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Notes on Blackstone's Commentaries Taken from the Lectures of J.A.G. Davis Professor of Law in the University of Virginia

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{copied} from the Notes of belonging to {April} Waverly Yownes, his being copied directly from the Lectures of Professor Davis Professor of Law in the University of Va.

1 Blackstone's Commentaries, Municipal Law—Lecture I.

The definition of the Commentator is objection — — able when applied to us; though it will hold good when applied to the English. To mark the distinction, we must advert to the theory of the different Governments. By the theory of the British Government, the Par— —liament is supreme: so that Legislature and sovereignty, may be considered as convertible terms. But the theory of our Government is different; here, the declaration of Independence, declares all free and independent. By our Constitution supremacy is declared to remain to the people; that the legislature is a qualified agent of the people, and consequently that all laws emanate from the states or the people. Municipal Law, may be defined, those re— —gulations adapted by the society in whi we live, as the conduct & regulations of its members. (Davis p 45. Our Laws have the combined effect of compacts and Laws. Laws to be binding must be known. The C. Law is published in books of reports and treaties to whi every one may refer. Statutes are

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are printed at the close of each session by the public printer and copies are sent to clerks of courts to be distributed. By act of Congress the Secretary of State is to furnish the Executive of each state, with copies for distribution, and all acts are directed to be printed in at least 3 news papers. Ex post facto Laws. In these cases a person is bound by a law that he did not nor could not know; these are even more objectionable than the laws of Caligula, they refer to penal offences. Definition of the Supreme Court in 3 Dallas 386. In this case it was decided that these were technical terms. It comprises all cases that were made penal after the offenses were

committed; or that agravated the crime, or imposed a greater penalty, or whi attend the rules of evidence. This is liable to too great minuteness. 6 Cranch, 138. Is one that punishable in a manner in whi it was committed; this is preferable. Civil Laws are not retrospective and do not affect the Constitution of the United States but they are so restrained that they do not impair the obligation of contracts. The difficulty consists in this, that there are

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some whi fall under neither of these. The Legislature may pass laws respecting remedies either as to the taking away or giving a remedy, but they must be explicit, 2nd H & M 181. 3 Cul. 268. We have no express judicial decision, concerning civil rights not affecting contracts nor remedies. Judge Tucker thinks they wd be void. P. 47. Sovereign power. This construction is founded on a total mistake of the nature of Govt. The design that induces individuals to enter into a society induces the necessity of a public authority; this public authority is what is called Govt. The people have the right to establish what for of government they please. The power is nothing more than the contribution of wills. The power aught to be delegated, that it may serve as a check upon the agent. Government is coequal with society; in this country alone, it can be traced to a written compact. Sanction of the Laws. There are 2 motives, to obey. 1st, good faith — 2nd As the happiness of the people is the object of Government an enlightened policy shd induce their observance. P. 57. Binding in

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in conscience. In addition to the reason given, we may add, that punishment on penalties are never intended as a com— —pensation or composition, but merely in tended to deter others. When any doubts arise. In this country, this is never the case, because the Judiciary departments are separated, fr. the other departments, and were they to attempt it, they wd be mere usurpations and void. In [blank space] they are governed by one spirit and one policy. As regards Equity; see Preface to Maddock's Chancery. Laws of England

Lecture 2d. The laws of England are divided into Lex Scrip— —ta and Lex non Scripta. The origin of the com —mon law is derived from custom or immemorial usage, correct it is the same as given by Sir Martin Hall and is supported by authority and reason of these customs in successive digests have been made. The 1st by Alfred which is lost. 2nd by Edward the Confessor and whether extant or lost the author does not sug. The fact is, that they are lost, what they were is much disputed, and this is one of the greatest defects in the

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English history. In Rules pleas of the Crown Note to p. 5. During the reign of Henry 2nd a treatise was written by Glanville, this serves as an as— —sistance but it treats but of one part.

In the time of Henry 3d a treatise was written by Bracton which was more complete. It may be considered in a communion of the different customs, it is not easy to know when the different customs were introduced, all that we know is that from the time of the Britons, to the time of Bracton certain maxims were introduced that even matured by custom. Since that time many changes have been made, all of which were results of gradual improvement. The history of the Common law, is the history of the people. Its authority was as doubtful as the statute law and the common law flow from the same source, the legislature. The statute law is their will in writing. The common law the prescribed will founded on languages that much of the common law originated in this way there can be no doubt. Some extant before Magna Charta and as many Parliaments were held before that time, it is but reasonable to suppose that they originated many of these customs as we cannot suppose that

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they [blank space]. It is generally supposed that all were so delivered. ([Mack]. Hall. P. 68. Hall ascribes the history of the common law to three sources. 1st to Parliament. 2d to Judi— —cial decissions. 3d Common usage. And that these last gave rise to some can't be doubted. It is the province of the Judge to construe but not to make laws. Laws may often arise which fall under no laws; so that in these cases the Judge is to decide by making an application of known principles. A portion is evidently to be ascribed to the 3d course by consent many maxims were adapted which usage has established a Law. Their obligation arises from their reception and not from their origin. Precedents. The exact weight that shd be given to precedents is not capable of ascertainment. The principles are easy of explanation: it is important that all laws shd be certain and wise; for this reason decisions shd be uniform. It is of the highest authority, and upon this presumption of its correctness the people have acted. He that changes it must show that it is founded upon an erroneous opinion

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of the principles of Law. In some cases they may depart from it as if [blank space] and not [blank space] the Court may disregard it, but if there has been a uniform series of decisions extending for a great length of time, it must be observed and shd never be changed without great caution. The reason is, that the community has the right to consider them as furnishing a just exposition of the law and for this reason policy requires that they shd be observed. The obligations of precedents have been acknowledged from the earliest period of time, but now they may be questioned by the bar and overruled by the Courts. For them to have effect, they must have been expressed on a point at issue and necessarily involved not extra judicially. p. 74.2 Branch, Rep: Lex Mercatoria "Is one of the only customs we have adopted by almost every civil nation, and in most respects may be considered as natural or national." P. 79. 3 Branch. So much of this as was applicable to our situation was included in the common Law, whi we have adopted. 6. P. 336. The manner of its adoption shd be noticed. The Convention of

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of Va: enacted, "that the common Law of England, and all Statutes or acts of Parliament made in aid to the common Laws, prior to the 4th year of the reign of James I" and whi are of a general nature to—gether with the acts of the Gen— Assembly of the colony, so far as may consist in the several ordinance declarations and resolutions of the Genl Conventions," shall be the rule of decision, and in force until repealed. — The Common Law thus adopted included any branch, so far as was applicable to our situation and equity. The common Law is to be modified so as to be adopted to our habits and conditions. Lecture 3 Absolute Rights, Chap 1st In connexion with another division of rights viz Perfect & Imperfect. When it is fixed and determinate the right is Perfect — but when vague and in— —determinate the right is imperfect. If a man demands his property it is perfect, or as far as a bargain has associated the right it is perfect. In short perfect rights are those

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wh. are fixed and determinate and wh. may be ascertained without affecting any law or rights of another. These are enforced by the Municipal Law. P. 125. The definition here given is an admirable one of civil liberty but not of Political Liberty. (Note — the object, is, so to delegate their authority as that it may restrain their rules. This is attained by Political liberty. It is impossible for civil liberty to be secured without Po— —litical Liberty.) P. 127. In this country, we do not hold our rights by so precarious a bond as as charters. But ours is derived from and depends upon a written Constitution, the principle of whi is that all power is vested in the people and consequently derived from the people. The Magistrates who administrate government and enforce the laws, are themselves the servants of the people. Absolute Rights — Bill of rights Art 1st Page 134; Personal Liberty — Habeas Corpus This writ whi has been called by the citizen's writ of right existed in Common Law.

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But by our Constitution and Statutes it was recognized. This writ may be had upon application to the general court by any one who is detained in custody; and upon this writ the prisoner is brought before the court, when the court enquires into the cause of commitment, upon whi the prisoner may be remanded, released or bailed as the court may think fit. But by the Consitution excessive bail cannot be required. — Ne Exeat. This writ has been used in modern times in chancery, in civil actions. In this country it is nothing more than holding one to bail and is here only applied to civil actions. [blank space] Private property shall not be taken on any occasion with— —out just compensation. But it is liable to this construction, it may be taken for the public good when compensation is made. We have adopted every caution for ascertaining whether it is for the public good, and what is just compensation. To these 3 we may add a 4th viz: The liberty of conscience and this is declared by the same

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instrument that protects life and liberty. Rights of Citizens. The security we have is the State and Federal Constitutions and the gurantees whi they contain. Prohibiting the passage of Ex post facto Laws. Securing to the citizens the writ of habeas corpus, not allowing private property to be taken without a just compensation. Lecture 4th Page Subordinate Magistrates The Officers here named are all we have, and the law, concerning them is indifferent. Yet their antiquity is worthy to be known in relation to the mode of appointing them. They differ in their several official duties. — 1st The Sheriff. In this state Va: the county court in the month of July annually nominates three persons of the justices of the peace, to the Govt, one of whom, being approved, is nominated and commissioned. The Court has a right to commission any three and the Governor may commission whi, he thinks proper. The Sheriff remains in office one year of course, and a second if he is appointed.

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This is a matter of course, so that they are always renominated. On the third year the first one is dropped and another from the list of Justices is annexed to the list. On their going out of this office, they re— —turn to that of Justice, and in their time may again be nominated. In some contingencies they may remain in office more than two years (Note) Tate 487 — The Sheriff is chiefly known as a ministerial officer of both, superior and circuit courts. He is a keeper of the peace, collector of the revenue, he levies the public dues of his country and the fees of various officers: he has no judicial authority in this state. The only case of the exercise of judicial authority is upon the execution of the writ of admeasurement of dower, writ of par— —tition, and writ of enquiry of waste. This is done by Jury, but he presides, and is considered as acting in a Judicial authority, he has also, to superintend elections and has the casting vote. Neither does he act in a Judicial capacity in the execution of a writ of ad quod damnum or (10 1/4 — P.M.) eligit. 1 Tuck: Com: 41. Wash 126.

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Although no statute has declared him, keeper of the peace, yet he is so at Com: Law and also virtute officio. In this State, acts as bailiff, he is to take an oath and execute 3 bonds payable to the Governor in time; being each in the penalty of $30,000; he must execute these within two months after his appointment and if he does any act before, he is liable to a penalty of $1000. The securities are not bound the second year 4 Henry's Munford 208. Page — 345 — The only inferior officers are Deputies or Jailors, and it was decided by Judge Lomax that he may appoint the bailiffs. By act, no man can be appointed deputy unless he can be shown to be a man of honesty probity and good demeanor. He shall not serve as deputy for more than 2 years unless reappointed or more than 4 years unless he can show that he has paid all taxes in his hands

over. General Rule for Exception see 2 revised Code. 55. All actions must be brought forward by the Sheriff no matter by when the act was committed 1 Wash 159.

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By [stat?] (Tate 230) The party aggreived has his election against which he shall proceed. The high sheriff may move his deputy at pleasure. But if he moves him without cause, he is subject to an action for damages for breach of contract. 1 Mumfd. 150. 1 Dallis 149. In case of death the deputy may proceed to collect. The securities of a deputy may bind themselves for two years, as between the high and the deputy sheriff. But if during continuance in office only bound for one year 2 Leigh 303. 6 Mumf. 81. Blackstone says that the sheriff's inferior officer are prohibited from buying and selling their offices, but there is a provision in this statute 1 Leigh 42. It is not illegal to sell or farm the office to a deputy. Page 436. jaolers 9 Rom: 456. Sergants of Corporations and officers appointed in corporate towns to perform the duties of the sheriff by the Court of Corporation they are elected Coroners. In case of vacancies the court may nominate two discreet persons of the Corporation of the County to the Governor who is to commission the one who is approved, his duties are ministerial and judicial, he acts minis— —terially when performing the duties of sheriff. Justices of the Peace. In this state (Va) one

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appointed by the Governor, his office determines when he moves out of the Commonwealth with an intention of remaining. The act of 1822. declares that the occupation of any office un— —der the general government or as deputy or in any office incompatible with that of Justice vacates the office of Commission in virtue of it. He may be moved from office by suffici— —ent information of misconduct being filed against him. Jurisdiction. They are conservators of the peace. They can exercise the law of Jurisdiction in all civil cases the subject of dispute not exceeding $20,000. Where it is to the amount of $10 an appeal lies from the dicission, to the County Court. Four Justices forms the County Court in all civil cases. It is necessary for five to constitute an examining court, and for the trial of Slaves for penal offences.

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Blackstone Lecture V. Constables.

Constables. These offices are appointed by the County Court, and many are appointed as the officers of the Court may think fit. They are ministerial officers of the magistrates and serve in the same capacity to the justice P. as the deputy does to the high sheriff. Surveyors of Highways. Our act of assembly directs the County Courts to divide the roads into pre— —cincts, and as often as is necessary to appoint survey— —ors over each precinct (see act of assembly or Roads. Tate 469.) Overseers of the Poor. There is an act which directs the County Court for

the County to be divided into convenient districts not exceeding four in each County, in which the freeholders select three over— —seers to remain in office three years. They meet annually, report and levy taxes for the support of the poor. Their several duties are different from those in the text book. They relieve the impotent, but do not find work for those out of imployment. Settlement is generally gained by a years residence in the County. See Stats. Digest 447. Expatriation. Vattle maintains {the right} this right when the party has arrived at full age, after having made a return of what the state has done for him. Protection if it can be done without detriment to the society. Grotius is of the same opinion.

Expatriation 17

Rutherford and other writers on this subject deny this Right. The English lawyers generally have adopted Rutherford's opinion. They say that neither party can cancel the contract without the consent of the other, that the citizen owes allegiance, and the nation protection. In numerous cases a citizen may leave his Country when the terms of the Contract are not fulfilled by one party the other may not observe it. But the truth is, that no such contracts as these the writers suppose are entered into. There are no express contracts and so far as an implied one may be presumed, its terms are different. It is that the citizen only owes allegiance so long as he remains a citizen and never the protection. It has been objected, that this might lead to a dissolution of society. Be it so if they chose so to act, they have the right. And no notion would act so hastily without a cause; Without regard to the positive law will quote a passage from Chancellor Kent's including his remarks of judicial discussions on this doctrine. He says that the latter opinion would seem to be that a citizen cannot renounce his allegiance to the United States without the permission of the Government to be declared

18 Expatriation

by law, and as there is no existing Legislature regulating this case, the rule of the English common law remains understood we will show that a person may expatriate himself in violation of the law of Congress. The act of Engd [Rules] all & by our statute. See (Tate 27) which acknowledges the right and prescribes the means. It enacts that whenever any citizen of this Com— —monwealth shall by deed in writing under his hand and seal, executed in the presence of, and subscribed by three witnesses, and by them, or two of them proved in the genl. Court or any district Court or Courts of the County where he resides or by open verbal declaration in either of those courts, to be entered on record; declare that he relinquish— —es the character of a citizen and shall depart out of the commonwealth, such person shall be considered from the time of his departure as having exercised his right of expatriation, and shall thence forth be considered as not a citizen, but a question arises, whether he can exercise this right in a different way. But as every citizen owes allegiance to the State & Genl Govt, the question arises, whether in the absence

of state regulations, he may expatriate himself and cease to be a citizen of the country and his expatriation {is} being according to state regulation he is freed from this secondary obligation to the Genl. Govt. 3 Dallis 133. 2nd Cranch 64. 82. 7. — Wheaton, 283. In these cases, the court declined to decide, because it was not necessary. But they entertain no doubts as to the right. In confirmation, See Kent & Tucker. Prof. Davis, thinks, that the right is possessed as to both, as if no laws — and in opposition if there be any. Though the power of passing uniform laws of naturalization is given to Congress, yet no right is given as to expatriation. These are different. One relates the citizens the other to aliens, the one relates to rights whi are to be acquired, the other to rights that are to be lost or given up. The one is political and the other civil. 2nd This a Federal, not a national Govt, and the citizens only owe allegiance, as citizens of their state. When he loses his right of citizenship under the State Govt, he loses it under the U. S. Govt and the contrary wd be an absurdity.

3rd ground upon whi expatriation has been questioned is, that the common law {will} does not allow it and that Congress has not repealed it. To this, the common law, is no part of the laws of the United States, that it was adopted by the States and is confined to them. "P. 373" By Statute (Va.) all free persons born within the commonwealth, (or all) no matter where born whose parents were citizens at the time of their birth shall be deemed citizens of this commonwealth Tate 55, Randolph 277., and the case of construing it, see P. 374. We have no Denizens in the country. By the Constitution of the U.S Congress has no power to pass uniform rules of naturalization, before this it was exercised by the States (See Tate, 55). The person who is to be naturalized must be, a free white person, whose country must be at peace with the U.S. and must have been a resident for 5 years; he must make a declaration of his intention, for 3 years be— —fore he can be naturalized. By this, his children (1)being (4)naturalized (3)are (2)minors. Whether a citizen of England born before

the revolution can take lands by descent, in this country, is questionable. If allegiance was perpetual, he might always recover. In England it was decided that "anti oratus" of America could inherit in England, because allegiance was due from America to England, but, that an antioratus could not inherit in America because allegiance was not due. (1 Munford's Rep: Appendix). After naturalization, his disabilities are removed, excepting that of his holding an office; for he must have been a resident seven years, before he can hold any office. See Tate, 24. ——— He can never be elected President or Vice President. Before, he could not hold lands. If he buys lands and becomes a citizen before escheatage, he can hold them : or if he sells land

before; the purchaser may hold them. If he dies his heirs may take his property. " See Munf: 117—160—507. 2 Randolph 276. Wheaton 563.

22 Lecture 6th. Master & Servant.

A master by Law, is one, who has per— —sonal authority over another, and the person over whom this authority is exercised is called the Servant. To the several kinds of servants mentioned by the Commentator we may add Slaves whi kind does not exist in England, nor are they known by the common laws. The three rights or origin of Slavery, assigned by Justinian are shown to rest upon an unsound foundation, and the three given by Paley: crimes, captivity and debt, if more satisfactory are more just.

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3 sorts of law: Municipal Law 1

Lecture 1. Section 2nd p. 38. (marginal page). On the nature of Laws in general; — Law in its general sense, is a rule of action, applicable to all things, animate & inanimate. But in its more confined signification, it is to be applied to the actions of man and communities of men. Three sorts of Laws Law of Nature, Divine Law, Law of nations. 1. To the Lex Naturae, men, in all stages of civilization are subject. 2. The Divine Law was revealed to mankind, to restrain their vices, establish virtue, and make them subject to the rule of their creator. 3. Law of Nations regulates the mutual & necessary intercouse between different nations. Municipal Law Having briefly stated the 3 sorts of Law whi belong equally to all nations, we now come to the consideration of municipal or civil law. "Jus civile est quod quisque sibi populus constituit" Municipal Law, is a rule of civil conduct prescribed by the supreme power of the state

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commanding what is right & prohibiting what is wrong. It is a rule to distinguish it from a compact. It is a rule of civil con— —duct to distinguish it from natural or revealed law, whi regards man, as a creature subject to the will of his creator, and allots to him, duties to his god, his neigh— —bor and himself, but municipal law re— —gards him as a citizen, bound to

promote the interests and obey the laws of that community to whi he belongs. It is presented by the Supreme power of the State, the exercise of whi power, is always placed in the legislative department of Govt. Every municipal law has 4 parts. a declaratory, a directory, a remedial & a vindicatory, each of whi is essential to the existence of a municipal law.

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Section 2. Page 44. — "Municipal law, thus understood, is properly defined to be, a rule of civil conduct presented by the supreme power in a state." {&} This definition however correct when applied to England is entirely incorrect when applied to this country. To understand the reason why this definition shd be proper there, and not so, here; it is necessary to understand the difference between the Government of that country and of this. Thus, according to the theory of their constitution, all political power resides in Parliament, consisting of a King, Lords, & Commons. For although the writers on Government admit the people to be the original source of power, yet the authority whi it is supposed they once delegated to Parliament is now claimed by that body, as a right, not as a trust, & they also claim, that it is unlimited. Hence the Parliament of England may be called "supreme", & consequently, the laws enacted by them, are enacted by the supreme power of the State. Here the thoery of our Govt is widely different. The Declaration of Independence asserts the

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great truth, that all men are free & equal by their creation; that they are en— —dowed by their creator with certain unalienable rights, such as, life, liberty, and the pursuit of happiness, that to secure these rights Governments are instituted among men, deriving their just powers from the consent of the governed, that when any form of Government becomes destructive of these ends, it is the right of the people to abolish it and institute a new one, laying its foundation upon such principles and organizing its power in such forms as shall seem to them, most likely to effect their safety and happiness. Our Govt has been established in conformity with these principles. The Constitutions es— —tablishing them, have expressly declared the supremacy of the people and that their representatives & officers in every de— —partment of Govt are their agents merely, and responsible to them for the exercise of their powers. The Constitutions have care— —fully defined the powers whi their officers may exercise & all their acts, beyond these prescribed limits are void. The authority

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delegated is a trust and can never be claimed as a right. If these laws be here considered as made by the Legislature, it is manifest that they are not prescribed by the supreme power of the state. But as the legislators are merely the representatives of the people, laws here, may be properly considered as made by the people themselves — or, by the state itself instead of the

supreme powers in the State... I would therefore prefer, as the definition of all municipal laws: "Those regulations adopted by the society in whi we live" for the government and conduct of its members. This definition is very nearly the same as that given by Justinian "Jus civile est". In this country where govt is founded on ex— —press compact between the people, the obligation of the laws, referable to compacts; since, those who have established a government & provided a legislative power, may be presumed, to agreed to obey the laws, enacted by that power. Laws, here, therefore have the combined authority of rules & compacts. Page. 45. It is believed (...). Laws to be obeyed must be known. Hence the absurdity once

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so prevalent in some countries of Europe, in expressing laws, in a language of whi the people are ignorant. The English acts of Parliament, were at one time written in Latin, at another in French; a proceeding equivalent to a concealment of the very rules to whi obedience was required. Among some nations of early antiguity laws were composed in verse & sung to popular airs, that they might be more generally known, as well as the more easily retained in the memory. The Athenians engraved their laws on plates of brass, which they fixed up, in public places: among the Romans it was an indispensable branch of the education of their children, to make them commit to memory the 12 tables, whi was their collection of laws. "In regard to the promulgation of our laws" — the common law is published in books of reports and treatises on law, to whi all may refer. The statutes enacted at each session of the Legislature, are printed at the close of the session & copies are sent to the clerks of each county, for the use of the commonwealth

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Introductory attorney, Clerk, Sheriff, and each Magistrate. And by act of Congress, the secretary of State, is required to furnish to the Executives of the several states, copies of the laws passed by Congress, and the Executives have them distributed. The secretary of state, is further required to have all laws, passed by Congress, printed in not less than one nor more than three newspapers, printed in each State. The Laws are therefore as fully promulgated in this country, as it is practicable for them to be. I say, as it is practicable, because, no humans means could communicate the knowledge of all the laws to every one that is to be governed by them. All that is required is, that every should have the means of knowing them if he please. In general, only Lawyers will take the trouble to acquire a knowledge of all the laws. Others will make themselves acquainted with those only, whi it concerns them most materially to know, those whi secure their most important rights, and prescribe their duty. In connexion with this subject of the promulgation of laws, may be considered

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ex post facto laws, by whi says the author an action (indifferent in itself) is after it has been committed, declared criminal. In such cases a man is punished by a law, of whi he not only was ignorant when he committed the act, but of whi, but of whi he could not know, because it had not been enacted. Caligula, it has said, wrote his laws in very small characters and hung them up very high, to ensnare the people. The Legislator who enacts ex post facto laws is yet more unreasonable and cruel, for he confines them in his own breast, until they have been violated, and then promulgates them, only by enforcing their penalties. From the definition of ex post facto laws, given by Blackstone, it seems that, they can only relate to offences, in other words they must be penal laws. Laws regarding private rights, however retro— —spective in their operation are not ex post facto laws. As the Constitution of the U.S. contains a clause, prohibiting the several States from passing ex post facto laws, it has become necessary for the courts of

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the U.S. to define, the term, ex post facto. The definition given by the supreme court confines it to penal laws, as is done in the text. In the case of Calder vs Ball — 3 Dallas 386, it has been decided, that the words ex post facto laws were technical expressions and meant, every law that made an act, done before the passing of the law, and whi was innocent when done "criminal", or whi aggravated a crime and made it greater than when committed, or whi changed and inflicted greater punishment, than the law annexed to the crime, at the time that it was committed, or whi attend the legal rules of evidence, and received less or different testimony than the law re— —quired at the time of the commission of the offence, in order to convict the offender. This definition is certainly correct — it is only liable perhaps liable to the objection, of enumerating too minutely the qualities of an ex post facto law, instead of defining by a distinction, whi shd include all of its particular features. I prefer therefore the definition of the term, given in the case of

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Fletcher vs. Peck. 6 Cranch 138. It is there said, that an "ex post facto law", is one wh: ren— —ders an act punishable in a manner in whi it was not punishable when committed. This defintion is distinguished for its comprehensive brevity & precision and it extends equally to all laws passed after the act & affecting a person by way of punishment either in body or estate. Kent. It may be regarded therefore as settled, that ex post facto include only those that are penal. The Const: of the U.S. prohibits the States from passing such laws. The new constitution of Virginia also contains the same prohibition. Laws, regarding civil rights, however retrospective, are not ex post facto laws, nor consequently prohibited by the clause in the Federal & state Constitutions, to wh: I have referred. 8. Peters Rep: 88. But as persons contract and regulate their own transactions, with a view to the laws then existing in the subject, it is manifestly unjust, by a subsequent law, to affect their rights previously acquired. Accordingly, both, the Federal Constitution &

the new constitution of Virginia, contains a pro— —hibition against the enactment of laws affecting the obligation of contracts. There are many civil rights however, to which this prohibition might not extend and the Government aims how far laws may be passed, affecting them retrospectively. 8, Peters. 88. It seems to be settled that the legislature may pass retrospective laws affecting remedies. Either by giving a new or taking away an old remedy — but this must be done in ex— —plicit terms, or else, as all retrospective laws are unjust, the Courts will presume them to be prospective only, & so construe them. Elliott. Exer. vs: [Sybs] 3. Call. 268. Commonwealth V. [Heruit] 2. H. & M. 181. Statutes of all kinds, excepting remedial statutes are therefore prima facie pros— —pective in their operation. We have I believe, no express adjudication as to the validity of retrospective laws operating on a civil right, not connected with contract. Chancellor Tucker thinks, that upon the principles of our Govt & the spirit of adjudged cases they wd be

regarded as void. Page 46. "Sovereignty & Legislature are covertible terms." 47. " — This will naturally "lead us to a short enquiry" &c and the conclusion at whi the author arrives is that. Pa: 47 "By the soverign power" &c. This conclusion is founded on a total mistake as to the true nature of Govt. For a better understanding of this subject a short digression from law to govt, is unadvoidable. A nation or State has been defined to be a body politic, or a society of men united together to promote their mutual safety & advantage by means of their union. The very design therefore that induced them to enter into society, renders it necessary that a public authority shd be established, to control shd be established to control the vicious, & order, and direct what shd be done by each in relation to the end of the association. In the formation of this public authority every individual has equal right to participate, because, "all men are by nature equal" and to this public authority every one agrees expressly or tacitly, to relinquish certain rights whi he possesses,

upon condition, that the physical force of the whole shd when requisite, be exerted for his protection. This public authority, thus formed, is called Govt. Govt therefore, is nothing more than the result of a compact between the several members of the community, for their mutual benefit & protection. The people who form the society, have a right to es— —tablish whatever form of Govt they please, and to change it at pleasure that whi is established; whilst the power {obviously} necessary for that purpose obviously results from the United strength of the individuals forming the body politic. And the right & power, of doing at all times, that which the good of the community may require, constitutes what is meant by the term Sovereignty. Sovereignty therefore, must be inherent in the people, as it is nothing more than the result of

these individuals, willing and acting. The institution of Govt requires, that some persons be invested with power, & all histories prove nearly, that such persons are very apt to forget the source and end of their appointment.

