We allow of the printing and publishing of the book intitled, *A General Abridgment of Law and Equity*, alphabetically digested under proper titles, &c. By Charles Viner, Esq;

W. Lee.
W. Fortescue.
J. Willes.
E. Probyn.
F. Page.
Law. Carter.
J. Fortescue A.
W. Chapple.
T. Parker.
M. Wright.
Ja. Reynolds.
Tho. Abney.
T. Burnett.
A General Abridgment of Law and Equity

Alphabetically digested under proper Titles

With

Notes and References to the Whole.

By CHARLES VINER, Esq;

Favente Deo.

ALDERSHOT in Hampshire near Farnham in Surry:
PRINTED for the Author, by Agreement with the Law-Patentees.
# Table

**Of**

The several **TITLES**, with their **Divisions** and **Subdivisions**.

## Evidence

<table>
<thead>
<tr>
<th>Witnessess</th>
<th>Particeps Criminis.</th>
<th>F. a</th>
</tr>
</thead>
<tbody>
<tr>
<td>What Persons may be.</td>
<td>Disabiled by Crime</td>
<td>G. a</td>
</tr>
<tr>
<td>Feme in Cafe of her Baron, or Baron in Cafe of his Feme.</td>
<td>Enabled by Pardon, or some After Act.</td>
<td>H. a</td>
</tr>
<tr>
<td>Persons Interested by Accident As Executors, Trustees, Guardians, &amp;c.</td>
<td>Proces against Witness. And Punishment of not appearing.</td>
<td>I. a</td>
</tr>
<tr>
<td>Or by Kindred.</td>
<td>Jointed to the Inquest, in what Cases.</td>
<td>K. a</td>
</tr>
<tr>
<td>Interested Persons</td>
<td>Priviledged from Arrests.</td>
<td>L. a</td>
</tr>
<tr>
<td>Members of Corporation, &amp;c.</td>
<td>Not to be enforced to give Evidence against themselves.</td>
<td>2.</td>
</tr>
<tr>
<td>Judges, Jurymen, &amp;c.</td>
<td>Evidence by Jurors.</td>
<td>L. a 5</td>
</tr>
<tr>
<td>Parties.</td>
<td>Examination of Witnesses, to what, and how.</td>
<td>M. a 2</td>
</tr>
<tr>
<td>In Cafe of Neceffity.</td>
<td>On a Voire Dire.</td>
<td>M. a 3</td>
</tr>
<tr>
<td>To Fraud.</td>
<td>De Bence Effe.</td>
<td>M. a 3</td>
</tr>
<tr>
<td>Disabiled By Crimes.</td>
<td>Of whom it may be.</td>
<td></td>
</tr>
<tr>
<td>Of a lower Sort.</td>
<td>Plaintiffs or Defendants.</td>
<td>M. a 4</td>
</tr>
<tr>
<td>Not concurring with the Law.</td>
<td>Of Evidence in general.</td>
<td>N. a</td>
</tr>
<tr>
<td>From or at what Time.</td>
<td>Examination of Witnesses after Publication.</td>
<td>P. a</td>
</tr>
<tr>
<td>By Interrell.</td>
<td>Re-examination. In what Cases.</td>
<td>P. a 2</td>
</tr>
<tr>
<td>By Act of the other Party.</td>
<td>What shall be admitted by Reason of Length of Time, &amp;c.</td>
<td>Q. a</td>
</tr>
<tr>
<td>By Suspicion of Fraud.</td>
<td>Evidence sufficient, good by Indemnent. Q. a 2</td>
<td></td>
</tr>
<tr>
<td>One Offender admitted against another.</td>
<td>Supplied. In Cafe of Neceffity.</td>
<td>R. a</td>
</tr>
<tr>
<td>Demeanor.</td>
<td>Order of giving Evidence.</td>
<td></td>
</tr>
<tr>
<td>How they may affit themselves in giving their Evidence.</td>
<td>Who must begin and end.</td>
<td>S. a</td>
</tr>
<tr>
<td>Non-Appearance. Punishment for it.</td>
<td>Given at what Time.</td>
<td>T. a</td>
</tr>
<tr>
<td>Refusing to be sworn.</td>
<td>What must be produced in Evidence. As Papers, Deeds, &amp;c.</td>
<td>U. a</td>
</tr>
<tr>
<td>Demeanor of Counsel as to Witnesses.</td>
<td>Good by Confession.</td>
<td>X. a</td>
</tr>
<tr>
<td>Number.</td>
<td>Variance between the Evidence and the Declaration, &amp;c.</td>
<td>Y. a</td>
</tr>
<tr>
<td>How many are necessary to prove a Thing, and what.</td>
<td>What must be pleaded, or may be given in Evidence.</td>
<td>Z. a</td>
</tr>
<tr>
<td>Objections to the Credibility of a Witness in that particular Cafe.</td>
<td>What Things may be given in Evidence, and of what.</td>
<td></td>
</tr>
<tr>
<td>What Persons in certain Cases shall not be compelled to give Evidence.</td>
<td>Acts of Courts</td>
<td>A. b</td>
</tr>
<tr>
<td>What Persons shall not be Witnesses unless sworn.</td>
<td>Acts of Parliament.</td>
<td>A. b 1</td>
</tr>
<tr>
<td>In what Cases, and how.</td>
<td>Admiralty.</td>
<td>A. b 2</td>
</tr>
<tr>
<td>Demeanor of and to Witnesses in general.</td>
<td>Affidavit.</td>
<td>A. b 3</td>
</tr>
<tr>
<td>How it must, or may be.</td>
<td>Almanack.</td>
<td>A. b 4</td>
</tr>
<tr>
<td>Persons injured.</td>
<td>Antient Tables of Duties.</td>
<td>A. b 6</td>
</tr>
<tr>
<td>TABLE of the several TITLES</td>
<td>A, b, 7</td>
<td></td>
</tr>
<tr>
<td>-------------------------------</td>
<td>--------</td>
<td></td>
</tr>
<tr>
<td>Apprentices Indentures</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Appropriations</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Arrest.</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Affiant.</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Attorney's Bill</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Bill and Answer in Chancery</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Books</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Certificates</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Chancery. Proceedings there</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Circumstances</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Collateral Warranty</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Comparison of Hands</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Condemnation of Goods sealed</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Confinement of one against another</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Conspiracy</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Conf.