." We have the same Stat. (and con— (...)00 §1st)a little modified. Our Stat. applies to contracts for the sale of lands (not the sale itself) & the making the base thereof for a larger term than ((...)75 § 1st) one year. V. C. 579 § 1. This is which is called the "Stat. of frauds" must be distinguished from the Stat. of fraudulent conveyances, which may be found in the code cp. 116, 117 & 118. 298. In 4 Kent 441 (481) will be found a very imperfect sketch of a deed, which though sufficient to convey would not be sufficient to protect the interest conveyed. The code gives very superfluously the form of a deed of gift, lease, & deeds of trusts; but the most difficult parts viz: the specific provisions of each deed are of course left out. V. C. 503—4 § 1 to 8, 9, 10-21. 300. Warranty. The Com. Law doctrine is that the ([V] C. * (...)63 (...)38 (...)) tenant be evicted. The Lord must give him another estate equal in value, but then the question arises when shall the land be valued? Shall the value be taken at the time the warranty was given: or at the time of eviction? It seems to be settled that the valuation shall be at the time of the warranty; that it shall be measured by the purchase money to which interest from the time of warrant to the time of eviction shall be added if the vendor has not been in possession of the premises & costs: but if possession has been had of the premises, the profits thereof are held to be a sufficient rec— —ompense for the interest 2 Ran. 132 Stout vs Jackson. 2 Le 451, 5 Leigh 178 (119), 11 Leigh 261 (287). 2 Robin. 374. There are two Remedies ((...)*) to which a person evicted might resort to in Engd. viz: a * voucher & warrantiae chartae. The former has long since been abolished in Va., but the latter might still be used in a proper case.

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301. In Va we do not use the covenants real: but the covenants personal. When the vendor has entered into no covenant or warrantie with the vendor & there is no fraud he is not bound though the vendor be evicted the next day, unless there is some material mistake. 3 Grat. 193. 2 John 5 Ch Rep 523 4 Ran. 484. Warranties are always given in the sale (2 Grat Fulton v. [Drickson'brs]) of personalty, but seldom in realty. We have a Stat. providing that all alien— —ations and warrantees shall operate to pass or bar only such estate as that the warrantor or grantor has & no more. But if any heritage afterwards descends on (4 Leigh Tabb v. Benford) the heir of the warranting ancestor who [blank space] and his heirs &c. this heir shall be barred to that heritage only so far as his heritage may extend V.C. 501 § 7. 304. Warrantees have generally give out of use and covenants have superseded them. The covenants in Va. usually providing for the security of title are 1st. That the grantor be seized in fee. (IM [Hangd]) 2nd. That he has the capacity right to convey 3rd. That {that} the grantor shall have quiet en— joyment of the property 4th. That the estate be free from personal encum— —brances. 5th. That the grantor will make any further assurances when required by the grantee. All these should be inserted in all deeds executed in Va. V.C. 505 §9—16. By the Va code the most informal war— tantee is declared equivalent to the most technical if it can be shown that the deed is in possession of the grantee no date necessary. The rule generale be presumed to be [mentioned] in the deed. (...) Mun. 555; 3 Ran 309, 5 John 244.

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305. The Com. Law idea of a seal was an impression on wax. In Va a scroll is affixed & so expressed in the deed. It has the same effect as the seal V C 580 § 2. The Ct. of Appeals have declared this to be only a declaration of the Com. Law & erroneously. 1 Wash. 42 & {107} 170. The scroll must be acknowledge in the body of the deed as a seal or explicitly proved by the clause of attestation to have been intended as such. ((...)) 2 Leigh 195. —17. 2 Ran 446. 7 Leigh 301. 4 Grat. 283—4. 4 Mun 442. 7 Leigh 195. 2 Grat. 439. (2 Le. 488. 2 Rand. 446. 2 Le.195. 7 Le. 301) So the seals in general See 5 Coke. 5. Bacon's Abrt. Obligation. C. 9 Leigh 511. 1 Munf. 487. Whether parol evidence can be admitted to prove this has not been decided. A seal is also lately essential & if it be torn off (unless perhaps by accident) it is no deed. Signing it is not expressly required, except probable by analogy to the Stat. of frauds. 307. Attestation is not necessary to be the validity of a deed. Our Stat. also requires all deeds to be recorded before two witnesses &c. V. C. 515 § 2 & 3. 2 Lomax 251. The manner of a acknowledg— —ing a deed or conveyance (without which it is not good) is different according as the parties are in the State {or} in [U]. States or in a foreign country. Acknowledement is necessary before it can be recorded & recordation is necessary by our Stat. to make it valid against subsequent purchasers, for valuable consideration without notice & all creditors whether with or without notice &c. V. C. 512 § 2 & 3. 309. Canceling a deed does not operate to repass any— —thing conveyed 2 Lomax 259. 10 Leigh 51. In Va lands may be passed & conveyed either by Comm. Law conveyances {or by} as feoffment &c. or by conveyances operating under the Stat. of Uses. The ceremonis of conveyances are however different for at this day in Engd.

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livery of seisin is necessary in the conveyancer of an estate of freehold, if made by Com. Law conveyances, but here it is not necessary to have it in any case, though the Stat. declares that in cases where livery of seisin is necessary is shall be acknowledge & recorded in the deed to be recorded therewith. The V. Code however dispenses with all of it entirely declaring that all real estate as to the immediate freehold thereof shall be construed to lie in grant as well as in livery. V. C. 500 § 4. 301 N. 26. A feoffment in Va {is} not consummated by livery of seisin, if for valuable consideration will operate as bargain & sale: if for natural love & affection as a covenant to stand seised. 2 Leigh 662. 4 Mun 475. 324 Releases always suppose some prior estate for the release to act upon. If there were no such prior to Com. Law required — feoffment & livery of seisin, which were not necessary where the possession was already had by the person to whom the release is made. Blackstone divides releases into five classes, but this may be included in four, which are as follows. 1st. Releases to pass a mere right to a wrongful estate in possession. Thos sort of releases passes ("meter la droit") a mere right to a tenant in possession, though the possession be tortious. Thus a man seised in fee is disseised & he releases to the disseisor. Here the tenant in fee passes his right & make the wrongful possession of the disseison, a rightful one & enlarges his estate into a rightful fee. So again if there be two disseisors and a release is made to one of them, the other is [deprived] of his tortious estate. But it is not so in regard to the two feoffees of a disseisor & a release to one (...) to both. The reason is that in the latter cases they both come to then

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estate by the same notoriety & prima facie right. i e that is feoffment & livery: & the law will not allow the of them to be turned out & the estate defeated, unless entry be made with a similar notoriety to that by which they claim, a disseissee cannot grant a mere right, but he can release to one in possession of the estate. 2 Coke 459. 489. 2nd. To extinguish a right. This is rather an anomalous feature of the law. It takes place where he to whom the estate is released, cannot take the estate to him released chiefly because, he not being in actual possession would violate the fundamental maxim that right of action & entry cant be [assigned] (a chase in action cannot be transferred.) The estate of which a release is made is called a chase in action. Thus there is a tenant for life remainder in fee. Tenant for life is dispersed; during the time the remainder man releases to him so right is passed, but the estate of the remain— der man "ut res valeat" is extinguised. Because [incongruity] (...) grant A of rent afterward (...) release (...) rent granted in court (...) both land & rent as it [extinguished]) 3rd. To pass an estate. This release passes an estate to one already in possession with a complete tittle and right to the estate released, as if one of two joint—tenant or parceners release to the other such parcener or joint—tenant has a complete tittle to hold in severalty. There the releasor & releasee being seised of their estate by the same tittle of the whole no ceremony is necessary to a full & complete tittle to the whole. Tenants in Com. Law cannot release to each other because they came to their estates distinct and it must be so passed. They seised not if the whole but of {an}

individual moities. 4th. To enlarge an Estate, as when one in remainder or reversion releases to the particular tenant to full tittle of the releaser, which operates to enarge the release estate. It simply passes the remainder or reversion; but in order to do that the proper words must be used, as

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it it were an estate for life the words "heirs" should not be used. These releases come in the place of feoffments since the tenant is in possession. This kind of conveyance is now generally know as lease & release: But our revised {declare} Stat. declare that a release shall be as valid without, as with a lease. V. C. 502 § 15. 6 Leigh 473. 327. Uses & Trusts. The text remarks that origin— —ally the same; this is incorrect. Ld. Bacon's distinction is, that in uses the feoffee had the legal estate only, while the cestuy que use had the beneficial ownership & the control of the estate & could demand a conveyance at any (1 Stp Com. 343) time, which demand Equity would [enforce]. But in trust, the trustee not only had the legal estate, but the entire control of the es— —tate subject to the performance of the Trust and thus control was given him to (1 Lom Dig. 177) enable him to perform the duty entrusted to him. For if he had not this control, the purpose for which for which the land was conveyed to him might be defeated. Lord Bacon calls the former "Uses general" the latter "Special trust". The better division iz into uses & trust. A use is a conveyance to one, to the use of or in trust for another, so that the latter has the beneficial interest & continue of the estate & may at any time compel the execution of the Use. A trust is a coveyance to one, in trust to recieve & pay the rents & profits to another or to perform some other duty, which necessa— —rily requires some descriminating power. 332. The Stat. of 27 Hen. VIII applies to execute all uses by whatever means they are declared and upon all kinds of real property we have a similar Stat. but it is much

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more limited extending only to lands, & {and} embracing only three modes of conveyances, viz: 1st Bargain & Sale. 2nd Lease & Release. 3rd Covenant to Stand Seised: on deed operating as covenant to stand seised. By these modes the Stat. declares that the possession of the bargainor releasor or covenantor, shall be transferred to the person entitled to the use, as perfect as by feoffment & livery. All the states of the Union have enacted Stat. of Uses, except Louisiana conforming more or less to the example of 27 Hen. VIII. The Engd. Stat applies. 1st. Where there is a transmutation of the possession, in which case it transfers the possession of the person seised to the use, to the cestuy que use. 2n. When there is no transmutation of the possession which is the case in conveyances by "bargain & Sale" Lease & Release & Covenant to stand seised when the possession of the bargainor, releasor or covenantor is transfered. Our Stat. applies to the latter only i.e. when there is no trans— mutation & contemplates no feoffer & feoffer to uses. It is necessary by the terms of the Engh Stat & by our own that there should be some (335) person seised to the use. The Author mentions three exceptions to the operation of the Stat. os Uses viz: 1t. That not use could be limited on a use. Com. 343 1 Stp. 2nd. That the

Stat. did not apply to terms for years & other chattel interest, since the term "seised" was used in the Stat. for the word "possession" which latter was held necessary to make the Stat. extend to estates less than freehold, which could not be seised but only possessed. 3rd. To hire lands given to one of his heirs in trust to recieve & pay over the profits to another, for the profits must remain in the trustee to enable him to perform the trust. The Va Stat. admits the 1st & 2nd Class, but as to the third there is doubt.

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152 (4) (Those (...) by any other conveyance than those mentioned in the Stat by (...)) There is a very large additonal class growing out of the limited terms of our Statutes. 338. Enrolment is necessary only in Bargain & Sale in Engd. 1st. In Va. 1st All conveyances of estates exceding 5 yrs must be recorded. See V. C. 508 § 4 & 7. also 500 §1, 4, 5, & 8. 504 § 7. 2nd 2nd. As to the necessity of recordation, see V. C. 508 § 4 & 5. 3rd. Deeds of trust & mortgages take effect from the time of lodgement with the clerk for recordation &c. V. C. 508.9 § 5 & 7. 4th. As to the time other conveyances take effect, see V. C. 509 § 9. If two writing embrace the same property they take effect in the order of their recordation. 5th. As to the place of recordation, see V. C. 508 § 6 & 8. Ct. of {a} every Cty or Corp. where any of the land lies. 6th. As to how the writing is to be authenticated for record this may be done either by acknow— —ledgement of the parties & by prooff of its execution by 2 witnesses. See V. C. 512 § 2 & 3 for both of which. 340. The effect of a bind at Com. Law was to change the lands in the hands of heirs & of the person giving the bond, but now in Va lands are liable for all debts, whether due on bonds or not. 341.n63. A bond lying dormant &c is only presumption of payment which must be disproved by the holder of the bond by any manner in his power. As to the time in Va within which an action must be brought in a bond see V. C. 591 § 5. The Stat. of 4 & 5 Anne has been reenacted in Va. V. C. 673 § 16. Alienation by Matter of Record.

1st. By private act of Parliament. Before the abolition of estates tail in Va this method of alienation uses much more

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frequently use here than in Engd. Since abolition of Estates—tail it has been seldom used except to unfetter encumbered estates or to enable lands of person who are not "sui juris": infants, idiots &c. to be sold. Some general Stat. have rendered their use still less frequent respecting infants &c. enabling them to make conveyances under the direction of Chancery &c. This kind of legislation is very objectionable. The text says that no judge or jury is bound to take notice of a private act of Parliament unless specially pleaded. Our law is different. The Cts. are not bound to notice them "ex officio" but they may be given evidence without being specially {of} pleaded. V. C. 666 § 1. Le Grand vs Hampden Sydney Col. 5 Munf. 324. 346 (2). Kings Grants. The Commonwealth rights (no more than the King's) cannot pass except by matter of record. The doctrine of grants are different here to that of Engd. There they are made by the King. Here our executive officers have no such power & therefore all such grants are made by the Legislature. No grants are made here, unless in accordance with some Stat. except for the

appropriation of waste & unappro— —priated lands. In these the applicants pay two dollars to the treasurer for every hundred acres of land & takes a recpt. for the purpose for which the money was paid. The receipt is delivered to the 1st Auditor, who gives a certificate with the quantity to which he is entitled which being lodged in the land—office. The Register thereof give a warrant authorizing any surveyor or person qualified by law to buy off & survey the land. Having obtained the warrant the proceeds to locate the land according to the description

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Having found it he gives the warrant to the Surveyor, who proceeds to survey or lay off the same. The Commonwealth however does not guarantee to the appli— —cant that there are any such lands to be found. V. C. 473 Cp. 112. 2 Tuck. Com. 281—5. Cranch 215. 11 Leigh 491. 1 Leigh 443. 2 Grat. 415. 347. King's grants are construed most strongly vs the grantee, because they proceed from mere bounty & not from valuable consider— —ations, wherever they are from valuable considerations they are construed as other deeds viz: more favorably to the grantee. In Va all grants being for valuable consideration, are construed more formably for the grantee. 348. We have no fines & recoveries in Va since the estate which they were intended to bar have been abolished, and the Stat. having providen in another way for con— veyances by femes covert, yet we have no stat. abolishing them in Va. 352. The Stat. of 23 Elizath. requiring advertisement of fines has been imitated in Va. V. C. 514 —15 § 10. The principle reason why femes covert are allowed to alien is explained by Mr. Hargrave in note 2 Th. Co. Litt. 610 viz: that justice to other require that a claim they might have against the wife's freehold or inheratance, should not be postponed untill the determination of the wife's coverture, for this might defeat justice. 351. Recovery by Doble Voucher bars every right, but by single voucher bars only such as the party living had at the time levied. The reason for this effect of the Double voucher is formed in the indefinitness of the warrantie. 2 Th. Co Litt. 615. 1 Preston on Conveyancer 7 & 125.

