Student Notebook: John W. Stevenson
Date: 1831-32
Professor: J. A. G. Davis
Collection: Law School Notebooks, RG 32/400

Transcribed: December 2020
Transcriber: Jane McBrian

1

2

Notes on Blackstone

[handwritten list upside down on lower right of page] 1 Replevin 2 Trial by Jury 3 Breach of Trust 4 Slaves punishment 5 Stat of Descents 6 Distinction Lands - [Lease] 8 Promissory notes 9 Challenges 10 Corporations Occupancy

3

4

Notes on Blackstones Commentaries from the

Lectures of J.A.G Davis Esqr. Professor of Law

in the

University of Virginia

taken by John W. Stevenson

Sessions of 1832—33

5

[library stamp AUG 11 '61]

6

Lecture 1st — Feby 1st 1832

Blackstones treatise is admitted to be ele— mentary & superficial; & not to be relied on to form a lawyer — nor could any treatise equally concise. But is an [admir]— able outline of the science. Mr. Jefferson attributed to Blackstone much of the heresy in politics that is prevalent. He is in— deed a decided Monarchist; but this is an objection which lies against all Com— mon Law writers for the lex prerogativa a part of the Common Law. Introduction, Section 1st passed over. Lect 2 pa 44. "Municipal law thus unders" If this definition of Municipal Law is right in England, it is not so here, in consequence of the difference between our Constitutions & the

English. According to theirs the political power resides in the King, Lords & Commons not only over the Laws but over the over the Constitution itself. According to ours as is as is stated in the Declaration of Independence & Va Bill of Rights the People possess supreme power and a majority of them have the inherent right over their govt in all respects to reform alter or abolish it.

7

Section 2d Introduction Continued

+Laws to be obeyed must be made known, & never the absurdity once so prevalent in England of publishing their laws in French Latin &c languages unknown to the people generally.

8

See Va Bill of Rights — and the law making power is only one out of three coordinate branches of the peoples Govt, so that our laws are not prescribed by the "Supreme Power." But it is not improper to consi— der the laws as made by the Sovereign People through their Representatives. The proper definition of Municipal Law may be this Those regulations adopted by the Society in which we live for the govt of the conduct of its members. This de finition is nearly that of Justinian. Page 45— "It is also called a rule to distinguish it from a compact" &c. Here laws have the combined authority of a rule & a com— pact, since every citizen is a party to the government — & have agreed to obey its laws. Page 45—"It is likewise a rule prescribed. That is made known." The early nations of Antiquity published their laws in verse so that they might be the more readily learnt by all. The Athenian laws were engraved on plates of brass and hung up in public places, the Roman law was memorized by their children. The Com— mon law is published in books of re— ports, & in commentaries treatises &c to which all may refer. The Viriginia acts of Assembly and Statutes are printed & distributed and copies are sent to each County for the Commonwth. Attorney, the Clerk of the County & each of the Justices of the Peace. By an act of Congress, the

9

In this way our laws are promulgated as exclusively as it is possible they should I say as it is possible, for no human means could give to all a thorough know— ledge of the laws. That belongs only to Lawyers.

10

Secretary of State is required to distribute the Congresstional Laws to the States & to print them in from 1 to 3 public journals in each State. # Page 46 — "laws ex post facto". From Blackstones definition this term can only apply to penal laws. Laws re— garding Civil Rights, however retrospec— tive are not ex post facto laws. Yet as persons contract with reference to the laws then in being it is manifestly unjust. In B Dallas 386 ex po fa laws are defined to be technical expressions and mean all laws which make an act criminal, which was not so when committed, or which increases the penalty or which aggravate the offence, or which render the {(...)} offence triable by different rules of evidence from those which existed at the time when it

was committed. In 6th Cranch 138 there is a more general and a better definition namely — Any law which renders an act punishable in a way in which it was not punishable when committed. The Constitutions both of the United States & of the State of Virginia provide that no ex post facto law shall be passed. They both also provide that no law shall be passed impairing the obligations of contracts. The question has been consequently raised how far retrospec— tive laws may be passed not in re—

11

[#] Lec I Tucker Commentaries pa 1.

12

gard to Contracts literally. Judge Tucker thinks that though such laws do not come under the letter of the Constin. yet that from the principles of our Govt and the spirit of adjudged cases they would be void [#]. It is understood that they may be passed so far as regards remedies. But this must be done express— ly or the Courts will give them a pros— pective operation. 3 Call 268. 2 H&M 181. But we have no decision as to the passing of Retrospective laws not effecting reme dy or contract. Chancellor Tucker is of the opinion that they should be restricted to remedies alone. Page 47. "This will naturally lead us" &c What our author endeavors to prove is that Sovereignty and Legislative Power are convertible terms. A State or nation may be defined to be a body politick or a Society of menn united together to promote their mutual saftey & advantages by [blank space] the result of a compact between the several members of the Com— munity. The people who form the Society have the right to establish what govt they choose & to change it at pleasure whilst the power necessary for that purpose obviously results from the united Strength. So— vereignty consists in the right & power of doing what the will disctates. The true thing is that Sovereignty resides in the people alone and not in the govt.

13

14

nor in any department thereof. The insti— tutuion of Govt is only one exercise of Sovereignty. Page 49. "In a democracy." &c Our authors opinion of the English Govt is not true. That is a govt not of check but of conspiracy against the people & their rights. Our governments it is thought will answer his description much better. The representative System is a relief from the inconveniences of democracy, while it secures the benefits, it also secures the wisdom of an Aristocracy in a greater degree than the English Sys— Tem of makeing the nobility one branch of the government. & our single elected executive magistrate secures the strength of a monarchy without incurring the risk of its abuse. Page 56. "With regard to the sanction of laws" &c. Two motives should induce obedience to the laws though no penalty. 1st Govd faith. Since every citizen is a party to the social compact & thus bound to comply with its stipula tions & 2d enlightened policy. Since the happiness of the community is object of all law. But as these have no weight on the bad, on whose account laws are most needed, penal sanctions are added consisting personal suffering, or pecuniary loss. Page 57. "But in relation to those laws" &c Respecting the mala prohibita See note 8

15

16

Punishment or penalty was never intended as an equivalent for offenses but it is that degree of pain or inconvenience supposed to be {supposed} sufficient to deter men from the commission of offenses. The Authors opinion is therefore wrong. Page 59. "When any doubt arise under Con" &c. The law making power has in this Country nothing to do with construing the laws and any act of that kind, by that power would be usurpation. The fairest way to construe Laws is the one insisted on by Lord Coke which he calls ar— gumentum ab inconvenienti. See Har graves remarks on this point. Chapt. 2. 1st Institute pa 19— note 10. Page 62. "There can be no established rules" &c In contradiction Sec Chittys notes and preface to Maddocks Chance— ry. The author is unquestioningly wrong. The rules of Equity are as well fixed and established, and as binding as those of law.

17

18

Lecture 2d Feby 5th 1832

Lect 3d Page 64. "This may be the case as to some" &c. Blackstones exposition of the origin of the Common Law is certainly correct. See Hales Hist Common Law, Chap IV—also most English historians & lawyers in confirmation of this. Reason also con— firms it for as the various natures the Danes, Saxons, Normans, Picts &c took possession of the Island they introduced their respective customs. Foulescque is therefore wrong. The first Common law Code was formed by Alfred & is lost. The 2d by Edward the Confessor which is also lost. The dates of laws have been changed & it is not really known what laws are his, though his laws are referred to in Magna Charta. See Hales his Com Law, note pa 5. Glanvilles treatise in the reign of Henry the 2d was confined to part only of the Common Law. See Reeves history of the Common Law Vol 1st pa 222. This is not a dijest. Bractons trea— tise on Henry 3d may be regarded as a dijest of the Law then in force.

19

20

and as constituting the 3d Common law Code. This was about the time that the Common law began to be changed by the statutes now extant, & since this time various changes have been made in the Common Law at periods not known which mark the progress of the nation from its rude condition to its present high state of improvement. The era of the Common law customs cannot be Roman nor can the manner of introducing them with much more certainty. In 2d Wilssons Reports 348 it is said by Ch justice Wilbourn that Common & Statute Law spring from the same source, the legislature. This may be in a considerable degree true, as much of the former may be provisions of sta— tutes which are lost for there is no statute extant other than the Magna Charta in Henry 3d. But it is not generally supposed all Common Law is so derived.

Hale in his Common Law pa 88 gives three sources. 1st authority of parliament. 2d judicial decisions. & 3d Common Usage. This is very very probable. Questions

21

Book I.

22

arise before judges to which no legal rule can apply, they then recur to legal analogy & principles of justice. And their decision forms a mode for future decisions. The obligation of the Common Law in England arises from its general reflection & authorization. In Va it is valid by express Statute & with its statutory amendments. 4 James 1st. So far as applies to this Country. 1st [Revd]Code 135. Tate 89. Note on Coke Lyt. pa 1. Page 69. "But here a very natural & very" &c. The exact weight which should be allowed to precedents is not to be ascertained, but the principles wh should regulate their authority are easy to ascertain. The certainty of rules of law is almost as important as the wisdom of them. It is by the certainty of the law that Professional men may with confidence of its correctness give advice & men may contract with each other with safety. There are two reasons why a judicial decision shd be valid & binding as precedent. 1st the high evidence of its correctness to be found in the wisdom of the judges & 2d the acquiescence of the

23

§ To such a decision the subsequent decisions conform. But it has no authority to bind the judges themselves or others. The same tribunal may afterwards re— vere the principle uphon which they proceded through the case adjudicated still remains as it was. The principles upon which the Court should exercise this right should be known, and as there is a strong presumption, the first step (...) commence now at §

*The reason is because, the court will not be supposed to have discussed them.

24

people under it §. In order to obtain a decision in opposition to a precedent the first step is to show error in that precedent. If this is done and the decision is recent & solitary, the Court will depart otherwise not; and for this plain reason. The people have consi— dered this the rule & have acted un— der it that is to say the Court is go verned by a rule of expediency. But this rule is in some cases doubtful. Fre— quently it is a very doubtful question whether certainty or propriety is of more consequence. For many years in Engd the bar was not permitted to argue against them. Precedents have been valid in England from the earliest period, but Chancellor Kent says that 1000 cases have been overruled or doubted & limited. For previous judi— cial decisions to have effect as precedent they must have been expressed as a point then in issue necessarily in volved in the cause. Otherwise they are called extrajudicial law not precedents. [*] Page 75 "Lex Mercantoria & note" (9) This is the only one of the particular

25

Book I.

+ If the principle of the bench were correct we should have no custom at all.

26

customs of the Common Law that we have adopted & it has been likewise adopted by almost all trading nations & cannot be easily changes without genl consent. Pa 76 or 7. "So that if any one can show &c" Custom to be good must be 1st [immem]— rial of which regular usage for 20 yrs unexplained & uncontradicted also ad— verse is sufficient evidence; 2d Conti nued as to the right 3d peaceably & not unreasonable in law; 5 Certain; 6th Compulsary 7th Consistent. Coke & Lyt (...) are both directly against this state ment in the note. They say time of mem is not limited to the reign of Richd 1st & they are correct. Page 79. The third branch &c. The civil & can laws Justinians Civil law consists of 1st The Institutes. 2d The Dijests or pandects; 3d The Code called the {old} new Code to distinguish it from that of Theodosians or the old code; 4th The novels or new constitutions being a suplement to the code. These form the corpus juris civilis. The corpus juris canonici consists of 1st nations decree; 2nd Gregory's decretals 3d the Sixth decretal, 4 the Clemen tine Constitutions, 5th the extrava gants of John & his successors. To

27

Book I.

+ The 4th year of James 1st was fixed upon because that was the period of distinct Legislation.

28

an added in Engld the legative and the [provincial] Constitutions. So much of this branch of Common law as was suitable to our salvation and circumstances was adopted by our statute which adopted the Com Law. (6th Rand 336). By that the Common Law & all the stats in aid thereof (x) made prior to the 4th year of James 1st. and which are of a general nature, were made a part of the law of this State. Ta. 89. This included all the branches of the Com. law in the text, as far as applicable to our condition; and Equity likewise. But the rigour of the old Common Law is relaxed. SEE 4 H&M 19. I Wash 83; 1 H&M 160; 6 Moore. 148. Ha. 85 "Stats. are either genl. or special, public or private" Division of Statutes (1. Public or genl. (1. Declaratory (2. Remedial (1. Enlarging (2. Restraining [large bracket to the far right of the page after "Enlarging" and "Restraining," followed by the note, "Of the Common Law."] (2. Private or Special The difference beteween public & private stats. is that: 1st. Courts take notice ex officio of the former, not of the latter, & 2nd Public stats. bind all persons, private stats. bind only the parties. Since the ordinance adopting the Com. law down to 4 Jas. I, the Legislature have enacted all the later Eng. stats. which they thought fit, & formally adopted the remainder. 21 Ta. The principal diff. between the Eng. & the Ameri— can law, is to be found in the lex scripta of the two countries, not in the Common Law.

29

Book I

The Danger of referring to preambles is that they are not generally explicit enough.

30

Our lex scripta in the Fedl & State Constituti ons & the acts of Congress & of the state Legislatures: Theirs in the acts of Parliat. Page 86. "Declaratory" &c The Legisla— tures of this country cannot declare the law is, that belongs to the judicia ry, but what it shall be. Page 88 "Penal statutes must be strictly cons" See a case of Brothers wife, (...) 2nd Leigh 777' The defence (...) in genl court. Page 89. "One part of a stat must be so construed" &c The formal parts of statutes are preambles enacting clauses & provisions. The pream— ble states the inducement, for example of preambles, provisos &c Lee Statute on the subject of fraudulent devises, the enacting clause is the operating vi tal part of the law, the proviso is the saving of certain cases from the genera— lity of the law. In construing the stat regard must be had chiefly to the e— nacting clause, if that be clear & certain we can refer to no other part. but if that be ambiguous or its appa rent import would be grossly inconve— nient, have regard to the preamble. 4 Turners Reports 193. But preambles are unsafe guides of construction. It has been shown that many Preambles state reasons for passing laws which are not

31

The constitution is a restriction here to our Legislature which is unknown in England.

32

the true ones. Perhaps there ought to be no preambles. They are often improper, & always useless, for if the law be a bad one no preamble can render it good. Page 90. "If a state that repeals another is" &c This rule does not exist in this State. In Engd unless otherwise specifically provided the acts of Parliament took effect by re— lation from beginning of the Session. 6 Browns Parliament Cases 553. But the rule now is from the time of their pas— sage. Wheaton Reports 174. Same in Con gress. In this state all acts, by genl rule take effect from the 1st of April after their passage unless the act specify its own commencement. An additional rule of construction is that statutes must be construed in reference to the principles of the Common Law, as it is not to be presumed that the legislature in— tended to make any greater in— novation in Common Law than ne cessary.

John W. Stevenson Pass over Section 4.

33

Book. I. Of the Rights of Persons &c.

34

Of the Rights of Persons Book I. Lecture 3d Feb'y 13th 1834.