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Even in England, where they boast of their free Constitution, the govt has forgotten the origin of its powers, and parliament now claims supremacy. The authority delegated for particular purposes, is now claimed as a right instead of a trust. Hence the Sovereignty there, is ascribed to the Govt instead of the people who made it. One of the great objects whi every Govt shd have in view, in the formation of their Govt, should be, so to delegate authority, that those to whom it is delegated shd be controlled in the exercise of that authority and continue, the servants, instead of becoming the masters of the people. If this be done, the character of the Govt is of less importance, since it is then, in the power of the people to alter or abolish it at will, and to institute such Govt as they may deem most likely to effect their welfare & happiness. In every other country the terms & manners of the original institutions of Govt are entirely unknown, and its subsequent modifications have been the result of accident. It

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may be regarded in everyone, to have been in some form coeval with society, since the objects for whi men associated could not have been attained without Govt. Whether any, or what precautions were taken, to prevent those to whom power was committed, from abusing their trust or converting it into a right, cannot be known. — From the present state of those Govts it is probable, that the people who established them, confided too implicitly in those whom they appointed. In this country government can be the certain and undeniable intention of an original written compact. Then the would for the first time, since the records of its inhabitants began, saw an original written compact, formed by the few & deliberate voices of individuals, disposed to vote in the same social bands. And in this compact every precaution has been taken to preserve the supremacy of the people, & to control those, to whom power is delegated. The compact itself, the constitution, has accurately defined & limited the powers, meant to be conferred on the public functionaries, prescribes the mode by

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which these agents shall from time to time be appointed; & asserted the great truths, that the people are supreme; and that the officers are only their trustees & servants; & this compact being in writing it will remain a perpetual memorial of the rights of the people, and the delegated authority of their officers. Besides the security afforded by a written constitution, the people have another security, in the distribution of the powers of the Govt among the several distinct sets of agents. There are three distinct functions in every Govt, The Legislative, Judicial,

& Executive, & these have been confined, by our Constitution to distinct (independent) & separate agents. Limited & divided as are the powers we have delegated, it is scarcely possible for the Officers of Govt to exceed the powers confided to them, or to exercise them otherwise than as a trust. A great object therefore whi every society shd have in view in instituting a govt; {that} is; so to delegate authority that those to whom it is delegated, may be controlled in its exercise & prevented from

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becoming the masters of the people who appointed them, has been as effectually accomplished by us, as it is perhaps possible to be. From the remarks I have offered, it is manifest, that according to the theory of government, sovereignty resides in the people alone, and not in the legis— —lative branch of the Govt, nor indeed in all the branches to—gether. If it did reside {in} in govt there is surely no reason why it should be confined to the legislative branch. Since the enactment of statute in no more an {existing} exertion of soverignty, than its explanation or enforcement. The power to do either is a trust desired from the people & limited by the terms of the grant. — (P. 49) In a democracy where the right of making laws resides in the people at large &c. — The author, after explaining, what he conceives to be the excellence of each kind of simple Govt & the peculiar defects of each, says, that to combine these excellencies and remedy these defects, the mixed govt of England is an excellent contrivance. He insists indeed that it combines the good qualities of all the simple forms, free from their defects & that it is the

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most perfect govt whi can be formed. If it were necessary to my purpose, it could be easily shown that no encomiums on the English government are deserved—that there does not exist the mutual control, the well poised balance of the several parts whi has been alleged, that it is a govt, not of check, but of conspiracy against the rights of the people, that all power resides in the crown & the great landed proprietors (aristocracy) of the kingdom. But this would be, a digression unsuited to the occasion. It is proper however to show, that our govt has been so framed, that whilst the equality of the people has been acknowledged in theory and acted upon in practice, whilst all our institutions are democratic, the inconveniences of a simple democracy has been obviated. A pure democracy where it wd be the duty of every citizen to attend the public deliberations & councils, to assist in making laws and administering justice, besides being exposed to the {inconvenience} inconvenience stated in the text & to others, also must be confined to a very small extent of territory. But all the dis— —advantages of a pure democracy may be effectually guarded, by one that is representative.

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(P.56.) With regard to the sanction of laws, or the evil "that may attend the breach of public duties, it is "observed &c. There are two motives whi shd induce obedience to the laws, though there were no penalties an— —nexed to the violation. 1. Good faith. In this [Country], where government is a compact, to whi every man is a party voluntarily, and every law is enacted by the people themselves or their agents, no man can disobey any law, without at the same time, violating a pledge. 2. As the happiness of the community is the object of all laws, enlightened policy shd induce obedience to them, on the part of every one, in the absence, of all sanctions. But unfortunately, few individuals are governed by enlightened policy. They generally attach too much importance to immediate, and too little, to the remote consequences of their acts, they look to the immediate and certain gain, disregarding the remote & contingent inconvenience. Hence if by the violation of a law, they could greatly and directly profit, few wd take into consideration the ultimate and greater injury they must themselves receive from general insubordination to the laws, if men were unrestrained by the

fear of punishment, neither good faith nor policy wd induce a general observance of the law. It is therefore necessary to enforce law by sanctions, existing in the personal suffering of the individual offending, or the diminution of his estate by pecuniary penalties. "Page 57. " But in relation to those laws" &c. This opinion of the commentator is certainly wrong. Punishments or penalties, are never intended as an equivalent or compensation for the offences, but they are that degree of pain or inconvenience, which are supposed to be sufficient, to deter men from the commission of an act whi the law prohibits. It is no recompense to the community that an individual suffers the punishment inflicted, for the offence of whi he has been guilty. ——— Page 59. "When any doubt arose" &c. As the author remarks, this was certainly a bad mode of interpretation. In this country it can never be resorted to because by our Constitution the Judiciary power is separate & distinct;

from the legislative, & if the legislative were to attempt to construe the law in any case they wd be guilty of usurpations, and their acts wd be void. ——— Page 60. "If words happen to be still dubious" &c. Several acts in "Pari Materia" relating to the same object, are to be taken together, & compared in the construction, because they considered as having one object in view, & as acting on one system. This rule was declared in the case of Alisbury vs: Patterson. Douglass Rep: 27., & the rule applies; though some of the Statutes have expired, or are not referred to in the other acts. The object of the rule is, to ascertain and carry into effect the intention, & it is to be inferred that several statutes, relating to one subject were governed by one spirit and policy, & even intended to be consistent & harmonious, in their several parts & provisions. Page 61. "As to the effects" &c. This is the rule intended to be laid down by Lord Coke, when, as he often does; he insists on the force, to whi the argumentum ab inconvenienti entitled, arguments from inconvenience, certainly deserves the greatest attention, & when the

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weight of their reasoning is nearly on an equipoise, ought to turn the scale. But if the rule of law is clear & explicit, it is in vain to insist upon inconveniences, nor can it be true as Lord Coke says, that nothing whi is inconvenient is lawful, (Hargrave), for that, supposes in those who make laws a perfection whi the most exalted human wisdom is incapable of attaining, & wd be an invincible argument against ever changing the law (Co: Litt: p. 18.). As Chitty has remarked in his note, the author is certainly mistaken, when he says, "there can be no established and fixed principles of equity laid down without destroying its very essence. So far from this, the rules of equity are as well established & obligatory as those of the common law. — See preface to Maddock's Chancery."

Introductory 23 Lecture II (Page 63.) "Lex scripta and Lex non scripta". Page 43. Sir Mathew Hale, ch: 4, & the English lawyers, generally give the same origin. The origin of the common law, is derived from custom & immemorial usage. As the northern nations, the Danes, Normans, Piets, &c succeeded each other in the govt of the island they must have adopted successive objects &c as Blackstone says. The 1st of whi we have any knowledge, is that of Alfred, whi has been lost. The 2nd was that of Edward the Confessor; & whether that has been lost or not, Blackstone does not inform us. The fact is, it has been lost. Those called his were in fact lost; and the laws passed afterwards under his name, were compied by successive writers. Hal: note, p. 84 & 85. During the reign of Henry II, a treatise, written by Glanville, serves to inform as much, but it was only a partial object of the laws of England. Reeves, History p. 222. Bracton, was the third who formed a digest of the common law. It is impossible to ascertain where, these several customs had their origin. All that we can know, is, that from the time of the Saxons, till that of Bracton

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certain maxims and customs did exist, whi he collected and embodied in his digest. All the changes have not had a great tendency to benefit the people by whom they were made, & although these changes have been frequent, the English law may be said to be the same now, as it was 800 years ago. To attempt to understand the manner in whi they were introduced and their true source, would be as futile, as to attempt to discover the sources of the Nile. (2. {Wilsons} Wilmot Rep: 348 ch: jus: Wilmot says that the common law, than statutes would out by time. That much of the common law, originated in this manner there can not be a doubt. All the statutes enacted previous to Magna Charta passed in the 9th year of Henry 3d reign; have been lost, as that is the earliest record. Sir Mathew Hale (History of C. Law p. 86.) ascribes the common law to three sources. 1st. The authority of Parliament. 2nd, Judicial decisions. 3d, Common usage. But although these are the common & probable sources, yet there must always be uncertainty & confusion in arriving at any true conclusion.

Introduction 25 (Page 70.) "The Doctrine" &c. The exact weight whi should be allowed to former precedents, is not susceptible of any pre— —cise demonstration, {but the principles are,} In many cases, the principles are of much more importance than the decisions. It is for this reason, that the decisions shd be uniform, in order to establish the principles. A decision on any point is prima facie correct & he who objects to it must show in what respect it is incorrect. If the decision has been recent and solitary, and the reasons upon whi it has been founded slight & trivial, the Court will not regard it. But if there has been a series of uniform decisions, the court will adhere to them for this manifest reason; that the people are guided by these decisions, as to what is law, these decisions place a certain construction upon the law & the people are to suppose, that construction, as right. But if the court finds any decision injurious to the community, however sanctioned by precedents, the court will reverse it. The obligation of precedence has been always regarded from the most remote period of the Law. But in this country there appears to be

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some falling off, from the scrupulous adherence to ancient customs & opinions. Ch: [Ken] I says there have been at least 100 cases that have been rejected or altered. For previous Judicial decisions, to have au— —thority, they must have been expressed in a point at issue. (a) Here they are confided to the ordinary courts, governed in a measure by ecclesiastical principles. —(— But in undermining them we use the ecclesiastical as far as applicable here, & so far as they have not been repealed. (6 Reeves 331.) Opposing precedents show grossness & are clearly incorrect, & showed misapprehension of law. —, The court considers also whether the principles shd be adhered to, or corrected, the enquiry is one of expediency. —. If it violated Justice, or is single in its operation it shd be corrected. If the harmony of law remains established by a series of decisions it shd be adhered to. In order that they might have a binding effect however, they must have been expressed upon a point of law at issue, in the case under investigation, else they are called extra—

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—judicial. Branch 742. (Page 75.) Lex Mercatoria; is the only one of the particular customs, that we have adopted. Indeed it has been adopted by almost all the commercial civilized nations, and may be considered, a part of the law of nations, (see 3 Branch, 79). So much of this as was included in the common law whi we adopted. (6 Rand, 336) The manner of its adoption should be noticed. The convention enacted, that the Com. law of England, all, Statutes of acts of parliament prior to the fourth year of the reign of James 1st, 1607. A.D. which are of a general nature, together with, all the acts of the Genl assembly of the Colonies, so far as may consist with the several or— —dinances of the declaration & resolutions of the Genl. convention, shall be the rule of decisions, & in full force, until repealed. The common law thus adopted, included

every branch, so far as it was applicable to our condition & equity in addition. The common law, is to be modified so as to be adapted to our habits & condition. (Page 77.) First, that it must have been used

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Lord Coke says; time of memory, is no parti— —cular time. It is enough, that the memory of man runneth not, to the contrary. If it be referred to the time of Richard as some contend; it cannot of course, apply here, for this country has been discovered long since that day. Coke 36. (Page 79 "Third branch of unwritten law." &c.) So much of this branch as was applicable to our situation, we adopted in our common law Code. In England, wills are proved before ecclesiastical courts, here they are confided to common court, governed by eccl: law. (6 Kent, 336)(a) It should be understood, in what manner the common law of England was adopted in that country. We have adopted by the convention whi framed our first Const:, all that part of the common law, & all the acts & statutes of a general nature & not local, in and thereof, whi were applicable to {the} our situation and country, passed prior to the reign of James 1st, including equity, H.&M. 19. 1. Wash. 83 — 1. H & M. 161. (6 Munford 148. p. 85.) Coke included equity also here, in page 85.

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Page 85. "As to the several" &c. Lex Scripta. The chief is the Magna Charta divided thus. Sta— —tutes are public or private, of public statutes the court must take official notice. Private statutes must be given in evidence of a fact and in England must also be specially pleaded (an other act Tate 21. called repealed statutes) repealed all those acts of a public nature prior to the 4th year of James 1st reign and other acts have from "time to time" repealed successively many of the English Statutes. Public acts bind all per— —sons. Private only those who are parties to it. The difference between the English and our Lex Scripta, is, that this consists only of acts of parliament, ours consists of state &c and Fede— —ral Constitution and acts of state & Federal Legislature. The common law is the basis of all our law. (Rule 310. 87) The formal parts of an act are. First Preamble. 2nd The enacting clause. 3rd The Provisors. The title is not a part. The preamble states the inducement which led to its enactments. The enacting clause is the vital and operative part and the [blank space] and the provisoes are exceptions to the operations of the law.

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In construing a statute we must regard the enacting clause; if it be clear, we cannot re— —fer to any other part: if ambiguous; the pream— —ble & sometimes the title are referred to in order to arrive at the intention. But this is an unsafe exposition of the law, the pream— —ble is never resorted to unless the enacting clause is ambiguous. Page 88. Penal Statutes must &c.

There is a statute in this state declaring it penal for a man to marry his brother's wife. A man was recently presented for the violation of this law, his plea of defence was, that he had not married his brother's wife, but his brother's widow. He according —ly did not fall under the provisions of the statute: was not unpunishable, however, 2 S. Rep 717. (A). The Legislature declares what a law shall be. The Judicial department declares what it is, expounds. The rule for construing a statute given above, does not exist here. If a statute is passed whilst a prior one of a similar nature in operation, the prior sta— —tute is not repealed. If one statute re—

peal another & is itself afterwards repealed, the prior statute is not revived as in England unless there be express words to that effect. In connection may be neutralized another rule in England which does not exist here. Formerly when an act of parliament was passed it was referred back to the first of the session & the time of its passage; as it did those which occurred afterwards. It was of course pro— —ductive of abudant hardships 6 Brown's Parlia— —ment Cases 553. This has been repealed by a statute of George III. which enacts that acts of parliament shall take effect from the time of royal assent. This last rule has been adop— —ted by Congress 7 Wheaton's rept, 174. In this state they go into effect from the first of April succeeding their passage unless otherwise menti— —oned in the act. Here the Legislature can enact no law in violation of the constitution, there is no such provision in the English law. (10) Statutes are to be construed with regard to the principles of common law. Lastly, the obvious intent of the law given should be the rule of construction of all statutes whatever. (A). Perfect rights are only enforced by mu— —niciple law. End of Introduction.

32 Lecture 3rd Of the absolute right of individuals. Blackstone as far as he goes, is correct in his division of rights. But they are susceptible of one other division, viz: into rights proper & imperfect. When a right is fixed and determinate it is perfect. When vague & indeterminate it is imperfect. Ex: If a man's property be withheld from him and he demand it from the person by whom it is withheld, his right to demand it is perfect. If a poor man ask alms from one of whom he has a rigt to expect charity, his right is imperfect. Again: a man's rights are perfect when no law prevents him from putting them into execution & they are imperfect when any law does so prevent him. And again: rights are perfect when they interfere not with the perfect rights of another and they are imperfect when they do so interfere. Perfect rights then are fixed & determinate and such as violate no laws — nor any man's perfect right & imperfect right are vague & indetermi— —nate & such as violate some laws or some man's perfect right. (Perfect rights only as enforced by mu— —nicipal law.) — Page 125 "The absolute rights" &c.

This is an admirable definition of civil liberty; but has nothing to do with political liberty. (See note to this page). It has been elsewhere said that after govt is established the powers should

be so delegated as to secure an efficient and punctual performance of its functions: at the same time keeping in view the responsibi— —lity of public agents, by rendering them amena— —ble to the people. This political liberty. And when political liberty is not civil liberty must also be insecure. This together with the res— —ponsibility of the English Govnt mentioned also in a previous part of the course, will assist the student in forming an opinion, whether as Mr. Christian says in a note, it is essentially necessary in order to enjoy political liberty, or in a word to be free, to be born and to live under the English Constitution. [blank space] 127. In this country we do not hold our rights by so precarious a tenure as charters, petitions of rights &c. We claim them under a compact (A.) "This writ is called by the English, the citizens writ of right." This writ of habeas corpus is founded on the common Law. The bill of rights of our state has declared

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Habeas Corpus — that excessive bail should not be required. entered into by the people for their mutual pro— —tection and happiness. We claim them under constitutions receiving their existance by popu —lar consent, by which the powers of Govt are expressly defined & by which public agents functionaries are rendered responsible for what they do. It is through the medium of these that we enjoy what may be truly called Civil and political liberty. And as long as these barriers last, as long will that liberty be imperishable. Page 129. "This much &c see our bill of rights sect. which says &c 134-5. 'Habeas Corpus' bulwark of British liberty." This writ is secured to us by our federal & state constitutions. Its character and operation. When a person is detained in custody justly, or unjustly, he may apply to a superior or Chancery court or judge of either of them for a writ of Habeas Corpus ad satisfaciendum subjiciendum, upon producing affadavits of his imprisonment. The judge or Court proceeds to examine his case and grants a writ to the person detaining; com— —manding him to produce the prisoner, upon trial the court or judge may either release

Ne exeat 35

him or admit to bail, or remand him to prison as the nature of the case may require. The constitution of the U. S. declares that this writ shall be in no case, but that of invasion or rebellion suspended under any circumstances whatever. In this state the writ of habeas corpus is never suspended. It rests therefore for its security and performance upon the foundation of a high constitutional guarantee. — Page 137 "A natural & regular" Va. This writ ne exeat regno has been used by our courts of Chancey for civil purposes, only to prevent debtors from escaping from their creditors. Here might be introduced the principles and law touching expatriation, but I await another & fitter occasion which will offer itself. Page 161-123 &c. The securities we have are the Federal and State constitutions & the guarantees they contain, such as the restricting upon the passage of ex post facto laws, habeas corpus acts immoderate bail, private property not to be ta— —ken without proper renumeration — liberty of conscience, and that no man shall be punished unless previously indicted.

36 Subordinate Magistrates

Freedom of speech and of the press &c. &c. &c. Chapters 2,3,4,5,6,7,8 are of no importance here as they relate to matters not coming within the sphere of our laws. They should however be read over. Page 138. The constitution of the U. S. and Va. have declared that private property shall not be taken unless due compensation be ren— —dered: the objects in taking it would be for the making of high-ways, construction of canals and rail-roads. [blank space] Page 140. The security we have.

Lecture 4th Subordinate Magistrates The magistrates of officers whose rights and duties form the subject of this chapter, are, Sheriffs, Coroners, Justices of the peace, Consta —bles, Surveyors of high-ways, and Over— —seers of the poor. All these officers we have in this state though the law relating to them is not the same here that it is in England. It is in relation to the manner of appointing and removing these officers and their rights and duties that our laws differ from those of England.

Sheriffs 37

First Sheriffs. These officers are thus ap— —pointed in England. The Chancellor, the chancellor of the exchequer, the judges and several of the privy council assem —ble and nominate to the King three individu als of each county, whom they may consider as fit persons for the office of sheriff, one of whom the King appoints to the office. The next year the two nominated and unap— pointed the preceeding year, are again nomi— —nated, if no objection be made to them, and a third in the place of the one who was appointed, and so on every year. In Va. they are appointed thus. The court of every county in the commonwealth, in the month of June or July annually nominates to the Go— —verner three persons from the justices of the peace for each county, one of which persons so nomi— —nated being approved by the Governor is com— —missioned by him to execute the office of She— riff in such County. Under the law the court has a right to nominate any of the three of the justices of the County, to the Governor and he may appoint which of them he pleases, but the uniform practice is, for the court to nominate the three

38 Term of office, of Sheriffs

oldest Justices arranging them in the list according to official seniority, and for the Governor to appoint the one first named. This however, is only the general custom from one which either the court or Governor, might as the court sometimes does, depart. If for example the oldest magistrate was of bad character, or had rendered no service as a justice of the peace, then the court would pass him over and similar reasons might induce the Govern— —or to pass over the one first named. The Sheriff remains in office one year ne— —cessarily and generally a second year, the law permitting him to do so , with the approbation of the Governor and as a matter of

course he is nominated by the court a second year if no sufficient objection exists to him. Seniority is now understood as conferring right unless some objection exist. If the other two who were nominated and under no disability, they also are nominated a second year. The third year the one first name on the proceeding nomination, having held the office two years, is no longer nominat —ed, but the two on the list with him are together with a third justice the next in

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seniority. The Governor now again appoints the one first on the list and so on yearly. Each usually continues in office two years and under particular circumstances — as the death of his predecessor before the expiration of the term, on the failure of his successor to qualify by giving the necessary bond & he may continue for a longer period than two years. Page 343. "These are either" &c. The sheriff of Va is chiefly known as a minis— —terial officer of the county and circuit courts, as a keeper of the peace and as collecter of the revenue of the commonwealth the levies and public dues of his county, and the fees of various offices. Page [blank space] We may further observe &c From this statute and another mentioned on page 346. it seems that the office of sheriff in Engd is one of burden and expence to him who holds it. So much so that statutes were formerly enacted to compel those appointed to accept the office. In a very different light is the office regard— ed in this state: it is lure a lucrative office & at all times readily accepted. It constitutes in— —deed (as was intended) the only compensation which the justice should receive & it is accord— —ingly conferred on them in rotation.

40 His authority

Were it ever to happen, that all the justices in the county were to refuse the office of Sheriff, the Governor may appoint one of two respect— —able freeholders of the county to be recommend —ed by the court, and if no freeholder of the county will accept of it, then the Governor may appoint any citizen of the commonwealth to the office. But no man can be compelled to accept the office. Page 343. In his judicial capacity, &c. In this state the sheriff has no judicial power to decide causes of even the smallest value. The only occasions on which he exercises judicial power are those of the execution of a writ of admeasurement of dower, a writ of parti— —tion and a writ of inquiry of waste. These acts are performed by him with the aid of a jury, but he presides and is regarded as acting in a judicial capacity. When he goes out of the Sheriffship, he en— —ters on his duties in the office of justice with— —out a commission. After he has returned to the bench he may again be nominated for the Sheriffship. See Tate 479. This is all the judicial power he has.

His duties 41 The law directs the sheriff to superintend elec— —tions and to declare elected those who receive the greatest number of votes. He may give the casting vote & this though he

has already voted as a freeholder. Blackstone ranks this among his judicial duties. Here it is obviously not of that character, because it may be performed by deputy. It either does the sheriff act in a judicial capacity, in the execution of a writ of ad quod damnum 2 Marsh 126. page 343. "As a keeper of the King's peace." Although no statute has declared that the sheriff shall be a conservator of the peace, yet as he sup— —poses these powers at common law virtute officii no statute was necessary to confer it. He is there fore conservator of the peace and with the same powers here as in England. Page 344. "In his ministerial capacity". &c. In this capacity, the chief one in which he acts here, his duties are similar to those in England. Page 344. "As the King's bailiff" &c. In this state the sheriff (whether as bailiff for the commonwealth or not —certainly in his ministerial capacity) collects all the taxes, fines, levies, rates. &c. Before entering upon the performance of his duties the sheriff is

42 Must give good securities

required to take the oaths of office and to execute three bonds payable to the Governor &c. each on the penalty of $30,000 with good security, conditioned for the faithful dis— —charge of his several duties and any person injured by the sheriff's acts or omissions may bring suit on them in the Governor's name for his own benifit. The sheriff must give bond within two months after his appointment, and if he perform any official act, without first having given these bonds, he is liable to a penalty of $1000. It was at one time the practice of the Sheriff to perform their duties for two years without removing their bonds at the end of the year. At length however, the sheriff securities in one case consisted their liability for his acts for the second year and it was decided that they were not liable, and though by law the sheriffs may continue in office two years, there must be an annual nomination, commission and bond. See cases Com: Va: Fairfax 7 & 8 M 208. Page 345 [blank space] To execute various offices &c. The only inferior offices which it is usual

Limitations of his powers 43

for a sheriff in this state to employ are deputy sheriffs and Jailors. Though it as been recently decided by Judge Lomax, he may appoint Bailiffs also. By express enactments however no person is capable of serving as deputy unless the court shall enter a record, that he is a man of pro— —bity, honest and good demeanour, nor shall any person serve as deputy more than two years, in any period of four years, unless he produce satisfactory evidence of his having duly collected and paid all taxes which were assigned for collection. As a general rule the deputy may perform all the duties of the sheriff though this rule is sub— —ject to a few exceptions 2 R. [Code] 55. The deputy cannot perform the judicial duties of the sheriff. As another general rule also, if an action be brought for a breach of duty in the office of sheriff by whom so ever com — mitted, it should be against the high sheriff as far as an act done by him and not against the inferior officer, that is matter to be settled between him and the high sheriff 1 Wash: 157. But by a

44 statute of this state the party may in some cases proceed against the deputy himself or the high sheriff at his election. Tate 230. (High sheriff may remove his deputy.) The high sheriff may remove his deputy at pleasure, notwithstanding, the deputy may have given him a good bond of indemnity & it may have been agreed that he shd be his deputy, during his continuance in Office. (must have sufficient cause) If, however he removes him without a sufficient cause, he is liable to damages for his breach of contract, but if the removal be in consequence of the misconduct of his deputy, he is justifiable & no damages can be recovered of him — see case of Hodge vs. Trigg 4. Mun: 150 & 1 Dallas 49. On the death of the Sheriff, the powers of the deputy are at once determined, except as to the collection of taxes, offices fees &c due at the Sheriffs death. Although as I have stated it has been determined, that the high sheriff must give bond annually & that his securities in his bond for the first year are not bound for his debts of second year, yet it was decided in the case of Royston vs: Lake

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2. M. 28, that the securities for the deputy to the high sheriff (here as in England the sheriff requires a bond of indemnity from his deputy) were liable for the first year, as well as the second, if they expressly undertook to be liable for 2 years as they did in this case. (Securities for 1st year not held responsible after the expiration of the 1st year) But when the bond of the deputy was for the faithful discharge of his duties during his con— —tinuance in office, then the securities for the 1st year were not held responsible for the 2nd year, see Munford vs: Rice & others 6 Mun: 81 Leigh's Rep: 303..... (Shall not have the right to farm, or sell their offices.) It is said by Blackstone, that the Sheriffs inferior officers, must neither, buy, sell, nor farm their offices on forfeiture of £500. In this state also, we have a statute, against buying & selling offices which declares, "that if "any person buy or sell any office whi shall "in any manner affect the administration "or execution of Justice, he shall be disabled "to hold the office, in virtue of whi he "possessed the power of appointing to the "office whi he sells, and shall be moreover "fined & imprisoned, at the discretion of the jury

"& that, he who buys such shall be incapable of holding it." (This prohibition does not extend to deputy sheriffs or deputy clerks.) But there is a proviso in this statute, declaring, "that it shall not be so con— —strued, as to prohibit the appointment, qualification & acting, of any deputy cler or deputy sheriff who shall be em— —ployed to assist their principals. (It is not illegal in this State for the sheriff to sell his office to his deputy.) Under the proviso, it has been recently determined by our Court of appeals, in the case of Sulling vs: McBing 1 Lee 42. That it is not illegal, to sell or farm his office to his deputy, the deputy performing all their duties, receiving all the emoluments, & paging for the office, a certain sum. This decision only legalized a practice whi had long existed, but whi, legal, or illegal, is productive of great inquiry to the {re}public. (Is not apt to regard the right purpose.) The high sheriff being at liberty, to sell his office to whosomever he chooses, is apt to regard the sum offered for it, more than the

qualifications of the person offering. (What it is generally understood to mean) Indeed it is generally understood that the office is up for the highest bidder, & on one occasion, as I have understood,

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was actually exposed for sale at public auction, and purchased, (like any vendable commodity,) by him who bids highest. (Bad consequences of selling their offices) The consequence is that this important office frequently falls into the hands of those least qualified for it, of persons indeed who chiefly desire it, on the account of the opportunities it affords them, for speculation & extortation. (Tempted resort to dishonest modes of pay for his office & reimburse himself.) And even if it be not sought with this view, as the purchaser is frequently induced, by the competition he has to encounter in the purchase, to pay so high a price, that the fair profits of his office will reimburse him, he is strongly tempted to resort to dishonest practices for his own indemnity he averts ruin by practicing fraud and oppression on the people. Thus, in a country, where according to the theory of our Government public offices, are mere trusts, conferred by the people, & to be exercised for their benefit, that one, whi concerns them most nearly is bestowed, without regard to those qualifications essential, to its beneficial & faithful discharge; {but it is bestowed} on a principle whi has

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a direct & powerful tendency to disqualify all, by the corrupting influence whi it exerts over their morals & integrity; a principle whi in its consequences reverses the theory of Govt and converts that whi was instituted for the public good, with a public curse. It is said, that the office in rotation is the sole reward whi the justices receive for their services, & as many do not receive it, till they are, through age, unable to per— —form its duties, therefore, if they were not permitted to farm the office, they could not derive any benefit from it. Let such employ an assistant, or if they can perform no part of the duties, they are unfit for the appointment. Important public trusts are not appro— —priate rewards for services rendered, if those on whom they are conferred are unable to discharge them, they shd be rewarded in some other way, less burthensome & oppressive to the people. I would not be understood, that all deputy sheriffs are dishonest, but I speak only, of the practice of selling the sheriffships, whi tho it

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has long existed, has but recently been sanctioned by Judicial authority. The Legislature is alone competent, to provide a remedy for this grievance. Connected with the Office of Sheriff, allow me to call your attention to another office, differing from that of Sheriff principally in name. (Sergeants of Corporations, how appointed their duties.) I mean, Sergeants of Corporations. They are officers appointed in towns corporate and who have the same duties to perform in the

corporation, as the Sheriff has in the county. Page. 346. "Gaolers are also" &c. Here, as in England the Gaolers are the mere servants or agents of the Sheriffs. There have been several enactments, with regard to them, but in no manner vary— —ing their character or duties. On the subject, of the liability of sheriffs for the acts of their Gaolers, see Dabney vs Taliaferro, 4. Randolph, 256.

