Student Notebook: Robert J. Washington
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R. G. Washington U. of Va. Jany 8th 1861

Senior Minor -- Vol. 2nd

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1 Lecture XXXVII. Thursday Jany 3rd 1861

We will explore now the meaning of the terms — Judgment's "by nil dicit." "Non Sum informatus," and "default of appearance" are all called Judgments by default — tho the last is generally called default of appearance. Judgement by "nil dicit" is where one appears & says nothing — or else pleads and then at the subsequent stages refuses to rejoin. Judgement by "Non sum informatus" is when the Deft's attorney appears and says that he is not informed of what to say in behalf of his client — therefore judgment goes against him. Judgment by confession is where the Deft's acknowledges the Plt's demand in whole or in part as agreed

upon. If he acknowledge the action it cures all the errors in the proceedings. Judgement by default of appearance is when Deft. appears not at all. It is entered most frequently in personal actions, because a man will not employ counsel &c. if he has no hope of gaining the action. They are as common in personal as in Real actions. In England confined to Real actions. It is necessary to know whether there must be, or must not be a writ of enquiry to ascertain how much judgment ought to be given for. The Judgments are generally interlocutory Judgments, when they are always necessary. It is important to know when to issue a "writ of enquiry". If the amount is certain & the liability of the party certain upon the face of some writing a writ of enquiry is not necessary — in all other cases, it is. In an action of Covenant, or assumpsit it is necessary — a [fortiori] must there be in all actions of tort. A writ of enquiry is necessary then in all actions, except an action for debt on a written promise for the payment of money signed by the Deft. — or upon a judgment, or Recognizance. If you can [bring] into Deft. and Covenant, you had better [bring]

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Deft = because in this case a writ of enquiry is not necessary whilst in Covenant it is always necessary, and the Ct is sometimes so pressed for time that it cannot either impannel a Jury to try the writ of enquiry, or for the Ct to look over the papers in the case, so that you would have to wait a whole term before gm got the benefit of your verdict. At C. L. there must be a writ of enquiry on an action against any endoser of negotiable paper a Drawer of Bill of Exchange, because their liability is not prima facie upon the face of the instrument. The Va. Stat. despenses with this. In reference to the writ of enquiry see Gilmer 191. 4 Rand 152. 2 Washington 181. 2 Call 238. [6] Munf. 454. 5 Rand. 327. 7 Leigh 175. [L.],C. 652. If the Clerk enters trial Judgment without awarding a writ of enquiry when one is necessary the cts. say that this is a Clerical error, which may be amended even after subsequent term of the Ct. 1 Leigh 175. Mr. Minor thinks that this rule established by the Ct. of Appeals is [wrong] and thinks that such a mistake would be a Judicial one, and not one capable of being conected under the Statute of Jeopaids. The writ of enquiry is tried in the same ct where the action is pending. At the next term after the order is made by a Jury, but the ct may if either party desire a Jury asess damages & [give] judgment. Judgments that maybe entered in favor of Deft. against the Plaintiff. 1. Where the plaintiff does not prosecute his suit "Non prosequitur." 2. "Nolle prosequi" — when the Plaintiff enters on Record that he is unwilling to prosecute his suit any further. 3. Non Suit — Is where after the Jury is impannelled the Plf. abandons the suit. In Va. we make no distinction between these 3 Juds.

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5 and call them all "non suits." If at any time before trial the Plf. abandons his case, we call it "non suit" and the Plf. has to pay $ 5.00 to the adversary besides the costs in the case. The "non suit" puts a premature end to the cause, but does not bar another action in the same cause. But in [Retrax] it, the Plf acknowledges that he never had any cause of action, and after that, he cannot sue again in the same case, in this case he pays no damages, only costs In England it is customary fr the ct to direct the Plf. to suffer a non suit, but in Va. this is held improper, alto' the ct may intimate it to the party, still of the party pleases, the case must be tried. 1 Washington 89 & 219. Our Stat. directs that a non suit shall be allowed the Pet. before the Jury retire from (V. C. 672. 10) the Bar, and not afterwards. And the Deft. may require the filing of the Declaration or Bill, if it is not filed at 1st rule day, and if the Pet. fail to do this at the succeeding rule day, or shall at any time after the Defts. appeareance fail to (V. C. 677. 5.) prosecute his suit, he shall be non—suited and shall pay the Deft. $ 5. in damages and his costs. [Now] in reference to Costs. It is reasonable that the party who succeeds should recover his costs. The costs are to be recovered by the party, who substantially prevails. In England the manner of ascertaining the costs is very complicated. In Va. the clerk generally taxes the costs down to the time of the execution issues, and puts that in the execution. As to the Sheriff's costs, he takes them himself, & adds them to the amount he is instructed to levy [fr.] (V. C. 705.3, 8, 9, 11) The costs are generally to be awarded to the party substantially [prevailing] against his adversary (11 Grat. 22) not withstanding that adversary may not appear in the Record, provided the suit is for his benefit.

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7 In all motions, other than motions for judgments for (V. C. 674. 20.) money, and in all interlocutory orders, the ct may (2 Lom. Exes. 580) return or give cnts. at its election, and in Cts of Equity the cts have power over them, but in the Appellate Ct cost must be awarded to the party who prevails. Costs awarded against Personal Reps. or against the Committee or a Lunatic or convict in the Penitentiary are directed to be paid not only his own estate, but our the Estate of the Decedents unless it shall appear that the suit was owing to his (Pers. Rep &c.) imprudence, when he himself will have to pay all costs. It has long been the custom both in Va. and in Eng. for the cts to refuse costs altogether or to limit them, to discourage frivolous and vexatious suits. The Va. stat. provides that in any personal action not on a contract, if the Plf. get a verdict for less than $ 10.00 he shall recover no costs, unless the Ct enter upon Record, that the object of the action was to try a right, other that the right to damages, or that the [mony] was malicious. It also says that in any personal action on contract, if it is ascertained either by the party's own showing, or by the verdict of [deny] that less is due than $ 20.00

exclusive of interest. The verdict shall be for the Deft., unless the Ct enter a secnd, that the matter in controversy was of greater value than $20.00 exclusive of interest. (C 70 C. S 12—16) In which case it may give Judgment [for] Plt. on (C. 689. 184.) what shall appear to be due him, with or without costs as it may seem right. The privileges extended to poor persons to sue in "formam pauperis" is to be judged of by the Ct. and includes the services of counsel as well as officers of the Law, and those services are not paid for, except by what may be recorded by costs from the other party. The demand for security for costs, may

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be made of all non—residents Plaintiffs except pauperis. The motion maybe made by any officer of ct. or by Dept., and unless security is given within 60 days (Robinson 1. Ed. 388.) wthe Clerk of the Ct. or the party be proven to be a resident of the State, the suit shall be dismissed (2 Tucks Com Bk 3. 232.) by an order of the Ct. In real actions at the death of the party, the action is revivable against the Heir and Devisee provided they have some interest. Executions. See Bl Com Ch. 8 &c. Change of parties [to a] suit, occasioned by death or marriage is praetermitted by both Bl. & Lt. At C. L. the death of either party pending the action abated the suit. It might be renewed against the Persl. Reps. of Decedent, provided it was such a suit, as might have been brought against him originally, all actions ex contractu were revivable, actions for torts were not revivable against or by the Personal Reps, the maxim (1 Saunders 21 C. A(n. 1).) being "actio personalis mortitum cum persona." 3 Bl Com 302. Upon this doctrine [innovations] have constantly been made. Until we now have it a rule that Persl. Reps. may sue or be sued, not only in actions ex contractu, but also in all ways done to the Estate of the decedent. But this is not so if the [suit] is done wthe person of the decedent. At C. L. if there were serval parties, and one died the action [removed] to or against the survivors. So (C 656.2) it is now in Virginia. Marriage of a woman at C. L. seemed to have had the same effect as death wh. abated the suit, but in no case, so that you might not renew the suit against the Husband or in case of an insane person, or a convict in the Penitentiary, the suit may be renewed against the Committee of the insane person or convict in the Penitentiary. The occasions upon which [our] Stats. contemplate a revisal of

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action. 1. When a party dies. 2. When he becomes a convict of Felony. 3. When party becomes a Lunatic. 4. When a female party marries. 5. When the (...) of the Personal Reps. or committee of a Lunatic or convict cease, if either of these events occur after the verdict, judgment may be entered, as (1 C. 55 C. 1) if it had not occured. At any time you may have the order made, and at any time you may have it entered, without reference to Rule days. How Revival is effected. It is by means of a Scire facias against the Husband &c. by which he is called upon to show cause why the suit should not be proceeded with, in the name of the new party. In case of Plt. it maybe done with or without notice, or scire facias. by motion. And if no sufficient cause be shown against it an order shall be entered that the Ct. proceed according to such scire facias or motion, and the case shall proceed for or against the new party just as if the case had been pending for or against him before the Scire facias. If there be no application made by the committee. Husband. Persl. Rep. Heirs or Devisees of the Plt. or Appellant for such Scire facias. or motion at or before the second term after the date of the application or motion, the suit of such Plt. or Appellant shall be dismissed unless for good cause (...). Chancery Causes In Chancery Causes, when on account of the great number of parties, some of whom will always die, marry &c, the cause is continually [interrupted] and cant be proceeded with a very wholesome provision is made by [our] Stat. which declares that in any cause in Equity, where the [number] of

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the parties exceeds 30, and one of them marries, dies & the Ct may proceed to decree if in its opinion all classes of interests are represented and no one be prejudiced. Executions 1. Circumstances which attend the issuing of executions. Executions can issue from into cts of Equity & of C. L. By old English Law, the Cts. of Equity enforced their decrees by punishing for contempt of ct. and did not issue executions at all. Executions can only issue from Chancery when the decree is for some specific property or money, & not to do a collateral thing. If good reason be shown for it, the Ct shall allow all Execution at any time during [the] term of the Ct. at which Judgment was given but in general it is the rule that after the 15th day of the lerm, it may make a general order allowing executions to issue, in Judts & decrees after 10 days after their date. Altho' the term be not ended. But if the Ct does not sit 15 days, the Executions cant issue generally until after its adjournment. Lecture XXXVIII. Saturday January 5th 1861. Executions Executions are expected to be issued out, within 12 months (V. C. 710. 12.) after Judgment tho they may be obtained long after that time by a Scire facias on an action in the judgment, or without any process at all. as a matter (when it is issued) of course. The issuing of an Execution means the (limited to 10 years) Clerks preparings of the Execution ready for the Sheriff. If within the year an execution issues which (of return made) means the making out of the execution and signing (to 20 years) it by the clerk. Other executions may be issued out

within 10 years, and if the officer makes a return on it within 20 years, and in reckoning this time you leave out all the period during which

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the Plt. is disabled form issuing the execution, either by insanity &c or by injunction. When it is necessary to resort to the Scire facias, or action of debt, these proceedings must be limited to the like periods of time. When the suit is against a Personal Rep, you must proceed within 5 years from the date of his qualification. The execution must correspond with the Judgment in all material points (as e.g. names. amounts &c.) for it is given to enforce the Judgment. And if at at any time there is any irregularity, it may be quashed by the Cty. Ct. form which the execution issued, or of in the Circuit Ct. by the Judge in vocation. If the Judgment is against several jointly, it must be a joint execution against all, tho' the Sheriff may execute it upon any he pleases. And if one party is principal & the others [subordinates] generally the Sheriff will levy the execution against him alone, (C 711 — S1) if he has enough property to satisfy it. Change of Parties. If there is but one party and he dies or becomes a Lunatic &c after Judgment & before execution issues, the suit must be revised in the (C 656. S.3.) name of his Personal Rep, or committee &c before the execution can issue. If there are serval parties and one of them dies, or marries &c, the Judgment [carries] as to the others, and execution issues directly.

In any stage of a case, a Scire fascias may be sued out for or against the committee of any insane person &c., to show cause why the suit should not proceed in his or their name. If the death occur after execution issues, no notice need be taken of it. The same general rule applies in case of marriage of female party, & other changes. Whence Ex execution ought to issue. Generally from the Ct. which rendered the judgment. But that directs that in case of appeals

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17 from the Cty to the Ct. Ct, the Ct. Ct is to issue the execution. But if it is an appeal from the Circuit to the District Ct or Ct of Appeals, the case is remanded back wthe Ct. Ct and it will issue the execution. The execution is directed to [run] in the name of the C. W & to be tested by the Clerk addressed to any sheriff or sargeant in the C. W. to be executed, and he can serve it on his Bailwick. The suit is not invalidated by being addressed to no one: (C 642. S 2) or by being addressed to one, and served by another. It is returnable just as an original process within 90

days from its date, to the Ct. on the first day of the term, or to the Clerk's office, on a rule day. A party is not restricted to one execution only, he may have as many as he wants, upon payment for all of them except one, but it is at his peril, if more than one of them be executed, in which case he would be liable to the Deft. for harrasing him with more than one execution. V. C. 715. 21. The several kinds of Execution. Mode of proceedings therewith, and the effect thereof respectively. A little consideration shows one that there must be several sorts, in order to meet the different cases: E. g. They must be 1. to recover specific property. 2. To do some specific thing. 3. To pay money. As to the 1. the C. L. made a distinction between recovering the seisins and the possession, viz: Real personal property. To secure possession the Execution was "Habeas facias possessiomem" i.e to recover a term of years. While to recover a freehold, the Execution was "Habeas facias seisinam." The C. L. had no adequate writ to recover Personal property as to the 2. to compel the performance of a specific thing. 1. The execution in case of a nuisance was "Quod Nocumentum [amoreatur]", and if any thing else is to be done, the suit was 2. "Distingas" whereby the Sheriff distrained the Deft & his lands

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19 until he did what the Ct adjuged what he ought to do. 3. To pay money. These, both at C. L. and now, are the most important. The first writ was "Capios ad (1.) Satisfaciendum" more commonly "ca. sa" which was a precept to the Sheriff to take and safely keep the Defts. [body] to satisfy the Plt's demand. The (2.) second writ was "Fieri Facias" - commonly "fi: fa", & was a precept to the Sheriff to cause to be made out of the goods and chattels, such a sum of money to render to the Plt. what he has recovered against the Deft. The (3.) third writ is "Levari facias", a precept to the Sheriff that he cause to be levied out of the goods & profits, the (4.) debt therein named. The fourth writ was "Elegit", this is not by C. L. but by Statute of 13 Edward I for it is only by that Statute that a creditor could charge the Debtors lands, and even by it, only one half could be charged, the other half remaining as a security for services due the Lands. The writ that was used in these cases was called "Elegit", and was against the Lands & profits of 1/2 of his freehold lands, except only [unk] cattle.

All these are C. L. writs except "Elegit," which is by Stat. of 13 Edward I. The Va. Statute has modified these C. L. ones just in accndance with the advances & changes in Society. The writ of "Levari Facias" is wholly abolished. Also the writ of "Capias ad Satisfaciendum," except in rare cases. These executions are like those at C. L. viz. (1.) To record specific specific property, & to record Real property. 1. A writ of possession — but the Statute does not say that ym can not have the writs at C. L. At the same time the Sheriff takes a writ of "Fieri facias" (C. 702. S. 2) or "Elegit" to recover costs & damages. Now to recover Personal Property. 1. The present Statute of Va. provides the writ of

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21 "possession", doctrine of the Sheriff to take the property and deliver the property to the Plt., and to recover costs & damages, writ of "Elegit or Fieri facias." 1. "Distringas", not as at C. L. The Va. Stat. restricts it to recover personal property, recovered in an action of Detinue. If the specific property can't be gotten, you can get the Ct to supersede the writ of "Distringas," and issue a writ of "Elegit" or "Fieri facias" for the alternate value. 2. {To recover Specific property} — To compel the doing of a Specific thing. The executions {be} in this case are "Quod Nocumentum amoreatum" & "Distringas." The last was however confined greatly to actions of Detinue, and the Stat. now restricts it to that (C 711. 2.) specific case of Detinue, to (...) the delivery of Specific property. The Plt. may have a "writ of possession" together with a "fieri facias," or may have also a "fieri facias" or else gets Judgement for damages & costs, or he may have a "Distringas", and if a "Distringas" does issue, the Ct may order the Sheriff (712. 6) to distrain the Deft's goods, & may order it to be superseded as to specific thing, & to be executed in lieu thereof for alternative value. The Judgment in the action of "Eligit" is for specific thing, if to be had, or if not its alternative value, & for damages & costs. Lecture XXXIX. Tuesday Jany 8th 1861 Issuing Execution means drawing it up and signing it by the Clerk. 3. Executions to compel the payment of money. In respect to these, our Statutes have abolished two. "Levari fascias" and "Capias ad Satisfaciendum." "Capias ad Satisfaciendum" was that by which the Deft. was imprisoned until he paid his debt. Our Leg. has modified this & if the Deft. has no property, he may take the insolvent Oath, and it

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23 is not as it was in England, where the man was kept in prison until he paid the debt, even tho' he had no property. [6 months] had scarcely passed before the ill effects of this Law was seen, and the Leg. directed that if the Creditor knew the Debtor was not answering questions as to his property, he might be put in jail, by order of the Commissioner in Chancery until he did tell where his property was &c. Mode of proceeding in "eligit" & fieri facias." "Elegit" means that the Plt. hath chosen to charge lands of the Deft. as well as his guds. In 13 Edward I. before which Lands were not liable for debts, the Legislature said 1/2 of the freehold Lands might be taken, & all guds except beasts of the plough. And the Statute said if the Creditor chose to charge Lands & guds of the Debtor, he might to do so and this writ was called "Elegit" from the prominent word in it. Magna Charta [9] H. III. having changed {this somewhat} the C. L. that no Real propty cld be taken could Ed I, made this writ in pursuance of the Charta (3 Bl 418) This

writ was addressed to the Sheriff directing him to [give] (Bac. abr.) the Plt. 1/2 the Dft's freehold lands & guds except beasts of the ([ex'eu] (A)(c)2.) plough. Real property to be given at an annual rent & Personal property by a valuation. [The] Statutes apply this writ to Lands only & not to guds, but it embraces not only 1/2, but all of the Real Estate of Va which the Deft. was possessed at the date of the Judgment, (711.2) or at any time afterwards. Also the form of the Return which the Sheriff shall make to him, including the inquisition made by the Jury, is directed by the Statute. The effect of Judgment or decree is to create a Lien on all Lands of which the Deft. was then seised, or afterwards became seised, and this is because you can subject such Real Estate {by} to and Eligit. This Lien begins from the day of the Judgment was entered if in Vacation, if it begins in Ct. from the commencement of the term. The Lien of every Judgment

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commences at the time Judgment was rendered, or at the commencement of the term. But this Judgment must be docketed in the Ct. of the Cty or Corption, where the Land lies, and if not docketed, Judgment cant continue longer than a year from the Judgment — must be docketed then within 1 year as to the mode of docketing, C. 709. 3—4, which means taking a memorandum. A like policy is adopted as to all liens on Lands. This is done as to a "Lis pendens" i. e. pending suit. &c in case of attachment against non Resident [Vesters]. C 705.9) When the Creditor is put in possession of Lands, if he is evicted before the debt is satisfied, he may within 5 years, by a "scire facias" or "on motion" obtain another "defit". As to Lien of Judgment, any Lien is an Equitable demand, hence Judgment Lien is a subject of Equitable Cognizance, and if Rents & profits will not satisfy the demand, in 5 years Equity will decree a sale of Land to pay the debt. Sometimes this resort to Equity is indispensable as when the Dr. has sold lands to several persons after the Lien has been attached. The "elegit" would be in sufficient, and [you] must go into Equity. At one time, in such a case it was thought that all purchases should contribute [noteably] to pay the lien, but this doctrine has exploded, and the last one must pay the debt, and if his property is not sufficient to pay it, then you must go to the next &c. And this is fair, for suppose A. [to be] the 1st purchaser & buys 1/4 of the Lands, then [you] should take all remaining in the Dr's hands before [you] take any from A. then suppose {you} he add 1/4 to B, then if A is to be preferred (10 Leigh 393) to Dr. he should also be preferred to B. And as would (3 Leigh 532) come in the [Dct] (...) before you go to B, then if the dtr. sells another 1/4 to C. then B should be preferred (C 709—10) to C. And [so of] the last purchaser, and this therefore is just, as seen from this.

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27 As to "fieri facias". 1. Form and tenor of this writ. It is a precept in the name of the C. W. [bearing] testee in the name of the Clerk. and addressed to any sheriff or [Searjeant] in the {Cty or} {corpt.} C. W. commanding lien to be caused to be made out of the guds & chattels of the Deft. the sum named in the Execution, & have the same at the return day of the writ, to have them to render to the Plt. and have then there this writ also. 2. Whose property may be taken. This is determined from the terms of the writ itself. Writ says gud & chattels of Defts. or Defts. & if by direction of the Plt. or by discretion of the Sheriff the [exc.] &c {Plt} be (...) s. one of several Defts. {and} those others may be made to pay that one who paid the debt. provided they be not his [sureties]. If the Sheriff executes {or} any other property not the Defs. this does not divest that owner of his property & he may bring an action for it as in any other case of unlawful taking. And as the Sheriff does do this often the remedies against such are. 1. Claimant may sue the sheriff on a a [trespass] & of the Creditor told him to do it, may bring the action v.s the Creditor too. 2. May sue the Creditor for money had & received to his use as soon, as soon as the Creditor receives the proceeds of the guds, not before. 3. May sue to the purchaser of property at the sheriff's sale in Trover or Detinue, if Trover & Conversion, for the value, and if in Detinue, for the property itself. 4. May obtain from the Ct of Chancery an injunction to prohibit the sale, provided the property possesses a "pretium affectionis". And principle on which this is done is that irreparable injury would be done if the Ct did not interfere. But this does not exist otherwise. 5. May have an interpleader [introduced] by Stat.

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29 for replevin. The Plt. executes a Bond for double the value with gud security conditioned to pay (199.2.1.3) all damages which any one may sustain thereby, (6) and direct the parties to appear before the Ct. Ct. or Chy Ct, and if by Ct. Ct. by the Judge in vacation, tried [only] summarily indeed, need not {for} wait for next term. Inquiry made by [jury], but if neither party desire it made by Ct.

[At margin: The Sheriff demands this indemnifying Bond from the Creditor. This Bond was for the relief of the Sheriff primarily, altho it afterwards answered other purposes]

6. Claimant may depend upon an indemnifying Bond, which the officer can demand as soon as the title is disputed. Such a Bond is with a penalty of double value, and if the Bond is not given, the Sheriff may give the property up. The condition of the Bond is to indemnify the Sheriff & the claimant & the purchaser, and if the Bond be given, it must be returned in 20 days to the Clerk's office from when the Bond issues, and thereafter the Sheriff is free. This Bond may be sued on in name of the officer for benefit of the claimant or for the benefit of the purchaser

and makes no difference as to bringing of the suit, whether the officer be dead or not. And if the property when sold brings more than the debt, the surplus is paid in, to be disposed of as Ct. directs. As the writ is to be liened only on the Defts. guds, a Legacy given by the Rep of decedent is free from such lien, because no longer his guds, and in such case, execution is had. v.s. Rep or Executor's (2 Tuckr no. 60) property taken & sustained on a Delivery Bond cant be taken again until the holder has forfeited the Bond. And property of the wife cant be taken fm execution a.s. the Husband. If Dr's property has been conveyed away to defraud the creditor the (C 501 1—2) conveyance is declared void, and if this intent be palpable it is expedient to adopt this course but if it is not palpable, then you had better file a Bill in Equity, rather than (...) out an Execution and obsene if it be a deed of trust which had been made

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(2 Tucker 383) and not avoided by any fraud or illegality any surplus cant be reached by a "Fieri facias" or "Elegit", but must (2 Rob. 1 Ed. 15 6 Rand 285 2 Leigh 280, 713. S.1) resort to Chancery, because not a certain, but a contingent writ. 3. What kind of property may be taken. The writ says "goods and chattels of the Deft" and therefore may be levied v.s. all personal property, except wearing apparel, and mere choses in action. At C. L it matters not whether real (1 Cr. 117) or personal chattels, houses, Leases for years, & (12 (...) 220. 365.) slaves, cattle, household stock &c., and may levy it on money in the Debt's possession. And altho' it has been said by Bacin, that Bank (Bac. (...)exe'u (c)4) notes can't be taken, yet now it is otherwise because transferable by delivery & in Va. the Stat. expressly (C 713 -11-12) allows it, and gold & silver is to be taken at par value. The Creditor must either take Bk notes as par value, or else they must be sold. It has been doubted whether crops growing on freehold (17 John 128) lands can be taken, because part of the freehold. (2 " 14) The Later English cases establish [it of] these crops which (7 Mass. 34) are the fruits of animal industry, & which are (5 B & C 829) emblements may be seised. In Va crops growing (22 L. Marshall 159) are forbidden to be taken except Indian Corn (1 Gen (...) 391) after Oct. 15th in any year. So there is no doubt here as to what may be taken. Crops growing on Lease hold lands are not liable without the Lease, but we can take the Lease (...). Lecture XL. Thursday Jany 10th 61. In pursuance of the principle of attachment of the Master to his slaves, our Statute directs that slaves cannot be taken, without the consent of the owner untill all other property has been exhausted. The Sheriff is bound to keep his hands off slaves as long as the Debtor will show him any other kind of property to satify the debt. Our Statute also declares that certain articles of Household furniture shall be exempt, as e. g. Bedstead, with bed & furniture. 6 chairs. 5 barrels of corn,

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6 bushels of wheat, and the tools of a mechanic i. e. not worth over $25.00 - This Jno. B. thinks is a very unwise provision of the Statute. For these articles alone named are very rarely ever found in the poor man's house (Acts 53—4) none of them (...) as much as this, & so by exempting these (p 24 — Ch 31) things, you exclude the owner from all credit (because no one will trust him, when they know positively they have no means of recovering the debt) & thus do him an injury, and moreover you make him a knave, by giving him the enjoyment of property not liable for his debts. Nothing has a stronger tendency (New Code 252. Ch. 49) to demoralize the community, and all Homestead Laws are of this character. Slaves then are not liable to be taken, as long as the Dr. will show other property sufficient to pay the debt. So choses in action are not generally liable to "Fieri facias" — unless they be transferable by delivery. So a debt due the deft. cant be taken under "Fieri facias" because it is a chose in action, and yet it is liable to (2 Tucker Com. 360—61) the Lien of "Fieri Facias". And except at the Sheriff's option, a debt due from the Sheriff to the Deft. cant (2 Va cases 246) be taken in Execution, unless he considers this as so much taken in Execution. In England it seems to be regarded as otherwise, upon the very stranged ground, that money cant be taken in Execution, because it is said money cant be sold, but this is an erroneous idea. Nor can you therefore (2 East 460) levy on money in the Sheriff's hands due to the (9 East 48) deft., but here you can, if the Sheriff says he has got (5 (...) 163) such. At C. L. no interest merely Equitable was liable to be seized under "Fieri Facias", because the C. L. Cts did not recognise Equitable interests, (C 202. 16) and therefore no Ct. of C. L. could recognise the seizure of an Equitable interest. But our Statutes say that Estates of every kind holden in trust shall be as liable for debts as Legal Estates, but this

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35 principle extends not to unknown or unascertained Equitable debts, such as Equity of Redemption, Mortgages or deed of trust, because the Equity of Redemption has (2 Leigh 280) not been ascertained, and in such cases you must file a Bill of Chancery, which will direct the property (6 Rand 285) to be sold, and find the extent of the value. Again under a "Fieri Facias" no Freehold or thing affixed to a Freehold can be taken, because the writ applies only to goods and chattels. To this subject therefore belongs the consideration of what are called fixtures. This designation (Fixture) is most unhappily bestowed on such articles, as are personal articles and are fixed to the freehold, but which can be removed without injuring the Freehold, and which are not necessarily accessory to the enjoyment of the Freehold. If not fixed there, they maybe levied upon. If the chattel be not fixed to the Freehold but merely resting upon it, even if a house, it can be levied upon. Hence it becomes necessary to determine what is a fixture, for

if a fixture, it can{not} be levied upon under a "Fieri Facias." There are 3 signs of a fixture, which are 1. Affixed to a Freehold 2. Affixed so as that the removal of it will not injure the Freehold. 3. Not necessarily essential to the enjoyment of the Freehold. If a fixture, and can be removed without unjuring {the} the Freehold, and not necessarily accessory to the enjoyment of the Freehold, can be levied on, even tho' it be a fixture. As e.g. take a mill stone, you can take it away without injuring the freehold, but it will disturb the enjoyment of the Freehold, hence no ficturem and cant be levied upon. Again the outside window Blinds, they can be removed without injuring the Freehold, and

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37 fixed indeed, but then they are essential to the completness of the Freehold, hence cant be levied on. The stoves in our Lecture Rooms can be taken, because they are affixed, to remove them will not injure the freehold, and they are not necessary to the enjoyment of the freehold for, we have fire places. (5 [Barnall] 625) In general Agricultural fixtures are essential to the completeness of the Freehold, & hence [dont] (3 East 38) correspond to the 3 signs. Trade Fixtures however (2 (...) (...) cases 114) are not essential, as e. g. shelves not put with nails, & hence they can be levied on. (2 Lts. Coms. 260) In one case it was decided that fixtures altho' might be removable as between L. Lod. & tenant, (2 K's com 345) could not be taken in Execution unless removable (5 [Barnall] & addum 625) as between heir & Executor. Whilst in general no freehold interest is subject to (1 Lom. Exc. 256) Execution under "Fieri Facias", yet by our Statutes lands may be taken & sold under a "Fieri Facias" as for the C. W. when Creditor, and then of course the writ authorizes & directs the Sheriff to levy the Execution not only on goods & chattels, but also on the (c 223—8) Lands. Now let us see what we have found cant be taken under "Fieri Facias." 1. Choses in action. 2. Freeholds. 3. Equitable interests unascertained. But because these cant be taken under "Fieri Facias", you must not suppose they are exempt from debt altogether, each may subjected for debt. Nothing which a man can own is free from liability for his debts. E. g. suppose the Dr. has a Freehold, you can take it under an "Elegit" if you know where the lands are, and if you do not know where the lands are, you can make him come before a Ct of Chancery & tell where his lands are, upon oath, and if he refuses to do it, you can put him in jail.