Pa. 122. "Rights &c". In connection with this part of the text we will give another division of Rights of persons often referred to in natural Law, viz into Perfect & Imperfect rights. 1 Perfect. The right is fixed and determinative. 2. Imperfect. When vague and indetermi— nate. Examples. When a man demands his property unjustly withheld from him his right to demand is a perfect right. But if a poor man asks alms of me from whom he has a right to expect charity, his is an imperfect right. The distinction may be viewed in another light. When no law restrains a man from carrying his right into effect, it is a perfect right, but when it does so restrain him it is imper— fect or in other words It is a perfect right if he can carry it into execution without infringing the perfect rights of ano— ther, but if he cannot so carry it into execution it is an imperfect right. Perfect Rights then are those which are fixed and determinate and which may be asserted without violating any law & infringing any other mans (perfect) rights. Imperfect Rights are those which are vague and indeterminate and whose assertion violates some law or infringes

the right of another person. The only exception to those are the rights of necessity which know no law. Perfect Rights are those only which are enforced by the Municipal Law. Pa 125 Political or Civil &c. [This] a correct definition of Civil but has nothing to do with Political Liberty. We have before explained that the great object of every people should be so to delegate their authority that their functionaries may be controlled in the exercise of their powers and continue their ser— vants instead of becoming their mas— ters. Political Liberty consists in such a delegation of authority. Civil Liberty is the effect of Political, if the latter be {safe} secured, the former will be also safe. Pa 127—8. "The absolute &c" We do not hold our by so frail and uncertain a te— nure, as polite lines of right, characters &c. We claim and secure them by our written constitutions, which as the people made so they only can cancel and destroy. Pa 130. Sec 1st Sect of Bill of Rights &c. Pa 135. "Habeas Corpus." This writ wh has been called the Citizens writ of Right is founded on the Common Law, here decided by the Statute & Constitution. When any

one is retained in custody either justly or unjustly, he may apply to the Genl Court or [atry?] Supreme Court of Law or Chancery, or any judge of either of them during the vacation, for a "writ of Habeas Corpus and Subjaciendum" upon producing affidavit of Imprisonment. The Court of Judge examines his case & grants a writ to the person dilaiming him, (...) immediately, commanding him to produce the prisoner. Upon Trial the Court or judge releases him, or admits him to bail, or commands him to prison as the law or evidence may require. The Constitution of the U.S. declares this but shall never be suspended but during invasion and

rebellion and the con— stitution of Va in no case whatever. & it is moreover declared by Va Bill of Rights "that excessive bail ought not to be required". Pa 137. "A natural &c" This (...) of no (...) has been applied in modern times as a civil remedy in chancery to prevent (...) fr escaping from their creditors & is the nature of Equitable bail. Any (...) have for civil purposes between party and party. Pa 139—140. The Fedl and Va Constitution Declare that private property shall not

39

Chap IX. Of Subordinate Magistrates

+ though law relating to them not same law as in England.

40

be taken for roads, canals &c and other public uses without compensation. Subject to then restrictions private rights must yield to public convenience. Pa 140. There may here be added a 4th Liberty of Conscience in matter of Religion. The securities we possess as to our rights are the federal & State Constitutions & the guarantees they contain. The prohibition of the suspension of Habeas Corpus, of e— naction of expost facto laws, of Excessive bail, & of taking private property for public uses without just compensation. The freedom of conscience & of the press. The Declaration that no person shall be twice put in jeopardy for the same offence, (...) by the trial by jury, of counsel for his defence &c. Lecture 4th. Feb'y 15th 1834. Of Subordinate Magistrates. Chap. IX Pa 339. Sheriffs, coroners, justices of peace, constables, surveyors of the highways & overseers of poor. All these officers we have here, though the laws relating to them are different. It is in relation to the manner of appointing them these rights & duties of removing them that our laws chiefly differ from those of England. The principles of legislation [&c] will with regard to them only will be explained. 1. Sheriffs. In Va

41

Book I. Chap IX. Of Subordinate Magistrates

42

They are appointed thus. "The Court of every County annually generally in July no— minate to the Govr three justices of the Peace of such County, one of whom he appoints under the law. The Court can nominate any three of the Justices and he may may appoint any one of those nominated, but the uniform practice is to nominate the three oldest Magistrates arranging them in order of Seniority and the Governor appoints the first one on the list. But Court or Governor for good and sufficient reason may depart from this rule e.g. bad character or had rendered no service as justice of peace &c. The Sheriff remains one year in office necessarily, the law permits him to remain two years being a second time nominated and appointed, if no sufficient objection by the Governor, the other two if alive and under no disability are again nominated a second time, and the third year the second on the list (now the first) is in his turn appointed and so yearly, though each generally continues generally continues in office for two

years, and under particular circumstances longer as the death of his predecessor before the expiration of his term or the failure of his successor to

43

Book I chap IX. Of Subordinate Magistrates Contind

He may continue for a longer period than two years & has been recently elected to change the rule, and include any one who has been sheriff until all the justices have been appointed.

44

qualify by giving bond &c. He returns to the magistracy without a new appoint— ment as justice. Pa 243. "We may observe &c" & another sTat cha 11 Pa 246—13.19 From this it appears to be an officer of burthen in England. Not so here. The office is generally lucrative and is in all cases accepted. It is indeed the only com— pensation to justices of the Peace. Should it ever happen that all the justices were to refuse the office, the Governor may appoint one or two respectable freeholders of the County recommended by the Court, and if no free— holder will accept, he may appoint any respectable citizen, through no one can be compelled to accept the office. Pa 343. "These are either" &c The Sheriff of Virga is chiefly known as ministerial office of the Courts either Circuit or County. Keeper of the peace & collecter of the revenue of the Commonwealth, the levies and public dues of his County & fees of various officers. Pa 343. He has no judicial power {of} to determine the causes of smallest value. The only occasions in which he exercises judicial power are those in writs of amendment of dower, writs of prohibition & writs of inquiry of waste. These acts are performed by him with and of a Jury. He is to keep the polls at all elections & announce the person having the largest number of votes elected, and when the candidates have an equal numb— er of votes, he shall decide the election by his vote, although he has already voted. This is no judicial authority for the deputy

45

Book I. Chap IX. Magistrates Continued

For no judicial authority can he exercised by authority.

46

may perform the same thing & the deputy can have no judicial authority, nor does he act in a judicial capacity when he presides at the execution of a writ "ad quod damnum", or elegit. See 2 Washington 126. & 1 Tucker Commentaries 4. Pa 343. "As Keeper of &c." Although we have no statute on the subject, yet as at Com Law he was (virtute officii) conservators of the peace. He is here so also and with the same powers as in England. Pa 344. "In his ministerial" &c. Here his duties are similar. "As the Kings bailiff" &c. Here whether as bailiff or not certainly in his ministerial capacity he collects all Taxes levies poor rates &c. Before entering as his office he has to execute 3 bonds each in the penalty of 30 000 $. With good security, conditioned for the faithful discharge of his duties and made payable to the governor & his successor. And when any one is aggrieved by any acts of or omissions of the sheriffs, he may bring suit in the Gover—

nors name. The Sheriff must give the bonds in two months after his appointment, & if performs any {judicial} official act beore giving the the bonds he is liable to a penalty of 1,000. It was formerly the practice for the sheriff to perform his duty in the 2d year [without] renewing these bonds at the end of the 1st year. At length Sheriffs Securities con— tested this liability for his acts the 2d year, & now by statute he must renew his bond. 4 "H&M 208. Pa 345. "Under sheriffs bailiffs &c". The only inferior offices here are deputy sheriffs & jailers. Though Judge Lomax decided that he may appoint a bailiff to execute some particular process. No one can serve as deputy unless the Ct be satisfied that he is a man of honesty probity &c.

47

Book I. Chap. IX. Magistrates continued

48

Nor any as for more than 2 year in 4, unless he produce evidence that he has collected and paid all taxes &c assigned him. As a general rule he may perform all the ministerial duties of the Sheriff only a few exceptions. See 2 Rev Code 55. But he cannot perform his judicial functions. Also all actions though for breach of duty (in office of sheriff) by whom so ever {brought} committed should be brought against the High Sheriff as for act done by him. But in some specified cases (by special stat Ta 230) the party may proceed against the deputy if he chooses. The High Sheriff may re— move his duty if he chooses. Though he has given him good bond and though it was agreed that he should be his deputy during for the whole term of his office. He is liable though to damages for breaches of contract if he did it without good reason. 4 " Mun 150. & 1 Dallas 49. By the death of the Sheriff, the powers of the deputy determine at once except as to the collection of taxes &c due at the time of his death. Though the Sheriff must renew his bond else the securities of the 1st year are not bound for the 2d year, it is de— termined that the securities of the deputy sheriff were liable for the 2d year as well as the 1st if they expressly undertook to be so liable. But when the bond was for the faithful discharge &c during his continuance in of— fice where securities were not responsible for the second year 6th Mund 81. 2d Leigh 303. "Sheriffs Inferior officers &c must not sell &c". We have a statute prohibiting the farming of offices which touch the administration of justice. Disabled to hold the office, disabled to hold the office, in

49

Chapter I.X. Continued

in where of which he possesses the power of {nominating} appointing to the office, he holds, fined and imprisoned at the discretion of the {Judge} Court & that he who buys such office shall be incapable of holding it. But under a proviso, that the statute shall not be so construed as to protect the appointment of any deputy &c, to assist their principals, it has been decided in 1 Leigh 42 that the Sheriff might sell or farm his office to a deputy the latter performing all the duties receiving all the emoluments & paying a certain sum for the office. This decision only legalized wh had long existed of farming this office. Sometimes even to the highest bidder. He regards of course the price offered, not the qualifications of him who offers it. Hence arises

speculation &c, & if not so the deputy has to pay so much for it, that he extorts from the people to reimburse himself. It may be said the Senior Justice is too old & feeble & must farm it, but let him employ an assistant and if he can discharge some of the duties he should not be appointed but be re— compensed in some other way. Sergeants of Corporations. An officer appointed by Incorporated Towns to perform the duties usually assigned

50

to Sheriffs in the Counties — (...) by court of law: Pa 344. {Coroners} Jailers &c. Here as in England mere agents of the Sheriff, as to liability of Sheriff for acts of Jailer. See 4th Rand. 256. Pa 346. "Coroners &c" The court of each County or Corporation has to nominate 2 fit and suitable persons of the County or Corporation, one of whom (genlly the 1st) is appointed. He must take the oath of office and enter into a penalty of $1000. Service is good behavior By regular prosecution may be removed from office for failure &c. His duties are judicial ore ministerial, former when he acts as Coro— ner, latter when he represents the Sheriff. Pa 349. Justices of the Peace. Nomination made by a majority of justices composing the Court being present or having been summoned to make the nomination, and the Governor appoints them. Only recompense is the prospect of Sherifalty. Tenure good behavior. 353. Office determinble by his remo— val from the County in which he was commissioned, or from the Commonwealth, with a bona fide intention of changing his residence. Lec 2d Va Cases, 208. Sessions act of 22, & 2d Leigh 743. So the acceptance of any office under the general Govt or of that of deputy Sheriff in any County or of any office incompatible with justice except that if High Sheriff (this only suspends his magistracy) accession to office of Coroner may be commenced & [preserved]. When information filed & [proved] in Supr Court, as to misbehavior & being intoxicated on the bench, see 4 H&M 522. 1 Vol Va Cases 156. & 308, & 2d Leigh 709. Also (...) of feeing. They are conservators of the peace, can determine singly causes under $20. The party having an appeal of over $10. 4 of them constitute a Cty Ct for the trial of civil causes & 5 or more a Court for the trial of slaves charged with crimes & for preparatry trial & examining Courts of free {negroes} persons. Only (...) of this mentioned by Bl

51

Chapter IX. Continued Constables &c.

*Appointed by the county court. *: Escheators take possession & all lands of those dying without, heirs, for the benefit of the commonwealth, a [jury] of 16.

52

Lecture 5 Pa. 355 "Constable". These officers are appointed by County Court, and are not nominated by the Governor, & as many as may be necessary. They are the mi— nisterial officers of Justice of Peace as Shff are of Courts. They may appoint as many as may be necessary. See Tate 90. 357. Surveyor of Roads. Our statute requires that the diff roads in the county be divided into precints & a surveyor be appointed over each precint. Tate 467. Pa 359. Overseer of Poor. Here the Court of each County shall cause their counties to be divided into convenient districts not ex ceeding four, in each of which the freeholders and housekeepers are

to elect overeers of the poor &c Lec Tate 445. Three persons are to be chosen. They meet anually and are appointed for three years. They have power of levying on the County, the sum necessary for the power & this levy is collected by the Sheriff. Act of ass entitled Overseer of Poor. Their duty differs from those in England. Here their duty is to releive the impotent, and hence the second part of the duties wh was imposed on overseers of the Poor in Engd, to whit that of "providing work for such as are able and cannot otherwise get employ— ment" Pa 360 text. Is no part of their duty here. Those who are able to work must support themselves. The charge of supporting the paupers devolves in the parish in wh he lives, hence of importance to define the boundaries of each parish. Lec Tate 444. Pa 362. The law of settlements &c. In England 10 modes. The subject is one of some dif— ficulty and consequently many differences arise concerning it. Our statute on this

53

Chapter 10. Expatriation &c. Vattel, Grotius & others contend that citizens may, under certain circumstances & on certain conditions, expatriate themselves; Rutherford advocates the contrary opinion; he says there is a compact entered into by {the} a state & its citizens, by which the 1st owes the 2nd perpetual {allegiance} protections, and the 2nd {the 1} owes the 1st perpetual allegiance; Mr. Davis denies that is any much compact; he says if there is any compact at all, it is one by which allegiance is due only whilst a person remains a member of the state. It is one of the unalianable rights, of many of which he cannot be deprived by entering into society, {that} the right of pursuing and obtaining happiness {&} {of}; he has therefore {therefore} the right to leave his country and seek happi— —ness elsewhere. But supposing the compact entered into; if broken by one party it is not obligatory on the other, and on this ground a citizen might renounce his allegiance, countrary to the maxim of the com— —mon law.

54

subject declares that no person shall be accounted an inhabitant, so as to have gained a legal settlement, until such person shall actually have resided in the County, wherein he claims a legal settle— ment for the span of one whole year. Tate 447. Our statute regulates the manner also in wh disputes between parishes must be carried on. & prevents {one} them from straying out of one county into another. When a man dies without heirs the fact is ascertd by a jury of 16 over which the escheator pre sides.* There is one in each County. Ta 195. Chapter 10. Of the People whether aliens &c. Pa 369. "Allegiance with express & implied &c." See notes on Vattel, Ch 19, book I, 1st vol of notes. In remarks establishing right of expatriation see there also who citizens & who aliens &c. By a stat of Va (Late 57) this right of expatriation is secured to citizens of Va. Whether he can only exercise his right in man— ner prescribed see 2d Mumford 393. But as every citizen owes allegiance not only to the government of his own state primarily but secondly to the government of the U.S. there have arisen in the U.S. Courts the questions 1st whether in the absence of all state regulations a man may expapatriate himself, & 2d when permitted by the laws of his state to do so, his renun— ciation of allegiance to his state shall have the effect of discharging him from the secondary allegiance he owes to the General Government. Congress having passed

no law on the subject. Undoubtedly it has that effect, may he could expatriate himself in opposition to the laws both of the General and State Governments, if such laws there should be. For nature has given to all men the right of seeking happiness and safety wherever it may be found, and this right is inalienable. The quesitons arose as to the Fed Govt in cases in 3d Dallas 133. 2 Cranch 64 & 82 & 7" Wheaton 283. The Supreme Court de— clined deciding the question it being not natural to the issue, but threw out the doubts about the rights. So far as regards the Fed Government the right seems more unquestionable. For 1st. They have power to "pass uniform laws of naturalization", they have no power as to expatriation. They are distinct powers, one concerns aliens the other citizens, one in regard rights to be acquired the other in to rights to be abandoned. The one a political right the other a natural one. The latter power not having been conferred on Congress remains to the States. 2d. This is a federal not a national Government, and the Citizens of the Several States only owe allegiance to the Federal Govt as citizens of their respective states. & when permitted by laws of the state (as in Va) to relinquish the latter, they necessarily relinquish the {latter} former, else the absurdity wd follow that one could be

a citizen of the United States, & yet not a citizen of any one of the United States. 3d. The ground on which the right of expatriation is denied is that the Com— mon Law denies it and the Common Law rule Congress has not repealed. But the Common Law forms no part of the laws of the United States. Though it does of the States generally as States. Pa 373. "When I say &c." By a statute of Virga 1 All free persons born in the Commonwealth. 2 All persons wherever born when fathers or mothers were citizens at the time of their birth. 3 All naturalized foreigners, are Citizens. It has been supposed that to those classes should be added a 4th viz, The citizens of the several states of the union, under the clause of the Constitution, that the citizens of each state should be citizens of the several states. But this is incorrect. Because 1st notwithstanding its comprehen— sive terms, the clause only includes those privileges & immunities which other than citizens proper can enjoy, such as to hold lands &c & not to those which from the very notion of society belong exclusively to citizens such as the right of suffrage &c. 2 Munford 319. A 2d & more conclusive reason then are du— ties & burdens as well as rights & im— munities which are incident to the charac ter of a citizen which the constitution does not mention every "privileges & immunities" &c.