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If the suit is brought against a tenant in tail, he basis nothing but his tail & no rights but his own are barred. But if the suit is brought against another & the tenant in tail is vouched, then the [blank space] of the voucher being indefinite his tenant in tail is of course indefinite. 365 (3) We have no special Customs in Va & of course no alienation by special Customs. 373 (4) Alienation by Devise — The term legacy refers to personal property. Devise to real property. A Bequest is the same as a legacy. A Testament usually imports conveyance of personal property. (V.C. ([577] § 8. 1. By subsequent will or codicil. 2 By writing (...) cutio like a Will. [3.] By (...) (...) [Breaking] with animo [revocondi.] Implied (...) without issue. (...) Birth of [pretermitted] 17 [§ 7—17]) Will refers to both. Previous to the 32 & 34 Hen. VIII a man could not dispose of his property by will; but convey the use of it. But the Stat. of 27 Hen VIII called the Stat. of Uses annexing the possession to the use, lands were no longer devisable. In five years it became necessary to enact the Stat. 32 & 34 Henry VIII, by which a man could devise in writing 2/3 of

his property held in chivalry & the whole of that held in socage. This Stat. being liable to abuse the 29 Chas. II enacted that the will must be signed by the deviser & be attested three or four creditable witnesses. Our Stat. combines these Stats. V. C. 516 § 2 to 4 which it will be well to commit to memory as there is not one useless word in it. The difference between the Engh & Va Stat. are as follows[:] 1st By both the testator may devise & the [devises] are the same in both 2nd As to person to whom devises may be made the Engh. Stat. excepts corporations. Ours does not, but declares that all persons aged (§10) 21, of sound mind & not a married woman may devise by last will & testament in writing

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all the estate, right or title in possession remainder or reversion which he or she hath &c. provided such last will & testament be signed by the testator or some other person in his presence or by his direction & if not written wholly by himself, by two or more competent witnesses in his or her presence. In Va the capacity of a corporation to be a devisee depends upon its charter. If the charter authorizes it to be a devisee it may be but otherwise it cannot. 3rd. As to the estate or interest which may be devised. In Engd. a deviser must be seised of an estate in fee—simple and those only are devisable of which the deviser die seised. Bacon's Abrt. Little Devises, m B. Our Stat. says all the estate, right & tittle may be devised. V. C. 543 § 18. 4th As to form. In Engd. the testament must be in writing, signed in any part by the presence of three or four credible witnesses who must also sign in the presence of the testator. In Va it must be signed so as to show that it was intended as a signature in the presence of two competent witnesses who must also sign in the presence of the testator {&} tho not in each {pres} others presence. But if it be wholly written by the testator no witnesses are necessary. V. C. 516 § 4. Married women either with or without their husband's consent either here or in Engd. cant make devises except for the disposition of her separate estate or property & for the exercise of her power of appointment V. C. 516 § 3. The appointment operates by the instrument creating the power, as is in the case of a trust for the feme's benefit.

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The appointment must conform in its execu— —tion to the {(...)} direction of the power & not to the Stat. of wills. V. C. 516 § 5. But if the power directs the appointment to be made by will, then the will must be made according to the Stat. But if the power requires only one witness then it must be made accordingly. 376. The text says it is sufficent if the testator name be signed at the top of the will, thus (510 § 4) "I John Miles" &c. The last difference [sated] above makes an exception necessary to this rule in which wills are wholly written by the testator. Such wills technically called olograph wills must be signed at the bottom in order to show that the will is completed & in order to connect the tes— —tator with the instrument. 2 Leigh 249. 1 Grat. 47. It (...) in olograph wills that although the appearance of the name at the top might sufficiently con— —nect the instrument with the testator yet the signature at the bottom was held to be necessary in ordet to show the comple— —tion of his intentions, which in wills not

not wholly written by himself was suf— —ficiently shown by the attestation of the witnesses. Note 9. As to what is presence. When the testator {the} {te} is in the same room & could either see (1 Le. 6 Neil vs. Neil) the witnesses sign or could change his position so as to see them, it was held sufficient. It is not necessary that the witnesses know that it is the testators will, but only that he acknowledges it at such & requests them to sign it. If the testator be blind or an illiterate man he must some how or the other know the contents of the paper & is this case the witnesses must have more the acknowledgement of the testator.

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In ograph wills one witness [uncontradicted] (1 Ran. 132) and unimpeached is sufficient to prove the signature of the testator. If the wit— —nesses were in the same room as the Testator it is prima facie evidence of being in his presence. But this may be rebutted by showing that the testator was whose he could not see them through in the same room. (*Neil v. Neil.) *1 Leigh 6. On the other hand if they were not in the same room this is prima evidence of not being in his presence. But this may be repelled by proving that the testator though not in the same room could see them. 377. The Stat. 25 Geo. II has been reenacted (516 § 4 Va Code) in Va with the same changes. V. C. 579 § 19—21. This Sta. provides that when a Legatee is witness to a will he is compellabler to prove it & the bequest to him is void & if he would be entitled to any share in case the is not established, he shall only have so much of that share as equivalent to the legacy bequeathed to him by the will. This latter clause is an improvement on the Engh Stat. as it may happen to be to the interest defeat the will, which inducement is entirely removed by this clause. The Commentator mentions a subsequent, will, tearing, burning, canceling & obliterating, the same by the deviser or in his presence & with his consent as express modes of revoking wills. Our Stat. is exactly similar. It say no devise shall be revoke except by the testator, obliterating destroying or canceling the same & causing it to be done in his or he presence, or by a subsequent will, codicil or declaration aforesaid. If the revocation be made by an act of destruction it must clearly

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159 appear that the testator intended it to be a revocation & we must apply "the show this inten tion." Any act is sufficient if done, "animo revocando", but there must be some act thus if the Testator directs the will to be destroyed, but that direction was not carried into effect, even though he thinks it, it will not amount to a revocation, at least in a court of Probat, however it may be in Chancery. 1 Rob 346. 3 Leigh 32. (Story' Conf Laws § 474 2d § 363—373. § 466—9. V.C. 517 § 6 [2d] 520 § 26. 3 Le. 816, 819. 5 Do 222.) (Chancery will release by make the devisee stand as trust for the person entitled). A will may be revoked by a codicil which must be executed in the same manner precisely as a will. 3 H & M. 502. 1 Rob. 379. The text mentions two implied revocations. (1) A change in the subject matter of the will or (2) a great change in the circumstan— —ces of the Testator: as marriage & the birth of a child. Besides this our Stat. introduces {four} two other cases of implied revocation. 1. Marriage alone & 2 Birth of pretermitted children. {1st where there is no child at the making} {of the will & one is afterwards born either} {in the lifetime or after the death of the} {Testator, being unprovided

for or not mentioned.} {2nd. Where there are children & posthumos chil—} {—dren are born.} {3rd. When there are children at the time of} {the making of the will & other children are} {born during the life of the testator.} {4th. Where there is a provision in the will directing} {the property to be kept together for the main—} {—tenance & education of the children. & sub—} {sequent or posthumus children are born, they} {shall share the estate alike with the rest.} {In the first case the will is suspended} {during the minority of the child & when it} {reaches the age of 21 or marriage the will is void.} {V. C. 518—19 § 18 3 Munf 20. 2 Rob 570.} {3 Call 334.}

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In all these it is necessary that the child be pretermitted only: not desinherited: for the law recognizes the right of a father (V. C. 577 § 1) to desinherit his children. 2 Call 334. 1 Rob. 570. 3 Mun 20. 1 Was 140. 2 Mun 204. The Stat. 3 & 4 Wm & M. giving an action against the deviser has been reenacted in Va. V. C. 545 § 3 & 6. As to a devise will apply to after acquired property see 2 Mun 209. The law will contemplate such a case 3 Call 289. 1 Wash. 75. 8 Cranch 69. 379 n (19) Gives an example of what is called a Lapse viz: where an estate is devised & the devisee dies before the devisor, the heirs of the devisee can claim no benefit & the devisee lapse. In Va the law is exactly reversed as to the descendents of the devisor who are the descendents of the devisee. Our Stat. declares that when any devisee or legatee dies before his devisors, the estate shall vest in his children or descendents as if such devisee had survived the devisor or died unmarried. V. C. 577 § 13. 579 § 23 to 27. In Eng. a will of personalty must be recorded in the ecclesiastical courts, but wills of realty are not recorded: both kinds are recorded with us. Our Stat. provides that if the Testator have a mansion hous or known place of dwelling his will shall be prove & recorded in the Court of law of the county or in the court of the county or corporation wherein such mansion house or place of residence is V. C. 524 § 34 & 35. 4 Ran 586. 11 Leigh 498. 3 Grat 555. If there be no such res— —idence & lands be devised it shall be proved in such Court as above of the county in which such lands are or a part of them lie if it be in two counties V. C. 520—1 § 28 to 33.

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When there are no such lands devised & the Testator has no fixed residence, the will is proved either in that county where the Testator dies or in that county where the greater part of the estate lies. If the Testa— —tor dies out of the Commonwealth, the will is recorded in that county where the property devised lies. In all these cases the will may be recorded in the general court. 2 Ran 130, 217. (It is not necessary to record a will but it is best to do so). Although the Stat. makes provision for recording wills they are valid without it.

Personal Property

390. "Parus sequitur ventrem" — "the brood belongs to the owner of the dam." Our American Law with respect to slaves seems universally to recognize this maxim. 394. In Va the exclusive right to hunting which every man has on his own land may (V.C. 450, §2.) be considered as

vesting the right to the game & he may have a summary action before a justice of trespass if this act is infringed; the destinction subsequently mentioned as to the kinds of property a man may have in personalty, is applicable here. V.C 450 §20. [398] Here remainders may be limited of personalty ([10] Le. 639 [Dunbar's (...) vs. [Woodcock's] (...)) by deed or will after an est. for life when it is of such a nature as not to be consumed by use. Thus in the case of a bequest for life to the wife & remainder over of personal estate consisting of crops growing, in the barn, on the way to market & in the hands of a commission Merchant, stock of all kinds & of money, it was held that the wife had the absolute property of as much of the growing crops as was necessary for her support

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for the use of the farm & an estate for life in the proceeds if any that might & the use of beasts & utensils belonging to the farm such as horses, wagons & such as were not worn out, to be turned over to the reamain— —derman. 10 Leigh 639. 1 Tuck. Com. 311. 2 Kent 352. 10 Leigh 653. 399 Our stat. has abolished the right of survivorship in chattels as well as lands. But the Stat. compelling partition in the case of lands held by joint tenants does {not} also extend to (2 [Dal] 5) {lands} chattels. V.C. 502. Sec 18 & 19. Do. 526, §1—6. In such case unless they can make partition by agreement they must resort to chancery. V.C. 526 §1 & 6. (8 Cr 206. Gor [Dir] 2(...)) Title to things Personal —1st by occupancy. (On sea capture doesn't give title until condemtn by a ct of prize on land 24 hours {pe} safe pass'n) We have seen (Vattel) the things necessary to confirm a title to things taken from an alien enemy. Also that altho, by war, every citizen of one nation is made the enemy of every citizen of the other, custom has introduced & main— —tained certain principles modifying these strict rules. On land private Marauders are considered as Banditti. But on sea — Privateers are considered as lawful, but their prizes belong to the Govt.; (and are called "droit admiralti"). Property seised by privateers in self—defense or otherwise are considered as prizes of war. Vattel 464. Wheaton 255. 8 Cranch 132. No title is derived to the captor by the capture except by act of the Govt. in passing condem— —nation in a Ct. of admiralty. Govt. frequently confers this title by a general laws as to the owners of privateers as are under commission. 10 Wheat 310. Tho' they generally retain the prizes of non— commissioned privateers to discourage such warfare. Title to property taken at sea is never complete until condemnation nor if taken on land until it has been in the hands of the captor 24 hours.