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And if the Lands lie out the State the Commissioner can make him convey them, can make him tell where they are. ([doubtful]). Now as to choses in action or uncertain Equitable interests You must go the Commissioner & ask that the deft. be summoned, & then ask the deft. if he has any choses in action, & if he says he has the Commissioner can make him produce them, or if he says he has not, he can be committed to prison for perjury. All three of these can be taken by appealing to chancery, Eg Equitable interests [unascertained] you may take the dr. before a commissioner, or else go into chancery. Now let us see how the Sheriif may take the property liable under a Fieri Facias. He need not lay his hands on each individual object. It is enough for him to have them in his power & in his view & declare that he then denies execution on them, but he must be careful to have them in his power as need as in his view. Tuckers Com. 367. 4 Grat. 101. To offer any resistance to an officer of the Law in the discharge of his duty is a very grave offence against public justice, subjecting the offender not only to the process of contempt of the Ct. which issued the process in the discharge of which the officer was performing his duty, but also to an indictment & fine as the discretion of the Jury. C 737 — 24. 4 Clause C 737 — 27. The officer is moreover required {to summon} when resistance is anticipated to summon the power of the Cty. "pose comitatus" to help him to execute his this process, whatever it be. If he anticipated resistance, and did not call in aid (power of cty), he would be both censurable & punishable. C 720 — 26. Bac. Abr. til. Ex'cu (0). In Levying the execution as in other cases of civil process, it is not allowable to keep open the outer doors of the drs. dwelling house, but he can keep open inner doors and the lids of chests &c., and outer doors of outer houses

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but this is done at the peril of the officer if the guds be not there he is liable. 2 Tucker Com. 362. Bac. Art. Ex'cu (n) — if he breaks open the outer door of a stranger's house. We have seen that the parties being in the actual use of the guds, exempted them from distress, but this is not so in case of execution on things. While we know in distress the officer could break open the outer door, & in execution could not. An execution may be levied on goods even in the actual use of the parties, as e. g. upon a horse which the dr. is riding. 2 Tuckers Com 362. Unreasonable levies are prohibited, and the officer is punishable for making such, and a Jury will assess heavy damages, as if e. g. he should take 2 or 3 slaves to pay $ 100, but if the chattel is entire, & there are none worth less, why of course in this case he must take it, and the Sheriff cant sell more of the property than is necessary, w pay the execution, unless the property cant be divided. In the 5th place when may a Fieri Facias be levied? i.e. at what time, of course it cant be legally levied 1. before the execution emanates. 2. or it cant be levied after the Return day, but if it be levied {before} during the return day i.e until afh R.d. is past. the lapse of that day dont destroy the proceeding, because the execution is an entire thing -- Bac. Abr. Exe'n (c) 4. 2 Tuckers Com 341

& 360. Neither an execution nor any other civil process can be levied on Sunday. Except in cases of persons escaping out of prison or custody, and except where it is specially provided by Law. As in cases of attachment against absconding debtors. C 251 — 26 — C. [603] 3 — 10. An execution may be levied at night as well as by day, which is not admissable in distress warrant except where the goods have been fraudulently removed. B 570 — 13 (...) Exe. levied by off., distress warrant by the man or his (...). Hitherto members of assembly have been exempted from being arrested in their persons, & from having

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their goods taken in Execution, during their stay in the Assembly & a day for every 20 nules going & coming, but by the present statute their persons only & not their guds are exempt except in 5 cases. [cgh] 5. 2 Tucks Com. 362. Lecture X [2]. Saturday January 12th 1861 A mans dwelling house is his own castle, for his own protection and that of his property, but not to conceal other's guds, and if in this house, he does conceal guds, such house may be broken open, but the Sheriff does this at his own peril, for if he breaks it open, & does not find the guds there, he is liable for it. Lecture. Lien "Fieri Facias" at C. L. — A "Fieri Facias" has a Lien on the deft's goods from the date of the execution, and if it had been sold afterwards, such purchase was void. This was attended with a good deal of inconvenience as to trade. & hence a Statute 29 Chas 11 was passed, in the same year of the famous Statute of Frauds, which said no Execution should be a Lien, until from the time it was delivered to the officer to be executed. A corresponding provision statutory, has long existed in Va. which says "that as against purchases for valuable consideration without notice, and creditors, shall bind i. e (Fieri Facias shall) what it may be levied on only from the time that the writ is delivered to the officer to be executed." C 713 —11. It is to be delivered to the officer to be executed, if for any other purpose, it would not be a Lien. The Lien of this "Fieri Facias" {does not} extends not only as far as the property on which it may be levied, but to all the personal estate of a to which the Judgment debtor is possessed or entitled (although not levied on, nor capable of being levied on, under that chapter) C 717 — 3. There are some exceptions to this, as Household Articles, and the choses in action of the assignee, and in case of Debtors of the deft. who paid their debts to the deft. before they knew the execution had issued. If I have bought a chose in action from the debt., after it has {been} had an execution issued [against] it, which had been given in to the Sheriff, but I dont know it, why I am safe. It belongs to me 15 Grat 153.

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In order to make this Lien available, the Statute provides that "Every officer shall endorse on each writ of Fieri Facias the year, month, day, and time of day, he receives the same. If he fail do so, the Judgment creditor may, by motion secure against him and his sureties, jointly & severally in the Court in which the Judgment was rendered, a sum not exceeding fifteen per centium upon the amount of the execution." and if there are several writs of Execution, the statute provides "of writs of Fieri Facias that which was first delivered to the officer, though two or more be delivered on the same day, shall be the first levied and satisfied, and where several such executions are delivered to the officer at the same time, they shall be satisfied pari passu." C 713 — 13. C713 —14, i. e. notably, in proportion to the amount of each. An attentive Lawyer may sometimes insure the priority of his client, by not limiting to the Clerk to do this, but going & doing it himself. The Statute C 717. (...) 4 provides that "The Lien shall cease, whenever the right of the Judgment Creditor to levy the "Fieri Facias," under which the said Lien arises, or the levy a new execution on his judgment, ceases or is suspendend by a forthcoming bond being given and forfeited, or by a Supersedeas or other Legal process is upon claim." 12 Grat. 401. The Lien then may continue after the Return day, and is determined only by the above means. In conclusion by virtue of this Lien, after it has been once attached, all intermediate gifts and even {gifts} sale of personal chattels embraced by the Lien are avoided. 2 Tucker Com 363. As to Forth coming or Delivery Bonds — when the property is taken under execution or warranty distress, the Law allows the debtor to keep the guds in his possession, provided he will keep them at his own risk, & provided he will execute a Bond with gud security, to have the guds &c forth coming at the appointed day & place of sale. He must keep them at his

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own risk, and if any be omitted to be bought up as the appointed time & place, even the slightest article, he forfeits the Bond. This Bond is sometimes called a Forth coming, and sometimes a Delivery Bond. C 720 1. (...) a (...) says. "The sheriff or other officer levying a writ of Fieri Facias, or distress warrant, may take from the debtor a bond with sufficient [surety], payable to the Creditor, reciting the service of such writ a warrant, and the amount due thereon (including his fee for taking the Bond, commission and other lawful charges, if any) with condition that the property shall be forth coming at the day & place of sale. Whereupon such property may be permitted to remain in the possession and at the risk of the debtr." This Bond is delivered to the officer, who thereupon {delivers} surrenders the effects to the debtor, and the Debtor forfeits the Bond, if he [do not] produce every article of property, [if this]

condition is broken by his not producing every article of property, the parties named in the Bond. i. e. The oblijers. {who are then living} are liable to pay the whole debt therein mentioned, with interest thereon from the date of the Bond till paid, and the costs. In case of such forfeiture of the Bnd the statute C 720 — s2 provides "If the condition of such Bond be not performed, the officer, unless payment be made of the amount due on the execution or warrant (including his fee, commission and charges as aforesaid) shall, within 30 days after the Bond is forfeited, return it, with the execution or warrant, to such {the} Court or the Clerk's office of such Ct as is prescribed. The Clerk shall endorse on the bond the date if its return, and against such of the obligors therein as may be arise when it is forfeited, and is returned it shall have the free of a Judgment."

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C 251 — s 28. "Every officer to whom any office order, warrant or process maybe lawfully directed, shall make true return thereon, of the day and manner of executing the same, and subscribe his name to each return." The obligors are liable for the amount of the Bond with interest from date thereof, & crts to be recovered by action, or in motion in 10 days notice. to the Ct. to which it was returned. C 639 — s 3 finds that "In any case wherein there maybe judgment or decree for money or motion, such motion shall be after 10 days notice, unless some other time be specified in the section giving such motion." The motion is not a motion for a Judgment, but for award of Execution. On every Execution on which {is prohibited} a Forth Coming Bond is prohibited form being given, the endorsement that "no security is to be taken" shall be made by the Clerk. C 720 — 1 — 2 — 3. (notes) - C 721 — 6 — 7. In the 8th place, what are the Proceedings after Levy. 1. It is the officer's duty to provide for the safe keeping of the property. C 253 — 36. provides "For slaves, horses, or any live stock distrained or levied upon, the Officer shall provide sufficient sustenance while they remain in his possession. Nothing distrained or levied upon shall be removed by him out of his County or Corporation, unless where it is otherwise specially provided." "Under such a warrant, a slave maybe confined in Jail, at the request of the master, so long as the justice and the Jailor concur in opinion that no public in convenience will result from it, but no longer." C 257 — 8. {In to} For the care and security of the officer. In Va. if any doubt arise as to whom the property belongs, the officer can demand before or after the

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levy, or indemnifying Bond, and if it is not given in reasonable time, he can refus to levy , or if he has levied, he may return the property. V. C. 609 — 4—5. This Bond is payable to the High Sheriff, and generally in a penalty double the debt. It has a threefold intention. 1. To indemnify the officer for seizure & sale. 2. To indemnify the Claimant for any damages, if the property prove to be his. 3. To warrant the {tt} title to the purchaser at the sale of the sheriff. V. C. 699 — 4. The Bond is returned by the Sheriff to the Clerk's office within 90 days of the execution issued for that office, if it issued from the Justice's hands, 'tis returned to the office of the Court appointing such justice. V. C. 610 — 5. {6}. If suit is brought on this Bond it must be in the name of the Sheriff taking it, tho' {if} he be dead, in favor of the Claimant, Creditor or purchaser, or any other informed person. V. C. 610 — 6. After it is returned to the Clerk's office or that of the Justice as the case maybe, the Claimant &c is barred of any action against the Sheriff, if the security taken was not gud and the surplus after payment debts is to be disposed of as the Ct. shall direct. V. C. 610 — 7. At C. L. in case of dispute in regard to title to the property, the Sheriff was exposed to responsibility either way, and to avoid this he was allowed 1. To take a Levy to the spot to try the right of the party claiming it, and if then verdict was for the Claimant, perhaps the sheriff was to give it to him, tho' this even is doubted in 2 (...) Blackstone 437. & 3 [Mad] & Selden 175. If the verdict of Jury decided that it did not belong to the calimant, the action of the true owner (viz Claimant) was not barred & therefore the sheriff was exposed to responsibility to him. 2 Tuckers 369. Bac. Abr. Ex'cu (c) 4. 2. To get the ct to inquire at its own bar by a levy, where it was, & in the meantime, if any injury did

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not result by detaining if it would detain it, until could find out where it was. 3. Sheriff could take, even if not require, an indemnify Bond. 2 Leigh 630. 12 Leigh 383. 4. It is suggested that the Sheriff could demand an Interpleader in Equity, to compel the partues to try where it was - 1 B(...) 32. 4 Harmon 506. 1 Call 23. But as he also files an Interpleader always admits the interest of all the other parties against himself. to be gud.: the Sheriff thereby admitted himself to be doing wrong to the claimant. 1 (...) (...) — 334. 2. (...) Equity see. 821. As to the property whenever any dispute arises as to this. If an indeminifying Bond be taken, the Claimant can suspend the sale by giving a bond to the officer with gud security the penalty double the amount of the debt. to answer all damages arising from the suspension. V. C. 10. 6. And upon this Bond he can have the property redelivered to the person who held it, when latter upon the execution of the Delivery bnds. Hence to get the full benefit of the Law, the Claimant will have to give three bonds. Acts 51—2 C 94 — Sec. 1. V. C. 720 — S 1 — 67. Whether the Bond is given

or not, the [Ctty] or [Corpt.] Ct. or the Circuit Ct. & the Judge thereof in Vacation can make the Creditor & Claimant appear, and if the parties dispense with the Jury by consent, can try in a summary way whose the title to the property is, just as in Interpleader. V. C. 609 2 — 3 —1. Acts 51 — 2. C. 94. sec. 2. [There] cts. or judge of Ct. Ct. can order a sale of the property, & keep the proceeds for final disposition. Acts 51—2. C 94 — sec. 2. The next step after the property is {taken} put in safe keeping, is to sell it. The general rule is that the officer is to conform as nearly as possible, to that precedence which he would

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use in selling his own property, in order to get the best price. Bac. Abr. Ex'eu (c) 14. 17 (...) (n. 7) 116. Hence he should sell specific articles separately, if they be of little value, may sell them by the lot, since if the sheriff have any interest in the Ex'eu, he could not buy it himself, so if he is partial to either party concerned, his whole proceedings are void. 4 [Rand] 199. So also he cant as the only bona fide bidder buy the property himself and whenever he does buy it, it is looked upon with suspicion by the ct. The Va. Stat. prescribes the time, place, & notice of sale minutely. The Sheriff shall himself fix the time & place for sale, & give notice for 10 days at some place on or near the premises, and at 2 other places in the Cty or Corpt. if the [guds] &c be not slaves or [unk] cattle. If they are slaves or [unk] cattle, notice is to be posted at the door Ct. house from one ct day to another (1 month) and notices elsewhere in the Cty. The sale is to the be first bidder frm each. Acts 52—3. Ch 33. Sec. 38. And if the sale is not completed in the first day appointed, it may be continued from day to day (not time to time) till is is completed. V. C. 253. 39. If slaves & [unk] cattle, the sale is to be at the Ct. house between the hours of 10 & 4. V. C. 253. 38. Thus we see that the Sheriff can sell guds not slaves or [unk] cattle where he chooses, in 10 days notice, but if slaves &c at the Ct. House & on the 30 days notice. If the purchaser fail to comply with the terms of the sale, (Cash &c.), the officer at C. L. sells the property again at once. And if he gets less at the 2nd sale than the first buyer bids, then the difference it to be made up from the 1st buyer. In Va he can do as at C. L. or he can advertize for another day of sale, & the first buyer is bound for the difference as befofre. [&] he may make retain that he has not

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57 sold the guds &c. V. C. 713—16. 4 Bingham 722. Ch. 4. If the property levied on belong to the Life tenant or be on Leased premises, & rent is due on such leased premises &c. the property tho' levied on, is bound for one year's rent due or to become due & the Officer is to pay it out of the proceeds of sale of the property. If the rent is due, sale for each, if not due due or a credit [equal] to the time when rent will come due. V. C. 669. 12. 1 Washington 233. 2 Leigh 630. We have seen that the sheriff must act as any prudent man would in settling his own property, & hence he cant sell for a very inadequate price but rather return not able to sell for want of bidders. 3 (...) 523. Where such return is made upon the motion of theparties, a writ of "feudatory exponas" issues, which tells him to sell at all events, or at the best price he can get [&] as it is said in 3 (...) 324. When the property is not sold after a fi. fa. has issued, this writ issues & the same proceedings had on it, as on fi: fa: except that if it issues fr want of bidders, or no sufficient bidders, notice shall (...). If the officer die, & has no deputy: the Creditor can have the property sold by such officer as may be in his place upon a writ of like nature, being directed to such officer, & the property levied on by the dead off or to be delivered up to the second off. of the pers. Rep. of deceased officer. & if no Persl. Rep. of dead officer in 3 months, a special writ is issued for the delivery of the property to be made. V. C. 714—18. Next step is the Return of the "Fieri Facias." The Statute is very particular in declaring that the return 1. shall be time, & due day & month, & year & manner &c shall be endowed on it, with the name of the Sheriff, if Deputy must say "A. B. Depty for C. D. Sheriff."

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2. The Return is to show whether the money or a part of it has been, or cannot be made; and is accompanied by a statement of how much he has made including his fees &c, and the amount excepting the fees &c is to be paid to the Creditor. V.C. 713 —15. 3. The Sheriff is also to return with the powers any bond &c. and account of sales he has [taken], or [records] showing articles sold, the purchasers, other prices (...). 4. The return in any process must be in 30 days after sale, if no time is named for it in the process: tho' in Ex'cu line is always named. If the Officer does not so make the return, he profits $20.00 to Va. & if he makes a fake return, $100.00 V. C. 251 — 28. And such fine maybe repeated every month as long as the failure continues, or until it appears that the Return cant be made, or that [money] has been paid. V. C. 251 — 29. The Ct may also [inforce] any fine it chooses not exceeding $5.00 {or more} on every $100. till each failure of officer cease. V. C. 251 — 29. How a Fieri Facias may be transmitted to a distant State &c. The Law says by Mail, and the P. M's calificate is sufficient evidence that it has been sent, tho' other evidence is admissable, and the facts of its being sent is prima facie evidence that the Sheriff received it. The Sheriff can free [himself] from fine or forfeiture however by making

Oath that neither he, nor his Deputy got it. V. C. 251 — 30. Lecture XLII. Tuesday, Jany 15th 1861 All writs directed to the Sheriff, which require no Jury e. g. "Habere facias possessionem". "Habere Facias Seisinam" or "writ of possession" or "Fieri Facias" for money, are [gud] when executed, tho' never returned, but the sheriff is liable to a fine for not returning them. The reason for letting it be gud wihout return, is that the Plt. has gotten the benefit of his suit.

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61 "The Execution Executed" is said to be the extent of the Law. But from the fact that an "Elegit" requires a Jury to make & return to the ct an inquisition, the Sheriff must make a return upon it and the Plt's'title to the benefit of the writ is not complete until there is a return made. V. C. 712 — 8 — 9. Bac Abr. Ex'cu (c) 1. When the process is returnable on a particular day, it can be returned in the morning of that day. And after this return the Sheriff is not liable for any failure to take advantage of a chance to levy it during the remainder of that day. 10 Mendall 369. He can also execute it at any time during that day — viz at any time "until Return day is past." V. C. 642—2. 4 Johnson 280 - 420. 2 Caine's Reports {Rep} 243. The officer's return, so long as it remains inattended, tho' it can be contradicted by 3rd person (4 Rand. 189) is still conclusive against him & his securities, unless there is collusion between him & the Creditor in getting the return made, then tis not binding on the securities — 2 Rand 329—455. 13 Sargeant & Rolls 60. But the cts are very liberal in allowing the Sheriff or his deputy to make amendments to the return, in order that it may conform to the truth of the case. 1 Munf. 369. 2d 181. 4 Leigh 590. And amendments have been allowed even after an action is begun on official bond of Sheriff, founded upon the very return in question. 4 Grat 99. 10 Grat. 529. The Sheriff can amend the return if he chooses, but cant be compelled to do it. 2 Lampart & Rolls 426. Bac. Abr. Ex'on (c) 1. The officer is to pay it. V. C. 713 — 15. And if any surplus is left, after paying the creditor, he is to pay it to the debtor. V. C. 714 — 19. If the Creditor dont live in the Officer's Cty. or has no agent living there, the Sheriff is not obliged to go outside of his Cty. to pay it, tho' he must make return. The penalties for not making returns are in V. C. 251 — 28 — 29 he consider now. 9th How the Debtor is compelled to discover & give up the

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property. The guds may be [{fruit}] 1. out of the state. 2 may be such property as the Plt. does not know of 3. choses in action. In all these cases a Fi Fa would not reach the property, &

consequently there must be some method to compel him to give up and discover the property. We have seen that when a Fi Fa has once been levied, or its lien once attached to property, that all intermediate gifts and sales &c of this property made after such Lien are void so far as stopping the execution. 2 Tucker Com. 363. 9 Leigh 176. 3 Grat. 343. Regularly the Lien embraces such property, as it can be levied on V. C. 713 — 11. 3 Grat. 343. But by Va. Stat. all personal property is embraced, except 1 that kept in form of Husband & heads of families. 2 property assigned for value is a man without notice of Lien. 3. Money paid Debtor without notice given to the man making payment. V. C. 717 — 3. Generally all visible property can be reached by a Fi: Fa: If it is an invisible Estate, or an unascertained Equitable interest, or chose in action, the Creditor has to reach it by filing interrogations with the Judgment & a copy of the summons to the debtor, and is servable only in Cty of commissioner. V. C. 667 — 38. If the Debtor fail to appear and file answers to the interrogation, then the Commissioner or Creditor, or attorney of Creditor, if they deem them evasive, can report them to the Ct. through the Commissioner and the ct after notice to show cause why he should not shall by attachment compel him to answer before ct. or the Commissioner, the same or other interrogations which are deemed pertinent. V. C. 717 — 2. Acts 55 — 6 — Ch 40. Sec. 1 If the Creditor should show the Commissioner that there is (an affidavit of the creditor would be sufficient proof) reason to fear and believe that the debtor is about to quit the State, the Commissioner will issue to a Sheriff or Sargeant any where in Va a writ to take him {&} and command the off. him safely to keep until he make him answer or a proper conveyance of property be made, or 'till the ct (Cty. (...) or Circuit Ct. or Judge of Ct. Ct in vacation) shall discharge him - Acts 1851 — 2. C 91. If the debtor be thus by

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his own undr possessed of any lands in Va. you can reach him by an "Elegit" & Bill of Equity. V. C. 712 — 1 to 10 — 2d 709 — sec. 9. If such lands be out of Va. he is forthwith required to convey them to the officer — or if he possess or have the control of any personal Estate, or Bank notes &c in Va. they too are to be given to the officer, who has the Execution, or any other officer the ct or Commissioner may direct. And the debtor shall be compelled thus to give them up by a writ commanding his imprisonment. V. C. 717 — 6. The Commissioner is to return the interrogation, answers & a report of his proceedings to the ct in which the Judgment is, or if it be a Justice's Judg.t then to the Ct to which the Justice belongs, & that Ct directs the sale &c of the property. V. C. 718 — 8 — 9. If the property given to the officer is evidence of debt, due the debtor, other than Bank notes, he can collect them in 60 days, if in that time the man owing such debts to the debtor (like Garnishee) dont pay, the officers is to return them to the Ct. and there the officer or the creditor either by Motion, before the ct where the Judg. is, or if Justices' Judg. before the ct to which the Justice belongs, can compel the Debtor of Deft. to appear & say

how much he owes &c to the debtor, just like Garnishee in an attachment, if the he fail to appear & says then the ct can proceed as if he had appeared, and make order just as tho' what the ct finds due to the debtor in the absence of Garnishee, had been so found due upon an examination of the Garnishee, and if it is suggested that upon appearing the Garnishee, did not till every thing ex a ctty about the debts, then the Ct can have a Jury {to enquire} to enquire into the case & which shall sit not as when the pleadings are regular, but only to try the fact, & then the ct will proceed as tho' the Garnishee had told of this also. V. C. 605 — 18 — 19. But the Garnishee may come before the Return day of the summons, and pay what he is liable for — {&c} this (...) the costs of the proceedings. V. C. 718 9 to 14. see B. abr. and also the officer who holds the Execution

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or some othe one whom the ct may appoint, may bring a suit for their evidences of debt due the Debtor, tho' the off. is not bound unless a bond to indemnify him against all losses & costs &c is given: and any other interested person, who pays his own costs thus extended, can bring the suit in the name of such officer. V. C. 719 — 15 —16. The officer is in 30 days to make a report to ct or Clerk's office, and lasting out 5 per ct., his expenses & cuts also fee to Counsel, is to pay the rest to Creditor in satisfaction of his debt. V. C. 719. 16. Having seen how all property can be reached to pay a moris debts, let us now consider some writs which the C. L. has, but not used in Va. now. and 3rd. writ is the "Levari Facias" This writ commands the sheriff to cause the debt to be [levied] writ of the lands & chattels of the debtor, but not against the land, but note that the profits of the lands only are taken — 2 Plowden 441. Fittzherberts Natura Brevium — 593. BAc abr ex'cu (9) 4. As regards chattels the Fi: Fa is preferable to this writ and as regards lands the writ of "Elegit" is the best. It has seldom therfore been used in Eng. (Prof knows no case) and is now abolished in Va by stat V.C 711 — 2. 2 McKee 371. 4th Capias ad Satisfaciendum This is the last writ (...) to enforce the Judgment of money. It was seldeom, if ever used at C. L. 13 Ed. I authorized it in case of judgt. in action if acct. & then subsequent statutes allowed it in other actions. Bac. Abr. (c) 3. 3 Coke Repd. 11 — 12. The writ commands the Sheriff to take the debtor's body & keep it safely until he satisfy the creditor of his debt. In Eng. the Debtor was kept in Jail until he paid the debt or tell the Plt. discharged him, and this discharge of the Debtor, was one of the Debt also. If this mode was ever adopted in Va. it was soon abandoned, for as early as 1644—5 there were four enactments, whereby the Debtor under a Capias ad satisfaciendum, cld be discharged by making an

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Equitable [Commutation] at the Cts or Commissioners discretion. 1. Henings Stat 234 — 2. 2d 81. Then in 1705 these 4 (...) enactments were completed, for this year's law declared, that after such aforesaid Debtor had laid three months in jail he should be discharged by giving up all his property. 3. Hen Stat 388. and for many years if a Debtor {would} will give up all his property he {would} will be discharged from Jail. The enactments thus ex honorating debtors are in 1 R. C. of 1819 — 525. Sec. 1 — 2d 534. sec. 28 — to 45 — supplement to R. C. 273. C 216 — Acts 1842 — 3. C 74 Sec 1—3. 6 Rand. 737. 2 Leigh 764. Both the first named acts agree in this: that where the Debtor exhonorated himself by giving up all his property, that then the {ct} Commissioner cld not refuse to administer the Oath to him, even tho' he (commissioner) knew that the Oath was a lie. If the Oath was a lie, Creditor cld only indict the Debtor on perjury. Thus those Laws not allowing imprisonment work more in favor the Debtor, than the Creditor, & were therefore bad laws. When in 1850 this Ca. (...) was done away with V. C. 716. 1—2 & note 6 months brought it back again, under a different name but with greater severity than before for now the Commissioner don't discharge him until he is satisfied that his answers are true. 2 (...) 343. 1 Rob practice 1st ed 548. Acts 20 — 1. C 49. Acts 51—2 c 92. Acts 55—6 c40. Sec 1. We are through now with the writs &c. Let us look at Proceedings by way of Appeal 3Rl ch XXV. The Appeals allowed by our Law, whereby to correct the errors of Judgt. are 4. 1. Audita Querela. 2. That of error. 3. Supersedeas which always issues from a higher Ct. & 4. An Appeal, this too issues from a higher Ct. Note — dont confound the 4th mode with the general method of revising Judgts. The word "appeal" has a twofold meaning, one is the "Process" whereby errors are taken up to be corrected, the other is the general mode of securing a Judgt. — but "an appeal" is a mode

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71 of appealing. Consider these 1. Audita Querela. This is an antiquated proceeding, whereby the deft. seeks to be relieved from the Exc. in a Judgt. by some or any matter which has arisen since the Judgt. was given E. g. a Release by Plt. of whole debt. It is superceded by Motion on 10 days notice. 3 Pl (...) 405. It is to the same ct that gave the Judgt. and represents that the Judgt. has been satisfied, or discharged by a Release &c. Lecture X to 111. Thursday Jany 17th. 2. Writ of Error. Writ of error is one of two kinds. 1. Coram nobis or vobis. 2. Writ of error generally. The 1st. is employed to correct errors not Judicial, but only the result of oversight, errors no affecting the merits of the cause but only little mistake in proceedings. E.g. Where the Jud. is given for an infant who appears by attorney & not by Guardian, or entering Judgt. against a dead man. This (...) sort of the writ of error is divided or rather is called 1. Writ of Error Coram

vobis. 2 Writ of error Coram nobis. They both are the same so far as being grounded on errors merely caused by or (...) but they are differently called because that coram nobis is applicable to that of Ks. B. the King in persona propia being supposed to be there, while that Coram vobis is in C. Pleas & Exchequer where the Judges are & not the King. This 1st. sort of writ of error is therefore addressed to the Ct. where the error occurred and that gave the Judgt. which it seeks to [rescue]. The Judge of this Ct. is to correct the (...) if such can ex acts. He is to look over the Record, and if the error is or it is said to be by him who takes the appeal then it is to be corrected by the writ of error. 1 H & [Munf] 206. And if the error is that Infant appeared by attorney & not by Guardian, unless amended by Writ of [Infants]. This to be corrected at C. L. by writ of coram nobis or vobis. 2 Rand 174. If the Judgment be for the Infant. [Stat.] of (...) will cure it.

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All writs of error in Eng. are obtained from Chancery as is the case with all great Remedial writs in Engl., and the constitute a commission to the Judges named in them to {affirm} examine the Record. & affirm or reverse the Judgt. With us, these writs alltho' in the name of the C. W. bearing taste of the Clerk issue from the Ct. which is to reverse the proceedings. Now this Ct. in the case of writ of "Error Coram vobis" is the same Ct that gave the Judgment, i. e the former judgment. (The form will probably aid in understanding this writ, see abstract). It may be that the adversary will not admit the truth of the fact offered as a [formd] of error, and if he does not, it must be ascertained by a Jury. Judgt. is obtained by Plt. v.s. Deft for $10.000 & Deft. say Plt. not dead when the judgment was given, & he sues out a writ of "error coram vobis". The Plt. then says he was not dead, and a Jury is called in to to try the fact. The writ of error is founded upon a matter of extrinsic to the Record in case of "error coram vobis", while are "error generally" is founded on the Record, hence a Jury and not a Ct is the proper agent to try the truth of the fact, if denied of the adversary. Writs of error of both kinds are at C. L. granted "Ex debito Justitiae", as a matter of course, and not at the discretion of the Ct. & it appears not to have been till 3 James I that the obvious precaution was taken of requiring the person applying for the writ to give security that he would prosecute the writ, & make gud any costs or damages which the other party might sustain. That he would indemnify [wherein] (...) [loss]. Bac. abr. (...) (...) (H) 2. 3 Rl com 410. Bac. abr. (...) (...) (F) 1. Our stats. as to writs of "error generally" & as to "Appeal"

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* "For any clerical error or error in fact for which a Judgment or decree may reversed or corrected or writ of error coram nobis, the same may be reversed or corrected, on motion after reasonable notice, by the Ct. or if the Judgment or decree be in a ct. ct. by the Judge thereof in vacation."

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75 have altered this C. L. principle, so that neither a writ of error for matter of Law nor an appeal can be had except by order of the Appellate Ct. Writs of "error coram vobis" are not within the provision of the Statute, and they may be had still "ex debito justitiae" as at C. L., you can get it at your own discretion. 7 Rand 174. So you can get it at any Clerk's office, whenever you ask for it. 1 Rob's [practice] 1 Ed. 644 only that the proceedings or Judgt. will not be superseded, unless you give bond with security &c to answer all damages, costs &c to the other party. "Coram vobis" by mere motion, {the Stat says} {that where} the proceeding has been {using} very seldom employed with us, and it is now expressly declared by our Stat. that* (C 880 — 1) (Ch 181) As to writ of "error generally" this applicable where an error of Law is supposed to have occurred in the Ct. which error must appear on the face of the Record, & it is not allowable to (...) out of the Record for it, of course such errors must be revised in the higher cts. This writ of error issues out of Chancery in Engld. Here it issues out of the Appellate Ct. It can be obtained only by exhibiting a complete transcript of the Record together with a certificate of the Counsel practising in Appellate Ct. that in his opinion there is an error in the Record and a petition saying what the errors is to the Appellate Ct or Judge therein if in vacation. If the Appellate Ct. or Judge thereof in vacation shall upon inspection of the Record, think there is reasonable doubt of the justice of the judgment, the writ must be allowed according to the terms of the Law, if otherwise it must be refused. C 685 — 13 — 14.