59

Book I Chap 10. Aliens, Citizens &c. *An alien may hold lands here by making a declara— tion in court that he intends to reside within the state.

60

And 3d. If this construction were allowed the Federal Government would become a consolidated Government, the several states standing to each other in relation of dift counties of the same state. Pa 374. For laws of Congress on subject of naturalization see Tate 55. They require that the person applying shd be a free white citizen, where country is at peace with ours at time of his admission & he must have resided four years within the United States after making his pro— clamation in Ct of his intention to be— come a citizen. His children who are minors also become citizens. The questi on has arisen whether a subject of En– gland born before the Revolution, can since that event take lands in this country by descent upon the ground of being antenatus ie born under a common allegiance before separation. The claim is founded in the Common Law maxim "once a {citizen} subject always a {citizen} subject." Which if true supported the right since the right of inhabiting followed that of allegiance. This maxim is not admitted here, decided he cd not take lands by descent. See appdx. to Mun Rep 4 Cranch 331. But an American Citizen could inherit lands in England where the maxim still holds.

61

Book I. Chap 14 Master & Servant. &c

Crimes, captivity & debt are the three sources of slavery according to Paley.

62

Lecture 6th Feb'y 20th 1834. Master and Servant Pa 423. "As to the several states of servants" &c. Before considering the several kinds of servants and the legal consequences of this relation it is proper to define what master & servant mean. A master is one who by law has a right to personal au— thority over another, and the person over whom such authority may be exercised is a servant. Blackstone divides servants into 4 sorts. Menial servants or domestics, apprentices, laborers, {or} stewards factors or agents to which in this state we must add slaves. This last species of slaves does not exist in England & is unknown to the Common Law. Here they constitute a very large class in the Community. Blackstone asserts that a state of slavery contrary to reason & the principles of natural Law. This o— pinion I am not disposed to controvent. The three origins of the right of slavery assigned by Justinian in his institutes viz, birth when the mother was a slave captivity in war, and the voluntary sale of himself by a freeman are I think shown by Blackstone all to rest in unsound principles or foundations. And the three causes from which Paley in his principles of Moral Philosophy thinks slavery may properly arise viz, to crimes captivity & debt, if they be more

63

Book I. Chap. 14 Master & Servant, &c.

64

legitimate are not the less satisfactory than that of Justinian. Since slavery as it exists here can not be justified on either of these grounds. The moral right wh we have to hold our slaves in bondage I am not prepared to maintain. From the im— putation of injustice & inconsistency to wh the existence of slavery in this Country has exposed us we have usually exonerated ourselves by charging the introduction of slaves among us to the policy adopted towards us by Great Britain whilst we were her colonies & incapable of free and indepen— dant legislation. Certain it is that all laws passed by the Legislature of Va whilst a colony for the purpose of prohibiting a further importation of slaves were defeated by the negative of the King of Great Britain & one of the causes assigned in the declaration of Independence for renouncing al— legiance to England was this very abuse of his pow— er by the King. When we became independant from wh period only we should be held respon— sible for our institutions & civil policy, we found slavery established in this Country. Two years after that event this state passed a law prohibiting the futher introduction of slaves., thus in some measure arresting the evil & manifesting the public sentiment in regard to it. Further it was supposed circumstances rendered of impossible to go. The total abolition of slavery by a general emancipation, neither the rights of Individuals acquired under the

65

Book I. Chapter 14 Master & Servant.

66

sanction of our laws nor policy permitted. For if all owning slaves had been willing to yield them up without consideration what was to be some with them? When were they to be removed? And for them to have amongst us as free persons was en— tirely out of the question. In the language of Mr. Jefferson we had the wolf by the ear and to hold it or let it go wd be at— tended with equal difficulty & danger. The same considerations have continued to ope— rate & constrained us to preserve a relation which the moralist must condemn & the patriot and philanthropist deplore. All that our circumstances have hitherto permitted we have done, as we have made that relation as just & mild as in compatable with the public safety or with the existence and preservation of that kind of property; & I doubt not that these unfortunate people are more happy & comfortable than the lowest class of people in any other Country. The rapid increase of this Class, the inse— curity and danger which even now re— sult from it and which every year is fearfully increasing, the injurious and blighting influence which the existence of slavery exerts in our national prosperity have recently revived an effort in our Legislature to effect its gradual abolition. Whether this great object shall be attained it remains for the people to say, and to determine. Pa 424 "Yet with regard" &c.

67

Book I. Chap 14 Master and Servant.

68

It may be inferred from this remark that a man carrying his slave to England would then be entitled to his perpetual service. Such is not the meaning of the Author. He means only to say that if a freeman were to enter into a voluntary contract upon adequate consideration to serve another for any period, not to become his slave, and they were to go to England the contract would remain in force. That such was his meaning is proved by what he says a few sentences further on, "Whatever Service &c 'owed' &c by general not by local law, the same is to be bound &c" The service due by a slave is due by local law, and therefore would not be enforced in England the contract would be enforced by general law not by local law, & hence would still hold in Engalnd, for it is well settled that if a man carry his slave to England the latter is thereby eman— cipated. In the case of Somersett a slave carried by his master from America to England in 1772 reported in Lofts Repts pa 1. Another case See Kamis principles of Equity Vol 2, pa 134. It might be sup— posed that if the slave did continue in the service of his master (whilst in Eng) he would be entitled to wages & could receive them on proving he did the service. It has been decided that he cannot un— less he can prove an agreement on the part of the master to pay him for his

69

Book I. Chap. 14. Master & Servant.

[sketch of a hand in the left margin, index finger pointing to the following text]

Our statute has made the slave trade piracy. For laws see Gordons Digest, 616, & 719.

The County Court is to hear all complaints between apprentices and their masters. Guardians may bind out his ward. and make orders for [removing] these where necessary.

70

service the law refusing to imply a promise to pay wages on which alone in the absence of an express promise can a recovery be had. See the case of Alfred vs the men [group] of [blank space] 3 (...) cases 3, referred to in note 4 of the text. Pa 426. "Another Species of Servants" apprentices. Apprentices therefore are persons found to a master to learn some trade or art. At Common law this could only be done by deed & it has been said that this is the only compact the Common Law requires in writing. In this state ap— prentices are bound by deed. Pa 426. "And children of poor persons" &c. By the law of Virginia be found under the head of apprentices Tate 25 every orphan not having a sufficient estate for a maintanence out of its profits, the children of parents incapable of supporting them and bringing them up in honest (...), and all illegitimate children the County and Corporation Courts are authorized to order the overseers of the Poor to bind out, boys till 21 years old & girls till 18 years old. The master is to covenant to teach them reading writing & arithmetic (if whites) as well as some particular trade or art & to pay them twelve dollars at the expiration of their service. 1 Hen & Mumford, 413. If the covenant entered into by the master be violated though the indentures were executed by the overseers of the poor

71

Book I. Chapter 14. Master & Servant.

And as the subject him to mast. The right which a master has over his apprentices cannot be assigned to another; if an appointment be made and apprentices serve under it, he gains the right and incurs the duties of an appr— entice. Exception made to this rule of Common law.

72

they cannot sue him. Suit must be brought in the name of the apprentice. See Poindexter vs Milton & others 3 Munfd 183. The position laid down by several writers that Common Law the father may bind his child apprentice without his assent was denied to be law, by the Kings Bench in the case of the King vs the inhabitants of [Arunsty] 3 Barn & Alderm 584. The Court held the law to be that the father has at Common Law no right to bind his infant child apprentice without his assent, manifested by his execution of the indenture. And this may be regarded as the law here. And even when the child becomes a party to the indenture he is not bound by any contracts therein. He only gives to the master so long as the relation [admits] a right to his services & authority over him. At Common Law an apprentice could not be bound even with his own consent for a longer time than the age of twenty one years. By our statute apprentices bound by order of the Court or by his father may with the approbation of the Court after he shall be 16 years old agree to serve un— til he be 24 years old or for any shorter time and such agreement extended on record shall bind him. For further in— formation see 2d Strange 1267. 1 Douglas 69. 4 Bacon Abrdgment, 577. 1 JR 139. 1 East 73.

73

Book I. Chapter 14. Master & Servant

This power of correction was decided by Court of Appeals to be limited by maiming or killing. It was likewise decided by the General Court, that he would not inflict crime and excessive

74

Pa 426. "A third species of servants" &c. We have no such statutes as then referred to. The only one at al of this nature is that on the subject of vagrants. It enacts that any able bodied man, who not having wherewithal to support himself & his wife & children if he have any, shall wander around or be found loitering without beta— king himself to some honest employment or shall go about begging shall be deemed and treated as a vagrant, that is shall be bound out by the Overseers of the Poor on the warrant of a magistrate for a term not exceeding three months. Pa 427. "There is yet a faith" &c. A term wh will include all this class of servants is agents. Under this head may be ranked factors, brokers, auctineers & attornies. This class of servants is bound by law to pursue strictly the authority of & obey the roles given them by the Principals. If they do not & any loss ensue, they will have to bear it. Pa 428. "A master may be Law &c." As to the masters right of punishing his servant a more correct view of the sub— ject named have been to have regarded the Common Law regulating the relations between man &

man, prescribing the duties & rights between man & man, of all & the punishment allowed by the relation, and then enquiring how far the existing relations between master &

75

Book I Chapter 14. Master & Servant.

Punishment as not necessary to the enjoyment of the rights springing from this relation.

(...) notes not liable.

The injury must be done in the common course of his employment. The Courts are inclined to decide it when out of the course. In the case of an Overseer killing a servant it was decided that he was acting out of the regular course of employment.

76

slave should operate to except from the Com Law the acts of master towards their slaves. Pa 429 "After these things" &c & pa 431. "If (...) &c" In regard to contracts by servants it is settled that the master is liable not only when he has given express authority but when for the nature of the transaction or the practice of the parties on authority may be presumed as in the case of a contract made for goods with a clerk in a store or the case of purchase of goods by a servant when the master has been in the habit of sending for goods on a credit without an order, or when no such authority can be implied, but the master subsequently takes the bene —fit of the contract made by his servant, as using the goods purchased by him. In all these cases the master is bound by the contract of the Servant. But when the servant exceeds his authority the master is not liable. See Reeve's Domestic Relations 367. injuries &. If a servant commits an injury either wilfully, negli— gently or from want of skill whilst in the service of his master, the master is answerable in the principle of implied authority. & the duty of masters to employ servants, honest, skillful & careful. 1. East 106. 4 Bam & Ald 590. 17 Mass Rep 508. 5 Mun 483. But whether the master be responsible or not the ser— vant is answerable. See note 2d by Chitty. Masters wd certainly be liable for all injuries committed by slaves in those cases in wh they wd have been liable if they had been committed by other servants. But the question might arise should they not be liable in other cases than those in which they wd be if the injury were committed by other servants. If a servant employs another to do this himself & in doing it the servant so employed is guilty of an injury the master is liable. See the case of Bunch & Shumman 1 Bos & Fuller 404. Slaves introduced in this county in 1620.

77

Book I. Chapter 15. Husband & Wife

(x) The parties must be willing. Wanting this (...) requisite all by force are of course void. See 2 Kent 66. Fraud which will render it void must be distinguished from impudence, so as to relate to the identity of the person.

Pre contract a cannonical disability none here. We have them one less.

78

Lecture 4th Feb'y 1834. Chapter 15. Husband & Wife. x Pa 434. "Now these disabilities are of 2 sorts" &c. The Common Law writers distinguish the disa— bilities wh operate as impediments to marri— age into two classes, Canonical & Legal. Of the first are pre contract, consanguinity, af— finity & some other corporeal informities. They are called canonical because they were suf— ficient by the ecclesiastical law to avoid the marriage {with} in the Spiritual Court. In Va we have no Spiritual Court, and the disa— bilities which in England are cognizable by it are here subject so far as they exist, to the jurisdiction of the Superior Courts of Law & Chancery. These disabilities therefore are in this state as properly entitled to be called legal as there [there] designated by Blackstone. It is conventional however to retain the English dis— tinction because of the different nature & character of the two classes of disabilities the one rendering the marriage void ab initio. The other making it voidable only. It is to be remarked that neither the cannonical nor legal disabilities are as numberous here as in England. Of the first we have only one con— sanguinity, affinity, & natural or inevitable impotency of body at time of entering into the matrimonial contract. Precontract is here no disability. For the first time, see Ta 309 it conforms to the Livitical law for the last see Sessions acts of 1827, pa 21. In regard to consanguinity & affinity an act of assembly or incestuous marriages conform

79

Book I. Chap. 15th. Husband & Wife

80

in substance to the Levitical law. As in latter there are many cases not embraced by the letter, though certainly included & prohibited by the spirit of the Law. See (1 Co Littleton Pa 128, Note 4) so our act though intended to be more compre— hensive, does not by any means include all the cases within the degree within which it appears to have been the intention of the Legislature to prohibit intermarriage. The object of both laws is that ours and the Levitical seems to have been to prevent the contracting of persons within the 4th degree of relationship by the civil law of computation, relations by affinity or marriage being regarded in the same light as those by consanguinuity or blood. Whether our law would be held to extend to cases not enumerated, because in the same degree with some prohibited is a question unsettled as far as I know. I am inclined to think it would. For instance I presume the precept which for bids the son to marry his fathers daugh— ter begotten of his stepmother, virtually prohibits him from marrying his mo— thers daughter begotten by his stepfather. Among the prohibited degrees both by the Levitical law and the English Statute as also by ours, was included the mar— riage of the wifes sisters. Recently the law has been taken out of the general

81

Book I. Chap 15 Husband & Wife

—*

See our statutes Revised Code Sup 225.

82

law regarding incestuous marriages. By this Statute of 1827 Lessions Acts' 22, the marriage of a wifes sister is made a misdemeanor subjecting the parties to fine or imprison— ment or both at the discretion of the Jury but the marriage is not avoided. This act only applies to this particular case so far we have spoken of the Canonical. Pa 436 "The first &c." A second (deficient) marriage lea ing the first husband or wife, the law calls bigamy, and punishes the person con— tracting it, by confinement in the peniten— tiary for a term not less than {one} two, nor more than ten years. It excepts however from the penalties of the act, persons whose husband or wife has been continually absent beyond the seas for 7 years, to— gether or has been continually absent in the US or else— where 7 years, the one of them marrying not knowing the other to be living within that time. And 2dy it also excepts from pe— nalties those persons who have been divorced by lawful authority or whose former marriage has been declared void or who were at the time of marriage within the age consent. Tate 47. But {though} when the husband or wife has been absent 7 years, the other party marrying is not subject to the prescribed penalties the marriage so still illegal. The exemption in case of persons who have been divorced, applies to cases of divorce a mensa et thoro. 2 Kent 69.