50 Coroners (Page, 346.) "The Coroner is" &c. (Manner of appointing Coroner.) (Must be resident of the county) Whenever any vacancy occurs in this office, in any county or corporation in Va: our act of assembly on that subject, requires, that the court of such county or corporation, nominate two, fit & discreet persons, re— —siding in such county or corporation, to be coroner therof, one of whom; generally the first named, if approved by the Governor, he appoints. (More than one may be appointed.) If the court of the county, thinks proper, more than one may he appointed. (Tate 107) (Must take the oath of office.) (Live bond with security in penalty of $10,000.) Before entering upon the discharge of his duties, he is required to take the oath office, and enter into bond, with good security in the penalty of $10.000, conditioned for the performance of his duties. (Hold office during good behaviour.) He holds his office during good behaviour, whi in judgement of Law, is for life. (Can be removed from office for official misconduct only by regular prosecution.) Like all other officers he can be removed from office, for official misconduct, but, this can only be done by regular prosecution. (His duties are Judicial or Ministerial.) His duties are judicial or ministerial. Judicial, when he acts in his own appropriate character as Coroner. Connected with his Judicial

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(His Judicial duties, look into the affairs of the felon.) duties, he is required not only to enquire concerning the lands and the goods of the murderer, but he must cause them to be inventoried and valued, and take them into possession. He remains administrator of the personal, and trustee of the real estate of the murderer, until he surrender himself or is taken. (May appoint deputies with [proba]: of Court.) Like the Sheriff he may appoint deputies with the approbation of the court. (Mode of appointing justices of the peace.) (P.349) The next species of subordinate magistrates. The Governor with advice and counsel, appoints Justices of the peace on the recommendation of the county courts, a majority, of the Justices composing the court, being present or having been summoned &c. (receive no emolument or compensation, but [the?] shrievalty.) They receive no other emolument or compensation for their services, than the shrievalty in rotation (See Tate 384.) (Page 353.) "Office of the Justices &c." (Office of Justices determinable by his removal from the county or commonwealth.) The office of a Justice of the peace, is determinable for his removal from the commonwealth or county, in whi he was commissioned, with a bona fide intention

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of changing his place of residence. This was decided in 1820 by the General Court, in a case, in 2nd Va: cases 208. See also 2nd Lee 743,) and was subsequently, viz: 1822 declared by Law. So the acceptance of any office under the general Govt, or of deputy Sheriff in any county, of any office incompatible with that of Justice of the peace, except the office of high sheriff vacates the Justice's comission, as was de— —clared by the same statute; this office, however, is not determinable by any of the causes stated by Blackstone, except his ac— —cession to the Governor's office. A Justice may be removed from his office, upon an infor— —mation filed against him, in any su— —perior court of Law, for misbehavior in office. (Constables are ministerial officers of the Justices.) Constables are ministerial officers of the Justices, as sheriffs are of the Court. (Tate 90.) (a.) 7th office may be added, here we have [blank space] their duties &c may be seen in Tate 195. (Forfeiture of office determined by his leaving his country.) The forfeiture of the {forfeiture} office of Justice is determined by his bona fide leaving. If he is absent 10 years even, he

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(May be removed for being intoxicated, in the discharge of duties.) still holds his office on his return, but if he be absent for one day with the bona fide intention of quitting his country, he for— —feits his office, and being intoxicated whilst in the discharge of his duties, is sufficient misbehavior to justify his removal. See 44 & M. 522— & 1st Vol: Va: cases 156 & 308. 2 L 709. (Conviction & sentence of felony forfeits the office of Justice Peace.) Conviction and sentence of felony produce the forfeiture of the office of Justice of the peace. 2. Lee 724. Page, 353. "The power, office & duty" &c (And conservators of peace in county may determine all controversies where the sum does not exceed $20.) In regard to their powers, they are conservators of the peace, throughout the county. They have jurisdiction to determine all controversies, when the matter in dispute does not exceed $20, the party dissatisfied with the judgement, having the right of appeal, when the demand amounts to $10— (4 constitute the county court, for trial of civil causes.) Four of them constitute the county court, for the trial of civil causes; and five of them or any greater number, constitute a court for the trial of slaves charged with criminal offences, & for the preparatory trial, of free persons, also, but we shall enquire here— —after into their powers and jurisdiction.

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(Page 357.) "Fifthly, we are next &c." (Courts to divide public roads into precincts.) (Shall appoint surveyor of each his duties; to superintend the road in precincts.) The act of assembly requires, that the several courts shall divide all of the public roads into precincts, & as often as necessary, shall appoint a surveyor over each precinct, whose duty shall be, to superintend the road in his precinct, and see that the same be kept in repair. For, the manner in whi he is to perform his duties, his power &c, as well in the enactment on the subject of opening & closing roads, & the preceedings to be had in order to condemn the lands of individuals for the purpose of constructing highways. See act of assembly 467, p.359. (Page 359.) Sixthly. "I

proceed lastly &c." (Court of the county shall lay off their county into districts not exceeding 4.) The act of assembly, requires that the court of each county, shall cause their county to be laid off into convenient districts, not exceeding 4 in each county, (In each, the people shall three overseers of the poor, hold their office for 3 years.) in each of whi districts, the freeholders & housekeepers, shall elect three overseers of the poor, who ask to continue in office three years; these overseers must annualy bring in a statement of the number of

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names and situation of the poor, and an account of their expenditures in their {several} respecting districts. They regulate the provision to be made for the poor in the succeeding year; as well as settle the charges of maintaining them the preceeding year, and proceed to levy upon the county, the sums necessary to defray such expenses. The common Law, gives the right of Expatriation. In England, the citizens owe perpetual allegiance to the King in opposition to the law of nations & nature. (2nd 893. Expatriation.) (P. 361.) "Secondly, To provide work" &c. (Overseer of poor only provides for impotent persons.) This is no part of the duties of the overseer of the poor in this State. They relieve the impotent, but those who are able to work, may find employment for themselves. (P. 362.) "The law of settlement." (Settlement gained 1 year's residence) In this state, settlement can only be gained by a year's residence in the county & the statute prescribes a mode, by whi paupers from one district may be prevented from strolling to another. And the disputes between counties as to the residence of paupers, are to be determined by the same statute. Tate 447.

56 Of the people whether aliens, Denizens or Citizens. Lecture 5th (Page 367) "Natural allegiance is therefore"

Before considering the provisions of positive law, on the subject of expatriation it is necessary to understand the principles of natural & universal law, in regard to whi (see Vattel Book 1, 220). This right of expatriation is secured to the inhabitants of Va: Statute in Tate 57. But, as every citizen owes allegiance not only to the Govt of his state primarily, but also to that of the U.S, whether in the absence of state regulations a man can expatriate himself; his renunciation of allegiance to his state shall have the effect of discharging him from his secondary alliegance. Congress having passed no law on the subject. The cases in whi these cases have occurred & been discussed, are found in Dallas Rep: 133, Cranch, 64. In these cases, the supreme court declined deciding the question raised on the ground that the decision was not necessary for the determination of the cases in whi they occurred. In one or more of them however, they threw out doubts as to the power of the citizen to renounce his allegiance to the U.S. without permission from the

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general Govt to be declared by law, or act of Congress. Notwithstanding the doubts of this tribunal I do not hesitate to say that the right of expatriation in regard to the state & Genl Govt, is possessed independently of any law of either, and in opposition to the laws of both if there shd be such laws. — For nature, has given to all mankind the right of relinquishing the society in whi by accident he may have been born, and of seeking sub— —sistence and happiness, elsewhere. And of this great & natural right men, on entering a society, do not deprive themselves, and no law can take it from them. In this country, in particular, it is sanctioned, by all the great principles, on whi {our} Govt & institutions rest. If then, a state were to deny the right and prohibit its exercise, the law, wd be an abuse of power, a power not granted, & therefore void. So far as regards the Federal Govt, the right of expatriation is still more unquestionable, & the incom— —petency of that Govt, to prohibit or legislate in regard to it, still more clear. For 1st, though the power of passing uniform

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laws of naturalization, has been conferred in Congress, no power, respecting expat— —riation has been given to them. These powers are entirely distinct & unconnected. The one, relates to aliens, the other to citizens; the one to rights to be acquired, the other, to rights to be abandoned; the one to a political, the other to a natural right. The latter power, not having been granted to Congress, remains to the state, if it be possessed by either power. 2ndly. This is a Federal, not a national Govt, & the citizens of the several states, only one allegiance to the Federal Govt as citizens of the several states. When permitted by the laws of their state, as, Va; to relinquish the latter character they at the same time relinquish the former, otherwise this absurdity wd follow, viz; that a man might be a citizen of the U.S. & yet not a citizens of any one of the states, or enacted to the privileges of any one of them. 3dly. The ground upon whi, the right of expatriation has been questioned, as, that the common law denies

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the right, & that the common law rule, Congress has not repealed. But the common law, forms no part of the laws of the U.S. For, although Va: & most of the other States, have adopted the common law, the U.S. in their confederate character have not, nor can its rule therefore, be enforced by the courts of U.S., as the laws of the union. The laws of the United States, indeed provide, for the naturalization of foreigners in this country, after a temporary residence, therby virtually recognizing the rights of our citizens, to become citizens of a foreign country by the same means. I question the correctness of the opinion of the supreme court, on this occasion, with less reluctance, because, that tribunal is not generally, believed or deemed, a safe orthodox ex— —pounder of questions, involving the principles of our Govt, or the rights of man, and also, because, in differing from it, I agree with those, whose authority on such subjects is entitled to infinitely more respect. I mean the liberal writers on national law, & the republican lawgivers, & judges of our Country.

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(Page 373.) "When I say that an alien is one who is born" &c By a statute of Va: all free persons born within the commonwealth, all persons naturalized by law, all children wheresoever born, whose fathers or mothers are or were citizens at the time of the birth of such children shall be deemed citizens of this commonwealth, 2 Rand: 276 — Tate 55. (Page 374.) "Naturalization cannot be performed but [by?]" By the constitution of the U.S., Congress is invested with the power of establishing an uniform rule of naturalization. Before Congress exercised this power, the law of the States severally regulated the manner in whi aliens shd become citizens. On its exercise by Congress, state laws on that subject, yielded to those of Congress. The laws of Congress on this subject, now enforced, were passed in 1802, March 1813 & 16, & are found in Tate's digest page 55. They require, that the person to be naturalized, shd be a free white citizen, whose country at the same time of his admission must be at peace with this, & he must have resided 5 years within the U.S., after making a declaration of his intention to become a citizen, he must

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reside for one year, in the state — make known his intention; join the community & formally renounce all allegiance to his own country, before he can be entitled to the rights of {cetiz} citizenship. On becoming naturalized; his children being minors & residing in this country are also citizens. And the children of American citizens wheresoever born, are declared to be citizens of this country. Connected with the subject of alienage, the question has arisen, whether a subject of England, born before the revolution, can, since that event, take lands in this country by descent, on the ground of being an ante-natus. The claim was founded on the common law; maxim, "once a subject always a subject", whi, if true, supported it since the right of inheriting necessarily accompanies Allegiance. But it was decided that though in England where this maxim prevails, an ante natus might inherit lands, since he once owed allegiance to Great Britain; yet that an ante natus of G.B. could not inherit here, because he never owed any allegiance to this Govt, "see [Rodues] opinion in the case of Reed vs. Reed" in the appendix to 1 Munford & 4 Cranch 321.

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Where, by the mode pointed out by Congress an alien becomes a citizen, the disabilities of alienship are removed, except that, he must reside 7 years in the country, before he can be a member of Congress, and he can never be President, or Vice President. Before he became naturalized, he could not hold lands & if he purchased them, they became for— —feited, in England to the King, in this country to the State. When persons not naturalized, purchase lands, the title to them, by the common law is vested in the King. Page 372. [blank space] Although the alien die, or sell the lands, the King's title is not affected thereby. But we have settled this

rule of common law, by act of assembly. A statute of this state enacts, that if {you} an alien purchase lands, before the same has been escheated by the common law, he becomes a citizen. The right of the commonth shall be released to him, & that of an alien residing in the U.S. shall claim title to any lands, & before the institution of any proceedings, for the

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purpose of escheating the same, shall sell them, or dies possessed of them, in the one case, the purchaser, in the other devisees being a citizen of the U.S. shall have such lands discharged from the claims of the commonwealth. This law does not enable aliens to hold lands, but only en— —ables them after becoming citizens, to re— —tain those whi they purchased while aliens unless they have been previously escheated, and enables the purchaser from them as well as their devisee. [blank space] Heirs to hold discharged from the claims of the commonwealth. For the general rights & disabilities of aliens, see, com, Vs Martins exectr 5 Munford 117. Com: Vs Hopkins, 2. Rand: 276. Craig Vs Leslie 3, Wheaton 508, & Judge Roane's opinion in the case of Reed vs. Reed. Appendix to 1 Munford. End of Lecture 5th. Omit chapters 11,12, & 13 —

64 Lecture 6th Master & Servant. Chap: 14. Page 423. "As to the several sorts of servants" &c Before considering the several kinds of servants & the legal consequences of their relation; it is proper to define the meaning of master & servant. A master is one, who by law has personal authority over another, & the person over whom such authority may be exercised, is a servant. Blackstone divides servants into 4 sorts. 1. Menial servants or domestics, apprentices, laborers or Stuarts, factors or agents, to whi in this state, we must add slaves. This last species of servants does not exist in England, & is unknown to the common law. Here, they constitute a very large class in the community. Blackstone says, that a state of slavery is repugnant to reason, & the principles of national law. This opinion, I am not disposed to contravene. The three origins of the right of slavery, assigned by Justinian in his institutes, viz: birth, when the mother was a slave, captivity in war, & the voluntary sale of himself by a freeman; are, I think

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shown by Blackstone, to rest on unsound foundations. And the causes from whi Paley (in his moral Philosophy) thinks that slavery may properly arise viz: to crimes, captivity & debt if they be more legitimate are not the less unsatis— —factory than those of Justinian, since, slavery, as it exists here, cannot be justified on either of these grounds. The moral right whi we have, to hold our slaves in bondage, I am not prepared to maintain. From the imputation of injustice & inconsistency to whi the existence of slavery in this country has exposed us, we have usually ex— —onerated ourselves, by changing the intro— —duction of slaves among us, to the policy adopted by G.B. whilst we were her colonies, & incapable of free & independent legislation. Certain it is, that all laws passed by the Legislature of Va whilst a colony; for the purpose of prohibiting a further importation of slaves were defeated by the negative of the King: and one

of the causes assigned, in the Declaration of Independence, for renowning allegiance to Eng: was this very abuse of her power

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by the King. When we became independent, (from whi time only shd we be held responsible for our institutions & civil policy) we found slavery established in this country. Two years after the event, this State passed a law, prohibiting the farther importation or intro— —duction of slaves; thus, in some measure, arresting the evil in its progress, and manifesting the public sentiment in regard to it. Further, it was supposed, that, circumstances rendered it impossible, to effect the total abolition of slavery, by a general emancipation; neither did the rights of individuals, acquired under the sanction of our laws, nor policy {wd} permit it. For, if all owning slaves had been willing to yield them up,without consideration; what was to be done with them? Where were they to be removed to ?, and for them to live amongst us as free persons was entirely out of the question. In the language of Mr. Jefferson, we had the wolf by the ear, & to hold him or let him go wd be attended with equal (danger) difficulty & inconvenience. The same considerations have continued to operate & constrain us to preserve a

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relation whi the [blank space] [ralist] must condemn and the patriot & philanthrophist deplore. All, that our circumstances have, hitherto permitted, we have done, as we have made that relation as just & mild as is compatible with the public safety or with the existence & preservation of that kind of prosperity, & doubt not that these people, are more comfortable & happy than the lower classes of people, in any other country. The rapid increase of this class, the insecurity and danger whi even now result from it, whi every year, is fearfully resulting & augmenting; the injurious influence whi the existence of slavery exerts on our national prosperity have recently induced an effort on the part of our legislature to effect its gradual abolition, whether or not, this grand object shall be obtained it remains for the people to determine. (Page 424.) "Yet with regard to any right" &c It may be inferred from this remark that, a man carrying his slave to England wd there be entitled to his perpetual service. This, is not the author's meaning.

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He means to say, that if a freeman were to enter into a voluntary contract, upon adequate consideration, to serve another for any period — & not to become his slave, the contract wd remain & the service wd be due. That such was his meaning, is proved by what he says further on, "Whatever service" "by general, not by local law, the same is to be found." The service due from a slave to his master is due by local law, & therefore wd not be enforced in England. That, due by contract, wd be due by general law. Blackstone wd have committed a gross error, if he

had said what he seemed to say. For it is well settled, that if a man carries his slave to Eng:, the latter is thereby emancipated. (see the case of Somersett a slave carried by his master from America to England in 1772, reported in Crofts Reps: p. 1. another case, see [blank space] principles of equity, vol: 2nd p. 134. It might be supposed that if the slave did continue in the service of his master (whilst in Eng:) he would be entitled to wages & cd recover them by proving his service. It has been decided that he can

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not, unless he can prove an arguement on the part of the master, to pay him, the laws refusing to imply a promise to pay wages in whi alone, in the absence of an express promise can a recovery be had — see the case of Alfred vs: Marquis of [blank space] 3 Espie cases referred to in note 4. (Page 426.) Another species of servants are, Apprentices. Apprentices are persons bound to a master to learn some trade or art. At com: law, this cd only be done by deed, & it has been said that this is the only contract, the com: law requires in writing. In this state also, apprentices are bound by deed. (Page 426.) "And children of poor persons" &c. By the law of Va:, to be found, under the head, of apprentices, see Tate 25. Every orphan not having a sufficient estate for a maintenance, out of his profits, the children of parents incapable of supporting them, & all illegitimate children, the courts & corporation courts are authorized to order the overseer of the poor, to bind out boys till 21 years old & girls till 18. The master or mistress is to covenant to teach them reading, writing, & arithmetick (if white) as well as some particular trade or art, and to

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pay them $12, at the expiration of their ser— —vice. 1 H. & M. 414. If the convenant entered into by the mastr, be violated, though the indentures were executed by the overseers of the poor, they can not sue him. Suit must be brought in the name of the apprentice. See Poindexter vs: Wilton & others, 3 Munf: 183. The position laid down by several writers, that, at common law, the father may bind his child apprentice without his assent, was denied to be Law, by the King's bench in the case of the King against the inhabitants of [Arnistry], 3 Barn & Alderson 584. The court held to be; that the father has, at com: law, no right to bind his child apprentice, without his assent, manifested by his execution of the indentures; and this may be regarded as the law, here. And even where the child becomes a party to the indentures, he is not bound by any covenants therein. He only gives to the master, so long as the relation subsists, a right, to his services, & authority over him. At common law, an apprentice cd not be bound, even with his own consent, for a longer term than the

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age of 21 years. By our statutes, apprentices bound, by order of the courts, or by his father, may, with the approbation of the court, after he is 16 years old, agree to serve till he is 24, or for any shorter time, and such agreement entered on record. For farther information, see 2nd Strange 1267. 1 Douglass 69. 4, Bacon's abridgements 577. 1. S. & R. 139. (Page 426.) "A third species of servants" &c We, have no such statutes, as those referred to; the only one of this nature, is that, on the subject of vagrants; it enacts, that any able bodied man, not having wherewithal to main— —tain his wife & children if he have any that shall wander abroad, or be found loitering, without betaking himself to some honest employment, or shall go about begging he shall be deemed & treated as a vagrant, that is, he shall be hired out, by the overseers of the poor, on the warrant of a magistrate, for any term, not exceeding 3 months. Tate 516. (Page 427.) "There is yet a fourth &c" A term whi include all this class of servants is agents. Under this head, may be ranked, factors, brokers, auctioneers & attorneys. This class

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of servants is bound by law, to observe strictly, the authority and obey the orders given them by their principals. If they do not, & any loss ensue, they will have to bear it. (Page 428.) "A master may by law" &c. As to the master's right of punishing the servant, a more correct view of the subject wd have been, to have regarded the common law, as regulating the relations, between man & man, prescribing the duties & rights between man & man, of all, and the punish— —ment attending their violation, & then en— —quiring how far the existing relation between master and slave shd operate, to except from the common the acts of masters towards their slaves. The master stands in loco parentis.

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(Page 429.) "As for those things" & (Page 431) "If lastly" &c. In regard to contracts by servants, it is settled, that the master is liable not only when he has given express authority, but when, from the nature of the transaction or the practice of the parties, an authority may be presumed, as in the case of a contract made with a clerk, in a store, or the case of purchase of goods by a servant, whom the master has been in the habit of sending for goods on credit without an order or where no such authority can be implied, but the master take the benefit of the contract made by the servant, viz: by using the goods purchased by him. In all these cases, the master is bound by the contract of the slave or servant. But where the servant exceeds his authority, the master is not liable. See Reeve's Domestic Relations 367. Slaves were introduced into this country in 1620. and in 1672 & [blank space] the master was not punished for killing his own slave. If the servant, for want of skill, whilst in the service of his master, on the principles of implied authority, & on the principles that; it is the

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duty of masters, to employ servants, that are honest, skillful & careful. 1 East 136. & 4. Barn & Alfred 590. 17. Mass: Reps: 508. and the case of Hams vs: Nichols, 5 Munford 483. But whether the master is responsible for the injury committed by the servant, or not, the servant is answerable in England. See note 20 by Chitty. Masters wd be responsible for all injuries committed by slaves, in those cases in whi they wd have been liable if they had been committed by other servants. But, the question might arise, shd they not be liable in other cases than those in whi they wd be, if the injury was committed by other servants? — If a servant employ another servant to do his business, & the servant so employed in doing it, is guilty of an injury, the master is liable. See case of Branch & Sterneman 1. Bos, Puller 404. Fraud must be distinguished fr: Imprudence & relate to identity of persons.

75.

Of Husband & Wife. Chap: 15 (Page 434)" Now these disabilities are of two souls" &c. The comman law writers distinguish the disabilities wh: operate as impediments to marriage into 2 classes Canonical and legal. Of the first are, pre contract, consanguinity, affinity & some other corporeal infirmities. They were callid canonical, because, they were sufficient by the ecclesiatical law to avoid the marriage in the spiritual court. In Va we have no spiritual courts & the disabilities whi in England are congnizable by it are here subject so for as they exist, to the jurisdiction of the superior court of Law and chancery, those disabilities therefore, are in this state, as properly entitled to be called legal, as those thus designated by Blackstone. It is however, to retain the English distinction, becuase of the {difficult} different nature & characters, of the two classes of disabilities, the one rendering the maraige void. Ab initio, the other only making it voidable. It is to be remarked that neither the canonical or legal disabilities are as numerous here, as in England. Of the first, we have

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only Consanguinity, affinity & natural or incurable impotency of body, at the time of entering into the matrimonial contract Pre contract is here, no disability. For the first two, see Tate 309 — it conforms to the Levitical law; for the last see Sep acts of 1827, Page 21. In regard to consanguinity & affinity our act of assembly on incestuous marriages conforms in substance to the Levitical law.—. As, in the latter, though certainly included & prohibited by the Spirit of the Law (see, Coke Littleton p. 128 note 4.) so our act though intended to be more comprehensive, does not by any means include all the cases within {the} [blank space] whi it appears to have been the intention of the legislature, to prohibit intermarraiges. The object of both laws, ours and the Levitcal, seems to have been, to prevent the contracting of parties, of persons within the 4th degree of relationship. By the civil law computation, relations by affinity or marraige being regarded in the same light as those by consanguinity or {blo} blood. Whether, our law wd be held

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to extend to cases not enumerated, becase in the same degree with some, prohibited, is a question unsettled; as far as I know, I am inclined to think it would. For instance; I presume that the precept whi forbids the son to marry his father's daughter, begotten of his step mother, does not virtually, prhibits him from marrying his mother's duagther, begotten by his step father. Among the prohibited degrees, both by the Levitical law & the English statute as also by ours was included the marriage of the wife's sister. Rescently this case has been taken out of the {(...)} general law regarding incestuous marriages. By this statute, of 1827, {Sep: acts} supplement revised code 220, the marriage of a wife's sister is made a misdemeanor, subjecting the parties, to fine or imprisonment, or both, at the discretion of the jury, but the marriage is not avoided. This act only applies to this particular case. So for me have spoken of the Canonical &c.. (Page 436:) "The first" of these legal disabilities &c. A second marriage, having the first husband or wife, our law called bigamy

and punishes the person contracting it with confirement in the Penitentiary for a term not less than two nor more than 10 years. It excepts however, persons whose husband & wife, has been continually absent beyond the seas for 7 years together. or has been in the U.S. or elsewhere for 7 years, the one of them marrying, not Knowing the other to be living within that time, & it also excepts those persons from these penalties, who have been lawfully divorced, or whose former marriage has been declared void, or who were married within the age of consent. Tate 47. But, though where the husband or wife has been married 7 years, the other party marrying, is not subject to the prescribed penalty, the marriage being still illegal. The exeeption in the case of persons who have been divorced, applies to cases of divorce a [menset] there who marry again, leaving the other, to the penalty of bigamy.

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(Page 436) "The next legal disability" ie. want of age &c. This disability exists here. It needs however, some explanation. When it is said, want of age, makers a marriage void ab initio it means that either party or both, attaining the age of consent may disagree to it.. but before, they can not. 1. Co: Litt 123. But as of the parties, at the age of consent do not dis— —agree to the marriage, no new marriage is necessary, & if either die, under the age of concent the marraige is so far valid; that the sarvivior may have the courtesy or dower this disability must be distinguished from the other legal disabilities whi render the marriage absolutely void. Like the Canonical disabilities it renders the marriage voidable only. (Page 436) "Another in capacity" arises from want of consent &c. The legal & canonical disabilities are fewer here, than in England: for, want of consent of Parents or Guardians, though a legal disability in Eag: is not so, here. It was there, enacted by a statute of George II whi was never in force in this state, nor has any similar one, been enacted here. Our

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law, enacts, that if either of the parties intending to marry shall be under the age of 21 & not have been married before, the consent of the father or gardian of such infant, & if no father or gardian, the mother, shall be personally given before the clerk or certified under the hand & seal of such father, guardian, or mother attested by two, witnesses, one of whom shall personally appear before the Clerk & swear that he saw the father, guardion or mother subscribe or acknowledge the same. If the clerk issues a license, without the consent being thus given, either party being minor he is subject to imprisonment for a year & a fine of $1500 Tate 415. If a minister marries without bans Farther, (except as to the forfeiture of the estate of the infant, in a particular case, to be mentioned presently) our law on this subject, & if, (not— —withstanding the precautions I have referred to) infants of the age of consent, contract marriage, such marriage is neither void nor voidable.