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77 Like all other writs it is in the name of the C. W. bearing title in the name of the Clerk of the Ct. from which the writ issues. & is addressed to the Ct. whose judgt. is complained of commanding him to certify {to} the Record, and is generally accompanied, (especially in Criminal cases) by a clause of supersedeas, the object of which is to suspend all proceedings until the judgt. has been reviewed. It is practically confined to Criminal cases. tho applicable to both civil & criminal. The 3rd sort of writ or process by way of appeal is the writ of "Supersedeas". This like all writs is obtained from the Appellate Ct. & on similar terms as writ of error, and is addressed to the Sheriff, and not to the Judge as the "writ of error" was, and commands him to forbear further proceedings on the the Judgt. and to notify the other party that he appeal before Ct. on a certain day. It is employed exclusively in Civil cases, not appropriate in Criminal cases, and in Civil cases is generally preferred to a "writ of error" in practice. It may be observed that in this the writ the commands to suspend further proceedings

is direct and not incidental, and the object is to suspend the proceedings while Ct is revising the judgt. A "writ of error" has been sometimes called a "writ of Supersedeas" by implication. All these mandates are in the name of the C. W. It also commands the Sheriff yo give notice to the deft. to appear before Ct of Appeals. 4. The 4th Process of appeal, is technically called "On Appeal", and here we must be careful not to confound the generic name of appeal, with this particular one. The 3. writs already mentioned are intended to correct errors in

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Judgments given in C. L. cts. but the C. L. knew no such process as this "Appeal", but this was confined to the Civil law. The C. L. writs do not review & cure mistakes of fact, but only errors of Law arising out of facts, and they must appear on the face of the Record except in case of "coram vobis". The proceedings of way of appeal reviews facts as well as Law and this grows out of different modes of investigating facts. Civil Law ascertained facts by means of the Ct. but the C. L. seldom referred to the Ct. to decide questions of facts, but called upon Jury or were decided by wager of Law or Battel. Nor did the Record at C. L. obtain any memorial of facts, unless a Bill of Exceptions has been made which is made a part of the Record. But according to the Civil Law proceedings all the facts upon which the Ct rested its adjudication made contained in the Record, and therefore submitted to the Appellate Ct. facts as well as Law, and it was congruous to it do so, but the C. L. method did not allow the facts, and it would have been incongruous in it to have done so. Appeal being employed in Engld, in those cts proceedings from the Civil cts. i. e. Ecclesiastical Cts. Maratime & Chancery Cts. All the errors in Engld. which are cognizable in these Cts. are here used after the methods of C. L., i.e in cases which these cts would adjudicate. If you have a case in Equity, and want to appeal, altho' our Stat. allows a writ of supersedeas now properly an "Appeal" would lie. So in such causes, administration, divorce, maratime causes, Marriage contracts, and also causes touching Roads, building mills,

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Police causes and causes of public economy, and causes tending the poor, &c. This is only by Stat. Formerly appeals were allowed at the arbitrary pleasing of the dissatisfied party, but this being used to an infamous extreme, now you can have an arbitrry Appeal only in the cases of

appointment of Guardians. Probtle of writs, granting letters of administration, & cases of erecting mills, opening Roads, & erecting ferries. But this arbitrary Appeal can be had only from the Cty or Corpt. Ct to the Ct Ct and not from the Ct Ct to the Ct of Appeals. The arbitrary appeal must be taken during the term, at which the [blank space] complained of was made, and if dont do it then you have to get an "appeal from the Appellate Ct afterwards. C. 682. s 1 — ch 182. C. 682 — 13 — 14. and in these cases Parol testimony is heard & the cause is just reheard in the Appellate Ct. as if it had never been heard before. And here as we have said you can introduce new parol testimony in Ct of appeals or Dist. Ct to support the Record which could not be done in other cases of appeal to the Appellate Ct. C. 122 — s 22 - New code S 32—33. The first three of these writs are the only ones known in the C. L. Now the Course of Appeal. In criminal causes it is from the Cty or Corpt. Ct to the Ct Cts. & from the Ct. Ct to the Ct of Appeals. New Code Ch 209 —3 — 4 — 5. In civil causes the course of appeal is from the Cty or Corpt. Ct to the Ct. Cts except in the case of a simple Justice, when there is no appeal, and from the Ct. Cts. either to the District Ct. or Ct. of Appeals. Sometimes exclusively to the one or the other, and sometimes of the option of the other party to either. There is no appeal from Dist. Ct to the Ct of appeals except in 3 cases, then the Dist. Ct exercises

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original cognizance. 1 Mandamus. 2 Habeas Corpus. 3 Prohibition, new code 182 — 10 — 15 to 20. Let us now see when the appeal is exclusively to the Dist. Ct. It is exclusively from the Ct. to Dist. Ct. when the cause is pecunary, and the amount is over $100, and less than $500, using the word appeal here in its generic sense. New Code 182 — s 3 — 11. If amount under $ 100 no appeal lies from Ct. Ct. If it is exclusively from the Ct. Ct. the ct of appeals when the case [involves] 1: right of Cty to levy torts or taxes. 2. freedom of (...) done away with now, or 3. constitutionality of a Law. Ch 182. s 20. New code. The appeal lies at teh pleasure of the party from the Ct Ct to the dist. ct or ct of appeals in all other cases. New code 182 3. 11. 12. In the 3rd place. When the proceedings by way of appeal are allowed. At what stage of the cause, and here we dont discriminate between the various causes. There must be something final in order to go to the Appellate Ct in the (1) decision of the Ct, blow. You may have one or the other of these processes of appeal in case of any order concerning Probat of wills, appointment of Guardian, Granting letters of administration, or conerning the committee of a Lunatic, ferry (...) road, erection of mill &. (2) So in any case on chancery where an order dissolving an injunction, requiring money to be paid, or the possession or title of property to be changed, or adjudicating the principles of the cause. (3) So also you may appeal in any civil case whatsoever, wherein is a final Judgt. or order. New Code 182. 1 — 2. And observe that if an appeal from an introductory order be allowed, where none is proper, the cause

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will be dismissed as soon as the attention of the Ct is called to it. 12 Grat 479. 13 do 40 — 252. 653. And the cts. are very strict as to this rule. Lecture XLIV. Saturday Jany 19th 1861 In the 4th place. Here Appellate proceedings may be had. Pending application to any Ct or Judge of Ct. a Dist. Ct. such cts a Judge can in 60 days suspend the Ex'cu levy enough for the appellant to get out a Supersedeas upon his giving bond &c to pay damages & costs of suspension, in case the Supersedeas is not gotten out within the time specified, in the order of ct allowing suspension. V. C. 183 — 4. Acts 51 — 2 ch 63. sec. 1. The petition must be accompanied by a transcript of the whole Record, or enough of it, to enable the proper determination on it, tho' upon certiorari a complete Record can be obtained. V. C. 683 . 5 — 7. ch 182. The petition tells the errors of which the party complains and to get Ct to allow it to be tried in that Ct. a counsel of that Ct shall say that in his opinion the Judgt. can be reversed, and is presented to the Appellate Ct. in term, of a Judge thereof in vacation. V. C. 684. Sec. 8. Acts 51 — 2. C 61 — s 9. If the Dist. Ct judge refuse to allow it the person can apply to the Dist. Ct. in the term, or (...) Judge of Ct. of Appeals. Acts 61 — 2. ch 61 — 7. Except when appellate proceedings are to protect 1. decedent's Estate. 2. a convict. or 3. an insane person. The petitioner must give Bond & Security &c. - and after the dismissal of the Appeal &c. no other one can be had on that Judgt. V. C. 685. Sec. 13 — 18. acts 51— 2 ch 62 — 2. And after 5 years from the Judgt. or decree is given, no appeal shall be had. V. C. 683. 3 — Acts 51 — 2. 61 — 5. This depends on the amount of judgment which is to be under $ 200. See 2d. Now the mode of proceeding when the process of Appeal has been obtained.

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1. When the appeal is to the Ct Ct, at any time during the term after that one at which process of appeal is obtained (unless to [good] cause not given), the Judge will, when it is convenient to him, take up the Record & hear the arguments of the counsel on the error, which was alleged to have been committed in the Cty Ct. The Judge then pronounces his judgt. If there is error he will reverse the Cty Ct's Judgt., if none he will confirm it. 2. When Appeal is to Dist. Ct. or Ct of Appeals. The Stat provides that the Record shall be printed at the C. W's expense. This printing the Record is a modern practice. Stat. allows 21 copies for the Dist., & 12 for the Ct of Appeals.

These copies are for the Judges, Counsel, and Records &c. V. C. 686 sec 19. Acts 51—2 Ch 62 s. 3. The Va. stat. provides for the docketing of appeals. If the appeal is cognizable exclusively in the Dist. Ct. it is docketed there. If exclusively in the Ct of appeals, it is docketed there. If cognizable in either, prima facie it is docketed in the Ct of appeals. But if the appellant chooses, he can have it docketed in the Dist. Ct., and if docketed in the dist. ct. appellee can have it moved to the Ct of Appeals within 90 days, after the summons on appeal, & before it is heard on the dist. ct. V. C. 686. 19. Acts 31 — 2 n(3) sec 3 2d ch 61 — 10. Transfer of Appeals. By consent of parties, an appeal can be removed from the dist. ct. to the Ct. of Appeals, & from the {Dist.} Ct of Appeals to the Dist. Ct., vice versa when cognizable in either ct. i.e when it is cognizable in the ct to which it is removed. Acts 51-2. Ch 61-11 The grounds of decision in the appellate cts are generally such evidence as is contained in the face of the Record, that alone being considered entirely authentic. 1. In error coram vobis, and 2. in arbitrary appeals, parol (...) is admissable, if there is

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89 irregularity in the proceedings, when appeal is from Cty to Ct Ct. not otherwise. V. C. 687. 22. Acts 51—2. ch 62—5 As to the decision of Appellate Ct. [Registry], and enforcement therof see, V. C. 687. 25—28. Acts 51—52 ch 62— 9. Constitution of 1851. Lit. VI Sec. 13.

Rules of Pleading. St. Rl. Chap II. P 126. The text gives account of the peculiarities of Eng. C. L. mode of pleading, and attributes its rise to 3 things. From the custom of Deal pleading, assisting the memory. The various modes of decision, hence the necessity of certainty of causes nature, in order to know how to try it. (Prof. adds) The Trial by Jury. Must be accurate, to let the Jury see the precise point for decision. P 13 C. Text lays off the subject, and says that the object of pleading is to devlope a single, or a certain {issue} number of points for decision, upon these points defend the cause, i. e. to gain an issue, so called because it is the end, "Exitus." These rules must be such as tend 1. To produce an issue 2. To give materiality to the issue 3. To give certainty to the issue 4. To give singleness to the issue {5. To present prolixity in the issue} 5. To secure clearness in the issue 6. To present prolixity in the issue 7. To secure miscellaneous desirable objects. P 138. Consider these tending to production of an issue. Rule I. After the Declaration, the parties must at at each step demur or plead, & if they plead, must do so by [trovers] or plea in Confession and avoidance. II. When a party (...) he must tried an issue III. When issue is tendered properly, the other party

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must accept it. There will secure an issue necessarily. 140. Demurrer. There is a difference between General and Special Demurrer. The C. L. did not require a [specification] of the causes of demurrer to be given by the party demurring, except when the [plea] affected to, on account of duplicity. Hence at C. L. there was no special demurrer except in case of Duplicity of allegation. This leaving gap to (...) delays, the Stat. of 27 Eliz. & 4 & 5. Ann. enacted that the ct should take no notice of formal errors, unless thereby they were unable to give judgt. acending to the very right of the cause except when such [error] was particularly specified in the Demurrer. And when a party demurred he put in the demurrer a specification of the grounds on which he demurred, & hence it was called a "special demurrer" see 1 Ch. Pl. 701. The Va. Stat. directs that the Ct is to take no notice of such trifling of errors, even when specially stated, except in pleas of abatement. Hence special demurrers are abolished in Va. VC 650 — 31. The Prof. thinks this is a bad Law, because it disables the ct to control the forms of pleading. Note — Pleas in abatement are demurrable even for matter of form, upon general demurrer, because they are regarded with no (...). 2 H and Muf. 314. 2 Mall & Seld 486. P 143. Effect of Demurrer is I to admit the truth of all facts sufficiently pleaded II. To cause the ct to consider the whole Record & give judgt. for [him] who on the whole seems but entitled to it. This is at C. L. The I exists in Va., but modified by stat. & the cts. I. The stat. modifies it, in as much as it allows the Deft. to plead as many matters of Law & fact as he chooses. V. C. 644 — 23.

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93 [drawing of a finger pointing right] This privilege is allowed the deft. only & only to him when he is answering the Plt's declaration. In Eng. the stat. 4 & 5 Ann allows him to plead as many as the ct shall think proper. Here he judges of the propriety. Hence he can demur & plead both at once. Judge Tucker (senior) thought the stat. did not intend to allow him to plead & demur both at once. 2. Muf 96. (p 101 of case). In this case the rule was held good & it was also decided that the deft. may plead in consistent pleas. & it was confirmed in 3 [Rand.] 448. 2 Brockenborough 14. 6 Call 71. But the plt. cannot do it. See 1 [Rand] 277. The Va. stat. therefore repeals some of the conveyances of the doctrine, rather than the doctrine itself. II. Practices of the cts modify this 1st effect of demurring at C. L. by allowing the party to withdraw his demurrer & to plead before trial judgt. or the end of the term of ct. 3 John 145. 2 Muf. 518. 8 Leigh 532. If the deft. demurs & pleads (...), the demurrer is to be decided [for it]. (...) probably the plea will be [unnecessary] to be decided. 2 Muf. 518 — 5 [2d 7]. If the demurrer is over ruled trial judgt. is not given, but the plea is to be determined. 2 Muf. 88. P 144. Text says 'tis the practice for the Ct to examine the whole Record, & give Judgt. v.s. him who committed the first mistake in pleading, unless aided by pleading (...). 6 (...) 182. 6 Leigh 316. If the

Declaration contain several (...). it is but to demur to such if these severally as are supposed to be bad, as well as to demur to the whole, for if the Demurrer to the whole is overuled, the Special one is good. 8 Leigh 50. 6 Grat. 134. The cause is the case in several claims: in several breaches of Bond. 6 Grat 134.

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Lecture XLV. Tuesday January 22nd 1861 95 As to our Statute of Jeofails — It says if you plead over without demurrer, {the} some errors are cured by the Statute of Jeofails. & some by C. L. If don't demur, and it is mere matter of form, the pleading may obviate it, or the Stat. of Jeofails. C 680 — S 3 — Ch 181. Our statute declares no judgment shall be stayed or reversed for any of these reasons, viz: Suppose the mistake is that the infant appeared by attorney instead of guardian, the Judgment might not be reversed of in his favors, & beneficial to him. Nor shall any Judgt. be stayed or reversed, for want of a warrant of attorney to authorized him to appear as attorney. Nor would it be stayed or reversed for want of a Similiter, or any (...)ing of issue. Nor any informality in Entry [of] Judgment, nor for omission of Entry of a [Error], nor [for] its not appearing that there were a legal number [of Errors]. Nor shall it be stayed or reversed for any [omission], imperfection or defect in pleading which might have been taken advantage of by Demurrer but was not [or] could not have been taken advantage of by demurrer, and if you plead over without demurrer, the Statute (...) every error which does not amount to non— statement any defence at all. 152. The reason why a person should not pass by a defect without demurring, is that if it prevails afterwards, he {(...)} gets [no] costs. This is not the case in Va., but the Ct has to give cost to the party which prevails. C 680 — ch 181 — s 4, 8, 11. 6 Leigh 277. Now you must either plead or Demur. As to pleading it must by way of traverse — or by Confession and avoidance. Pleading by way of traverse which is denying the adversary's allegations. There are several sorts of Traverse kinds have already been mentioned, those by Deft. respect to the Plt's declaration. Common Traverse which is in the very same record of the

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97 allegation. 2. General issue which is confined to the Declaration 3. {Traverse "de injuria"} Traverse with "an absque hoc": "or special Traverse". 4. Traverse de injuria" which is confined to the Replication. We give here an explanation. Take a plea of the Statute of Limitations. You acknowledge the promise, but say it is avoided of the Statute, which is an example of a plea by

way of Confession and avoidance, and the Plt. will say here, that the cause of action did [occur] in the time named & was denied in the Defts. plea. 2. General issue so called, because of the comprehensive terms in which the allegations are clothed, and is confined to plea altogether. The Rules of Hillary term 3 & 4 Wm. 4. are nor incorporated in any Statute. These rules of Hillary term were to circumscribe the general issue & make ot more precise. P 156 Says in an action of debt on a Simple contract general issue is "never indebted" by these Stat.s of Hillary term, according to C. L. & the practice of this Country it is "Nil debet" and this will (...) any Defence except the Statute of Limitations. "Never indebted" is more confined and could not prove any thing by Confession and Avoidance. As Release &c, but not Infancy, Coverture &c. P 156, As to plea "Non Est Factum" in an action on a Specialty. A man cant deny any thing acknowledge in Specialty, but you can deny the existence of Specialty. When there is a matter which proposed to introduce under this plea of "Non Est Factum," which does not show that Deft. did not sign it, but you ought to state the facts on which you rely, as making the defence, & this ([Muf] 462) should be act out in the affidavit, "Non Est Factum" cant ((...) 86) be pleaded unless sworn to. Read to S.P. p. 198.

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99 under a plea of "Non Est Factum" you can prove what makes the Deed voi {dable}, but not what makes it evidable Traverse "de injuria" occurs only in the Replication in actions of "Trespass and Trespass on the case", but is not used in any other stage of the pleading. In these action it is the proper form when the plea consists merely of matter of "Excuse", & in no other case. The general design of a Special Traverse, as distinguished from a Common one, is to explain or qualify the denial, instead of putting it in the direct and absolute form. And the ancient pleaders were induced to adopt this cause from 2 reasons. 1. "A simple or positive denial may in some cases be rendered impossible by its opposition to some general rule of Law." 2. "A common Traverse may sometimes be inexpedient as involving in the issue in fact, some question which it would be desirable rather to develop and submit to the Judgment of the Ct as an issue in Law." I. "It is a rule that the inducement shld be such as in itself amounts to a sufficient answer in substance to the last pleading." II. "There must no traverse upon a Traverse", is "that the opposite party has no right to traverse the inducement". There is no way of pleading to the inducement. He cant do it by Confession & avoidance, but he can demur to it. This II "Rule is open to an important exception, viz that there maybe a Traverse upon a Traverse, when the first is a bad one." III. "Again with respect to all Traverses it is laid down as a Rule that a traverse must not be taken upon a matter of Law." IV. "It is also a Rule that the traverse must not be taken upon matter not alleged". V. "That a party to a deed who travers it, must plead non est Factum, and should not plead that he did

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101 not grant, did not demur &c." Lecture XLVI. Thursday Jany 24th Remarks. The effect of pleading over without demurer is to cure every defect in form & sometimes even matter of substance. The Special Traverse consists of the "Inducement" & the "Absque hoc", and is used to prevent argumentativeness of the denial. As e.g I bring an action v.s a person who says he was an infant. I (...) to put this on the Record, and I say {it has} [he] executed the contract &c., on the day preceding the anniversary of his 21. birthday, rather than that he was an infant, if he denies that this makes him an adult he will demur & leave it to the ct to decide, if he wishes to show that it was executed two days before the anniversary of his 21 bth he will plead. The inducement must be an indirect denial made direct & positive by the "absque hoc." (See.) The forms of General Issue have been explained. As to the action of Ejectment it is originally a personal action of trespass vi et armis, adopted afterwards to recover 1st. a term of years, 2nd. freeholds, in both cases to recover damages. Formerly the General Issue was "not guilty" and this was the only plea which the Deft. was allowed to put in at one time. 1. Chd. pld. 546. Our Stats. in Va. still confine the Deft. to general issue, and the Stats declare what the General issue shall be, ie "not guilty of unlawfully withholding the premises claimed by the Plt in the Decl: upon such plea the Deft. may give the same matter in evidence, and the same proceedings shall be had as upon a plea of not guilty, in the present action of Ejectment, except as herein otherwise provided, and he may also give in evidence any matter which if pleaded in the present writ of Right would bar the action of the Plt. V. C. 559 — S 13 ch 135.

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Under this plea he is allowed to bring a certain equitable defence which was formerly only available in Chancery. The Stat. says 1. "A vendor, or any claiming under him, shall not, at Law any more than in Equity, recover against a vendee or those claiming under him, lands sold by such vendor to such vendee, when there is a [writing], stating the purchase and the terms thereof signed by the vendor or his agent, and there has been such payment or performance of what was contracted to be paid or performed on the part of the Vendee, as would in Equity entitle him or those claiming under him, to a conveyance of the legal title of such land from the vendor or those claiming under him, without condition." 2. "The payment of the whole sum, or the performance of the whole duty, or the accomplishment of the whole purpose which any

mortgage or deed of trust may have been made to secure or effect, shall prevent the Grantee or his heirs from recovering at Law by virtue of such mortgage or deed of trust, property thereby conveyed, wherever the deft. would in Equity be entitled to a decree, resulting the legal title in him, without condition." C. 560. S 20—21. Ch 135. But before these Equitable defences can be taken advantage of, notice must be given of your intention to do so 60 days before trial. Ch 135 — s 22. Under the action of assumpsit, the plea of Infancy, Coverture, duress may all be given in evidence under the Gnl. Issue non—assumpsit, or they may be pleaded specially as you like. 2 Starke's evidence 127. P 181. Special Traverse. We have adopted the same amendment which was adopted in Engld by Hillary Term 4 Wm. 4. viz. that Special Traverse shall (...) to the country, instead of

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[verification] thus (...) use stage. The statute says "All Special Traverses or travers with an inducement of affirmative matter, shall conclude to the country. But this regulation shall not preclude the opposite party from pleading over to the inducement when the traverse is immaterial." C 649 — S 26 — Ch 171. This Special Traverse is sometimes called formal travese & sometimes Simply Traverse. 1 Ch's Pl. 653. 1 [Tidds] practice 684 — 5 — n(A). [Goulds' Rl Ch 7 — S 6. (...) (...) pl 102. 1 Saunder's Rpts 103. 8 — & note. Among the later cases where Sprecial traverse has been employed we may cite the following. 3 Ringham's new cases 71. 4 Adrethus & Ellis Abb. 2 Meeson & Welsby 770. 4 Bingham's new cases 77. 9 Adolphus & Ellis 303. 8 Meeson & Welsby 593. p. 212. Author says in plea by way of confesion & avoidance you must deny in effect, and yet not to appear to deny. Sometimes it is expedient to plead not of Traverse but by Confession & avoidance, but if you do, the plea will be open to the objection of the want of color, and to avoid this you may give it colour by means of fiction, and plead by confession & avoindance. The object of this is to [devolve] upon the Plt. to counteract only one of the matters in the controversy & admit the (...). Also to separate the questions of Law & fact, but in order to give some color you must insert some feigned pretence of title. As you admit a person in possession in pursuance of illegal title, and this give some color for bringing an action, and then you state some true title. You have also several steps in your pleading, but the Pltf. can reply as many several matters of Law & fact as he pleases, but he must confine himself to one single defence. The ct will not admit him to plead this

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[fictitious], and if he does, he will be ruled out of the ct, [the] objects are twofold. 1. To separate Law from fact. 2. If he denies in (...), he is confined to one single step. [It] says this expression is confined to Real actions, another (...) of trespass. But Prof. says this is not so, but is often used in the action of trover. 2 Meeson & Welsby 95. If the party have (...) a colorable title would be to his disadvantage, because he cant traverse that &c [false] one too. The false title is that the Pltf. claims under the (...) of devise without livery of seisin. 2 (...) & (...) 95. [This] cld not be here now, nor in Engld. because Livery not (...)grined, & ought to say by [parol] [devisee]. 14 Meeson & Welsby 105. (...) do. 585. 1 Wheatin 269 - 5 [Coners] 207. 217. Author says every pleading must be in answer the whole of what is adversely alleged 8 Grat 578. (...) to the doctrine of protestation, our statute superceded [the] necessity of this, by a {statute} provision which says that (...) party shall be prejudiced by omitting a protestation any pleading. Read to p. 240. Lecture XLVII. Friday Jany 26th. Protestastion is where a person passes over traversable matter [but]does not wish it to go against him altogether, and to avoid [this] he may protest and if he does he may bring it up in another [suit]. But if the party protesting dont maintain his action, but [the] issue be found v. s. him, the protestation dont avail. [There] are 3 exceptions to the rule that a party must demure [plead] by traverse or confession & avoidance [1.] In case of Dilatory Pleas which are confined to matter of form. 2. In pleading by way of Estoppel which may occur either in pleading by {way} matter of Record, by matter [in] pais, and in case of Deed. 3. In case of new assignement, as when the Deed, is very vague and the plea answers to the wrong point of the Deed. and the Pltf. (...) assigns the real cause of action.

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[Lecture]. The 2nd sort of Rules which tend to secure materiality (...) issue. But before we mention these we will refer to the (...) p. 217. Which says, You must answer to as much of the allegation you profess to answer to & in the case of the Pltf of the [Deft] dont answer to the whole the Pltf must sign judgment [as] to what is unanswered and reply to the rest, and if he [dont], it will be a discontinuance. 8 Grat 578, Ch 171, S 25. [As] to Protestation if several allegations, the Pltf cant plead to more than one, to prevent this {protestation} he protests & this does not apply to that action but to another action & thus the [rules] of pleading lead to an absendity, if it applied to that action alone it would be [well]. That St. mentions as an anomaly (...) not so. P 229, i. e that must prove {illeg.} the breach of the [condition], this is case in all Bonds with collateral condition & the Declaration dont set out {illeg.} these breaches & the deft. has observed [illeg.} them & the Pltf proposes to traverse that. [P] 240. Says under this rule that all pleadings must contain matter pertinent and material. (...) mentions several

subordinate Rules. 1. That traverse must not be taken as an immaterial point. 2. That a traverse must not be too large, nor on the other hand too narrow. E. brought an action v.s. D. for cutting down his mill dam, the deft answer that the Pltf. built without any authority & the water obstructed the road. The Pltf answered that it did not entirely obstruct the road, thus making his defence wider than it ought to be. A Demurer [was] made, and the ct held that the Pltf's defence was [too wide]. 6 Mnf 308. 1. Bingham's new cases 323. An action was brought on an attorney's Bill. Deft. pleaded Bill was for work in Law & in equity & that he had commenced the action before, a month had elapsed which was vs the Law. The Pltf [replied] Bill was not for work in Law & Equity & the ct held that the traverse was to wide {& had}, Meeson & Welsby 728. An action v.s. Sheriff of London for false return under which the Pltf averred that the Sheriff

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111 had seized & leved {money} goods improperly, and made money vulg(...) . The Sheriff answered both that he did not seize & levy the {money} goods — the ct held that the traverse was too wide, it being immaterial whether he did levy {money} goods or not it being sufficient of the seized it. The principle of this rule is that it involves immaterial matter to the merits — of the cause. The other [branch] that the traverse must not too narrow. (...) 40. The action was for breaking open the outer door and entering the house, the defence was that he did so by virtue of an (...)ecution. The ct held that this traverse was too narrow, because it did not answer all the material facts. 5 [Muf.] 1. The principle of this rule {is} It depends on the principle that pleading is faulty which does not answer all [it] professes to answer. [P. 262]. N. C. In saying that pleadings must not be double{d} refers to the Penal Bills in which at C. L. the penalty became the debt, if the terms of the Bill were not complied with. & if I were to state the failure of more than one payment it would be duplicity of pleading. Our Statutes have abolished this principle of C. L. (...) I may state more that {for} one failure. The difference bet. Penal Bills & Bonds with condition. A Penal Bill is to pay twice the sum, if not complied with. While a Bond with condition is an obligation to pay a certain sum of money {which} with certain conditions (...)exed, on the performance or non—performance of which the bond shall be void. Penal Bills were more frequent than single Bills here, but now have almost disappeared. [P.] 262. Says no matter however multifarious will [operate] to make a pleading double that together [constitute] but one connected proposition or entire (...). [2] Johnson Repts. 462. This was an action of trespass for taking the Plts' goods, the plea was that it was done (...) authority of an officer &c. Were many allegations but all amounted to one defence, & ct held that this did not make the allegation double. P. 259. Considers how duplicity is avoided by Plt. & also by Deft.

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115 By Plt — by several counts in the same {case} Decl. by all he can set out {in} the same cause of action in {the same} different aspects. The use of [several] comits is to avoid a variance [bef.] the allegation [proof]. If you bring an action of slander no two [witnesses] may agree on the same [words]. In an action of assumpsit there were many counts used. 1. Indebitatus Assumpsit. 2. Quantum valebant. 3. Quantum meruit. 4. Count stated & then several money counts. More there are but two. Lecture XLVIII. Tuesday Jany 29th. [As] to several Counts. Our practice is in several [aspects] different from that of England. Prof. says (...) when he commenced practicing it was customary an action of assumpsit to put in 7 different Counts, [now] two are sufficient. Indebitatus Assumpsit. 2. Quantum Valebant. Quantum Meruit. When there were 3 money counts so called because they referred to money, alleging. 1. That money had been lent the deft. 2. That money had been paid for the deft. 3. That the deft. had & had received money to his use. And 4 & last. Count stated the first 3. were called Common Counts. [And] 1st As to Indebitatus Assumpsit, so called from [its] prominent words. In debt it would be called Indebitatus Count. It sets out that the deft. was [indebted] to the Pltf for some specified things, and that [being] so indebted, he promised and agreed in consideration thereof to pay it. Quantum Meruit — meant for work done, to pay as much as was [deserved]. While these two counts are the counter parts of each other, it was generally [customary] to put them both together, because it was probable that work might be done, goods sold in the same [transaction]

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117 e. g. if a Blacksmith brought an action, it would be both for [the] iron which he had sold, and also for the work which [he] had done. [The] Quantum Valebant avers that the Pltf. had sold the [Deft.] certain goods, in consideration whereof the deft. has promised to pay him as much as they are reasonably worth, which sum is specified. The Quantum Meruit avers that the

Plt.f. has done [work] for the deft. which was to be paid for as much [as] it was worth, sum being specified. They were [the] same thing, only substituting work done for goods sold. [The] Count Stated. This sets out or alleges that the Pltf. [and] deft. accounted together concerning certain [sums] of money due to the Pltf from the deft. & in which accounting the Deft. fell into arear to the Pltf. [and] in consideration thereof he promised to pay. Now what is the use of all these various Counts. They were presented upon the fallacious idea that in in debitatus assumpsit it was necessary to prove the exact sum alleged to a farthing, just as avered. And if you did [not] do this, you would be defeated in your action. And in consideration of that, they introduced Quantum Valebant and Quantum Meruit. In Counts of account stated it is enough to prove that the deft. [admitted] that he owed the Ptf. the sum stated. In these counts it is immaterial from what the count (...) its origin, whether for work done, or goods sold. [Now] come the 3 money counts, only applicable when money was lent, or when money was paid, or when money was had & recieved of Deft. If there was no money concerned, these Counts ought not to have been used. The foundation of all these Counts is the same, and [the] only difference is the different circumstances. [In] process of time it came to be seen that there was (...) occasion for Quantum Valebant or Quantum Meruit. [that] the indebitatus assumpsit was sufficinet for all cases.