83

Book I Chap. 15 Husband & Wife

84

But see our statute of 1827 wh expressly subjects parties divorced a mensa et thoro who may marry again, living the other, to the penalties of bigamy. Pa 436. "The next legal disability &c." This disability exists here. It needs however some explanation. When it is said a man of age makes a marriage is void ab initio, it is only meant that either party or both attain— ing the age of consent may disagree to it and avoid it, but before they cannot. 1 Co Litt 123. But if the parties on arri— ving at the age of consent do not dis— agree to the marriage no new marri— age is necessary, and if either die under the age of consent the marriage is so far valid; that the survivor may have the curtesy or dower, this disability must be distinguished from the other legal dis— {tinctions} abilities which render marriage absolutely void. It like the Cannonical disabilities render the marriage voidable only. Pa 436. "Another incapacity &c." I have said the legal as well as the Cannonical disabilities were fewer here than in England. For want of consent of parents and guardians, though a disability in England is none here. It was enacted there by a statute of 28 George 2d which was never in force in this state nor has any similar one ever been enacted. Our law enacts that if either of the parties intending to marry shall be under

85

Book I Chapter 15th. Husband & Wife

and by a recent Statute by the consent of the mother if there by no father.

either party being a minor.

the age of 21 and not before married the consent of the father or guardian # of every such infant shall be personally gi— ven before the Clerk, or certified under the hand & seal of such father or guardian assented before two witnesses, one of whom shall personally appear before the Clerk and swear that he saw the father or guardian subscribe or acknowledge the same. If the Clerk issues a license with— out the consent of the father or guardian he is subject to imprisonment for a year and a fine of $1500. If a minister celebrate the rights of matrimony without a license or publications of bans (the mode of which publication is prescribed) he is also subject to imprisonment for a year and a fine of $1500. Tate 415. Father (except as to forfeiture of the estate of the Infant in a particular case to be mentioned presently) our law on this subject does not extend. & if not— withstanding the precautions I have refer— red to, infants of the age of consent, con— tract marriage, such marriage is neither void nor voidable. Deficient. Pa 437. "And by the Stat 4 & 5 Ph & M." This statute with modification we have reenacted. Our statute enacts that if any female of the age of 12 and under 14 shall marry any person contrary to the consent & will of her father & guardian & without the legal publica—

Book I Chapter 15 Husband & Wife.

tion of bans, then the nearest of kin of such person to whom the inheritance shd descend or come shall have a right to enter upon and take possession of all real estate possessed by her at the time of her marriage and enjoy the same du— ty the coverture. But on the determination of that, such estate is to revest on the heirs of the female, other than her husband who may reenter and take possession thereof. Tate 419. This is the forfeiture to which reference has been made. Pa 439. "Lastly, the parties must &c." It is scarcely necessary to say that how also the parties must {connect} contract themselves in due form of law to make it a good marriage. Our law on the subject of the solemnization of Matrimony con— tains various provisions, intended to pre— vent the marriage of infants without the consent of their father or guardian. It contains other provisions intended to pre— vent the marriage of servants without the consent of their masters, or the mar— riage of white persons with negros or mu— llatoes. But the violation of these pro— visions does not render the marriage invalid in any case. It may therefore be laid down that every marriage in this state between single persons, con— senting, of sound mind, & of the age of consent, (which is 12 in females & 14 in males) by any minister of the gospel qualified and authorized in the

Book I. Chap 15 Husband & Wife

manner proscribed by law or such person or such person as the court of the County shall have appointed (& every County is empowered to appoint this persons for this purpose if there be no

ministers who are qualified in the County) every such marriage I say is legal and valid. Pa 440. "[Legally] the parties must" &c By Common Law the issue of marriages void or voided are illegitimate. By our Law such issue are legitimate. Tate 169. Connected with this subject of contracting marriages it is to be observed that a mar— riage valid by the law of the place where it is made is valid every where. In consequence of this principle Scotch mar riages are regarded in England as valid & No Carolina marriages in Va 2 Kent Pa 78. If a marriage is called in question the proof required to establish it varies ac— cording to the character of the suit in wh it is called in question. In all Civil suits regarding the rights & liabilities of the parties, the marriage may be proved by reputation cohabitation ac— knowledgement or recognition. 3H&M 230. But in criminal prosecutions for biga my or in suits brought by the hus— band for criminal conversation with his wife, then an actual marriage must be proved by the marriage regis ter or some one present at the marriage. See 4 Bur 2057. 1 Doug 162.

91

Book I. Chap 15. Husband & Wife

92

Pa 440 "I am next to consider &c." I have already said that the Canonical disabilities of consanguinity affinitiy or corpo— real infirmity exist here. In regard to the first two there is no law authorizing any Court to grant a divorce on account of them. But the statute on incestuous marriages defining the degrees in which marriages shall not be contracted, consi— ders a marriage within the prohibited de— grees as an offence, and authorizes the Superior Court of Law to take cognizance of it. The judgment rendered on conviction is what the marriage is null & void {and} that the parties shall be separated & that they shall pay such fine as shall be assessed by the Jury. Marriages con— tracted within these disabilities are voida— ble, but their nullity is effected by the prosecution of the parties who contract & not by any proceeding withheld for the mere purpose of attaining a divorce. In England if these disabilities existed a divorce would be obtained. In regard to the other Canonical disabilities or corporeal infir— mity the Statute of 1827 (Sess acts 22) authorizes suits to be brought in the Supe— rior Courts of Chancery to claim divorces on account of it. Besides natural or incurable impotency of body at the time of entering into the matrimonial contract the Statute authorizes divorces a vinculo matrimonii to be obtained in the same

93

Book I Chap 15 Husband & Wife.

94

manner or account of idiocy or bigamy. There are legal disabilities at Common Law rendering the marriage void without any Sentence of divorce, therefore unnecessary to include them in the Law. Pa 440 "Divorce a mensa et thoro" &c. The Statute of 1827 authorizes courts of Chan— cery to grant divorces a mensa et thoro on account of adultery, cruelty and just cause of bodily fear. Neither of the parties thus divorced can marry again during the lifetime of the other. There are many causes for wh named persons might desire a divorce and perhaps should

obtain it which are not maintained in this sta— tute as grounds of divorce a vinculo or a mensa et thoro. Conviction of the one or the other of felony incurable insanity &c are of this kind. In all these cases the only mode of obtaining a divorce is by a petition to the Legislature. The statute of 1827 contains a provision on this subject intended to prevent frivolous applications to the Legislatiture wh requires persons to petition for a divorce shall previously file in the Clerks Office of the Superior Ct of Law of the County in wh he resides a statement of the cause on wh the appli— cation is founded. The Court and to cause a Jury to be empannelled to ascertain the truth of the facts set forth in the statement (the confession of neither party having admitted as evidence in the trial & a copy of the proceeding must accompany the application. On such

95

Book I. Chapter 15 Husband & Wife.

96

application the Legislature grant a divorce a vinculo or a mensa et thoro, as they shall deem proper, generally the latter. Adultry cruelty, and just cause {fear} of bodily fear form grounds on which the Court of Chancery are authorized to grant divorces a mensa et thoro only. The parties are almost always anxious to be divorced a vinculo. But this divorce for these causes can only be obtained from the Legislature. And an application to the Legis— lature for that divorce, for these said causes a copy of the record of the Court of Chancery granting a divorce a mensa et thoro must accompany the petition. See Stat 1827. Pa 440 "In case of divorce &c." The Statute of 27 enacts in granting divorces a mensa et thoro the Court of County has full power to decree perpetual separation & protection to the persons & property of the parties to decree to either not of the property of the other such main (...) as may be proper. & so to dispose of the custody & guardianship & provide for the issue of marriage as under all our circumstances may seem right. Such a divorce it is moreover declad shall have the same effect when the rights & property which either party may acquire after the decree or a divorce a vinculo &c would have same only that neither party shall marry again in the lifetime of the other & that another marriage shall expose the offender to the penalties of bigamy. Pa 441. "Alimony &c." This is frequently granted when there is no divorce, as when the misconduct of the husband is such as it is unsafe for the wife to live with him or he harms her out doors, and the Court of Chancery has a right to decree it 4 H&M 507. 4th Rand 662. Whether the marriage be void ab initio no rights are acquired by it. Each retains their property & neither acquires any right over the property of the other.

97

Book I. Chap 15. Husband & Wife

x were to purchase several things of a merchant as customary for wifes to purchase, he would be bound.

Here arises the question. Can it be implied? And it may be implied, &c &c. § The first when she has been in the practice of doing certain things & he in the habit of (...) buy it. # The husband is bound to such contracts as is usual for a wife in her county to {purchase} make as

for example if she were to purchase oxen he would not be bound, not usual unless it came under 1st head. x # On principle that he may be fairly presumed to have authorized it, and in addition to that the Law raises the presumption he will do that wh in justice he ought to do. # When the husband is absent in foreign country, or bed ridden, or incompetent to do himself. Reins P 79

98

With regard to alimony see Stat of '26 Chap 23, which gives Superior Courts of Chancery jurisdiction to decree purpetual separation and protection to the person and property of the parties. See note to page 441 on the preceeding page. A doubt has been suggested as to the power of the State Legislature to grant or authorize divorces as the Constitution U.S. prohibits the States to pass laws impairing the obligation [of] contracts. The question however never has been directly raised and determined. In a case in 4 Wheaton 518 the question was incidentally alluded to. The Cheif Justice said that this clause of the Constitution had never been construed to extend to cases of divorces & that the object of State Laws in permitting or granting divorce, was not to impair a contract, but to liberate one of the parties because it had been invoked by the other. The Court said it would be time enough to enquire into the constituti— onality of the State Laws, when they should un— dertake to annul all marriage contracts or permit either party to annul it at pleasure. Lecture 8th 25th Feby '34 Husband & Wife Continued. Pa 442. "A woman may indeed be attorney" &c. All contracts made by a wife by the authority of her husband bind him. Authority may be express or implied. {From} may be implied # §1 Practices of the parties. # 2 From the Custom of the Country. # 3 From the husbands lacking benefit of Cont. # 4 From the Circumstances of the family. The obligation of the husband to perform his wifes contracts rest solely on his authority express or implied, consequently where no authority express or implied, He is not bound. But besides being bound for his wifes contracts on ground of

99

Book I. Chap 15. Husband & Wife

x As in case of elopement of wife. * 1st may not exist, 2nd always does unless discharged by misconduct of wife.

100

of authority, but he is also bound to pay for necessaries purchased by her. This obligation is generally referred to an implied authority and assent of the husband. I think it more simple and correct to refer it to duty of husband to provides his wife necessaries & on failure to pay those who do. For in the first place has assent to pay for necessaries cannot be presumed, when he refuses to {pay for} provide them. And though he were to turn her out of doors and forbid all mankind to furnish her necessaries, he would be bound to pay those who did. His obligation to pay them does not arise from consent or authority but duty. He who seeks to make husband responsible for necessaries must show they were {duties} necessaries otherwise no duty arises. What are necessaries depend 1st on situation of parties &c 2d on the fact of the wifes being

supplied before or not. On the subject of what are necessaries see 1 [Fonb] Equity 91, or 1 Campbell 120. 2 Hc Bla 99. If not necessaries it is not duty of husband to pay and he is therefore under no obligation to do so. But though they may be necessaries, the wife by her conduct may have released the husband from his duty to provide them. * Two different grounds then on which the husband may be charged for his wifes contracts, 1st Authority given her to contract, 2d duty to provide necessaries. Pa 443. Note 50, 3 Cranch, "And a woman divorced or" &c. This is not reasonable. If she cannot sue alone for injuries to her person, her character and her private property she is without the protection of the Law and opposed to this authenticity is Baccom Abrdg. [Title] baron] v {Faine} [Feme]. Btler M, & Black Com, Rep 2, 1195. Our stat of 27 expressly declares that such divorce shall have the same effect or infer personal rights & rights of property, as a divorce a vinculo matrimonii. Clear she might as action matrimonii. Pa 445 "And in some felonies" &c. the rule on this

101

Book I. Chap 16. Parent & Child x It seems to be better opinion that the rule is too general, and that if there are other exceptions besides those mentioned above, they are robery & arson.

102

subject is this. If the wife commit an injury to another or a crime by the command & coercion of her husband (& his presence in deemed such command {*}, if he in any manner encourages or approve his wife) she is not answerable for the violation of the law, provided the offence be not one against the law of nature, as murder. The only exception to this rule exempting the wife from punishment for offences against the laws of society, if committed by the coer— cion of her husband, are treason & the keeping of a brothel; the former is on the ground, that treason is so dangerous to society that e— ven the coercion of the husband shall not excuse it, and the latter on the ground that the wife has principal management. Neither servant child, nor agent are within this rule, but all punishable. For crimes mala in se though committed by command and of husband, the wife is punishable {alone} X. For injuries and offences against the laws of society, not commited by the husbands command she is answerable but in all cases of pecuniary punishment husband must be joined. When punish— ment is personal as by whipping imprison— ment &c wife is prosecuted singly. See Reeves on Domestic Relations 72.

Lecture 9th Feb'y 27th. 34. Of Parent and Child Chap 16. Pa 448 "Let us see &c" and note 3. Judge Tucker thinks in accordance with the note that the parents are under no legal obligation to provide for their children is founded on stat but by stat, and as there is no statute here impairing such obligation he infers there is no

103

Book I. Chap 16. Parent & Child

The object of English statute was misunderstood. To protect parents from their support.

This shows the duty of fathers to

The County Court to bind out.

(...) justice to (...) require it III This obligation is sufficiently definate and specific. See Raymonds Reports.

§ Pa 450. A father nor any remedy against the execution.

This obligation not to (...) & consequently not so fully enforced.

8 Or where they are drunken, blasphemous &c, & some— times mere insolvency.

104

comparison on the part of parents. The object of the English Statute in exempting parishes fr maintainance of children existed at Common Law and consequently exists now. The following considerations warrant the inference that our Legislature recognizes such legal obligations on the part of the father. 1 If a child has property of its own in its Fathers possession and the Father at setting up charges his child for maintenance it will not be allowed by the court, if he was able to maintain his child. # 2. A Statute of Virga. has been passed compelling the father of bastard children to support them, and it cannot be supposed that Legitimate children do not come under it. Another statute authorizing # the children of poor persons who are unable to support them, to be bound out to learn some trade or art. The law inference from these is that the Legislature considered such Legal obligation as existing, and therefore the parent was sound wihtout any {legal} interposition of theirs. 3. Common Law is Common {Sense} Reason, hence it enforces every precept of nature and justice if sufficiently definite or specific and as this obligation is founded on such principles it may be fairly inferred that it existed at Com Law. (III) The parent is also entitled to the services of his Child —ren & should therefore be bound to support them. The conclusion then is that every Father is compelled to provide for his children & any person furnishing them with necessaries may recover fr the parent. Parents are futher bound by duty & express & im— plied authority, as in case of husband to perform contracts of wife. Ante pa 22. 3 Com Law Rep 449. 13 [Gran] 480. (§)Pa. 451 "The last duty &c" "to provide for education &c." This is a high moral duty, but not so high as that of maintenance. It is an imperfect obligation wh cannot be enforced. # Pa. 453. "A Father has no other power over" &c. The guardians of parent only extend to the person of the child, & not to his property. For to be guardian to that he must quialify as in all other cases. He is guardian by nature. Though a father has the legal right of being the guardi— an of his childs person yet in Engalnd the court of Chancery has in many cases taken children from the possession of their parents when they have been treated with cruelty[8]. I have never known a case of this nature, yet I think the Court of Chancery

105

Book I. Chap 16. Of Parent & Child

Our law renders the children legitimate if the parties ever intermarry, & if the father recognize his children. The issue of void marriages are legitimate. See our Statute of Maintenance. Tate 21.

* The warrant must be issued by Overseers of Poor, & the charge must be in writing. 6th Mumfd. 452.

§ {5 Term 278.} On this subject see 5th [Terms] Reports 278.

Illegitimate {father} children having in law no father the consent of guardian or mother under our law is sufficient. Not so in England. See our law authorizing mother. Sup R. C 222.

106

possesses & wd exercise the right if similar cases were to occur. Note 12, 1st Maddoch Chancery, 332. Page 454 "Bastards &c." Our law says where a man having by a woman one or more children, shall afterwards intermarry with such woman, such child or children if recognized by him, shall be thereby legitimate. Tate 169, § 19. It conforms to the civil and canon law. Page 457. "As Bastards" &c. The question of the legitimacy or illegitimacy of children of married women, is regarded as matter of fact arising on presumption whether they be legitimate or not. Note by Harg 1 Co Lit 139. 4 J.R. 251 8 East 193. Page 458. "The method" &c. Our Statute declares in substance, that if any single woman shall be delivd. of a barstard child, which is or will be chargeable to the County and shall upon examination before any justice of the peace, to be taken in writing upon oath charge any person with being the father of it, the person shall then be served with a writ to appear before a ma gistrate, where he either gives bail to appear at the next court or is committed to gaol &c. Tate 21. § 31. * Upon the construction of this statute see 6th Munfd. 452. As to what evidence is sufficient to charge a man, See 4 Munfd. 295. The father is only liable from the time the parish is charged with support of Child, and though he is bound to support it, yet he is not entitled to its custo— (5) dy. Mother is only entitled to such custody. 15 Johnson 258. Right of Father is preserved to that of a stranger. Strange 1152. Page 459. "I next proceed &c". Here bastards may inherit, and transmit lands &c on the side of the mother. See Tate 169. § 18. Page 459. Note 29. There is a great contrariety of opinion in England whether bastards were included in the mar riage act. The better opinion however seems to be that the marriage of all infants, legitimate or illegiti— mate were included. The question then arose, where consent was to be obatined? Decided that then consent of guardian appointed by Court was necessary. See notes 19-26. [&cg] of this chapter. The provisions of our law on this subject will be found on page 20 ante note 3 to page 436. Tate 415. The Statute includes both legitimate and illegitimate children and declares consent of father & guaridans necessary. & of (...) of mother. =

107

Book I. Chap. 17. Guardian & Ward

Blackstone has imperfectly supplied the subject of Guardian & Ward.