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Page 437, " And by the statute 4&5, Ph:& M. C. 8, whoever &c.. This statute with the modification we have reenacted. One statute enacts, that if any female of the age of 12 & under 14 shall marry, any person, contrary to the will or consent of her father or guardian, & without the legal publication of banns, then the next of kin of such female to whom the inheritance shd descend or come; shall have a right to enter upon & take possession of all real estate possessed by her at the time of her marriage & enjoy the same during the coveture. But on de— —termination of that, such estate, is to vest in heirs of the female other than the husband, who may enter & take possession thereof. Tate 419. This is the forfeiture to whi reference has been made. (Page 439.) "Lastly, the parties must" &c. It is scarcely necessary to say, that here also, the parties must contract, themselves, in due form of law, to make it a good marriage. Our law, on the subject of the solemnization of marriages con— —tain various provisions intended to prevent the marriage of infants without the consent of their guardian or father. It contains other provisions, intended to prevent the marriage.

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of servants, (slaves & others) without the consent of their master — or the marriage of white persons, with negroes or mulattoes. But the violation of these provisions, does not render the marriage void in any case. It may therefore be laid down, that every marriage in this state, between single persons consenting — of sound mind & of the age of consent whi is, 12 in females & 14 in males, by any minister of the gospel, qualified & authorized in the manner prescribed by law, or by such person as the court of the county may have appointed, & every county is empowered to appoint two persons for this purpose, if there be no minister who are qualified, in the county, every such marriage, is legal & valid. (Page 440) "Lastly the parties must" &c. By the common law, the issue of marriages that are void or avoided is deemed

illegitimate. By our laws such issue is legitimate. Tate 169. Connected with this subject of contracting marriages, it is to be observed, that a marriage valid by the law of the place where it is made, is valid every where. In consequence of this principle, Scotch marriages are valid in England, & North Carolina marriages

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in Va. see 2 Kent's commentaries p. 76. If a marriage be called in question, the proof required to establish it, varies according to the character of the suit, in which it is called in question. In all civil suits, regarding the rights & liabilities of the parties, the marriage may be proved by reputation, cohabitation, acknowledgement and recognition, see 3. H & M, 250. But in criminal prosecutions for bigamy, or in suits, brought by the husband, for criminal conversations with his wife, there, an actual marriage must be proved by the marriage register or some one present at the marriage, see 4 Bur: 2057. 1, Douglas 162. (Page 440) "I am next to consider" &c. I have already said, that the canonical dis— —abilities of consanguinity, affinity, corporeal impotency exist here. In regard to the first two there is no law authorizing any court to grant a divorce on account of them. But the statute on incestuous marriages defining the degrees in whi marriages, defining the degrees within whi marriages shall not be contracted, considers a marriage, within the prohibited degrees, as an offence, & authorizes the superior courts of law, to take cognizance of it. The judgement

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rendered, on conviction, is; that the marriage is null & void, & the parties shall be separated, & that they shall pay such fine as may be assessed by the Jury. Marriages contracted within these disabilities, are voidable, but their nullity is effected by the prosecution of the parties who contract & not by any proceedings, instituted for the mere purpose of obtaining a divorce. In England, if these disabilities exist, a divorce wd be obtained. In regard to the other canonical disability; impotency of body, the Stat: of 1827, (sess: acts 22) authorizes suits to be brought, in the superior cts of chancery, to obtain divorces in account of it. Besides natural & incurable impotency of body, at the time of entering into the matrimonial contract, the statute autho— —rizes divorces a vinculo matrimonii to be obtained in the same manner, on account of idiocity or bigamy. These are legal disabilities, at common law, rendering the marriage void without any sentence of divorce. Page 441. "Divorce a mensa et thoro" The statute of 1827 authorizes courts of chancery to grant divorces, a mensa et thoro on account of adultery, cruelty, or just cause of bodily fear.

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Neither of the parties thus divorced, can marry again in the life time of the other. There are many causes for whi married persons might desire a divorce, & perhaps cd obtain it, whi are

not mentioned in this statute, as grounds of divorce a vinculo {et thoro} or, a mensa et thoro. Conviction of either, of felony incurable insanity &c are of this kind &c. In all these cases, the only mode of obtaining a divorce, is by petition to the Legislature. The Statute of 1827, contains a provision on this subject, intended to prevent frivolous appli— —cations to the legislature — whi requires, that persons intending to petition for a divorce, shall previously file in the Clerk's office of the superior court of Law, of the county in which he resides, a statement of the causes on whi the application is founded. The Ct are to cause a jury to be impanelled, to ascertain the truth of the fact, set forth in the statement, the confession of neither party being admitted as evidence in the trial, & a copy of these pro— —ceedings must accompany the application — on such application, the Legislature grants a divorce a veniculo or a mensa et thoro as they shall deem proper; though generally the latter.

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Adultery, cruelty, or just causes of bodily fear are grounds on whi the courts of chancery are authorized to grant divorces a mensa et thoro. The parties in such cases are almost always anxious to be divorced a vinculo. But this divorce for these causes, can only be obtained from the Legislature. And an application to the Legislature for divorce, for the afore said causes, a copy of the record, of the Ct of chancery granting a divorce a mensa et thoro must accompany the petition. see Stat: 1827 (Page 441.) In case of divorce a mensa et thoro &c. The Stat: of 1827 enacts, that in granting divorces a mensa et thoro, the ct of chancery shall have full power to decree to either, out of the property of the other, such maintenance as shall be proper, to the injured party, as fas as practicable, the rights of property conferred by the marriage, on the other; & {as} to dispose of the custody & guardianship & provide for the maintenance of their issue under the circumstances of each case, may seem right. It is moreover declared, that such a divorce shall have the same effect upon the rights of property (confessed by the

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marriage) whi either party may acquire after the decree, & upon the personal rights whi either may enjoy after a decree as a divorce a vinculo wd have, save only, that neither party shall marry again in the life time of the other, & that, another marriage shall expose the offender to the penalties of bigamy. Alimony is frequently granted, when there is no divorce, as, when the misconduct of the husband is such, that it is unsafe for the wife to live with him, or he turns her out of doors; & the ct of chancery has jurisdiction to decree it. 4. H & M. 507. 4 Rand: 662. Nothing is said, either in the text or in our statute on the subject of a provision for the wife, or the rights of property on the part of the husband & wife, or a divorce a vinculo in cases in whi the marriage is void ab initio, no rights are acquired by it. Each retains their property, & neither acquires a right over the property of the other. A doubt has been expressed, or rather, suggested as to the power of the State Legislature to grant or authorize divorces as the Constitution of Uncle Sam, prohibits

a State, from passing laws, impairing the obligation of contracts. The question has never been directly, determined. In a case 4 Wheaton 518, the question was incidentally alluded to. The Chief Justice said, that this clause of the Const: had never been construed to extend to cases of divorce, and that the object of the state laws, in granting a divorce, was not to impair the obligation of a contract{s}, but to liberate one of the parties, because it had been broken by the other. The court said it wd be time enough to enquire into the consti— —tutionality of state laws, on the subject of {contracts} divorces, when they shd undertake to annul all marriage contracts, or permit either party to annul them at pleasure. (Page 442.) "A woman indeed may be attorney" &c. All contracts made by the wife, by authority of the husband are binding on him. This authority may be either, express, when no doubt can arise, or implied.

Authority implied, 1. From the practice of the parties. " " 2. " " custom of the country. " " 3. His having taken the benefit of the contract " " 4. The circumstances of his family. The obligation of a husband, to perform his wife's contracts, rest solely on the authority express or implied. Consequently when there is no authority express or implied, the husband is under no obligation. But besides being bound for his wife's contracts, on the ground of authority, he is also bound, to pay for the necessaries purchased by her. This obligation is generally referred to, & implied authority & assent of the husband. It seems more simple & correct to refer it to the husband's duty to provide his wife's necessaries, and he may be forced to pay those who do. For in the first place, his assent to pay for necessaries can not be presumed when he refuses to provide them., & 2ndly though be turn her out of doors & forbids every body to furnish her with necessaries, he wd be bound to pay those who did, whi shows, that his obligation to pay for the necessaries that do not arise from contract or consent

but from duty. He who seeks to make the husband responsible for necessaries, must show that they are necessaries, otherwise no duty arises. What are necessaries depends 1st on the situation of the parties. 2nd, on the wife's being supplied before or not. see Faubhanger's Equity 90. 1 Chap: 120. 2 H. B. 99. If not necessaries it is not the duty of the duty of the husband to pay, therefore he is under no obligation to do so. But though they may be necessaries, the wife, by her conduct may have released her husband from his duty to provide them; in that case he is not bound. The 2 different grounds then, on whi the husband may be charged with his wife's contracts are, authority given her, to contract, & duty to provide necessaries. Page 443. Note [blank space] "And a woman divorced a man" This is unreasonable. If she cannot sue alone, for injuries to her person, her character, & separate property, she is without the protection of the laws.

Our Stat: of 1827 expressly declares that such divorces shall have the same effect

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in wife's personal rights as a divorce a vinculo, she has not the privilege of marrying. Page 444. "And in some felonies & other inferior" &c. The rule on this subject, is this: If the wife commit any injury to another, or a crime by the Command or coercion of her husband, & his presence is deemed such command, if he in any way encourages or approves the action of his wife, she is not answerable for the violation of the law, pro— —vided the offence is not against the law of nature, as murder. The only exception to this rule ex— —empting wives from punishment for offences against the laws of society if committed by the coercion of her husband, are treason, & the keeping a Brothel; the former exception is on the ground that, treason is a crime so dan— —gerous to society, that even the coercion of the husband can not excuse it; and the latter that it is a matter of whi the wife has the principal management.

92 Parent and Child Page 448. "There is an obligation" &c. Judge Tucker thinks in accordance with the opinion expressed in the note, that the obligation of parents to maintain their children is in England founded on Statutes not on the com: law. And as we have no Statute on this subject, he thinks a parent is under no legal obligation to support his infant child. The character of these English Statutes it seems to me has been mis— —apprehended. Their object was not to enforce the general obligation of parents to provide for their children, but it was to protect the parish against the liability for their support. It cannot therefore be inferred from these statutes that they are under no legal obligation in England to pro— —vide necessaries for their children: On the con— —trary it appears to me that such obligation ex— —isted at Com: Law & therefore exists here. This opinion is founded on the following considerations. 1. If a child has property of its [access] in its fathers possession, the Cts will not permit the father to apply that property, nor even the profits of it to the child's maintenance if the father be of sufficient ability to maintain

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his child. This established rule clearly recognized the obligation of the parent, to support his offspring 1. Bro: C. C. 287. 3 K 416. 426 428. 2 vis & R. 36. 2. A statute of Va has prescribed the proceedings to be had for the purpose of compelling the father of bastards to support them, & it cannot be supposed that they are more worthy objects of the care & protection of our law than legitimate children. And {the} another Statute authorizes the county courts to have bound out as apprentices, the children of such poor persons as are incapable of maintaining their children. 3d Common law is common sense reason & enforces every precept of natural duty and justice when it is specified & definite enough, to admit of enforce— —ment & {the} its fulfilment of whi is necessary to the good order & welfare of society, also the common gives the parent a right to the services of this child; this seems to be a sufficient consideration to prove

our position. The conclusion therefore is, that a parent is bound to provide a maintenance for his child & this obligation is a perfect & legal one. Persons then, who furnish infant children necessaries, may recover of the parent the value of them; on the principle applicable

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to husband & wife duty to provide them. Parents may be bound by other contracts of their children on the ground of express or implied authority. 3 Com: law R. 443 — 13 John 460. Page 449. "Our law has made no provision" &c. A father may at his leave all his estate to strangers & leave his children in the parish & neither the public nor the children can have any remedy against his Execution. I am surprised said Lord Alvanley that this shd be the law of any country; but I am afraid it is the law of England. That it shd be the law of this country shd excite equal surprise. (Page 451.) "The last duty of Parents" This duty is certainly a very important one to The State to be performed, & it is certainly is high moral duty. But it is not in the esti— —mation of the law important as high a duty as maintenance — it is moreover less pre— —cise & definite & therefore not as susceptible of enforcement. The law has therefore not enforced it by its sanction, but it remains an imperfect obligation.

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(Page 453.) "He must account for them when he comes" &c. The father is guardian by nature of his legitimate children, but this guardianship ex— —tends only to the person of the child & in that character he cannot secure the infant's pro— —perty without 1st giving security. See 1 P. Williams 285. Hence the practice of parents becoming the guardians of their children when they have a separate property. Page 453. Note 12 "At Law the Fathers" &c. Though in general the father has the Legal right to the custody of his child yet the court of chancery of England has in many in— —stances removed children from the possession of their father when the father were in the habit of drunkenness and blasphemy and in cases of gross ill treatment & even when he had become insolvent, they have also interfered to prevent fathers from carrying the children abroad 1 Maddox, chap. 1332 — Page 454. "born out of lawful matrimony" &c. See our law which renders the children ligiti— —mate if the parties subsequently intermarry and the father recognizes the children as his. The children of marriages deemed null in

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Law are also legitimate {To the parties} 169 {subsequently} which conform to the civil and common law. Page 457. "But gene— —rally during the coveture" &c. the [gn] of the legitimacy or illigitimacy of the children of a married woman is now regarded as a matter of fact resting on a presumption going to establish a conclusion one way or the other and if it is a [gn] for a jury to deter— —mine 3 P. W. 275-6 Strange 925. Note 1st by Hargrave 16: Lett: 139. 4. [blank space] K. 251 68 Eart 193 [Pe.] 458: "The method" &c. See our act of Assembly on the subject

Tate 1 which require that a justice of the Peace shall take the mother's examination in writing and shall thereupon by application of the overseer of the poor or either of them &c. It has been de— —cided that, it must appear in the proceeding, that the charge of the mother was in writing and that the warrants issued on the application of the overseers of the poor, See Man. A.S. Overseers of the poor. & Man 782. See the case of all Va overseers of the poor of Augusta 3 Mum 495 as to the evidence suffici— —ent to charge the man. The same case

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decided that the father can only be made liable for the time the child is chargeable to the parish. Though the putative father of a bastard is bound to support it, he is not entitled to its custody, but the mother is 57. K. 275. 1 Rep. 148 — 15 John. 208. The putative father might probably assert a right to the child as a— —gainst a stranger 512 1162. The courts assert this right against the mother. A mother here would be necessary to give consent in the absence of father or guardian. Pg. 37. I proceed next &c. the same act which enables bastards to inherit and transmit in— —heritances on the part of the mother, which is reasonable; this is one of the few innova— —tions by the common law Tate 169. — Pg. 459. note 51. It seems that there is a great contrariety of opinion in England as to whether the marriage act extends to it— — legimate children. That act requires that if either of the parties to be married are un— —der the age of 21 and has never been married, the father, or if the father be dead the guardian of the infant lawfully appointed, on in case

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there be no guardian, then the mother of such enfant, shall have authority to give consent to the marriage. The better opinion seems to be that all mar— —riages whether legitimate or illegitimate children are within the provision of the law so far as to render necessary the con— —sent of the father and mother or guardian to the marriage of an illegitimate minor, it seems to have been decided on this point, that the consent of a guardian appointed by the court is necessary, the words father and mother, mean ing legitimate parents. see note 438. note 19. 489. no. 26. The provision of our statute on the subject of minors is that if either of the parties intending to marry shall be under the age of 21 & not before married, the con— —sent of the father, guardian or mother of each infant shall be personally. Our State obviously includes the marriage of all minors legitimate or illegitimate & requires the consent of the guardian or father for all. Illegitimate children having in law, no father, the consent of the guardian is, under statute certainly necessary.

Chaptr 17th 99 Guardian and Ward. [blank space] Pg: 461 Of the several species of guardians Blackstone has very imperfectly explained the distinction between the several kinds of guardians in England. The first species of guardians known in the English law are guardians by nature. All fathers, mo— —thers, grandfathers, grandmothers, and every other lineal ancestor

may be guardian of their heirs apparent. The father having the first claim the mother the 2d & as to the other ancestors if two happen to be equally related, the one first obtaining the infants person becomes guardian. This guardianship continues until the infant attains the age of 21 years, but extends no farther than to the custody of the infants person. This kind of guardianship only exists of heirs ap— —parent in England the oldest son — no other being in general the heir apparent. This species existed at Common law. 2d species in Chivalry. This existed only where the in— —fant was possessed by descent of lands holden by knight service (belonging to the lord of whom the lands were holden & was transmittable and

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assignable). The peculiarity of it was that the guardian had a right to apply the pro— —fits of the wards' property to his own use, except the support of the infant. He took precedence of all others except the father and his authority continue over males till 21, females till 16 or marriage. This existed at Common law and continued till Stat. 12 chp. 2d. (3. species of Guardians in Socage. This ex— —isted only when the infant was possessed of lands holden by socage tenure and like the 2d species it arose out of the tenure; such guardianship is confined to the use of kin to the infant to whom the lands could not possibly descend. The reason given by Black— —stone for the restriction last mentioned do not appear satisfactory; for no reasoning can be, which is based on the supposition of universal depravity. Unlike guardianship in Chivalry, it is a transfer the benefit of the ward, the guardian receiving the profits of the estate of {or} the ward, the guardian receiving the profits of the estate{s} for the ward; the guardian, nor was it transferable or assign —able as Chivalry guardianship was.

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It draws to it the care of all property as well as the person of the infant, continued till 14 years; & it existed at Common Law. 4th Guardians by nurture. These are only the Father and Mother. The differ— —ence between these and guardians by na— —ture is that the {first}{last} appl{y}ies to heirs only. These apply to all other children. This Guar— —dianship continues to 14 and exists at comn Law. 5th Guardians by election. The right to elect a guardian only exists where the law has provided none. The election might be made before or after the age of 14 years. This guardianship existed at Common Law. 6th Guardians appointed by Lord Chancellor as part of his peculiar province. 7th Guardians by appointment of the Ecclestiastical Courts. 8th The Guardians by Stat: 4 & 5. Philip & Mary Blackstone refers to this{ese} as a separate species of guardianship but does not ex— —plain how they are so. The extent of power belonging to the Guardians was the marrying of female infants under 16 & the guardianship was implied from the statute

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making it an offence to take away from the care of father or mother or such persons as should have care and marry an infant daughter under that age an unreasonable implication which might have been rendered use— —less by reference to guardians by nature or nurture. 9th Guardians by appointment of fa— —ther by deed or will with 2 witnesses. These exist till 21 and bar the rights of mother, guardians in socage & all others. They have the care of persons and estate by statute. Ch. 2d. 10th Guardians by Custom of particular places, & 11th Guardians ad li{bu}tem. appointed to de— —fend suit for the infant & by that court in which he is sued. See note 1.2.3.4. 5.6. by Hargrave. 16. Litt: 151. In regard to the guardians known to the law of this state of the enumerated, the first we *have guardians by nature and it extends to all chil— —ren* in England only extends to oldest son. The 2d we have not, for there is no such te— nure. The 3d we have not, by socage, though our statute twice refer and au— —thorizes our courts to require security & in England it only extends to the eldest son.

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from them. This perhaps proceeded from in— —advertence & from Blackstone's imperfect definition whi may be amended by adding after the lands held by tenure of Socage. But we have no lands held by socage tenure (nor indeed by any other tenure.) For another reason, that we have no kindred to whom the lands could not possibly descend, they could not exist here. This last reason is partially by a recent change in our law of descents. The fourth (by nurture) we have not, for all children are included under the first kind, so that there is no occasion for this. 5th we have, by election, though they are usually termed Guardians by appointment of Court. The election of Guardian is here, never made out of the Court, tho" it seems that it might be; A fact whi if es— —tablished & known might save young ladies, the disagreable trip whi they sometimes take to court, to elect a guardian, for the purpose of getting married. But at present, a choice in any manner but the usual one, might occasion delay whi wd be more objectionable than the trip. 6th We have,.. Guardians may here be appointed, by express provision of Statute, by the Court of Chancery, who have to give bond and security (also to qualify). The previous class may be included within.

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7th We have not. —. The 8th presumed we have not, it wd be unnecessary since the first ex— —tends to all children. 9th. We have, but such guardians must appear in court, the court of the county in whi, the will was recorded, declared acceptance, & give bond & security in a limited time, or the Ct will displace him & appoint another. The 10th we have. Of all these, those by election, those by appointment of the court (whi is the same) & those by testament, or Testamentary guardians alone, have the care of property; as well as of the person, & they alone are required to give bond. See 6. R. 536. in relation to the powers of these guardians. If an infant has a father; he is guardian by nature, if the father die, appointing no testamentary guardian, it is the mother, if both the parents are dead, the nearest lineal ancestor. But in this character none are entitled to authority over property, & the testamentary guardian has

preference to the mother, & other ancestor, even as to the person of the infant. The mother has no power to choose testamentary guardians. If there be, no guardian by nature, nor testamentary guardian, the Ct appoints.

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And if the infant be of sufficient years (precise age not determined, but certainly at 14). The court will appoint the person chosen by the infant, unless there be great objection to him. In the latter case, the courts are authorized by express act of assembly to reject the person elected, & appoint some fit person. But the question is what principle wd govern the court in selecting a fit person if there was no natural guardian, nor testamentary guardian, & infant not being old enough to choose, and choosing choose an objectionable person? Prof: Davis, thinks, the next of kin. provided he be a fit person. The courts of chancery, and the county & corporation courts in their chancery character are to make rules &c for the guardian, & no appeal lies to the superior court of Law. 2. Va. cases 204. & {Tate}Va. Law 291. that an infant has not the right (as is commonly supposed), to change his guardian after 14, but on good cause shown. The effect of marriage in determining the guardian— —ship of a ward, is not entirely (settled) determined. 1st. As to female wards. If she marry{s} an adult, it is clear that the guardian's power ceases, as to her person & property, & as to her person, the same is equally clear if she marry an infant,

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but as to her property, some differences of opinion exist. The better opinion is, that this follows her person & goes to her infant husband. 2nd. As to a male ward. It is agreed, that his marriage, does not determine his guardian's power over his property; & if he marry a female ward, as her property becomes his, that also is in the power of his guardian. As to his person there is some doubt. Reeves on Domer. Rela: 228. says, that when the male ward marries, he contracts a relation inconsistent with the power of a guardian over the person. The correctness of this opinion or position is doubt— —ful. Page. 462. "The power, & reciprocal duty of the guardians ward, are the same position: as that of parent & child" &c. By our Statute, the guardian is bound to exhibit annual accounts at superior Ct. & on failure to do so, the court may displace him. Guardians are compensate for their trouble, Tate 296. but in England they are not. The established rule in this state is, that a guardian{,} must put out the money at interest 6 M. 4 M. III.

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The question has arisen at common law, whether the guardian may dispose of the property of his ward so as to vest a good title. Clearly, not of the lands, tho" he may of the profits. But as to the personal property? — By 7. To. Ch: Rep: 154: he may. Some provisions of our statute took a

different way, at least they require the consent of the Court to authorize the guardian, but they do not touch the question, of title ac— —quired by the purchaser. See Connected with the subject of settlements of guardians accounts, it is proper to notice, that the courts look with a jealous eye on all contracts or settlements between them, shortly after the majority of the latter. & by 2 See 11. it is decided, that a deed of gift or release, or acquittance; made by the latter to the former shortly after full age, & before delivery of property and settlement is void, on a principle of public policy, & strong suspicion of fraud, from the previous relation of the parties, no proof of actual fraud being required. (Page 463.) "A male at 17 may be an executor" &c. The age required for an executor at common law was 17, but the Stat: of England 4 Geo: III requires 21.

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We have no statute of the kind, but another circumstance prevents it. By our Statute, all Executors & administrators are required to give bond & security: but none can execute a bond till over 21. see Tate 522. that infant cannot make {rule} will till 18. Page 464.] "Infants have various privileges" &c. Coke says, that an infant must sue by prochaine ami and defend by guardian ad litem. and such has been common practice By 6 Munf. 280. He may in this state, sue by regular guardian & by next friend 4. Munf: 439 6. Munf: 99. he may defend by same, regularly constituted guardian. Page 465.) "An infant shall lose nothing by non-claim, or neglect of demanding his right" &c &c. Infants {Those} are expected from statute limitations on this principle. Page 465.] "But infant trustees or mortgage are enabled to convey under the direction of the courty of chancery" &c. Stat: 7, reenacted, see Tate 294. Writers have tried to distinguish between acts of infants, void & voidable, but they all fail. 4 Burrows Rep: 1994 says, all contracts requiring delivery of the land are voidable, others void: but this is neither intelligible nor definite. Bugham p.33 says, acts, capable of being

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legally satisfied, are voidable, others absolutely void. All agree in one thing, that when the contract made, is for the benefit of the infant it is not void. 2nd Kent Rep: 50, gives the rule, that when the contract can be pronounced by the court, to be to the prejudice of the infant, it is void. When for his benefit valid; & when doubtful, voidable, this is the best definition. 2 Kent [blank space] 4. Rand 602. But, contracts by the infant, are binding on the other party, & can only be avoided by the infant himself or his representative. Strange Rep: [blank space] 2 Rand. 4782. John 271. 6 Munf: 455 is in opposition, but it is not authority. Records (such as recognisance) are voidable only by the infant, before coming of age, see 1. Co: Litt. 178. There have been doubts about the question, whether on arriving at majority, the infant is required to affirm his contracts, in order to give them validity, or to disaffirm them, in order to set them aside. This ought to depend on whether they are executed or executory; if the former: express disaffirmance is necessary. Chilty says, all contracts, with continuing consideration must be

expressly disaffirmed, if, the latter, they are to be affirmed, or are not binding. But in either case notice shd be given 2 Kent 173.

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Page 466 Under the class of contracts, clearly for the benefit of infants, & therefore binding on them, are those of necessaries, & this does not conflict with the obligation of the parent as has been previously urged, for he might be dead &c but intended to benefit the infant by supplying the defect, if any, in the father's fulfilment of his obligation. It is a question, whether an infant has power to make a valid marriage contract. 3 H. & M: 399 see Athaley Anthony on marriage settlements in favor & 18 [blank space] against. The case in 3. H & M, is not considered as conclusive authority & is decided in the affirmative. The English authorities are against. Apply here too, the principle of benefit or injury, to determine the doubt. If, for instance, in a marriage settlement of personal property on female infant, be in dispute, it is clearly, to the benefit & therefore binding. Whatever an infant is bound to do by law, that, shall bind him, if done without coercion. (Infants are also liable in actions, arising ex delicto.) 7. Co: Litt: 177. He may be a witness at any age, if he knows the nature of an oath, as he must be sworn. 1. Co: Litt 173 & notes. and can distinguish between good & evil.

111 Chapter 18 Of Corporations

Page. 471. Among those (civil) I am inclined to think the general corp bodies of the Universities & In a casein 3 Call 574 the quesn arose whether Wm & Mary College was a civil or ellemosynary corporation & the court tho' they professed not to decide the quesn at all, decided in substance that it is a civil corporation. 3 Case 374. Page 472. "How a corporation in general may be created" &c. In this state {country} corporations are created by the state Legislature, Page 474. "When a corporation is created a name" &c. A corporation must sue in its right name even a contract made with it under a mistaken name. 6 Rand 165. If the mistake be only in syllabis et verbis not in sensus & re ipsa, the contract is good. Page 475. "After corpo: is so formed & named it acquires many powers, rights &c. The {persons} powers of a Corp: here depend on the act creating it entirely. Whether if no rights were [blank space] those would be possessed which are specified in the text

112 is a question which will never arise here. Page 475 "which incidents" &c. The 2d part of the 2d incident is not jueer here in note 18, it is said a foreign corporation may sue in corpo— —rate name in connection see 2 Rand 465. In that case a bank of Ohio at Marietta brought suit {against} in this state on a con— —tract made in Ohio. It is a principle of universal law that rights acquired by contract cannot be varied by the residence of the party wherefore courts will carry them into execution according to the law of the country were they new made. The only exception is when the contract is contrary to the policy of the law of the state or country where it is attempted to be enforced. On that ground in the case above the court determines that

primary contracts of a foreign Bank corp made in this state would not be en— —forced, but whether a secondary con— —tract entered into in this state to carry

113 into effect a previous Bank contract made in another state would be en— —forced was decided. 3d Incident to purchase lands is sometimes given here to a united extent for case involving the right. See 3 Rand 136. to have a common seal. The 4th incident is universally given here yet corps may so act as to lend itself without seal as by an agreement of majority entered in corps books 1 Fort E 196 or by agent acting under authority of the corp (and even tho' the agent has not been appointed under the corp seal.) See 7 Cr. 299 5 Mumd 324. 3 Rand — 136. 7 Cr. 299. The 5th incident "To make by laws" & is given here too, with restrictions (no tell) that they be not inconsistent with the (Charter) 1 Co Lett.. 184 note C. laws of the land. Page 477. "It cannot be executor or adminis— —trator" &c see Toller 30. that corpo: may in some cases be Exor but they must by Syndics. {Page} Page 477. "The proceedings to compel corpo: to appear is always by distress" &c.