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401. Observe the modifications of the text doctrine in the note with regard to captures at sea which require sentence of condemnation. (2 Dallas 5) [8] Cranch 226. Gord. Dig. 2581—2. Prizes!!) The same Law exists here. The doctrine that a man might acquire a sort of qualified property in the person of his captured enemy is now exploded. In the U States even slaves found on board a captured vessel are not considered as property. 5 Hall's Amer. Law Journal 451. As to the moveables found unclaimed, which the text says belong to the first finder, it

must be clear that the former owner has relinquished his right in order to give the other a title. 10 John's 102. 2 Kent Com. 356. Waifs & treasures trove belong to the King in Engd. Here they belong to the owner of the land where found or to the finder if found on the public high— — way. 2 Kent Com. 358—360. This however is a question of some doubt, but the rule just laid down is strengthened [big?] our stat. relating to estrays giving them to the owner of the land whereon found, after certain proceeding for finding out the real owned, whose right is always saved. V.C 449 §1—5. 366 §2. Wrecks or goods found on (66 §2) the sea off from the shore are supposed to belong to the U.S. V.C 428 §1 to 17. 2 Kent Com. 359. 404. The doctrine of accession is different from the Civil Law. There is one difference made here with (John 432 (...) §1,37) respect to slaves & brute animals. The increase of the latter whilst in the hands of a temporary owner goes to such owner; but the increase of the female slave goes to the permanent owner. 8 John 432. 2 Kent Com. {301} 361. 6 Mun {316} 368. 7 Le. 590. 405 Confusion of Goods. The Com. Law rule was not carried beyond necessity. 1 Ran. 9. 15 Vesey 438. 2 John. Ch. Rep. 180. If the property is of such a nature as to be distinguishable in quality or if the quantity alone was regarded

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it does not hold; as if A was to throw 100 bushels of wheat with wheat belonging to B of the same quality A does not lose his wheat but may have 100 bushels measured out again. 15 Veisy 438. 2 John Ch. Rep 180. 1 Rand 9. Jurisdiction over copy rights & patent rights is vested in the Fedl. Govt. by the Contn. See Gordon's digest "Copy §2148 & Patent rights". §2166. 2188. An author's exclusive privilege continues 287 yrs. at the end of which time, if himself, his widow or his child be alive another 14 yrs is added. The Author must deposit a printed copy of his work in the Clerk's office (of the District Court of the US) of the district in which he owner (not necessarly author) resides & a notice of that fact must be printed in every copy of the work. The property of the work may be transferred by deed acknowledged in the same manner as deeds for the transfer of land in that state & recorded where the original copy right was recorded within 60 days after its execution or it shall be void as to subsequent purchases & mortgages for valuable consideration without notice. The Author or transferrer must be a citizen or resident of the U. States. (Has exclusive use for 14 yrs.) Patents issue from the patent office in the name for 14 yrs of the U. States for signed by Sec. of State & are recorded in the same office. Assignments may be made by any instrument of writing, recorded in the patent office within 3 months after its execution. The patenter must be a citizen or must {be of} have been for 2 years a resident. See Amer. Almanac 1833. The Fedl. Cts. have exclusive jurisdiction in all case of infringement on the rights of patenters also to declare patents void. 3. ([7] Pet. 292) Wheat. 454. 7 John. 144. [p7] 2 Page 134. The invention must be one absolutely new; not one that has been in use. If there be two applicants for patents

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of the same invention; one claiming to be the real invention, & the other claiming to have made the first practical application the latter shall be preferred. 2 Kent. 368. 408. Title by Prerogative in connexion with which the Author mentioned tributes, taxes &c. In this country taxes are levied by the prerogative of society & exercised by its officers to protect itself & provide for its own exigencies. 409. With regard to wrecks in Va, we have already spoken. 410 The principles here laid down by the Author are learnedly controverted by Mr. Chs. Christian in note 9. Page 419; which see. In Va the regulations with regard to game &c are of little interest. There are however certain prohibitions regarding certain classes of ani— —mals at certain seasons of the year. See V.C. 450 to 454. §1 to 28. 419. The Commentator does not mean to say that if a man start game on his land & {the land of a stranger} and follows it on the land of 3rd person, it ((...) Peters (...)) is lawful, for he is trespasser against both & is liable to action by either. We have a Stat. forbidding hunting, fishing &c on the land of another without leave & which does not leave the party to obtain his remedy by action, but gives a summary method before a justice by which the party forfeits $3— for the 1st & 2nd offences. On the third offence the justice may require him to enter into a bond for his good behavior in the penalty of $30—which is forfeited in the repetition of the offence. V.C 450 §2. 421 Goods & Chattels how forfeited. All forfeitures for crimes are abolished in Va but there are certain forfeitures to person, allowed as punishment for the wrong & as indemnity to the injured party; as if tenant for

life of slaves removes such slaves out of the state without consent of remainder or reversioner he shall forfeit them to the remainderman or reversioner together with the full value of the slaves. V.C. 458 §7. There are many penalties for misdemeanor also; as that of 500 dollars, against a clerk for {illegally} granting a marriage license contrary to law & that for the like amount against ministers for marrying {ag} without a license. V.C. 739—40. §4&5. 421. Title by Custom: as Heriots, Mortuaries & Heirlooms - Of the 1st & 2nd of these we know nothing & according to some we have no more to do with the third, since we have no customs nor an established church in Va. But we have something similar. E.G. An old family picture considered part of inheritance, (...) or members of inheritance & nor by custom. 429 note 10. Stealing a dead body was by Com. Law considered a felony & as such was punished very severely & our stats seem to sanction the punishment. V.C 740 §13, Fine $500. Imprisnmt 1 yrs. 433 Title by Succession, Marriage & Judgment &c. Of the first we need say nothing. (2 Kent 387. 1 H & M 449.) The subject of title by marriage is very impor— —tant. A wife's personalty may consist of chattels personal in possession, chattels personal in action & chattels real. 1st. In regard to chattels personal in possession the husbands take them without qualification as his own in the same manner as if he had paid his own money for them. 2nd. Chattels personal in action are debts, arrears of rents &c. Marriage operate to give only a qualified right of these to the husband, dependent on whether he reduces them into possession during the life of the wife, otherwise his marital right ceases & if his wife sur— vives him, she takes to the exclusion of his personal representation or creditors but if he sur— vives her he is her sole administrator

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(3 Co. Lyt 309 n(O)) and distributor & as such may bring action and recover such debts & after the debts contracted by her previous to marriage are paid, he is non—compellable to make dis— —tribution to her next of kin. V.C 524 §10. (1 Bright H & W 48—80) Thus it is important to know what actions amount to reduction in possession of the husband. This reduction is either actual or constructive. Actual by a receipt of the payment of the debt &c. Constructive as release, assignment, recovery of a seperate judgement by the husband, (& it is said by bringing a separate action in his own name) & if by the husband altering the nature of the contract by obtaining a new security payable to himself. 1 Co Litt 309. ((...) H & Munf 389.) 2 H & M {489} 389. 2 Rob 348. If a joint judgement be obtained it is not a reduction. 4 H & M 410 & 452. 1 Ran 355. It is the husbands interest to bring a separate action when he can. As to when a husband must sue jointly & when separately from his wife see note to page 443 vol 1st of Blackstone. The possession of the hus— —band be in his charcter as husband & not as executor &c. & this must be judged of by his conduct & declarations at the time. 5 John, 211. (2 Call 447—471. Munf 70. 2 Vesy 497. (...) 413 (...) 344) If the chase in action of the wife is merely equitable, the husband must make a sufficient settlement on the wife as the price of the aid of chancery in reducing such chases in possession. 2 Rob 340. The husband cannot devise the chases in action of his wife, because the devise cannot take affect until after his death & the wife's? right takes place immediately upon his death which latter has the priority. 2 H & M 381. The husband may assign the wife's reversion, but the assignment depends upon the determination of the particular estate during the life of the husband. If the End (...) 30 (...)

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reversion comes into possession during the (2. Brights H & Wife 83—[et]) life of the husband the assignment is good. If the wife survives & the husband dies before the death of the life tenant the assignee takes nothing. 1 Wash 30. 2 Call 491. 2 Rob 340. Divorce "a vinculo" operates as death in either party. 9 Wash 3. 7 Gr. 99. 3rd. Chattels Real. Here the wife's right of survivorship is defeated only by the alienation on the part of the husband or an agreement for alien or some act equivalent to alienation, 3 Tho Co Litt 307. A recovery by the husband in his own name is equivalent to alienation & as he may (2 [P Wm] 365.) alien, a whole, so may he a part & may also sell on condition, but if the condition be broken before the husband's death, the property reverts to the husband wife jointly, but if after his death to the wife. The husband cannot [charge] the chattels real of his wife with his own debts, during the coverture but the creditors may subject it to legal process. Two general observations may be made on his subject in conclusion Viz 1st The husband is not at liberty to effect the wife's right by neglect & when the nature of the property is doubtful, the husband cannot elect to make it personal or real at his discretion, but it must be settled by the courts. 4 Ran 397.

2nd Voluntary conveyances made by a woman (2 Le 14) immediately before her marriage are looked upon with suspicion. But if it is evident that they are not for fraud or if they are for valuable

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consideration, they are not void. 6 Grattan {313} 338. [436.] 4 Ran 397. Title by judgement, so the instances of this title mentioned in the text. In action for trover the property is vested in the defendant, as soon as the act pronounces judgement for damages, for these are supposed to be a recompense to the plaintiff and the defendant retains the property converted, 2 Kent Com 307. 1 H & M 449. 440. Title by Gift or Grant and Contract. A gift is generally gratuitous, a grant is for valuable consideration. Conveyances of lands have their validity affected by 4 circumstances. 1st By an illegal consideration, as usury or [learning]. 2nd When induced by a purpose to delay justice or to deceive or defraud creditors and sub. purchases—thus obviously fraudulent. V.C {577} 507 §1—2. 3. By not being recorded, as to by having been founded on not a valuable but only a good consideration, this renders the deed &c constructualy fraudulent in regard to subsequent purchases & creditors. These 3 circumstances refer to both real and personal property the following refers to personal only. 4 Personalty is void by neglect to record, provided it be a marriage settlement, deed of trust, or mortgage, &c. VC 505, sec 4 & 5. In other cases instead of recordation of [actual?] sale & purchase of personalty, delivery of property is substituted. ((...) & [Harben]. 2 Term Rep 587.) Delivery of possession is so important in the sale of personalty, that it was decided in the leading case on this question, 2 Co. 81 (...uyne's Case) that if the sale is absolute & the possession don't go to the vendee it is "per se" fraud and void, with the qualification that the delivery of possession be such as the transaction

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([Releading] case in Va 170 4 Gr. 422, Davis vs Turner. Doc. laid down that circumstances of non—delivery might be explained by any circumstances.)

will admit. Afterwards it was decided that non—delivery was only "prima facie" evidence of fraud & might be repeled by rebutting evidence. But of the situation of the property precludes delivery, as of (4 Grat 422. Davis v Turner) a ship at sea, the want of it is no evidence of fraud. 9 Leigh 181. 4 Leigh 535. 4 Ran. 252. 2 Rob. 286. 3 Ran & [Anderson] 498. If the sale is not absolute on its face, the question is whether the property remaining with the ((...) 15. 3 Munf 1) grantor is fatal to the transaction. It is not when it is provided in the deed that the possession shall remain with the vendor or if any asssginment of the goods is made (2 Do 341. 5 Rand 227. 1 Cranch 316. Le. Case 2 T. (...) 596.) to take effect on condition for the vendee's benefit. 6 Ran 664. 604. If the deed contains an express provision for the contin— —uance of the possession with the vendor— for the vendor's benefit (& not for the vendee's) non—delivery is a badge of fraud & the sale is void. All this supposes the consideration to be a valuable one & if so it is not required to be recorded & it appears sufficient to prove the consideration & that the possession (VC 500 §1. 20 508 §1—7.) is consistent. But if the sale be not for val— —uable consideration

the Va Stat of fraudulent conveyances require that the sale must be evidenced by deed or will recorded or poss— —ession must remain with the grantee & if the deed contain land, it must be ac— —knowledged & proved as deeds & conveyances of land are directed to be acknowledged (2 Munf 341. 2 Rand 359. 4 Do 334) & proved (by 2 witnesses) or if it contains personalty it must be acknowledged & proved by 2 witnesses & recorded in the county where the property remains. V.C 508 §4. But there must not be any conflict between the terms of the deed recorded & the possession. 1 Tuc. Com B 2nd pp 341—4. 2 Ran 399. 4 Do 334.

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When it said the transaction becomes void (1 Le. 540. 5 Munf 28. 3 Le 729) in case the deed & possession do not conform it is not meant that is is void with regard to the parties, nor as to all creditors, but only as to those who by judgement, mortgage &c. can get hold of the property. 4 Leigh 338. {40} 6 Leigh 326. 2 Grat 333. 3 Grat 353. The revisal of 1849 allows any proceeding which would be admissible after a judgement &c to be instituted by a creditor before judgment obtained to avoid any gift grant or change on the estate of his debtor, &c. VC 677 §2. The delivery of possession before the creditor get a lein on the property makes the transaction good. The possession must not be momentary or colorable only but "bona fide" with the vendee or his bailee other than the vendor. 4 Leigh 538. 5 Leigh 434. 6 Leigh 320. If the vendee resides in the vendor's family the possession apparently in the vendor is good sometimes. 5 Ran 219. 3 T Rep 618. 10 Vesey 139—but see 6 Ran. 769. ((...) C. Law (...) nor charge property in the hands of a loanee after any length of time. Le. 88.) Pretended Loans. The stat provides that when any person has been in the possession of the personal property of another, without demand made or pursued, by due process of (void unless by Deed or Will as to cr. of loanee) by the pretended lender within 5 years—void as to (...) of source or &c. See V.C 508 §3. The object of this stat was to remedy the Common Law, which declared that length of possession gave no right to charge property in the hands of a loanee. The declaration of the loan need not be coeval of the loan if made within 5 yrs. 3 H&M 449. 483 & when made is equivalent to a resumption by the lender. A demand & to delivery of the property in the presence of relations tho' within 5 yrs does not prevent the operation of the stat. 5 M. 3 & 5. There must have been an adverse possession. 9 Leigh 245. 5 Cranch 258. 5 M 101. 9 Leigh 452. No matter how long the possession has been it is still a loan between the parties [unless in poss'n husband] (...). 9 Leigh 245. 2 Grat 493.