</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Copies</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Counterparts</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Court Rolls</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Decrees</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Deeds; tho' the Witness not proved</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Depositions</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Examination</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Exemplification, Of what.</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Fine</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Foreign Letters in a strange Language</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Goldsmith's Note</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Guardian's Answer in Chancery</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Hearlay</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Heralds Books</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Histony</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Indorsement</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Inquest of Office</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Inrollments of Deeds</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Infamous</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Inventory</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Tonnancuay</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Journal</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Minutes of Proceedings in Courts</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>In what Cases a Negative must be proved, and what shall be Proof thereof</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Nonfeit</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Notary Publick's Certificate</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Office found</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Parliament Rolls</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Parol Evidence to Writing</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Preliment of the Forreinners</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Prufumption. Length of Time</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Probate</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Proceeding in Courts Spiritual</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Proclamation</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Receipt</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Recital</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Record</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Recovery</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>In other Courts than those of the Welfinister</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Regifter-Book</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Rent. Dicharge thereof</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Rentals</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Reputation common</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Rule of Court</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Seals of Courts</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Sentence. In the Exchequer, as to Goods forfeited.</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Signet Manual of the King</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Similitude of Hands.</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Things done or sworn at another Trial.</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Torn Papers, Books, &amp;c.</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Transfer. Books of a Company.</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Verdict.</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Water Course. Diverting them.</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Year Books</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>What Things may be given in Evidence. Variance in Time or Place, &amp;c.</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>Proof. Good or not, tho' it comes not fully up to the Suggestion.</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>At what Time it must be.</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>In what Cases new Evidence shall be given.</td>
<td>A, b, 9</td>
<td></td>
</tr>
<tr>
<td>What Evidence the Parties may enforce the Plaintiff, or others to produce; as Court-Rolls, Books of Account, Church-Books, &amp;c.</td>
<td>A, b, 9</td>
<td></td>
</tr>
</tbody>
</table>

In what Cases a Special Matter may be given in Evidence. A, b, 9

In Account. ibid. Fol. 170

In Annuity. ibid.

In Appeal. ibid. Fol. 171

As to Affairs. ibid.

In Espurradry. ibid.

As to Common. ibid.

In Debt. ibid.

Against Corporations. ibid. Fol. 172

Against Executors. ibid.

In Detinue. ibid.

In Dower. ibid.

False Imprisonment. ibid. Fol. 173

Grant. ibid.

Honest fin Fee. ibid. Fol. 174

Maintenance. ibid.

Non effe Factum. ibid.

Rent. Affile. ibid.

Receipt, and Counter-Plea. ibid. Fol. 175

Rent. Avory. ibid.

Rent. Replevins. ibid.

Statutes Penal. ibid.