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Our statute provides it shall be suffi— —cient to issue a summons to corpo: to appoint and defend suit, which must be served on the major, president, or a member. In Chancery a sub— —pena instead of a summons. Tate 114. Page 478. "But with as any majority." See 2. Burrows 1019. — The charter of corporation in this state, generally decides what is a regular meeting See also Cooper Rep: 249. Page 479 "But they are excepted are of the Stallite will &c" Corpo: are not excepted out of our will law. We have no general Stat: of Mortmain Page 484. "We come now to consider how corpo: may be dissol." The question has arisen here, how far the legislature of a state after having granted a charter, may alter or revoke it. In 6 Cr: 87 & 9 Cr: 52, the supreme court distinguished between private and public corpo:, that the charter of the latter may be altered at the will of the Legislature, but not of the former on the ground of contracts. In this ststae no doubt is en—

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—tertained of the power as to private corporations. In this state a contrary doctrine has been maintained. 4th H & M. 315. Judge Roan's opinion. Prof D looks upon charters not as con— — tracts, but Law, and should be repelled whenever it seems good to the legisla— —ture. What indemnity should be granted to those who may have suf— —fered by its grave and & recall is a difficult consideration. —

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17 Book 2d Of the rights of things. Chapter 1st Of property in General. Page 13th "This one consideration may" &c. Admitting that by the law of nature, the estate of a man, shd at his death become common & open to the next occupant, it does not follow perhaps, that when this law of nature is changed by Positive Law, a right is conferred on a man, to dispose of his property at his death, that he is unrestrained by the law of nature in the disposition he may make. On a former occasion, it was attempted to show, that every man is under a legal obligation to maintain his children, whether he be so or not, he is surely under a natural obligation; his natural obligation is admitted to extend further, it obliges him not only to maintain them, but to do all in his power to render their lives comfortable & happy, & they have a right to expect that he will do so. When, therefore, the law confers on him the power of determining who shall take his property at his death, the obligation he is under, and the expectations he has raised, give his children a stronger claim to it, than any one else, because, their comfort and happiness, whi it is his duty to

118 Real Property. Chap 2.

provide for, can in no way, be so much prompted as by making them easy & independent in their situation. He cannot therefore, by natural right disinherit his children, unless {for} by their mis— —conduct they have forfeited the claim whi nature has given them on him. In regard to the obligation of the child to relinquish his title to his father's property, because by an informal will the father has manifested his intention, to give it to a stranger. Blackstone is thought to be right on his side.

Chapter 2nd Of Real Property &c Pa: 16.) "Tenement is a word of still greater extent" &c. Tenements mean every thing whi may be holden, or on whi a tenancy may be created, according to the feudal sense of them term. [blank space] they include all corporal heriditaments & all incorporal heriditamts issuing out of those whi are corporal, or concerning, or annexed to, or exercisable within the same. See 1. Co: Litt: 219-514.

Book II Chapter 3d 119

Of Incorporeal Hereditaments Pa: 33) "Common appendant, appurtenant & Vicinage" &c. From the very definition of common appendant existing only in manors, & arising from tenure. It is d— —vious that it cannot exist here. Judge Tucker says, that {common} appurtenant & common because of Vicinage do not exist in this state. 1 Coke 226. Note. S. If Coke & [Littleton?] be right, it may exist here, at all events it may exist by grant (common appurtenant.) so Judge Tucker is wrong, because of Vicinage. Page 34.) "Common in Gross or at large" &c. This species may exist here, since the owners of lands may confer upon another, the right to pasture his land in common with himself, in whi case the extent & right & the term of enjoyment are to be decided by the terms of the contract. —. —. —. Page 34.) "Common of Piscary, & common of Tusbary" &c. In the same manner, these may exist here. In re— —gard to the right of fishing,

it may be remarked; that in England & here, in navigable rivers, by whi the law means those in whi the tide ebbs and flows, the public has the right to fish. In England, if any man claims the exclusive right to fish in a navigable river, he must show a special grant or prescript from the crown.

120 Incorporeal Hereditaments Cap: 3.

Here, he wd have to show a special grant from the Legislature, if indeed that body possesses the power to make such a grant & such exclusive privilege wd be a franchise. But although, the public has a common right to fish in navigable rivers, those who possess land adjoining have the exclusive right to draw the seine & take fish on their lands. exclusive right ex— —tends to low water mark. see 1 Bl: Com. 144 — others may draw to low water mark. In regard to rivers in which the tide does not ebb and flow, & whi therefore the law terms not navigable, the owners of the soil on each side, own the land over which the tide ebbs & flows to the middle of the river, & have an exclusive right of fishing to the same extent, this right, both of soil & fishing, being subject & subordinate to the right of the public, to the use of the river for navi— —gation — & a grant of this right wd be common of Piscary, 3 Kent 330. Page. 35) (note 25) "Right of way" &c. In regard to the extent of the power whi a right of way confers on the possessor; there is a distinction between a right of way by necessity,

Book II Incorporeal Hereditaments 121

and rights of way derived from other sources, as, express grant, prescription, reservation. In regard to the latter, the right is limited by the terms of the grant, or the reservation, or the usage on whi the prescription is founded, & extends no further than they authorize, either as to the person who may make use of it, or the manner of using it. But a right of way by necessity is of a very more comprehensive character. It runs with the land & extends to the heirs, & even to the assignees of the estate of the grantee. It comprehends not only these persons & their families, but all per— —sons going to or coming from their premises. It is not confined, as to the manner of using it to foot passengers horses or carriages, but extends to all. For it is a right implied from the grant, on the principle, that when the law gives any thing to a person, it gives also impliedly, every thing necessary for enjoying it. The right of enjoyment being therefore without limit, the right of use must of course, be the same. 1 Tucker's Com: 7. — In respect to all these incorporeal hereditaments, 20 years adverse, uninterrupted possession, is prima facie if unexplained evidence of right; as it will be implied that there was some grant. 4. Rand: 58:]3 Masons.

122 Incorporeal Hereditaments Chap. 3.

Rep: 272. Page 36.) "Offices, whi are" &c. The first observation, necessary to be made on this subject is, that in this country, offices are not incorporeal hereditaments; for here, no office is

inheritable. In regard to Black— —stone's division of offices, into public and private, in this country certainly & I am inclined to think, in England too there are no private offices, other than agencies comprehending Blackstone. 4th Class of servants. Private offices there being never agencies, the employment of one individual by another, has no claim to consideration under this head. Many attempts have been made to define the office; but no satisfactory definition has yet been given, none whi cd enable us to distinguish between, an office, an agency, & a profession. Blackstone's is as good as any yet given "a right to exercise a public employment & to take the fees & emoluments thereunto be— —longing" but it does not supply the defect whi marks all that have been given & this distinctions between an office, and an agency or profession, is very important in this state, & shd be if possible precisely ascertained.

Book II Incorporeal Hereditaments 123.

For we have statutes requiring that all persons ap— —pointed to any office, shall take certain oaths, & by a clause in our state constitution, no person, holding a lucrative office, of the legislature, shall, during the term for whi he has been elected, be appointed to any civil office of profit under the commonwealth, whi shall have been created, or the emoluments of whi have been increased during such term, except such offices as may be filled by election of the people. In the construction of the law, prescribing the anti-duelling oath, it has been decided by our court of appeals, that an attorney is not an officer within the meaning of this law, & may therefore qualify without taking such oath. 1. M. 468. The Legislature has determined, that the re— —porter of the court of appeals, tho" he receives a considerable compensation, is not an officer within the clause of the Constitution, excluding from the Legislature, all persons holding lucrative offices. And the executive of this State, has determined, that the commissioner appointed to prosecute the claims of Virginia against the Fed: Govt tho" receiving a salary from the treasury, is not an officer within the clause of the Constitution, prohibiting the

124 Incorporeal Hereditaments Chap: 3.

appointment of members of the legislature to offices, created during the time for whi they are elected, (on similar principles it is presumed that our present commissioner to So: Ca:, B. W. Leigh is not an officer, March 1833.) These causes show the necessity of the distinction referred to & the doubt and controversy whi attend all of them, show the difficulty of making that distinction. Page 36.) "Also by a Stat: Ed:" We have a similar statute taken from this, & substantially reenacting it, provisions. The penalties prescribed for selling a public office, or taking or giving any thing for a note in this appointment are; disability to appoint, or to hold such office, & fine & imprisonment at the discretion of the Jury. But a proviso is annexed to our statute, authorizing sheriffs & clerks, to appoint de— —puties, to assist them in the execution of their respective offices. Under the proviso it has been decided, that Sheriffs may sell their offices. 1. Leigh 42. Tate 433. Page 37.) "Dignities" These do not exist in this State, nor in the country.

Pa: 37.) "Franchises" &c — may here, be defined, a privilege or authority, vested in one or more persons by special Statute, to exercise powers, or to do & perform acts, whi without such Stat: could not be exercised, done, or per— —formed. Thus, it is a franchise for a certain number of persons to be incorporated & subsist as a body politic, have extraordinary powers con— — ferred on them. "Corodies do not exist here." Page 40.) "Annuities." — Bacon defines an annuity; "A yearly payment of a certain sum of money, granted to another in fee simple, fee tail, for life, or years, charging the person of the grantor only." If payable out of lands, it is properly called, a Rent Charge, but if both the person & the estate be made liable, as they commonly are, it is then generally called an annuity—... In the last mentioned case, though generally called an annuity, yet the grantor may make it, either, a rent charge, or an annuity, by the remedy he resorts to, & this at his election. Thus, a writ of annuity or other personal actions, being appropriate, for the recovery of annuity, if the grantee resort to

such action, he is regarded as having elected to take it by annuity. On the other hand, or rent charge being {d}recoverable by distress; if the grantee {res}distrain, he is regarded as having elected to take as a rent charge. It is frequently important to make a Judicious election, for the rights of election once made, are determined for ever. See on this subject 1. Ba: A. B. 185. note. 1 Coke Litt: 450 & Tucker's commentaries. 12. —. Pa: 42.) "There are, at common law" &c. (see articles on Rents, p.: Littels Museum, or [Chamelian]. — Pa: 42.) "There are also" &c. There are two kinds of rents not enumerated, that; granted on partitions, & that; granted on allottment of dower. They are called, Rents for, [aielty] of partition, & both are rent charges, dis— — trained for, of common right.

Book 3. Chapter 4th 127 Page 44. Of the Feudal System. A few remarks on the subject of the influence of Feudalism, on one system of law; & the consequent utility of feudal learning, to the American Lawyers, will not be here, inappropriate. —. —. Any one who has attending studied the history of English Jurisprudence; particularly that portion of it whi relates to landed estates, can not have failed to remark, how much of it, is to be traced to the feudal system, or to the struggles of the courts & occasionally of the parliaments, to modify its rigours and stubborn technicalities. The reciprocal relation of lord and tenant, the tenacity of the former in main— — taining the fruits of Tenure & enforcing every feudal obligation, & the artifices of the latter in endeavoring to soften or elude them, gave rise to a numerous train of legal doctrines, whi, either remain unaltered to the present day, or, if not modified, greatly effect the present system, & can never perhaps be entirely effaced from it, it could not be otherwise. A system of laws, in active & efficient operation for the space of at least 6 centuries, must have become so radically incorporated, with the general

law of the land & must have occasioned such an infinite variety of customs, laws & institutions and such numerous alterations & additions in the general code, as forever to retain an al— —most immutable influence. Tho" the Stat 12. Ch: 2 removed the oppressive & military part of this system & though the refinements as well as the necessities of mankind had intro— —duced, long before, important alterations in the forms of procedure & the genl spirit of the Legislature, much, still remains & a very considerable portion of the common law, has its foundations, resting immediately on feudal principles. Page. 53.) "Besides an oath of fealty" &c There was a distinction between fealty & homage whi the author has not adverted to. Homage was only due, from the tenant, fee, simple or fee tail. Fealty was due from the tenant, for life or for years, as well as from those possessed of an estate of inheritance. Both services were therefore due from the tenants in fee simple or fee tail. (fealty from tenants for life or years.) Neither was due from tenant in frankalmoign, or tenant at will. 1. Co: Litt: 253.

Of the Ancient English Tenures. Page. 72. "With us in England." &c It is somewhat difficult to trace the progress of alienation of lands in Eng:. It is certain, that before the conquest, the power of alienation was un— —restricted and universal. But upon the introduction & establishment of the feudal system after the conquest, alientation was prohibited, as is stated in the text. Various methods were adopted to elude the feudal restraint. One was the practice of subinfeudation, by whi, the tenant instead of disposing of his land entirely, retained the pro— —prietorship or reversion, only conveying the use and possession of the land. In this way, he remained the tenant of his land, & the person who purchased of him, was his subtenant. This practice of subinfeudation, being found more injurious to the Lords, than alienation itself, the statue of Quia emptores was passed, whi allowed tenants, except the Kings tenants {tuente} in capite, to alienate the whole or any part of the land, but requiring that the lands so alienated shd be holden of the Lord of whom the grantor or seller himself held them. This Stat: then, conferred the power of alienation but destroyed subinfeudation.

Chapter 5th Of the Ancient English Tenures. see page 129.

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{130} Chap: 6 Chapter 6th Of the modern English Tenures. Page 31 "Taking this then," &c. As Socage tenures formed a part of the Feudal system, that system must have prevailed among the Saxons, if Blackstone be right, in supposing it, a relict of Saxon liberty. The weight of authority seems however, against him on the subject of the origin of this tenure, & the better opinion perhaps is, that the feudal system did not prevail to any extent among the Saxons, and con— —sequently that socage tenure did not originate as he supposed. The reason for

believing that the lands of the Saxons were allodial (held of no su— —perior) & not feudal, are given by Sullivan in his lectures on the laws of England, p: 348. — The nature of English tenures being explained in the text, some account of our own is necessary. An opinion has prevailed, that our lands were always allodial. This opinion & the reasons on whi it is founded, are stated in the instructions prepared for the 1st delegation fr: Va to the Congress of 1774, to be found in 1. Jefferson's memoirs p. 115. That paper in enumerating the grievances whi this country suffered contains these remarks. "We shall at this time

"Take notice, of an error in the nature of our land holding, "whi crept in, at a very early period of our settlement; the "introduction of the feudal tenure into the Kingdom "of Great Britain. Tho" ancient, is well enough under— "—stood to set the matter in a proper light. In the "earlier ages of the Saxon settlement; feudal "were certainly altogether unknown, and very few, if "any had been introduced at the Norman conquest. "Our Saxon ancestors held their lands, as they did their "personal property in absolute dominion, disincumbered "answering nearly to the possessions whi the Feudalists "call allodial. William the Norman first introduced "that system generally. The lands of those who fell at "the battle of Hastings, and in the subsequent insurrection "of his reign, found a considerable portion of the lands "of the whole kingdom." (refer to Jefs Mem: p. 113. vol 1..) That these views are in strict accordance with reason and the rights of man, cannot be doubted. But it is not as clear that they are consistent with Law & the actual state of things then existing. The principle, asserted, shd have prevailed, but the right question is, did they prevail? And were they recognized by the law{nd} as it stood? In the same manner, the right of the people to self Govt was & is undeniable, but it cannot be asserted, that before the revolution

that power was possessed by our ancestors. To as— —certain the nature of our tenures before the Revolution, we must therefore refer, not to ab— —stract prinicples, but to the actual existing law, whi regulated them, whatever were our rights, we were in point of fact, a colony of G. B. subject to the control of the mother country, ac— —knowledging allegiance to her, & claiming our lands under grants from the King of England. Those grants had declared that we shd hold our lands of the King of England, by the tenure of free & common socage, & by tenure therefore, so long as our colonial & dependent State continued, we held our lands. We cd hold them by no other, without disclaiming allegiance to Englnd & asserting our independence. When we did this, the very act whi disunited us from the mother country, destroyed the tenure whi had been prescribed to us, & thenceforward our lands be— —came allodial. Among the first acts, of Legislation in Va was a statute containing the following enactment. "And that the pro— —prietors of lands, within the commonwealth may no longer be subject to any [blank space] from perpetual revenue. Be it enacted, that the

reservations of royal mines, of (quick) great rents, and all other reservations & conditions in the patents or grant of land from the crown of England or Gt Britain under the former Govt shall be, & are herby declared null & void, & that, all lands thereby respectively granted, shall be held as absolute & unconstitutional property, to all intents & purposes whatever, in the same manner, with lands hereafter to be granted by the Commonwealth in virtue of this act." This Stat: contains an acknowledgement that our lands had been before held by feudal tenure, at the same time, it declares that they shd be henceforward as absolute & unconditional property, in other words shd be allodial. Until the Revolution the tenures by whi our lands were holden was that of Socage, since that period, they have been allodial. See Pendleton 15 remark on this subject, in the case of Kenison vs: McRoberts wife. 1 Wash 101. Our lands being now allodial, it has been supposed, the tenure, cannot in any case exist here. This opinion appears to result fr: a misconception of the meaning of the term. Tenure, means simply; the holding lands of another, in whom the proprietorship or ultimate property resides, whilst the tenant

has the present use & profits. It does not imply that they are held by any particular services, feudal or other. —. Now it is very certain, that whenever lands are allodial, there can be no tenure in relation to fee simple estates in those lands; because, the very definition of allodial possession is, those in whi the tenant has the absolute property, & which he holds of no one. It is equally certain, that in England, tenure in relation to fee simple estates, was created by the introduction of the Feudal system, the fundamental maxim of whi {practice} is, that all the lands in the kingdom, whatever be the estate possessed in them, are held either mediately or immediately of the Kings, & that system not existing here, but our lands being allodial, tenants in fee simple do not here, hold by tenure. But in relation to estates less than fee simple; estates for life, or for years & tenure seems to exist as well, where lands are allodial, as where they are feudal, & consequently in this State, as well as in England —. In the case of an estate for life or years, the absolute & ultimate

property [blank space] in the reversioner, and the tenant has the present use & profits only. The tenant holds of the reversioner, usually pays him rent, & a commission of wastes, forfeited the land vested. This, according to the definition of the term, constitutes tenure — not feudal tenure, but still tenure. Tenure therefore does not exist here, in relation to all estates, less than fee simple; the only evidence of its {during} being the existence of reversion, in any other person, but the Tenant. — — — — —

Chapter 7th Of freehold estates of Inheritance. Page. 107.) "Yet sometimes the fee" &c. Th{e}is doctrine of abeyance is not only refuted by the authorities referred to {by Mr} in the Note but it is opposed by reason; for in all cases of contingent grants or devises of property, it is admitted that no interest passes by such a a disposition, to any one, until the contingency happens, & as all the estate was in the grantor or testator at the time of making such disposition, the conclusion of reason, seems to be, that it remains, where it was — that is in the grantor or testator of his heirs, until the disposition takes effect. If it never takes effect,

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owing to the contingency not happening, it remains there, always. So far as the doctine of the text is supported by the com: law principle, that no estate of freehold in future, can be created, that principle as we shall see, has been repealed by a Stat: of Va: Pa: 107. The word heirs" &c. We have attend this rule of Common Law, we have altered by Stat; passed in 1785, whi declares, that every estate in lands whi shall, thereafter be granted, or devised, altho" the words theretofore necessary, to transfer an estate of inheritance be not added, shall be deemed a fee simple, if a less estate be not expressly limited, or does not appear to have been {created} granted by construction & operation of law. (Tate 102.) This stat: certainly carries into effect the intention of grantors & testators better, than the common law did. Pa: 108. "For, 1st it does not extend to devises" &c. Blackstone's remarks on this subject do not present a full or even a correct view of it. The rule, that the word heirs in necessary in a grant or donation, to constitute an inheritance, originated in Feudal structures, as ex— —plained in the text. Devises not being per— —mitted, at the time. This rule was adopted, it applied in its origin, only to gifts grants or deeds, and

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not to devises. On the introduction of devises, the governing principle in the construction of whi having always been to effectuate the intention of the testator. This rule shd not have been extended to them (devises)}. Unfortunately however, it was extended to them, and thus, was a rule of construction applied to them, the unavoidable effect of whi was, frequently to defeat the intention of the testator. After adopting the rule, all that the judges cd do, was to struggle against it, and as far as possible restrain its operation. This, they did, by supplying the omission of the word heirs by other words of equivalent import. Such as. — to a man and his assigns forever — or, forever, or in fee simple — see text. But in the progress of their struggle for intention against the rigid rules of Law, the judges went further, & made various other words & limitations answers the same purpose. Thus, a devise of all the testator's estates, or all his real property, or a devise of {the} lands charged with the paymt of a specific sum — or in short, any words & limitations manifesting that intention, were permitted to operate as a devise of the fee. (See note, and in addition to the English authorities there cited, see, on the same subject. 1 Wash: 98. — 1. Call: 127. 3. {H. & M.} Call 308. 1, Munf: 537-549 & 2 Munf: 453.

However, these authorities, are only of importance to show what the law was in 1785; for since that time, our stat: to whi I have referred, has done away with the necessity of words of inheritance in wills, & conveyances of all kinds. —. — (p. 110.) Estate tail existed in this State as in England, in the same property, & with the same incidents, & were barred & defeated generally, in the same manner, till, by an act of 1715 (3. H. Stat: at Large 320) the sole power of barring entails was reserved to the Legislature, to be exercised by special acts on each particular occasion. By that act, all the means used in Eng: for the purpose, were prohibited (expressly) — In 1734. 4 H. Stat: at Large 400, the legislature introduced a more summary method of docking entails, by authorizing all tenants in tail, to sue out writs of ad quod damnum & if upon the return of the writ, it appeared that the lands did not exceed the value of £200, sterling & were not contiguous to other entacted lands, permitting the tenant to dispose of them in fee simple. After that estates tail cd be saved by writs of ad quod damnum, if not of greater value then £200, but if greater, by private act of assembly only

Thus, the law remained until the revolution. Immediately after the Declaration of Independence (October "76) they were abolished by Stat: — Our ancestors, thinking that encouragement & facilities for the perpetuation of wealth in select families, shd not be afforded, as thereby, aristocratical distinctions wd be produced, inconsistent with the spirit of our institutions & the genius of our Govt. Besides, the impolicy of such restraints, manifested by the Ex: of England wd have produced the same {results} course, though the stronger motive of adapting our laws to our Govt had not existed. The preamble of the statute sets forth, the reasons for its enactment. It recites, "that, "whereas the perpetuation of property in certain families" &c &c (see stat:). Therefore, it is declared in substance, that all estates tail, then in being, or whi shd afterward be created, shd be deemed, estates in fee simple, & that the tenants shd have the same power over them, as if they were pure & absolute fees. This law has been re— —enacted, at various times & now forms part of our Code. Tate 201 —. The whole time allotted for this lecture, & much more cd be easily occupied with discussing this branch of the law — in explaining the distinction

between this kind of estate & others, and in showing the operation of our statutes upon them. But any oral explanation at this time wd {easily} scarely be able to give any adequate idea of the distinctions between estates tail. Contingent Re— —mainders & executory devises. It may, however, be remarked on this subject, that our Stat: only converts estates tail into fee simple. Any fees conditional whi the English stat: de donis did not convert into estates tail, our stat: does not con— —vert into estates in fee. For the same reason that a fee conditional might be

had in England in an annuity, it might be had here. It must also be borne in mind that qualified or base fees were not included or effected by the Stat: de donis, & consequently are not destroyed by our Stat: abolishing Estates tail. A qualified or base fee may therefore be created here, as at Com: Law.

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Chapter 8th. Of Freeholds not of Inheritance. Pa: 122.) "Tenants for life" &c. "Emblements". First, what are emblements? They are all, annual artificial products, in the production of whi industry combines with nature. Toller. 150. Our stat: on the subject of emblements has somewhat modified the common law, the rule of whi was, that if tenant for life, died after said time & before harvest, his Executors were entitled to the crop of grain on the land. Our Stat: Tate 244, declares, that, if tenant for life die on or after the 1st of March, all the emblements whi shall be served (severd) before the 31st of Dec: shall belong to his Executors or ad— —ministrators, & all growing on the 31st of Dec:, shall go to the remainder man or Reversioner & that if tenant for life die after 31st Dec: & before 1st March, the emblements growing, at his death, shall go to the remainder man. Tate (...) At com: law, the representative of{or} the tenant for life, was entitled to the emblements un— —served at the time of his death, whenever that happened; in this State, that representative is only entitled to them, in the event of the tenants dying; after, the emblements are not {served} severed before

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the expiration of the year — in either of these events, the remainder man or reversioner takes them. Tates digest 244. —. There are some tenants for life, to whi this act of ours does not apply, as, in the case of lease to husband & wife during coveture, who are divorced, a vinculo et matrimonii, after the crop is sowed & before it is reaped. This case wd be governed by the com: law rule, as wd all others not embraced in the terms of our statute. — Pa: 123. "So also it is if a man be tenant [blank space]" Tate 200. Do: 123 "But if an estate for life be determined" &c (same principle here) Do: 123. "To remedy whi it is now enacted &c" 2nd Geo: 2" — Our stat: Tate 244, provides, that if tenant for life dies after 1st March, his under tenant shall hold the land & the slaves till the last day of Dec:, paying rent & hire, till that time to the representative of the tenant for life, & to the remainder man in the proportions in whi they are entitled, & returning the slaves, well clothed. Pa: 124. II "The next estate for life" &c. "Tenant in tail after" &c. These, of course do not exist here, since we have no estates tail. Pa: 126. III Tenants by the courtesy &c. & P. 127 "4 requisites."