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It is only where there has been 5 yrs of adverse possession that the lender bases his right as loaner & Loanee. 5 [Cranch?] 358. The (4 Grat. 93.) stat. above applies not to bailments in good faith, but only to loans. 5 Grat. 379. Possession by loanee for 5 yrs. gives absolute right to his (5 Do. 379. 9 Le 453. Stat don't apply to Bailments for hire & they now not be (...)) creditors to subject the property & the return of the property of the 5 yrs. makes no difference as to creditors of the loanee. 5 M 101. In 9 Leigh {452} 453 it is held that a person buying before the

lapse of 5 yrs. is not allowed to reckon his own pos— —session with that of the loanee in order to make out the 5 yrs, & his title is null against the demand of the lender made within tho' after the sale of the property by the loanee. But if the purchaser has sold to a third person his title is good against the lender. (441) In order that a gift not founded on valuable consideration may be enforced it must ac— companied with delivery of possession— because otherwise it would be a mere promissory (7 Hen. stat 119. 237. 1 R.C. 1819. 432, Ch. 111 §51) contract. An early Va stat. modifies this doc— trine by requiring all gifts of slaves to be evidenced by will or deed duly recorded. The revised stat. extends this to all chattels & not to slaves alone. V.C 500 §1. If a parent gives slaves to his/a child in his family without delivery of possession or if he continues to ex— —ercise ownership over them the gift is void. (6 Rand. 135. (...) case & 764) 3 Grat 1. The Stat. in (1737 & again 1758), VC. 500 §1, is an enlargement of the Com. Law that requires only delivery of possession, but the allows slaves to be con— (4 Le. 433. 5 Rand 219. (...) 364) — veyed by deed or will duly recorded, {as} or the Com. Law method by delivery of possession. 2 Leigh 337. 387. The Stat. besides delivery of possession requires also permanent possession. This was sometimes difficult to prove which difficulty the revised Stat removed. VC 500 §1. 444. A contract is an argument for valuable Read to contract of Bailment p [457])

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consideration. As concerns executory contracts (Any benefit to the promissor or to a (...) person his request, or any risk injury or loss or danger to the promisee is a valuable consideration) the consideration must be valuable. In executed contracts this is not necessary, because there is no need of application to the cts. But in case of contracts under seal & Bills of Exchange a valuable consideration was not necessary. It was not necessary in contracts under seal on account of their solemnity & in bills of exchange in order to favor commerce. If the contract was not under seal the valuable consideration may be presumed "prima facie" but may be disproved. 447. Here as in Engd a fi fa (fieri facias) binds the property of the debtor from the term of its delivery to the Sheriff & is applicable to personalty only. V.C 713 §11 to 14. A case binds the property only from the time it is levied by service on the body of the debtor and binds both personalty & realty. V.C 716—note, This last however have been abolished in Va except in a few cases. 448. The stat of 29 Char. II as to earnest has (sometimes right of propty in lendee [will] the right poss'n is in [the] vendor any [loss as] (...) on the (...) rule is that [where] the vendor has done every thing that he is called upon to do (...) the prop (...)) not been reenacted in Va. The only contracts affected by the Stat. are 1st Contract of Extrs or Admtrs to answers debts or damages out of their own estates. 2nd or to charge the de— —fendant upon any special promise to an— —swer debt, default or miscarriage of another person. 3rd Any agreement in consideration of marriage. 4th Contracts for the sale of lands &c or the only the lease thereof for a longer term than {5 yrs} 1 yr. 5th Agreements not to be performed in one year after making thereof. This stat may be found in V.C. 579—80 §1, 592 §7. 449 In Engd title in goods may be transferred by sale when the vendor has no title in them himself e.g. by sale or market overt. This law exists nowhere in America. 1 John 480—that lendee has no (...) title than lender. 457. Warranty. Implied warranty of title exists

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(2 Kent 477) only when the vendor is in possession of what he sells, if he is not in possession & does not expressly warrant the rule of C. Law "caveat emptor" applies. 2 Kent Com. 417. The text gives the correct doctrine as to warranty to title. 4 Ran 5. An express warranty always renders the vendor liable for the quality of the goods sold. {An implied} warranty of the quality arises in {2} 3 cases 〔1st When the vendor misrepresents the quality 1. 〔of the goods. (suggestio falsi?) 〔2nd When he uses art to disguise the real quality (the defects). (supressio veri) (2. Where he expressly warrants.) (3. Where he sells goods not present or nor yet manufactured, by a description. They must conform to the description.) Bailment is a delivery of property for some purpose to a third person. There are but 4 purposes for which bailment can be given & of course but 4 sorts of bailments viz 1st To keep. 2nd To Use. 3rd To do something to & 4th To hold as a pledge. The first three may be either gratuitous or for reward & upon this depends the degree of care to be exercised upon the property delivered. If the bailment is for the benefit of the bailee he must use great care & is liable for injury arising from slight neglect. If the bailment is exclusively for the benefit of the bailor, the [bailee] is only responsible for gross neglect. If it is for the benefit of both bailor & bailee the bailee is liable for ordinary neglect. Upon these distinctions the whole subject of bailments turns. The whole doctrine of bailments as it now exists with the names is derived from the civil law. The names are as follows—

I Bailments to keep {without reward — depositum {for reward — Locatio operis faciendi. Degree of care may be [varied?] by the character of the Bailment—as they are more or less valuable. May also be modified by the agreement of the parties, (...) or simple

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II Bailments to use {without reward — commodatum {for reward — Locatio rei

III Bailments to do something to {without reward — mandatum {for reward — Locatio operis faciendi {or in case of carrying — Locatio {operis mercium vehendarum.

IV. Bailments as a pledge — Pignoris acceptum.

([5,] vol Howard 344. 11 Gr. (...) [carrier] of (...) {liable} must be the utmost degree of care presumption (...) the [carrier].) Public carriers are liable in consideration of public policy, as public insurers; nor are they at liberty to qualify their liability by a general notice such as "all baggage at the risk of the owners" which are sometimes seen up in the cars or stage coach. Ch. Cont 480. 477. Story. [Bailments] §488. 464. (...) They are bound for all injury except in three cases. 1st Injury by act of God. 2nd Injury by the act of a common enemy. e.g. an enemy of the country & not merely a robber & 3rd by the act of the owner. Inn Keepers {though more liable} though more liable than other bailees are not so absolutely liable as public carriers. 463. Rate of Interest—The Author remarks that it has gradually decreased. In Va until 1797 the legal interest

was 5 pr cent. Since that time it has been 6 prct. pr. annum. The present Va Stat. has three prominent objects. 1st To declare the legal rate to be 6 pr ct. pr. annum upon any contract for loan & all contracts for more than 6 pr. ct. &c. shall be utterly void. V.C.575 §§4 & 5. 2nd To subject him who makes more than 6 pr ct. to a forfeit of double the amt. of money lent. §11 3rd To allow the borrower to exhibit his bill in Equity vs the lender to compel a discovery of the usury (...). §7. As to what is usury see 1 Wash. 368. 2 Call 110. 4 Ran. 407. 6 Leigh 517. 5 Ran. {136} 132. 5 Leigh 254. 8. Leigh 238 & 93 & 330. 9 Leigh 556. 12 Lgh 166.

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(6 Munf 434. 5 Le 254. 6 Le 517 8 " 238 & 330. 9 Le 556. 4 Gr. 55. 6 Gr. 387. 5 Ran 156.) The general rule is that when it is found that a loan is contemplated & more than 6 pr ct is taken it is usury. To show with what little favor the cts. view shifts & devices to cover usury see Gilmer 42. 5 Ran. 132. (136) 2 Ran [101]. The Stat. avoids the contracts entirely if the borrower can prove the usury at law. So if he is defendant in chancery & usury is proven the lender loses as at Law, his prin— —cipal & the penalty. If however the borrow— —er cannot prove usury he can have recourse to the conscience of the lender in Equity, in which case the lender gets only his principal without interest & is obliged to pay the cost of the suit. This can only take place where lender brings suit for payment. We generally use deeds of trust & not Mortgages in Va to secure debts, which deeds of trust the debtor conveys to a mutual friend, to sell if necessary & pay the debt & return the overplus to the debtor. Now as the sale takes place at the discretion of the Trustee, some— —times the party is precluded from setting up usury at law or in equity. This is a case in which the lender does not bring suit for payment. In this case the borrower must come into chancery & have an injunction to stay the proceedings of the trustee, until he can establish the usury at law. But Equity as the price of its aid will compel him to do equity & pay the lender his prin— —cipal & legal interest unless he can prove the usury. The 1st case on this subject was that of Marks vs Morris (2 Mun 407) in which the rule was laid down that the court will enjoin the trustee from selling until the debtor has had an opportunity of establishing the usury and avoiding the claim at law. See 1 Ran 172. 1 Leigh 449. 2 Leigh 624. 1 Grat 153. 3 Grat 173—by Bank of Washtn. vs Arthur.

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(Shepherd) 177

((...) Munf 407.) some of which Marks vs Morris was sustained by others opposed. The revisal of 1849 adopts the policy of Marks vs Morris. V.C 577 §10. 463. The Lex loci Contractus governs in interest as in all other cases of chattels as it regards the rights of the property, unless the contracts be made with reference to another country. 1 Wash 368. ([1] Gr (...)77) 2 Wash 295. But with respect to the remedies for the violation of the contract the lex fori governs. 2 Ran. 303. Story's Conft. of Laws 470. V.C. 594 §17. 465. Note 36 is very important. It shows the principal points wherein a deed differs from a parol contract. The same difference exists in Va the 1st, 2nd, 6th 7th & 8th which have been modified. At 465 the Author explains the difference between debts by record, specialty & simple contract. A Bond is an instrument under

seal in which there is a promise to pay money either absolutely or on condition; or to do some collateral thing. Bonds are of three kinds 1st Simplex obligatio or simple bill. 2nd Penal bills & 3rd A bond with a condition to pay money or to do some other thing. If I promise to pay a sum of money to A, witness my hand & seal & affix my signature & a scroll it is a simple bill. But if I go on to say I will $100 in the penalty of $200 this is called a penal bill. (The penalty is generally double the amount of the 1st sum.) If I give an absolute promise to pay money & afterwards insert a condition on the performance of which the bond is void; this is called a bond with a condition. Such are the bonds of Exectrs Admtrs Guardians, &c. 465 In note 36, the 1st is exactly as it exists in Va. The 2nd has been modified. VC 652 §5. The 4th is the same as at Com. Law. The 5th is modified see 545. §3— also the 6th. See V.C. 544 §25. Also the 7th. VC 541 cp.149 §5. The 8th is changed, profert is dispensed with. 647 §9

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Bonds are also either joint, or several or joint & several. If two persons bind themselves in a bond it is generally taken to be joint; though express terms may control this general understanding & make it several; for the [I] at (6 Ran 40) the beginning is said to be distributrive & being signal by two it is (*6 Ran 40) joint & several.* If the names of some of the parties be men— —tioned in the deed & others sign with them (3 Munf 118) those not mentioned are not bound. 3 Mun [118]. (Contra 8 Grat 54) Thus if the bond ran 2 A, B & C, promise &c & D also signs (*contra 8 Gr. 54. D is not bound* (*Prof thinks that now all wd be bound.)) H & M 61. 1 Mun 406. So it is prudent to leave the names out of the bond. These distinctions are imperative in order to the character of the action as whether it be joint or several. If the bond be joint all the parties alive must be joined in the action. If the bond be several the action must be several. If joint & several you may (*1 Ch. Pld. 47.) sue all jointly or each one severally, but not an intermediate number*. 1 H&M 61. 1 Mun 406. At Com. Law a joint obligation survived to the surviving party & the estate of the deceased party was at Law exonerated. This has been altered here by a stat. which has abolished survivorship not only in estates, but also in (*must go into equity) obligations*. 2 Call 527. 3 Call 521. 2 Wash 136. (°VC. 572. §13. 1 Ch. Pld. 20. Heir only [bd] as C.L. when named [several] [whether] named or not. V.C 545 §[3],7) ° That is the stat. has abolished survivorship as to obligors, but not as to obligees & bind man (...) relieved only in equity. Thus if A & B give a joint bond & B dies, the obligation does not survive to A, so now although the rule of law is inex— —orable forbidding a joinder of the [representative] of the deceased person with a surviving party still you may sue both the representative & the survivor separately, but can have only one execution. But if a bond be given to A & B jointly the Com. Law rule prevails & the debt survives to A upon the death of B, but in this case Equity will give relief & give the

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representative of B his share. At Com. Law, the heir was bound only when named but the executor being the personal representative was bound whether named or not. 2 (...) (136) 136.

{[Chitten] 136} (1 Chitt. Pl. 58.) 2 Co. Litt. 142 (n). In Va the heir without being named is bound for all debts {evidenced by} (date of a bond is prima facie the date mentioned, but [if] it is impossible the [due] date (...) of [delivery]) {writing} both bonds & promissory notes bind the lands in the hands of the heir in default of the personal assets. This charge is collateral & dont follow the lands in the hands of a purchaser from the heir. Devisees are bound in like manner as heirs & may be sued in the same action. If the bond has none or an impossible date it takes effect from the delivery. A seal imports a consideration nor could it be impeached at Com. Law except (stat. first enacted in 1831.) for fraud in the extn or illegality. But now a defence can be made by stat. by a special plea of [Set-off] verified by affidavit. V.C 654 §5. It was always allowed at Com. Law to impeach a deed by showing mal-execution, of the instru— —ment as [duress], fraud or illegality or incompe— —tency of parties; as infancy &c, but not the consideration. In actions on promissory notes & simple contracts in general the considerations should be alleged & proved; but now by a stat. you (V.C 582 §10.) may not in an action of debt on promissory note though you must in all other actions—action of debt on promissory being the only exception. Tate & vs [Boatwright]. 2 Leigh (to (...) are on [the] same [footing] joint obligor (...).){195} [198]. If a bond be given without saying when it is to be payable or payable on demand or at doomsday or never to pay in all those cases it is due & may be sued on immediately. 6 Ran. 101. If the bond is payable on a partic— —ular date the obligor cannot stop interest by tendering the money previously. 1. Johns Ch. Rep 7. We generally see a bond payable on or before a certain date which enables the obli— gor to stop the interest if he pays before that day which otherwise he could not do

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If no place of payment be named in the bond the debtor must seek out the creditor on the day of payment if he be in this state or {if} his known agent; not so if he is out of the state. 1 Call 139 & no interest is to be paid perhaps during the absence of the creditor (1 Gr 292. 7 Gr. 377) from the state. 1 Amer. State Papers 257—304—312. 2 Rob. Pract 205&6. 1 Rob. Pract. 366 & 363—4, (Fiduciary bound for interest as he can bring into ct. & have it lent out & have it pay interest. 1 Gr. Ev. §565 et Seq. 6 Ran. 92) Fiduc mt. bring money into ct or he will be bd. for interest. The effect of interlineations & erasures is to violate the instrument if done by a party of the instrument; if done by a stranger & is material it is fatal; if not material & done by a stranger the instrument is good. Chitty on Contracts [783]. Greenleaf thinks a different rule may be gleaned from dif— —ferent authorities; he says there is a difference between alterations & spoliations. Greenleaf's [Evidence] 600. The principle is this; if the obligors consents after the interlineation it does no good & the bond is destroyed, for that would amount to setting up a deed by parol. 6 Ran. 92. Ship (...) 68. But if the obligor consents at the time to the alterations it is still good. Parol authority does not authorize one to bind another under seal as in bonds; but an authority to execute bonds must be under seal. (*4 Ran 177.) Parol authority is sufficient to execute promissory notes & Bills of Exchange. 4 Ran 177*. A blank bond signed by the principal & filled up by the agent is void. A release of a bond must be under seal. Chitty on Cont 777. 4 (...) (...) 265 Release (a) 1. A release before or after the bond is forfeited must be under seal & a release of a parol contract after promise violated must be under seal. In releases if two or more

are jointly or jointly & severally (6 Call 343. 2 Le 29) bound a release to one is a release to all notwithstanding an express reservation as to some viz an express declaration that