1st [it] existed in Common Law.

108

Guardian and Ward Lecture 9. March 1st Chapter 17. 1. The first species of guardians known by the Eng— lish law are guardians by nature. All fathers mothers, grandfathers, grandmothers and all lineal ancestors are entitled first to their heir apparent. The father first and mother next. When there are several of the same degree the one first acquiring possession of ward is entitled. This guardianship continues till 21. & comprehends only person of ward. Exists in England only in cases of heir apparent, or only son. 2. The second species of guardians are those in Chivalry. This kind existed only when the ward acquired lands held by knight service tenure, by descent. The peculiarity of this class was that Lord was entitled to wards lands for his own benefit, subject only for maintenance for child and was assignable, whereas in all other kinds the object is the infants interest. It had a preference over all other species of guardian ship to person of ward, except that by nature. This again may be traced as far back as Common Law & continued till the abolition of Knight Service tenures by Chancery. 2 person of ward continued in possession till 21. 3. Guardian in Socage. This kind existed where infant was entitled to lands hold in socage te— nure, by descent. Guardianship belonged to persons next of kin to the ward, to whom lands could not descend. Reason mentioned by Blackstone not sufficient. Springs from time. It differs from Guardian in Chivalry in this, that it is in Trust solely for the benefit of the Ward. Draw with person & property. Continues till age of 14, not ttransferable or assignable. Continues till 14. 4. Guardian by nurture. None can be such unless father or mother. It differs from guardian by nature, in as much as the latter

109

Book I. Chap 18. Guardian & Ward.

East at Common Law.

Powe is appointing [given to], all courts.

110

can only be exercised over heirs apparent; whilst the former extends to all children. Continues till 14. 5. Guardians by election of Infant. This right of election only exists when the law has provided no guardian. It may happen either after or before 14. Derived from the Common Law, though not remote as to origin. 6. Guardians appointed by Lord Chancellor. This right exists in Lord Chancellor from the genl jurisdiction he has over infants. 7. Guardians appointed by Ecclesiastical Court. 8. Guardians appointed under stat of Philip & Mary. Black— stone does not mention how this is done; in creating a distinct species of guardian by virtue of this statute it was passed for the purpose of preventing the daughter of persons, fr being forcibly taken away &c married under 16, and prescribes penalties to be imposed on such persons as do &c. And it has been inferred from this that the statute implied the guardianship of parent, over their infant daughter, till they arrive to the age of 16. Mr. Davis thinks this unreasonable. 9. Guardians appointed by fathers. Statute of Charles 2 authorizes fathers by deed or well in writing to appoint guardians to their infant children, and this bars the right of all persons claiming to be guardians of minors &c. They have the case of the person & estate. 10.

Guardians by custom of particular places 11. Guardians ad litem They are appointed by Court (x) to defend minors in suits see on this subject 1 Co Litt 151 no 12345 &c. Let us now enquire which of the several spe— cies known to our law. 1. We have guardians have by nature, but as there exist no laws of primogeniture their authority extend to all children alike. 2. Guardians of Chivalry of course we have not, no such tenure here, nor in England since 12. Ch: 2nd. 3. Guardians in Socage we have not although our statute twice refers to them, & once requires security to be taken. We have none for two reasons. 1st Because we have no such tenure. And 2nd Because untill recently, there existed no such persons to whom lands could not descend. It being mentioned from in our statute probably from inad— vertence & its being little understood. 4. Guardians by nuture we have not being superseded by Guardians of nature.

111

Book I. Chapter 17. Guardian & Ward.

Guardian appointed by heir

The election usually made in court, but may be made out of court & communicated to the court.

112

5. Guardians by election exist here, they are not however regarded as guardians by election, but by appointment of Court because the Court always appoints those elected. The infant may elect out of court, though never done. 6. Guardians may be appointed by a Court of Chancery by express authory of Statute. Such guardians must give word and (...) and qualify in it. 7. Guardians by appointment of Ecclesiastical Ct, we have not 8. Guardians by stat of Phil & Mary I presume we have not as guardians by nature extend to all children hence it would be unnecessary to confer on them {what} the right they possessed before. 9. Guardians by appointment of father exist here, as we have reenacted the Stat of Charles 2d. But such guar— dians must appear in Court declare their accep— tance & qualify, otherwise the court will displace them & put others on them stead. 10. Guardians by Custom we have not. 11. Guardians ad litem, courts have power here to appoint these guardians as in Englad. Of all the above mentioned species of guardians only those by Election of persons, by appointemnt of Court, (wh here are in fact the same) and testamentary guardians are entitled to person & property of Infant, and who are alone bound to give bond & security. As to [blank space] 6th Ran 563 It may be necessary to explain who are entitled to guardianship of Infants. When an Infant has a father he is guardian by nature. If his father is dead having made no testamentary guardian his mother is guardian by nature & if both Father & Mother are dead the next lineal ancestor. But neither father or mother can possess anything but infants persons, unless they qualify in due form of Law. If father has made a testamentary guardian he has preference. If their be no guardian by nature or Testa— ment, the Court will appoint one. And if Infant be old enough to {appoint} elect one, the Court will appoint one elected unless some objection to him. The pre— cise age at which an infant may elect is not determined certainly however at 14. Superior Courts of Chancery & County & Corporation Courts suing in Chancery have jurisdiction in regard to

113

Book I. Chapter 17. Guardian & Ward

It seem to be that when infant arrives at age of 14 may change his guardian, no law says he cannot do this unless for good case shown, (...) decided by Kent. Infant must be 21 before he can be an executor, because he must give bond, which no one can do who is not 21, & ad Litem, & or defend.

114

Guardians. {appeal to Chancery} Court, 2d Va Cases, Va Laws 291. Tate 291. The effect of marriage in determining guardianship is a matter not entirely settled. 1. Female Wards. If female Ward marries guardians power must cease as to person and property: more particularly if she marry an adult. If she marry her person of course is freed from control of Guardian. There has been much difference of opinion as to property of female ward on such cases. The better opinion seems to be that power of former guardian both as to {real} and person {al} & property ceases. 2. Male Wards. If male ward marries the guardian— ship of his property continues in guardian. And if he acquires property by marriage, the guardian will also be entitled to that. As to person there is doubt. See Reeves on Domestic Relations 328. Thinks that the relation contracted by marriage totally incon— sistent with power of guardian over person of Ward. Pa 463 Note. The power &c. By an act of assembly, Gua— rdians are required to render accounts of their guar— dianship annually & on failure may be displaced. Courts are authorized to allow compensation Ta. 296. Note 10. The guardian in this State must put the money of his ward out at interest within 6 months, & if he fails to do so is himself liable. Connected with this the question has arisen Whether guardian can make good title to lands of Ward. It is clear he cannot disperse of the land. He may it is clear dispose of profits for benefit of Ward, but whether he can dispose {of profits for benefit of ward} of his capital is a matter of doubt. Chan Kent thinks he may 4 John Ch. Reports, 154. Our Stat enacts that he cannot without protection of Court. 6th Rand 444. If a guardian does without such consent he violates his duty. Deeds of release & acquital made to a guardian by the ward after he attains full age & before he gets possession of lands, are void for motives of public policy, without any proof of actual fraud. 2 Leigh 11. Pa. 465 It is laid down by Coke that infants must sue by purchase any & defend by guardian (x) In this state it has been decided he may sue (x) by both 4" Munfd. 439. 6th Munfd. 99. Infants are excepted from acts of (...). They cannot make deeds to bind

115

Book I. Chapter 17. Guardian & Ward.

x In the opinion of the court, most are doubt— ful, contract for neces— —saries are for benefit.

x Parents may be dead or absent or insolvent.

116

themselves. Ta 494. Pa 465 Several writers have attempted to draw a precise line of distinction between acts that are void and those that are voidable, Perkins says. That all deeds &c take effect by hand of infant are void, and those that do not take effect in this manner are merely voidable. 4th Bar 1794. [Bingham] say acts that are capable of being legally ratified are voidable, whilst those incapable of being legally ratified are voidable. All books however agree on one result, that when the act may be for the benefit of the infant is is (...). 14 Mass 354. The best rule Chan Kent says is the only laid down in 2 H. Blac 51. The rule is this. Whenver the act is to the prejudice of infant it is void; when for his benefit it is good, & when doubtful it is voidable. (x) 2 K Common 191. 4 Rand 402. But when void on part of the infant, it is binding on adult with whom he contracted. Strange 937. {4} 2 Rand 478. 2 Johns 279. 6th Munf 453. And when voidable on infants part, it can only be avoided by infant or his representative. Matters of record only voidable during nonage; other contracts may be avoided after he arrives at full age. In voidable cases doubtful. Whether any act of affirmance is necessary to carry into effect contracts of Infants, the Courts are not {affected} decided. It depends whether they be executed or executory. In the former case his affirmance is necessary, in the other affirmance. The proper course is for infant to give notice to appoint party of his intention. For some authority, see 2 Kent Com 193. Pa 466. This law that infant is bound for necessaries not at all conflicts with what was said at last lecture (x) It was conferred for infants own benefit. This is under obligation to [provide] for necessaries. In a case in 3 H&M it was decided that infant might enter into valid con tracts in regard to lands. This subject has given rise to much discussion both here & in England. The consent of the guardian is necessary here. The case in 3 H&M is not regarded as of much authority by the profession. We must apply those genl principles for determining this point, and if the settle— ment is clearly to the infants prejudice it is void. If to his benefit, it is good, & if neither prejudicial or beneficial voidable, to be confirmed (when necessary) by male when he attains 21, and by female when she becomes [discovert] & of age. In 1 Co Litt 177, it is said that whatever infant is bound to do law is valid where done by him as bailbond Infants liable for all actions ex delicto. He cannot in such cases plead infancy. 1 Co Litt 171. Where he is liable he or his property may be taken in execution. An infant may be a witness so soon as he can understand an oath. Tate 294, 494.

117

Book I. Chapter. 18. Corporations &c. In English Law otherwise. See note to Crower (...) died as to validity of such contracts the same rule holds as to the validity of other contracts See before. Infant is bound to do whatever law re— quires as in case bail bond. As to the age in wh an infant can take an oath, no precise period has been settled on. It seems generally settled as he can do so, so soon as he can distinguish good from evil.

Conn

Its Bank of US hd a charter for so many years.

a limited extent [blank space] as to Insurance Companies wh are not allowed to hold.

(...) as

The Court is to make bye laws which is universally granted, with valuation in text & note

Corporations may be appointed executor, but it must appoint a person to act for it.

§ The reason of Decision is that the principle of universal principles of Law, that the effect of contract cannot be influenced by change of residence. They are to be expounded by the laws of the plan when made, & may be expanded by other Courts. The only limitation, they will refer to execute where contrary to the policy of its law.

118

Lecture 10. 4th March, 1834. Corporations Chapter 18 Pa 472 Creation of Corporations. In this State Corporations can only be created by Legislature. Note 2. A case in 3d Call 574 decided in substance that the College of Wm & Mary was a civil & not an elymosynary corporation. The decision was that an appeal might be from the decisions of the Visi— tors which was the same thing. Pa 474 "When a corporation is enacted a name &c." See 6th Rand 165 that corporations must sue by their true names, but when sued a mistake in syllabi verbis and not in sensa &c will not be fatal error. {Such error must be.} Pa 474 — 11 The powers of a corporation here depends on the act creating it its charter, and we must refer not to the C Law but to the Charter creating it. Corporations have not here perpetual succession, but limited #. The 2d power to sue or be sued "grant or receive" &c. Except the latter part "to do all other acts as natural persons" is always conferred. The 3d power sometimes granted to & sometimes not at all. In none is an unlimited power of purchasing lands granted. For a case on this subject see 3 Randolph 136. The 4th to have a common seal is always granted. The acts of corpo— rations may bind it without seal # See 1 [Font] 191. 5 Munfd 324. 3d Rand 136. 7 Cranch 299. 5th power is universally granted 1 Co Litt {134} 184. Note C. Pa 475 Note 8. "A Foreign corporation may sue in their corporate name". They may in Virga. 2 Rand 465 or 415. Promissory notes executed by per— sons citizens of Va & signed in Ohio were sued for by the Ohio Bank, and the Court of Appeals decided they might recover in Virginia, because made in Ohio. But a foreign company can make no primary contract in Virginia; because against the policy of our laws to permit any banking establishment operations to be carried on in Va

119

Book I. Chapter 18. Corporations &c.

A Corporation may sue in Va on contracts made in another state. Exception is that when the contract contrary to policy of our laws. In a banking or turnpike compnay summons may be served on President or Cashier or Treasurer, or in their absence on any member. In town on the mayor alderman & In academy, on President, trustees or misters, but the person in whom it is served must be within the precint of the corporation. 485. How In state Cor, may be [devises].

An Example of Public & Private Corporation. The University is a public corporation, no private rights or interest &c. Turnpike is {public} private since there are private rights.

The consideration of these belongs to another part of the Course. If this Doctrine [been] correct the people as well as the Legislature would be [bound], inconsistent with the theory of our government.

[Doubtless] not repealed for strong & sufficient reasons, but those [accomodations?] are addressed to the Justice of the Legis (...) & don't affect at all the right.

120

but by its own banking companies. It is doubtful whether a secondary contract to en— force a pecuniary contract made abroad entered into by a foreign corporation in Va would be enforced. Pa 477. "A corporation be executor &c." A Corporation may be executor here but as they cannot take the oath required they must appoint a syndics to receive admr with the will annexed. Toller on Ex 30. A summons here is the mode of commencing suits vs Corporations # Tate 114. & in Chancery by subpoena. Pa 478. Acts of the majority. A majority of a quorum 2 Bur 1019 Confers [Re] will bind a corporation in any regular act. The Charter here provides what number shall constitute a quorum or meeting. How far may (885.) Legislature of a state repeal or modify charters of corporations before the Charters have expired? In 6 Crauch 87 & 9 Do 52 the Supreme Court distinguished between public & private Corporations and the distinction was this; that the former might be al— tered at the will of the Legislature, but that the latter cannot. In the latter there is a contract. In Va there is no doubt as to the power to repeal or modify public acts of incorporation, being in the Legislature. But as to alter or annul the Charter (Judge Roaner opinion 4 H&M 315) of a private corporation It has likewise between maintained on the ground that all charters are laws. Our State Constitution only vests the Legislature with Legislative power subsequent to repeal by subsequent Legislatures. The power to make contracts irrepealable by the Legis lature & people themselves is repugnant to our Institutions & has never been conferred on any person or number of persons whatever. If this view be correct Charter are not contracts, but laws, and though contracts subject to repeal.

John H. Christian

End of Book 1st

121

Book II Chapter 1st Rights of Things

122

Book 2d Chapter 1st. March 6th 1834. Rights of Things Lecture 11th. Property in General, &c.

Pa 13. "This one consideration &c." Admitting that by the law of nature the estate of a man should on his death should become open & common to {all} the next occupant it does not follow I think.

123

Book II.