Tenure. ibid.

Trespass of Battery. ibid.

Of Chases, &c. broken, &c. ibid. Fol. 176

Of Goods carried away. ibid. Fol. 177

Waste. ibid.

What may be given in Evidence in Mitigation of Damages. A, b, 9

In Aggravation of Damages. K, b

In the Issue. L, b

Admitted by what Plea or Action. M, b

Of what the Jury may or must take Notice. N, b

Evidence. A, b, 9

What may be given on the General Issue upon Not Guilty. And what may be given in Evidence in the following Cases. O, b, 9

Assault and Battery. O, b, 9

As to Attachment of Goods. O, b, 9

Arraignment. O, b, 9

Defence. O, b, 9

In Ejecution. O, b, 9

False Imprisonment by Peace-Officers. O, b, 9

As to False Return of Writs. O, b, 9

As to Highways. O, b, 9

Maintenance. O, b, 9

Parco Fracito. O, b, 9

Relief. O, b, 9

Trespass. O, b, 9

Trepass. O, b, 9

Warron. O, b, 9

Waste. O, b, 9

Writ of Right. O, b, 9

For
With their Divisions and Subdivisions.

For or against what Persons having Relation to others.

Accesoary. P. b. 1

 Bail. P. b. 2

 Bailiff and Receiver. P. b. 3

 Baron and Feme. P. b. 4

 Cartrite. P. b. 5

 Custom-house Officers. P. b. 6

 Executors and Administrators. P. b. 7

 Inn-keepers. P. b. 8

 Landlord and Tenant. P. b. 9

 Master and Servant. P. b. 10

 Merchant and Infrurer. P. b. 11

 Partners. P. b. 12

 Sheriff. P. b. 13

 Strangers. P. b. 14

 Successors. P. b. 15

 Torts. P. b. 16

 What must be given in Evidence in Respect of the Plea.

 Account. Q. b. 1

 Non Cepit. Q. b. 2

 Contrect. Q. b. 3

 Non Infrigit Conventionem. Q. b. 4

 Non Dimittit. Q. b. 5

 Dower. Q. b. 6

 Debt. Q. b. 7

 Non est Factum. Q. b. 8

 Liberum Tenementum. Q. b. 9

 Molliter Manus impolluit. Q. b. 10

 Ne Infesta pas. Q. b. 11

 Ne Unques Executor. Q. b. 12

 Ne Unques Receiver. Q. b. 13

 Nil habuit in Tenementis. Q. b. 14

 Non fecavit. Q. b. 15

 Non ramet Modo & Forma. Q. b. 16

 Non of Hand. Q. b. 17

 Plene Administrativ. Q. b. 18

 Rients per Benef. Q. b. 19

 Robbery. On the Statute of Winton. Q. b. 20

 Son Adulft Deemf. Q. b. 21

 Nul Tort. Q. b. 22

 Nul Waft. Q. b. 23

 Proved in Evidence, what must, or may be in, or as to the Plea.

 Affirmat. R. b. 1

 Non Affirmat infra fex Annos. R. b. 2

 Non Concipi. R. b. 3

 Non Debet. R. b. 4

 Non Detinet. R. b. 5

 Debt upon Bond against an Heir. R. b. 6

 Egoget. R. b. 7

 Of a Reftory. R. b. 8

 Eftowers. R. b. 9

 Parce Fraoto. R. b. 10

 Per quod Servitium amittit, &c. R. b. 11

 Policies of Infurance. R. b. 12

 Posiefly Action. R. b. 13

 Quantum Meruit. R. b. 14

 Trefpaf. R. b. 15

 With a Continuando. R. b. 16

 Trower. R. b. 17

 Where the Onus Probandi lies on the Plaintiff, and where on the Defendant. S. b

 What shall be Evidence of what. T. b. 1

 Accesoary.

 Acting as an Alderman, Justice of Peace, &c. without qualifying themselves. T. b. 2