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it should not operate as to all 6 Call 343. As if a release be made by one joint obligee, it (2 Co. Lyt [311]. (...) Leigh 29 (...) Do 158. Applies to [releases by operation of law]) shall operate as to the release of all. The same law in respect to releases by operation of law. A memorandum made on bonds at the same time the bond was executed is a part of the bond & if torn off the bond is not good. 1 Wash. 11. 2 Wash 130. 5 Leigh 114. 3 Le 200. At Com. Law, when the bond was forfeited the whole penalty was re— —covered, but chancery comes in & relieved against the penalty & allowed principal with interest & cost only. We have a stat. saying that when a surety by bond, bill or note for the payment of money or tobaco shall apprehend that his prin— —cipal is likely to become insolvent or to remove from the Commonlth without discharging such bond &c, (5 Munf 494. 10 Le. 285.) he may in every such case provided an action has accrued on such bond &c, require by notice of writing of his creditor to put such bond, &c in suit & unless the creditor shall sue within a reasonable time & proceed to get judgment & make the (V.C. 545 §25. 2 Ran 446 (...) promise not under seal the penalty is not (...) is the debt only) amount due, he shall forfeit his claim upon his securities. 5 Leigh 158. 2 Ran 446. At Com. Law, if a creditor made his debtor his executor it was considered an absolute release of the debt. This is different in Va. V.C. 543 §13. At Com. Law when a {personal} penal bill was forfeited the whole penalty was due. But Chancery comes in & allows principal & interest & costs. The remedy vs penalty only existed in Chancery until 4 & 5 Anne, which gave the same remedy at law. But still suit must be brought for the penalty. (V.C. 673 §16 Re—enactment of stat of Anne.) We have re—enacted the stat. 4 &5. Anne, ((...) Munf 78) it provides that in all actions on bonds for the payment of money or tobaco, wherein the plaintiff shall recover judgment, shall be entered for the penalty of such bond, to be dis— charged by the payment of principal, interest, & costs, or if before judgement the defendent

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shall bring into court the principal & interest due, he shall be discharged & in that case judgement shall be entered for the costs only. V.C 673 §16. This maxim of the Com. Law as to penalties holds only in the case of sealed intruments; {though} there is no penalty to a promissory note though it be written in the form of a penal bill. 2 Ran 444. & therefore the action in such case, must be brought not for the penalty named in the note; but for the sum really due. 6 Mun. 18. It often happens that when Executors &c, sell property at 6 & 9 months credit, they wish to make the note bear interest from the day of sale if it is not paid promptly, but if it is paid promptly no interest is to be charged. In such case it is necessary to include the interest in the note with an endorsement on its back remitting the interest in case of prompt payment otherwise equity will look upon the interest as a penalty which in an un— sealed instrument cannot be recovered. In Engd if the principal & interest exceed the penalty it is

doubtful whether anything more than the penalty could be recovered. In Va you may recover the excess in the shape of damages if the amount does not exceed ((...)) the damages laid in the writ & declaration. 5 Mun 494. 10 Leigh 285. VC 545 §25. Assignment. At Com. Law no chase in action except—mercantile securities—were assignable. But if there was an assignment the Ct. of Chancery would recognize the assignment & the Cts. of Law would allow suit to be brought in the name of the assignor. This has been changed by our state which provides that all assignments of notes, bonds & other writing not negotiable shall be valid & the assignee of any such may bring his action thereon in his own name,

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which the original obligee or payee might have brought, but shall allow all just discounts not against himself but against the assignor before notice of the assginment was given to the defendents. VC 583 §14. 2 Wash 255 & 233. 3 Mun 68. (*Eq assets 5 Leigh 1. VC 545 {§25} §25. 2 Wash 233. (...) Munf 533.) *5 Leigh 34. 1 Mun {532} 533. 2 Rob {76} 676. The leading principle is that the assignee is in no better situation than the assignor at the time of the assignment. 3 Mun 68. 5 Leigh 1. 34. The obligation to yield all just discount, yields only in the case where the obligor has induced the assignee to take the security by his own representation. 5 Leigh 82. 2 Rob 674. As to the manner of bringing suit the Stat. allows the assignee to sue in his own name. Before the Stat. the assignee was tolerated only in Chancery. At law he was forced to sue in the name of the assignor; (*Garland vs Richard. 5 Munf 23. [10] Le 663. 4 Ran. 396.) the Stat. merely added the right to sue in his own name. V.C 583 §16. *4 Ran 266 though he may still sue in chancery if there be no remedy at law. 6 Mun 23. 4 Ran 396. 10 Leigh 663. V.C 583 §16. If the assignee finds himself deceived he has recourse to the {assignee} assignor i.e. when the obligor is insol— —vent. Here far does this recourse extend? This (At C. Law assignee cd. only sue his immediate assignor (...) by stat. [he] may sue any assignor (...) note. (...) [Wash] 219. [5] Call 116. [9] Le 6) ground of the assignee recovering against the assignor is a failure of the consideration which induced him to take. The assignor is liable by endorsement without assignment. 2 Wash 219. V.C 583 §15. Extent of Recovery. He ought not to recover more than he has paid, but as it is presumable he paid the whole amount, he will recover the whole. At Com. Law if A assign to D & D to E & E to F. F if he finds the debtor to be insolvent cannot proceed against A. But he must proceed against E, & E vs D & D vs A. But now V.C 583 §15. F can proceed directly vs A, who shall be subject to the same recovery & have the benefit of the same defence as if the suit had been brought {ag} by D, his immediate assignee. 5 Call 16. 9 Leigh 6.

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Now when can he sue the assignor? He may sue him when he has use due diligence to recover vs the obligor. But what is due diligence? This chiefly depends on the circumstances of the case. A suit followed as speedily as possible by execution is always due diligence. 2 Wash 219. But it is not always necessary (5 Cr. 142. 4 Le 452. 6 Le 386) to bring suit if you can show that it would

be unavailable. The action is assumpsit. 2 H & M 113. 5 Ran 31. 4 Call 492. 5 Call 78. 6 M 391. 4 Leigh 452. 6 Leigh 386. If the debtor is a non—resident of Va it is uncertain whether the assignee must pursue him before he can have recourse to the assignor. 4 Le. 452. 6 Do 386. (4 Wh. 122. 9 Wh. 197. 5 Do. 34 et seq) Bankruptcy & Insolvency. The power of enacting laws of Bankruptcy has been conferred on the Genl Govt. This power is not however exclusive; but the states may enact bankrupt laws for themselves in case non enacted by the Fedl. Govt. are in force. Such laws have been enacted but twice by the Fedl. Govt. 1st in ([Elder Adams]) 1800 which was enacted to continue 5 yrs, but at the end of 3 yrs was abolished by an almost unanimous vote. 2nd During the presidency of Mr. Taylor in 1841 which was repealed by the same Congress that en— —acted it {by the sam}. Between {1800} [1803] & 1841, there were several attempt made to pass bankrupt laws, one in {1827} 1825 proposed by Mr. Jno Q. Adams during his Presidency & another in {1839} 1837 proposed by Mr. Van Buren during his administration. (In 1839 Bill for this purpose passed Senate but failed in House.) But both of these efforts were unsuccessful. But whilst bankrupt laws do not exist by Fedl. enactments they have been employed by several of the states at different times as (...). The difference between Bankrupt & insolvent laws is that the former regards the interest of the Creditor as well as that of the Debtor & the Community, whilst the latter are merely

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(Bac. Abr. "Extr" (c) 3.). 185

(Insolvent law are merely to discharge Debtor (...) pay imprisonment.) for the interest of the debtor & the community by releasing the debtor from unnecessary con— —finement, upon condition of his giving up all his effects. The Com. Law considered it as a punishment well deserved until he died or paid his debts. But this was changed in Va 1644 by an enactment which was matured in 1705 & for many years past a debtor has (Hen's stat 294—346 453. (...) Do 388. (...) Rand. 737. 2 Le. 764) been allowed to discharge himself with great facility giving all advantage to the creditor. In the recent revisal this revisal has been carried still farther. V.C 716 §1&2 note Act 53—4. & 717 §5. Act 52 —3. p 76 & 91. p 25 c. 22. Several of the sister states have introduced into their insolvency Stats. a feature of the bankrupt Laws. 2 Kent 389—400, viz that of discharging insolvent. (Story's Constn (...) Bankruptcy Story (...) 1105—15.) 467. Merchantile Securities. A Bill of Exchange is an open letter of request from one man to another desiring him to pay the the sum named therein to a third person or his order on his account. In the U.S. bills drawn in on State on a person in another are considered foreign bills (for in such matters the states are independent of each other) unless (2 Wash 298. [2] Peters 586. 2 Do [54]) it be otherwise declared by stat. We have heretofore had a stat. declaring that all bills drawn in Va on any one in another state or in one of the territories or in the Dis. Of Col. shall be deemed in land & if protested the drawer or endorser shall pay one pr. ct. damage & 6 pr. ct. interest from the protest until paid. If for instance a bill be drawn by one in Va on one in N York it is inland; but not if one in N York be drawn on one in Va. We find no such Stat. in our late revisal & therefore, now bills drawn by one in Va on one in another state are foreign. If the bills be for $16.67 or upwards, expressed to be for value received & payable at a certain time after date; being presented & dishonored the payee, his agent or assigns may cause such bills to be protested by a notary public; or if

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there be no such, by any other person in the pres— (7 Le. 194. 2 Grat.)—ence of two witnesses. The Stat. says "may cause to be protested" but does not enjoin it. The drawer or endorser must have notice of the dishonor in reasonable time. The Com. Law (V.C 582 §8) does not require a protest of an inland bill; but does of a foreign bill. 5 John's 384. But notice of non—acceptance is indispensable in either case. 2 Leigh 323—4 & if notice of non— —acceptance is given the holder may sue. The essential difference between foreign & inland bills at Com. Law was that foreign bills in case of dishonor required to be protested, to show that fair dealing had been practiced &c, while inland bills did not require protest. Both however required to be only presented for payment in due time for acceptance & notice to be given to all entitled to it, if they were dis— —honored. This in case of foreign bills was proved by the protest & seal of the notary; in case of inland bills by any satisfactory proof. Both kinds however may be protested & perhaps this is the best course. V.C 581 §7&9. In the event of dishonor Com. Law allowed the payee to recover not only the sum named in the bill, but also all incidental expenses, interest, cost; & if a foreign bill re—exchange. The amount of these incidental expenses & re—exchange being difficult to prove most of the states have laid fixed damages. By the former law of Va the damages recovered on inland bills if protested was 1 pr ct. & on foreign bills provided that had been protested 10 pr. ct. By the present law if the bill is drawn & payable in Va—nothing—if in the U.S. & out of Va, 3 pr. ct. & if out of the U.S. 10 pr ct. V.C. 582 §9. In some of the states the pr. ct. on foreign bills is very great. In Va previous to 1826 it was 16 pr. ct. & the same is now the l aw in Kentucky. The Com. Law allowed

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(M Hanger University of Va) the same remedies to holders whether foreign or inland. This was an action of debt or assumpsit vs the acceptor, because his liability was certain; {but} and v.s. the drawer or endorser whose liability was contingent, {not} on action of debt & {but only} also of assumpsit. These actions against the drawer or endorser or acceptor must necessarily separate altho' carried on at the same time, because the contracts were separate. There was a Stat. of Va in 1730 which allowed in the 1st place action of debt or assumpsit vs. drawer or endorser in case of foreign bills & in the 2nd place a joint action of debt; & afterwards notes & inland bills negotiable at the banks of Va &c were made to stand on the same footing except as to damages. This being found to operate well the revised stat. extended. V.C 581 §7. The Stats then proceed to say every promissor note or check payable in this state at a particular bank office thereof or savings bank & every {inland} bill of exchange payable in this state shall be deemed negotiable upon such note or bill an action of debt may be brought vs the drawers, endorsers & acceptors or anyone or any intermediate number for the (V.C. 581 §7) principal & charges of protest & interest from the date of such protest, & in {such} case of a bill (Foreign Bill) in which damages are given, damages also V.C 582 §11. In consequence of these we have three kinds of mercantile securities in Va. (*See p 212 of this book. 7 Le. 194. 2 Grat. 536. Bac. Abr. (...) 2 Gr. 536) 1st. Foreign bills of exchange for which see V.C 589 §8. In these protest is

"prima facie" evidence of notice it must be protested to the drawer which notice must be prompt i.e. the same or next day if the parties live in the same place; if they do not live in the same place by the next mail. 2nd. Inland bills of Exchange. These are not nec —essary to be protested but due notice of their dishonor must be given to those entitled to it. The protest protest proved by the notarial seal (8 Wh. 333 Unless [protestio] can have joint action) is prima facie evidence of notice.