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The first requisite, so far as regards the nature of the marriage, its being canonical & legal — does not apply here, unless the marriage be avoided in the life time of the parties. 2. "Seisin" &

pa: 128 "And this seems to be" &c. Blackstone says, on the authority of Coke, that the necessity of seisin, results fr: the principle, that the issue begotten, shd be capable of inheriting the mother's estate, whi it could not do unless there was a seisin. These writers, seem to forget that seisin of the mother, anterior to the marriage, wd make the issue capable of inheriting, whereas, seisin during the marriage, is necessary, to make the hus— —band tenant by the courtesy, & consequently that seisin, as one of the requisites to a tenancy by the courtesy, must be necessary for some additional reason at least. Probably the chief reason for requiring it is, to stimulate the husband to litigate the rights & reduce to possession the lands of the wife, [blank space] by lapse of time & his negligence they shd be lost to her. That this reason has considerable influence is proved by the fact, that when the husband can— —not acquire an actual seisin, he nevertheless has courtesy, on the principle that impotentia excusat legem. Tho" that, given by Coke & Blackstone does,

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the same reason in regard to dower, also does not hold & an actual seisin is not necessary. At com: law, neither courtesy nor dower was allowed by trusts (1. Co: Litt: 559.) Yet, courts of equity, having early settled, that trusts & other mere rights & titles, were, in respect to courtesy to be considered as legal estates (1 Co: Litt: 559. & notes) by an act of our legislature, passed Oct. 1785, trust estates were declared to be subject to both, courtesy & dower. Tate 175. — — Dower Pa: 129 "Tenant in Dower" &c Dower is defined by Coke, to be that portion of the husband's lands & interests, whi on his death is allotted to his widow, for her sustenance & support, of course it does not include personal property. There are in England, four kinds of dower, enumerated by Blackstone. 1. dower by com: law, 2. dower by custom. 3. dower ad ostium ecclesium." 4. dower ex assensu patris. Owning to there existing at com: law, so many kinds of dower & owing to the alteration in the law on the subject of dower, our legislature has thought it necessary, particularly to designate & define the dower whi shd exist in this State, they have (established) adopted that species of dower, termed by Blackstone

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"dower by com: law — Tate 174 (it is defined by Blackstone) — Pa: 130. "Who may be endowed" &c The 1st enquiry may be best prosecuted by considering first, the capacity of the man to endow. 2ndly of the woman to be endowed & 3dly the sufficiency of the marriage — for on these 3 things depends who may be endowed. 1st Those at com: law: All men are of capacity to endow a wife, no matter what be their age, unless they are idiots & cannot marry, or aliens & can hold no real estate, or have been attainted & not pardoned. The disability of alienage in the husband, has been in a great measure re moved, by an act of assembly in regard to aliens, whi declare; (sec 1). That if any alien purchase lands, & before the same be escheated shall become a citizen, the right of the commonwealth shall be released to him; & whi declares, (sec 2) that if any shall claim title to any land & before the institution of proceedings, for the purpose of escheating the same, shall bona fide sell or demise the same, or die seized thereof — in the 1st

place his grantor & in the 2nd, his heir or devisee shall hold the lands, discharged fr: the claim of the commonwealth. Under the 1st sec: — the wife of an alien, is her— —self a citizen, & wd be entitled to dower, after

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the husband had quitted his title by be— —coming a citizen. Under the 2nd, the wife it is believed, wd be entitled against the heir or devisee, but not against the purchaser. The disability consequent upon an attainder & whi at com: law, extended to all the ac— —quisitions of the husband, & every marriage he might contract, before he was pardoned, is entirely removed, in this State by the Const: of the U.S., in regard to treason, & by the new const: of Va:, & by the laws of Va: generally. — — — As to the capacity of the wife, to be endowed: at com: law, every woman may be endowed, if she be 9 years old, at the death of her husband unless she be idiot, or an alien, or attainted & not pardoned. The disability arising fr: attainder as regards women, does not exist in this country: that arising from alienage does not; as our act of assembly does not perhaps in any manner remove the incapacity of alien wives to be endowed, so also, that arising fr: want of age does. 3d. On the subject of marriage, in virtue of whi the right of dower may accrue, it is to be remarked,

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that, as it arises from marriage, if there be no marriage, there can be no dower. Hence, when any of the legal disabilities, whi we have considered, exist, the right to dower does not arise, except in case of disability through want of age. When a marriage is contracted within the age of consent, tho" the parties upon arriving at the age of consent, may avoid it, yet, if the husband dies in the mean time, the wife is entitled to dower, for whi reason, if you remember I said, this disability in its consequences, more nearly re— —sembled the canonical disabilities, than the legal, among whi it is ranked. — If the canonical disabilities exist, the right of the wife, to dower, depends on whether marriage be avoided in the life time of the parties. If not, the wife is en— —titled to dower. — A question of some interest might arise under this head, as to the right of the wife, to dower, and the husband to courtesy, in cases of marriages, contracted within the prohibited degrees, & not avoided in the life time of the parties. Blackstone Book 1st pa: 434 & Co: Litt: 571 lay down the rule, that such marriage be not avoided in the life time of the parties, the wife shall be endowed.

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But in a note by the Editor Thomas, it said that the reason of the rule is this. "The courts of West— —minster have not by the com: Law, cognisance of matrimonial causes, but judge of them upon the certificate of the ecclesiastical judge, & it is a rule of practice in the ecclesiastical cts, that no sentence of divorce can be pronounced after the death of either of the parties, so

that if no sentence is pronounced in the life time of the husband, it must be certified by the courts of com: law that the parties were husband & wife, tho" in truth the marriage between them might have been avoided.". From this explanation of the law of Englnd it might seem that as in the country we have no ecclesiastical Cts & as the disabilities of whi they have cognizance in England are here, subject to the com: Law cts — therefore, a rule originating there, in the practice of the former, shd not prevail here, in the latter. Hence arises the doubt as to the manner in whi this question wd be decided in Va: but I think the law is here as it is in England — for the following reasons. 1. The fact: that the rule in England, has grown out of the practice of the ecclesiastical courts, is extremely doubtful, as will

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appear fr: the remarks of Blackstone in the text, "That after the death of either party, the com: law, will not suffer the spiritual cts to declare such marriages void." From this, it wd seem, that it was imposed on those cts by the courts of law. 2ndly If it did, so originate, after it was established it was a rule of the com: law, whatever might have been its original, & in adopting the com: law we have adopted this among many others whi had a similar origin. 3dly If it were not a com: law rule yet, it shd hardly be inferred in the absence of any provision to that effect, that the Legislature intended in committing the cognizance of this class of disabilities to court of law (whi indeed was done of necessity, as we had no spiritual cts) to change the nature of these disabilities in regard to their character and effect, as they existed in Engnd, fr: whi country we derived them. 4thly, tho" the reason of the rule may have ceased, yet, as some rule must exist, the one established shd prevail unless repealed by the Legislature. For these reasons it is believed, that in the case of a marriage, within the prohibited degrees, but not avoided in the life time of the husband, the wife wd be entitled to dower, in the estate of her husband.—

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Ch: 8 In our Stat: land tenements & other real estates Page. 131. "We are next to enquire, of what a wife may be endowed." The definition of dower, given by Blackstone, suggests almost every thing important to be known. First; the estate must be in lands & tenements; therefore, of an annuity, says Coke, that chargeth only the person, & issueth not, out of any lands or tenements, the wife shall not be endowed. Secondly, the husband must have been seised of the estate in whi dower is claimed, at some time during the coveture. But a legal not actual seisin, as is required to make a tenant, by the courtesy, will be sufficient, because it is not in the wife's power, to bring the husband's title to an actual seisins, as it is in the husband's power, in regard to the wife's land. An actual seisin is an actual possession; a legal seisin is a legal possession. The time of seisin, provided it be during the marriage, is immaterial, & as to the duration of it, for if the husband, has seisin for an instant, for his own use beneficially, the right to dower accrues & cannot be defeated by his sub— —sequent alienation, unless indeed the land be re— —covered fr: him, by better title. The question, has indeed occurred, whether the wife be entitled to dower, in the case where, the husband buys land

& immediately executes a deed of trust, in whi the wife does not join. The land is sold under trust, and is she entitled to dower?. The question has not been decided in this State, but has been re— —marked on, in Moore & Gelliam 5 Munf: 346 & Childers vs: Smith. 1. Gil 200 — But in New York and Masstts, it has been decided that she cannot claim dower, provided, the deed of trust has been executed. 3dly. As to the nature & quality of the estate as to whi the husband must be seised, it is well settled, that it must be of the immediate freehold, & of the 1st estate of inheritance without any intermediate vested estate of freehold. (see 1. Co: Litt: 592 & notes.) It is said by Blackstone, that the husband must be seised of such an estate, that the issue which the wife might possibly have, might possibly inherit it, and the influence seems to be, that the right of the wife, to be endowed, depends on the capability of issue, to inherit. These two rights, tho" they usually exist together yet, they in no manner depend upon each other. That they usually exist together is evident, since, if the husband be seised of an estate of inheritance it must be such an estate, as is inheritable by the issue he may probably have. And the two

rights are not absolutely connected, since an actual seisin of the ancestor, is necessary at com: law, to a descent, a legal seisin only to dower, & therefore the wife might be endowed when the issue could not inherit, and on the other hand. 1. Co: Litt: 578 — 582. states cases in whi the issue might inherit, tho" the wife cd not be en— —dowed, the case of dower in special tail, statute by Blackstone proves nothing. The principle I contend for is more evidently correct, when applied to the law of Va:, whi declares that the wife shall be endowed of all the lands & tenement whereof her husband was seised of a state of inheritance at any time during the coveture, besides, by our Law, the issue may frequently inherit, when the wife cd not be endowed, as in the case of marriage, void in law. The remarks on the connection between dower, & the rights of the issue to inherit do not apply to courtesy. For that right to exist, the issue must not only be capable of inheriting, but there must not only be capable of inheriting, but there must be issue from, & thus there is a connection, & courtesy whi does not exist in the case of dower, the reason of this distinction is probably of feudal origin; as courtesy was introduced into England, with the Feudal system.

At com: Law, a woman cd not be endowed of a trust estate; but by an act of our Legislature, trust estates are declared subject to dower & courtesy, (see the case of Claiborn & Wife, vs: Henderson and others. 3. H. & M. 322.,) — in whi the question of a wife; right to dower, in a trust or equitable estate, was elaborately discussed & decided in the neg: on the subject of the kinds of trust estates of whi the wife may be endowed, see Heth vs: P. Cocke & C. Wife. 1 Rand. 344. Neither at com: law, could she claim to be endowed of an estate held by the husband in

joint tenancy, because the other joint tenants claim by survivorship, & the claim was superior to hers, but in this respect also, our law is different; a stat: having enacted, that if partition be not made between joint tenants, the parts of those who die first, shall not accrue to the survivors, but shall be subject to dower & other charges &c. In many cases, the wife may elect, of what estate she will be endowed, as in exchange by the husband, or in sales of lands by him, reserving rent: see Bacon's abridgements. Title dower. letter E. In some cases she may be endowed anew, as, when the land assigned her in dower, has been recovered by title paramount. On the subject of the right of the wife to be endowed estates conditional, determined, or extinguished, see Ba: abr: title dower letter B

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Pa: 132. "Next, as to the manner in whi a woman is endowed." &c On the death of the ancestor, the law casts the freehold on the heir immediately, & the widow has at com: law, no estate in the land, & cannot enter upon the dower until assignment. see 1 Co: Litt. 584 Hence arises the necessity of assignment. As the freehold is, by law cast on the heir, he is the person to make the assignment, & this, whether he be of age or not. see 1. Co: Litt: 606. 2 (...) 418. —. If the heir be not in possession, then it ust be made, by the person having the freehold. 1. Co: Litt: 591. & 1. Henning & Munford. 368 If the estate be devisible, the wife should be endowed of the 3d part, by metes & bonds. — In making this assignment, it wd be reasonable, that she shd have a third in value & not in quantity, & such, I confidently state the law to be, notwithstanding that Judge Roane in a case, in 4. H & M. 376. seems to think otherwise, & that a third in quantity shd be allotted. Whatever may have been the com: law rule, ours is difft, & the difference may be owing, to the difft circum— —stances of the country. There, a 3d of each kind of land is assigned. &c.

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If the estate be indivisible, the wife must be en— —dowed as stated in the text, or she may have the separate alternate enjoymt of the whole &c. If subsequent to the death of the husband, the land be improved in value, by the heir or any one else — widow is endowed according to the improved value. In all cases of assignment of dower, the assignment shd be certain, & discharged of all conditional limitations &c. At com: law, if a widow were not endowed, she had no other remedy than by a suit called the writ of dower, to recover her dower of the heir or tenant of the freehold, or if she had received a part of her dower from any one, she was obliged to bring in her writ of right of dower. But, as great delays might be occasioned by these proceedings, it was enacted by magna charta, that she shd remain in the chief house of her husband for 40 days; within whi time, her dower shd be assigned her, this term of 40 days, was called, her quarantine, but this act produced very little benefit to the widow, since no penalty was imposed on the heir or tenant, if dower was not assigned in that time. It was therefore enacted, by the Stat. of Merton made the 20th Henry 3d, that the wife shd recover damages, in her writ of

dower, fr: the time of the death of her husband. For the construction of the Stat: see 1. Co Litt: 584. & 2. Saunders. 43 & notes. — In this State our stats give the wife a much surer & speedier remedy, for the recovery of her dower, than she has in England. Besides the writ of dower & her suit in Equity, whi she may bring in all cases, she may here, remain in the mansion house, & in possession of the plantation, thereunto belonging, without being chargeable with rent, until her dower be assigned. And if she be thereof in the mean time deforced she shall have a vicontial writ (Tate 175.) whi is a writ directed to, & triable by the sheriff, without staying for the county "court", the nature of a writ de quarantina habenda, whi was the writ by whi in a summary manner might recover her quarantine; under the Stat: of Magna Charta, to restore her immediately to possession. And it is also declared, that whoever shall deforce widows of their dowers, or such mansion house & plantation, shall be answerable to them in damages, to the value of the whole dower, to them belonging, from the death of the whole dower, to them belonging, from the death of the husband, to the day of the recovery of seisin by the widow. 1. Leigh 449. Tho" the legal remedy of the

wife, when her dower is not assigned her, be as I have stated, the common mode of assigning dower, or procuring it to be assigned, both in England & here, is by an application to a Ct of Chancery, whi appoints commissions to assign it. Connected with the assignment of dower, the admeasurement of dower needs consideration; if the heir, within age, assign more land to the widow, than she is entitled to, or the tenant assign too much, in the 1st case, the heir upon attaining full age, shall have a writ of admeasurement of dower, by the com: law, & in the 2nd case, whatever be his age, (see 1. Co: Litt: 606. Ba: Abr: Title dower, letter K.) By it, the allottment shd not altogether be set aside, but the excess corrected. see Fitz, Na: Bre: 149. & S. Call, 13. — If the sheriff, on a writ of dower, assign too much, the heir may have a scire facias to obtain an assignment de novo. See 1 [blank space] 402. But if the heir, being of full age assign excessive dower, he has no remedy at law. [Ibid] — [Inere] — has he any in Equity? — If the widow, after assignment, improves her dower land, no writ of admeasurement of dower, he's therefor: if the dower was fairly assigned at first. This writ of admeasurement, is not given to the wife; if too little be assigned, she may refuse to accept it.

Page 136. "How dower be be barred or prevented" &c. First, dower may be bared by the wife joining her husband, in the way prescribed by the Stat: in conveying her husband's lands. Tate 97. 2ndly, By an act of assembly, the same in substance with the Eng: stat: on the same subject; if the wife elope fr: her husband, & goes away, & continues with her adulterer, she shall forfeit her dower, unless the husband, be willingly reconciled with her, & permit her to [blank space]

or dwell with him. Under the Eng: statute, it has been determined, & under ours wd be determined, that if she go away willingly, but [blank space] not remain with the adulterer, or remains with him against her will, or if she be carried away, against her will, but afterwards consents, & remains with her adulterer, she shall lose her dower: Ba: abr: title dower. letter F. — 3dly, dower may also be forfeited by distraining {(...)} fr: the heir, the Charter relating to the land of whi she claimed to be endowed, & bringing such [blank space] in a Ct of Record. Ba: Abr: title dower letter F. — 4thly. Dower may be barred by a release made by the wife, after the death of her husband, to any one from whom it might have been demanded. So, if a woman takes a lease for life, of her husbands lands, after his death,

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she shall have no dower, because she cannot demand it against herself. Ibid. c. 5thly By a divorce of vinculo matrimonii — — The acts of the wife, affecting her dower, of whi we have been speaking, are those committed by her before its assignment. In England, after being assigned it may be forfeited by the [blank space] (1st; ; For the alienation by the widow, for a greater period, than she cd lawfully alien; & 2nd for committing waste. The 1st is no cause of forfeiture; the 2nd is in this State. See Stat 29 as to divorce mensa. 6th Lastly; the most usual mode of barring dower is by jointure, on whi subject at present, it will only refer you to some authorities, whi will serve to ex — —plain the law. See Co: Litt: 611. 4 H& M. 23. Tate 176. 27 Henry VII What is said in the text on the construction of the Eng: statute, is applied to our own. In addition, the right of election here exists, tho the jointure were made before the marriage, if the wife was then an infant. The difference between dower & courtesy, in {the} regard to the quality & quantity of states, are these, 1st, Dower consists of the 3rd part, of the estate of Inheritance of the husband. Courtesy, of the whole, of those of the wife. 2nd Seisin, in fact, of the wife, in generally neccessary, to give

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that of courtesy to the husband. 3. The husband must be seised of an estate of Inheritance for the wife to be entitled to dower. The wife must be seised of such an estate, that some issue whi the husband has by her, may possibly succeed to the inheritance, as her heir for him to have courtesy, so that there must be issue to give the latter, but the former. —. 4th. The wife can only recover her dower by legal pro— —cess, the freehold, on the death of the ancestor, resting in the heirs. The husband has his courtesy by operation of law, the freehold, at the death of his wife, resting in him & not in the heir. —. 5th. The wife holds her dower, disengaged fr: all specific & general charges; made by her husband, during coveture, & from all general charges before. The husband holds his courtesy, subject to the charges of the wife before coveture. see 1. Co: Litt: 565. note L. She can not make any after coveture. —

B: II. Chapter IX. 161. Of estates less than freehold — Pa: 141. "A month in law is a lunar month. or 28 days." As remarked by Chancellor Tucker; it may well be doubted, whether the rule laid down in the text, is generally ad— —verted to in this country. I shd think indeed, that the calendar & not the lunar month, is almost universally in contemplation of the parties contracting, here. No decision has however occurred on this subject, in this State; but as the rule stated in the text, seems well established at com: Law, I suppose our Cts wd observe it, unless there was some evidece besides the general understanding of those who contract that calendar months were intended. I see, that in a case in New York, reported in 15 Johnson's reps: 119 the com: law rule is recognized, & declared to be the well settled rule of construction. But tho' this is the construction given to the term "month" or "months", when it occurs in Stat, deeds, contracts generally, or legal proceedings, yet, neither in Engnd nor in this country is time thus computed, with regard to Bills of Exchange, and such promissary notes as are put upon an equality footing with bills of exchange. When they then are made payable in so many months after date, the computation is always made by Calendar months. See Chitty on Bills, 268. Page 142. Note: "However, in a case in equity." &c. When the law requires an act to be done within so case in Leg: contended each — see Munf.:

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many days fr: a certain day, it is a matter of some uncertainty, or at least controversy whether that day is to be excluded or included in the computatn. Coke says, the expressions "from the date"; & "from the day of the date"; both exclude the day of the date. I Co: Litt: 407. — So, in re— —gard to Bills of Exchange & promissary notes, if they be made payable in so many days after sight or date, the day of sight or date in excluded {fr:} in the computation. See, Chitty on Bills 264 — 8 Mass: Rep: 4{8}53. 12 Mass Rep: 403. So, where the law requires so many days notice, say ten days notice, in legal proceedings, a (...) &c the day on whi the notice is given is excluded in the computation. — — — If, indeed, this was not the rule, a note executed by a man, made payable one day after date, wd be payable instantly. There are some cases however, in whi the rule is different; As, if a lease for life be made, to commence fr: "the date", there the day of date is included — see Lord {&} Raymond Reps: 84. It is stated by the Editor, Mr Bailey, on a review of the authorities on this subject, that when the expressions are "from the date", the rule seems be, that if a present interest is to commence from the date, the day of date is included; but if they are merely used, to fix a terminus, fr: whi, to compute time, the day is excluded. The reason of the first part of the

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rule is, that when words of an equivocal meaning are made use of, & there is no index fr: whi the intention of the parties using them, may be gathered, the construction shall be made most advantageously for him in whose favor the instrument is made. This rule was sanctioned by the

late Judge Washington. When the computation is to be made fr: an act done, the day in whi the act is done is to be included. 9 Cranch. 104. Pa: 144. "With regard to emblements" &c. I have already explained, in what manner the com: law of Emblemts in regard to tenants for life has been affected by our statute: The com: Law, on the subject of the rights of tenants for years what terms have a certain termination, is not effected (altered) by our Stat:. That, on the subject of the rights of tenants for years, the continuance, of the term, depends on the life of another person, has been effected by our Stat: whi enacts "that if there be a tenant for life of lands or slaves, let, or hired to another, at the death of such tenant for life, if that event happens after the first of March, the lessee, or person hiring, shall hold the land or slaves until the last day of Decr following, paying rent or hire, to that time. In such a case, the tenant may consequently take the emblements. But in other case, of uncertain determination of estates for years, as when the lessor has an uncertain

interest, whi determines otherwise than by his death; the com: law rule is in force, as also, in case of tenant for life, dying before 1st of March. Pa: 146. "For in the case" &c. When the tenant determines his will before rent day, the lessor is also entitled to demand the rent whi wd have become due, the next rent day. 1. Co: Litt: 648. and Notes. Pa: 144. "For no estate of freehold can commence in future" &c. This rule of Com: Law, we have altered by a Stat: whi declares that an estate of freehold or inheritance, may commence in future, by deed, in life manner as by will. — Tate 112. Pa: 147. Note. "When a lease or demise" &c. Nor is a notice to quit, necessary in the case of tenancy at will, properly so called. That tenancy, if created, might & may be deter— —mined by either party, without any notice whatever to the other — subject to the right of the other, to emblemts the removal of goods &c. It was only after the Cts began, whenever it cd be done, to construe all leases, when no certain term was mentioned, with tenancies, fr: year to year, so long as both parties pleased, that notices to quit become necessary. (Pa: 154. And by Stat; &c. These Stats: have never been reenacted in this state, but by an act of our Legis— —lature, on the subject of forcible entries, & detainers, the owner may at any time within 3 years, recover possession in a summary manner, without the necessity of a formal {forial} entry and tedious suit, at Com: Law. Tate 269. —)

B: II. (no forfeiture for any 105 alienation of a greater (...) Chapter 10. Title than (...) might lawfully Of Estates upon Condition. make.) Pa: 150. "There are express conditions" &c. It is frequently important, to ascertain, whether the condition be precedent or subsequent. Tate. 101. Conditions precedent; are such as must be punctually performed, before the estate can vest—.—. Condition subsequent, are, when an estate is already executed, but the contrivance of such an estate, depends on the breach, or performance of the condition. There are no precise technical words required; to make a condition precedent or subsequent, nor does it depend on the circumstance, whether the clause be placed before or after the grant, in the deed. The only question is, whether the thing is to happen, before or after the estate is to vest; if before; the condition is precedent, if after, subsequent — 2. Bos: & Pal: 295. In the one case,

the condition must be performed, for the estate to vest; — in the other, it must be performed, unless impossible, illegal, &c for the estate to be defeated. Pa: 157. "Estates held in vadio, in gage or pledge" &c. Mortgages therefore, are examples of estates to be de— —feated on condition [blank space] grant. And as far {is} {as the} {2} (3) doctrine (1) is (4) stated, pa: 158 (as to the strict performance of the condition on the part of the mortgage) carried, that in a recent case of the Ct of appeals of this state, reported in 4 Rand: 245, it was decided, that when it

was stipulated in a mortgage, that money shall be paid, on or before a given day, & it is paid after that day, the mortgager is not deprived of his right of action at Law on the mortgage, & that the acceptance of the money by the mortgager, after the day appointed for payment, does not change the rights of the parties at law. — On the subject of Mortgages, it is necessary to call your attention to the difference between mortgages & conditional sales; strictly & technically speaking, a mortgage is a conditional sale. But in point of fact, it is intended as a mere security for money, & so, the cts regard it. A conditional sale, on the other hand, is intended by the parties to be, what the name imports, a sale on a condition. The only thing then, whi distinguishes the two fr: each other, is the intention of the contracting parties. Wherever a borrowing & a lending of money is the object of the parties, the mortgage is taken as a security, & the right of redemption exists in equity; but wherever a sale & a purchase of the property, is the object of the parties, it is a conditional sale. The rules of law on the subject of the performance of conditions, are strictly enforced, & no redemption exists, after the day appointed for the performance of the condition. This distinction between mortgages and

conditional sales does not depend on the form & terms of the contract. Tho' it shd appear to be a conditional or even an absolute sale, if it can be shown that it was intended as a security for money, a ct of Equity, regards it, as a mortgage, & permit to the party, to re— —deem. see 1. Wash. 126. 1 Call: 292. 2 Call: 425. 2 Mun: 40. 1. Rand: 120. — 1. P. M. 261 — There is another species of securities for the paymt of money in this State; un— —known to the English law — I mean, Deeds of trust. The difference between a deed of trust & a mortgage, consists, in the intervention of a trustee, in a deed of trust, in whom is vested the power to sell, for, non— — payment. This is a power whi a mortgager can not exercise; he being obliged to resort to a Ct of Equity, to decree a [blank space] closure & sale. Having explained the general distinction between mortgages & deeds of trust, I will only refer you, in addition to the cases in our courts, explaining the powers & duties of trustees, & the general principles governing those trusts. — 2 Munf. 407 4. do: 25i. God. 130, 1. Read 72. do: 172. do: 306. 6 Munf: 541. 1 Leigh 499. Tate 217—219 Page 153. "Upon the same principle" &c. These forfeitures are incurred at com: Law, in consequence of the tenants selling & conveying, a greater estate than he lawfully might. But as, by a Stat: Va:, it is de—

—clared, that alienation or conveyance, purporting to pass a greater estate than the grantor may lawfully convey, shall operate only as an alienation of the right & title whi he may lawfully convey. No forfeiture can here arise fr: such alienation. Pa: 155 "A distinction is however made" &c. "The condition in law," here spoken of must be distinguished from the condition implied in law. ante. 152. The material distinction between a condition & a limitation is this. The latter specifies the utmost time of the continuance of the estate; the former marks some events or acts, whi, if it takes place in the course of that time, will defeat the estate. In the case of a limitation the estate cannot endure beyond the time prescribed, & ceases at the time, without any act being performed by any one; in the case of a condition the happening of the Court does not defeat the estate until entry by the grantor or his heirs for breach of the condition. Hence, tho' words be used whi import an estate on condition, yet, if on the happening of the event, the estate is to go over to 3d persons, it is construed, not to be a condition — because then as only the grantor or his heirs may enter for the breach of a condition, the remainderman wd be without remedy; but it is construed, a limitation (or to speak more properly as a conditional limitation partakes of the character both, of a condition & a limitation 54. Kent's Com: 122). So that on the happening of the event,

the 1st estate ceases, & the estate of the remainderman becomes immediately vested, without entry or claim. An estate on condition in deed is therefore always reserved to the grantor & his heirs; an estate or condition, in law, or a limitation, is always made to a stranger. The words usually made use of creating a condition are, "upon condition" whi are the most appropriate, or the words so that, provided, if it shall happen &c. The words usually employed, to create a limitation are; while, so long as, until, during &c, see 2. Co: Litt: 4 Ba: ab: title conditions, letter H. — —

Chapter 11th Of Estates in possession, remainder & reversion. Pa: 167. "And hence, it is generally true" &c. When the estate is void in its creation, it is certainly true at Com: Law, that the remainder is defeated. But that does not seem to {have been} be the rule, when the particular estate was (is) defeated afterwards, at least as to vested remainders. (At com: Law, it was, as to contingent remainders.) (Coke) — (2. Co: Litt: 134) gives several instances of vested remainders, whi are not destroyed by the particular estate being defeated. And in Bacon (5. Ba: Ab: 826.) the rule laid down by Blackstone is thus modified, "When the particular estate is defeat— —able only, & the remainder is by good title, then, tho"

the particular estate be defeated, yet the remainder continues good". The distinction then, in regard to vested remainders, was between those particular estates whi were void, & those whi were defeatable; a distinction whi seems to me, correct. But a Stat: Va: has declared, that no remainder of any kind shall be destroyed, or in any manner affected by the alienation or merger of the particular estate, on whi it depends, so that now, there can be no question as to the rule here. Tate 101. Pa: 172. "But in both these species" &c. The general rule is, "that any limitation may be made, by way of executory de— —vise, so that, the same takes effect, within a life or lives & being, & 21 years & 9 months after those lives". Under this rule, prescribing the boundaries to limitations by executory devise, it was in the power of the owner of the estate, to suspend, not only the ownership of the inheritance for the limited time, but also to suspend the right to the intermediate enjoyment, so as to accumulate the income & add to the principle, and thus aggrandize the remote issue of his family, at the expense of the present, & perhaps, the 2 or 3 succeeding generations. Availing himself of this rule, a testator in Engnd W Thillason, who died in 1897, fixed, on the lives of all his sons & grandsons, born in his lifetime, & 21 years after the death of the survivor, as the period during

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whi, his immense property shd accumulate for the benefit of those of his posterity, who at the end of that period shd answer the description of "heirs male of his 3 sons," thus dividing his property at that period in 3 parts, and giving 1/3 to the family of each son. In the mean time they do not receive a dollar. The property originally amounted to half a million lbs; sterling. The calculation is, that the period of accumulation will probably continue 80 years & possibly 100, by whi time, it is supposed, the property will amount to upwards of one hundred millions of pounds sterling. But so far as depends on him, his children are in the mean time beggars. This case you will find in 4 Levy 227.