 Administration. T. b. 3

 Age. T. b. 4

 Agreement. T. b. 5

 Alta Enormia. T. b. 6

 Alien. T. b. 7

 Alien in Fee. T. b. 8

 Answer. T. b. 9

 Affers. T. b. 10

 Affirmat in Respect to the Statue of Frauds. T. b. 11

 Attaint. T. b. 12

 Augmentation of Vicarages. T. b. 13

 Bailiff of a Manor. T. b. 14

 Bankrupts. T. b. 15

 Causing or Procuring. T. b. 16

 Clerk in Orders. T. b. 17

 Common. T. b. 18

 Common Recovery. T. b. 19

 Conten. T. b. 20

 Contempt. T. b. 21

 Contents of Deeds. T. b. 22

 Conviction. T. b. 23

 Copyhold. T. b. 24

 Custom of a Manor. T. b. 25

 Custom of Merchants. T. b. 26

 Evidence relating to Deeds. T. b. 27

 Demand of Rent. T. b. 28

 Denizen. T. b. 29

 Defect. T. b. 30

 Defalvat. T. b. 31

 Devise of Land. T. b. 32

 Disfranchise. T. b. 33

 Earnest Money paid. The Effect thereof. T. b. 34

 Effect. T. b. 35

 Election of Parliament Men. T. b. 36

 Endowment. T. b. 37

 Entail. T. b. 38

 Entry and Suffosion. T. b. 39

 Eate at Will. T. b. 40

 False Imprisonment. T. b. 41

 False Return. T. b. 42

 Fee-Farm Rents. T. b. 43

 Fees. T. b. 44

 Fines levied. T. b. 45

 Right of Fishery. T. b. 46

 Fraudulent Conveyance, or Sale. T. b. 47

 Hand-Writing. T. b. 48

 Heir. T. b. 49

 His Freehold, Money, &c. T. b. 50

 Imprisonment at the Time of the Lawry. T. b. 51

 Incumbent. T. b. 52

 In Custodia Marechallis. T. b. 53

 Inrollment. T. b. 54

 Infulum Computatet. T. b. 55

 Intercity. T. b. 56

 Judgment. T. b. 57

 Legitimate modo acquetatur. T. b. 58

 Levancy and Cowlancy. T. b. 59

 Lewdness. T. b. 60

 Libel. T. b. 61

 Liking Goods, &c. T. b. 62

 Limitation. T. b. 63

 Living or Dead. T. b. 64

 Lott Deeds. T. b. 65

 Malicious or Vexations Prosecutions, &c. T. b. 66

 Manor and Contents of a Manor. T. b. 67

 Mariners Wages. T. b. 68

 Marriage. T. b. 69

 Marriage Agreement. T. b. 70

 Modus Descominat. T. b. 71

 Money received or laid out to a Man's Use. T. b. 72

 Morisary. T. b. 73

 Murder of Ballards. T. b. 74

 Nonage
## Table of the Several Titles, &c.

<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nonage</td>
<td>T. b. 75</td>
</tr>
<tr>
<td>Non Affirmavit</td>
<td>T. b. 76</td>
</tr>
<tr>
<td>Non Compos</td>
<td>T. b. 77</td>
</tr>
<tr>
<td>Non est Factum</td>
<td>T. b. 78</td>
</tr>
<tr>
<td>Notice</td>
<td>T. b. 79</td>
</tr>
<tr>
<td>Not taking the Oaths</td>
<td>T. b. 80</td>
</tr>
<tr>
<td>Null Dissolution</td>
<td>T. b. 81</td>
</tr>
<tr>
<td>Number of Acres in a Fine</td>
<td>T. b. 82</td>
</tr>
<tr>
<td>Nulities</td>
<td>T. b. 83</td>
</tr>
<tr>
<td>Original Writ</td>
<td>T. b. 84</td>
</tr>
<tr>
<td>Parcel of a Manor</td>
<td>T. b. 85</td>
</tr>
<tr>
<td>Payment Modo &amp; Forma</td>
<td>T. b. 86</td>
</tr>
<tr>
<td>Pedigrees</td>
<td>T. b. 87</td>
</tr>
<tr>
<td>Perjury</td>
<td>T. b. 88</td>
</tr>
<tr>
<td>Possession</td>
<td>T. b. 89</td>
</tr>
<tr>
<td>Prescription</td>
<td>T. b. 90</td>
</tr>
<tr>
<td>Priority of Birth</td>
<td>T. b. 91</td>
</tr>
<tr>
<td>Rape</td>
<td>T. b. 92</td>
</tr>
<tr>
<td>Records</td>
<td>T. b. 93</td>
</tr>
<tr>
<td>Rector of a Church</td>
<td>T. b. 94</td>
</tr>
<tr>
<td>Release</td>
<td>T. b. 95</td>
</tr>
<tr>
<td>Reputation of being Part</td>
<td>T. b. 96</td>
</tr>
<tr>
<td>Requell</td>
<td>T. b. 97</td>
</tr>
<tr>
<td>Resignation</td>
<td>T. b. 98</td>
</tr>
<tr>
<td>Retainer of a Chaplain</td>
<td>T. b. 99</td>
</tr>
<tr>
<td>Reviver of Promises</td>
<td>T. b. 100</td>
</tr>
<tr>
<td>Revocation</td>
<td>T. b. 101</td>
</tr>
<tr>
<td>Right of Soil</td>
<td>T. b. 102</td>
</tr>
<tr>
<td>Riot</td>
<td>T. b. 103</td>
</tr>
</tbody>
</table>