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3rd. Negotiable notes being such as are payable at some bank in the state any office or (...) savings bank. These require no protest. (VC 582 §8. & 11.) V.C. 581 §7. The remedies in all these cases are the same provided they have been (action of debt may be brought on a note not negotiated out of the State [Do 511]) protested i.e. an action of debt vs. the drawers endorsers or acceptors jointly or severally or vs any intermediate number of them. (...) 582 §11. (11 [en.] 411 [SM. Mer.] Law. 258 ct. following Holder of mercantile paper for value takes it (...) discharge of all eq wh it was subject in the hands of the only (...) for the benefit of trade. This is true only while (...) yet over due) Notes not thus negotiable are not mercantile paper & can only be passed or assigned as bonds &c. 493 Title by Testament. See Coke's Opinions. 3 Coke Litt. 317 n. 25. She has a right to 1/3 which could not be divested by the husband's divesting it. By virtue of Va Stat. we have the same. V.C 524 §11. But she shall have only a life estate in the (she may lose the (...) 525 §[14]) slaves in her portion. If the husband bequeaths away the wife's share given by the Stat, she may in one year after probate of will before the Genl Ct. or Ct. of probate of the will or by writing executed in the presence of two or more credible wit— —nesses proved by them in ct. & recorded renounce such will & take 1/3 of slaves & the same share of the other personal property as if the husband (5 Munf 42) had died intestate. V.C. 524 §12—14. 474 §4—5. This Stat. applies to personalty only 4 H & M 55—6. (6 Gat 594) 35—6; 5 Call 481. 3 Ran 361. The object of the Stat. was to [prevt] the {wife} husband's defeating divesting the wife's claim. The husband cant defeat the wife's claim by will; but he may by an irrevocable deed, reserving a life estate him— —self; & he can do this even though he should express a wish to disappoint his wife. But he could not by will or by revocable deed or by voluntary bond. As to slaves the widow has them only for life. This is a remnant of a stat of {1704} 1705, in which they were regarded as real property. Hence the phrase "dower slaves". But since 1792 they have been considered as personal property

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496 (who shall administer. See V.C. 541—2 §4 & 10. 1. Husd or wife. 2 (...) 3 [Cred] 4. Shiff) The Author explains the reason why the ecclesias— —tical courts attained jurisdiction of testaments &c. When the widow renounces the will shall she take in preference to the creditors or not? There is a stat. which says "after just debts are paid" she shall take the third—so it seems creditors are to be preferred. Read V.C 541 §14 which says the wife shall be preferred. 497 Here no one can make a will of personalty under the age of 18, but this age both males &

females may bequeath. Experience has also proven that persons born deaf, dumb & blind are capable of a great deal of {intell} cultivation & question is one of fact hence may be allowed to make a will if proved competent. VC 516 §3. 498 In regard to separate property in Va a married woman may dispose of it, by will, but it must be (Code 576 §3.) given to her separately & independently of her husband. 2 Ran 375. V.C 576 §3. So may dispose of property held in "autre droit" & with the consent of her husband she may dispose of chases in action also. V.C 579 §22. But in such case it is rather an appointment in the nature of a will than a will. The power to devise really is derived from the Stat. 32 & 34 Hen VIII & a married not being allowed to devise by that stat. She may only appoint under the instrument which created her interest, which appointment must strictly pursue the directions of the authority. 499 We have no forfeiture for crimes but our Stat. says that the lands, slaves, & personal estate of any person sentenced to death shall descend in like manner as if he died intestate. VC 750 §5. If sentenced to the penetentiary for a longer term than one year, all his estate real & personal, shall by the court of the county in which it lies, be committed to trustees appointed by such court during the time of his imprisonment. V.C 791 §5&11. Judge Tucker thought that one capitally convicted could not make a will. 1 Tuck. B II 500.

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Non—Cupative Wills— Previous to the stat. of frauds 29 Char. II all wills of personalty (5 Le. 589. V.C 516 §4.) might be non–cupative. But by that stat. verbal wills are allowed only in certain cases; as of mariners at sea & soldiers in battle & in extreme cases of sudden sickness & in these cases strict rules are prescribed. Previous to 1835 our stat. with regard to non—cupative wills was the exact counterpart of the Eng. Stat. The revisal of 1849 restricts non—cupative wills to mariners at sea & soldiers in battle. V.C [516] §6. Written wills of Personalty require to be executed as wills of realty. This change was made in 1840. V.C. 516 §41. 502 (V.C. 542 §9) We have [long?] had a stat. declaring that no in writing or bequest of chattels, should be revoked except by a subsequent will, codicil or declaration in writing. This question came up in 12 Leigh 539 (celebrated case & the ct. of appeals expressed the opinion that one will could not operate to revoke another, unless made as a good will), executed in the manner prescribed by the act of 1840 viz as a will of realty. Since the revisal of 1849 wills of chattels may be avoided in the same way as wills of lands. VC 517 §7 to 10. At Com. Law there was no punishment for the destruction or concealment of a will. The Eng. provision was by 7&8 Geo. [blank space] Our provision may be found in V.C 731 §29. 517 §7—10. 501 The ct. of appeals in 5 Leigh [blank space] decided that a man might write a will of personalty & sign it & [set] it up by his own testimony. In consequence of which decision the Legis— —lature passed the Stat. VC 571 §3 & 4. Perhaps we are to understand from V.C 542 §9 that a married woman may be an administratrix.

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503 Executors. We have no stat. directly on the age of the Extr. But our Stat. requires an oath & bond before an executor can enter upon his office. One (V.C 542 §9 (...) 122) under 21 cannot take an oath or give a bond therefore we may presume one under 21 cannot act as an Exectr. VC 540 §1. Exectr's bonds as well as all others payable to the public (V.C 731 §29) are now made payable to the Commonwealth. VC 88 §5. Formerly they were made payable to the sitting Judge or justices. Official bonds were formerly payable to the Governor. 504 In Va as well as in Engd the same courts take the proofs of wills & grant administrations. By our stats the cts of probate have power to hear & de— —termine all questions as to Exectrs & Admtrs. The cts. are 1st the Genl. Cts in all cases. (2nd the Circuit & County Courts of the County where the Testator has had his (1) residence.) (If no residence & a testament of lands then in the county in which the (2)lands or a greater part of them be.) (3 If no lands then in the county where the party died or where greater part of property remains.) (V.C. 542 §10 20. 540—1 §1—3 & 6 & 7. 541 §5 & 6.) V.C 579 {§23} §29. In Va one probate & one administrator is sufficient no matter in how many counties the property lies. (...) 541 §4. Who entitled to administration. The Stat. says 1st to husband & 2nd to wife & then to those entitled to distribution. After the husband & wife you must determine who is entitled to dis— —tribution in order to ascertain who is entitled to administration & the same persons are entitled to distribution who would take the lands by descent. 1 Call 1; 4 Munf. 231. If no distributed or interested person apply within 30 days or at the next ct; after 30 days the ct. may grant administration to some of the creditors & if no creditors apply in 3 months, the ct. may direct the Sheriff to take charge & without further oath or bond he may act in all respects as Admtr. V.C 541 §4. 542 §10. See Code 540 §1 to 3. 6 & 7 as to Exectrs. 5 & 6 Admntrs.

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(The man that is entitled to the est. is entitled to the Administration a general principle that never fails.) The persons entitled then are 1st husband & wife. 2nd Distributees & 3rd Creditors or any other person & 4th Sheriff. In all these cases except the last the Adr. or Exr. make oath & give bond for the performance of his duty. A subsequent Stat. provides that if a will be afterwards produced & proved by wife or distributee the administration is revoked. V.C 541 §5. The order of administration to the Sheriff may always be revoked & [often] is on the application of a creditor merely & if administration be gran— —ted tax to a creditor or Sheriff if afterwards the wife or some distributee who had not previously (...) apply for letter of administration they shall have them. V.C 542 §10. At Com. Law very formal letters were required to be made out in the case of Extr. called probate & in the case of Adtr. called letters of administration. But our stat. has very much simplified this since it is not absolutely necessary for letters to be given a copy of the order of ct. [allowed] letter to be granted, but certificates are sufficient. But if any wants them he can obtain them. V.C 542 §11. 505. By Stat. Ed. III if a dispute arose as to who should be Extr. the ordinary might appoint one called administrator "ad colligendum". In Va the cts. are authorized to appoint persons called "Curators" during any contest about a will or during in— —fancy or absence of Adtr. &c who must collect & preserve the property; to sue & now to be sued as an administrator. VC 579 §24. 8 Leigh 264. The suit of Curator doesn't abate by a grant of administration but maybe continued by Adtr. 506 The Extr. of an Extr. shall have

no authority to execute the estate of the 1st Testator. By a stat of 1824 & 5 in Va the 2nd Extr. was required to give bond & oath as Extr of the 1st Testator. Otherwise be (...) act. But by the revisal of 1849 Extrs. of Extrs. were abolished. VC 541 §7. 5 Ran 42. [9] Leigh 508. 3 Ran 287. 3 Leigh 299.

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An Adtr "de bonis non administratis" "with the will annexed" is intended to administer goods not administered by a former representative therefor he cannot call a former administrator to account for anything he has done because it is none of his business. 5 Ran 52. 9 Leigh {586} 580. (2 Le 572. (...) Gr. 478) But he may recover on judgment or continue a suit begun by a former representative. 3 Ran 287. 3 Leigh {299} 399—because the recovery of judgement is not an administration asset. He may recover debts {sold} for good sold by a former representative in equity provided he did not intend to convert the property to his own use. 2 Leigh 572. See also V.C 544 §22. Since the revolution the mode of probate is per [testas] only in Va. 508. Duties of Extrs. & Adtrs. 1st Must bury the Decd. in a manner suitable to his estate. 2nd Must prove the will. In Va the oath of Extr. is superseded to proof per [testas] & dont supersede it. V.C 541 §3. Our Stat. directs that the original be deposited in the clerk's office when proved & certificate of probate ([text 808]) be had or to obtain letters of administration issued by the Clerk — that certificate of probate or admin— —istration attested by the clerk shall be admitted in evidence in any court in Va, in same manner as if letters of probate [in?] due form had been gran— — ted. The only occasion of letters of probate is when the Extr. or Adtr. has need to prove them out of the state. {507} 509. The power of the Extr. ot Adtr. extends throughout the Commonwealth. 4 Ran 160. 9 Cr 152. 1 Cr. 259. 3 Cr. 319. See als V.C 538 §1. This does not apply to wills of land which do not require to be proved in a (2 Rand 190) ct. of probate (tho' better to do so) & therefore of lands lying in different states, but one proof and one Extr is necessary. 3rd Must make an inventory. This is necessary in Va. V.C. 542 §12. 547 §{5} 3. The inventory is the act of the representative & unless signed by the Extr. is not an inventory. 2 H & M 361. 5 Leigh 149.

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(Inventory must be made within 4 months) An appraisement (articles listed & valued) made by officers appointed is almost the same as an inventory signed by Extr. Everything that the Extr. is to be charged with is to be included in the inventory i.e. Debts. An inventory signed by an Extr. or an appraisement is prima facie evidence for or ag'st {as} the repr. as to property in his hands. 5 Le 149 Parks vs Rucker. 4th. He must collect all debts, &c. In Va all provisions & livestock necessary to be killed for the use of the family must be executed &c. V.C 252 §34. Our Stat. also enacts that he must sell all goods (specific legacies & slaves excepted) liable to perish or grow worse by keeping & if such goods are not sufficient for the payment of all demands he may sell the other goods having regard to specific legacies & slaves. V.C 543 §14, 15 & 17. 548 §4, 5. 511 5th Must pay the debts of decd. The law of payment by our law which is different from that of

Engd. is as follows 1st Funeral expenses & reasonable compen— —sation to himself as Extr. of Adtr. 2nd Debts to the U States. 3rd Taxes & levies assessed on decd previous to his death. 4th Debts due as personal rep. guardian or committee. When the qualification was in this state in which debts shall be included a debt for money recd. by the husband acting as fiduciary in right of his wife. 5th All other demands [ratably], except 6th Voluntary obligations. 544 §25. Any deviation from this order in general though not always exposes him to the charge of (...), subject to some modifications for which see note 36. But all deviations are forbidden by the V.C 545 §24. In note 36 the author refers to the distinction

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(V.C 543 §13) between legal & equitable assets. Legal assets are such as a court of law will take cognizance of. Equitable assets are taken cognizance of in a Ct. of Equity. Legal assets must be administered according to the rules of the Ct. of Law & Equitable assets according to the rules of Cts. of Equity i.e. rateably equality is equity. Formerly lands could only be charged in Equity for debts & accordingly were only Equitable assets. But our Stat. makes them chargeable for debts & hence they are legal assets. —End— 513. (6) Legacies according to the text are either specific or general & according to the note there is a 3rd class called Demonstrative. Our Va Stat. makes a provision with reagrd to specific legacies much more specific than that of Eng. V.C 534 §31 by which the Extr. or Adtr. by waiting one year & taking a refunding bond with security (1 (...) 244. (...) N of Law (...) 298. [11] Gr. 182. Bind (...) [Even] now 4 Le 433 any evidence of [debt]) from distributee {creditors} or Legatee is exemt from all responsibility from after discovered debts. So also the stat. provides for a case without a refunding bond if Extr. wait 2 yrs. V.C 554 §32. These two provisions leave nothing to be desired in order to exempt the Extr. &c from liability in case of after discovered debts. Author men— —tions at this page that if the legatee dies before the testator, the legacy lapses &c. This was much modified by a Stat of 1813 the (...) descendants of [Testator] (...) & much further by the revisal of 1849. V.C 517 §13. Descendants of any Devisee or Legatee. 514 7th. The surplus must go to the residuary legatee. The doctrine that the Extr. is entitled to the [residue] when there is no residuary legatee is entirely superadded by our stats. of distribution. 515. Author explains Engd. stat. of distribution 23 & 29 Ch. II. In Va the surplus of personalty is distributed among the same persons & in the same way as real property with the following exceptions. 4 Le 163. V.C. 553 §30 after one yr. 1st Alienage is no disqualification to the distributee.

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2nd The decedent being an infant makes no difference. 3rd If the decedent is married woman her husband is the sole distributee to the exclusion of the children &c. 4th If decedent leaves a widow & children she is to have 1/3 of the chattels & a life estate in 1/3 of the slaves; if there are no children she is to have 1/2 of the chattels. 5th If the decedent leave a widow & no children by her, she is to have all the personal property which came by her & 1/3 of the husbands; if he has children by a former wife; but if he has no children with the widow is

entitled to 1/2 of his personal property. VC 524 §10. 6th If there be no distributee the whole of the (V.C 366 §2.) personalty shall accrue to the Commwlth for (...) fund. V.C. 524 §11. The "Lex domicilii" governs in the distribution of personal property & the "lex loci rei siti" in the distribution of real property. 516 The Author mentions a process in regard to personalty similar to Hotchpot of real property. The principle of hotchpot has been consider– –ably extended in Va by Stat. so as to include both real & personal property. V.C 525 §15. In concluding this subject we will remark that an Extr. or Adtr. is required annually 6 months after the end of each official year to render an account of his Stewardship otherwise he is entitled to no remuneration &c. V.C 548—9 §§7,8 & 9 — before [Com'r] of Ct. of Probate or administrate or privately with persons entitled or in [pending] [Suit in Chcy]. Demonstrative Legacy is one where the fund is desig— —nated out of wh. the legacy is to be paid, not liable to ademption or abatement. Specific Legacy is liable to [ademption] tho' not to abate. General Legacies are liable to abate tho' not to ademption.