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119 and if you could prove that the deft. was indebted to the Pltf in [any] sum that was sufficient, and it was necessary to prove particular sum. To that (...) Q. L. V. & L. Me. were [dispensed] with keeping the remaining 5. [Whether] progess has been made in this work of [abbreviating] [the] declaration. It was afterward found that you could [bring] all the money {a c} counts together, it making no [difference] out of how many transactions the indebitatus {they} [spung]. [Could] embrace them all in one indebitatus. It was [found] that you could embrace work done, money paid, [money] had and received, all in the Indebitatus Assumpsit. [This] was at first thought to be in violation of the rule [forbidding] duplicity, but it was not, as there is but one [promise], altho' many grounds of promise. Now let us see some of the practical uses of these Counts of (...) Stated. The principal use of it is that it dispenses with the necessity if a Bill of Particulars, for the (...) in the Count of [allemut] stated is that the Plf. & Deft. accounted together, and the Deft. was found to be in [arrear] to pltf. and in consideration thereof promised to [pay]. Of course then no levy was wanted. Now if the Pltf [has] evidence to prove this, the would be no need for a Bill of Particulars. 11 Leigh 471. This is a great convenience for [to] copy all the items of a long account would take a prodded (...) & (...) much trouble. We have a Statute which rep. [blank line] [blank line] [Now] it {must} will {hap} occur that it must sometimes happen when an action of assumpsit is proper in a case, that these various forms we have mentioned, will not be applicable. As in case of an action employed against an (...) for leaving his employer in the middle of a year [before] his term is out. In such a

case tho' assumpsit the action to bring, none of these counts will apply. [Some] of these Common Counts broad [guide] as they are [will] not apply to the case. Hence you to have to are

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121 [some] special language, called a Special Count. In Chitty you [will] find Special Counts which will apply as easily as [Com.] [Cnts.] Chitty's Pleadgs. 116 to 383. So also there Special Counts must be brought in an action of assumpsit in a Bill of Exchange [or] a Promissory note, and in many other cases. Chitty's Pledgs 316 to 372. The Joinder of several causes of action in [special] Counts, [put] in one declaration, sometimes presents a point of practical difficulty. The best general rule seems to be that when [the] several Counts are of the same nature, and the same judgment is to be given, but the pleas are different, and therefore the demands may be joined in the same action. 1 Chitty's Pledgs 229. In an action ex contractae [the] Plf. may join as many causes of action as he chooses, which are of the same nature. Thus debt on a Bond may be joined not only with a debt on a simple contract, but also with a debt on a Judgment. 10 Johnson 463. 9 Grat. 183. 2 [Lomedus] 177 (x) (n) If they are all of the nature of a contract to do a (...) [thing] other than to pay money, you can join them. So in action ex delicto several trespasses may be joined. You may form Trover with a general action on the case, 1 Chitty Pld. 230, but not assumpsit. E. g. If you were to hire a man a horse and he were injure him, you could sue him in assumpsit, but you had better sue him in case, because you could join trover with it. But it is always improper to form any tort with a [contract] 1 Robinson 265. When there are several Counts [one] of which is faulty, you should demur not to the whole [Decl.] generally, but to each Count separately, i. e. you should demur to both. And the same thing applies when you demur to a single Count containing many (...). 6 Grat 130. (...) 54. 1 Henng & Mnf 351. 8 [Leigh] 50. or again when there are several demands. With us the deft. instead of demurring (...) are several counts & one of them is faulty, is allowed to to ask [the] Ct to instruct the Jury to disregard all such faults.

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123 get if [entire?] damages be given the verdict shall be good. C 672. S 12. Ch 177. C. (...) 134. Lecture XLIX. Thursday January 31st 1861 (Remark) You cant join an action in Account with an action in Assumpsit. Nor Covenant with Assumpsit, nor debt with Asssumpsit. The money counts are of the nature of indebitatus. (Lecture) P. 272. Author mentions Stat. of 4 Ann, whereby the deft can plead as many matters of Law or fact as the Ct shall choose. Our Statute is

still more liberal allowing the deft to plead as many several matters of Law or fact as he may think necessary. No leave of the court is (649, S 23 Ch 171) therefore necessary. All the pleas ought to be put in at one and the same time, and if not, the subsequent pleas can be put in only by leave of the Court. P. 274. It says "For that leave of the Court, which the Statute requires, was formerly often refused where the proposed subjects of plea appeared to be inconsistent. And on this ground leave has been refused to plead to the same trespass not guilty, and accord and satisfaction, or non est factum and payment to the same demand." Here no leave of the Court being necessary inconsistent pleas may be put in, and this is allowed only where the deft. answers to the Plt's declaration. The privilege is not allowed the Pltf. at all. 2 Munf. 101. 4 Hen & Munf. 277. At subsequent stages of the altercation the deft cant demur or plead, but if he does demur and the Ct. gives any signs of judgment against him, he may withdraw his demurer and plead. 8 Leigh 532. And of he don't, final Judgment is given against him. P. 276. It says privilege allowed by Stat. of Anne does not apply to Dilatory Pleas, but here you may plead Dilatory as well as Peremptory Pleas. It says you cant plead & demur to the same matter. This rule as to the Defts. plea is changed in Va. But as to subsequent pleadings the C. L. rule still

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125 remains good. 6 Call 71. 2 Muf. 88. 4 Hen & Muf. 277 2 Brokenbrough 14. 5 Muf. 1. 1 Rand 277. P. 281. Author says pleadings must have certainty of place, & says that every traversable fact should be laid at C. L. with a venue — i. e there should be stated the place at which the alleged fact happened. You are not to infer that our writs of Summons concur with original writs {held} used in the text. Our writs of Summons are addressed to the Sheriff of some particular county, usually the cty of defts residence, or where the cause of action arose, requiring him to summon the deft to answer the Pltf's complaint, and the facts are retained for the declaration, and therefore as the writs state no fact, venue can be laid. But what is said in the text of venue in (...) writs applies here to the declaration. It was a general rule of C. L. that every [traversable] fact should be stated with certainly of time and place, and the modern use of this requirement is 1. To state the averment with such particularity of place and time, as that the party may be better prepared to meet it. 2. To determine the jurisdiction of the Ct. In practice neither of these objects are attained. It will be admitted that this requirement of the venue &c. in most cases, depended more on the usage of English pleading, than the good derived from it, and our Cts enforced it vigoriously. 6 Rand 165. Accordingly our recent code very wisely provides that "It shall not be necessary in any declaration or other pleading to set forth the place in which any contract was made, or act done, unless when from the motive of the case, the place is material or traversable, and then the allegation may be as to a deed, note or other writing bearing date at any place that it was made at such place, or as to any other act, according to the fact,

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127 without averring or suggesting that it was at or in the Cty or corporation in which the action is brought, unless it was in fact therein." And again it says "All allegations which are not traversable, and which the party could not be required to prove, may be omitted unless when they are required for the right understanding of allegations that are material." C 647. S 8, 10. Ch 171. In respect to the distinction between Local & transiting actions explained in the text. With us in Va. Real & Mixed actions are always Local and never otherwise. Personal actions are always transitory, and in any personal suit, you may sue either where the cause of action arose, or at the residence of the deft. V. C. 641. S. 1-2 Ch169. Formerly in consequence of this distinction bet. Local and Transitory actions, and the necessity of stating the place where any harvestable fact ocurred &c. an extraordinary style of expression was used in the pleading. If you were alleging a cause of action which might have arisen elsewhere, you state the time place. & under a videlicit, you state the venue of the action. Our Statute dispenses with this, and declares that you need not to state the place where the fact ocurred, "unless the place is material or traversable &c." V.C. 647, S8 Ch 171. 1 Ch. Rlds. 320. Ch 169. S 1. 2. If a mistake is made as to the Ct. the defence is made by a plea in abatement to the jurisdiction or some (...) a plea to the jurisdiction, and such plea must be filed at the same rules at which the declaration is filed. C. 649. S19. Ch. 171 which says "Where the declaration or Bill shows on its face proper matter for the jurisdiction of the Court, no exception for want of such jurisdiction shall be allowed, unless it be taken by plea in abatement, and the plea shall not be recind after the deft. has demurred, pleaded in bar, or answered to the declaration or Bill, nor after a rule to plead, or

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129 a conditional judgment or decree nisi." P. 290. In England the Pltf. alleges the cause of action to have ocurred in that county which he wishes to be tried in, and when this was material the deft. could apply to ct to change the venue. C. 657. 1 to 5. 4 Leigh 669. 8 Leigh 364. As to certainty of time. This time need not be stated at all, unless material, and if it is material it must be stated accurately. In actions for money, in debt. & in debitatus assumpsit, you need not state accurately but then you cant recover more than the pleadings are made for. C 681. S 5. Ch 181. P. 301. In respect to the allegation of Quality, this must be proved as averred because it is descriptive. P. 302. As to Misnomer. How to proceed against a deft who has signed a Bond by his mony name. You should sue him by his true name, and then give the name which

he has himself put to the Bond. 1. Greenleaf's evidence 869 (n 3). In Va when a name is mistated it can be amended by inserting the true name. At C. L. {it abated} you conected it by a plea in abatement. Lecture L. Saturday February 2nd. P. 377. Rules which tend to prevent obscurity & prolixity. P. 388. As to usury, where usurious interest ought to be stated. Our Statute declares that a general plea of usury will suffice, and does not require that is stated particularly C 576, S 6, Ch 14. And by our Statute private acts of assembly may be given in, without being explicity pleaded. C 660. S 1. Ch 151. As to matters of fact of which the Ct. takes notice ex officio see 1 Greenleaf's evidence p. 78. 6 Rand 704. P. 362 Author in speaking of notifications connected with the plea of non damnificatus, says in order to make this general mode of pleading proper, it is necessary

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to use the words "indemnify" or "[save] harmless." He says "that if the condition does not use the words "indemnify" or "save harmless", or some equivalent term, but stipulates for the performance of some specific act, intended to be by way of indemnity, such as a payment of a sum of money by the defendant to a 3rd person, in exoneration of the plaintiff's liability to pay the same sum, the plea of non damnificatus will be improper; and the deft should plead performance specifically as "that he paid the said sum &c." - 8 [Grat] 539. If the stipulation is that the deft. will do some specific act, the general averment of "non damnificatus" will not do. P. 384. Pleadings must not be argumentative, but must be stated in an absolute form. 2 Washington 187. Again in an action of assumpsit the Pltf. stated ground for a promise, but not the promise itself, and the action went for the Pltf. 2 Call 47. P. 388. Pleadings must not be by way of recital, but must be positive in their form 5 Call 533. Which was an action of trespass for the [breaking], of a close and taking his slave. and the complaint was given with a "Whereas" and the judge was not recused, but the Judges said it would have been good ground for a demurrer. 2 Hen. & Muf 661. 3 H. & Muf 134, which was a case (...) verdict was given. 5 Heny. & Muf 276. 4 Muf 261. 3 Muf. 566. 4 H & Mf 280. It would seem that in all actions whether "ex contractu" or for "tort", that a continuous recital from beginning to end, would be bad, but it is less likely to [seem] in actions ex contractu, than those ex delicto, because actions "ex contractu" consist {only} of several sentences. So that it would be better to omit the clause "for that Whereas", and say "for this (...), that &c." for "Whereas" is the method of making a continuous recital. (...) pleading 65 (...) 73 & (...). 3 H & Mf 276. Bac. Abr. Pleas (B) 5, 4. Bac. Abr. (...) (I) 2. 19.

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133 Our Statute of Jeofails covers the error whatever it maybe. So that these cases are overruled by the Statute, but error is avoidable on demurrer. C 680. S 3. Ch 181. P. 393. Pleadings should have then proper formal commencements and conclusions. This is very important. P. 397. Author makes a strange mistake in telling what the conclusion of a plea to the jurisdiction is, which is the final Judgment of the court. In Dilatory Pleas the Judgment is "Respondeat Ouster", but in all other cases, whether the issue be in Law or fact, the judgment if you Pltf is "Quid Recuperet." 1 Chitty's Pl 499. 2 Saunder's Repts 211 (n 3). P. 400. Says that "Rule of [Hil.] 4. W. 4 provides that no allegation of "actionem non," or "precludi non" or "prayer of judgment" shall in future be necessary in any pleading subsequent, upon a plea pleaded in bar of the whole action generally but that every Replication or subsequent pleading, pleaded without these formulae shall nevertheless be taken as in bar or maintenance respectively if the action C 649, S. 24. Ch 171 which says "In a plea, Replication or subsequenr pleading, intended to be pleaded in bar, or in maintenance of the action, shall not be necessary to use any allegation of "actionem non" or "precludi nom" or to the like effect, or any prayer of judgment. This rule alone then of Hil 4 W. 4 is true here. All the Stat. says if these allegations all to the whole of the action, you need not have them, but if not to be whole but a partial one, then you must have all the "actionem non" and "precludi non". {In Va. the} P. 404. Auth. says the use of improper conclusion or commencement, or defect therein is proved for demurrer. In Va. it is proved for Special demurrer. 10 Grat 198. P 410. Rules which tend to {produce} prevent prolixity and delay in pleading. Lecture LI. Tuesday Feby 5th 1861. Rule I. There must be no departure in pleading. 4 Call 206. In this case the Declaration is as in the

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135 name of [two] and the Replication in the name of one. This was held ground for Demurrer. 2 Mat 219. P. 418 Rule II. Where a plea amounts to the General issue, it should be so pleaded. What the Pltf is required to prove as a general issue, must be pleaded as a general issue and not specially. Any ground of defence which admits facts alleged in the Declaration but denies those [blank space] may be pleaded specially. 9 Johnson 302. 8 Cranche 35. 10 Johnson 289. By way of exception to these there are some instances of defence which under general issue may be proved under that, or specially proved either. As in case of Devise, Infancy, Coverture (...) and satisfaction. Any of these are admissable under general issue by the relaxtion of the Law in Eng. & Va., and may also [be] pleaded specially. V. C. 630. S. 31. Ch 171 says on a Demurer unless it be plea in abatement the ct shall not regard any defect imperfection in the declaration or pleadings, whether it has [been] deemed mispleading, or insufficient pleading or not, unless (...) be omitted something so essential to the action or defence [that] judgment according to Law or

the very right of the cause cannot be given. P. 426. As certain miscellaneous Rules. N 33 gives as Rule I. The Declaration should commence with a recital of the original writ. We have no original writ and we employ a paper said to be by "Bill." In personal actions in Va. the Declaration begins by entilling the Ct. properly and do not insist the term at which Declaration is filed, but this may done in some cts. After the title of the Ct. we plunge at once into the narrative of the cause without any recital at all. The next rule is, Declaration must be conformable to the original writ.

The effect of a variance between the writ and the Declaration (...) Summons here. Any such variance was such fatal at C. L., provided the rules allowed the ct to inspect the writ, to see whether the variance existed or not. The only nay in which you could tell whether there has a variance was to put the writ on Record by craving oyer, and you could only ask oyer

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137 [before] imparlance or before any plea dilatory or preemptory. If the variance is immaterial to the real merits of the case, it could be taken advantage of (...) plea in abatement, or by special demurrer, but if it was material (...) it was craved oyer if it could be taken advantage of by motion in (...) of Judgment, or by writ of error after judgment of the lower ct. 4 Munf. 94. Our former Statute of Jeofails declared that after verdict, or judgment nil dicit no variance bet. the writ and declaration should be taken advantage of, by motion in arrest of Judgment. Robinson insists that the only way in which a variance could be taken advantage of was by a plea in Abatement or special demurrer, but this wrong. 1 Rob's practice 168. But the Statute now says, that the deft. on [whom] the process is served shall not take advantage of any defect in [a] writ or return, or any variance in the writ from the declaration, unless the same be pleaded in Abatement. In England the practice in the 2cts. is to [require] oyer of the writ in order to discourage these proceedings which are supposed to be frivolous. The Statute dont interfere with oyer of the writ, because the pleadings ought to conform to the suit. 4 Munf. 94. 4 Hen. & Muf. 310. 2 Washington 212, P 43 C. N34. says that while the declaration must conform to the writ, [yet] it is not to be considered that by a departure from that rule, you state (...) more particularly in the declaration than in the writ. P. 428. Says the declaration should have the proper commencement, and a proper conclusion together with the production of [blank space]. It says the Pltf. cant secure greater damages than are expressed in the declaration at C. :. 4 Hen & Muf. 310. 3 do 202. 4 Muf. 214. This is qualified with us, if this mistake be found out before the Jury discharged the Ct will recall the Jury, provided the damages [exceed] not both the damages in the writ and declaration together. V. C. 681, S. 5, Ch 181. If they do exceed those both laid in the writ and declaration, it could be revised only in the Appellate Ct. at C. L. [But] our Statute says that the Ct in which there is judgment by default, a decree on a bill taken for confessed, or the [judge] of said Ct, in vacation [say] on motion revise

such judgment or decree for any [error] for which (...) appellate ct. might revise it. [Whether] in actions on Bonds with collateral condition, not only

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139 (...) penalty limited by amount stated in the declaration & writ, but also amount in the Bond. As in a Sheriff's Bond you cant recover more (...) $ 90,000 from his securities, might bring an action against him, (...) C. L. [P. 430]. Says the pleadings must be pleaded in due order. Pleas 1st to the Jurisdiction. " 2nd to the disability of the person. 1st Pltf., 2nd. Deft. " 3rd to the Count or declaration. " 4th to the writ. " 5th to the action itself in bar thereof. The 4 first are dilatory pleas and you must therefore plead [dilatory] before preemptory pleas, an exception to this general rule [when] any matter subsequently occurs {whic} to the time at which (...) plea ought to have been pleaded. In such cases the rules of pleading (...) such subject matter to be pleaded, provided it be done. (...) the last — continuance and before the term of next ct. [and] this is called a plea of depuis darein continuance. (...) Call 49. (...) 36 says pleas must be pleaded with defence. Our Statute expressly [declares] that no formal deference should be required in a plea. {It says} {dilatory}. V. C. Ch 171. S 28. [P.] 433. says Dilatory Pleas must be pleaded at a preliminary stage [in] suit. Not only does this principle apply here as to C. L. but by Stat. also (...) dilatory pleas cant set aside an office Justidgment and therefore must plead dilatory pleas before office Judgt. is entered. And as to [as] to the Jurisdiction, the Statute requires them to be pleaded at the same (...) at which the declaration is filed [blank space] [P.] 436 says all affimative pleadings which do not conclude to the (...), must conclude with a verification. Our Stat. V. C. 647. S 4 Ch 171 [says] when a deed is allowed in support or bar of any action, project [must] be made. Lecture LII Thursday Feby 7th 1861 Pleading is beginning to be abolished to a great extent and very [errorneously] too, because the question has to be evolved in some way (...) it is better to do it in the quest of an office, than in the [service] of the Ct House. But the study of the rules of pleading

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the general rule is that the heir gets only "Real Property," but it is an anomaly which has to be remembered, that the the "heir" from "personal property" gets only "annuities and corodies."

Whether a common is appendant or appurtenant, to sell a portion of the land to which it is incident, there will be an appointment. But if it be appendant, and he sells the land in wh right of common exists, there will be an apportionment. But if the common be appurtenant, the right of Commons will be extinguished.

Now if the Common be Appurtenant, then if a 3rd persons buys a portion of either piece of land, that piece to which the Common is incident and that in which it exists will in no way affect the Common.

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141 important because while it dont exist in fact it does require a knowledge to instruct the Jury how to get at the question.

Real Property Real Property

The first look in Real Property was prepared by Littleton, & called treatise on tenures. Coke put a commentary to this treatise [100] times greater than the book itself. The Lecture begins with the subject of Estates which men may have lands. Lord Hale said we should treat of 1. The nature and kind of Real Property 2. The tenures 3. Of the Estates in them 4. The title thereto — and this outline was followed by Bl. which [method] of Bl. is the best. Lomax P 654 Real Property consists of corporeal and incorporeal [Heriditaments]. Treats I Of Commons P. 657. Explains several sorts of Commons, and says Common Appurtenant does not arise by any tenure, but may arise by prescription. If the grant prescribes the number of cattle the number is decidedly the Grant: but if there be no stipulation you may put as many cattle on the Commons, as the products of the land would feed in the winter. Also he says Prescription doesn't exist in Va. In this he is wrong, and he supposed that because this Continent was discovered within the memory of man. But there is no Historical Record when property originated here. But Custom cannot become a Local Law, and it depends on Govt. Common Appurtenant may exist by prescription as well as by Grant and 20 years of adverse and uninterrupted, quiet enjoyment is evidence of immemorial [enjoyment]. While Commons might be apportioned at C. L. reference to the land to which it was incident, [yet] it could [not] be apportioned by way of sale of a portion of the land to which it was incident. If I have a right of Common in tract of land and buy a portion of the C. W. land, my whole

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143 interest of commons is extinguished. Lomax says Common because vicinage dont exist here V. C. S 1.4. Ch 99. But it does exist here because it is analagous to our fence Laws. P. 663. States that subject to the right of fishing, {shooting & hun} fowling and hunting the limits of the several tracts of land [lying] on the sea shore, the said bay and the rivers and creeks thereof, and the rights and privileges of the owners of such lands shall extend to ordinary Low water mark, but no further unless when a Creek or River or some part thereof is comprised within the limits of Lawful Survey. [P] 665. Mentions a statute which is directly in [truth] of this provision mentioned here. viz. that when there is a fishing shore in any Cty. Commissioners shall be appointed to mark out the ebb & flood [halls] of the Seine. Application was made for this in the

cty of King Geo of the proprietors of a shore, and the revisors of the code applied this provision to all counties. So that the proprietors do have [an] exclusive right as far as these flood & ebb halls extend. [He] says unless a [way] be appendant to land, a part of that land will not include that [way] unless so expressed. [illeg.] 17 Ch 117. P 679 Proseeds to Public [ways] and says a [blank space] must be prescribed in the application to the Ct. Om. Stat says.

It is the decision of the cty ct to open a road, tho' it be only for a private purpose. All actions for Real Property are now limited to 15 years with the exception — that if a person is [laboring] under the disability of infancy, coverture &c. 10 yrs additional is allowed, but in no case to exceed 30 years. V. C. 614 — 683. Lecture LIII. Saturday February 9th 1861 Franchises. P 684. Authors falls into singular blunder. He says. Chancellor Kent has remarked that "these incorporated franchises seem with some impropriety to be classed by [writers] among Hereditaments: since they have no inheritable quality.

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145 in as much as a corporation, in cases where there is no express limitation to its continuance by the charter, is supposed never to die, but to be clothed with a kind of Legal immunity." A right of way arises 1. By prescription. 2. By [Grant] 3. By Reservation. 4. By necessity. A Right of way appendant and appurtenant pass with a grant of the land, and this way appendant and appurtenant arises by immemorial usage and by such usage you can claim a right of way through a stranger's lands. In reference to P. 684. Jno B. says an inheritance does not mean an estate which must be inherited under all circumstances, but only {one} a perpetual denotion of Estate, and is fitted to go to the heirs if there are any. As to the exclusiveness of Franchises, our idea of Franchises in Va. and in the Superior Ct of U. S., is that they are never exclusive unless so denominated in the charter. The Ct of appeals declared that there was no exclusiveness of Franchises, unless so expressed. N. 4. 1 Rand. 204. which shows the Legislature cant take away any interest from a person unless by the same act it will make first compensation. This principle applies as much to Franchises as it does to Lands or any other property. 9 Leigh (...) (...) [Canal] 25 Turner 3 Grat. 277. The measure of damages is the value of the property, after substracting from that, the amount of benefit which is peculiar to the proprietor alone but not any benefit derived from this by him {in} together with his neighbors. As to Rents P 697. says "if H has a Rent service or Rent [charge] & (...) it to another for term of life by deed indented, rendering to H certain (...) the reservation is void, bec. rent cant be [charged] with other rent, [for] it cannot be put in view." It means cant be put in view of [Recognitors] of an assize. P. 707 comes to explain the remedies which are

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147 {very} summary and by action. They Summary are Distress. Attachment. Entry & Nominae Paene, which is only a penalty. As to additional Remedies in case of Husband, Parents, and other heads of families. The no of persons are greater for when the exemption operates, than those mentioned in the text. Also increases the actions of exemptions. Lecture LIV. Tuesday Feby 12th 1861 Remarks. A franchise is a privilege enjoyed by an individual of the authority of Law which he could not otherwise exercise. A will has been decided not to be a franchise because the purpose of a will is for the benefit of persons generally, as {also} providing a necessary article of [good]. And what is a franchise must necessarilly have the authority of the Ct, but a will need not have such authority. Franchises cant be taken away from the owner without just compensation. As to Rent, it is certain profit issuing periodically out of Lands and tenements corporeal in retribution for the land that passes. Rent cant issue out of Rent because Rent is an incorporeal thing. There are 3 cases in which a Rent charge is distreinable for as if of Common right. 1. In case of "Onelty" = "Egality" of partition. 2. In case of Exchange 3. In case of Rent being given on Lieu of doner. In order to make rent go to the heirs after the death of the Lessor you on put to insert into the demise the words "during the term" &c. At C. L. the landlord could not distrein after the Lease had expired, nor on any guds not in the premises. But one Statute allows him to distrein as long as the tenant is on the premises and [on] goods not only in the premises, but also on those not removed there from more than 30 days. C. L. was more liberal than our Statute as to things distreinable. C. L. allowed every thing with a few exceptions to be distreined for. At C. L. things on the premises for the benefit of trade were not distreinable, unless they had remained in the premises longer

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reasonably beneficial, as e. g. another person's horse at a Black Smiths [shop]. Lecture. P. 714. Observe the Real actions for the recovery of Rents and particularly how an action of debt lay at C. L. for a freehold rent. P 719. After mentioning these actions, author says where the remedy at Law was not clear & sufficient. A Bill in equity may [be] had. And he mentions numerous instances, as in case of Rent seck. If the rent cant be recovered at Law Cts of Equity will decree a seisin of the rent, and perhaps decree that the Rent shall be paid. We have a case in Va. 2 Call 249. In this case the parties had had transactions of such a nature, that the rent could not be recovered at Law, and a Ct of Equity took it in hand and {declared} decreed payment of Rent. Sec 2. Chap. 3. treats of the Estates which may be had in Rents and its incidents. In paragh. 2, same see: 2. It is said a Rent being an incorporeal Herditament issuing out of lands, was comprehended within the Stat. "de donis" and might therefore have been entailed. It is true it

might have been entailed, but this was because it was a tenement, and not because it was an incorporeal Heriditament. Sec. 3. As to the discharge and apportionment of Rents - The key to this whole subject of Rent, is the distinction between Rents granted and Rents Reserved. The Law did not form Rents granted and would not in this caase apportion the Rent, and accomodate it to this state of things. But it would in case of Rent reserved as far as was just. But in case of Rent granted, if the change took place by the act of God or a public enemy, the Law would apportion. Great trouble is created here by a double use of words &. The word apportion is used in 2 senses. Sometimes it means to abate or diminish, sometimes the division of Rent or bet. several persons. The distinction bet. Rent Reserved & granted as to apportionment has been done away with in Va. by Statute. Now in either case Rent is apportioned.

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The question arises as to Rent reseved whether it should be apportioned as where a man rents a house & lot and the house is destroyed without default of the tenant, as by a [wind] &c, he must still pay all the Rent, and by the Law of waste, must pay also for the House. This is an example of Rent [reserved], not being apportioned. P. 727. pag. 2. says if the tenant be ousted by a title paramount before the day appointed for the payment of rent, such [distinction] entirely discharges the tenant from the payment of any part of the Rent; as e. g. if H Leasee for life makes a lease to B for [years] rendering rent payable at Easter, & B by virtue of the lease [occupys] the land for 9 months, and then H dies by which the (...) of B was determined. At C. L. in this case B was [required] to pay no rent, and this was upon the principle that [the] Law does not apportion any periodical payment in [point] of time or any solid [Blank space] The arrears of Rent are paid up to the last Rent day [but] not afterwards. 10 Coke 128. 1 (...) 65. P. 729. Mentions that in case of Rent reserved, where the property is destroyed as by fire &c as in the case Rep. mentioned, no apportionment is made. 3 Call [309]. 12 Leigh 601. 3 Johns Rpts 44. And this {is time} principle remanins unchanged as to payment of Rents, but as to Repairs the Law is altered, and the statute declares that the covenant or promise of a Lesee that he will have the premises in good repairs shall have effect, if the buildings are destroyed by fire or otherwise without default of the tenant, of binding him to erect such buildings again, unless there be [understanding] such to be the intent of the parties C (...) . S 19. Ch 117. P. 734. Use of the word Statute which means here Statute merchant & staple. 2 Bl. 160. Lecture LV. Thursday February 11th Author does not mention corodies, annuities and offices. So he omits the II grand head of this subject. i. e. The Terms by which lands are holden. This would have come in inmediately after speaking of the nature of Real Property and the several Kinds.

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Bl. tells us to distinguish bet. modern & ancient [tenures] and then another division into Base & Honorable. Then whether Base or Honarable they may be Certain or Uncertain. If free or Honarable & certain in amount called Free & [Com.] socage, if uncertain in amount, called chivalry or knight service. If services are Base & certain in amount called Villein socage. If Base and Uncertain in amount, they are called [Rent] Veillenage. The tenures in Va. have been abolished since the Rev. before which land was held by mere & common socage. The next question is the Estates which men may have in lands. This subject of Estates is subject to a fourfold [division]. 1. In [antity] of interest which men may have in lands. 2. The [gratifications] of the interest. 3. The number & connection of the tenants. 4. The time of enjoyment including Estates in expectancy, as Remaindered &c. [At left margin]: [questioned Feb. 16th, [asked] on the question why has [estates] tail put analysis [laid] (...) is bec. it of later origin.] As to I. In [antity] of interest. All estates are either of Freehold i.e. if in determinate [duration] or Less than Freehold. Estates of Freehold were either Estates of Inheritance or not of inheritance. Estates of inheritance, all 1. Estates in fee simple. 2. Fee qualified or Base fee. 3. Fee conditional. Fee tail. Estates not of inheritance are 1. Fee tail after possibility of issue is extinct. 2. Estates of the curtesy 4. Estates in doner. Estates less than Freehold are 1. Estates for Years. 2. At will. 3. By sufferance. P 13. Author considers the Statutes of Mortmain and considers whether we have them. He says none so called by that name. And a corporation's right to hold is either limited by charter or general Law, and if a corporation acquires

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155 more than is allowed by the Charter, or the Law allows it. Lomax says the Corpt. may sell the surplus validly. But Prof. says if it buys more land than it has a right to, the excess is forfeited. The conveyance is contrary to the policy of the law {cant} and if so, cant pass anything to the Corpt. or Grantee, and therefore no interest can by that vest in the corporation. The Grantee cant in face of his grant or deed, and therefore the land must go to the C. W. P 15. Author points out that in the case of a fee simple being granted, nothing more can be granted. Distinction between a grant of fee simple with remainder and fee simple to take effect after a fee on a contingency, called a contigency in a double aspect or a double contingency. As an Estate to a A for life remainder to B in fee. You cant limit a fee after a fee but you cant make one fee take effect after another on a contigency. And by Statute of Uses s 8 & 9 (...) ct. & wills, you may make a conveyance in fee to cease upon the happenning of a contigency, and make another fee take place after that. And this is applicable to Base Fee, as well as to fee simple or absolute. P 17. Mentions incidents to Estate in fee. 1. Unlimited [power] of alienation 2. Goes to

the heirs generally 3. Curtesy and Dower. 4. Liable for the payment of debts. P. 20. Says the principle of marshalling assets is this, that where one Creditor has access to the funds and another to one fund, the 1st one ought to go against that to which the 2nd creditor has no access at all. If a man dies leaving lands & bond debts, these bond debts are chargeable upon lands and also personal assets. Now if there are personal assets

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157 creditors, the Bond Creditors should go 1st to lands & exhaust that first, and of they dont, the Ct. of Equity will allow the simple creditor to go against the lands as far as the land creditors have [issue] vs. personal assets. [Leigh 224] Lecture LVI Saturday February 16th These conditional fees seem to have been at one time {to have} very common. And there was only one condition viz: that Grantee should have heirs of his body, and when the condition was performed, the Estate was vested absolutely only for 3 purposes. 1. To sell them. 2. Forfeiture for treason or Felony. 3. Charge with his debts. The result pratically was that as soon as there was issue of body, the donee conveyed the Estate to a freind of his, which friend conveyed the Estate back to him, thus vesting in the Donee. {a ft} an Estate in fee simple absolute. If he had issue and died having issue the Estate descended as a conditional fee to that issue. This thwarted the principles of aristocracy in 2 ways. I. It tempted the young owners to subject the lands to all debts, and thus bring families to destitution. II. These donees were sure to accomplish this result upon their Lords, and the Lords therefore lost their reversion. And in 13 Ed. I the Statute of "de donis" was passed under which was {passed} enacted that {upon} when an Estate of this sort was given, it should go to the heirs, and if he had none, it should go {to} back to the Donor. The pretence of this Statute was that the willl of the Donor ought to be preserved. This is an erroneous idea, because no man ought to use what belongs to him prejudicial to the community. This Statute "de donis" was a great sore to the Juridical policy of Engld. and 200 years elapsed before any change was made. Coke makes a pathetic ennumeration of the ill effects of this Statute. He said under conditional fees, all Estates were liable for debts &c.