124

125

126

13th March '34 Book 2d Chapter 7 Lecture 14th Pa 107. "Yet sometimes the [fees]" &c. This doctrine of abeyance is not only refuted by the authorities re— ferred to by Mr. Fearne but it is opposed by reason. For in all cases of contingent grants and devises of property it is admitted no interest passes by such a disposition to any one until the Contingency happens and if all the estate was in the granter or testator at the time of making such dispo— sition the conclusion of Reason seems to be that it remains where it was, that is in the grantor or testator or his heirs until the disposition takes effect. If it never takes owing to the not hap— pening of the continingency it remains then al— ways. So far as the doctrine in the text is supported by the Common Law principle, That no estate of freehold in futuro can be created, that principle we shall see has been repealed by a Statute of Virga. Pa 107. "The word heirs &c." This rule of Common Law we have altered by a statute passed in 1785 which declares that every estate in lands which shall therafter be granted or denied, altho the words heretofore necessary to transfer an estate of inheritance, be not added, shall be deemed a fee simple, if a less estate be not limited by express words, or do not appear to have been granted by construction or operation of law. Tate 102. This statute certianly carries into effect the intention of granters & testators bet— ter than the Common Law did. Pa 108. "For 1st it was not intended &c." Blackstones {neir} remarks on this subject do not present a correct or full view of it. The rule that the word "heirs" is necessary in a grant or donation to constitute an inheritance originated in feudal structures as explained in the text. Wills not being

127

128

permitted at the time this rule was adopted, it applied in its origin only to gifts and grants to deeds, not to devises. On the introduction of devises, the governing principle in the construc— tion of which having always been to effectuate the intention of the testator, this rule should not have been extended to them. Unfortunately however it was so extended to them, & this was a rule of construction {laid down} applied to them, the unavoidable effect of which was to defeat the intention of the testator. After adopting the rule all that the judges could do was to struggle against and as far as possible restrain its operation. This they did by supplying the omission of the word "heirs" by other words of equivalent import such as a man & his assigns forever or his posterity forever or a man forever; or in feesimple. See Text. But in the progress of their struggle for inten— tion against the rigid rule of law the judges went further and made various other limita— tions and words answer the same purpose. Thus a devise of all the testators estate as all his real property, or the devise of lands charged with the payment of a specific sum or in short any words or limitations manifesting that intention, were permitted to operate as a devise of the fee. See note. In addition to the English authorities those reffered to see on same subject 1. Wash 98. 1 Call. 127. 3 H 308 1 Munfd 537, 549. 2 Munfd 453. However those authorities are only important to show what the law was before 1785, for since that time our

statute to which I have referred has done away with the necessity of words of Inheritance in wills & conveyances of lands & all other kinds.

129

130

Estate Tail &c

Lecture 15th March 15th 1834.

Pa 115. "Thus much" &c. Estate Tail existed in this State as in England in the same property with the same incidents and were bound and defeated generally in the same manner until by act passed in 1785 (3 Hen Stat at large 320) the sole power of destroying entails was reserved to the Legislature to be exer— cised by especial acts on each particular occasion. By that act all the means used in England for that purpose were expressly prohibited. In 1734 (4 Hen Stats at large) the Legislature introduced a more summary method of docking entails, by authorizing all tenants in Tail to sue out writs of ad quod damnum, & if upon the return of the writs it appeared that the lands did not exceed the value of 200 £ sterling and were not contiguous to other entailed lands, permitting the tenants to dispose of them in fee simple. After that act es— tates tail could be barred by means of the writ "ad quod damnum" if not of greater value than two hundred dollars, but if of greater value by private acts of assembly only. Thus the law remained until The Revolution. Immediately after the declaration of Independance (Oct 1776) they were abolished by statute, our ancestors thinking that encou— ragement & facilitates for the perpetuation of wealth in select families should not be afforded as nearly aristocrateal distributions would be produced inconsistent with the spirit of our institutions &

131

132

the genus of our government. Besides, the im— potency of such restraints manifested by the example of England would have induced the same cause, though the stronger motive of adopting our own cause to our own Government had not existed. The preamble of the Statute itself sets forth the reason of its enactment. It recites that whereas the perpetuation {creation} of property in certain families by means of gifts made to them &c &c. See Stat. Therefore it is declared in substance that all estates tail then in being or which might afterwards be created, should be estates in feesimple and that the tenant should have the same power over them as if they were pure & absolute fees. This law has been reenacted at various times & now forms part of our Code. Tate 201. I could easily occupy the whole time allotted for this lecture & much more in discussing this branch of the law in explaining the distinction be— tween this kind of estates & others & in showing the operation of our Statute upon them. But you would scarcely be able to have a very precise idea of the distinctions between contingent, remainder, executory devises & estates Tail, from any oral explanation I could give. It might however be remarked on this subject, that our statute only converts estates tail into feesimple. & any fees conditional therefore which the English Stat de donis did not convert into estates tail our Statute does not convert into estate fee. For the same reason, that a fee conditional might be

had in England in an annuity, it might be held here. It must also be borne in mind that qualified or ban fees were not included in or affected by the Stat de donis & consequently

133

Book II. Chap 8. Of Freholds not of Inheritance

134

are not destroyed by our Stat abolishing estates tail of qualified or ban fee may therefore be created here as at Common law. Chapter 8. Of Freholds not of Inheritance 1st What are emblements to which the principle of the Common Law does not apply They are all annual artifical product in the production of which industry combines with nature. Our Statute has somewhat modified the Common Law, the rule of which was that if the Tenant for life died before the harvest his executors were entitled to the crop of grain on the land. Our Statute Tate 244 declares that if a tenant for life dies after the first of March all the emble— ments which shall be severed before the 31st of December shall belong to his executors or administrater. & all growing on the 31st of December shall go to the Remainder man or Reversioner and that if the tenant dies after 31st of December and before the 1st of March the emblements growing at his death shall also go to the Remainder man. Ta 444. At Common Law then the Representative of the tenant for life was enti— tled to the emblements unsevered at his death whenever that happened. In this state the Representative is only entitled to them in the event of the tenants dying after 1st of March and before the 31st Decr and on the event of their being severed, before the 31st decr. If he dies before the 1st of March or if dying after, the emble— ments are not severed before the expiration of the year the Remainderman takes them. There are some tenancies for life to which this act does not apply, as the case for a ban of husband & wife during

135

Book II Chapter 8. of Freeholds not of Inherittance

136

coverture who are divorced a vinculo matrimonii after the crop is severed and before it is reaped. Our Statute would not apply to that case and it would be governed by the Common Law rule as would all other tenancies not embraced in the terms of our Statute. Pa 123 "A 3d inadent" &c. Our statute provides that if the tenant for life dies after 1st of March his under tenant shall hold the land & slaves until the last day of december paying rent & true until that time to the representatives of the tenant for life & to the Remainderman in proportion to which they are entitled and returning the slaves well clothed. Pa 128 "And this seems to be &c." Blackstone says upon the authority of Coke that the necessity of seizin results from the principle that the issue begotten should be capable of inheriting the mothers estate which it could not do unless there was a seizin. These writers seem to forget that seizin of the mother anterior to the marriage under make their issue capable of inheriting [blank space] during the marriage is required to make a husband tenant by the courtesy and consequently that sezin as are of the requisates to a tenancy by the Courtesy for at least some additional reason. Probably

the chief reason of requiring it is to stimulate the husband to litigate the rights and reduce to possession the lands of his wife lest by lapse of time and his negligence they should be lost to his wife. That this reason has considerable influence is proved by the fact that when the husband cannot acquire an actual seizing he nevertheless has custody on the ground that "impotentia excusat legem". In regard to dower also when the same reason does not hold though that given by Coke and Blackstone does an actual seizin is not necessary. At Common Law neither courtesy nor dower was allowed of trusts (1 Co Lct 559) yet Courts of Equity having early settled that trusts & other mere (...) & titles were in respect to courtesy to be considered as legal Estates. (1 Co Lit 554 & notes) by an act of our Legislate (Ta 175) passed (Octr 1785) such estates were deduced to be subject both to curtesy & dower.

137

Book II Chapter Of Dower &c

138

Lecture, 16th 18th March 1834.

Of Dower Pa 129 "Tenant in dowers &c." Dower is defined by Coke to be that portion of the husbands lands & tene ments wh on his death is allotted to his widow for her sustenance & support. Of course it does not include personal property. There are in England 4 kinds of Dower enumerated by Blackstone, dower by the Common Law, dower by the custom, dower ad estium ecclesiae, & dower ex assensia patris. Owing to these existing & owing to the alte— ration in the law on the subject of dower our Legislature have thought it necessary particularly to designate & define the dower which should exist in this State they have established that species of Dower which is {known} called {by} Blackstone, Dower at the Common Law. Tate 174 (it is defined by Blackstone). Pa 129. "It is possible &c." It is stated by Mr. Thomas the late editor of Co Littleton & on apparently good authority that dower in its present significating was first used by the Germans, from whom the English, though the Saxons derived from the custom though it was probably much modified by by the Normans. See 1 Co Lctt 569. Note 9. Pa 130 "Who may endowed". This first enquiry may be best considered by considering 1st the capacity of the man to endow. 2nd of the woman to be endowed. 3d the sufficiency of the marriage, for on then these things depends who may be endowed. First then at Common Law all men are of capac— aty to endow a wife no matter what be their age, unless they are idiots and cannot marry or aliens & can hold no real estate, or have been attainted and not pardoned. The disability of the husband has been in a great measure as far as it regards alienage by our Statutes in regard to aliens which declares Section 1. That if any alien purchase lands and before the same be escheated shall become a citizen the right of the Commonwealth shall be released to him, & which declares Section 2d that if

139

Book II Chapter Of Dower

140

any alien shall claim title to any land & before the institution of proceedings for the purpose of escheating the dower shall bona fide sell or devise the same or due seized thereof in the first case {the} his granter & on the 2d place his heir or devisee shall hold the land dischargd from the claim of the Commonwealth. Under the 1st Section the Wife of the alien is herself a citizen and would be entitled to dower after the husband had his quitted his title by becoming a citizen, and in the second it is believed the wife would be entitled against the heir or devisee, but not against the purchaser. The disabiltiy consequent upon attainder and wh out Common law extended to all the acquisitions of the husband & every marriage he might contract before he was pardoned, is entirely reversed within State by the Constitution of the United States in regard to treason & by the new Constitution and by the new Constitution of Virga & by the laws of Va generally. As to the capacity of the wife to be endowed, at Common law every woman may be endowed unless she be not more than than 9 years old at the death of her husband or unless she be an idiot, or an alien, or attainted and not pardoned. The dispability a— rising from attainder in regards women does not exist in this Country. That arising from alienage does as an act of assenbly does not perhaps in any manner reserve the incapacity of alien wifes to be enslaved. So also that arising from a want of age. 3d on the subject of marriage in [virtue] of wh dower may acend it is to be remarked as it arises from marriage, if there be no marriage there can be no dower. Hence when any of the legal disabilities which we have considered exist, the right to dower does not arise, except in case of the [disability]

141

Book II Chapter Of Dower

142

of want of age. When a marriage is contracted within the age of consent, though the parties are arriving at the age of consent may avoid it yet. If the husband does in the mean time the wife is entitled to dower, for which reason if you remember, I said this disability in its consequences more nearly resembled the ca— nonical disabilities, than the legal among which it is ranked. If the canonical disabili— ties exert the right of the wife to dower depend on whether the marriage be avoided in the life— time of the parites. If it be not the wife is entitled to dower. A question of some inter— est might arise under this head as to the right of the wife to dower & of the husband to curtesy in cases of marriage contracted within the few pro hibited degrees and not avoided within the life— time of the parties. Black Book I. Pa {34} 34 & 1 [Coke dit] 571, lay down the rule that of such marriage be not avoided on the lifetime of the parties the wife shall be endowed. But in a note by the editor Thomas it is said the reason of the rule is this "The Courts of Wesminster have not by the Common Law cognizance of matrimonial causes [but] judge of them upon the certificate of the ecclesiastical judge & it is a rule of practice in the ecclesi— astical Courts that no sentence of divorce can be pronounced after the death of either of the parties so that if no sentence is pronounced in the lifetime of the husband it must be certified to the courts of Common Law that the parties were husband & wife, though in truth the marriage between them might have been avoided." From this explanation of the law of England it might seem

143

Book II Chap. Of Dower

144

that as in this country we have no ecclesiasti cal courts and as the [disabilities] of which in England they have cognizance are here sub ject to the jurisdiction of the courts of Com Law therefore a rule (...) then in the practice of the former should not prevail here in the latter. Hence arises the doubt as to the man ner this question would be decided in Virga. But I think the law is here as it is in End for the following reasons. 1. The fact that the rule in England has gone out of practice of the Ecclesiastical Courts is extremely difficult as will appear from the remark of Blackstone in the text viz "that after the death of either party the Common Law will not suffer the Spiritual Courts to declare such marriages void" from which it would seem that it was imposed on those courts by the Courts of Laws. 2. If it did so originate after it was established it was a rule of the Common Law whatever might have been its origin & adopting the Common Law we have adopted this among many others that had a similar origin. 3. If it were not a common law rule, yet it should hardly be inferred in the absence of any provision to that effect that the Legislaure intended in committing the cognizance of this class of disabilities to courts of law which indeed was of necessity done as we had no spiritual Courts to change the nature of those disabilities in regard to their character & affect as they existed in England from wh Country we derived them. And 4th though though the reason of the rule may have ceased yet as some rule must exist, the one established should prevail unless repealed by the Legislature. For these reasons it is believed that in the case of a marriage within the prohibited degrees but not a—

145

146

—voided in the life of her husband the wife would be entitled to dower, in the estate of her husband. Pa 131. "We are next to enquire &c" The definition of dower given by Blackstone suggests almost everything important to know. First the estate must be in lands & tene— ments, therefore of an annuity says [Coke] that changeth only the person and issueth not out of any lands or tenements the wife shall not be endowed. Secondly, the Husband must have been seized of the estate in which dower is claimed at some time during the cover— ture. But a legal not actual seizin as is required to make a tenant by the curtesy will be sufficient because it is not in the wifes power to bring the husbands title to an actual seizin, as it is in the husband power to do in regard to the wifes lands. An actual seizin is an actual possession, a legal seizin is a legal possession. The use of seizin provided it be during the marriage is immaterial and so as to the duration of it, for if the husband has seizin for an instant beneficially for his own use the right to dower accrues & cannot be de— feated by his subsequent alienation, unless indeed the land be recovered from him by better title. The question has indeed oc— curred whether the wife be entitled to dower in this case. The husband brings land & immediately executes a deed of trust in wh the wife does not join. The land is sold under trust deed. Is she entitled to dower?

The question has not been decided but has been remarked on in [Moor] vs [Gillian] 5 Munfd 346 & [Whelden] vs Smith. 1 Gil 200. But in New York & Mass it has been decided

147

148

ded that she cannot claim dower provided the deed of trust has been executed. Third as to the nature and quality of the estate of which the husband must be seized, it is well settled that it must be of the (...)— (...) freehold & of the first estate of inherit— ance without any intermediate vested estate of freehold. Lec I CoLit 512. & notes. It is said by Blackstone that the husband must be seized of such an estate that the issue which the wife might possibly have might possibly inheret it & the inference seems to be that the right of the wife to be en— dowed depends on the capability of issue to inherit. These two rights although they usu— ally exist togther are in no manner dependant on each other. That they usually exist toegether is evident, since if the husband be seized of an estate of inheritance it must be such an estate as is inheri— table by the issue he may probably have. But the two rights are not necessarily con— nected since an actual seizin of the ancestor is at Common Law necessary to a descent, a legal seizin only to dower, & therefore the wife might be endowed when the issue could not inherit & on the other hand I Co Litl 578 & 582 states ca (...) in which the issue might inherit though the wife would not be endowed the case of dower in special tail stated by Blackstone proves nothing. The principle I contend for is more evi— dently correct when applied to the law of Virginia which declares that the wife shall be endowed of all tenements

149

150

and lands. Whereof the husband was seized of an estate of inheritance at any time during the Coventure, besides by our law the issue may frequently inherit when the wife cd not be endowed as in the case of marriages void in Law. The remarks on the connec— tion between Dower & the rights of the issue to inherit do not apply to curtesy. For that right to exist the issue must not only be capable of inheriting, but there must be issue [born] & thus there is a connection with curtesy which does not exist in the case of dower. The reason of this distinction was probably of feudal origin as curtesy was introduced into England with the feudal system. At Common law a woman could not be endowed of a trust Estate but by an act of our Legislature trust Estates are declared subject to dower & curtesy. On this subject see the case of Clarbourne & wife vs Henderson & others. 3d Hen & Munfd 332 in wh the ques tion of the {right} wifes right to dower in a trust or equitable estate was elaboratily discussed and decided in the negative. On the subject of the kinds of trust Estates of which the wife may be endowed, sec Heth vs Cocke & wife I Rand 344. Neither at Common Law could she claim to be endowed of an estate held by her husband in joint— tenancy, because the other joint tenants claim by [summonship] & their claim was superior to hers but in this respect also our law is dift. A statute having enacted that if particular (...) made between jointtenants the parts of those which die first shall not accrue to the survivor, but shall be

151

152

subject to dower & other charges, &c. In many cases the wife may elect of what estate the wife will be endowed as in exhange by the husband of in sales of lands by him reser— ving rents. See Ba Ab, Little Dower, Letter E. In some cases she may be endowed anew as where the land assigned her in dower has been reserved by will parsimoniously. In the subject of the right of the wife to be endowed of estates conditional determined or extinguished. Sec Ba Ab, Little Dower Letter [E]. Pa 132 "Next as to the manner &c." On the death of the Ancestor the law casts the freehold immediately on the heir & the widow has at Common law no estate in the land & cannot enter upon her dower until assign— ment. I Co Litt 584. Hence arises the necessity of assignment. As the freehold is by law cast on the heir he is by law the proper person to make assignment and this whether to be of age or not 1 Co Litt 606 & 2d Rand 418. If the heir be not in possession then it must be made by the person having the freehold. 1 Co Litt 591 & [1] H&M 368. If the estate be divisible the wife should be endowed of the third part by notes & bounds. In making this assignmen it wd be reasonable that she should have the third part in value & not in quantity, and such I confidently state the law to be not withstanding Judge Roane in a case 1 in 4 H&M 376 seems to think otherwise & that a third in quantiity should be allowed. What ever may have been the common law rule ours is dift & the difference may be owing to the

153

154

dift circumstances of the country. There a third of each kind of land is assigned. If the estate be indivisible the wife must be endowed as stated in the text, or she may have the separate alternate assignment of the whole &c. If subsequent to the death of the husband the land be improved in value by the heir or any one else, the widow is to be endowed according to the improved values. In all cases of assignment of dower the assigment should be certain & discharged of all conditions limitations &c. At Common Law if a widow were not endowed, she had no other remedy than by a suit called the writ of dower unde nihil habet or more commonly the writ of dower to re— cover her dower of the heir or the tenant of the freehold.