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Of estates in Severalty, joint tenancy, coparcenary & common. Pa: 181. "There must be" &c. Time [writs] of For farther exceptions to this rule, see 1. Co: Litt: 732 & note. It is there said, that this doctrine is confined to limitations at Com: Law and does not extend to estate raised by way of use, or to devises. writs of [pross] Pa: 182. "And therefore" &c. In confirmation, I refer you to a case in Rand: (3). 17{8}9 —. Pa: 183. "And if any waste be done" &c. {This} These Stats: we have reenacted, Tate 518., & tho" in its terms it only extends to tenants in common, I presume, here, as in England, it wd be held by construction to include joint tenants. The Stat: [blank space] rendering them liable to actions of acct, we have also reenacted. Tate 71. Pa: 183.) "From the same principle" &c An exception to this principle at Com: law was, in the case of a partnership in trade. There, the capital or stock in trade, did not survive. This exceptn was allowed, for the benefit of commerce. 1. Vernon 207. 1 Co: Litt 737. But by a Stat: Va: survivorship has been destroyed in all cases, & the parts of those dying, directed to descend and pass, subject to like charges & incumbrances, as if they had been sole seized. Tate 441. —

Pa: 185. "By com: law" &c. These stats: have been reenacted Va: Tate 442. Pa: 185. "And therefore, if two joint tenants" &c.

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But this must be done by deed at com: law, unless it consisted of Chattels. 1. Co: Litt: 753, the partition for inequality, see 4 H & M. 184, & on the same subject see Call Johnston 3 Call 558. Pa: 187. "And his next heirs are two more females" &c. Here, an estate in parcenary maybe, when there are 2 or more males, as well as in the case of females, because law gives no preference of males over fem. {&c} Pa: 189. "Parceners are so called" &c. Parceners therefore, at com: law might be compelled to make partition, in whi respect they differed from tenants in common, & joint tenants. They could make partition too, by parol without deed, whi joint tenants cd not do. 1. Co: Litt: 704. As parcener cd {not} at all times compel a partition at com: law, they cd not maintain an action of waste against each other. Here, they have the same right to enforce partition & may sue each other for waste, also by a Stat: of Va: Tate 169. Pa: 189. "And he mentions many methods" &c. By a Stat: of this state no parcener shall possess any privilege over another, in a division to be made &c Tate 169. Pa: 190: &c. "With us it is dominated &c" By a Stat: Va:, children of persons dying intestate, or their issue, who shall have received an advancement from such intestate of personal or real property, must bring it into {Hotch Pot}, Hotchpot, or otherwise they will

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not be liable to come into partition of the estate descended. Tate 170. — For, what is an advancement, see 1. Madd: 627. — Toller on Exons. 375. Under this law as it now stands, it has been decided, that, if any advancement be made either on personal or real estate, the child must bring it into hotchpot, before he can be entitled to any part of the estate, real or personal, descending from his ancestor. See 3 Rand: 559. But in bringing the advancement into hotchpot, he need not account for the profits of the land, the increase or hire of negroes, or the interest of moving {money}. It is only necessary to account for the property as at the time it was advanced. See 1 Wash: 224. 3 Rand: 120 & 17 Munf's Reps: 356. Pa: 194 "As to the incidents" &c. Like joint tenants, they cd not be compelled at com: law to make partition. But by the Eng: Stat: & ours Tate 442, they, as well as joint tenants, may be compelled to make partition without deed if execto — and here, by deed or writing. Pa: 194. "Such as being liable" &c. These stats we have reenacted. Ta: 71. 518. Altho" the division of these estates may be compelled by writ of partition, the usual mode of obtaining partition, is, by a suit in Chancery. By Sep: acts of 1824. Pa: 7. (made prescribed suit in ...)) Tenant in common may join the (...) in all actions [Liy] R[C] 210[6]

B: II Chapter 13 175 Of the title to things real, in general. Pa: 196: note 1. In general, a person &c. Our Stat: has somewhat changed the law in this respect. By our Stat: (Ta: 269) on the

subject of forcible entries & detainers, if a man unlawfully or forcibly enters on lands, the party turned out of possession by such unlawful or forcible entry, by whatever right or title he held such possession or whatever estate he claimed in the lands, may have his writ of forcible entry & detainer. On such writ, the enquiry is not solely, who is entitled to possession, but tho" the defen— —dant be entitled, yet if he forcibly dispossesses the plaintiff, judgement will be rendered against him. The object of this Stat:, seems indeed, to have been to prevent persons from being judges in their own cases &c. Pa: 197. "Yet, if he omits to bring" &c In this state there are 3 periods within whi possessory action must be brought. If a previous entry as, in ejectment, be necessary to sustain his action, it must be brought within 15 years. If no such entry be necessary, then it must be brought

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within 20 years, if brought on his own possession, or 25 of seisin of his ancestors. Saving to infants, femescoverts, persons in prison, or non compos, 5 years after their disabilities are removed. (Supplement to revised code 261 — 2.) Page 198. "And upon proof thereof" &c. All writs of rights, must be brought within 20 years, if the party relies on his own seisin or possession of his ancestors or predecessor — saving infants &c 5 years, as above.

B. II Chapter 14 177 Of Descents.... The law of Descents in this chapter, was adopted by us with the com: law & remained till 1785, when, our Stat: of descents was passed; that Stat: abolished most of the principles of the com: law of descents, & substituted others. But we ought to understand the law of descents for 3 reasons. 1st Because of the general law learning whi shd be possessed. 2nd Of the understanding of C. Law, here. 3dly, In order to understand our own Stat: well. Pa: 203. "Consanguinity," this ought also to be well understood. Pa: 208. "1. Canon." Inheritances shall lineally" &c. Almost all those canons of inheritance have been repealed here. Our Stat: of descents will be considered in connexion with these canons & afterwards a connected view will be taken of it. It is important to understand the civil law, for it has been decided, that our Stat: has been (is) taken from it. Seisin may be evinced either by entry or by receipt of rent from tenant for life, or by tenant for years being possessed. Canon 1st. Actual seisin of ancestor is not necessary to inheritance in this State. But by our Statute

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a man's title descends. Under our Stat: also on failure of lineal descendants, the inheritance will descend lineally. Pa: 212. Canon 2nd Under our Stat: no preference is given to males in the descending line, or among collaterals — the only preference given to males in the descending line, is where the father is preferred before the mother. &c Pa: 214. This rule, so far as it regards primogeniture is abolished under. Under our law, both males & females inherit together. Pa: 217. Canon 4. It is in reference to this Canon and the extent to whi is has been repealed or adopted, that the meaning of our Stat. is at all uncertain. We will notice it hereafter

in a connected view. Pa: 218. Bl: says, "this mode of represenation" &c This opinion of Blackstone, certainly coun— —tenances the opinions of those, who think this canon also repealed by our Stat: But says Prof: Davis "I cannot see the connexion to whi the learned commentator alludes. Indeed, I will say with Judge Green, "I do not believe that it exists". For 1st; This canon formed part of the civil law, to whi the two preceding were unknown".

179 2d This 4th rule existed in England before the existance of the other two and exists there now in gavelkind lands. 3d This rule in point of fact is wholly undependent of the other 2 (ex— —cept by its equity to correct some of the hard— —ships) and is prior to, them in point of applica— —tion instituted (as well as). P. 220: Canon 5th By our stat: on failure of linial descendants, the interest goes first to the fa— —ther, 2d to the mother, brother & sisters and their descendants. 3d if there be none of these the estate is divided into 2 portions & goes in the same order as above to the paternal and maternal ancestors. The blood of the purchas— —ing ancestor in only regarded by our Stat: in one case (viz) when infant dies without issue seized of estate of inheritance, derived by gift, demise or decent from either parent: See (...): 11 & 12 Stat: This preference is very different from that shown by the Engh Stat: (1 R. Code 356) 1st difference our Stat: confined to infants, theirs goes to adults. 2d diff: ours confined to parent, theirs goes farther. 3d difference ours gives more preference, theirs amounts to exclusion of the kindred on other side Ta: 224. —

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P 224. Canon 6th. Under our Stat. half [blood], not excluded but take half portions with whole (...). Pa: 234. Canon 7th & last, no preference to male stocks given by our law, but estate divided in de— —fault of children, father or mother & into two portions the one going to relations by father, the other to those by mother. Va: Stat: of descents Tate 107. Sect 1st. This abolishes the common Law principle that seisin of another is necessary to descent. It abolishes primogeniture and the distinction between males & females in descent. Secn 2d This constitutes that part of Pl: 1st Canon which he says is adopted by Notes. Secn 3d This repeals that part of 1st Canon which declares that estates shall never lineally descend. Secn 4th. In default of father to mother, brothers & sisters. The mother is not preferred as the father is. Secn 5th 2 moieties. This repeals those canons which descend to blood of first purchaser. And in default of knowing him confine it to the males. In respect to this section, it need only be remarked that by the division, relation of different proximity may inherit, for when division is made each moity goes independent of the other. Secn 6th Gives the same preference to Grandfather that Secn 3d does to father & secn 7 corresponds with secn 4th. Secn 8th does not make a subdivision on

181 the same division made by Secn 5. Secn 9th corres— —ponds with 4 & 8. Secn 11 In this case Estate not divi— —ded into moities. Secn 12 make the same provision as to mother as

Secn 11 does to father. These two last sections do not, with the other Secn of the Stat: apply to personal property. See [Leal] of stat: of distinction & they constitute the only exceptions to the otherwise total repeal of Canon 5. And to make these operate the person dying must be infant without issue, must have obtained estate by gift, descent or derive from father or mother & the father or mother (as the case may be) or some relation on that side, no farther off than Grandfather or their descendants. Secn 13th At comn Law no person can hold estate in opposition to persons after born, who if in being at time of its descending would have been entitled. This repealed by 13 Secn of our Law, except as to chil— —dren. Secn 14. Nothing similar to this in com: Law. For this totally disregarded blood of purchasing ancestors. Secn 15th permits and regulates descent to half blood. Secn 16th The previous secns have with perfect channels, ascertained the person to whom in any case the inheri— —tance shall go. This secn is designed to ascertain the portions in all doubtful cases and has accomplished its object with much less precision. For suppose

182 Descents Chap: 14

all those called to the succession per capita be dead, leaving issue. Are these issues to take per capita? or per Stirpes? To this case the Statute does not apply. The same question also arises as to the children of brothers & sisters. No cases occurred in the State, involving this, till a case in 6 Rand: 335. In that case, the intestate left no children, father, mother, but had a brother or sister, who were both dead — the 1st leaving one daughter, and the other 4 sons & 6 Grandchilren, the descendants of children who were {both} dead. The question was, shd these nephews & nieces take per capita, as equally near of kin, or per stirpes, as repre— —sentatives of their parents. Here it became necessary, to enquire into the origin & prin— —ciples of Stats: & if the Statute shd {have} be{een} found to have passed in aid or alteration of the Com: Law; the 4th canon of com: law wd have settled the difficulty. But a majority of the Court determined the stat: to have been made in total repeal of the com: law of descents, and consequently that representation in virtue of the 5th Canon was abolished, & taken from English statutes

B: II Descents 183

of distribution, and civil law, on whi that Stat: was founded, & that to expound the Stat: reference shd be made to civil law whi did not admit representation among collaterals standing in equal degree, and they decided the case thus, 3 to 2. In consequence of this decision, collateral relations of equal degree, must inherit per capita. But as to descents, it seems to me, the rule in civil law shd not apply, because the civil law does permit and enjoin represen— —tation among descendants. For if the principles of Com: Law are repealed, those of civil on whi by the view taken by the Ct the law is {repealed} founded, must be the rule of interpretation. And according to that law, (as is said above) as well as the com: law, representation among descendants is enjoined. In the case in 6 Rand:, there were some intimations that represenation wd not be permitted among descendants standing in equal degree. Judge Tucker is of this

opinion, see his commentary on the subject. But the intimation seems inconsistent with grounds of decision.

184 Descents Chap: 14

Sect: 17. Hotchpot — Sect: 18. Alters the Com: Law rule as to aliens & bastards. No bar in descent here, it removes the bar of alienage both in lineal & collateral descents. 2 Leigh 109. Bastards may here inherit, on the part of the mother.

B: II 185 Chapter 15 — Title by purchase & 1st by Escheat. Pa: 244. Here are 5 methods of acquiring Estates, 1st by Escheat. Bl.'s remarks, that the division of titles into descent & purchase, applies to several other titles as well as Escheat. Escheats cannot consistently be referred, to either title — not to descent, because it does not accrue in right of blood, nor to purchase, because it vests by operations of law &c. Estates of Courtesy & Dower, cannot be re— —ferred to either title, not to descent be— —cause they do not accrue in right of blood, nor do they follow the rule of inheritance — not to purchase, because they do not accruse by operation of law. But they resemble the latter more than the former, and like escheats, may be classed with estates by purchase. A better division of titles wd be, titles by purchase, whi wd include those required by act of parties, & those by act of law. Pa: 245. In this state, the only cause of escheat, is defeat of heirs. In England it escheats to the crown. Here, to the commonwealth, other— —wise, it wd be open to the first occupant.

186 Title by Escheat Chap: 15

Pa: "243. In respect to all adult descendants, the "1st difference is entirely abolished in "Va: & in regard to all infant descendants. "Disabilities of alienage are removed in "collateral as well as lineal descent "(2 Leigh) 109) who have devised their estate "by gift devise, or descent, fr: either parent "it then passes to the parent fr: upon "derived, yet the latter are admitted, in "case of failure of the former. In all "these cases, the rule in extended beyond the "com: law application in Va:, for while "the com: law applies here only to estates "of inheritance, it extends to cases of gift "or devise &c and on [blank space] of of blood, of "the original ancestor, it does not escheat, "but goes to the relations on the side from "whi the estate did not come. With "regard to the 2nd difference: Estates by "descent, make the heirs liable for the "acts of the ancestor; not so, in case of estates "by purchase. In Va: an estate escheats, "when no one existed to whom it wd pro— "—perly descend by the Statute of descents. —

B: II Title by Escheat 187

4th "Monsters". Presumed the same rule here, but no case has occurred. 5th "Bastards." Here, Bastards can receive from their mother. Bastards, in England, are all children born before lawful

wedlock, & all not born in a competent time afterwards — but here, all born before wedlock, if there is a subsequent marriage & if acknowledged by the husband are deemed legitimate. In England, the marriage must be valid. In Va: children of a null marriage are legitimate, see distinction between legal and canonical disabilities. 6th Aliens. As the law does not permit aliens to hold lands, it passes thereby in descent, and calls others to the succession, the more remote, for it wd be absurd, to throw lands upon them, that they might forfeit them. But an alien may purchase lands — that is an act of his own — but lands are forfeited to the commonwealth. By an art, passed by our Legislature, the rights of aliens are greatly enlarged, as to the power of holding lands — they can purchase of hold lands — & an alien may inherit lands from another

alien, if he makes a declaration in Ct: that he will live in, & become, a citizen of the State. See session acts 1835. As an alien cannot inherit, the qn arises, can a citizen of this State, devise his lands to a native, directing them to be sold for alien relations? See 5 Munf: 117 & 160, & 3 Wheaton Rep: 563. It was decided by the Ct of appeals in the affirmative. By com: law neither aliens can inherit, nor can inheritances be transmitted through them Sir E. Coke's case overruled. The disability of alienage in the descending line has been removed by Statute. In the collateral line, Judge Green thinks it unaffected by our Statute, & that it still exists. No case has occurred involving the principle. If Judge Green's opinion is correct, the question might arise also, as in Coke's case under our law (Two brothers being citizens & father alien). If it shd, there is no doubt it wd be also overruled. Pa: 251. 7th "Attainder" At com: Law, on judgement of death, pronounced on conviction of felony or treason, the blood of the

person becomes corrupted & the person is con— —sidered as dead in law. This consequence of the judgement of the Ct is called Attainder, & frequently, persons were attainted by act of Parliament. Here, no bill of attainder can be passed by the Legislature or by a verdict of Law. Title 101. The constitution of the United States and of Va:, both forbid it. There shall be no corruption of blood and of course, there shall (can) be no attainder. So, descent, may be through them to their heirs. Pa: 256. "Before I conclude &c" And this is the of corpo— —ration. As, against the commonwealth, the lands granted to a corporation, wd go rather to the person granting them; but Prof: Davis wd be superior in case of purchase, to either. Escheater, is commissioned by the Governor in every county, concerning this officer see Tate 195. He has cognizance of lands escheating. This officer is not noticed by Bl: in the chapter on inferior officers. Tho" this officer formerly existed in England, & is a common law officer. Escheators jury consists of 16: — 12 of these may act. —

190 Chap: 16 Chapter 16th Of title by Occupancy. (...) Pa: 259. "Estates per auter vie." Stat: 29. Ch. 2. &c The only difference between this Stat: & ours is, that this does not make the estate assets in the hands of the devisee. Ours does make it assets in the hands of the devisee. 1 R. C. 389. Pa: 261. The law of Va on this subject is similar to that of the com: law. In order to ascertain to whom lands formed in a river belong we must first ascertain whether the bed of the river is public or private, & this depends on its being navigable (or having the ebb & flow of tide) or not, in the former case, formations go to the public; in the latter to persons owning lands on either side. But the question may arise as to that person. When one man owns the land on both sides of the river, there can be no difficulty. When different persons claim, each one has a right to formations, to the middle of the river — it being the dividing line.

II 191 Chapter 17. Of Prescription It has been said, that title by prescription could not eist here, because the com: law principle is, that prescription must have from time immemorial, whi is, according to most authors, since the reign of Richard 1st, long since whi time, this country was dis— —covered. But Coke & Syttleton say, it need not be referred so far back, but only immemorially. So, at com: law, there may be title by prescription here. 1. Co: Litt 36. 1. Rutherford's institutes. 134. Prof: Davis thinks that such a title may exist here, with this provision "if Co: & Litt: be right." Judge Tucker's opinion is adverse, who states, that most of the bar, agree with him. Decision of Court of appeals in 4 Rand: 65, gives colour to the opinion of Prof: Davis, by making adverse possession for 20 years prima facie evidence of right by prescription.

192 Chapter 18. Of Title by Forfeiture By Stat: (Tate 161) no forfeiture of real or personal property takes place by {any} conviction of any crimil mis— —demeanor ot treason. Pa: 268 {"} The Stat: of mortmain has not been reenacted in this State, & the only check on acquisition of lands by corporations are the checks imposed by their charter, wh: generally restricts them to hold no more than necessary; what wd be the consequence of corporations purchasing lands in opposition to their charter has not been decided. Certainly it wd be good cause for forfeiting their charter. Pa: 274. "Forfeiture of Aliens" &c. When an heir is an alien the lands are escheated (this altered by Stat:.) If he purchase his lands are forfeited. This forfeiture is inevitable in England. Our Stat: says, if he purchases and becomes a citizen before his lands are escheated, the Ct. must release them to him or if he dies or sells them, before institution of proceedings against him, his heir, or the person purchasing hold them from him, free.

Title by Forfeiture 193

Our Stat: improperly terms this escheat instead of forfeiture. Pa: 124:: Can an alien be trustee in a conveyance to a deed? or: are they forfeited? (Munf. 305 decides that he can be, & that they are not for— —feited, i. e. the lands conveyed in deed.) Pa: 275. "If he sells a larger estate,

by com: Law conveyance, than he has his estate is forfeited." Not so here; for no conveyance can pass a greater estate, than the person who makes it, is lawfully possessed of; so, there can be no forfeiture. Ta: 101. Pa: 275. "Disclaimer." What wd be the consequence of such disclaimer here has not been decided as far as we know. On the one hand it wd seem just; on the other Bl: says it is founded on feudal principles, wh: of course do not exist in this country. Pa: 281 — 5. The next kind of forfeiture &c. This exists here as at com. law and breach of condition is cause of forfeiture of (except as to mortgage). 6 Waste. Acts constituting waste cannot be defined accurately for what is waste in one place is beneficial in another. This remark applies to different neighborhoods as to different States or countries, we must in all cases refer to the definition of Whatever does a lasting damage

to the inheritance, may be called waste. See 6 Mun 134 & 7 Johnsons 227 where it is said it depends upon the circumstances of the country & the situation of the estate. These remarks do not apply to waste on houses. Damage to houses is the same everywhere. Pa: 281. Sta: 6 Anne. 3 Co Litt 235. Burning a house by negligence or mischance is waste at common Law. The consequence is that all persons liable for waste must be answerable for {(...)} the houses burnt in their possession. Stat of Gloucester 6 Edwd II. made all tenants for life or years liable for waste & consequently, for accidental or negligent burning. But by Stat 6 Anne such tenants are exemp— —ted from penalty for accidental burning unless there is an agreement otherwise & are responsible for negligent burning. We have reenacted the St: of Gloucester & have not that of 6 Anne. So it seems all tenants for life are bound for accidental or negligent burning — but no case of this kind has occurred nor does this seem to be the gene— —ral understanding of the country — the situation of the Law has not as yet been adverted to. — Any cutting of trees which is lasting damage to the inheritance is waste. The Engh distinction in regard to timber does not exist here, nor their

established division of lands, into arable, meadow &c. The doctrine of the text, in reference thereto is not applicable. Pa: 282. Opening mines is a waste in Va. 1 Rand: 258. But to work mines when opened is not waste. By feudal law, all vassals were liable for waste. Pa: 282. "There are 3 kinds of tenants at com. law liable to action for waste, till Stat: Gloucester, wh: we have reenacted. Tate 577. (Guardian in Chivalry). Tenants by courtesy, & Dower, the reason why they were responsible was, that they took estate by operation of law. Pa: 285. 8th Banruptcy. This species of forfeiture does not exist here, as we have no bankrupt laws in this state. By the insolvent laws of Va., a debtor is confined until he vo— —luntarily relinquishes his lands to his creditors, this cannot be considered as forefeiture, see Tate 316. Pa: 290 "Who may alien & to whome" &c. Stat: of Anne & Geo:2 are reenaacted in Tate 102. concerning pretended titles see Tate 103. Attornment. We have a Stat: against buying & selling pretended titles unless they may have been in possession for one year.

and if he offen, they are forfeited — one half to the commonwealth, & the other half to the person sueing. See Tate 103. Another exception has been established as to equitable rights, by judicial decisions. See 1 Leigh's Reps 131. Even in those cases to wh: the Stat: applies, conveyance is not thereby voidable. See 3d Call 481. That Stat: does not extend the legal rights — but to those wh: are equitable. The validity of the conveyance must be tested by com. law principles but its being operative, is not test of its validity, for even temporary possession at Com. law is the [blank space] see Tate. Tucker Com: 203. 2 Rand: [blank space]. Possession actual or constructive at Com. law, is necessary to all conveyances, however temporary or illegal. The conveyance is operative, but by Stat: he must have been in possession 12 months. Pa: 291: All contracts that are beneficial are valid for infants — if doubtful, voidable if prejudicial, aboslutely void. Purchase comes under voidable contracts, see 3 Munf. 456 where the doctrine restrained of the text is contraverted. Nor is, that doctrine restrained by reason, anywhere for the person is not supposed to recollect the acts wh: he endeavored to avoid by insanity; but to

make that plea because he does not recollect them. Pa: 293. "Case of alien born" &c. An alien may take a mortgage to secure a debt at com. law, independently of Stat.: 1 Dower's Rep: 2 B. 9. Wheaton 489. So also, he may be a trustee in a deed 6 Munf. 365. But an alien cannot buy lands mortgaged to him for security of his debt when sold. Kents Com: 64. Pa: 293. "Note" aliens cannot ever rent houses. This is not the practice here, — & every other sort of aliens as well as merchants are in the constant habit of renting.

Chapter 20 Of Alienation by Deed Pa: 295.

turn over.

 Chapter 20. Of Alienation by Deed. Pa: 295. It is not now necessary here or in England, that a deed shd be actually indented to make it an indenture. Under our law if there are 2 or more parties, it is an indenture — if one a deed poll, & it must be in writing, & delivered to parties after being signed & sealed. Tate 93. Pa: 297. "Considerations, or where land was purchased by him" &c. Statments of considerations are not necessary at common law to be made in deeds as feoffments gifts, grants &c. The publicity of the act as (...) of seisin was only necessary to exclude the fear of fraud. The statements of consideration only became necessary, on the introduction of uses; Cts of Equity requiring consideration, to raise a use — & when uses were noticed by Law; courts of law adopted the practice in deeds of every kind — & the considerations need not be stated definitely, as, "value received" is sufficient, however small, the value. Any consideration, not inconsistent with that expressed in the deed, may be

averred. 1. Rand 219, where a party proved a different construction from the one stated. So that statements of consideration, seem merely a

formality in some instances. As between parties either consideration is sufft to render any conveyance good (except deed of bargain & sale, whi require valuable consideration,) but not always as to 3d persons, ie. persons indebted, or subsequent purchasers for valuable consideration, set aside deeds upon good consideration. These deeds are fraudulent in law, tho" not in fact. Tate 104. An illegal consideration will not support a conveyance; as fraud (actual & intended) gaining usury &c are illegal considerations. Actual or intentional fraud vitiates all contracts. 1. Rand: 213. But 4. Rand: 365, makes deeds fraudulent in fact, valid between parties claiming under. This is an exception to the general rule, allowed perhaps on principles of public policy (Davis). Whether deeds wd be void as to subsequent considerations is doubtful. A question arose in our Court, as to, whether a purchaser, if he shd be evicted, shd be paid according to the value of the land at the time of purchase, or when evicted. Our Ct decided (2 Leigh 451.) that it shd be according to the value, at the time of purchase. Mr David thinks this incorrect.

A conveyance must be recorded in 8 months. A deed is always supposed to be executed on the day it bears date. 6 Munf: 550. 1. Rand 219. A deed unattested, if the handwriting can be proved, it is valid, as to the party making it — but it is necessary that it shd be attested & {recorded} acknowledged, so as to be recorded. — All deeds of trust & mortgages, only take effect upon recordation.

Note.) The 3 following Chapters, 27, 28, 29; shd be read after Chap: 26. This Chapter is continued on pa: 153.

Of Title by pre{g}rogative and forfeiture

Pa. 149 "It is held indeed that if a man" &c. It is said {tho} a few sentences further on that if a man starts game on lands of A and pursues it on the land of B he has a right to the game tho" guilty of a trespass against A & B. who might both sue him therefor. And when Bl. here states that if a man starts game on his own land and pursues it on the land of another, when he kills it, the property remains in him, he must also be understood, as in the passage just referred to, merely as affirming the right to the game. Thus understood, perhaps he is right. But if he means that a person starting game on his own land, has a right to pursue it to the land of another, he is most unquestionably wrong. He would be liable to action for trespass. The law is clearly laid

down in 10 Petersdorf abe: 168—169 and in 2 com. Law Rep: 184 where the principle is clearly laid down without restriction that, me who finds game on his own ground cannot justify pur— —suing it to the lands of another. — Pa: 420. "In the variety of penal laws" &c. In this State, no forfeiture of estate, real or personal, for conviction of any crime whatever. But there are some forfeitures whi accrue to individuals. As, if tenant for life of negroes, carries or permits them to be

202. Title by pregrorative &c Chap: 28

carried out of the state, without his consent, in Remainder or reversion, they are forfeited to the latter. Tate 499. Many such particular forfeitures as are spoken of by Bl: are annexed by our law to the [blank space] of prohibited acts. But such partial forfeitures are generally termed fines & penalties, not forfeitures. —. —

Chapter 28. Of Title by Custom. Pa: 427. "Heir Laws" &c This is only one, of the titles by custom, mentioned in the chapter whi exists (as is supposed) (there being no reason to the contrary) in this State, as in Engnd. No case has occurred concerning these, here. —.

B. II 203 Chapter 29. Of Title by Succession, marriage, & Judgement Pa 438 "There is therefore a very considerable difference" &c. Chattels are divided into 2 kinds, real or immoveable & personal or moveables. — The latter are again divided into those in possession and those in action. The right whi the husband acquires to the personal property of his wife, depends on the nature of that property; viz: whether, it consists of chases personal, in action; choses personal in possession; or chattels real. (See Toller) 1st All choses in possession, whi the wife has, at marriage, or obtained afterwards, in her own right, vest absolutely in her husband. 3 Co: Litt: 309 & 11. 2nd Her choses in action do not vest in her husband, unless he reduces them into possession during coveture. (These choses in action of the wife, are debts due to her, arrears of rent, legacies unpaid, personal estate in remainder or reversion. &c. So, if the husband dies before the wife, without having reduced them into possession, she, and not his, personal representatives, is entitled to them. 3. Co. Litt: 309. But, if the husband survives the wife, he, as adminis— —trator of the wife, may recover to his own use, the choses in action of his wife. But the question is, wherein does this reduction into possession consist?