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These Estates were called Estates tail, from "feudum taliatum". i. e. a truncated, mutilated feud. So called, 1. Because the Heirs general were cut off, & the inheritance limited to the

particular heir. 2. Others say called truncated because the Estate is cut into two parts, one part going to the tenant or Donee in tail. The other to the Lord in Reversion. These Estates were brought to Va. from England, and were very much formed. Slaves were also entailed. They could be baned by time & Recovery as in England. In the 1st year of Anne in 1705 our Colonial Legislature instead of doing as the Engl. parliament{ary}, Cts. and people had done, declared these lands should not be disposed of at all except by specific act of assembly. The result was that the Legislature was incessantly teased with [frequent] applications, and after 29 years 1734, they adopted some relaxation of this principle, and declared if the land exceeded 200 pds sterling in value, or even if less than 200 pds sterling, and was {(...)} adjacent to other entailed lands belonging to the same person, then it was necessary to apply to Leg, but if the value of the land was under 200 pds Sterling, and not adjacent to other entailed lands, then need not apply to the Leg. And this Estimation as to the value of the land was made by a Sheriff under a writ similar to an "ad quod damnum." So it stood till 1776, and after some opposition a Statute was passed 7 Oct: 1776 abolishing or rather aiming to abolish entails. Jefferson the framer of the Statute, abolished Estates tail in possession or Estates tail limited after a life Estate, but the Estate tail after and Estate tail he did not seem to notice at all. And it happened that this very case [occurred] within 2 years after Statute was enacted, and the Cts. held that

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161 this was an Estate tail, because it did not fall under the provisions of the Statute. The Legislature passed an act that every Estate tail which as the Law stood prior to 1776 would have been an Estate tail shall be a fee simple. 2 Washington 11. And all Estates tail limited after an Estate for life or years or in tail were delcared to be a fee. While in 1705 slaves were made real Estate, & subject to all incidents of real estate, a statute was passed saying slaves should be personal property, and the [end in] has no doner in anything but real property. Our Statute only converts these Estates into a fee simple, which the Statute de donis would make an Estate tail and this Statute applies only to tenements. An annuity is no tenement nor is a corody, and not within the Statute "de donis". And {if} in England if you give an annuity to a man and the heirs of his body, it would be a conditional fee and so in Va. P. 35. Ran 2, says (...) after the Statute abolishing [Entails] was passed, the question arose whether a Desvise to A for life, and if he died without issue Remainder to B, was good. The cts said were not barred by any technical words, and that B could not have the land till A & the heirs of his body were extinct, and this would make it an Estate tail with a Remainder to B. This Estate tail of our Statute was converted into a fee simple and there would then be a Remainder after fee, & therefore barred, but the Counsel said tho' there could not be a Remainder, it was good as an executory devise. But the cts said if you adopted this custom, lands would be made less alienable by this Statute instead of more alienable because as for Est. tail it could be sold by an act of the Leg: & Remainder [over] barred, other Ct

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said such a custom would thwart the policy of the Statute. The clamor of the people to let men do as they pleased with their lands prevailed, (...) Leg. and such a Remainder as above, would be good only as an Executory Devise. Lecture LVII, Tuesday February 19th 1861 At C. L. it was necessary to use the word "Heirs" to create an Estate of inheritance. But this is not required in Va. Incidents to an Estate tail. Tenant was not liable for waste. It could not be conveyed so as not to be recovered by "fine or Common Recovery". Subject to Dower. Subject to Curtesy. And it was not liable for debts. Estates tail was finally and wholly abolished in 1785. "Devise to A for life, & if he die without issue, to B." Previous to Abolition of Estates tail, this is a Gift to A & his issue, which was an estate tail in a will, but not in a deed, because it wants the words Heir. B would have an Estate for life taken as a Remainder. Now when this Statute was passed abolishing entails, the effect was that A would have a fee simple. B's remainder by this would be void, because nothing can be limited after a fee simple. By this Statute abolishing Estates tail, all Estates which were Estates tail before, were changed into fee simple Estates. In above, B's remainder would not be good as an executory devise, because this would have been against the policy of the Statute. And after that that it would not be good for another reason, namely because it was too remote. Estates tail after possibility of issue extinct cant exist here because Estates tail cant exist. It grew out of the Estates tail special at C. L. A tenant for estates tail Special is not liable for waste. You may have an Estate with several limitations. As for example to A for life B. C. & D. is an Estate with several limitations.

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165 "If you were to give an Estate to A for his life, with Remainder to B for his life." If A were to give up his Estate to B, it would merge, becuase B's Estate which is for his own lands, is greater than the Esate for A's life. So if B were to give up to A. "Grant to A for life Remainder to Z for life" Here the same thing takes place. But [blank space] "Grant to A for his life, & the life of Z". Here there is only one Estate, but merely two Limitations and hence there is no merging. The difference then, is that where there are two separate estates, the one greater than the other, and the lesser one is given up to the greater, it is merged in the greater. But if there is only one Estate, there can be no merging. An Estate for Life is not liable to be given in tail. Nothing but an Estate of inheritance can be given in tail. Right to Estovers. Liable to waste, & probably

Liability {into} forfeiture may be mentioned as an incident. As to Emblements, it was not material at C. L. at what time of the year the Estate was determined. If the tenant had saved nothing of course he could have no Emblements. Lecture. Emblements. Has remarked that the modifs. of the C. L. as to emblements was questionable. Prof. thinks it does not promote the justice of any case. & defeats the [practice] of others, as e. g. {after 1st (...)} if man dies after Wheat & Rye are put in & before 31st Dec. the Statute will not give him anything that cant be severed before 31 Dec. & he loses the crops.

If on the contrary he dies bet. 1st of march & 1st of June, the the Statute may be more advantageous than C. L., for he is allowed to keep the land until 31st Dec. Some cases which are contemplated 1. Where Life Estates is of indeterminate duration determined by death of tenant of himself. i. e. the occupant of the land. 3. {2}. Where the Estate of indeterminate duration is determined

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167 by some other than the death of the tenant. 2. Where the Estate at the times it comes to an end, is leased out to an Under tenant. This 3. case ought ought to be put (2). As to 1 & (2) case Statute is very clear. As to 1. says if any party is farming & dies on or after 1 of March & before Dec. 31 his Reps. shall occupy the lands either by themselves or by tenant till Dec. 31 & the profits of the Crops &c of the lands shall be assets in their hands of the decedent. They must pay a rent to the Revisioner or Remainderman, and that too is to be conduced as a fact of the expence for (...) the land. But if the decdent dies bet. 31 of Dec. & {before} 1st of march the C. L. of emblements prevails. Suppose (...) die in 5th day of March, he would pt. by C. L. crops in ground. With us here they are fall crops of small pain demand preceeding year, Wheat & Rhye. The Statute would give not only then, but a [chance] of a Corn Crop, tobacco crop & oat. Now suppose die on 4th July, by C. L. he wld get all crops in ground & all [aft.] might be successfully put in, & reaped before end of the year. By the Statute he would get poss. of the land till 31 Dec truly, but he would have no chance to put in anything, altho' he would have have the use of all the Crops [aft.] he might get in, still this would be nothing, for he could get in no crops. The expenses have to be paid. Such as Rent of Land. Clothing of slaves &c. Of course the Statute applies only to farming or planting land. Neither the C. L. nor Stat. applies except where the land is employed in farming or planting. Nor as to 2nd case. The C. L. rule would give the under—tenant all the growing crops, & would have free use of the fields on wh. the Crops are

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growing. & access to the other fields [to] these. Our Statute sys he shall have the right to occupy the land and doing what he can with it till the end current of year of tenancy, & (...) the emblements which were forming at the time his Estate determined. But he pays Rent, due proportion to Remainderman or Revisioner, & due proportion to {Landlord} Representatives. The Rent is paid in proportion to the length of the Estates. Our Statute makes a further [proviso] that if the Life Estate determines before 1st August. The Lesse is at any time after that to {be} allow {ad} {by} the Revisioner or Remainderman to use the land to put into crops for the next year or any crops, and if deprived of this use he can have reasonable compensation. Also as to the manner of paying Rent. If Rent is usered in money it is to be apportioned of the tenant himself. If to be paid in kind, then all are to be paid to the Rep of the life tenant, & he pays {the} to the Revisioner or Remainderman. 3rd case where estate {if made} is determined by any other merit than death of tenant. Our Statute is wholly silent as to this or rather provides that C. L. shall remain. So in 2 of these cases that Stat. provides for in the other C. L. rule prevails. As e. g. if a tract of Land be given to A for life or B. & B dies here the estate is determined of a mode other than death of tenant. The [alteration] which has been wrought in C. L. by these Stats. 1. Where the Estate for Life expired. C. L. excused Lesse from paying Rent for holding Land since last Rent day. If Estate was determined in day Rent was due before 12 oc. at night, tenant had to pay rent up to end of current year of tenancy if he [continues] to hold the land. C 573. S 1. 574. S. 1

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171 Lecture LVIII. Saturday February 23rd 1861

Equitable Waste is an injury where the party is not possessed of a Legal Estate. And then there is another class of Equitable Waste, which is the distinction of anything ornamental. Especially flowers, Shrubbery, &c.

(Lecture) Curtesy. In order that a Husb. may be tenant by Curtesy, the woman must be seised of such an Estate as the issue could inherit. Now if the woman were seised of an Estate by special tail, 1.2 if a tract of land be given to a woman other heirs of her body by a certain man, & she married some one else, her Husb. could not be tenant by curtesy. Hence the def. found in most books that when a tenant by curtesy of England {as} where a {woman is seised} man taketh a wife seised in fee simple or fee tail, general or special, as heir in [special] tail & hath issue by the same wife male or female, born alive, albeit issue after (...) or liveth get if wife dies, the Husband shall hold the land during his life by the law of England. In Va. any Estate of inheritance is capable of being inherited by {any} the issue of any marriage. Hence this

qualification dont exist in Va. But there is a Lease (Simon's 249) when you cant, as if a tract of land be given to a woman & heirs, but is she had issue, then to that issue, they took as purchasers & could not be tenant of curtesy. P 77. Author observes.

It is to this definition that (...) remarks apply. The 4 requisites to curtesy are 1. Marriage. 2 Seisin in Deed. Birth of issue born alive. 4. Death of Wife. The true reason why there must be actual seisin of the Husb. is that is is done to prevent the Husb. from having any claim to the wife's ourstanding right, unless he reduces them into possession. This is then done to stimulate the (...)

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173 to reduce the wife's outstanding claims into possession. Any seisin during coveture will entitle the Husb. to Curtesy. Littleton's reason is that Seisin in deed is required, because otherwise issue born of the marriage could not possibly inherit the land. This is not the true reason. The true one we have (...). In Dower, Seisin in Law is sufficient. Hence if {Lomax's} Littleton's reason was good, the seisin would occur in Dower as well as in Curtesy, but we see it is not necessary in Dower. Actual Seisin is not necessary for the issue to take. Lomax comments upon the insuffiency of the note are rather a contracted way. The seisin to entitle the issue to inherit, must be at the death of the ancestor, while seisin any time during coverture will give the Husband Curtesy. P. 79. Last paragraph, when an Estate of the wife is let out for life before marriage, the Husband cant be tenant by curtesy. This we know is so, for we have seen that In order for the Husband to have curtesy, the Wife must have 1. The immediate Estate of freehold. 2. The first Estate of inheritance. 3. There must be no intermediate, ruled Estate of freehold. Unless the wife is thus seised the Husb. cannot have ((...) C Lit (...) 560. (h e)) Curtesy. The same principle and requisites hold good as the Dower. If a tenant make a Lease for life to the Senioress, the Husband of Senioress cant be tenant by curtesy of the Rent. 781. "A Devise was to A & her heirs, & if A died leaving issue, then to such issue. Husband cant have curtesy here, because the Estate is such an one as cant descend upon her issue, but will go if she has issue to that issue, & they take as purchasers, if no issue it is a fee simple Estate but if issue, then it is only a life Estate. This can occur here.

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175 P. 82. The author observes that the disqualifications to aliens to Curtesy have not been removed. But the cts of Equity would construe the Stat. relating to aliens to extend to ((...) 498.

S 1.2. Ch. 115) give them Curtesy. Aliens come in either by act of the parties or act of Law, if by latter, they take as by a quasi inheritance & if by former, then there is a purchase, & it comes within the terms of the Stat: P. 84. Author comes to consider the various cases of defeasible Estates, and the effect of the defeat of an Estate on Dower or Curtesy. The will now only notice the cases. 1 Fee simple. 2. An Estate tail. 3. Base fee of the happening of the contigency in which the Estate determines. The principle is if the Estate comes to an end if the usual or regular effect of the period marked out for its existence, the Estate is to be prolonged to issue dower or curtesy — but of the Estate suddenly comes to an end by any premature happening of a condition, there can be no dower or curtesy. On P 84 Section 18 contradicts. Section 17 in both of its divisions. Lecture LIX Tuesday Feby 26th

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Lecture LXIV. Saturday March 9th 1861 209 The English Statute of Uses was applicable to every kind of property. Lands, tenements and Heriditaments, as ours also is, tho' statute only says Lands. The English Statute tended to convert into legal Estate any use no matter how raised tho' it did not in all cases. All that was requisite was that the person whose possession was to be transformed should be seised. In this respect our Statute is far more limited than the English Statute. Our Statute says that in 3 cases. Bargain & Sale. Lease & Release, and Covenant to stand seised, the statute converts uses into legal estates. V. C. C 116. S 14. I. As to Bargain and Sale. In order that you may pass a title, it must be founded on a valuable consideration. Some think there must be a moneyed consideration, but this incorrect. The consideration must be expressed in deed whether it exists in reality or not. Gilbert's Uses 50. 1 Kent 496. 2 Lomax 165. II. Covenant to stand seised. In this case, the consideration is one of natural love and affection. Arising from relationship in this case also, a Ct of Chancery would have [blank space], but Statute of Va. also converts this without help of chancery. No man can covenant with his wife, because they are one person in Law, but he must covenant with a stranger to stand seised to his wife, and the Statute will transfer the possession. While Bargain & Sale is founded on a valuable consideration, Covenant to stand seised is founded in a consideration of natural love and affection. III. Lease and Release operate partly under the Statute of Uses and partly at C. L. Lease by the Statute of Uses, Release by C. L. The Lessor covenants that he will stand seised to the use of the Bargainer for 6 months or a year &c, & then the Lessee being supposed to be in possession

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211 without actual entry, he is competent to receive the ([Our] stat. (...) no [recital] case is necessary.) Release which operates at C. L. Our Statute has declared that you need not show a Lease at all, but that a Release is Sufficient, if you only say there had been a deed of Lease. V.C. C.116. S15: says deeds of Release are effectual without a deed of Lease. These are 3 conveyances which in Va. operate under the Statute of Uses to convey the legal title to the Use. And if in any other way the use is raised, the Va. Statute dont affect it, but {the} it is cognizable only in a Ct of Chancery. In England there are classes of conveyances which operate by transmutation of possession. Where lands are conveyed to a trustee of C. L. conveyance and then the Statute takes them out of him & gives it to the Cestui qui Use. In family settlements this is very useful, because the trustee is a reservoir of seisin for all Uses. And the way is to convey the land to the trustee by feofment, or fine & recovery &c. and then by deed direct the uses which you wish to be made continuously. Our Statute dont apply to transmutation of possession, as the English Statute does. In England there is another class, viz: declarations of uses raised upon these transmutations of possession. See as to appointment of declaration of Uses. 2 Lomax 205. P. 214. At C. L. no freehold could be transferred otherwise than by livery of Seisin. When the Statute of Uses came into existence, it was seen that a man might transfer lands by Uses, so it substituted constructive in the place of actual livery. Then came the Statute of Wills which said a man could devise his lands to whom he pleased, but here also there was constructive livery. But 8 & 9 Vict: enacted that lands should be in grant as well as in Livery, and we enacted this statute in 1820. So now we need have neither actual nor constructive livery.

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213 At C. L. I grant Blackacre to A & his heirs. Witness my hand & seal [signature], this would operate nothing unless accompanied with Livery of Seisin. Under the Statute of Uses this would not raise an use, unless there was a consideration expressed e. g. "in consideration of $100.00", or something else. While at C. L. this would have been only a contract, by the Statute of Uses there would have been an Use raised, and the Statute would have conveyed the legal Estate. Now this would be good under 8 & 9. Vict: whether there is a consideration expressed or not. Hitherto the most usual conveyance has been a Bargain & Sale prior to 1830. Since then it has very little changed, but you might leave out the $100, and so now it is sufficient to use a mere grant without any consideration. P. 222 & 3. As to the origin and nature of trusts. They may be regarded as the Uses unexecuted by the Statute of Uses, and still cognizable in the cts of equity. But they are not synonymous with the uses at C. L. as Lomax says. The distinction is that in Uses, the Feoffee had the legal title, but the actual control was in the Cestui que Use, & beneficial ownership, & the trustee might convey to whom he pleased, and the Ct of Chancery

would make him, but in trusts the trustee was clothed with a discretionary power, and the Cestui que use could not make him convey it to him. If A was {possessed} enfeofed of Lands to the use of B, or in trust to B, B had a use, and A had to convey it to any one B might appoint, but if the feofment was to A. in trust to receive the profits and pay them to B. or a married woman &c. this was a trust, & the ct of chancery would compel the trustee to execute it. What uses are now executed by the Statute. When the Statute dont execute an use, it is called a

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215 trust, and in either called direct or indirect. I. As to direct, and 1st in England, was the policy of ((...) 355) 27 Hen. VIII to do away with Uses. There are 3 classes of cases not in the Statute. 1. Those of Estates which before the Statute were known (Lomax 224) as equitable trusts, and were not at the entire disposal of the Cestui que trust. 2. Uses limited upon Uses. As A seised of Land, bargains for valuable consideration to stand seised to the Use of B to the Use of C. The cts held that the Statute transfered the Seisin to B & not to C. The reason of this is difficult to explain, and the reason of Lord Bacon, when a person is seised of Lands & tenements is not a good one, because B in this case is not seised of Lands, but only the Use of them. The probable reason was that in such cases, as the latter use was repugnant before the Statute, so it was now. But however this has been the principle is that when an use is limited upon an use the Statute executes only the {latter} former use and thus it is said that the Statute which was intended to abolish Uses has had only the effect to add 3 words. As A bargains to stand seised for valuable consideration (to the Use of B) to the use of C. Before the Statute you did not have to interpose an use to make the Estate Equitable. 3. Uses declared in Estates less than freehold. And the reason of this is seen on the face of the Stat: because seisin is necessary, and seisin impacts a freehold. So that if a man was not seised but possessed only, it will not operate under the Statute of Uses, but is an unexecuted use. You may create an Estate for even so short of time, but the person must be seised. As to the 1st & 2nd our Statute is the same, as to the 3rd it is doubtful.

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Lecture LXV. Tuesday March 12th 1861 217 The 2nd class. Va. These are raised by the 3 modes of making conveyances aforesaid, and they differ from the English 3 sorts in this. 1. In those equitable Estates which at C. L. would be trust, i.e. discretion in the trustee, ours are like the English. 1 Lomax 225. 2. An use upon an use, just as in England. 1 Lomax 224 3 An use upon an

estate less than freehold. This is different from the English. In applying the 3rd direct trust i. e. the 3rd exception to the English statutes of uses, making the use executed viz: that the Estate must be freehold, there have been given in Va. three plausible constructions to one Statute. They are that the Estate must be 1. A fee simple. 2. A freehold merely. 3. An estate for years. The arguments are 1. For an Estate of Free simple. It is said the Eng. C. L. required that the person (Bargainer) be seised in fee, and that as the Va. Statute dont use the word "seised" as the Engl. Statute does, that the C. L. rule must prevail 2 Th's Cke Lit. 573. Cruise on Uses 48. and if it be said that tho' the Va. Statute dont use the word "seised" as to Grantor, but does say "the Grantee shall be enfeofed as property as if he had livery," it may be answered that "enfeofed" imports a free simple, and supports the construction contended for. Prof. thinks this "depends too much upon the the "letter of the law" construction to be "held by the cts". 2. For the freehold construction. It is contended (1) that the argument of the other side viz: that tho' the Va. Statute says nothing of the Bargainers Seisin, yet its saying the Bargainer shall be "enfeofed" &c is equal to the English Statute of "Seisin" viz to a fee simple, that this argument goes to show must be only a freehold (not necessarilu a {freehold} fee simple) for the Bargainer.

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219 cant be "enfeofed" unless the Bargainer had been "seised" & (2) besides the Statute of Va. must have intended to adopt the conveyances by covenant to stand seised. Lease & Release, Bargain & Sale, just as they were used in England, and that in Eng. they designated a freehold passage & no more, that this applies to show the Va. Stat's object, since it applies to the future as well as to the fact. 3rd. It is held moreover (3) that the covenant to stand seised is one of the conveyances named in the Va. Statute whereby an use raised of this conveyance is executed, and hence it would be incongrous to talk of a convenant to stand seised of a term {of} for years. (4) Another argument against the term for years construction is that it was to dispense with livery of Seisin that all freeholds were embraced under the Statute and that in terms for years no livery was necessary, and hence no reason for enhancing them under the Statute. 1 Lomax 229. The best construction of the Va. Statute is that the Bargainer be seised of a freehold estate only. 2 B.M. Lomax Dig. 229. And you could plausibly construe that an estae of equity must be freehold and not less from the undo of our Statute. Judges Tucker & Roane in 1 Tuckers Com: 1 K II p 261. (n) & 3 Call 483. held that not necessary that person whose possession is transferred shall be seised of freehold, but that possession is enough. Prof. says not Va. doctrine and answered the above by arguments (3) & (4) last mentioned. Besides the three exceptions to 27 Hen: VIII in England there is in Va. a 4th, it arises from the language of the Statute itself, viz: 4 Uses declared upon other conveyances than the 3 mentioned in Va. Stat. of Uses & are therefore trusts just as at C. L. 2 Leigh 359. 1 Lomax p 225 Yet is no particular object is to be effected by

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221 Keeping the possession and the legal Estate in the hands of the trustee. Equity will at any time compel him to give the legal title to the Cestui que trust. These are the 4 direct modes for creating Uses. The Statute 27 Chs II: declares that the declaration of all these direct uses shall be in writing, this statute is not expressly reenacted in Va., nor does it seem that the Statute of parol Agreements (in regard to trusts for more than one year) would make it necessary to have the Declaration of the trust in writing, tho' it has been held so. 1 Munf. 510. 7 Leigh 566. If the declaration is of an use for more than 5 years, it must be by deed V. C. 200. 1. 1 Lomax 230. and the Prof. thinks our Statute applies to equitable as well as Legal interests. No particular form of writing is necessary, provided it be signed by the man declaring the use, & in Va. if for more than 5 years, it must be {by deed} sealed. II. Indirect modes of creating a trust arise. 1. From the evident intent of the parties. 2. From the motive of the transaction. They are called Resulting, Constructive and Implied Trusts, and like all Trusts are enforced in Equity only. The English Statute 29 Chas II reserves all indirect trusts viz: not necessary to be written. And Judge Lomax p 233 thinks that nothing in the law is to stand in the way of their execution. These indirect trusts arise in all cases where it would be contrary to principles of Equity for the trustee to hold the lands &c., in any other way than as a trustee. They stand (1) upon the presumed intention of the parties, or else (2) they are freed upon the conscience of the party, by Equity as being trusts by operation of Law. 1 Lomax 233.

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223 If they arise from the presumed intention of the parties they are (1) Implied (2) Resulting trusts, and these last depend on like principles as resulting Uses of they are freed upon the party's conscience they are (3) Constructive trusts, and these constructive one arise both by fraud or some undue means in the acquisition of property, and also when it is contrary to principles of Equity, that such fraudulently gotten property (or even if not fraudulently gotten) should remain in the possession of him who has it, at least for his own benefit. (Lomax p 233. for examples of all sorts). In a contract for the sale of land, the land not being conveyed, the seller is an implied trustee for the buyer, viz: where the buyer of the contract, has got a right of possession, so if a testator charges his lands with debts & legacies the Heirs are by law implied to be trustees for the legatees & creditors. Resulting trusts arise from the same principle that resulting uses do, e. g. A conveyance is made to a trustee, & the whole interest of the Grantor in the land is not filled out by the deed, then the rest is held by the trustee in trust for the

Grantor, this is the general rule when the trustee was entitled to hold merely the possession, and not any beneficial property in the land. Constructive trusts depend on a conclusion of law, & are not refined to the intention of the parties, {& the,} indeed they are generally against the wishes of the parties, and they embrace all trusts arising by operation of Law, as contradistingued from those arising by intent of the parties. 1 Lomax 233. e.g. A testator gives a tract of land to another, and then directs that his will be destroyed, & thinks it is destroyed, he then dies the will

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225 not having been destroyed, & the donee if testator having done nothing like fraud in its not being destroyed, the law lets the devisee take the land, but Equity, tho' the devisee is innocent of the fraud, will make him hold the land as a constructive trustee for the testator's Heirs. Abstract of preceding Lecture. Very useful. Trusts are unexecuted uses. They are Direct or Indirect. I. Direct trusts in England are 1. The Estate which is created when land is given to a trustee who is to use some discretion in doing something with the land conveyed. e.g. to pay the debts of a 3rd person. 2. A use limited after a use. e.g. Estate to A to use of B to use of C. 3. Uses on Estates less than Freehold, or challet Estates. e.g. A (tenant for years) for consideration bargains to stand seised to use of B. Direct Trusts in Va are 1. These 3 English ones 4th Uses by conveyances other than Bargain & Sale, Lease & Release. & Covenant to stand seised. Direct Trusts are those not executed by Stat. of Uses. II Indirect Trusts in England & Virginia are those which arise 1. From the evident intention of the parties. 2. From the nature of the transaction. Trusts arising from the intent of the parties are called "Implied Trusts" and "Resulting Trusts". Trusts arising from the nature of the transaction & others forced on the party's conscience of Equity are called "Instructive trusts". Hence implied trusts are those implied by cts from parties' intention. e.g. 'Testator charges his land with debts & legacies, the Heirs are implied trustees for creditors & Legatees.

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226 The distinction between an Implied and a Resulting trust. The Implied trust is where it comes to a 3rd person. Resulting trust is where it results back to Grantor. They are alike in {born} arising out of the evident intent of the parties.

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227 Resulting Trusts are those which arise by evident intention of the parties. e.g. When a conveyance is made to a trustee, & all the interest of the Grantor is not filled out by the deed, then the rest is held by the trustee as trustee for the Land Lord. Constructive trusts are such as the cts from the nature of the transaction construe to be trusts. e.g. "A" by a will gives lands to "B", then orders the will to be destroyed, and then dies, the will still existing, then the Law will

let "B" take the land for he has not been guilty of fraud, but Equity holds him (altho' innocent) a constructive trustee for the Heirs of "A". Lecture LXVI. Thursday March 14th 1861. As to the 12th class of resulting trusts, when the Vendor sells lands and takes no collateral Security for purchase money, here the vendee is trustee for the vendor to the extent of securing the purchase money. If a security be taken, then it is not a constructive trust. It is therefore a Resulting trust for the benefit of the Grantor. Our Statutes have abolished this lien, unless contained in the deed of conveyance. Prior to 1850, if had taken no collateral security, the Law would have implied a trust in the Vendee for the Vendor: The present Statute requires an express reservation of the lien, and if there is no such reservation, we dont have such Lien at all. Even at C. L. Liens prevailed only against vendee and his heirs and those who purchased from him without value and with notice to Creditor or Vendee for value would have been chargable for the trust. The 13th Class. Is where one of several purcharsers of land, has paid more than his share of the purchase money, has an implied lien on the land for his extra portion.

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This capacity depends on the will of the Creator of the Estate.

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229 Rules by which trust Estates of freehold are governed. Trust Estates in origin are unexecuted Uses and one would suppose are subject to the same rules as Uses prior to the Statute of Uses, but these rules were {incorrect} incon— venient and have been modified. The effect has been to assimilate trust estates to legal Estates, and the only difference is the forum in which they are respectively executed and controlled. Trust Estates are liable to disseisin or abatement or intrusion as Legal Estates are. They may be conveyed and devised as Legal Estates, they are liable for debts. Subject to Curtesy and Dower. And may merge in Legal Estates when both come to the same person, and would have merged in to the Legal or with Equitable Estates. In marriage settlements questions as to Cestui que trust's capacity to alien or charge {with} the {trusts} Estate. A man conveys his property and creates trusts, and the question is can he alien this property or charge it with his debts. If it was the intention that the trustee should exercise a discretion as to trusts and keep the party from alienating it &c. a ct of equity will take care that nothing {that} {nothing} shall be applied to the current expenses, but the yearly profits. He also sues in a ct of Law, must sue for legal title and if he defends the legal title he must go into a ct of Law, and a Ct of Law must take cognizance of the Equitable title and tho' a Ct of Equity would give a legal title, yet if he has only an equitable title, cant sue in a Ct of Law. But sometimes tho' no direct proof that such a conveyance of Legal title has taken place {it will be presumed} to the person thus having the equitable one viz (cestui que trust) can be had,

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231 yet it will be precumed that it has been made to him not only from the lapse of time but also considering the purposes of the trust, from the inconsistency of a man's keeping the equitable estate so long, and yet allowing the legal one to remain outstanding, and also Equity will easily presume that what ought to have been done, has been done. 1 Lomax 285. The Va. Statute modifies the aforesaid general rule viz: that Law Cts dont notice equitable title, and 1. Allows the defendant (and never the Plaintiff) in a suit, if the object of the trust has been satisfied and he give 60 days notice, to show this satisfaction of trust's object to the Jury. The Statute does the same. 2. With a satisfied mortgage — and also 3. In case of a vendee, who has agreed with vendor, and paid the money, (and the agreement must be in writing), and is sued by the Vendor, in these 3 cases a Deft. can with an equitable title in a Ct of law contrary to the general rule giving 60 days notice in each that he will so defend V.C. 560. 20—22. Chap. IV p. 298. The Estate and duties of trustees. "The most frequent and usual cases of the deed of trust in Va. is where it is employed as a security for the payment of money and debts, tho' often to secure property for married women & "fast sons"." The purchaser then is not liable to see to its application. 1. If particular persons are authorized to receive the money. 2.If the debts &c to be paid are not specified tho' no particular person named to receive the money. Otherwise the purcharser is liable. But if the purchaser knows that the trustee is abusing his trust and he cooperates with him, the purchaser is liable to be considered a trustee.