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Blackstone Book 3rd Private Wrongs Blackstone after dividing all wrongs into public & private goes on to say there are 3 ways by which private wrongs may be redressed. 1st By mere act of the party. 2nd By more act of the Law. 3rd. By conjoint act of the party & of the law i.e. by suit in court. The 1st occurs in case of protec— —tion of wife, husband, parents, children, master or servant from injury. 2. Redress without breach of peace as case of robbery. 3rd. To remove a nuisance. 4th To distrain & this must be par— —ticularly noticed since there are many rules for its regulation, which if a man violate whilst he is distraining he is liable for tres— —pass. There are 3 cases in which distress is lawful. 1st For taxes. Militar fines &c. 2nd In case of cattle doing damage feusance. 3rd For rent due. The Com. Law did not allow distress for rent unless there is a reversion to the landlord or a special provision for distress i.e in case of rent—service & rent charge — but not in case of rent—seck. In Engd. they have long had a Stat. (4 Geo. II) allowing distress in cases of rent. This Stat. has been re—enacted in Va V. C. 568. Yet whilst there is any of the remedy remaining no prudent man will distrain since there are so many rules to be complied with. The Stat. directs the way in which a Militia officer may distrain for fines or a sheriff for taxes &c. V. C. 195 § 4 to 13. 700—1 § 1 to 23. Distress for rent is of greatest importance. It is provided for in V. C. 569 § 12. At Com. Law interest was not distrainable. But our Stat. seems to allow it. V. C. 568 § [7]. Property which may be distrained. The general rule is that all property found on

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the tenants promising whether tenants or not — is distrainable — and this is to preclude fraud. But there are some exceptures as mentioned by the Author. Originally the remedy of distress was solely for the benefit of the public, that the landlord should have power to compel this service by dis— —tress when the tenant failed to render it. It is now also for the benefit of the tenant be— —cause by this means the poor man can get a home, which otherwise he could not

do, unless he gave security that the rent would be paid when due. The reasons why certain property is not distrainable are referable to one of the three following heads 1st From considerations of public policy. 2nd From considetations of justice. 3rd From considerations of the nature of the thing. Remembering these will assist us generally in understanding this subject. 1 Those things not distrained in consideration of public policy are things in use for the benefit of trade such as cloth at the Tailors, a horse at a blacksmith' shop to be shod &c. — things in the use of the party such as the horse he is riding the distraining of which might cause a breach of the peace — & tools of trade which for the benefit of the public should remain in the owner's hands. 2" These things which are not distrainable in consideration of justice, are such as cattle coming into a field, legal means not having been used by the owner to keep them out — i. e fences lower than the law allows &c. 3rd. These things not distrainable in con— sideration of their nature are such as animals feral nature, growing crops &c. Our Stat. says the distress may be levied on any goods of the lessee &c found on the premises. V. C. 579 § 11.

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There are indeed a few exceptions V. C. 252 § 34. If goods are subject to a lien when carried on the premises, they can be distrained on so far only as the tenant has an interest in them; but if they become subject to the lein after they come on the premises they may be distrained as other property. V. C. 569 § 11 to 12 — for one year's rent. 10 The 5th class of things not distrainable are things that cannot be rendered again in as good plight as when distrained as milk corn in the shock &c. But afterward in Engd. Stat. enacted that corn & (...) in the shock might be distrained & heretofore this doc— —trine has prevailed in Va; but it is now chan — ged § 11 — Code : With regard to growing crops &c. see V. C. 252 § 33 &c. 11 Manner of Making Distress for rents. & 1st all distress must be made by day. The manner has been very much altered in Va. In Egd. no officer was requisite to make the distress but the person claiming the rent might dis— —train. But in Va it is necessary that a warrant of distress be issued by a justice to an officer &c. V. C. 569 § 10. & this Stat. allows any inner or outer door of the house where the goods have been secreted to be broken open, a proceeding, not allowed formerly in Engd. but is not with peace officer See Bl II. In Engd. the property distrained must be in the premises of the tenant & during the continuance of the lease (formerly so but not now B C 11) whereas in Va it may distrained from any place where it have been secreted & any time within 5 yrs. the rent has become due whether the lease continues or not. But the property must not have been removed from the premises more than 30 days before the distress. 12 The Stat. 52 Hen. VIII with regard to amercement for unreasonable distress has been re—enacted

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in Va. V. C. 253 § 35 in which it is expressly provided that slaves shall not be distrained or levied without the owner's consent except in default of other property § 35. See all — 253 § 36. In Engd. there are several sorts of pounds. We have no common pound & with respect to special pounds see V. C. 253 § 36. In Engd. if live stock is distrained or impounded the person from

whom the rent is due must furnish food: but in Va it is the duty of the sheriff § 36. 14 As to the sale of goods distrained our Stat. follows the Stat. of 2 W & M ch. 5. V. C. 253 § 37 & 38. There must in all cases be a notice of 10 days given. In place of the System of replevy mentioned in the text, the revisal of 1849 provides a delivery or forth coming bond &c. Code 720 § 1. For the method of procedure in case of forfeiture of the bond see V. C. 720 § 1 to 5. As to the officers mentioned in this Stat. See V. C. 251 § 28. At Com. Law allowance of interest or rent depended on circumstances. But the revised stat. provides differently V. C. 568 § 7. A distinction must be made between Statuary replevin bonds & actions of replevin. The former are bonds given by the tenant & are subsituted for the thing distrained for {the} assurance to the Landlord for the rent or the property distrained. An action of replevin is an action to [try] the landlord's right of distress. The revisal of 1849 abolishes the action of replevy. V. C. 589 § 1, 3 & 4. As to the manner of redress when the property of a 3rd person or interested party is distrainained see V. C. 609 § 1 to 7. 16 At Com. Law if in distress [any] of the rules were overlooked or violated the person distraining was liable for an action for trespass

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for the whole proceeding. This was modified by 11 Geo. II cp 19. which enacted that only in those particulars in which the rules were violated was the person distraining liable to an action for trespass. This Stat. has been re—enacted in Va. V. C. 570 § 14. There is also another Stat. on this subject V. C. 589 § 3. There are in Va some other remedies for rent both summary & by action. The Summary method is by Attachment which is in many respects like the remedy by distress. They differ in this however that distress cannot be made until after the rent becomes due: where as attachment may be made before the rent becomes due — is a statutory remedy & is used in cases where the property is likely to be removed from the premises before the rent becomes due. The Stat. in reference to Attachment may be found in V. C. 601 to 8. 4. 6 to 10. 12 to 14. 16 to 19. 21 to 2.6 30 to 32. It can be made not only vs personal property but also vs all other kinds. Previous to 1840 Attachment could not be issued to recover rent for the ensuing quarter. But now it may be issued by the rent of one whole year provided that year has commenced. Remedies by joint act of parties are of 2 kinds viz. Arbitration & Accord — Accord is an agree— —ment to take something else in satisfaction of the thing in question: thus if two person agree to exchange horses & one of them wishes afterwards to retreat the agreement he will probably {afterwards} have to pay the the other a sum of money for the privilege of retracting. This sum of money agreed upon is called the Sat— —isfaction & the agreement is called the accord. Blackstone by the language he uses tends very much to confuse this subject. He calls the Statisfaction the accord. See particularly the notes on accord. Arbitration is of 3 kinds: 2 at Com. & 1 by Stat.

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1st By parties to a suit pending in act. by rule of Ct. 2nd By parties in the country when no suit is pending without reference to act. 3rd By parties in the country who agree, though no suit has

been commenced, to make the award a rule of some Ct. & sentenced as a judgement. V. C. 611 § § 1. 4 & 5. The last sort must be made in writing. The other two many be either verbal or written. Awards are very favorably construed by the cts. as they are the acts of parties & tend to prevent litigation. In the 2 first cases no mistake of judgement can be objected to & no proof of fraud or partiality will be admitted in a ct. of law: but resort must be had to a ct. of Chancery. 3 Ran 2. 8 Leigh 608. In the 3rd case the Stat. allows an appeal for corruption &c provided it be made before the end of the 2nd term of the Ct. after entry of submission as a rule of Ct. In this case the cts. may award the same process as in other suit. 1 Wash 363. 1 Wash. 11 3 Call 309. 3 Ran 122. 4 Ran 101. 9 Leigh 232. These cases show the danger of referring the determination of disputes to arbitrators 2 Tuck. Com. 28. Ch. II Treats of modes of redress by operation of the law. There are 2. viz: Retainer & Remitter. Ch. III Treats of method in Ct. by Suit i. e. by joint act of the parties & by law under which is treated. 1st of the nature of Cts. 2nd Their classes 3rd Their jurisdiction: as in Engd. Courts in Va are either Cts. of Record or Cts. not of Record. In Engd. Cts. of Chancery & Cts. of Admiralty, are cts. not of record. This is otherwise in Va. 25 Attorneys & Counsellors. The 1st of these mature cases. The 2nd plead them. The Attorney furnishes the brief of causes to the barrister or serjeant who plead them before the jury both as to law & fact & when

judgement is obtained they are handed back to the attorney who sees that this judgement is executed. In Va he have no such distinctions. All are Lawyers. The existing laws in regard to Lawyers may be found in V. C. 635 § 1 to 4. 5. 8. 6. 10. An attorney is liable but not by summary process for gross negligence. In order to facilitate the management of suits attorneys are allowed to examine records free of charge, to retain fees out of money collected for their client & to retain papers belonging to the client until the fees are forth—coming. Felony & malpractice supersede a lawyer's license. Malpractice is maintenance. Champerty, Stirring up suits, appearing without being employed, deceiving the Cts. In case an attorney dies before judgement is obtained, Judge Tucker is of opinion that the act of God prevented the performance of his duty, there should not be an appointment of the fees. Formerly our laws regulated fees but now our lawyers are permitted to make their own bargains. The Courts which exist in Va & their jurisdiction. The courts of Va are very different from those in Engd. We have no cts. of private jurisdiction. The lowest Ct. is that of single justices. 2nd the County Courts. 3rd. Circuit Courts. 4th General Court. 5th Special Court of Appeals. 6th General Court of Appeals. These are the courts of Va but we also live under the Govt. of U. S. & hence we have — 7th Fedl. Courts. 1st Court of Single Justices. Justices were formerly appointed by the Govenor; but now they are elected by the people. A justice may either act alone or call in other justices, but he is not obliged to follow their advice. He may sit either at home or in any convenient place. His ministerial officer is the constable who is restric— —ted to his own district as to civil cases. A single justice has cognizance of any claim to property or debt or any other money reciverable at law,

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204 or in Equity not exceeding ${30} 50 -- exclusive of interest: or in cases of fines $20. V. C. 595 § 1 to 9. 737 § 24. 597 § § 11. 14. 16. 17. 18. 639 § 4. As to jurisdiction of justices. The V. C. has introduced some important modifications. Heretofore a justice had jurisdiction only in case the cause of action was such as to be redressed [detinen], trover or debt. But the V. C. has extended his jurisdiction to cases where there is any claim to property or to any debt fine or other money which would be re— coverable by action at Law or suit in equity of not greater in value than $30 or $20. in some cases. This does not exclude damages for a tort is not doing a collateral thing. Perhaps too from the words it also applies to real as well as personal property & hence freeholds under $20. come under the cognizance of a single which is utterly at variance with our former policy: that construction will probably confirm it to personal property alone. If the jurisdiction be for a penal bill, formerly the penalty & not the amount due gave jur isdiction. But by V. C. a penal bill stands on the same footing as a single bill, in which the jurisdiction depends in the principal sum due. If it be a single bill & is reduced by payment, they must be taken from the original amount in determining the jurisdiction. But if the amount be reduced by sett offs to the amount giving jurisdiction to a single justice the plaintiff may either bring it before him allowing set offs or before a higher ct. not noticing in the last case the set offs. An entire claim cannot be divided so as to bring it within the jurisdiction of a single justice

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205 as this would be in "fraudens Legis" & a prohibi— tion may be granted by a superior ct. 2 Va cases 45 1 Va cases 158. So if a justice takes jurisdiction in a case where he has no right to do so. It is yet undecided whether a creditor can enter a voluntary credit so as to reduce the amount. There are authorities on both sides. Prof. Minor thinks not. Heretofore there have been in Va a kinds of temporary cts. called cts. of forcible entry & unlawful detainer. But these have been abolished & in their place county & corporations cts. have been substituted. Of the summary remedy for unlawful entry & detainer See V. C. 556 § 1—4. County Courts. This feature of our judicial system was instituted in the earliest stages of our colonial existence. It is by some regarded as a strange deformity: by others as the chief excellency of our system. Mr. Leigh in a note to the Code of 1819 p 244 gives their origin &c. He says they originated in 1623. In 1661 they assumed their present form & since that time have remained unchanged & although in 1819 the constitution was changed the law with regard to county cts. was left unchanged. For regulations &c of County Cts. see V. Code 615 cp. 157. In this ct. justices pre— side {4} 3 of whom are necessary in civil cases & in criminal cases at least 5. They possess universal jurisdiction both in law & equity in all cases over $20. in civil cases. Besides this civil jurisdiction they have very extensive criminal. They power to try slaves finally for offences not punishable by stripes merely, & few negroes finally for all offences not beyond the degree of homicide. In these cases it is a Ct. of oyer & terminer. They also constitute an examining ct. for white persons charged with crimes & free negroes charged with homicide or other felonies punishable with death & if they think proper they may remand the prisoner for

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(J. H. Hanger University of Va April 28th /55 Prof. J. B. Minor) trial before the Superior ct. They have also crimal jurisdiction in cases of petit larceny by white persons. This ct. has also juris— —diction over the police regulations of the county such as buildings & repairing bridges &c & over overseers of the poor & all the police officers of the county. As regards their civi juris— — diction they are either quarterly or monthly. 4 quarterly courts being held in one year & 8 monthly. All Com. Law cases, present— ments for misdemeuners &c. are confined to the quarterly cts. All other cases may be tried in either V. C. 616 § 2 & 3 observe that in case of debts fine &c if the amt. be less than $20. the judgement must be given in favor of the defendent for the proper jurisdiction of causes of that amt. belongs to the cts. of single justices. See also V. C. 705 § 6. 7 & 8, where it is enacted that in cases not in contract under $10 no dam— —ages shall be given. But for these Stats. the jury were obliged to give damages although the judgement were but for one cent. Corporation cts. are for the most part like county cts. In them justices living within the corporation preside. Circuit Cts. (...) to 1831 the law & equity jurisdiction in Va were entirely distinct & exercised by different tribunal as in Engd. except in the county cts. At first there was but one Ct. of Chancery in the State — called the high ct. of Chancery. Afterwards (1802) the State was divided for convenience into 3 districts & a Ct. of Chancery held in each, one at Richmond & one at Williamsburg & one at Staunton. Next 4 chancellors were appointed 2 East & 2 West of the Blue Ridge & these hold in their respective districts 9 chancery