| Sale by Sheriff                           | T. b. 104 |
| Scienter                                  | T. b. 105 |
| Seats in a Church                         | T. b. 106 |
| Self in Fee of the King and others        | T. b. 107 |
| Settlement                                | T. b. 108 |
| Simony                                    | T. b. 109 |
| Sola & Separalis Pastura                  | T. b. 110 |
| Solvit ad Diem                            | T. b. 111 |
| Submission to Arbitration                 | T. b. 112 |
| Such Liberties                            | T. b. 113 |
| Surrender of Leave, Office, &c.           | T. b. 114 |
| Tender                                    | T. b. 115 |
| Things done at a former Trial            | T. b. 116 |
| Tithes discharged                         | T. b. 117 |
| Trees                                     | T. b. 118 |
| Trover                                    | T. b. 119 |
| Trust                                     | T. b. 120 |
| Vexatious Prosecution                    | T. b. 121 |
| Unity of Possession                       | T. b. 122 |
| Usage of granting Officers by Spiritual Persons | T. b. 123 |
| Usury                                     | T. b. 124 |
| Way                                       | T. b. 125 |
| Will                                      | T. b. 126 |
| Witnesses interested                      | T. b. 127 |
| Evidence                                  | T. b. 128 |
| Demurrer to it                            | T. b. 129 |
| Bills of Exceptions                      | T. b. 130 |
| Issues out of Chancery                    | X. b  |
Evidence.

(A) Witness. Who may be.

1. It is a good Challenge to the Witness to say, that he was one of the Accusers, quod nota. Br. Corone. pl. 219. cites 4 M 1.

2. Oftentimes a Man may be challenged to be of a Jury, that cannot be challenged to be a Witness; And therefore though the Witness be of nearest Alliance, or Kindred, or of Counsel, or Tenant, or Servant to either Party, (or any other Exception that maketh him not infamous) or to want Understanding, or Discretion, or a Party in Interest, though it be proved true, shall not exclude the Witness to be sworn, but he shall be sworn, and his Credit upon the Exceptions taken against him left to those of the Jury, who are Tryers of the Fact, infomuch as some Books have said, that though the Witness named in the Deed be named a Diffeffor in the Writ, yet he shall be sworn as a Witness to the Deed. Co. Lit. 6 b.

3. An Infidel cannot be a Witness. Co. Lit. 6 b.

4. A Person that is infamous, as if he be attainted of a false Verdict, or convicted of Perjury, or of a Premunire, or of Forgery, upon the Stat. 5 Eliz. cap. 14. and not upon the Stat. 1 H. 5. cap. 3. or convict of Felony, or by Judgment left his Ears, or flodd upon the Pillory, or Tumbrel, or been ignominius branded, &c. Whereby they become infamous for some Offences, quae sunt minoris Culpa funt majoris Intamiae. Co. Litt. 6 a b.


6. A Peer produced as a Witness ought to be Sworn. 3 Keb. 631.

Earl of Shaftsbury v. Digby.

7. An Approver or an Accomplice, may be a Witness till he is indicted. Law of Evid. 51 cap. 4. cites State Trials, 1 Vol. 606. 619. 782. 2 Vol. 377. 492. 3 Vol. 117. 136. 4 Vol. 10.

8. Where the Disability is only the Consequence of the Judgment, the King may pardon it; But where the Disability is part of the Judgment itself, the King’s Pardon will not take it away; Therefore if a Man be convicted of Perjury on the Statute, the King’s Pardon will not restore; For it is not a Consequence but part of the Judgment, viz. Law; And Quod impositerum non fit receptus ur Texit; cites Co. Ent. 368. But a Pardon by Act of Parliament will reittere in that Case; Per Holt Ch. J. 2 Salk. 689. pl. 1. Pach. 7 W. 3. B. R. in Case of the King v. Crosby.

9. No Quaker or reputed Quaker shall be be qualified to give Evidence in any Criminal Cause, by Virtue of the Statute 7 & 8 W. 3. cap. 34.

10. 4 and 5 Anne 16. All Witnesses who ought to be allowed good Witnesses upon Trials at Law shall be deemed good Witnesses to prove any Nuncpative Will.