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233 and hold the property subject to the trust, and this is true in all cases. tho' specified or no particular person is named. 11 Grat. 111. If several trustees are appointed they cannot act separately but must act jointly. But if one give receipt the others are liable only upon proof that they acted fraudulently by cooperating with, or allowing the other to commit fraud. Trustee is not allowed (2 Rob. 294) to buy or {sell} take any interest in trust property: & the Cestui que trust can set it aside, and all profits are theirs, and the loss fall on the trustee. III Conditions. A condition is a qualification annexed to an Estate, upon the happening or non—happening of which the Estate is created or determined. The text and nearly all books say the Estate is thereby "created, enlarged or defeated" — but "enlarged" is only a "creation," for the condition relates to the Estate which is to arise, and not the one already created. If the Estate is to arise by the happening or non— —happening of the condition, the condition is "Precedent" — if the Estate is defeated thereby , it is a condition "Subsequent." These words "Precedent and Subsequent" are then Relative words and relate to the vesting of the Estate. Conditions are also 1 Express or 2 Implied. Express ones speak for themselves. Implied ones are annexed by the Law impliedly, and they are to be observed, else the Estate is defeated, for they are entirely Subsequent ones. E. g. If A give B an Office or the Cty Ct the franchise of keeping a ferry, the laws annex this condition impliedly, that he perform the duties of, and attend properly to them

both or else his estate in them is defeated or determined. Unhappily there was something like this implied condition which from

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235 this likeness was called a condition in Law, but it was not one, it was called also a Limitation, and it is this name by which the Prof. wishes the class to remember them, as their true name. A Limitation is not a condition in Law, for the latter defeats an estate before the time arrives at which it was to end. While a limitation marks out the period for an estate to end, beyond which it was not inteded to extend from its creation, e.g. "Estate to A, until he marry, or return from Rome." ([p] 334) The text shows that a condition must be conformable to Law. Therefor let us consider the consequence of a condition being 1. Impossible. 2. Illegal 3. Repugnant. I. An Impossible condition (most of them are subsequent). We must distinguish between there being precedent and subsequent. (1.) An impossible Precedent Condition's effect, is that no estate can ever vest until it is performed and hence will never vest. 2 Th's C. Lit. 18. {II} (2) An Impossible Subsequent Condition. We must consider when and how the performance comes to be impossible, for (1) It may be so when created. (2) It may have become so afterward, and again (1) It may have become so by the act of God. (2) By the act of the Grantor. (3) By the act of the Grantee. Let us examine them. 1st. When it was impossible at the time created: in this case the estate becomes absolute. 2. Th's c. Litt. 22—23. 2nd. When it became so after created (1) and by the act of God. The condition will be impossible, and the estate will be absolute in the Grantee. (2) When it became so by the act of the Grantor, the estate will remain absolute, for it is only defeated by the act of the Grantee. (3) When it became so by the act of the Grantee, he is not allowed to take advantage of his own wrong, and the estate is void i.e remains

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237 in the Grantor. There is an analogy between the impossibility of condition in interest in lands and in bonds. If the condition was impossible when the bond was made and the maker knew it, the Bond is binding on the obligor, and the condition is void. If the condition become so after the Bond is made, and by the act of God or of a Creditor, then the obligation is not binding in the obligor, but if it become so by the act of the Debtor, of course the bond is binding on him, and he must pay the money. So much for Impossible Conditions. We consider now II Illegal conditions. These are divided thus 1. Conditions to do something contrary to Law,

whether malum in se, or malum prohibitum. 2. Conditions to omit something, which the Law requires to be done. 3. Conditions to encourage such crimes or omissions. These the Law always defeats, for its end is to prevent all such crimes &c. 1 P. Williams 189. There are 4 classes of cases governed by this 3rd. class of conditions. (1) Conditions pro tempi causa (2) Conditions in restraint of trade (3) Conditions affecting the freedom of marriage (4) Conditions involving considerations declared illegal by Statute. e. g. Gaming. V.C. 578. 2. or Usury V.C. 576. 4—5. See 2 Th's C. Litt. 24 (n) h. 1st. Conditions pro tempi causa. An example of these, is where the consideration that the obligor and obligee are to live in fornication — if it be between single persons and for past fornication it is good as a recompense for the injury done the woman, but if either party is married, it is wholly bad.

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Lecture LXVII. Saturday March 16th 1861 239 2nd As to conditions in {restriction} restraint of trade. All restraints of trade are prima facie bad if nothing more appeared. But this general rule does not apply always. If the restraint has reference to limited time or space it is not illegal. 3rd. As to conditions affecting freedom of marriage. Such as marriage brokage Bonds — they are void because they impose a restraint on marriage. Thus also with a bond given for having affected an Elopment tho' it was even given after marriage and without any private agreement. So also any private agreement as to the infrigement of a public agreement is void. To this class belong conditions in restraint of marriage annexed to legacies and devises. 3 Th's C. Lit: 19. n.k. To understand this you must observe that the Civil Law declared any restraints on the freedom of marriage as void. C. L. did not go so far, but considered conditions by which marriage was not prohibited entirely but only reasonable restraints as to time, place and person. Legacies payable out of personalty were recoverable only in ecclesiastical cts, as cts of Probat. and these adopting the Civil Law held all restraints annexed to marriage by personal legacies, void. The cts of Chancery adopted the decisions of the Ecclesiatical cts. and held all restraints in marriage, void. But over devises they never had any jurisdiction, nor over Legacies paid out of the proceeds of lands which were cognizable only in Chancery which adopted the C. L. maxim that reasonable restraints as to time, place, & person were valid. The Cts of Chancery as to personalty adopted mostly the ecclessiatical rules, but did not continually adopt such rules.

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241 But so far adhered to the principles of C. L., that if it appeared.

In all cases of Legacies affecting the freedom of marriage, you must consider whether the legacy is payable out of the personalty or Realty. If not of the Real Estate, then if the condition is precedent~ altho' entirely a prohibition of the marriage and therefore void, yet the Legacy cant rest until the condition is complied with. If the condition is subsequent. If in total restraint of marriage, it is void, and the Legacy is absolute, but if only reasonably restrictive of marriage, in these cases the condition is good and the Legacy defeated by failing to obt it. Suppose the Legacy is payable wholly out of the personal estate. If the Cts of Chancery had adopted the ecclesiatical rules altogether there would be no [blank space] and the conditions would be void. But as they did not, you must first consider whether the legacy is given over to someone else, if the condition is not complied with. If it is, then the condition must be performed or the legacy will go to that other person unless there is unreasonable restraint of marriage, whether the condition be precedent or subsequent. When the legacy was not given to any body then some distinctions. If the Condition is subsequent and illegal, it is void, and if legal still only operates nothing. But if the condition is precedent, then if unreasonably restrictive, it is void, but if reasonably restrictive the condition must be performed before the Legacy can rest. 1 Atkins 381. A bequest was made to a woman provided she married with the consent of her father

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243 and mother. And the Ct held that as this was precedent, and a reasonable restraint, it was good. Fonblangue's Equity 209. n.2. 11 Grat 804. A Quaker gave his estate to his daughter provided she would remain a quaker, and according to the rules of Quakers, a quaker had to marry a quaker. And the Ct held this restraint was unreasonable because it confined the lady to too narrow a space, and also because (4th) it intefered with her religious belief. As to {Creditors} Conditions involving considerations declared illegal by Statute. In all these cases of illegal conditions. If the condition is annexed to the Bond the Bond is void because it thereby never effectually discourages such actions. But if annexed to the Estate, and is precedent, the Estate is void, and if subsequent, the estate is absolute because it thereby most effectually discourages such actions. III. Repugnant Conditions. If a man makes a conveyance in fee on condition that the purchaser does not enjoy the profits, then it is void entirely. But if he conveys White Acre on condition that he will sell Black acre this is good. So a man may enter into a Bond that to an alien he leaves his fee simple lands because if do sell lands, only have to pay damages contained in the Bond. If the condition is annexed to the Estate, it is void (...) is to a Collateral thing as when it is good. So if the restraint be Alienation to a certain person or a limited time then such restraint is legal. A Corporation for (...) purposes may be restricted from Alienantion more than other persons. However the repugnancy comes about

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245 it will make the condition void — as if a condition be annexed in England to an Estate tail that person dont marry — it is void — and repugnant{cy} but if a fee simple tho not repugnant yet it is illegal being in restraint of trade. A condition annexed to an Estate for life or Years, not to an alien, is good because it protects the interest of the Grantor, by securing his reversion, but such restraints are not formed & affects only the original Lessee, and not any of his assignees. Lecture 68th, Tuesday, March 19th, 1861 It is important to notice the difference between Conditions, Limitations, Conditional Limitations and Remainders. 1. A condition is a restriction or qualification which defeats an Estate, or on which an Estate is to sise. And if it defeats the Estate there must be Reentry in order to afford notoriety of Livery of Seisin. And you cant defeat a freehold at C. L. without the entry of the Grantee or his heirs — and hence there can be no Remainder limited after a condition — because a Remainder awaits the end of the present Estate and also because there would be entry of the Grantee or his heirs, and when they do enter, it defeats the Remainder as well as the particular Estate. 2. A Limitation resembles a condition, but differs from it in this — that it does not prematurely defeat the Estate, but marks out the longest period during which the Estate can continue. And when the event occurs, the Estate is at an end and no entry by Grantee or his heirs is required — because the Estate has not come to an end suddenly. A Remainder may follow a Limitation because no Re entry

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247 is necessary in a Limitation [but] the land passes to the Remainderman at once: nor are the Grantee of his heirs possessed on Reentry of their original Estate. 3. Conditional Limitation did not exist at C. L.but is the creature of the Statutes which do away with Livery of Seisin. When they did away with the notoriety of Livery, they also did away with the notoriety of Reentry. And you may limit another Estate after a conditional Limitation, because there is no necessity of the Reentry of the Grantee or his heirs. But yet it takes effect after a premature determining of the particular Estate. It is a condition because it puts a premature end to the Estate to which it is annexed, and it is also a Limitation because no Reentry is required. 4. Remainder. It is a future Estate to take effect after a regular expiration of the particular Estate. As to the next class of qualifications of interest which are Securities for money. (1) Those which are Securities for money by a compulsory process. As Statute Merchant, Staple, and Elegit: With us Elegit only. (2) By consent of the parties. As a Mortgage, Living or dead. We have in Va. no such Estate as Statute Merchant or Staple. As to Elegit which arose out of 13 Ed. I., for the sake of convenience, and which enacted that 1/2 of a man's land and {beasts} goods and chattels,

except beasts of the plough should be liable for debts. The Judgment creditor may enforce this lien int Equity without resorting to Elegit. And by our Statute lands may be sold in

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5 years, if the Rents and profits {are not} will not pay{id} in that time, the debts. Lecture 69th Saturday March 23rd 1861 A "tenant by Elegit" may be classes among Estates less than freehold. i. e. "An Estate for Years." Sec. 22. p. [blank space]. The text is wrong in supposing that an Elegit of Eng. Stat. extended to any lands except freehold. Here both Lease Hold & freehold can be taken. P. 403. Sec 33. "Text says tenants by Stat. Staple Merchant & Elegit are punishable for Waste by action of Waste or by action of (...)." But C. L. Marshall said that a tenant by Elegit was not liable to action of waste. He is wrong in this, that he assumes that such a man is not a tenant for years. But tenant by Elegit is tenant for years on the principle that, "that is certain which is capable of being made certain." Therefore action of waste would lie agst tenant by Elegit: And Marshall wrong, and Lomax right for once in his life. In Va. by Stat. all tenants are liable for waste, & the party injured can have an action with case, for waste but not an "action of Waste". V. C. 266. 1 to 3. [P] 409. Sec 46. Text says that in England Pltf. in Elegit is allowed interest over & above the penalty of the judgt. now in Va. interest exceeding the penalty is allowed in the shape of damages. 5 Munf. 494. 10Leight 285.

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Mortgages. Chap I. P 411 251 Voluntary Securities for money charged in Lands. The text regards all the compulsory & voluntary securities for money as Estates on Condition upon their resemblance of a mortgage wh. is an estate on condition. P 415. Text speaks of a conditional sale i.e. A sale by Grantor to Grantee upon condition that if the Grantee does not pay the money at a certain time, the Grantor is to get back the land. This conveyance & a mortgage closely resemble one another. The grand criterion which distinguishes them is, that a mortgage is a security for money, while a conditional sale is a bona fide sale, liable to be considered no sale at the will of the Grantor, if the Grantee does not comply with the conditions by paying at the proper time. We can thus distinguish them. (1). If no price is named, or a a price grossly inadequate, it is evidence that it is a mortgage. (2) If the vendor remains in possession it is an evidence of being a mortgage. (3) If the Grantor at the time of making it, assumes a collateral obligation for further security for payment of the debt, it is a mortgage. The difference in effect

of construing these two things is that if it is a mortgage, there will be an Equity of Redemption in spite of any stipulations to the contrary i.e. in spite ([Lom]ax 422. [Wash]ington 127. (...) 125. (...) 204.) of the denied (provided it dont take all to pay the debt), provided he pays at the time which the Ct of Equity may appoint. While if it is a conditional sale, there will be no such thing as an Equity of Redemption.

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P 416. Rec 7. "Text says in all modern Mortgages there is a covenant for the Mortgagor, his heirs &c, to pay the money borrowed with interest, and this creates a personal contract bet. the Mortgagor & Mortgagee to pay the money: for an action does not lie upon a proviso in the deed, whereby it is declared that upon paying the money, the deed shall be void." The reason no action lies upon this proviso is that it is a proviso & not positive covenant. But because no action of covenant would lie, it does not follow that no action at all would lie: on the contrary debt or assumpsit do lie upon this principle: that every pledge implies a debt, & that every debt implies an obligation, & therefore a promise: therefore wherever there is a pledge, there is, unless the contrary be specially provided, allowed an action, and this action is debt or assumpsit. & if the promise be special covenant also. 2 [Muf] 624. 12 Leigh 170. or 107 Bac Abr. Bailment (B). P 417. Sec 10. Text speaks of Equitable Mortgages, Leases &c. as distinguished from legal ones. A Legal Mortgage is a regular transfer of the legal title, while an Equitagle Mortgage is no such direct transfer of the legal title, but only such an implied Lien as a Ct of Equity raises, e.g. A contract to convey lands as a security, but no actual & direct conveyance. This doctrine of Equitable Mortgage is a bad doctrine, because it is wholly contrary to the policy of the Stat. of Frauds, which requires a conveyance to pass a title to lands. Equitable Mortgages in England are (1) The retention of title deeds & (2) the mere

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255 transfer or a title deed as a security for the debt. This practice of raising a Lien, by merely transfering the title deed has been often lamented in England: and has not as yet & probably never will exist in Va. because our Stat. requires a deed to pass a title to lands. Tho' it is not impossible for it to exist here. There are other Equitable Mortagages however in Va. as in 12 Grat 372, & 541. P. 423. Text says there is a practice in England allowing the mortgagee a power of sale, there making hin both creditor & trustee. This is a bad practice. Still it has been

intimated in this Country. 2 Rob 172. 1 Rob 154 1 Rand 306, [scribble]. Deeds of Trust are more common with us than Mortgages. They may both be regarded as conveyances on condition that if the money due is paid at the proper time they are to be void. i.e. They are both securities for money. The difference between them is this. (1). A Mortgage. In this there is no 3rd person. The Grantor conveys the land upon condition that if the money is paid when due, the conveyance is void, but if not paid the land belongs to the Creditor absolutely & [forever] (in the eye of the Law): But Chancery will let the debtor redeem the land within a fixed time, and this right to redeem is the Equity of Redemption. The Creditor could not sell the land after debtor made default in payment until the Equity of Redemption was foreclosed, for it did not trust the Creditor with the [sale]. Therefore if the creditor wished to sell

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257 the Land, he had to file a Bill in Equity asking that the equity of Redemption be foreclosed, and the Ct of Equity named a day by which the debt is to be paid. Usually 6 minutes allowed. If the debt is not paid within this time, then in England, the land goes absolutely to the Creditor — in Va. some one is appointed to sell the land, pay the creditor his debt and give the rest to the debtor. (2) Deeds of Trust. On these there is no resort to a Ct of Chancery necessary. A deed is made to a mutual friend of both parties, upon condition that if the debtor makes defaults in paying the debt, the trustee when the creditor directs it is to sell the land, pay the creditor his debt. & give the balance to the debtor. Hence the difference between them is, that in a Mortgage there being no such mutual friend, resort to Chancery was necessary. In a Deed of Trust there being such mutual friend, no resort to Chancery was necessary. Therefore a deed of trust is a conveyance of property Real or Personal for theses purposes. (1) That the Grantee will permit the Grantor to keep the property, & enjoy the profits thereof, intil default is made in the payment of the debt. (2) That as soon after default is made, as the Creditor shall direct, the trustee is to sell the property as the deed directs. & after paying all sorts of expenses, he is to pay the Creditor his debt and interest, and give residue to the debtor.

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259 And the Statute of Va. makes a general provision that all deeds of Trust shall be subject to these general provisions whether so stipulated or not, unless the contrary be expressly declared. V. C. 204. sec 6. Since no resort to Chancery is necessary deeds of trust have in Va. superseded mortgages. The Law allows trustee to make sale &c, because it depends on his

impartiality as the mutual friend of both parties. 4 [Munf] 259. For this reason a conveyance to a Creditor to satisfy his own debt would be a mortgage & not a deed of Trust, and resort to chancery would be necessary for a sale to be made. 1 Rand 306. 3 Leigh 654. 1 Rob. 153. In England a power of sale is sometimes allowed to a Creditor with no resort to chancery: this is bad & oppressive, & it is the New York Law 4 [Renl's] Com. 145: And as bad as it seems the Va. Cts contrary to the doctrine laid down in above 3 cases, have inclined towards it. 2 Rob. 172. Lord Elden in 1825 pronounced it a dangerous innovation & refused to allow it. 1 Renell on [Mats] 9. A trustee takes a legal title, tho' it is a defeasible one. And any title he conveys is at law a good title, altho' he may not have precisely fullfilled his duty as trustee: but if it is a bad title, Equity will attend to it and any departure from his duties will be tried in a Ct of Equity, and the party claiming under him will have to show that he was

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261 guilty of no irregularity of conduct. [6 Muf 366], 368. 5 Leigh 307. So far as any harmless but not unfair irregularity of conduct is conceived, any title given by him will be good. 1 Call 524. And when a long time has passed, and other titles have been given upon this one which he gave, Equity is slow to set it aside. 11 Leigh 348. In Eng. the trustee gets no [payments] specially provided in the deed for the trust is regarded as an act of friendship. In Va., before 1850 he got 5 per ct on the debt or so much of the proceeds of the sale as was necessary to pay the debts, & nothing in the other proceeds of the sale 4 Hen & Muf 415. Now he gets 5 per ct on the first $ 300, and 2 per ct on all the rest of the sale. And this is a bad law, because it entices a trustee to sell more than is necessary, as he gets paid for all he sells. V. C. 504—6. A trustee being a common friend of both parties is borned to act impartially, and hence must not allow any urgency of the Creditor or desire of the debtor to hasten or delay the sale, but must act as if he were the commissioner of a Ct of Chancery. He has one important privilege which is allowed all fiduciaries, & no ordinary man — i. e. He can apply to a Ct of Chancery for instructions, relative to any part of his duties as trustee, or relative to the Estate. Gilmer 122 or 132. 2 Des [scribble] 369. (For Fiduciaries are a sort of deputy for a Ct of Chancery). If the trustee make default having this privilege, the other

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263 parties can apply themselves to the Ct for instruction. Gilmer 132. 11 Leigh 547. And if neither party apply, it is his duty to suspend the sale until instruction is given by the Ct of

Chancery. Lecture 70th. Thursday March 28th 1861 {"Tuesday March 26th. Jno: B. cut. Went to Mrs. Alexander Rives's funeral. I had a glorius time — spent this morning wh Dr. Maupin's"} P 412. The Voluntary securities for money are. (1) Mortgages and (2) Deeds of Trust. In the 1st the cts in all circumstances held the estate deed to the debtor, if he did not pay the debt at the time named. It was once thought that after a mortgage was forfeited, that the mortgagee's widow had a claim in the land for her dower – to avoid this, the land was conveyed to the mortgagee for a long term of years instead of in fee simple. But it has long been settled that no dower could be had in ch. If the condition of the mortgaged is puth in a different deed (usually done at first) this deed is called Defeasance. A mortgage cannot be so made as to prevent the debtor from having the right to redeem. The right may be given up for valuable consideration. If a deed of conveyance, intended as a mortgage does not contain a single clause or word of condition, parol proof is allowable to show that it was meant to be a mortgage. In this one case Equity will allow this contrary to the general rule, that parol proof shall not add to or take from a written instrument. P 431. The text says for altho' some of the qualities of a "tenancy at will" subsist between the mortgagor and the mortagee, yet in others they differ. For a Mortgagee, may be efectual at without 6 months notice recovered against the mortgagor

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265 or his tenant in which respect the estate of a mortgagor is inferior to that of a "tenant at will." Now this implies that 6 months notice is necessary to end an estate at will — this is not so: for a mortgagor's estate like that of a tenant at will, may be terminated without any notice except that which will barely let him remove off. 6 months notice applies to tenants from year to year p 191. 12. P 441. sec 33. The text speaks of the order of paying the assignees of notes, secured by a deed of trust. For the authorities see 2 White & Tudor's leading case part II. 446. Also 8 Grat 583. P 441. sec 34. The text says "in Pennsylvania it has been held that a mortgage may be release by writing not sealed &c." The Prof. says it not a discharge for a Release is an Executory contract, and a valuable consideration is necessary to make it valid and a discharge is only an agreement not to press the debtor — it is not an executed contract, and therefore some consideration is necessary for a consideration is necessary in Executory ones. If it is a discharge from Executed (i.e. sealed) contract, it must be under seal. If the contract is not under seal there must appear a consideration in the discharge as in all Executory contracts. Bac. Abr. "Release" (A). 1. Tho' it does sometimes happen that a sealed contract is discharged by accord and satisfaction by a writing less in (...) of solemnity than a sealed instrument, but it is because it is a satisfaction, and this is the only reason. Chap. III. On Equity of Redemption P 446. sec 4. The text speaks of a mortgage being payable to the Executor or Heirs &c. The Prof. says: if property

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267 at C. L. be sold in the name of the trust during the life of the Mortgagor the surplus is personalty and goes to the Executor. If it is not until after the death of the Mortgagor, it is Real Estate. In Rob. 384. these principles were applied to dower, and where it was personalty no dower was allowed. In Va. the Statute gives dower in surplus after satisfying an imcumbranse, tho' it is personalty. V. C. 474. 3. P 447. The text speaks of Equities of Redemption being assests and liable to execution at Law. They are not in law, for while certain and sure trust's estates may be, these cannot, since they are uncertain. Hence you must go to chancery to subject them. P 448 The Text says it is a general rule that Equities of Redemption are Equitable assets, "but that some are not equitable but Legal ones". Now equitable assets are assets which are only reachable in equity. 2 Grat. 86 & 6. 2 Lomax Exers. 238. [Lom] on assets 148. In Va. all Real Estate not subjected by will to pay debts is liable for these in the order of personal estate. V. C. 545. 3.7. In consequence of this Statute we must distinguish between lands being subjected by will to pay debts, when they are equitable assets and payable pro—rata, and when not subject by will, then they are payable in the order of the Statute (and in both cases they are equitable assests) and distributable in Equity only. Lecture 72nd. Tuesday April 2nd 1861 P 451. sec 17. The text speaks of backing. There are 2 kinds of this. (1) Is of a Bond to a Mortgage. This to avoid cercuity of actions &c. i. e. Multiplicity of suits. (2) This depends on the doctrine that where Equity is Equal the Law will prevail. This sort is where a subsequent Mortgage is made to the 1st Mortgagee, so as to squeeze out an intermediate

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Lecture left out by accident. Lecture 11th Mch 30th Saturday 268 1 Lomax 466. s13. Text says if lands are devised subject to a mortgage the debtor is to be paid out of {devse} the lands, and not out of the personalty for devise is taken "cum onere" & the devise is not liable personally. But if lands devised are subject to the payment of the certain sum of money, the devise is personally liable for the payment of the sum tho' it takes more than the land divised. 3 Grat. 148 P 476. A tenant for life is not directly bound to keep [down] the interest on a mortgage, yet the Mortgagee or Remainderman can have the land taken from him and sold for the debt to be paid — hence in fact he would be bound to pay the {debt} interest, or give up his estate, and he can pay so much now, as will be equal to the aggregate of which he will have to pay during the years he has a chance to live. P 487. Parol proof is admisable to prove that a deed is intended for a mortgage (or any security), but not to prove it was a conditional sale. It is allowed to show it was a mortgage, because it would be a (...) for a creditor to impose upon his debtor, as an absolute deed, a conveyance intended as a mere security. And the case in text, was void on account of [using] if a mortgage, not so if a conditional sale. P 491. If a creditor takes money from a debtor as a voluntary payment of his debt, he must apply the money (if he choose to receive it) to the principal or the Estate as the debtor shall direct, for else the debtor will refuse

to pay the money. 10 Leigh 484. 2 Rob 27. And when there are several debts blended in one statement by mutual consent of parties, the debts are to be paid in order of priority in the statement. If the debts are separate & not blended by the parties, then they are to be paid as is (...) Justice to each. Prof: thinks better be so as to be for benefit of debtor. 6 Cranche 27 &c. When there is a mortagage on land the order of paying off this mortgaged debt is this. (1) The personal estate. (2) The law devised generally. (3) The law specially devised, and legacies specially given.

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269 one. For this 2nd sort see p 500, for the 1st sort 5 Grat 851. The mortgagor's estate is at the will of the mortgagee. When there is but a slight difference between the interests and the profits, no account is necessary to be made by the mortgagee to the mortgagor. The mortagor can only make such a Lease as will pass the assignee such estate as he has. Equity regards a mortgage{e} as no more than a security for the payment of money. Covenants not relating to the land leased are not binding on the assignee of the tenant, those relating to it are binding and run with the land. P 455. The text speaks of the Statute of Limitations. Note that in Equity a party can avail himself of the [bar] of the Statute apparent on the face of the Bill by Demurer, but cannot be done if demurer in Law. Story's Eq. Rlds. see 484, 503, 760. Chap. V p 493. The text speaks of tacking. There are two sorts of tacking. The one allowed to avoid multiplicity of suits. e. g. If a man make a mortgage to a condition, and then give that same creditor a bond for another debt, then {give that to} when he dies his heir will have to pay both the mortgage and the debt due by Bond in order to clear the lands. This is C. L. Now by Va. Statute it is strengthened by the statute making all debts chargeable on bonds of a decedent, while at C. L. only specialty ones were. The second sort of lacking depends upon the principle that where equity is signal, the Law will prevail. e. g. If A. B. & C. all have mortgages on land, and C. loaned {for} the money for which the mortgage is given him, not knowing of B's mortgage, then if C. acquire the legal title by purchasing the mortgage of A, B will have to pay both mortgages to get the land directly

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271 chargeable with his — for B. & C. had signal equities, & C. got the legal estate, thus giving him priority. Here bear in mind that the 1st mortgagee has the legal title, all others have only equitable ones. If the first incumbrance is a Judgment Creditor, then a second one is a mortgagee, & also a 3rd one is a mortgagee — in such case the 3rd may acquire the 1st and tack, for he became a creditor on the faith of the land being liable to pay his debt. Had the 3rd been a Judgment Creditor and not a mortgagee, he could not tack by acquiring the 1st for he does not become a Creditor on the faith of the law. This second kind of tacking is not used in Va. owing to our registry laws, except all the mortgages happen to be unrecorded. P 509.

Explains the effect of the Registry laws, but not clearly. Prof: adds. Before 1819, our Registry law declared that every mortgage was void unless recorded. And tho' the other side seemed implied plainly for this, i. e. that it is good if recorded, yet in the case of "Dosnell v.s. Buchanan" the Ct held as follows. A man took a mortgage from another when the mortgagor had only an equitable estate, and the mortgage{e} was recorded. Afterwards the mortgagor got the legal estate and sold to a 3rd person and in a controversy between the 1st mortgagee and the last purchaser, the Ct held that the purchaser should be prefered to the mortagee on these grounds. (1) That because the Statute said unless recorded a mortgage should be void, it did not say if recorded it was good. (2) That the purchaser was not bound to look back for the title of the mortgagor any farther than

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273 the deed which gave him the legal estate. The Code of 1819 cut all this trouble by saying that unless recorded, a mortgage was void, if recorded good. Now the Va. Code says (somewhat ambiguously) that mortgages shall be void until and except they are recorded. V.C. 118. The Legislature of Va. has thus done away with the 1st doctrine of the Ct in the case above cited, but it says that the 2nd is good, i. e. that a purchaser is not under any obligation to look further for the title of a letter than to the deed whereby he got the legal estate. V. C. Ch 118, sec 12. P 514. The text speaks of the rule in case of a Lis pendens. Note that the principle is the same where the lands are not sought to be recovered, but to be subjected to a charge e. g. an annuity. 5 Grat 259. [P] 526. Chap. VI. For closure of Mortgages. Lecture 73. April 4th {Thurs}. We must distinguish between the English and Va. practice. In England the debtor's Equity of Redemption is forever barred after the creditor gets a decree of foreclosure and thus the creditor remains in the possession of the land from that time. In Va. it is not so, but the ct. appoints a commissioner who makes a sale of the land, pays the expenses, then the debt and interest, and if any balance, hands it over to the debtor: if there is not enough after paying the expences, to pay the debt and interest, the Creditor can make the rest of the debt by another action. The English practice is not wholly so, for when there is not enough land to pay the debt, it is sometime a very difficult question, for the land is supposes to be sufficient to make the debt out of, when the creditor {proves} takes the mortgage on it. Upon such occasions the questions arise: one question of fact, whether it is sufficient and this is proved by

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275 witnesses or better by an actual sale of the land. The other question is whether the debtor can redeem when the creditor tries to recover the balance of the debt due, and which balance the land will not pay. If now the creditor tries to recover the balance, and is not content to take the land, the debtor can pay the debt and get back the land. If the debtor has sold the land, he can't redeem it by paying the debt (?). "Remainders" Having been through I the Quantity & II Qualification of the interests in Real Property, we come now to the III The time of Enjoyment. All estates are either in possession or expentancy. More in expentancy are Remainders, Reversion, or (by Statute of Wills, Uses & 8 & 9 Vict) executory limitations. "A Remainder" is the remnant of a gift, the preceding part of which (gift) has been disposed of, hence it is a relative term, and relates to the preceding part of the gift which is called a particular estate. From this definition of a Remainder flow these incidents. 1. A particular estate going before to which the Remainder relates. 2. That all the estate of the Grantor has not been given away, and hence at C. L. there can be no Remainder after a fee simple gift, that being all the Estate the Grantor can have. 3. That the particular estate be created by one & the same instrument and at one & the same time, else they would not be the same gift. 4. The idea of a Remainder imports that it must rest before, or "so sustanti" that the particular estate determines.