155

156

Chapter 12th Blackstone P. 111. &c vol 2. Of Offences against public trade

1. Owling &c. We have no statute declaring this to be no offence & yet it is no offence. Constitution declares

([Pa] 155) 2. "Smuggling" This exists here & is punished by forfeiture of vessel {or} goods, or both.

(6.) 3. Backruptcy does not exist here, as we have no Bankrupt laws.

(7.) 4. Usury, which is an unlawful contract for the loan of money.

It is declared by our Statute that if he take un— lawful interest he shall forfeit double the amount of money lent. Find the Statute in Tate 318, & a case in 2d Va Cases page [blank space] To incur this the interest must be received. The same Statute in regard to Brokers, 25 cents is lawful. (7) 5. "Cheating &c" See our Statute Tate 277. On this we have several games. At cards cheating he forfeits five times the money won, declaring him infamous, & such corporeal punishment as he wd be subject to in perjury {Tate 270}. Another subjecting a person who brings or sells to by any other (...) established who to a fine of 20 shillings, had the statute in Tate 277. Another who gains goods from another by false note to be put in pillory, imprisoned or fined. On what constitutes cheating see 2d Va Cases 55. (159.) These in our Statute like those in the Text. For stealing, Regrating &c. Punishment for the 1st offence for forfeiture of the value of things bought & imprisonment for a month

157

Monopolies, cant exist here. Legislature alone have the power of granting monopolies and if granting them they are no offence.

+ [Those coming] by land

The meat must be wholesome, & must have been untouched.

punished by imprisonment in penitentiary not less than 2 or more than 10

158

For the 2d offense double the value, & 2 months. & for the 3d offence imprisonment at discretion of judge & being put in pillory. 1st Monopolies &c. Cant exist here, as Executive have no power to grant them. {Legislature can alone grant} them [& if] Chapter 13th "Offences against Health" "The first if these is declared felony." Under this [comes] On the subject of Quarantine See 2d Revised Code 293. Persons coming from infected places within the state equally liable to those {without} from foreign places, & by land as well as sea. The Governer is authorized to direct [Quarante] superintend, & appo wt statutes. & apparent [move]. The penalty is a fine of fifteen hundred dollars.

2d. "Unwholesome provisions" Find the Statute in 1st Revised Code 551. + A butcher who sells any other unwholesome meat (animal dying by disease) &c. (excep home affair) First (...), 2d pillory, 3d fine & imprisonment & every time after six months hard labour.

5. "The last species &c." Clandestine Marriages. If the clerk without certificate to the parties under 21 issue a license, he shall be imprisoned one year, pay $1500. See Tate 415. If {the} any minister marry without license he shall pay 1500 $, & be imprisoned one year {& pay 1500$}. If he forgo a legal ban he subjects himself to forfeiture. Same penalty as forgery. Female under 12 or 14 marrying without consent of parents her lands go to the next kin who enjoy it during the in coverture. Under 12 no valid marriage. Several other offences on the subject of marriages. Any minister who shall knowingly celebrate a marriage between servants or free person &

servant without certificate from master shall forefeit 250$ for every such offence. In addition to this if it be an indented servant & the free person both serve the master a year or pay 20$. Any white man who shall inter marry black person

(...) or free subject to a fine of 30$ or six months im— prisonment. The minister is subject to a fine of 250$. If a maiden be taken by force, & the (...) it is felony.

159

x This [is] an offence Ecclesiastical court in Engd.

Regarding the [lower] degrees by affinity as consanguinuity.

+ Thus although a nephew is forbidden to his uncles wife a niece is not forbidden to marry her aunts husband.

§ {And of if thinks proper may [require] bond & several Persons going out of the state to elude the law and subject to it.}

* By this act this law alone was taken out of stat.

Punishment not less than 2 nor more 10, & is declared felony. Stat reg one, yr, allowed by late stat. See SRC 299.

x SRC 223

3d does not enact here.

160

if taken with her consent from her parents is a misdemeanor punished by imprisonment not less than 2 years, marrying her & taking her by imprisonment by 5 years. The suit must be commenced in 5 years. Ta 419. "Incestuous marriages." + The Statute has enumerated the particular cases in which it shall not take place. See Tate 309. The object of the statute seems to ennumerate & forbid all within the 4th degree by civil law computation, permanently all those in the 4th, & all higher. If this be the object of the statute all the cases are not men— tioned that are included*, but when this quesiton is taken into consideration it obscures the construction. See notes G+H in 1st Coke Lyttleton page 128. These marriages are unlawful & the parties are to be separated by the decrea of any Superior Court & the parties may be fined with damages assigned by jury §. The court may require a bond that they may not cohabit again. Persons going out of the state are equally subject to this law. This statute expressly forbids a marriage between a man & his wifes sister. This was accepted by the Legislature of 27 (See Sessions Acts 27 page 22) was made a misdemeanor, & the par— ties not separated. The repeal of the Statute applies to this case alone. SR Code 120. 2d Offence, "Bygammy" &c is felony." Our statute in Tate 47. The marrying of any person whose husband is alive is felony punished by not less than 2 & more than ten. The exceptions allowed in our act are the same as those allowed by James, mentioned in the text. By our late Statute it is declared then + the 3d exception is taken out of the case. Sessions Act 27 page 21. The third exception then no longer

exists. As under the English Statute so under ours the two first exceptions tend only to protect from Bigamy. The third does not exist. The last two legalize a 2d marriage. [3th] "Gipsies." This does not exist here, & the same remark applicable to 3d Dfences.

161

In order to make it a public nuissance the public must have a {public} [some] interest, as near a highway, then it is, public nuissance. Under this comes highways bridges &c which are misde— meanor.

He must first (...) the Court of the County. A man must get a license in order to keep as public house. The court enquires whether he is qualified, whether a good situation, [character] &c, able & has a fit situation. If a man gets a license to keep a {license} a tavern at one place he cannot be more without getting a new license since the court have to consider the propiety of the place. License renewed every 12 months, he has to enter into a bond which the [stat] reviewable, & if he does not act up to his bond he shall forfeit the amount.

The sellers of tickets in State Lotteries were also (...). The Legislature had never before given leave to sell foreign lottery, & state lotteries been only granted for beneficial purposes &c.

By an act of court [session] no lottery ticket can be sold after 1837.

Any able bodied [man] idle may be taken up & hired not for 3 months. (+) the 16th Section of Stat (...) what is an (...)

162

1.5th Species, "Common Nuissance."

Difficult to distinguish between public & private nuissan ces. Obstruction of a public road highway or stream a public nuissance because it affects a public right. So a (...) house & gaming house since it affects public morals. Suppose a man dams a dam & render the air unhealthy by stagnant water. Is this a public or private nuissance. Decided in Ran— dolph 6th page 726. It was decided no to be a public nuissance, & in order to constitute a public nuissance there must be something on the statute of highways (...) ca wh the public have an interest. See Tate 472. [67] On the subject of (...) to water Courses see Tate 426. 68. "The next species of nuissances is ale houses." On the subject ordinances see our statute in Tate 434. (4th) Another species of nuissances are Lotteries. Here all Lotteries are forbidden by Statute See Tate 282. They can only be allowed by special law in each case. The same statute forbids the buying or selling of any ticket (...) state unauthorized by Law. All foreign lottery tickets was wholly forbidden under this case. Thus the Law remained until 1829. An unfortunate change in the Law in regard to foreign lottery tickets. There any persons are allowed to sell by paying 500$ for their license to sell. See Lessions Act of 29, pas 3 & 4. SRC 324.

No authority was ever given to sell lottery tickets, but since they could not be prevented it was best to tax the vendor. The only difference is the difference of the amount for a license for foreign & State Lotteries, one being about 500$, the other only 60 or 70.

(169) "Idleness" On this subject see our statute, (168) See Tate 516, not very strictly enforced. Laws against luxury, we have none. (170). "Gaming" See our statute Tate 275. (+) The question has arisen what is a public place within the meaning of the statute?

163

{& all places where they}

or anyplace to which a person may go uninvited. The penaltly of being at Public places is twenty dollars, backgammon, chess & draughts are allowed. In private houses.

Keeper guilty of high misdemeanor, thus the (...) penal section of [Lecture].

(x) Once this a man has been convicted of playing at (...) by playing at a game called hap hazard, alias blind hazard, alias [snuck] up.

Another section prohibitig Billiards.

164

It is settled a courthouse, a jail, a church, a Barn, a [nearby] house, a house unoccupied, a fodder stack, the shade of a tree, an all public places, See 2d Va Cases 515 & 5th Randolf, 669. It is immaterial whether the party bets or not. See 2d Va Cases 77. In private houses he is allowed to play, but not to bet over twenty dollars, to be won or lost within twenty four hours. The loser or winner shall pay 1/2 of the sum above the 20$. Under this section arose a good many cases in this countya few years (...) this county some of which are reported in 5th Rando 652. Taking a chance in a raffle when the chance does not come within $20 & the person does not win it was decided did not come within the Statute, unless the person taking the chance wins the prize in which case it does come within the Statute. When two persons divide the prize, when it amounts to more than twenty dollars, it has been decided does not come within the Statute. Faro Banks. See 17th Section of our Statute. Great inconvenience in enforcing this Statute, As the Statute relates to it ABC or EO Tables or Faro Banks. When (...) gaming table was of one kind, as it forbids any table of the like kind. Recently the Judges have laid down a power. It was decided in a case reported in 6th Randolf, 694. ithan it is only necessary for a game to be played which has une— qual & then unequal chances are in favor of the Exhibitor, comes within the Law. Can no longer be deceived by names (+). As to the punishment, such keeper shall be on convinction be sentenced to the penitentiary for not less than one nor more than five years & subject to a fine of 500$. This is the only misdemeanor punished by penitentiary, & by a late law (see Sessions Act 28, &c a 28) the Exhibitor is confined in a Public Jail not less than two nor more than eight years. Examen to end of Chapter 13. SRCode 286.

165

The reason on which this is placed though plausible is erroneous & unsatisfactory. If this were the (...) one a mo.

A person becomes that person if he committed the crime would only have been sent to the penitentiary.

& (...) which should induce a man to suffer a small injury than prevent it by death.

§ This right is independant of Society.

The reason why a man is justifiable in killing a man in the day & not in the night is because at night he can not identify him & has no means of address, or proceeding against.

166

Chapter 12th Blackstone, 2 Vol, Book 4th, p. 110

Of Offences against Public Trade, treated of in the last Lecture.

Chapter 14th. Blackstone 4th Book, 131. Of Homicide

Page 178. Three kinds of Homicide, justifiable, excusable, & felonious.

Justifiable Homicide of divers kinds. For one uniform principle &c. Refers to Locke &c. The Law appears correctly laid down, the reason, # the right to prevent by death any crime which if com mitted would be punished by death, seems to be incorrectly laid down. If this reason were correct a man violentely assaulted by lunatic would not have a right to kill him since the lunatic would not be culpably punished. Again of this be the correct reason, no man would be justifiable in this state in killing a man attempts a robbery in the night, because these crimes are not here capitally punished. Again if this be true if the charge of murder to the punishment of # penitentiary, no man would have a right to kill a a man would have no right to kill a man who tried to kill him since he would be inflicting a greater punishment than the law would have done if the person whom he killed had killed him.

On what principle does this law rest? It rests on the inherent right of every man to preserve that which belongs to him by those means necessary for the attaiment of the object. In a state of nature the exercise of the right should be restrained by benevolence #. In society it is further restrained by law, since it is not necessary to inflict death therefore not allowed {in society}. But where the injury is of such a character that no adequate address can be afforeded, such as robbery, attack on life, being known in all these cases his natural right is revived (§) & exists unrestrained by laws, in full force, & is wholly independent of the punishment which would have. (182 & [1]88) "Excusable Homicide of two sorts, misadventure or self preservantion" Ta. 127. Acquitted here in both causes. By our Law a man is acquited who com mits homicide in these two cases, & for our law See Tate 127.

167

By our stat, see Ta 126.

In England {manslaughter homicide} Involuntary killing is distinguished into manslaughter & murder, acending as it occurred from trespass or felony. By our law Inovluntary manslaughter is justifiable homicide & is excused, here it results from trespass. Suppose it results from felony, in the Text it is said it will be murder, under our Law it would not in all cases be murder. If the act

from which it proceeded was atrocious it would be murder, if not it might be manslaughter. The Stat does not lay down the distinction.

The assault of a slave free negro or mulatto with intent to kill he may be considered by late stat as a felon & punished with death.

At common law every homicide committed with malice was murder & is punished with death.

[provoke] the fight, took unfair means

= Our legislature followed the example of Pennsyla: slaing, lying in wait, (...), (...), &c.

168

"Felonies homicide" &c. [No] forfeiture accrues in this state, & no punishment (Est) but pass to his legatees distributees &c as if he died from any other cause. The other The other species of homicide of killing another man are not of grades of guilt. Murder & manslaughter voluntary & involuntary manslaughter, Ta 126. Voluntary manslaughter shall be punished by con finement not less than 2 nor more than ten. Involuntary manslaughter occurs in consequence of some unlawful act. Voluntary manslaughter inconsequence of some {voluntary} lawful act. Our Law has changed {manslaughter} homicide in regard to trespass, & has put it under the head of excusa ble homicide. Whenever no felony has been committed it is involuntary homicide. Where it results from a felonious act our Statute does not determine whether it is manslaughter or murder, but authorizes the attorney to waive the felony & proceed against him as a misdemeanor. If the act were mala de see it would be probably murder. If the act be malum prohibitum the act would be probably manslaughter. If a flagrant crime murder, if not manslaughter, this distinction better.

4# "Wilful Murder" killinb with &c. The grand charateristic of murder is it is com mitted with malice expressed or implied #. It is sometimes difficult to distinguish between manslaughter & murder, but in many cases the malice is hard to be shown. Take for example a man's killing another man in an affray, if he did not provoke the fight, did not (...) it is manslaughter, if he did (#) it is murder as malice is implied. But according to this no difference was made between the different degrees of atrocity, all being involved in the same punishment. =Our Legislature haved distinguished murder into two degrees, see Tate 125. Death the punishment of the first. Imprison ment not less than five & more than 10 years. The object of the Statute was only to graduate the prisonment & not to alter the Common Law punishment. The most striking instances of

169

so also of a person in resisting an officer were to [kill] him without having intended to as so.