11. One being produced to be an Evidence against the Appellee, who was under 12 Years of Age, and the Appellee’s Counsel objected
Evidence.

to him for that Reason, and besides they said he had taken Money, Holt Ch. J. said, that if he knew the Danger of an Oath, he might be an Evidence; And that appearing he was admitted. 11 Mod. 228. B. R. pl. 2. Trin. 8 Ann. Young v. Slaughterford.

(B) Witnesses. Who Feme in the Case of her Baron.

Or Baron in Case of his Feme.

1. T is informed, that C. one of the Defendants, examined his own Wife as a Witness; It is therefore ordered, the Plaintiff may take a Subpœna against her on his Behalf, and if C. will not fill her to be examined on the Plaintiff's Party, then her Examination on the said C's Party is suppressed. Cary's Rep. 135. cites 22 Eliz. Bent and Allet contra Coliton.

2. Wife examined to discover her Husband's deceit. Toth. 158. cites 38 Eliz. Lake v. Dean.

3. The Wife to be examined as a Witness. Toth. 149. cites 41 Eliz. h. b to. 10. Preston v. Powel.

4. A Feme Covert cannot be a Witness against her Husband. Quia sunt animæ duc in una carne; For if it would be, it admitted, an Occasion of perpetual Difention between Man and Wife. Co. Lit. 6. b. cites Sir James Crofts Cafe.

5. A Wife not to be examined against her Husband, Toth. 160. cites 10 Jac. Holman v. Audley.

6. The Court was moved, to know whether the Wife of a Bankrupt can be examined by the Commissioners upon the Statue of Bankrupts? And they were of Opinion, the could not be examined, for the Wife is not bound, in case of High Treason, to discover her Husband's Treasure, altho' the Son be bound to reveal it; Therefore by the Common Law the shall not be examined. Brownl. 47. Pacl. 10 Jac. Anon.

7. 21 Jac. 19. 8. 6. The Commissioners shall have Power to examine the Wife of a Bankrupt upon Oath for the Discovery of his Effects, Goods and Chattles, and such Wife refusing to appear, or to answer Interrogatories, shall incur the same Penalties as are provided against other Persons in the like Cases.

8. If a Privy Councillor be to be examined in the Star-Chamber, if the Privy Councillor said, that the Defendant related that to him as a Privy Councillor, and not otherwise, the Councillor is not bound to answer further to any Thing than the Defendant hath related to him. Noy. 154. Anon.

9. In Efficement, the Plaintiff made Title to his Lessee to the Lands in question, as Son and Heir of Jerome Jacques, and Hannah his Wife, in right of Hannah. The Defendant gave in Evidence, that Jerome Jacques was married, before he was married to Hannah; And the Woman, to whom it was supposed he was married before, was produced at the Trial, Summer Assizes 13 W. 3. at Maidstone, to prove this Marriage. The Counsel for the Plaintiff approved her Testimony, because the swore for her Advantage, viz. to have a Husband, the Husband then being living. But nevertheless, Gould Justice of B. R. then Judge of Assizes, admitted her Testimony. But afterwards the same Cause, upon the same Title, between the same Parties, was tried before Holt, Chief Justice at the Assizes in March at Maidstone, 1 Ann. and he refused, after
Evidence.

after Debate, to admit the former Wife to be a Witness for this Purpose; But, upon other Evidence, the former Marriage was proved to the Satisfaction of the Jury, being Gentlemen, whereupon they found a Verdict for the Defendant. But in the former Trial before Gould Justice, the Jury found a Verdict for the Plaintiff, 2 Ld. Raym. Rep. 752. 1 Ann. 1701-2. Broughton v. Harper.

10. A Woman was indicted upon the Statute 1 Jac. cap. 11. for marrying a second Husband, the first being alive. Upon Not guilty pleaded, the first Husband was produced to prove the Marriage; But the Court totally refused to admit his Evidence, and said, that he could not be a Witness against his Wife, nor the against her Husband, because it might occasion implacable Disfension in any Cafe but Treason; and they denied the Lord Audley’s Cafe in Hutt. 116. to be Law. Raym. 1 Mich. 12 Car. 2. B. R. Mary Grigg’s Cafe.

And therefore by the Common Law she shall not be examined.

11. A Woman is not bound to be sworn, or to give Evidence against another, in case of Theft, &c. if her Husband be concerned, tho’ it be material against another, and not directly against her Husband. 2 Hale’s Hift. Pl. C. 301.