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277 5. That the Remainder should await the regular ending of the particular estate, and be not in derogation of it, or else they would not be different parts of the same gift. 1 Lomax p 538. The text says that it follows from the (2) aforesaid incident that no fee can be limited by way of Remainder after a fee simple. This is true, but there may be two concurrent fees, the one to take effect provided the other fails to take effect, but not at the end of the other: this is called "contingency in a double aspect" or "a Remainder in a double contingency." 1 Lomax p 476. By virtue of the Statute of wills, Uses and 8 &9 Vict an estate may be limited in place of a fee simple but not after it has vested. This was not allowable at C. L., because when any estate of freehold was created at C. L. it was done by livery of seisin, and a like notoriely was necessary to end the estate. This was Reentry by the Grantor or his heirs. And hence any limitation to take the place the estate thus ended by a broken condition was void, for the Grantor had to enter to end the estate, and being in as before, any estate to a 3rd person had to be created afresh by a new conveyance: now the 3 statutes aforesaid did not require any livery of seisin to create an Estate, and hence no need of any entry to end it, and therefore there was nothing to hinder the subsequent limitation from taking effect. The text tells of a devise in England to a Prior & the convent and their succesors upon condition that they paid yearly a certain sum, & upon failure to do so, the Estate to go to another, that the ct held Remainder void, upon the ground that the 1st devise carried a fee, and any Remainder was void. This is wrong. The

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279 limitation is a condition, and not a Remainder and the benefit of a condition cannot be to a stranger, but must be to the, Grantor or his heirs 2 Th's C. Lit. 82, note (121). 1 Lomax Dig: 536. So that the case was decided wrong. But the decision of the case would have been good as an Executory devise, under the Statute of Wills, but as a conveyance by deed at C. L. it is void. [P] 539. The text discriminates between vested & contigent Remainders. A vested Remainder is one so limited to a certain person and on a certain event as to possess the present capacity to take effect in possession, should the possession become vacant. A Contigent Remainder is one limited to an uncertain person or on an uncertain event and hence does not have this capacity, or it is a Remainder so limited to a certain person and on a certain event, as not to have the present capacity to take effect in possession, should the possession become vacant. The difference there is that a vested Remainder has, and the contigent one has not the capacity to take effect in possession, if it should become vacant. 1 Lomax p 544. (Note that Estates may end by merger or forfeiture, which latter is of various kinds or ways). [P] 541. Text speaks of Fearne's 4 classes of contigent Remainders. They are I When the event which determines the particular estate, is connected with the event on which the Contigent Remainder is to aris.- e. g. Estate to A, until B returns from Rome. Remainder to C in fee. II When there is no connection between the event which ends the particular estate, and the one

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281 which gives rise to Remainder, e. g. estate to A. B. & C. for their joint lives, if B survive C. then to B in fee. III When the Remainder may not rest during the continuance of the particular estate, or so "instanti" that it ends e. g. estate to A for life. Remainder after death of B. to C. in fee. There is, says the text, an exception to this class, and the Remainder is vested, owing to the doubt as to the particular estate ending before the Remainder vests. Exception. Estate to A for 100 years should he live so long. Remainder after death of A. to B in fee, in this case tho' nominally the particular estate might end before the Remainder vests yet practically there is no reason to believe that it will, and therefore the Remainder is held to be practically vested (even tho' A live more than 100 years). P 542. Text says it may be observed that if the term for years be so short as that it is probable that the life may endure beyond it, and hence cannot be held reasonably that the Remainder is a vested one, then the Remainder if a freehold one, will in a C. L. conveyance be void, for want of a freehold particular estate to support it. This is upon the principle that no estate for years is good to support a freehold Remainder, since no livery is

necessary in the estate for years, but is in freeholds, but (500 [ct] 116.) if there had been a preceding vested estate of freehold the Remainder would have been for Mr Feaine's 4th division is IV. When the Remainder is limited to persons not in being, or not ascertained. e. g. Estate to A for life Remainder to B's heirs (Being alive) or his oldest son, he having no son —

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283 P 543. The text speaks of the exceptions to this. There are 3. (I) exception to IV class (where the Remainder is vested). Where an estate of freehold by deed or will is given to one, and afterwards by same instrument, the land is given to another either mediately, or immediately to the first taker's heirs, the word "heirs" shall be held a word of limitation (giving first taker a fee simple estate) and not a word of purchase (creating a new estate in the heir). 1. Co. Repts 104. This is the rule in Shelly's case. The reasons for it are (1) The Lord would be deprived of the wardship and marriage of the heir, if allowed to be words of purchase for only in lands by descent can he take them. This is now obsolete. (2) If Remainder allowed to be contigent the estate of the heir would be in abeyance during lige of ancesterm not knowing who are his heirs. (3) If allowed to be contingent there could be no alienation of it during the life of the ancestor which is not allowable. 4 Burrow's 2579. Perrin v.s. Blake. (4) That it is held vested to preserve the marked distinction between title of descent & by purchase, that if allowed to be a contingent Remainder it would be a mixture between purchase and descent. Hargrave's law tracts 489. 4 (...) (...) 217. Hargrave says it is not a rule of intention but that the Grantor made a gift which {somewhat} could not be given as he directed, and that the object of the rule is to give effect to that mode which is most agreeable to the general policy of the law, supposing that the Grantor would prefer that one. 2 Th's Coke Litt. 151, note (f). The Va. Statute declares that when an estate is given to a man for his own life, Remainder in fee to his heirs that the man shall take a life estate

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285 only, and heirs is fee simple, thus abolishing the rule in Shelly's case, in case where the 1st estate is for life, in any other case the rule is good: this is from the fact that Legislature [did] not know what they were doing. V. C. 501. 11. (II) Exception to 4th Class. Where the estate is given by way of Remainder to Grantor's heirs. In this case the heirs take nothing, but the Remainder vests in the Grantor, and gives him a fee simple, or whatever his old estate was. (III) Exception to IV class. Where the word "heirs" is a "designatio personamum" i. e. A designation of persons

now now living and ascertained. e. g. Estate to A for life. Remainder to heirs of B. now living, i.e. B's children. Lecture 74. April 6th Saturday 1861 [sketch of hand pointing right] A contingent Remainder which is freehold must be preceded by a freehold particular Estate, for when the particular estate is created (and the Remainder at same time) the freehold gives out if Grantor, and if particular estate is not a freehold then the freehold would be in obeyance which the Law never allows. The uncertainty of a contingent Remainder over taking effect in possession does not, but the present capacity to take effect in possession does constitute the idea of a contingent Remainder. Because one Remainder is contingent, is not a necessary reason that all subsequent Remainders are contingent. If there is a conditional vesting of a preceding Remainder, then that Estate failing to take effect does not prevent a subsequent Remainder from taking effect. A Remainder limited to takes effect is more

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286 Doctrine of "Scintilla Juris" "Feofment to A & his heirs, to use of B for his life (Remainder to oldest son of B unborn). Remainder to C in fee." If feofment is made to A & his heirs, to use of B for life Remainder to C in fee. The seisin of A serves the uses to C. and if there be an intervention contingent use to one not in "esse". The seisin of A will {stay} still sure it altho' it is seemingly all exhausted in securing the seisin of C, yet there is supposed to be a "spark of seisin" in A, the trustee, which can serve this contingent intermediate use when it arises. This is the doctrine of "Scintilla Juris." In the above example there is a difficulty in this, that if life estate to B's use, should become devested by some means. It is said that the trustee must reenter on the land to revest the estate the Remainders are void. Prof.: Contra, for the right of entry at C. L. sustains the Remainder, and he dont think it matters whether that right of Entry is in the trustee or the Remainderman. The doctrine of Scintilla is founded on principles connected with the Statute of Uses but this last difficulty depends wholly on principles connected with Remainders, not uses. The doctrine of Scintilla as in the above example dont here in Va. because our Statute of Uses operates not by transmutation of possession, and the above example is by a conveyance so operating. The Estates in Remainder in this example are equitable, and not legal interests, and heard only in Equity. And the Scintilla dont hold except in grants under the conveyances which do operate by transmutation, hence as a legal question it dont exist in Va. Executory Limitations arising under the Statute of Uses are called "shifting Uses, or Springing Uses." No special name has been given them, if under 8 & 9 Vict.

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287 than one contingency is void, to prevent perpetituies. And the largest time to which a Remainder can be limited is a life or lives in being and 10 months and 21 years thereafter. At C. L. there may be a Remainder after a limitation for no entry is necessary, but cannot be after a condition, for entry is necessary to be made by Grantor or his heirs. [sketch of hand pointing right] A conditional Limitation is a future limitation which is not good by way of, or as a Remainder. A freehold estate cannot be limited after a particular estate less than a freehold at C. L. but under the Statute Uses, Wills & 8 & 9 Vict. it can be done, but the estate so limited is not a Remainder, but an executory limitation. A Remainder must not tend to diminish the preceding estate. Remainder could be limited in term for years, if particular estate was not

freehold, if freehold Remainder was at C. L. void. Now any is good in chattels, provided chattels are not such as are censured in Use. A Remainder may be limited by way of Use. In this case "Feofment to A in fee to use of B for life. Remainder to C's oldest son (unborn). Remainder to Z in fee". Z's Remainder is vested, the person being certain. The Remainder of C's oldest son is contingent, for the person is not known. Now the use cannot be executed until C's son is born for these must be both a trustee, and a cestui que use, but even when the son is born it seems that the seisin of the trustee is already exhausted in Z's Estate. This therefore gave rise to the *"scintilla juris" i. e. a supposition of a continual seisin in the feofees, tho' all the seisin seems to have been exhausted in the other feofees and thus creates the feofees to take their

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289 estate (i.e let Remainder vest) as soon as, and whenever they come into being. In case of Lease and Release, the Release is only a C. L. Conveyance, the Lease is the part that operates under the Statute of Uses. Lecture 75th April 9th Tuesday, 1861 Time within which Contigent Remainder must rest. The "General Rule" is that. "Contingent Remainders" must vest during continuance of the particular estate, or "eo instanti" that it determines." Posthumous Children take as if born. In England this is so when the Remainder is created by Deed. But cts decided the same in case of Wills. In Va. this is true, for the Statute declares that no Contigent Remainder shall fail for want of a particular estate to support it. V. C. 502. 12. P 572. The text says Contigent Remainders may take effect in some, but not all those who are to take it, according as those persons came into being in time. In Va. this is not so, for no Remainder shall fail for want of a particular estate. P 576. The text says that Va Statute of Uses dont embrace but one instrument which takes effect by the doctrine of Uses. i.e. "Covenant to stand seised", and that the other two operate by the Va. Statute only, because the Statute says so, and not by the doctrine of Uses. Prof. thinks contra. For by our Statute, they are all 3 united in one and the same sentence. We have seen that all Estates in Expectancy are either in Remainder or Reversion or by {Expectancy} Executory Limitation. The text puts the latter off till vol. III. Prof. proposes to notice them here. They are Limitations which are not good at C. L. but only by reason of the Statute of Uses, Wills & 8 & 9 Vict, in England, and their corresponding ones here. An "Executory Limitation" is a future limitation

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291 which would not be good by way of Remainder at C. L. from the fact that it is an Estate in Expectancy, which is not good at C. L. as a Remainder. Of these are 3 kinds which are not good at C. L. but are by reason of the aforesaid statute. I. Limitation of a freehold to begin in futuro. This was not good at C. L. because (1) They could not be created except by Livery of Seisin which must be made at once. And (2) A rule of policy since by the delivery of the estate, the freehold passed out of the Grantor, and hence the freehold would be in abeyance, which the law will not permit. II. Limitations of a fee on a fee This not allowed at C. L. because after a fee once vested, it could not be directed except by reentry of the Grantor or his heirs in perseverance of a condition broken. III. Limitation of a term for years or any chattel interest in a chattel after a life estate is limited or given therein. This may now be done by any conveyance, even C. L. ones. Consider now, I. Limitation of freehold in futuro. We have seen that there were 2 reasons against this at C. L. But as to 1st the 3 Statutes did away with livery of Seisin, so that one ceased to exist. And as to the 2nd we know that it is just as desirable now that the freehold shall not be in abeyance as in the time of Ed. III, but it is held that the freehold remains in the Grantor in a conveyance under the Statute 8 & 9 Vict. in the (...) in conveyances under the Statutes of Uses, and in [Devisor] in those under the Statute of Wills. Hence these statutes abolish both reasons which presented such limitations at C. L. II Fee on a fee.

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293 This could not be at C. L. for it could it must have been either as a Remainder, or after a broken condition. If the limitation is after a Remainder, it would be nothing, for a Remainder in a fee takes all the estate. If after a condition, the reentry of the Grantor & heirs would be necessary to end the first estate, with equal notoriely as it was created, and then the estate revested in the Grantor as before he gave it. III. Limitation of Estate after a life estate in a chattel. This can now be done by any sort of conveyance (only the chattel be not consumed in use), whether statutory or C. L. Therefore this III example is not an Executory Limitation any longer. I & II only are ones. Differences between Executory Limitations and Contigent Remainders. (1) Executory Limitations are incompatible with the rules regulating contingent Remainders, as the creation of a freehold in futuro. (2) Executory Limitations relate to Real and Personal estate, or either. Contigent Remainders relate to Real Estate only. (3) Executory Limitations cannot be barred by owner of preceding estate, selling that estates by any means whatsoever. Remainder may by Fine & Recovery. (4) The rule in Shellys case is not applicable to Executory Limitations, while it is to Remainders. Fearne 28. Preston on Estates 263. Period in which Executory Limitation must take effect, i. e vest Some time for this purpose is necessary in order to avoid perpetituies, since these estates cannot be barred by any manner of means. The time is a life or lives in being, 10 months and 21 years thereafter, just as in case of Remainder.

This time was given perhaps from the analogy to that in Remainders for Reversions and Remainderswere the only sorts of

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295 of Estates in Expectancy where these limitations were invented. Now a Remainder cannot be limited on a double contingency, and hence it must be to somebody already born, or else to some one born of another already born. i. e. A life or lives in being and 10 months and 21 years thereafter. Fearne 444. (n A). (And limitations for life or lives &c are called "Strict Limitations" because the longest that can be made) 2. Blk. on Excty devises (or by Kenyon). Rules for Governing Executory limitations. Rule I. If one limitation in will is executory, and dependent on a contingency, if that limitation be in fee, all subsequent limitations in the will, will be so (i. e. executory and contigent). Rule II. Any number of executory limitations, even tho' in fee, may succeed each other, if not too remote, but if one of these vests, not subject to a contigency which may defeat it, all the rest will be defeated. Rule III. No subsequent occurrence can make a limitation good which was void in its creation, for remoteness. Rule IV. A devise to infant "en ventre sa mere" is good, tho' the words be "in presenti". Rule V. If the freehold is not immediately disposed of, they remain in the Grantor or Devisor and his heirs until the contigency arises on which the limitation is to vest. Rule VI. Equity will stay waste at the instance of persons who are entitled to contigent interests. {Devise} The phrases "dying wihtout issue" or "without heirs", or "without heirs of his body" "or without descendants" are held by the cts to mean not a failure of heirs, at the time of his death, but at any time however remote, and hence limitations after such phrases are void. Now this is especially in Real Property, but in Personal Property, the cts would often tie up

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297 the happening of the contingency, under very small circumstances, to the death of the first taker, and when this is done, the limitation is not too remote and hence is good. This doctrine is modified by statute in Va. and but for this the limitation would be too remote. E. g. "Devise to A for life, and if he die without issue, to B". This being in a will, the technical words can be disregarded, and hence "issue" in a will means "heirs of his body", and therefore this example is the same as if it had been to "A for life. Remainder to the heirs of his body," which gives "A an estate tail. Remainder to B for life." The modifications then are I Prior to 7th Oct: 1776 (C. L. prevailing here) A would take an estate tail by the Rule of Shelley's case, and implication (not

being directly made) and B a remainder for life -- (or heirs &c not named). II. From 7th Oct.: 1776. (All fee tails having been made fee—simples), to Jany 1st 1787, A would take an estate tail converted to a fee simple, and B's remainder, coming after a fee simple would be void as a remainder upon the principles of "Carter v. s. Tyler." Call 165. In this case the counsel admitted that B's estate was void as a Remainder, but tried to prove that it was good as an executory limitation (devise). The Ct. decided that it was no good as an executory devise, because the Statute was passed making fee—tails, fee—simples in order to let them be sold freely. And that to let this be an executory devise, would be to make them less salable, for a Remainder might be barred, but executory devises could not at all. III. After 1787 Jany 1st an act passed declaring that no words of inheritance was necessary to make a fee simple, unless specially named that

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299 the estate was less. (And thus B had a fee simple). And therefore B's estate was not an executory devise after this act, on the ground of remoteness, it having to take effect upon an indefinite failure of issue. Therefore from 1787 to 1820 Jany 1st A would take an estate but converted into a fee simple. B's remainder void as a Remainder because it is limited after a fee simple and not good as an Executory devise. 1st On the principles in Carter v. s. Tyler 2nd on the ground of remoteness. IV. Between Jany 1st 1820, & July 1st 1830, a statute declared that the doctrine of Carter v. s. Tyler should no longer subsist, and that any estate which would have been good, if limited after an original fee simple, should be good if limited after a fee—tail converted into a fee—simple, thus doing away with the objection in Carter v. s. Tyler. And another estatute declared that when a limitation was to vest upon the "failure of issue" or "heirs &c", that this should mean upon a failure "of heirs livery at the time of the first man's death," and thus the objection of remoteness was done away with. Hence. From Jany 1st 1820 to 1850, A would take an estate tail converted into a fee—simple. B's estate would be void as a Remainder, but good as an executory devise, (to the objections being removed by Statute of 1820). V. Since July 1st 1830 there have been no adjudications but Prof. thinks that statute{ory} abolishing the rule in Shelly's case, gives A an estate for life, remainder to the heirs of his body as purcharsers in fee simple (contigent Remainder), and B's estate void as a Remainder, and good as an executory devise, to take effect upon the contingency that A die without issue (living at his death by statute of 1820).

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301 If this devise had been to "A for life and if he die without issue to B and his heirs," it would have been precisely like the above, except that it would have been void as an Executory devise before Jany 1st 1787, & from Oct 1st 1776, as well as after " " " and void upon the same ground i. e. (1) Principle of Carter v. s. Tyler. (2) Remoteness. Lecture IV We come now to the 4th head of the estates which may be taken in Real Property &c "The number and connection to the owners." The normal condition of property is to have only one owner, but sometimes several persons posses it and if they do, it is. (1) Joint—tenants. (2) Tenants in common, or (3) Co—parcernors. The (1) and (2) get their estate by act of the parties. The (3) by the operation of the law. In conveyance if this, at C. L. the (1) and (2) could not make partitions except by mutual consent. (This is now abolished in Va.). While the 3rd had a remedy given them by the law, which gave them their estate, whereby they could compel partition hence their name. If land is conveyed to two or more, and it is not expressly said to the contrary, or fairly apparent to the contrary, they take as joint—tenants, to make tenants in common, must be expressly said or clearly apparent that such was intended. Joint tenants are noted for two things. (1) The 4 remarkable unities of time, title, estate & possession. (2) That they are seised "per my et per tout." Therefore if any of the unities first aforesaid be wanting, it is not a joint—tenancy, tho' there may be all these unities in an estate created by act of the law and such be not a Joint—tenancy, but whenever they are created by act of parties, and have these

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303 4 unities they joint tenancies, unless specially stated not to be. In consequence of the seisin being by half & by all the doctrine of survivorship was always between joint—tenants at C. L., but this is abolished in Va. except as to joint—trustees, joint Executors, or where the parties expressly declare it shall exist. When a Husband and his wife have land given them as Joint—tenants, they are not joint—tenants but tenants by entirety, and therefore the abolition of survivorship in Joint—tenancies did not present their taking all at the death of the other, but by the present Statute all right of survivorship is abolished. P 621. Chap II. How Joint—tenancy may be severed or destroyed. The text at sec: 7 speaks of "Releases". (2 Lomax 135. for subject). A Release considered in reference to property in lands supposes some prior estate in possession of the Releasee for the Release to operate on. If there was no possession in the Release, livery by C. L. was necessary. Releases operate (1) To pass a right. (2) To extinguish a right. (3) To pass an estate. (4) To extinguish an estate. (1) Release operating to pass a right. This operates to pass a right to him who who is in possession tjo' that possession be wrongful. E. g. A is diseised by B, and then consumates B's title by making a Release to him. If he disseised by B & C and releases to one only, then only one has right, if B & C had both been parties to a feofement, a Release to one would have been relase to both for they were in by an apparently right ful title. 2 Cokes Littl. 459.

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305 (2) Release operating to extinguish a Right. This means that on account of some reason in law, the Releasee can't have in kind, the thing released to him, tho' the Release being a solemn deed must have some force, and is therefore allowed to extinguish the right of the Releasor to the thing released. The reasons of which are. (1) Because of the incompatibility of the Releasee's right before the release is made, and that relased to him, e.g. Landlord releases unto the tenant. (2) Because outstanding rights are not transferable. e. g. Where a Release is made to a man, of land of which the Releasee is not in possession. 2 Cokes Lit. 589. (3) Release operating to pass an estate. E. g. One joint—tenant releases to another which passes an estate, not a right. Tenants in Common come to their estate by distinct ways, and hence are governed by differetr rules — their seisin is different too. 2 Ths. Co. Lit. 513. (4) Extinguishing and Estate. E. g. Remainderman releasing to tenant in possession. A tenant in common cannot release to another for their titles are different, so also their seisin is different. If A & B are Joint tenants for life, and Reversions to them and the heirs of their body, this will give each a tenancy in common in the reversion, and the joint tenancy for life is destroyed because it is merged in the Reversion. A mere agreement of one to sell passes only an equitable interest. You must make a written instrument to pass a legal right or interest. In Va. we may still have the C. L. writ of Partition. The mode usually resolved to, to compel a Partition, is a "Bill of Chancer." The county or circuit ct either can take

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307 cognizance of the case, but if there is to be a sale and each share exceeds $300, the Circuit Ct is to decree the sale, and not the County Ct. At C. L. in all cases the Sheriff was to make partition by metes and bounds. In Va. a part may be sold or all sold, or one take all and pay the difference, or by metes and bounds as at C. L. The C. L. cts of Chancery could not decide any legal question concerning their title, but the Cts of Law had to decide this. In Va. the Statute authorizes the Ct of Chancery to decide such questions. At C. L. Dower and Curtesy were not had in Joint—tenancy. In Va. they can be had. In coparcenary they are both at C. L. and in Va. Copernacers can compel partition at C. L. by suit of Partition and Bill in Chancery - If a Partition is mutual and is unequal it cannot be changed. If coerced and unequal it may be changed. As to Hotchpot and Advancements. An advancement is a gift made by a parent to some decendent for the purpose of advancing it in life. An advancement may be a provision depending on a contingency which is to happen in a reasonable time. 2 Lomax's Exc's 216 & 215. Advancements

are to be estimated according to their value when given. 1 Washington 124. 3 Rand 117. And no interest, increase, rent or profits are to be accounted for. 3 Rand 559. 13 Grat 49. 1 Washington 124. 3 Rand 117. Advancement of personalty are brought into Hotch Pot for the benefit of the descendants of the deceased and not his widow. 1 Taylor 213 (NC). 3 Devereaux 199. Dudley 251 (S. Carolina). 1Pickering 157 (Mass). 7 Connecticutt 1.

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309 And surely in Va. is this so, for the statute requires lands as well as Personalty to be brought into Hotchpot. 1 Tuckers Com. 181 Bk II. 12 Grat. 33. All property is acquired by purchase a decent. The differences between the property thus acquired by different modes are that at C. L. property gotten by descent is liable to all specialty debts binding the heir. And in Va. for all debts. And when gotten by purchase, it is not liable for debts, and also when by purchase it acquires a new inheritable quality. Consanguiniely is relation by Blood. Affinity is relation by marriage. Lineal relations are those derived form a common ancestor, and [the] one from the other. Collateral Relations are from a common ancestor but not from each other.

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{Critcher} & Washington Attys.

282

311 {Critcher & Washington} Attys Page A Bishop David 340 B Ballenger P. 342 C Burnett Dr 344 D E F G H I J Carter Geo. m 450 K L M N O P Q R [Dogin] Wm R. 422 Dinsmore & Kyle 468 S T U V W E(...) —[& Co] N{a} 268. W. [Pratt] Bolt 358 X Y Z

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313 Gouldman Henry B 362 Greenlaw L. B 364 {x sf} Gouldin John J. 366 Green Ch.s W. 464 Gutridge R. S. 384

G Harrison C. A. 372 H Hepburn Thomas 374 I Hepburn A. D. 376 J Homes Willis & David 370 K Hart — William F. 380 L Harrison William 542 M Hollingsworth D. P. 418 N Hartman & [Whitehill] 412 O P Johnston J. W 400 Q Jackson Edward 412 R

King John T. 400 S King John D. 414 T U V W Lainkin W. P. 480 Lewis Frank 500 X Y Z

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Mason Mrs Susan Y 320 *McKenney James S. 338 Miss William 346 Markham Bolson 368 Morse Walter S. & Co 398 Massie T. H. 408 Marmaduke Milton M. 410 Moniss Wm K. 470 McKesnogs Geo C. Exes. 425

(...) James W. 324 M Minor F. D. 424 N O P Q Portis Jonathan 412 R Payore F. W. 432 Powers J. D. 388 S T U Rogers John 440 V Reed John 404 W Robinson Geo. H. 486 X Y Z

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Seymour Chs 354 [Shriver.] Buck & Co. 386 [Snevenger}, Taylor & Neer 382

Thompson [Hosslewood] 578 Taylor Edward 7 376 Turner Carolines 406 S Thompsn C. C. 344 T Tiffey's [Jd] (...) Tiffey 352 U Usillon [Lewin] 444 V W Washington & Herbert 348 X Wheelwright F. D. 350 Y Walker Benedict 394 Z Walker Joel 396 Walter R. M. 434

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320

[Dr] Miss Susan Y. Masen In acct 1869 Nov. 4 To this paid you cash per [rcpt] $132.03 " " " " Commission on above 6.60 1870 Jany 21 " this paid (...) recd. {from J. M. Lewis in} acct J. M. Lewis Bond to W. B. Mason, per recpt. 37.54 " " " fee & comsn. for collecting &c. 5.00 Feby 8 " this sent you in my draft our Washington & Herbert, Alexa. Va. for [reft] 50.00 " " To Commission on same 2.50 Aug. 4 " " " $7.40 .40 " To fee for suit W. R. Mason's Exx. (...) J. T. King, on Bond for $1000.00 in Cir. Ct. King Geo Oct term 1870.

290

321 with [Cutcher] & Washington Attys. Cr. 1869 Nov. 4 By cash recd. from Law Washington on acct of Judgt. to Dogier & Washington in favor of W. R. Mason's Executrix $132.03 1870 [J]any 21 By cash recd from G. W. Lewis in full of his Bond to W. R. Mason 47.54 Feby 8 By cash recd

from Law Washington on acct Judgt. on Dogier & Washington in favor W. R. Mason's Executrix 50.00 (...) 4th By cash recd from C. W. Crismond, in full of account against him, after deducting Constable's Commissions. 7.40

291

Miss Susan T. Mason 322 Bond of R. L. T. Beale to W. R. Mason dated Nov 22nd 1858 on demand for $273.10

Bond of C. C. Baker, dated 27th April /58 on demand

[Three] Bonds of John Daliner & Jno. T. Reed each for $334.00, all dated Oct 31st 1857 — int. fr. 1. Jany 1857. all payable to Jno Cutcher. The 1st on Jany 1, 1861 — 2nd on Jany 1, 1862, & 3rd Jany 1, 1863, & by Jno. Cutcher assigned to W. R. M. these Bonds are entitled to credits of $ 80.00 paid 24th May 1859 & $150.00 pd 28th March 1860.

To [settling] Spences Point

"Whittington & Co. (...) Chandler", Judgt. in [West] Co. Execution in hands of sheriff. Paid by & due to W. R. Mason $445.15 with int. fr. 10th June /59 Cnts $6.60 — on this Exn $100.00 paid 27th Aug. 1860.

Bond of James Chandler & Wm. [T.] Chandler for $ 1000.00 payable to John Cutcher on Jany 1, 1861 — int. fr. Jany 1st /57, dated Sept. 26th /56. [assd] by Cutcher to W. R. M. Int paid Cutcher to 1st Jany 1858. Paid W. R. M. int. Jany 1859, 1860 & May 1861 in [Promis] chek in rect of int

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Mrs. W. R. Mason 324 Bond of James Chandler & Susan Chandler for $1000.00 payable to Jno Cutcher on Jan'y 1, 1862, with int. from Jany 1, 1857 dated Sept 26th 1856, & b6 Cutcher assigned to WRM.

Bond of H. Chandler for $102.71 on demand int. fr. 15th July 1861 dated 22nd July 1861.

Bond of T. R. [Dilty] for $207.55 on demand dated Aug. 1, 1859. (Judgt. was obtained on this)

Bond J. T. [Harvey] for $611, payable 1 Jany /58 dated 27th July 1857.

Negotiable note of J. T. Harvey for $1000.00 dated Dec. 18, 1861, payable 95 days after date to W. R. Dogier, by him & Law Washington Endorsed. W. R. M. gave Harvey money for this note, & subsequently got it discounted for his benefit. It was protested & W. R. M. paid it April 2nd 1862. (...) $1000.00 int. $117. Prot $2.90 This is new in shape of Judgt. (...) "Dogier and Washington," & L. Washington has in his hands collaterals sufficient to pay the debt.

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Mrs. W. R. Mason 326 Due Bill of Jno. T. Humphries for $25.00 dated 5 Jany /55.

Bond of John T. King for $1200.00 on demand dated 1 Sept 1859. Credits $115.00 1 Jany /61 $47.50 1 Oct. /61, $175, March 6th /62, Nov. 1865, cr. by $1000.00 Jany /67 $60.00, Nov. 68 $50.00

Bond of Geo W. Lewis dated 3rd May 1861, on demand, for [$100.00] Cr. Aug 15th by $[50.] & by $50.00 on — — (Paid in full, $47.54, & sent to Mrs. Mason)

Bond Ro. Mayo Jr. for $46.00 -- on demand int. from 2nd Nov. 1841 dated 15th Oct 1850

(...) of (...) Williams to C. C. Baker on Wm [A] D. Spencer for Judgt. (...) Spencer for $133.43 in Cty Ct West & by Baker transfered to W. R. M. Judgt entitled to credit for wh. Spencer has recepts.

Bond of Matt H. Tyler & O. C. Griffith for $426.66 on demand dated 28 March /55 Int to 26 Mar. 1840 paid, to wit $128.00.

Bond of J. B. [Marye] to J. L. Cox fr $18.00 dated April 14th 1854 assd. by Cox to W. R. M.

Bond of B. A. Thomas to W. R. M. adms for $40 dated 23 Nov. 1854. 6 mos. after date. Paid 3 Sept. 1857, $20.00.

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Mrs Susan L. Mason 328 Neg. note of W. A. Rollins ro W. P. Lamkin Endorsed by Lamkin to W. R. M. for $137.80 dated July 5th 1860, payable 60 days after date W. R. M. is charged with costs by protest.

Bond of John [Linsbloom], dated 1. March 1849 on demand for $23.00 Cr. 8 June /49 by $13.86.

Bond of Rook S. Lawrence, dated Jany 1, 1852 on demand to W. R. Mason admd Wm B. Ball recd. for $363.17.

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336 The Estate of James H. [Jett] In Dc. 1867

Sept 23rd 1867 To cash paid clerk as Tax on Qualification Bond $1.00 " " " Fee for Motion to qualify $7.50

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337

Afc. with R. Washington His Administrator 1867 Co.

[inserted on yellow note page] Lawrence Washington Esq. { Lawrence Washington Jr. { Captain { Westmoreland Rifles { [Sons of Liberty and R. J. Washington { 3 Brothers written up 1st Lieut { right side of page] Lloyd Washington { 2nd Lieut { Westmoreland Rifles {

James G. Mange 3rd Lieut. Littleton

R. G. Washington OS Sons of Liberty

Sons of Liberty

301

338 James S. McKenney 1867 Oct. To securing Rolph's Bonds by Deed of Trust on Cherry Hill $25 To sent on Bond of Samuel L. Rolph to John Reed dated Jany 1 /68 payable July 1/69 int. from date & assigned to Js. McKenney Jany 4th /68 for $340.90 ½ & Bond of same to same, same date, payable Jany 1, 1890 int from date & assigned to same, same date fr $340.90 ½.

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[yellow paper note]

B B B B B B B B 1861 1861 30th 1861 Bancroft B B C [Alaburtin] 30th 1861 Alabama Alabama 30th 1861 Amazonian Cason Jones Jnos. B Amazon Jnos B Jones Amazon Col. Jno B

Col B Col Jno B [Ens] B Henry M. Woodhard Esq. Jnos Z. Jones Esq. Mr W. W. Thoroughgood Mr Robt. I. Washington Mr Thos (...) [Pratt] Mr Jos K. Robert(...) Mr Jno:s Z (...) Mr Thomas Jefferson (...) Thomas Jeffer(...)