204 Title by Succession, marriage, Judgement Chap: 29

It does not {consist} consist in a mere intention, but in some act whi changes the property, such as, receipt of the {pro— —perty} money, or judgement recovered in action, commenced by husband alone, for, the wife joining in the action, makes execution requisite to vest title in him. 1. Va. 396. 1. Galk. 116. 4. H. & M. 452. 26: 410. Hence, it is important to recollect, in what cases the husband may & may not sue alone. 1. Bl: Com: 443 (marginal Page) notes & these acts of the husband in order to vest the right in him, must be done by him in character of husband.

12. [Vesay] 473. 2 Call 447. 471. There are other acts of the husband whi amount to reduction into possession, such as alteration of contract or taking new security. 1. Galk 117. pl: 8. But the husband cannot devise away the chases in action from his wife. 2. H. & M. 381. We have been supposing the wife to survive the husband, reverse, it, & the husband may recover, as adminis— —trator, all the choses in action of his wife to his own use, & the question about reduction into possession cannot arise. 3d. As to the chattels real, of the wife. Marriage gives the husband the right to use them during coveture, the right to them by survivorship, the

B: II Title by succession, marriage, Judgement 205.

right to alien them, at any time during coveture. But if he does not alien them, they remain to the wife, after his death. Differences between chattels real, & choses in action as to the husbands rights, & [blank space] 1st As to his right of taking them, at the death of his wife by survivorship & by administn, & 2nd in the way in whi he divests the right of the wife; by alienation & by reduction to possession. An agreement to alien, in for this purpose, equal to alienation. See 2. Atk 207. He may alien the whole, or part, & the latter is sufficient to divest his wife's right, so far as it does. Or, he may alien on condition; whi will also bar the wife, tho" the condition be broken after his death & his executors recover — back the Chattel, after if it be broken during his life time, & he enter for the breach. 2. P. Wms: 366. — Or he may alien without consideration — this bars the wife's right; so wd a surrender of his wife's lease and taking a new one in his own name. 1. Boll: ab: 343. 3. Co: Litt: 307 — So wd an award in husband [blank space] by arbitrators between him & 3d person. 1. Vern: 396 — If the husband commit waste, the term of the wife will be forfeited. 3. Co: Litt: 306 And lastly, the power of the husband over the wife's chattels real, may be taken advantage of by his creditors

206 Title by Succession &c Chap 29

during the marriage. But he cannot charge them with any collateral grant; as of rent, so as to bar or even bind, the wife, if she survived. 3. Co: Litt: 748. — Two other facts, need attention. 1st. If the wife's property be so situated, that it may be real or personal according to Election, to be made, the husband cannot elect to have it personal. 4. Rand: 397. 2nd. A woman is not permitted to dispose of her property, in fraud, of a marriage then in treaty, without the knowledge of her intended husband. If she make any voluntary disposition of here estate, under those circumstances, it will be presumed to be fraudulent & will be declared void at the suit of the husband. 2. Chan rep: 81. 2 Leigh 11. Pa: 436. "A judgement in consequence" &c. Judgement sometimes also, vests title in the wrong party, as, if a man be sued in trover; for taking goods & damages are recovered to the value thereof, on paymt he has title to goods thus paid for. Pa: 439. "Hither also may be referred" &c see Va: Stat: Ta: 78. On subject of costs, whi regulates the amt: of costs & provides that, in all actions in law, the prevaling party is entitled to costs, in suits in Equity, & on motions, the court may allow costs or not. —

B. II 207. Chapter 21. — Alienation by matter of record. — Pa: 344. "Private acts of Parliament" &c. Before the Stat: whi converted estates tail into fee simple passed, October 1776. — Estates tail of greater value than £ 200 could only be barred by private acts of the Legislature. Since that Stat: this occasion for legislative interference has ceased. Nevertheless, the Legislature has sometimes passed acts authorizing the sale of property, whi accd to the genl law, could not have been sold —. — & this they did, particularly in regard to the lands of infants, until by a Stat: 1819, a mode was prescribed by whi the guardians of infants may sell their lands without the legislature for special authority in each case Ta: 294. Since this Stat:, such private acts have been few. Sessions acts of 1832. — This kind of Legislation, is manifestly liable to abuse, & may be productive of great injustice. Hence, it is now rarely exerted — the Legislature preferring to prescribe remedies, & confer authority by general laws, of whi, all may avail themselves, rather than to interfere in individual cases, on imperfect, or exparte information.

208 Alienation by matter of record. Chap: 21 Pa: 346. "The kings grants are also" &c. In this State, grants are made of waste, & un— –appropriated lands by the Commonwealth. The course to be pursued to obtain such grant, is the following; Any person by paying $200 for every 100 acres may obtain a warrant from the register of the state for as much land as he chooses to buy, he, undertaking to find the quantity of unappropriated land, for whi he buys a warrant; and if he cannot find it or any it is his own loss. See 5 Cranch 234. This warrant this purchaser enters by lodging with any county surveyor in the State and locating it, that is describing the lands, which the party wishes to take up. The surveyor then makes the survey according to the location and delivers the survey to the purchaser. He returns it to the register who excites a grant of said land to the purchaser, which is endorsed by the register & signed by the Governor. This completes the title of the purchaser. Thus, a warrant, entry, survey, & grant are the difft steps necessary to be taken, to obtain a title to waste & unappropriated lands. For more minute information, see our Stat: on the subject. Ta: 287. For the most important decisions in regard to the construction of our Stat: See 2 Wash. 116.

B. II Alienation by matter of record. 209.

1. Call: 206. 3. Call 28. 267. 1. Hom: 306. 1 Munf: 134. 162. 293. 5 Munf: 220. 4 Rand: 365. 1. Leigh 353. 5 Cranch. 191. 224. 234. & Cranch, 229. 4 Wheaton 488. 7 Wheat: 1. 6. 24. — Pa: 355. "And indeed as this" &c. This kind of conveyance does not exist in this State. Its peculiar quality in Engnd is, that it is the only made of conveyance, by whi married women may convey their lands {or their lands} or their interest in that of their husband. Our Stat: has pro— —vided another mode by whi they may convey. It requires that after executing the deed [blank space] husband, she shall be privately examined by the Court or two magistrates, for the purpose of ascertaining whether she executed it willingly, and does not wish to retract it, & they demand certificates of her exoneration and acknowledgement. The deed together with the certificate of the magistrates, & the acknowledgement of the husband, are then recorded, & such deed it is

declared shall be as effectual, to pass all the rights, title & interest of the wife, as if she had been an unmarried woman, provided that, no covenant or warranty, shall have, any other or greater operation, as to the wife or her heirs, than to convey her dower & interest in the

line included in the deed. Of alienation by Devise. Pa: 373. "Devise" A will is a disposition of real or personal property, to take effect after the death of the testator. (A person making a will is some— —times called a devisor). When the will operates on personal property, it is a testament. When applied to real property, a devise — the most popular denomination of the instrument, is will, or last will testament, it applies to both, personal & real property. A legatee is one to whom personal property is given; a devise, one to whom real property is given. Pa: 375. "The Stat: of Will & whi enacted." Pa: 376. "To remedy the Stat of fraud" &c One Stat: gives the power to devise, the other gives the restrictions by whi devises are to be made. This is the case in Engnd — our Stat: effects both purposes — this Stat: is found in Tate 519. the enactments of whi are important. Comparison between the English & Va: Stats. 1st As to persons who may devise, — there is no difference in substance, a slight difference in words. Our Stat: says, persons must be of sound mind, instead of disqualifying idiots,

and those of non—sane memory, as the Eng: stat: does. — 2. As to persons, our, does not except {every} corporations {in Va:} the Eng: Stat: does; every corporation in Va: whi can hold lands by its charter, may become a devisor. Our Stat: does not exclude any one from taking by Devise. 3. As to the interest or estate of whi the devisor is seised, at the time of the devise. Only fee— —simple estates can be devised in Engnd. Here, every estate, right, title, or interest in possession, remainer or reversion, whi a person has, at the time of devise, or shall have, at the time of his death, in lands, tenements, or hereditaments may be devised. Our Stat: includes estates, "per auter vie". The Eng: have a special Stat: for that species of estate & so have we, but it is not necessary. —. 4. As to the solemnities in making a will. In Engnd it must be in writing, signed by the testator or some person, by his express direction & subscribed by 3, or more credible witnesses in his presence. In Va: it must be in writing, signed by testator, or some person by his express direction, & subscribed by 2 or more credible witnesses, in his presence. The Eng: Stat: requires 3 or more witnesses to prove a will.

If the will is written wholly by the testator or testatrix subscribed by him, or her, no witnesses are necessary except in the case of feme coverts. But when land is conveyed to a married woman, for her separate use (a trust) she may devise it and it is technically a devise, but substantially an appointment of a use, they may here, so devise. 3. Rand: 373. Tho" it is stated

in the note, that when married women, in Engnd may under particular cir— —cumstances, execute appointments whi operate as wills, it is not intelligible. When an estate in lands is conveyed to trustees, for the separate use of the wife during coveture, & by the same conveyance, the power is given her to appoint by writing who shall take the estate on her death, then, notwithstanding her coveture, she may dispose of her estate in the manner prescribed. It is not of any consequence, whether this separate estate be created before marriage by way of settlements, or afterwards — or whether the estate & power be conferred on her by the husband, or some one else. All that is necessary, is, that a separate trust estate, with the power of appointment at her death, be settled on her, under the same circumstances & in the same manner, married women may make testamentary dispositions

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in this state. Pa: 376 "In the construction" &c. When the person writes the will, wholly himself, his name, in the commencement does not make it a valid execution — for the Stat: was for a twofold purpose. 1st to prevent fraud by others, 2nd to prescribe a form & ensure the completion of the will, on the part of the testator. Both these ends are attained by the Eng: Stat: for there must always be subscribing witnesses, who guard against fraud & ensure completion. But here, when written solely by the testator, the exclusion of fraud by others is manifest, but there is no proof of finality & completion on his part, except his name is subscribed, or there is some other proof of completion, & it is necessary, that this proof shd be made. The principle then, must be received here, with this qualification, that in regard to wills written wholly by the testator and unattested by witnesses, the subscription of the testor or some satisfactory evidence furnished by the will itself; is necessary to afford the proof of finality & completion whi under the English Stat: is sufficiently afforded by the required attestation of subscribing witnesses. See 2 Va: cases app: 553.

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Pa: 376. Note 6. There are 2 modes of completion when there are several sheets, either to sign the last sheet, or to sign all. — If the 2 first sheets are signed as well as the last, & some intermediate sheets are not signed, the will is not good. Pa: 377. "But they must all subscribe" &c. In the notes, will be found, what was decided in England on this subject, whi decisions are regarded as authority in this State. Before, a case in Leigh. 6. the courts had done little more than decided such case on its circumstances. —. In that case, something like a rule was established. As to presence of attesting witnesses — it was decided — it was decided in the above case 1 Leigh 6, that an attestation in the same room, is prima facie evidence of presence; but this presumption may be repelled, by proving, that owing to the relative situation of the parties. The Testator cd not possibly have seen the attestation nor have placed himself in a situation to see it. —. And the Ct also said that signing out of the room, is prima facie evidence that the witness was not in the presence of the testator. But this presumption may be rebutted by proving that it was signed within the [scope] of the testator's view. —

The witnesses need not see the testator sign, but his acknowledgement, is sufft or one may see him sign, & the testator may acknowledge his signature before the others. But if another person signs for the testr, the two witnesses must see the agent sign; or the will is void. 1. Rand 131. (no case in the Engh reports). When the will is written, wholly by the testator, the handwriting must be proven. Quaere — must it be proven by one witness, as at com: law, or by 2, the number necessary to prove the execution of the will? One uncontradicted & unimpeachable witness is sufficient. 6 Rand: 316. Pa: 377. "Competency of Witnesses" &c. Incompetance, from interest — we have reenacted the Stat: of 25 Geo: 2, so far as it concerns legatees, with this variation only; that if the witness wd be entitled to any share of the estate of the testator, in the event the will, be not es— —tablished, so much of the same share shall be saved to him as does not exceed the legacy bequeathed to him. The competency of creditors does not {exceed the legacy bequeathed} appear to be restored by our act Ta: 522. Pa: 376. "And a solemnity nearly similar is requisite for revoking a will" &c. No devise made in requisition

of the act shall be revoked except by the testator or testatrix, cancelling, destroying, or obliterating the same or causing it to be done in his or her presence, or by a deed or writing executed, as directed by Stat:. of wills. Tate 520. The intention of the person re— —voking must be known, & those acts have effect whi are in pursuance of this intention. Destroying the will accidentally is not a revocation. If a man were to throw his will in the fire to destroy it, but it was taken out & preserved uninjured without the knowledge of the testator, there, tho" to all appearances, neither cancelled, obliterated, or destroyed, yet it wd be effectually revoked, because the animus revocandi is complete. If, on the other hand, a man were to commence tearing or defacing his will, but desisted before completing his purpose, then{re} tho" apparently cancelled & destroyed, it wd not be in fact so, because, the testator, tho" he had at one time intended to destroy his will, had never carried his intention into effect. When the will is revoked by another, or by a declaration in writing — the revoking will or writing must be made with all the solemnities required to a valid will. Parole evidence is

good, to show an intention of revoking. 3. H. & M. 502 —. "Partial Revocations". If a testator makes a will, having no child, and not mentioning after born children, and he afterwards have a child, the will shall be of no effect, during the child's life, and unless the child dies unmarried or under age, the will is void. Tate 521—3. 3 Call 334. On the subject of implied revocations, notwithstanding the positive expressions of our Stat:, it has been determined, that the subsequent marriage & birth of a child shall be deemed a revocation of a will 1 Wash 140. 3

Mun: 209. If a person make a will and has chil— —dren, or leaves his wife enceint, one stat: declares that such after born and posthumous child shall succeed to the same portion of the father's estate, as if he had deed without will, towards the raising of which portions the other children shall contribute propor— —tionally 3 Mun: 20. Lands in the hands of devisee are assets for testr debts Ta: 171 where we have reenacted the state: of 384 W. and M. 6. 14 given in text pa 378. Pa: 378 "And upon this notion" &c. Lands acquired after the making of the will, pass by devise, if the words of the will are general or if they contemplate after acquired lands, otherwise, the rule anterior to our Stat: will prevail.

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1. Wash 75. 3. Call 289. 8 Cranch 69. Tate 519. Republication makes the will speak as tho" made at the time of republication. But lands acquired after making the will, will not be included, unless the words are genl, & do not define the land possessed previously — no specific devise wd be enlarged by the republication of a will. Pa: 379. Note 12. "Lapse, Devise" &c. When an estate is given to a man & his heirs, & the devisee dies before the devisor, the heirs cannot take by purchase, as they were clearly intended to take by inheritance, nor by descent, for the father was not seized. But by Stat: (Ta: 521) if the devise is to a descendant of the testator & the descendant dies before the testator leaving descendants who survive the testatr, those heirs shall take as their ancestor. But, for our Stat: to apply, the devise must be to a descendant of the testatr — & that devisee, must himself leave descendants living, at the death of the testator. Except in this case, Law lapse devises, still hold good. By our Stat: wills must be recorded in the office in the office of the Ct in whi they are proved. But wills of land need not necessarily be so recorded (2 Rand. 200) as to recordation of wills in general, & after what time, viz 7 years, they may be tested. see Ta: 523 & 524 — 1 H & M 72. 4. H. M. 91. 5 Munf. 552.

B. II Chapter 25 219 Of property in things personal {as} Pa: 394. "A man may lastly" &c. The exclusive right which each person has to hunt on his own lands & prevent all others from [doing] so, is similar to this right "propter priviligium". In regard to the remedies for the violation of this right, it is certain on the one hand, that an action of the trespass might be brought by the owner of the land, against the trespasser. It is equally certain on the other, that a person killing game on the land of another without the authority of the owner, wd not be liable for a prosecution for stealing. But whether the owner of the land wd have the right to the game killed, & might maintain an action for its value, is a question of some doubt—. Pa: 399. "Next, as to number of owners" &c. Survivorship is abolished here, among joint tenants, in all cases, whether the property held, be real or personal. But for personal property, no writ of partition can be issued, & a suit in Chancery is the only means of compelling partition. Pa: 398 "But now, that distinction" &c. Tho" a remainder in personal goods, may be limited after an estate for life, yet there are some exceptions to this, necessary to be known.

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Whenever the use & the property can have no separate existence, the former rule still pre— —vails & a limitation over, after a life {estate} interest, wd be void. As, in the case of corn, hay, fruits, provisions, liquors & the like. In regard to such articles, there can be no enjoyment without consumption. Whenever the use of property cannot be separated, the limitation of the remainder, after life estate is void, as limitation of whiskey, corn &c to A. for life remainder to B. 2. Kent's Com: 286. 5. Johns: Chan: Repts: 334. 2. Tucker's Com: 300. But in all other articles, whi "ipso usu non consumantur" there can be, no limitation after life estate.

B: II Chapter 26 — 221 Of title to things personal by Occupancy Pa: 401. "Thus in the first place" &c. The taking of land from an alien enemy, must be sanctioned by the proper authorities. The qualification of the rule laid down, to those persons authorized by the public authority is certainly proper. Although a state of war puts all the subjects of our nation in a state of hostility with those of the other, yet, according to the present received principles of international law, every individual of the one nation is not allowed to attack & plunder at will, the citizens of the other. Every one with or without authority may defend themselves & whatever captures are made in such defence are lawful prizes — but the law forbids hostilities to be commenced offensively; & if they do, commence offensive hostilities they are not allowed the usual treatment of prisoners of war, but are treated as banditti, unless with authority from their Govt. Goods, when seized with or without authority, or in self defence belong to the Govt & not to the persons who seize them. The permission to retain his captures, or a large proportion of them is only a relinquish— —ment of the right of Govt to him, & it is only made to captors whom the govt commissions. The law of the text, says Chief Justice Marshall,

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never was the law here. And if the original law of Engnd authorized an individual to acquire to his own use the property of an enemy without any express authority from the public, that law was changed long before the settlement of this country. Non commissioned persons capturing, capture for the Govt. This (says Judge Marshall) is the settled law of the U.S. 10. Cranch, 306. Pa: 405 "There is still another species" &c. We have also secured to authors & inventors for a limited time, the right of the exclusive use & profits of their productions & discoveries. The Fedl Constitution rests this right in Congress & the laws of Congress regarding authors bear date May 1770. & April 1802. By them, the authors of Maps, Charts, Books, &c being residents or citizens of the United States, are entitled to the exclusive right of printing, publishing & vending them for 14 years, & they may, under certain limitations & even this copy right for 14 years more. Whether at Com: Law, & independently of statutory provisions, a man has an exclusive perpetual right to his literary productions, as to his other estate, is a question once much agitated in Engnd. In a case 4 Bur: 2. 303 the courts of King's B. (Lord Mansfield being of the

Judges) decided that such right existed, to whi the stat: only gave an additional sanction; & that, of course after the 14 years during whi the Stat: operates, is expired, his exclusive right still remains and is protected by the com: law. But subsequently in 4 Burrow: 2408, the house of lords decided this qn otherwise & determined that, if the right existed at Com: law, yet since the Stat: it cd not be exercised beyond the time limited by the Stat:. The qn has not arisen here. — A copy may exist in a translation, 32 & B Rep: 577 — or in part of a book as well as the whole. 1 East 360—361. A bona fide abridgement of a work is allowable, & in such abridgement a copy right may exist. 2 Ath 141. 403. A person cannot, no pretence of a quotation, publish all or a material part of another's work, but he may use [fari] quotations. The intention of the party, making the quotation, is the enquiry on whi, rests the question, whether he has invaded the rights of the original author. 17 Vasey 422. In Engnd authors have to deposit 9 copies of their work in Stationer's hall for Universities &c in other respects the Eng: law as amended by Stat: 54. Geo 3 is much more favourable to authors than ours. The cognizance of cases under our laws belong to the

Fedl Cts —. Pa: 407 "All whi parliamentary protections" &c. The clause of the Fedl Constitution referred to in the note above, also gives Congress the right to pass laws authorizing patent rights for inventions. A patent right may be obtained for any new & useful improve— —ment or invention. The next most material requisite is, that a description of the invention or specification, as it is called, be full, perspicuous, & accurate. For; any defect in this respect, the patent will be declared void, see acts of Congress Febr: 1793 & April 1800. Under these laws, it is said, that nearly 5000 patents have been obtained from the patent office, Washington city. The decisions of the Federal Cts: seem very nearly to conform to those referred to in the note. The most important are to be found in 3 Wheaton 454. 7. Wheaton 356. 1 Mason's Reps: 302. 1 Peter: 394. (Now read, Chaps 27. 28. 29)

Chapter 30 Title by Gift, Grant, & Contract Pa: 441. "Grants or Gifts of Chattel personal" &c. It has been stated previously that validity of deeds of lands, depends on consideration. The same views are to a great extent applicable to conveyances, by whatever name called, of personal property. For, they too, are invalidated by, 1. Actual fraud totally. 2. Constructive fraud, as far as creditors & purchasers are concerned, the Stat. of frauds, applying equally to all kinds of property. 3. Deeds of Trust & mortgages of personal property (as well as real) if not recorded, are void, as to subsequent purcharsers, for valuable consideration, & without notice & as to all creditors. Absolute gifts, or grants of personal property need not be recorded at all, but the law requires transfer of possession & makes the non—delivery affect their validity as regards

purchasers & creditors in a greater degree than the failure to record these conveyances of real property wh: are required to be recorded.

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Ever since [blank space] case in 3 Coke's reps: 87, the grantor holding possession of personal property has been held, a badge of fraud. In many of the U. S., still, lately in Va: the retaining possession by grantor; after absolute conveyance or Bill of sale of Chattels is, per se constructively fraudulent & creditors & subsequent purchasers may disregard it. See 1 Cranch 310. 2 H & M 210. Gilmer 15. In the last case, even the purchaser paid bona fide for slaves & then hired them to the seller &c. But in a late case 5 Rand: 211 the majority of the Ct. of Appeals decided such retaining of possession, only prima facie & not conclusive fraud & can be repelled only by showing that it was impossible to take possession. But neither valuable consideration nor recordation of deed will repel this presumption. Thus, in addition to the cases wh: affect the validity of deeds of land, see 6 Rand 78. 285. 1 Tucker's Com. 322. Connected with this subject, see the Va: Stat: on the subject of pretended loans wh: after 5 years shall be taken as to creditors & purchasers, as void, unless it has been declared by will or by deed in writing proved

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and recorded. This provision is intended to prevent the public from being decieved by the appearance of property. This deed may be made at any time within 5 years. 3 H & M. 499 & contracts of loan even after 5 years are good between the parties. P. 445. "A consideration of some sort" &c. The rule, that consideration is necessary to the validity of contracts, applies to all contracts, not under seal, except Bill of Exchange & Negotiable notes after they have been negotiated and passed to 3d persons without notice of want of consideration, wh: at C. Law the party who executed the contract cannot dispute. In Bills of Exchange &c. the reason is, the convinience of trade and commerce (see Bayly.) The consideration may be enquired into and shown between the parties. A valuable consideration is either a benefir to the person promising, or some prejudice of trouble or possible cause of loss to the party to whom the promise is made. 4 East: 445. 1 Sand: 210. Considerations are either executed when the promise is made, or executory. When the former, it must have arisen at request of the party promising

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either express or implied. 1 Sand: 264. P. — 447 "When the vendor has in himself &c." By our Stat: execution against the goods & chattels of a man, binds his property from the time of its

delivery to the Sheriff. Tate 222. P. 448. "What by same Stat: 29 Ch: II" &c. Our Stat: on this subject differs from the English. Tate 438. 1 R. C. Stat: of Frauds. Sect: I. The agreement when not to be performed within a year must be in writing, but all others, if on sufficient consideration, tho" verbal will be obligatory. Our Stat: does not require paymt. by way of [blank space] at all. P. 448. And by regular sale, without delivery.

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Idiomatic Phrases

This Piano Forte is out of time	Ce forté piano n'est pas d'accord.
I acknowledge all that	Le demeuré d'accord de tout cela.
Do not be inconsistent	Accordez vous done à vous meme.
He has very eccentric ideas & ways	Il a des idées et des manieres qui
" " " "	n'appartienment qu'a lui.
This woman has a very nimble tongue	Cette femme a la langue bien affilée.
He is not a bit better than others	C'est un homme comme les autres.
How old would you take her to be	Quel age lui domeriez vous?
She begins to grow old	Elle commence à etre sur l'age.
You are wrong to puzzle your brains so	Vous avez tore de vous alambigues
-- -- --	l'esprit de ectu maniere là.
To set the teeth on edge	Agacer les dents.
To be in love	Eu avoir dans l'aile.
To be very well off	Etre trés bien dans ses affaires.
To be in very bad circumstances	Etre fort mal dans ses affaires.
I had my hands full of business.	J'ai en tout plein d'affaires.
To yield	Se laisser aller.
I will be back presently	Je ne ferai qu'aller et venir.
What took him to Paris	Qu'etoil il aller chercer à Paris.
He has used him very ill	Il lui a porté une terrible botte.
Without any provocation	A propos de bottes.
To lay up for a rainy day	Metere du fain dans ses botte.
To be at variance	Etre brouillé.
I can never recollect proper names	Je suis toujours travillé avec

It is in vain to talk	Vous avez beau dire.
With the greatest contempt	Du haut en bas.
You make me mad	Vous me poussez à bout.
This child is incorrigible	Un ne peut venvi à bout cet enfant.
To seize the opportunity	Prendre la balle au toud.
You seem to be in the damps	Vous avez l'air triste comme un bonnet de nuit.
They are both of the same mind	Le sent deux tetes dans un bonnet.
At my tongue's end	Sur le bend des liures.
To be on the eve of breaking	Brauler furiensement dans la (...)
You are too young	Dans avez la barbe trop jeune.
To laugh in one's sleeve	Rire dans sa barbe.
I have other fish to fry	J'ai bien d'autres chats a faultter.
We highly esteem &c	On fait grand cas de &c
On condition	à la charge
Charity commence at home	Charité commence par [vimeme]
It is my business	C'est à moi
I am no judge of painting	Je ne nie cornais pas en peinture
Make one's hair stand on end	Faire dresser le cheveux à la tete.
How soon will you come and see me	Dans combien de temps viendrey vous me voir.
I gave him no rest	Je ne lui ai pas domé de cesse.
He is without exception &c.	C'est sans contredit &c.
It is resolved upon	Le dé en est jeté.
The street door	La porte qui donne seur la rue.

To break out (disease)	Se manifestee &c.
It is not worth a fie	Il ne vaut pas le diable.
To break one's word	S'etre dédit.
To put out of joint	S'etre démis.
First teeth	Dents de lait.
He is very close, stingy	Il est dur à la desserre.
What are you going to do	Que devenez vous.
It's no business of mine	Je n'entre pas la dedans.
His name has slipped my memory	Son nom m'est echappé de la memoire.
He speaks broken English	Le (...) l'Anglais.

As neat as hands can make him	Tiré à quatre épingles
To pretend to great skill	Faire l'entender.
To play truant	Faise l'ecole buissonniére.
I don't want your money	Je n'ai que faire de votre argent
36S What's the matter with your hand	Qu'avez vous à la main?
I cannot help it	Je ne sans ais qu'y faire.
How can I help it	Que voulez vous que j'y passe?
I have no objection to it	Je ne m'y oppose pas.
We must not quit	Il ne facil pas ajouter
credit to all that we hear people say	foi a tout ce qu' on entend dire.
It is beautiful moonlight	Il fait un beau claire de lune.
It is cloudy weather	Le temps est couvert.

It is gloomy weather	Il fait un temps sombre
It is very unhealthy weather	Il fait un temps fort

It rains very fast	Il pleut bien fort.
It pours	Il pleue a verse.
Do you think that it	Croyez vous qu'il
will continue raining	pluvia encore long —
long.	— temps.
I do not think that	Je ne crous pas que
The rain will cease	la pleue cesse d'anjours —
the whole day	—d' hui?
It is an April shower	C'est une giboulée

I catch cold easily	Je m'en(...) (...)
It clears up	Le temps s'eclaircit.
Do you know how to skate	Save vous patinee.
The weather is milder	Il fait un temps plus (...)

make myself understood Je le parle assez pour me ——————— ——————————

I understand better than	Je {l'entendre} comprends mieux
I can speak	que je ne parle.

Easy other day Tous les deux jours (or

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