12. If a Feme Covert acknowledge a Thing at a Trial, which is for the present Advantage of her Husband, but is for her own future Disadvantage, yet this is no good Evidence to a Jury. Mich. 23. Car. B. R. For her Husband’s present Advantages are her’s also, and is more lock’d up than her own future Disadvantage. L. P. R. 370.

13. In an Information for a Cheat, Baillie and Feme were discharged of Vent. 49. a Judgment entered into by the Feme (to a Matchmaker on Payment of 100 l. which he retook of her again presently in another Room) upon the Evidence of the Wife. Sid. 431. pl. 26. Mich. 21 Car. 2. B. R. King v. Parris & al.


15. Feme de facto, but not de jure, as by being forcibly married, was allowed to be a Witness against such Baron, for whatsoever was done while she was under that Violence was not to be expected. Vent. 244. Trin. 25 Car. 2. B. R. John Brown’s Cafe.

16. The Wife Executrix to her Husband, married a second Husband. A Bill is exhibited against them to discover the Truth; The Husband and Wife disapproved in the Matter, and put in severally their Answers; The Husband denied the Truth, but the Wife confessed it. The Cause proceeded to hearing, and the Plaintiff proved the Truth only by one Witness, which the Plaintiff intimated on, with the Wife’s Confession, to be sufficient, the Matter being but in that wherein she was concern’d as Executrix. But the Bill was dismissed, quia the Wife’s Answer shall not bind the Husband; Ex relatione Sir John Churchill and Serjeant Rawlinson. Chan. Cales. 39. Trin. 32. Car. 2. Anon.

17. In an Indictment prosecuted by the Husband for seducing away his Wife, and keeping her sometime in Adultery, the Wife was admitted to
to be a Witness against the Defendant coam Justice Wyndham at Lent Affizes at Aylesbury, and the Defendant found guilty. She may be a Witness to prove a Cheat upon her and her Husband. L. E. 55. pl. 12. cites T. p. Pais, 160.

18. The Plaintiffs were Infants, and the Children of the Defendant's Wife by a former Husband; Their Bill was to have an Account of the Sums left them by their Father, and of the Produce thereof. Upon the Hearing it was referred to an Account, and the Defendant and his Wife were to be examined on Interrogatories for Discovery of the Estate; The Wife being at Variance with the Husband, and living apart from him, upon her Examination, made the Estate of the Plaintiffs (who were her Children) as great as she could, and thereupon to fix the Charge upon the Husband. The Plaintiffs, upon a Petition to the Master of the Rolls, obtained an Order to examine the Wife as a Witness against the Husband de bene dicto, and the Master upon her Evidence, had charged the Husband with several Sums of Money, as Interest, and Produce of the Infants Estate; But now, upon Exceptions to the Report, the Lord Chancellor disallowed her Evidence, and declared the Wife could not be a Witness against her Husband. 2 Vern. 70. pl. 11. Tit. 1693. Cole v. Gray.

19. Question was, Whether one who had been Attorney for Defendant should be compelled to be a Witness; and Darnell said, this being a criminal Matter he should, but not so in a civil Matter. But Pratt said, that if he be sworn, we must ask him his whole Knowledge, and perhaps he cannot discover that without charging himself, for if one's Declaration generally may be made Ulc of against him, a fortiori what he says upon Oath shall; and this seemed to weigh with the Court. But Holt said, he was of Opinion against his Brothers some Years before, in the Case of one Holford, that any thing an Attorney knew, otherwise than quæreimus an Attorney, he ought to declare. But his Brothers held, an Attorney ought not upon any Account to be received to reveal his Client's Secrets; And Holt said, if a Client bring a forged Deed to Counsel, the Counsel ought to prosecute him, and that he had known such a Thing done. 12 Mod 3°1. Mich. 11 W. 3. in Case of the King v. Warden of the Fleet.

20. Per Holt, at Nisi Prius; I have known it ruled, that a Legatee should not be a Witness to prove Affets in the Hands of Executors in Debt by a Creditor; And it has been an old Exception, but I see not the Reason of it, for he swears to Jeffer the Affets, and the Legatee was known. 12 Mod. 385. Pach. 12 W. 3. Anon.

21. Trespasses for an Assault upon the Plaintiff's Wife, and getting her with Child, and what the Wife declared in her Labour, rejected to be Evidence. 12 Mod. 375. Pach. 12 W. 3. Adams v. Arnold.

22. Debt by Husband, and it appearing to have become due to his Wife as a separate Deader, a Discourse of the Estate concerning it, was given Evidence for Defendant. Anuente Holt. Mich. 13 W. 3. Anon.