303

310 Dr David Bishop In Acct

1869 To this fee for advice & for compromising Sept with G. W. Lewis claim of Charles Smith [to you] $20.00

304

341 [with] Critcher & Washington Attys Co 1869 Sept 28th By cash as fees for services per [centra] 20.00 Per received by (R. J. [W])

305

342 Dr. P. Ballenger In acct with 1869 Oct. To sent. Ballenger vs. H. B. Gouldm an in Cir. Ct West & Co. Oct 1869. on store a/c running from 1856 to 1859 for $241.75 Cr. 1858, & 1859 $176.25 $10.00 (continue until Spring term)

{To collection} Store account [vs] Nicholas Quesenberry, dated in 1859 for $62.87

306

343 Critcher & Washington Attys.

307

344 C C Thompson In acct with 1870 Jany To fee for collecting a/c is James H. Payne's admd. $11.41 5.00

308

345 Critcher & Washington Attys. 1870 Jan'y 28 By per centra paid R. J.N. $5.00

309

346 Dr Burnett with

Due Bill Churchill Jones dated Dec. 24th 1858 for $14.75

Prom. note of W. Moxley & B. T. Tayloo dated Jan'y 1. 1862, payable Jany 1, 1861 for $20.00. Aug. 1. 1862 Bond of Nathal. Elkins & W. S. Brown. dated 1. Jan'y 1862, payable 1. Jan'y /63 with credit endured thereon of $6.60 as of Sept 3. 1848 —— for $55.00

310

Critcher & Washington 347

311

348 Mess. Washington & Herbert In acct. 1870 Jany 25 Open a/c Washington & Herbert is Omohundro & Lord, (...), Bal. for a/c Rend. Jan'y 1. 1870 $27.99

Open a/c is Churchill Jones 8.50 (Collected July 7th 1870)

[text upside down, transcribed turned up]

Lawrence Langston 1868 Cr July 27 By 5 pr ct commission on $50.80 2.54

Aug. 7 By " " " " " $15.00 .75 Aug. 13 " this amt sent you in two drafts 50.80 Aug. 24 " " " 5 pr ct comsn in $24.13 1.24

" 24 " 5 pr ct on $67.50 3.37 -------- " 27 By this amount sent you in draft 58.66 on Geo Washington Alexa Va. drawn by John E. Wilson 106.63 Sept. 5 By 5 pr ct com. on $38.80 1.92

312

349 With Critcher & Washington Attys.

Letter from Geo Washington stating the a/c {bond} been paid.

7. By my draft on myself in payment of (...) 8.50

[text upside down, transcribed turned up]

R Washington In a/c with Dr 1868 Rust's drafts sent to Langeton Aug. 13, 1868 July 27th To this sum collected fron John Rust in full of his note &c. $50.80 Aug. 7 " " " collected from T. B. Dilby on a/c his note &c. 15.00 Aug. 20 " " " collected of John Taylor in full of his note &c. 24.13 Aug. 24 " " " collected from Edw Owens in full of his note &c. 67.50 ---------- 157. 45 Sept 5 " " " collected from Churchill Jones in part of his notes. 38.50

313

350

F. D. Wheelwright Bond of H. Thompson & W. D. Thompson dated Jan'y 3rd 1861, payable Jan'y 1/62 for $80.00.

Due Bill of W. D. Watson, dated Feb'y 2nd 1861 for $16.07 (filed with Comd. Hutd Co.)

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G. W. Lewis atty for H. C. [Fiffey]

To filing answer as Jud. at Litum, in " Tiffey Jr. vs. Tiffey &c". Cir. Ct. West, Oct term 1869.

[following text upsidedown on page, transcribed turned up] [68] Mrs. R. H. Crowell Dr. To this sum recd. of G. W. Lewis atty [for] D. Fowler. 39.00 " " " " " " " " " " 100.00

316

353

[text upside down, transcribed turned up]

1868 Robert J. Washington In a/c with Cr By this sum, sent [her] in draft of recpt. $ 25.0[0] " " " " " " " 90.00 " " " 5 pr ct Comsn on $130.00 6.50

317

354 Charles Seymour

Store acct [vs] Josiah Hays, commencing March 17th/7[during] Oct 10th/67 for $147.94

Bond of David Kelley to Thos L. McKenney, dated Oct 18th/67 payable March 1, 1868.

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William [Muso]

Acct vs Overseers of Poor of [Nortd.] Co. for $67.24 cr. April 30th/68 by $6.50

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358

1873 (...) & Co. April 17 acct. against Alexa. Wilkins 99.38 [Feby.] 18th 1873 $99.38

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[upside down text]

R. Washington and John R. [Clagett]. Minnesota property. 1868 April 28th Sent the draft of $116.93 to Geo. Washington Alexandria, to have cashed with instructions to place the amount to my credit.

1868 July Sent this draft of $559.35 to Geo Washington Alexandria, to have cashed wirh instructions to place the amount to my credit. Nov. Oct 24/68 Drawn on Geo Washington (Sangston) 191.25 " This draft was not presented but [frw'd] by me {37.50} " 28th drawn in " " to (I. T. King & Co.) 50.00 Nov. 5th " " " " to H. A. Mason 75.00 [Oct] 24th/68 Sent this draft to

Geo. Washington to have cashed & place the amount to my credit: Nov. 16 Drawn on G. Washington (L Sangston) 141.02 Nov. 24th {Drawn on G. Washington (D Wat)} Never drawn {100.00}

Dec. 5th Sent order of L. Washington, to have placed to my credit 208.45 Dec. 7. Drawn on G. Washington (Dr. Wheel(...)) 211.49 Dec. 16 Drawn on G. Washington (R. H. Garland) 24.02 Dec. 17th Drawn on G. Washington (W. P. Lamkin) 100.00 " 20. Drawn on G. Washington (R. H. Garland) 32.17 1869 Jany 26th Drawn on G. Washington (Cyrus Jett) 116.14 Jany 27. Drawn on G. Washington (R. B. Lewis) 1.20 Feby 16. Drawn on G. Washington (John J. Jett). 12.06 Feby 16. Drawn on G. Washington (L. Washington) Spil. (...) 12.10

324

361 [upside down text] Statement of Account between 1868 20th April Received of Messrs Clagett & Crosby settlement of acct amount to date Apr. 9th and a draft on Importers & Traders Nat. Bank New York, drawn by Merchant's National Bank, Hastings, Minesota, dated April 9th 1868, No. 2083, in favor of R. Washington as balance due on settlement for $116.05 1868 June 24 Recd of Messrs Clagett & Crosby settlement of Acct current to June 13, 1868 and draft on Importers and Traders Natl Bank, New York drawn by Merchant's National Bank, Hastings Minnesota, dated June 18, 1868, No. 2243, in favor of R. J. Washington. {bal.} due {(...)} settlement [$559.33] Oct. 21 Recd of Messrs Clagett & Crosby on sale of Lot 4 Bl. 46, Hastings for $280.00 dated May 20th 1868, draft on Importers and Traders Natl Bank, New York drawn by Merchant's National Bank, Hastings Minnesota, Oct 12, 1868, No. 2551, in favor of R. Washington. $38.7(...)

325

Henry B. Gouldman 362 1869 Dec. Bond of J. T. King & T. Hunter Jr. payable Jany 1, 1870 75.00 (Collected Feby 3rd 1870)

Open a/c against Jno. P. Martin [dcdt]. dated Jany 1863. 2.50 (Collected Feby 13th 1870)

Bond P. M.Peed [one] May 1, 1870 for $38.34 Collected June 2nd 1870 $25.00 in part

326

363 1870 [Feby] 4 Fee & per ct for collecting same. 6.25 (Paid to R. Jn.) " " By fee to R. J. Washington for writing {Paid} Deed of sale to H. K. Ellyson. & Deed of trust to McConkey & Dan. & Gouldman, May 21 1868 10.00 " " By credit on [your] Bond to W. P. Lamkin in my hands for collection 58.75 " 13 By credit on [your] Bond to W. P. Lamkin in my hands for collection 2.50 June 2 " fee &c collecting $ 25.00 [contra] " " " credit on your Bond to W. P. Lamkin in in my hands for collection (per yr order) 22.50

327

E. B. Greenlaw 364 Defense in "Thornton vs Greenlaw" Cir. Ct. Westd Co. Oct. term 1869.

Defense in "Jones vs Greenlaw" Cir. Ct. Westd Co. March term 1870.

Defense in "Rust vs. Greenlaw" Cir. Ct. Westd. Co. March term 1870 1871 Aug. 20 Bond of James F. Payne valid 12th day of Jany 1871, payable on demand (with 150.00 Bill of sale of (...)).

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366 John J. Gouldin

Defense in "Rhodes vs Gouldin" Cir. Ct West Co.

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Markham Bolson (Bleak Hall) 368 1869 Oct. To Defence in 5 warrants for Larceny $10.00 each 50.00

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370 Williss Homes

Contract with B. B. Smoot.

Daid Homes Contract with B. B. Smoot

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C. O. Harrison 372

Defense "Samuel S. Gresham vs. Harrison" Cir. Ct. Westd Co. Oct. term 1869 20.00 (Contd.)

[Open] acct. vs Josiah Hays July 1 /69 for $20.00 1871 Feby To appearance for [you] in corecting erroneous assessment in [your] tax for 1869 — & 1870 and as Guardian of Robert Montgomery 1869 10.00

336

373

$ 20.00 collected from T. H. Mossey — int. still due

337

Thomas Hepburn 374 Defence in "Bunday vs Hepburn," Assumpsit Westd Cir. Ct. Oct term 1869 (contd) $10.00

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339

A. D. Hepburn 376 Defence in "Essington vs. Hepburn" Debt on Bonds Contd. Cir. Ct Westd

Defence "Massie vs. C. Hepburn" Assumpsit Cir. Ct. Westd. March term /70.

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John T. King 378 To open acct vs James C. Deatby dated Aug. 20th 1858 for $8.00

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Dr 380 Hart In acct 1871 Feby. To appearance in Hart v. Wm K. [Moriss] in collecting bal. due on of [Moriss] as [yr] guardian for which you agree to pay me 20 per ct.

344

with R. J. Washington his atty 381

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382 Messenger. Taylor & New No 305: W. Balt St Balt 1873 Mar 10 [Mures.] a/c vs W. J. Damaby for $57.00 with int. from Dec. 27th 1871.

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384 1873 R. S. [Gutridge] Mar 29. Bond of Jas. D. Power's, dated Mar. 20th /72 payable one day after date, for $89.99

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386 1872 Shriver Buck & Co — 324 W. Balt St. Sept. 7th a/c vs W. H. [Mothershead]. for $95.60 with int. fr. April 15/72. dated Dec. 15/71 on 4 mos. (written to Sept. 9th 1872)

350

Balt. Md. 387

351

388 James D. Powers 1872 Oct Claim against E. O. Greenlaw for $ 775.00 to be bonded & [secured] by deed of trust. = Bond taken dated 24th Oct. 1872, on demand for $775. bearing 12. per cent. secured by deed of trust on 5 [mules] & int. in wheat crop. 1873 Jan'y 8 Bond of G. J. Gouldman & C. H. Ashton dated 28th Nov. 1872. 90 days after date to James D. Powers, for $27.20. " " = Bond of C. H. Ashton, dated 28th Nov./72 90 days after date to Jas. D. Powers for $32.00

352

399

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353

394 Benedict Walker To suit on Bond of Churchill Jones & J. F. [Bispham] dated June 24th 1867. 4 mns. after date for $26. 25 for 5.00

Paid Benj. Walker as per receipt. 30.40 ———— 35.40

354

395

1870 June 4th Collected the Bond & int $30.18 " " " Costs 5.22 ———— 35.40

355

Joel Walker 396

{To making out Abstract of title to Longwood 20.00}

{obtain conveyance from Dr, Stuart, & arrange with} {him about the note}

{Have Longwood lines surveyed, marked, & get} {Platt &c.}

1871 May Neg. note of John Donell dated April 6th 1870, one year after date payable at the First Nat. Bank Newark, New Jersey [6960.00]

356

397

{These fees all paid}

357

Walter S. Mone & Co. 398 Store a/c vs R. E. Deatley (alias J. T. Deatly) for $67.74. (Sent K. J. Cir. Ct. March term 1870)

Store a/c vs C. H. Smith for $50.92

358

399

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359

J. Wm. Johnson 400

Bond of Wm. H. Butler & [Susan] P. Lisson 13th Jany 1862 6 mos. after date for $165.00 cr. by $133.80 March 31, 1862.

360

401

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361

402 Ed Jackson

To Defence in 3 attachment cases Fee. $25.00

362

403

Fee of $25.00 paid to (R. J.n.) $ 25.00

363

404 John Reed

To attending to attachment Lewis vs. Reed & making arrangements for him to ship his corn (Fee) $10.00

364

405

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365

406 Carolinus Turner

To attending to rent of Walnut Hill & collecting same $20.00

366

407

1870 Feby 11th By this recd from J. W. Lewis for corn sold him for & on account of Carolinus Turner $60.00

367

408 T. H. Massey

To collecting Bond vs Leech & Falconer (fee) $5.00

To suit vs. [blank space] Wharton & Edmond L. Wharton in Cir. Ct. Westd Co. March term 1870.

Sept 30th 1871 Bond of Jame F. Payne dated 12th day oct. 1870, payable six mos. after date, with int from date at the sale of 12 per ct for $170.00

368

409

By cash recd from T. H. Massey (fee per contra) $5.00

369

Milton M. Marmaduke 410 To fee for collecting $267.12 from Judgt. against J. L. McKenney [securing obliger] of himself & G. C. McKenney 20.00 Collected & paid to Marmaduke. March 19th 1870.

370

411

[Co.] By fee to coma. retained $20.00

371

412

Jonathan [Paten]

To fee & coma. for collecting $191.54 from 1870 Judgt. vs J. S. McKenney, serving [& obja] of Feby 4. himself & G. C. McKenney. $15.00

372

413

1870 March 16 By fee & Coms. retained in my hands $15.00

373

John D. King admr. Henry King decd. 414 1871 Aug. Prom. note of David [Vessels] Sr. David [Vessels] Jr. & Josiah Hayes, dated January 7 1869 payable on or before April 1, 1870, with int. from date. $100.00 = 1872 Nov. 28 Bond of Saml. T. [Reamy] for $ 13.00 dated 30th April 1861, payable on 1 Jan'y 1862 to Henry King. = " " Note of [Planter] [Minor] to Henry King dated Jan'y 1, 1867, payable on demand for $39.00 cr. — by $21.50 paid to S. A. [McGuiness] [court].

374

415

suit in Co. court at [aug.] Rules 1871.

375

418 David [P.] Hollingswith (this C. C. Thompson) 1872 Nov. 16 An order by Mrs. E. A. Fleming on Dr Warner, in [favor] of D. P. Hollingwith, bearing no date, for $19.00

376

419

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377

Wm R. [Dogier] 422 1872 Nov. [30] [Due] Bill of Wm. L. (...), dated July 1, 1858, to W. R. [Dogier] for $27.67 credited by [fee] Bill for $5.00 = " " Bond of Chs. C. Robinson & T. R. [Ditly] dated 24th [Nov.] 1853, payable to Joseph F. Harvey Sr. of Wm. I. Dulinan decd. for — 6 mos. after date. $7.85

378

423

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379

Dr. T. D. [Minder] 424 1870 Dec. 7. Bond of R. L. T. Bealer executed to F. Fairfax dated 10th Sept. 1860 payable 12 mos. after date with int. from date — assigned to S. J. S. Brown — (with following credits 1866, Dec. 5 fr 48.00 1868 July 6 fr 48.00 1869 Jany 27 for 48.00) for — — 800.00

380

425

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381

Geo. C. McKenney's & [Dy.] 426

Nov. 1871 To defending suit Lewis v. [McKennys'] [Dy.] in Chancery in K. G. Co. Ct.

382

427

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383

F. N. Payne 432 1871 Nov. Prom. Ny. note of R. E. Deally & J. T. Deatley for J. T. Deatley, dated Dec. 1st 1869, payable 60 days after date to the order of Hartman Whitehill for $233.84. First Nat. Bank [Fdbrg.]

384

(...) [of the] covering [various] sums of money due to Plf by Def. & in (...) in wh Deft fell into arrear to Pltf & in (...) charge he promised to pay These [counts] were rendered upon the following idea (...) in (...) it was necessary upon (...) [Court] as (...) (...) in Court stated it is

immaterial [for] (...) [Court held] its (...) (...) [cause]the 3 (...) only and were only [complyed] in the (...) [where they] (...) applicable (...) (...) If there was no (...) in the court the (...) ought not to be made. In (...) it came to be (...) that the (...) (...) [has] now, on all cases & that

385

W. R. Walter Atty 35. St. Paul Street 434 1872 July 2. Open acct. (Store) I. Wolfsheimer assignce of S. Wolfsheimer & Bro. v. Wm Brown Jr. $255.07 with int. from Aug. 15 1871 — July 27th Due Bill of J. B. [Carey] tp Eliel & Mayer Balt. dated Oct. 21 1870 for 69.00 (sent to W. M. Walker July 29th 1872)

386

Baltimore Md. 435 Collected Aug. 26th of Wm. Brown a draft one day after eight on Jno. L. Redner 404. S. Delaware [avenue] Phila. Penn —— for $255.07 [refusing] to pay int —— Sent W. R. Walter draft for $232.32 keeping fess & comn. 22.75 ——————— 255.07

387

John Rogers In acct 440 [Dr] 1869 To suit on Bond of Jane E. Lunsford to T. Fairfax 10.00 on demand dated Aug. 15th 1860, & assigned in blank, for $76.32 (Judgt obt. K. G. Co. Ct. Nov. 69) $ To suit on Due Bill Jane E. Lunsford to Fairfax [Minde], dated Aug. 15th 1860, & assigned in blank for $24.28 (Judgt. K. G. Co. Ct. Nov./69) 5.00 To arranging & compromising Bond of Landrian Thompson & A. T. [Dishman] dated Jan'y 22nd /62. 6 months after date for $136.00 (settled & Bond handed to Rogers) 5.00 To examination & collection of Robert Cookley's Admn. a/c of Wm. Rowley decd. 10.00

388

with Critcher & Washington 441 1869 By this fee paid to R. J. W. (collected 1 year's int on bal. of Robt. Coakley's admn. acct.) & small balance on Thacker Rogers admn. a/c of Wm [Ronley] (dcd) $10.00

389

R. J. Washington Atty In acct 450 Dr 1871 Feby 11 To these accts &c. recd from G. M. Carter for collection or suit to wit [Memo.] Open acct against James H. Payne's Estate dated Dec. 31, 1861, subject to a credit June 1, 1867 of $15.56 for 76.57 = To memo. acct. vs Howard J. Bailor, dated Dec. 31. 1861 (A/c rendered) for 24.47 = {To Bond of G. W. Marshall, Wm L. Spilman & Tho. R. Ditly, dated Dec. 5th 1860, payable 12 mos. after date with int from date. executed to Wm W. Owens. Endorsed of W. W. Owens, & James C. Treakle. credit Oct. 22 1864 p 7.86 for } 131.00 = To open acct [vs.] James S. McKenney, dated Jan'y 19 & Mar. 26, 1861 for 4.24 = " Prom. note of R. B. Sutton & Co. dated May 31, 1861 payable one day after date executed to the order of John H. Thomas, & endorsed of John H. Thomas, Nov. 11, 1861. for 29.36 = " Bond of R. B. Sulton, dated 9. Oct. 1858, payable one day after date executed to John P. Thomas —— for 79.31 = " Bond of Henry B. Gouldman, dated 31 Jan'y, 1862, on demand for 94.98 = " Bond

of John G. Gouldin, dated 31. Dec. 1860, on demand for 22.41 = " Prom. note of Jno B. Lewis dated 20. Mar. 1861, on demand, executed to Jno. P. Thomas for 15.00

390

with Geo. M. Carter cr 451

1871 Feby 22. By collected on a/c claim v. [Barton] $5.15

This Bond paid in full Mar. 1. & Mar. 11. & transaction [carried] to Ledger. to acct. G. M. Carter.

Paid Nov. 29th 1871. by receiving principal of bond in full.

391

452 R. J. Washington Atty In acct 1871 Feb'y 11 To Bond of Jno. B. Lewis, dated Dec. 1. 1860, on demand for 323.61 = " Bond of Wm. I. Dishman dated Sept. 30. 1860, on demand cr. Aug. 1/67 by 28 [of] for 4.69 = " Bond of Mathew Wilkins dated 21. Aug. 1861, on demand for 12.84 = " Due Bill of S. L. Lewis, dated Jan'y 1. 1862, on demand for 6.79 = " Prom. note of Mary M. Dishman dated 31. Dec. 1859, on demand for 48.08

" Bond of S. L. Lewis dated 18. May 1861, $30 paid on demand, executed to John H. Thomas, & endorsed by John H. Thomas Nov. 11th 1861. 59.14 = " Prom. note of Jos. [Cunley] & Jos. A. Wilkenson dated 22 June 1861, on demand for 9.00 = " Bond of Jno. H. Burnett, dated 30 June 1860 on demand for 54.40 = Due Bill of William I. Dishman dated Sept. 30. 1859, on demand cr. Aug. 1/67 p1.55 for 25.83 = " Bond of A. Brown, dated 18. April 1855 Paid in full payable on 5th May 1855 (Beale) admr.) for 40.30

392

with G.M. Carter 461

393

462 1893 Hartman & Whitehill June 13 Open a/c W. C. Askins Port Conway To Hartman & Whitehill at 4 mos. dated 22/72 for $135.10

394

463 Sent June 14th to Julien J. Mason.

395

464 Chas. W. Green Alexandria Va. 1873 Jany 20 Nego. note of W. P. Lamkin dated Alexa. Va. Oct 29th 1872. Two months after date, payable to the order Chas. W. Green at Citizens Nat. Bank Alexa. Va. for $87.75

396

465

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397

466 Lewis [Wilton] Hanesville Nov. 5/72 Bond of L. A. Kuvek & [Jessie] K. Hines, dated Nov. 1. 1861. payable 1 year after date, with int. from date for —— $700. Cr. endorsed, thereon. Jan'y 19/62. Received $42 int on the within note. Lewis [Wilton] Jany 27/64 Recd int of the 1st Nov. 1863. Lewis Wilton May 13 /67 Recd of [Wm] Hines two years int. on the within note.

398

467 Kent Co. Md.

399

468 Mrss. Dinmore & Kyle. Balt. 1873 Jany 15. Merchants a/c vs Gouldman & [Stainback] balance May 30th 1871 —— $241.01 Aug. 25th 1871

400

469 Suit brought to March Rules in [court] 1873.

401

470 Wm. K. Morriss In acct with Dr 1871 Feby 24 To appearanced "Baker v. Morriss," action trespass on case on assumpsit. Spring term Cir. Ct. 1871, for $50.00 " " To appearanced "Mary Atweil v. Morriss," action debt on Bond. Spring term Cir. Ct. 1871, for $ 100.00

402

R. J. Washington his atty. 471

403

Dr. W. P. Lamkin In acct 480 1869 To suit on Bond Jane E. Lunsford dated x May 1, 1861, payable one day after date for $91.60 (Judgt. Nov. term 1869, Co. Ct K. G) $ 10.00 " To suit vs David C. King, on two Bonds one dated May 1, 1861, one day after date x with int. from date for $56.80, & the other dated July 20th 1861 payable Jany 1, 1862 for $33.00 credited Nov. 8th 1861 by $9.00 10.00 " To suit vs Louisa F. Potts, on Prom. Note x dated May 1, 1861, payable one day after date, with int. from date, for $31.38 credited Sept. 13th 1867, by $1.88 (Judgt. Nov. Term/69, Co. Ct. K. G) 5.00 x To suit on Bond of L. R. Rollins & William Green payable to Thos. R. Ditby trustee for W. A. Rollins dated Oct 25 1860, payable 6 months after date & assigned by Thos. R. Ditby trustee to Wm. P. Lamkin for $225.00 Cr. Sept. 16th 1867, by 1 year's int. $13.50 (Judgt. vs Green Nov. term 1869, Co. Ct. K. G) 10.00 " Oct To fee for defence "[Dozier] v. Carhart". (...) Summons on [Bonling Curley] to answer as to [Curley's] note, assigned to C. H. [Bonnell] in Cir. Ct. West .. (Contd. till Spring term 1870) 10.00 " " To collection Bond Mary M. Ashton & John x T. King to Charles Carhart, dated 18th Sept. 1862, on demand and assigned to B. Carhart 3.00 " for $42.00. (This bond was given to J. T. King & credited on note of (J. C. Deatley, to W. P. Lampkin wh. had been (...) to King. (& amounted to $61.20) " " To

collection Bond of W. W. Moxley, A. C. Edmonds, x Thos. R. Ditby to Daniel Carhart, dated Oct. 25th, 4 months after date for $100.00 " " To [blank space] Prom. note of Richard Watts x James Watts to A. B. Carhart, dated June 11th, 1867, 7 months after date for $50.00 " " To Prom. note of Richard Watts to A. B. Carhart x dated Jany 1, 1867, 1 day after date $11.84

404

with Critcher & Washington Cr 481

405

W. P. Lamkin In ac. 482 To Bond of Mary Gouldman to Charles x Carhart, dated April 13th 1863, on demand assigned to A. B. Carhart, for $35.00 cr. Oct 20th 1866, by $9.29 x To. Prom. note of Daniel King to A. B. Carhart dated July 9th 1861, 1 day after date $9.11 x " Prom. note James T. Owens to A. B. Carhart, dated Aug. 7th 1858, 60 days after date for $50.00 To [blank space] Bond of Wm. R. [Dozier] to Wm. P. Lamkin dated Dec. 8th 1863, on demand (Broadfried matter) for $895.50 x To Bond of Jno B. Lewis to W. P. Lamkin dated June 1, 1861 on demand for $111.84. x To Bond of R. E. Deatlry to Wm. P. Lamkin dated May 1, 1861 on demand $97.93. x To [blank space] Bond of Rufus King to W. P. Lamkin dated July 1, 1861 on demand for $57.66. x To [blank space] Bond of Mrs. Margaret [Monroe] to W. P. Lamkin, dated Jan'y 1, 1868 on demand for $66.05 To examination of title to land sold by [Northam] in his life time to John Barker. To examination of exchange of land by Geo. [Northam] in his life time with Wm. Moses.

406

with Critcher & Washington Attys Cr 483

407

486 Geo H. Robinson Alexa. Va Mch 23d 1871 Bond of David B. Taylor to G. W. Robinson = on demand, dated May 9th 1861 } $ 80.79 H. Thompson's Bond to same, dated Feby 28 = 1867, int from Mch. 12 1861 } 34.18 W. R. Sutton's bond to same — dated Sept 29/66 Int. from Mch 1, 1862, with following credits = Oct. 24/67 $2.36. Sept. 29/69 fr. 4.72 } 39.34 Thos. H. Sutton's bond to same, dated Oct. 13 = [1866]. Int. from Mch 1, 1862 } 37.46 Miss Fannie A. Lyells bond to same, dated = Feb'y 28th/67. Int. from Feb'y 1, 1862 } 53.68 J. S. Johnson's bond to same dated Feby 25th/67 = Int. from Mch 1, 1862. 76.74 John L. Jenkins bond to same, dated Mch 12th 1867. Int from Mch 1, 1862 } 17.06 = John B. Lewis note to same at 90 days from Jan'y 1, 1861, due May 1/4 } 169.49 = Henry B. Gouldman's note to same dated Feby 1, 1867, int from Jan'y 1, 1867 } 50.07 = Samuel Walker's note to same, dated March 6th 1861 } 40.38 = Edwin Hurt's note to same, dated Mch 15th/61 at 90 days. } 100.00 = Jos. A. Wilkerson's note to same dated May 17th 1866 } 107.87 = Wm. F. Chandler's note to same dated April 23 1867 Int from Mch 6 1861 } 113.30 = Mrs S. B. Lyell's note to Robinson & Payne dated Feby 28th 1867. Int. from Mch 1, 1861 } 103.94 = Mrs. S. B. Lyells ack a/c to G. H. Robinson, dated 28th Feby [1867], int from Feby 1, [1862] 2.42 = C. A. [Hainson's] a/c to G. H. Robinson & son int from Mch 20th 1871 121.65 = Wm. [Carey's] Bond dated Feby 1, 1861 on demand 34.05

408

487

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409

488 Geo H. Robinson June 11/71 Neg. note of G. W. Goldely, dated 15 Jany /61 } 4 mos. after date, at Bank of old dominion } at Alexa. to Geo. H. Robinson for } $121.82 = Neg. note of John B. Lewis, dated Jany 16 } 1861, 60 days after date, at Farmer's Bank } of Va. at Alexa. to Robinson & Payne } 141.85 = Bond of Wm. D. Nelson, dated April 30/60 on demand, int. from Oct. 4 1860 to Robinson & Payne for } 74.17 Mar. 11/72 Acct. against Dr. H. T. Barton Admr. d. 6. n. c. t. a. J. W. Payne deed. Dec. 1860 $ 165.42 Cr Dec. 18 By Dr. H. T. Barton $78.54 1867 " Cash ——— 15.84 Nov. 16 do ——— 8.42 102.80 = ————————————————— $ 62.62

Neg. note of [Jan] (...) F. Payne, 1st Va. Bank Alexa. endorsed by H. T. Barton & Geo H. Robinson [& son], for $250 [discounted afterwards] for ——— $150

410

489

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411

Frank Lewis 500 1871 Feby Open a/c [vs] John Miller, dated Aug 1870 for $65.00

412

501 collected in full May 13, 1871, & paid F. Lewis per (...).

413

Edward T. Taylor 516 Dec. 1891 To examining into matter of deed of trust given by Dr. E. O. [Greenlee]

414

517

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415

518 [Hazlewood] Thompson Nov. 1871 To examining title to land sold you by A. T. [Dishman]

416

519

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417

542 William Harrison In acct with

418

R J. Washington Atty 1871 543

Mar. To placed in my hands a/c against A. J. [Cooke] for services of son [Grays] for 1869. $25.50 (given to constable to warrant on)

419

576

[Upside down text]

A married woman cannot go back beyond her husband's death for profits of her separate Estate, which she allowed Husband to receive during his life time — when the Husband supports the wife. See Ridout v. Lewis, 1 Atk. 269. Countess of Warwicke v. Edwards 1. Eq. Cases Abr. 149, pl 7. 1 Bac. Abr. 482.

A provision in Will by Husband giving wife 1/3 of the sales of his Entire Estate, Real & personal, there being a lien on his farm, created at time of purchase, gives to the wife 1/3 of gross sales (not after haying the lien). See. Elliot v. Carter xx. Grat. 548. 2 Lomax [Exor]. 404—5—6. 3 Lomax Digest 7—18 2 [Jarmin] on Wills —.

420

421

578

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422

[4.60] 3.00 ——— A genel. plea of [usury] [14.60] (...) [happen]. C576. SC. Ch 16 [1)] 349. [Matters] by (...) [of rule ct takes] notice ex officio [In rules of in] p 78. [6 Ran 704] In wh. it was decided that [not] only the Ct might take p. 362. Auth in speaking of (...). (...) with plea of non [damnificatus] (...) in order to (...) (...) of pleading proper (...) that the (...) shall 8 nat 539. of the (...) that this deft. will do (...) p385. mtake in text. p384. Pleadings (...) he (...) 2 (...) 187. [you] (...) action by assumpsit ref. (...) [written upside down over text at bottom of page] 1 Feb 70 233.84 6 ———— 140304 3 ———— 32,0912

2/233.84 ———————— 1.1694 32.09 ———————— 33.25