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207 cts. in a year. Thus it continued until 1831. District Cts. of law were formerly instituted at different places, with law jusrisdiction over several counties. This [place] was superseded in 1809 by the establishment of Circuit Cts. in each county which continued until 1831. At present the State is divided into 10 district & each district into 2 circuits except the 4th District (that of Richd City) which is divided into 3 & one of these (Richd Cty) have a Com. Law & also a Chancery jurisdiction with different judges. In each circuit there is one judge (in Richd 2) making in all 22. They are elected by joint vote of both houses & hold office during good behavior &c &c. V. C. 618 § 5. The circuit courts possess a gen— —eral appellate jurisdiction from the county cts. except in cases where an appeal has been from the ct. of single justices to the county ct. in which case the decision of the county ct. is final. General courts. See V. C. 620 cp. 149. This ct. is composed of the 22 Judges just mentioned. It is held twice a year at Richd by 5 of the oldest judges in the ct. The sessions of this ct. commence one on the (J. M. Hanger) last Monday in June — the other 1st Monday in Decr. Its civil jurisdiction is very limited being confined to entertaining motions & suits vs public defaulters, debtors & col— —lectors & to grant letters of probate & administra— —tion concurrently with the county & circuit cts., & may issue a mandamus & prohibition to the circuit cts. but not to the county cts. But its chief office is that of criminal ju— risdiction. Its criminal jurisdiction is original & appellate. But as criminal [cause] can be taken to this court unless the crimal person consent, or the decision is favor

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there is no appeal to the Genl Ct. at the instances of the Commonwlth. 4 Leigh 693. 5 Leigh 740. It is general ct. of probate of will made in any part of the Commonwlth & formerly of deeds also & if there be any causes not committed to a tribunal they belong to the Genl. Ct. It has original criminal jurisdiction of all [treusus] committed out of the jurisdiction of the Cir— —cuit cts., of all public defaulters & of all crimes committed by one its members may adjourn criminal causes from the {Cr} Sup— —erior cts. with the consent of the persons & is the final criminal tribunal for the Com— —monwealth. Special Court of Appeals. V.C. 621 & 90 § 8. This ct. is held once a year by 5 senior judges. General Court of Appeals. V. C. 621. This ct. holds 2 sessions during the year 1 at Lewisburg of 90 days length & the other of 160 days at Richmond. It has not criminal or original jurisdiction V. C. 623 §15. Formerly upon affirming a judgement of an inferior ct the practice was to allow 10 pr ct. damages in addition to the former judgement. This was to prevent appeals. But now the damages are restricted to legal interest on mon— ey & forfeits on property. V. C. 687 § 24. Federal Cts. The jurisdiction of the federal judiciary is determined by two things 1st the nature of the cause of action & 2nd The nature of the parties to the action. Under the 1st head are included 1st Cases in law & Equity arising under the Constn. of the U. S., & treaties made in pursuance of them. 2nd. To all cases of maritime jurisdiction. Under the 2n are embraced. 1st. Causes affecting Ambassadors, other public ministers & consuls. 2nd. Cases in which U. S. is a party,

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3rd. In which any state is a party & the other party is a state or citizen of another state or a foreigner or {of} a foreign state. 4th. Cases between citizens of different states or citizens of the same state claiming grants of land under different because quo ad they grant they are citizens of this state & finally 5th. Cases between the U. S. & foreign state & citizens & subjects. By the 11th Amendment of the Const.tn you will remember that a state cannot be made the defendant of the suit of an individual, but maybe at the suit of another state. We have heretofore spoken only of the power given to the Fed. Cts. We come now to speak of the distribution of that power among the tribunals of the Fedl. Govt. The power of regulating this is given to Congress by the Constitution. There are three Fedl. tribunals viz: the Supreme Ct., the Circuit & the Disctrict Cts. 1. The Supreme Court -- This court consist of one chief justice & 8 associate judges 5 of whom constitute a quorum. It holds an annual session at Washington commencing on the 1st Monday in Decr. & continuing as long as nec— —essary. It has some original & exclusive jur— —isdiction: but it is chiefly Appellate. By the Constn. of the U. S. it is rested with original jurisdiction where a state is a defendant & in all cases when a foreign ambassador is a defen— —dant. But if a state or an ambassador is plain— —tiff in an action & choose to bring their suit in another court they are at liberty to do so. It's appellate jurisdiction is limited to actions amounting to $2000.00 or upwards exclusive of cost &c when the appeal is from the Circuit & district cts. of the U. S. & to causes of a peculiar nature from the State Courts such as affecting the harmony of the Govt. or the

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supremacy of the union. These causes are 3 in number. See Blk. p29 note. As incident to its appellate jurisdiction it exercises a superintending power over the District & Circuit Cts. 2. Circuit Courts. The U. States are divided into 9 {districts} circuits & in each circuit 2. cts. are annually held by a judge of the Supreme Ct. & a judge of the disctrict court of that circuit sitting together & constituting a circuit court. When it happens that a district does not come in any circuit & it would be inconvenient for one the judges to hold a ct. there the powers of the circuit cts. are granted to the District Cts thus situated. Its original cognoizance of civil cases is lim— —ited to the amount of $500 exclusive of interest & cost & in any case of copy right it has jurisdiction independent of any amount on account of the uncertainty & no inhabitant is to be sued out of his district. Its criminal jurisdiction extends to all cases committed vs the U States (& generally if the offence exceeds the grade of murder, exclusive jurisdiction). If a suit cognizable in the Circuit ct. be tried in the state cts., it may be remandd by giving security for damages & costs to the Circuit Ct. of the U. S. provided the original matter of dispute amounted to $500. Its appellate jurisdiction extends as low as $ 50. exclusive of cost. It is provided that if two judges differ on an appeal from the district ct. judgement shall be entered according to the opinion of the Judge of the Supreme Ct. & from this there is no appeal unless the action amount to $2000. If it be an original case it is [entified] to the Supreme Ct. for its decision.

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District Courts. The circuit if the U States are divided into districts & in each district from 2 to 4 cts. are held annually by a single judge appointed for each district at such place as the law shall determine. In 1850 the U. States was divided into 43 districts con— sisting generally of whole states except in some cases where geographical divisions made it more convenient to divide them into several. It has exclusive & original jurisdiction in all civil cases of admiralty & maritime jurisdic— —tion including prize causes; has cognizance concurrently with the state & circuit cts. when an alien sues for a tort, only in violation of the laws of Nations or a treaty of the U. S. & of cases of Com. Law where the amt. exceeds $100. We have no ecclesiastical nor ordinary cts. Military in the U. S. but only temporary cts. martial. The Stat. of the U. S. sometimes clothes the State cts. with Fedl. Powers. This has been held unconstitutional in some of the States & in the cts. have refused to comply. In Va we have no ecclesiastical cts. but in adopting the Com. Law we have adopted so much of the ecclesiasticaal law as was suited to the manners & genius of our people.

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$1000 Foreign Bill of Exchange [Ten days after] sight of this my first of Exchange (Second & Third of same tenor & date unpaid,) pay to the order of George Stone, one Thousand Dollars for value received, & charge the same, with or without further advice, to Mssrs. Whitworth & Adams. } Henry Mackie London.

(written across the above: Accepted Whitworth & Adams)

The Wold [Days] [Dan] Wild

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When the husbd does not dispose of the chattel during coverture the wife has a title to them by survivorship. Any [alienation] (...) (...) (...). The wife has an inted in compelling the husbd to make a settlement. 2 wife Eq(...) (...) (...) (...). 1. One upon ah. the husb. (...) (...) will attach. 2 (...) (...) the (...) (...) (...) attach. (First here the wife is Eq owner she has no greater power of dispositn than over her real est. that is there must be a deed & separate examtn &c. The disolution (...) as completey upon a {(...)} wife equitable (...) (...) it does upon her legal est. It is only as to her separate prop. trust she is a feme sola (...). Those to which won't (...) do not (...) it (...) where prop is settled upon her. Where the real est. [blank space] real est of (...) {sh} Here she can only transfer the fee from her in the manner proscribed by law in the absence of any express instrument provides a particular manner of disposition in wh. case she must comply with the instrument. In 9 Leigh 206 Judg [Cablle] supposed that the Husbd (...) Join in convey real est. (...) & approved where the instrument does not provide a meaning of disposition. A convey by deed & (...) (...) does not transfer the legal title, whs is in a trustee on her husbd or other person. Unless some power has {can be} been conferred viz a move (...) to devise she has no such(°3 Ran 373) °power. Our code (...) again this power V. C. (...) 122 § 3. The doct. are purely equitable. The power of a wife over prop wh. she has for life is more extensive. She is entitled to rents & profit. She is not confined to say express form in conveying a life est. in [Va] (...) of any instrument pointing out one. That a court to charge her [separat] prop. will be (...) deci— ded in (x 2 (...) [135]) x. As to (...) 1 (...) (...) (...) (...) (...) dist. as a (...) as if she was a fem sola in (...)

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Married Women. {Read Ch. on (...) to § 1215 for Next Lecture}

Eq. allows Mar. Wom. to cent. where the law does not. These rights relate almost entirely to prop. Int. may relate to (...) (...) may be legal or Eqble (...) may be separate from the marital rights of the husb. or con(...) with them. 1 Her legal (...) in real prop. as to these interest inter marriage give the husb an (...) right of poss'n but the {right} legal right remain in the wife but by this right of poss'n of the husbd he becomes entitled to the rents & profits. Question we have to consider as to power of wife over the prop. The Com. Law gives her a right by fine & recovery to convey the prop. by Stat. [exam'tn] apart from her husband. We have (...) that by ordinary deed of conveyance & separ. examitn. V. C. Ch. 121 § 47. This legal postn (...) & she posesses in Eng. This Stat. does not relieve her from the (...) of infancy [6 Leig] & that (...) the Stat. (...) her to convey yet she can not appoint a power of attorney to convey. The cts. of Eg. recog. this dect. of the C. Law. An agreemt entered wife to charge her (...) property, will not be binding. A marrd. woman has no power to dispose of this legal (...) by (...). The fee will descend to her heirs nor will the consent of her husb enlarge her rights. he has (...) (...) except as tenant by curtesy. Besides her own intn she has an (...) int: (...) in her husbd ext. she has a right of Dower. This as such an (...) (...) at will be a good [consnt] to support a settlement provided there is no gross inadequacy. She can only (...) viz (...) (...) of Dower in the same (...) (...) as she can convey

her (...) [Esp?] cts. of Ch. follow the (...) (along left margin: 5 Grat 111. 11 Leig 496. 10 [Page] 342. 6 (...) 9. 2 Phi(...) 470. 3 Rand. 373. West v. Do.)

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(...) of fee—simple 1. An intermi(...) [power] of alienation 2. That must descend to the heir generally or passes to the person to which (...) by will [leaves] is 3. Subject to curtesy [Dower] 4. Liable to Debts 5. [Forfeitable] for treason & felony At Com. Law V. C. 750 § 5. Con U. S. Art 3 §3, §2

See Lyt. Ten. 320 § 2 Co. Lyt. 26. 1 Do 50 (...) n(W)

F G G L E P R C S A C V. C. 545 § 3 to 7

Base fee — Dower allowed Condl. fee — D° Fee tail — D° Ect on Condn. — Dower not allowed Exect. (...) by } will or by Deed } — Doubtful under Stat uses } Ld Mansfield & King Bench

& our Ch. 4 Call 321 for Dower

Principle is that when the est. is terminated by the regular effects of the time limited dower is allowed. When suddenly terminated or he use them by reg (...) [often is] Dow not allowed 1. Husbd must be [sole] seised 2. must have a legal (...) 3. wife not endowable out of (...) [Eq] Est. 4. Husbd must have the immediate [ests] 5. Husbd must be seised af the (...) est of (...) & the (...) est. of (...) without any (...) (...)

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J. M. Hanger

6. Land (...) may grant the [reversion] in a part of the Land. Rent is [apportienment] 7. (...) entire des(...) of part of the Land as by earthquake &c. (...) of the sea &c. an abatement &c. 8. (...) are evicted from the Land before the day of payment this will be a appert(...).

3. When the rent is not abated (drawing of a seesaw with O left, equity center, figure right)

1. Where rent is granted 1 the (...) from the whole or part [will] constitute no reason for abatement. 2 Where there is loss of part of the Land little (...). Rent (...) 1. (...) (...) (...) burning of house no abatement that (...) 2. By principal by the grantor of part of it the rent being entire. no abatement for the public good as keeping a (...) Manner of apportaining. (3 Call Ross vs Overton Le. Case) The office always employed is a jury 574 § 2. Rent usual payable on the Land. 1. Destroy 2 Attachm. 3 Re—entry "at the expiration of such interes" see Code 573 § 1.

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Rent [Apport]. of Apportionment sometimes means to divide sometimes to abate. Must carefully dis— tinguish (...) rents granted & rents reserved. There are the 2 [sorces] of confusion on this subject 1. When the (...) rents is granted extinct. Suppose the grantee purchases all or part of the Land. The whole rent was {last} extinguished. Allow in Va 574 § 4. 1. Where the grantee is evicted from the Land in case of rent granted. 2. Purchased by the grantee of a part

or all of the Land. If a tract of land is rented reserving the (...) & 3 (...) often land is then bought the rent is extinguished. In the cases above the rent is extinct. therein (...) granted. 1. Rent — (...) (...) abated or (...) by a release from the grantee of the rent to the grantor. 2. In case of Loss of part of the land the rent is apportioned. 3. Rent may be apportio in conseque of a of the Law. 4. Assigment of part of the rent by the grantee will make an apportionment to take place &c. 5. By partition amongst several coparceners Where rent is reserved. 1. Where the {tenat} grantee of the land is evicted from part of the 2. Upon the release or assignment by the grantor of the {Land} part of the land. 3. May take place in consequence of a partition amst several coparceners. 4. May be an abatem growing out of a purchase of part of the land by the grantor. 5. May be a [resump] {by} of part of the land by surrender or by (...) (...) (...) (...)

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Ch. on (...)liction to §1107

[Illegible words all over this page and J M Hanger signatures]

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H [illegible words]

H [illegible words]

G [Illegible words]

A [illegible words] r R e g G n [signatures diagnonally across page] a O H M R J

I

H

C 2. 8th [Class?] (...) Read in Blk (...)

197 000 V. C. 677

394 [illegible]