Pa 198, murder of Bastard children, concealing its death. The objections are very firmly expressed by Mr. Jefferson in a note to a criminal code which henhad for this county. 1st Vol. Jef Mem 12. In consequence of the injustice of such a law we have no survivors enactment to

pa J in our code. A woman chagd with the murder of her child held as others, concealment a fact which the jury must weigh it.

Our Statute in regard to duelling you will find in the Statute of Sessions Act, & this was made to apply both to the parties fighting, but also to the surgeons & those bearing the challenge.

170

wilful deliberate malicious homicide is murder in the 1st degree. It enumerates the umost [striking] cases, all others then constituted murder in the 2d degree. The first class includes the more aggravated cases of murder of the Common Law. The 2d degree although exhibiting some malice, yet not atrocious enough for deliberate murder, took it out of the degree of manslaughter, & (...) distinguishable from it in the Statute. Instances of the first are enumerated in the statute. In the 2d a workman's throwing a piece of timber in a street where men are passing without giving notice, so a person resisting an officer were to kill him without intention, both of them though murder at Common Law in first degree are under our Statute murder in the 2d degree. # We have two distinctions 1st Whether murder or man slaughter. & we have then to determine whether murder in the 1st or 2d degree. The cases you will find in 2d vol of Va cases 287, 278. [6 in] Randolphs Reports 721, 1st Leigh 598. The premeditated design to constitute 1st degree need not to have existed for any length of time to constitute murder of 1st degree. If formed before the act, after time for reflection & thought. In the indictment of the killing must have been charged with malice aforethought, no [insti— tution] of words will answer & see 2d Va Cases, page 70. On Duelling, &c. (198). You find our statute on this subject in Session act of 31, p. 103. 103. Petit Treason. These ways, Ta 126 punished as other kinds of murder. Our statute see on this subject, Ta 126. Examine end of Chap. 14.

Chapter 15th Blackstone Book 4th p. 151. Offenses Against the Persons of Individuals 1. Mayhem. "By the ancient law" &c See our Statute in Tate 129.

171

out of tongue, nor ear or lip, put out eye, shoot or stab. with intention of injury, or that the party was disabled, if (...) of the

need not prove all the intentions, anyone either maim, kill injure, &c.

Thus when it is a crime for an officer to embezle money, here the offense enters into the crime and it must be shown he held that office.

We have reenacted Stat of Phil & [Mary], we have as punishment imprisonment only. The distinction between this inferior offence & the 1st is the 1st the force.

172

the punishment for mayhem is not less than one nor more seven years, two years by recent statute substituted for one. The indictment must charge the party with disabling by the injury. See the decision in 2d Va Cases 199. If any of the specific acts were enumerated the disa— blity Mr D thinks need not be mentioned. It has been decided that an indictment to injure, hurt

maim and kill is good. May do all or either, no ma lice need be proved. This species corresponds to mans laughter. This the 1st Section of Statute. Section 2d Statute. "Who ever shall voluntary, malicious." "Punishment not less than two nor more than 10 yrs." For a white man to come within this section malice must be shown. This corresponds to murder. 1st Leich 417, decided in. In a case 1st [Leitchs] 417 if death insued from mayhem, the homicide wd have been murder. Both Sections declare that the offenders shall {on being} if free, be felons. It was therefore contended {decided} in 2d Va Cases [318] that the indictment shall state whether they are free or not, for this doctrine to be true. The description (#) must enter into the crime. According to the court, the question has been raised whether it is felony to mayhem a slave. The question arises from the Statute's giving a right [of] action to the party aggrieved, now as a slave cannot sue, hence doubt, whether mayhem could be committed on slaves. In both cases the Court decided that slaves were persons on whom it cd be committed. 1st Va Cases 184, 6th Randolph 660 on whom.

(08) I refer to our State Tate 418. The Constitution of ours similar the English, the punishment confinement penitentiary. (09.) "It is held that a woman taken &c." See 2d [Starkee] 710 for authority. We have reenacted the statute of Wm. & Mary, with this difference ours prescribes the [taking] away with her consent imprisonment for 2 years, taking & marrying her imprisonment for 5 years. Tate 419 The forfeiture of lands takes where a girl marries between 12 & 14 against the consent of parents & guardians. (10) See our Statute Tate 127 on Rape. The punishment is confinement not less than 10 nor more than 21 years. With a slave it is death. By a recent statute it is death for a free negro or mulatto to attempt it.

173

The civil magistrate may commit the culprit to prison He {may} [until] the demand be made if within a reasonable.

Grotius says all those which strike at public safety, among which Ch Kent include, those which strike deeply at the root of public private property. 4 (...) Chany Reports 106.

= A child vs

174

(12) Statute of Elizabeth reenacted by us, See Tate 227. Punishment in the Penitentiary. Buggery. Death in a slave. See our statute, Tate 128, & 1st Va Cases 307, 20 Va Cases 235 on Rape & buggery. These

(16) In a case of 2d Va Cases 227. If two persons charged with an an {assault or} affray & acquitted on the ground that [it] was on the part of one & not of the other they are both innocent. If charged with assault & battery when one is acquited of affray the other may be chagd with assault. See our Statute on assault, makes it felony in any slave attacking white person with intent to kill SRC 247. (18) "The two remaining offences & crimes against the person." See Tate 133 for delivering up foreign fugatives. The act which this statute was intended to prevent delivering persons up without authority, after having fled from their country. Persons should be delivered up, but not until the foreign Government has made

appreciation until that no, & then the crimes for which they shd be delivered up are not particularly defined. 4 John Ch Re 166. Public safety. (19.) "Kidnapping." See our Statute Tate 131. Punishment not less than 3 nor more than 8 yrs stealing or selling a free person comes within the statute. 1st Leigh 558. It was completed in stealing without the actual sale, & the stealing a free person with intent to sell it is immaterial whether he knew him to be free or not, as stealing is a crime, but if he come honestly into possession of him ho— nestly, knowledge of freedom previously is necessary to make it criminal. = The taking away a negro child who is free is not lessened by the consent of the child. The sale of a free man by his own consent is not felony, & does not come within our Statute. Decided in 2d Va Cases 144.

Chapter 16th

"Arson" (...). See our Statute Tate 128. This punishable by death. If a free person in accepting shall be implied not less than 10 nor more than 21 yrs. Slave death. Our law extends the Common Law. Any person who shall and assist or abet in setting burning or setting fire to any house in town is Arson, & felony. In town, any house instead of a dewlling house.

175

176

23. "Burglary" See Tate 130. Confinement in Penitentary not less than 5 nor more than 10. Adopt the Common Law for explanation of the term. Examen end of 16th Chapter.

Larceny divded into 2 sorts &c" Until 1824 the stealg of 4$ constituted grand larceny & under petit larceny, at that time grand larceny consists in stealg of ten dollars & upwards, & in regard to slaves mulattoes &c another distinction is made, in regard to them petit larceny consists in the stealing of under 20$, grand, over. SRC 242. 3 Pa. 230. The distinction between breach of trust & law has often been conceived as an authority. Why is it that here Punishment neither is nor ought to be proportional guilt. Its justification & deduced from prevention of crimes, when punish ment is not necessary to prevent a crime punish ment shd not be inflicted. Such is the case here although the principle in consideration of greater guilt which attends breaches of trust. Courts seldom consider the fraudulent waste of another goods into breaches of trust. Preferring that these shd be punished as larcenies. 2dy they consider the original {possession} intention in selling possession. & if they took possession with intent to steal, they will not regard the possession as a trust, nor (...) it with the privileges of a trust. 15 [Senyt] & [Raute] 93. This does not include the 3d Counts regard the circumstances attending & preceding the conversion, & if the time at wh it occurred, & if from when they can imply the termination of the trust before the conversion occurred. They determine it to be larceny. The cases therefore in wh the conversion of another mans goods into a breach of trust, are reduced to those in which the offender has a [qualified] property at the time of {possession} conversion.

177

178

and an actual possession acquired without a felonious intention.

179

[An upside-down and diagonal autograph at the bottom of the page which reads] John W. Stevenson

180

181

182

Lecture June 21st 1834. Saturday.

In cofirmation of principle our [law] on Forgery. See 2 Va Cases 476 For punishment for forgery see our stat, Tate 106. For a [cause] (...) state &c without consent of owner is felony. See Tate 132. Concealing last will or codicil in order to defraud any legatee &c is felony, & death in a slave. Tate 138.

If any free person shall be convicted of any offence which was clergyable, he shall be imprisoned not less. Ta 143. 41. If not clergyable the principle of necessaries shall be punis: by confinement in penitentiary not less than 2 nor more than 10 years. Ta 142. At Common Law an accessory could not be tried until the principal had been convicted &c if therefore the principal stood mute, the accessory remain unpunished, in order to remedy this if the principal offender shall be convicted within being attainted, or stand mute, in all cases the accessory shall be proceeded against just as if &c &c. For a case here, 2 Va Case 211. For every third offence the confinement for life. 1st RC 619. (Crime) Punishment out always prescribed as to the free negroes & slaves, general rule shd be known. Diffic whenever or even after which person is punished by death so are they. 2. When {eg} free whether punishment are (...) punishment {by} [prepunishment] in jail &c so are for black persons, slaves by burning in hand & stripes. (3) Whenever white persons confined for not less than 2 & men free black not less 5 nor more than 18. & Slaves are punished by burning or death. Ta 165. Chapter 18. By a stat of the stat Judges of Supr Courts & Gen C & writs of appeal are considerations of peace & justices of peace are considerations of peace whether then [comits], Coroner, Sheriffs &c are so ex officio. By consideration of peace may bind any one who make a threat in their presence was to (...) peace, except sheriff Coroner. It seems in 1st Leigh 586 that justices can recognize them (...) appear in their own Court. Other Judges might make them appear in either. The stat (...) Judges &c as considerations of peace authorized them to demand of persons of Bad fame surety for their good behavior.

183

184

Chapter 19. Of Courts of a Criminal Jurisdiction.

This does not extend. By Constitution of US impeachment vested alone in our H of R. & trying of Impeachment in Senate. The judgment of Count of impeachment extends to the capital offence of the offender, here extends to disqualification & removal, & Mr. D (...) give our courts. 1st

County Courts already seen limitation. They possess power criminal jurisdiction. Of the 12 terms 4 are quarterly. Persons to then the sheriff summons 24 of his county men whenever Ta 381. Although Engd Jury can prevent all kind offences, yet Court can only where misde— meanors, by an exception petit larceny is cognizable in County. SRC 278. Crime of a higher grade than petit larceny & a misdemeanor not tried by county courts. the (...) County Courts have no criminal jurisdiction whatever, only Quarterly terms. Ta 324. In regard to slaves, the power of County Court (...) deft. The Justices of every county shall be not less than 5 Justices. All justices must agree, & no Justice having interest in slave shall sit. Corporation Courts possess the same power as County Courts, & same (...) apply. In writ of error lies in a County Court ordering a slave to death. Until lately a free negro was entitled to a Jury. (...) in case of homicide as (...). SRC 248. 2d Spears of County

Ta 380. This jurisdiction of Court misdemeanor with that of [its] grand jury.

185

186

3 General Court. Its criminal jurisdiction is original or appellate. Justices of peace and (...) to supply notes &c take down proceedings. If the Justices & Sheriff neglect their duty the Civil Court shall try them. This is its original jurisdiction. 1 RCo 556. 2d They shall try all high treasons (...) & except [persons] & officers on high (...). (SRC 135. Ta 315. 369. 2 Va Cases 172) If any Judge of this Genl Court be charged with any crime he shall be tried by Civil Court, unless it be by impeached. Appellate Jurisdiction. Questions of law by [count] if criminal, a Judge. The Genl Court is authorized to award writs of error in criminal cases, where by a final judgment of Supr Court the person has been convicted. Ta 370. Besides them there are United States (...) (...) in this jurisdiction. United States [ended] in 31 dis tricts. In N York Pen & (...) district, [there are].

[Gord]Digest 105.117.

h States divided into 7 counts.

187

188

Stat on Contempt see S.R.C

189

190

Chapter 21 of Arrests &c.

Pa 291. Genl Warrant. Our Bill of rights declares that general warrants are grievous & oppressive, & ought to be granted. Warrants issued by magistrates here would not extend out of the County, are granted by judges they would grant them might be excecuted throughout State. If an offender flees to another County the magistrate of that County can cause him to be

put in Sherriff's hands. Ta 154. Pa 292. Note no time or place protects an arrest in criminal or in civil cases. In execution of criminal warrant, may break open doors. 1st (...) the cause of his coming, & demand admittance 4 words of arrest. "Here & orig," Tate 109. The only cause in which reward is offered by statute is that of Horse Stealing, if the theif be convicted entitled to a reward. of 20$. Ta 134. Chap 22. Commitment to Jail. Any charged with any trason murder &c if in the opinion of Justices he is guilty he shall commit him &c & take a cognizance ass all the evidence to offence at a certain time, he shall by his warrant commit the prisoner order Shriff at case 8 of Justices to assemble in so many day after wards to act as Examing Court. [Plait]. There shall be let to bail not committed for crimes punishable by death or penitentiary. If the crime is punishable by death or penitentiary shall not be admitted by any justice in or out of Court. Any Judge of Court Genl may admit to bail any one. Now admitted after

191

192

conviction by anyone. Excessive bail anyth to be required. Of modes of Prosecution. One have seen it in duty of Justice of Peace to take a cognizance of all material witnesses, to have him committed, & to have an Ex Court in 7 or 8 days, & may be discharged or further committed by them, & he may be tried in Corporation or Supr Court. Ta 148. If the Ex Court fail to meet all the (...) cognizances shall be obligatory until next county court. Ta 150. [Court] have proven for good cause shown to adjorn, provide they (...) it until next term. The county court having power to continue examination until the 3d term. In all causes (...) he shall be tried by Examg Court unless dispenced with (...) himself. Although the Ex Court has power of acquittal, has not right of distinguishing between grades of offenses, except so far as the discharge of its duty. But in regard to Petit Larceny, Burglary, the court may distinguish, necessary because on it depends whether he be sent on to County or Supr Court. 1 Va Cases 188. It should appear in record for what [fact] the prisoner is remanded. 1 Va Case 271. If it appear by record for what fact he was sent on he may be held for (...) contend under fact. 6 Ran 685. & 2 Va Cases 396. Not necessary the offence to be [documented] in the record with the accusing as in indictment, only to place as to show the Court to judge whether he was under fact, or (...) under fact. 2 Va Cases 297, & 4. Five days between (...) of magistrate must be exclusive 2 Va 135 of both, or exclusive of one & inclusive 2 Va Cases 135 of the other. No man can be kept in jail more than 10 days, & never

193

.S.T. 1860. X

194

[quartered] after discharged by Ex Court. 308.

195

196

John W.

Civil fundamental

Civil Rights Real Privacy fundamental fundamental Public Crimes Crimes &c Crimes VC

fundamental fundamental

fundamental fundamental fundamental fundamental fundamental fundamental fundamental fundamental fundamental Laws & Principles

197

Rights of Persons &c "Persons are divided &c" In connection with this explain auther Blackstone has divided them due to & [form].

To this arragment no objection made, all capable of division into perfect and imperfect. When fixed & determined a perfect, when vague &c. indeterminate imperfect. To take an example master & sert, Parent child. Where no law (...) from (...) his right with execution perfect, where it does restrain, or (...) it is perfect when (...) don't in (...) on others. A man has right to defend his life when there unauthorized attempt later it. [On] the other hand. A mans (...) may expect it to caused some to get things from others, does not give them the right to take from the others. Perfect rights thus found & determinate & wh my be ass. Imperfect rights vague & indeterminate & cant be asserted without violating those rights of other man. The only explain are if {perfect rights of man}. This laws of necessary Perfect rights enforced & Man Law. May 129. The great object of every Commitment to control then has it excuse & that they may continue the servants & not the masters such object of Polit Liberty.

128. Security of Absolute right, &c In this Country we dont hold our rights by so frail as (...) as Charters.