23. In an Action of Assault and Battery brought by the Husband against the Defendant for an Intent to ruin his Wife, he was admitted an Evidence, which Holt said, it was because the Wife cannot give any Consent, tho' it be not Felony. 11 Mod. 244. pl. 19. Pach. 8 Ann. B. R. Anon.

24. And Holt said, that A. having laid 51. of the Event of the Cause, was no Object to the Wife of A. being admitted to be an Evidence, because it shall not be in the Power of a third Person to disqualify one who otherwise would be a good Evidence, and thereupon the Case was admitted to give Evidence. 11 Mod. 224. pl. 19 Anon.

28. Feme
Evidence.

28. Feme allowed to be a Witnes against her Husband, as to a Mortage of Monies borrowed by her on Bond, and placed out on a Mortgage, which he claimed, tho' himself had given it to the Concealment of the Marriage, as the Wife had done; And therefore, and because her Evidence was also supported by the Evidence of the Mortgagor, and the having transferred and appeared throughout the whole Affair as a Feme sole, the Monies of the Mortgage-Money was decreed to the Plaintiff (who lent the Feme so much) with Costs. Abr. Equ. Cafes, 226. Hill: 1719. Rutter v. Baldwin.

29. In the Cause of Rutter v. Baldwin, Hill. 1719. the Court agreed clearly that the Wife shall never be admitted by an Answer or otherwise as Evidence to charge her Husband; As where a Man marries a Widow Executor, &c. her Evidence shall not be allowed to charge her second Husband with more than the can prove to have actually come to her Hands. Abr. Equ. Cafes, 227. pl. 15.

30. In an Indictment against Lord Audley, for affisting another to commit a Rape on his Wife, she was admitted to be a Witnes against him. Hutt. 115.

(C) Witneses. Who. Persons interested by Accident.

1. A Subscribing Witnes to Livery and Seisin on a Feoffment afterwards became Tenant at Will of the same Land. Yet he was allowed to be a good Witnes. Bults. 202. Pach. 10 Jac. Anon.

2. Feoffees in Trust to be examined as Witneses. Toth. 168. in Hill.


4. In an Information for Forgery, no Man that is or may be a Lessee by the Deed, or who may receive any Benefit or Advantage by the Verdict being found against the Defendant shall be a Witnes. 3 Salk. 172. pl. 4. Watt's Case. Hardr. 331. pl. 7. Trin. 15 Car. 2 in Scacc. S. C.

5. An Executor may be a Witnes in a Caufe concerning the Estate if he has not the Surplusage given him and so I have known it adjudged. P. Hales. 1 Mod. 107. pl. 1 Pach. 26 Car. 2 B. R. Fountain v. Cook.

6. Several Persons were examined as Witneses no ways concern'd in Interest, and the Caufe heard, and Ifuies directed to be tried, but the Trials were not carried on, and the Caufe slept many Years, and after abated; and then tho' Persons who had been examined as Witneses became Heirs at Law, and thereby interested in the Matter; the Caufe was revived and reheard, and the same Ifuies directed to be tried; And the Persons who had been so examined (being now Plaintiffs) prayed to have an Order, that their Depositions taken when they were disinterested might be read as Evidence at Law for themselves; And my Ld. Keeper order'd accordingly, and likened it to the Caufe, where one is the only, or only surviving Witnes to a Deed, becomes after the Party interested, his Hand may be proved at Law; so if a Witnes to a Deed becomes blind. Then the Caufe proceeded to Trial at Bar in C. B. where the whole Court held these Depositions could not be read without Content, the Parties being living; but the Defendant contested, and had a Verdict for him; and the Plaintiff obtained a new Trial, and then would have had the same Order; but my Ld. Keeper said, since the Judges had resolved other-
Evidence.

wife, he could not take upon him to make that Evidence which was not, and therefore only ordered they should be read in Evidence, as by Law they might. Abr. Equ. Cafes, 224. Trin. 1702. Holcroft v. Smith.

7. The only living Witnefs to a Bond was made Executor by the Obligee, it has been ruled at Law that the Executor shall be allowed to prove the Hands of the Witneffes. 2 Vern. 700. Mich. 1715. in cafe of Goffe v. Tracy.

(D) Trial. Witneffes.

What Persons may be, as Executors, Trustees, Guardians, &c.

Ibid. pl. 6. cites 9 H. 6. 8. S. C. —
Ibid. pl. 7. cites 9 H. 6. 48. S. P. —
Ibid. pl. 17 cites 19 H. 6. 53. S. P.

1. In Debt by 2 Executors they counted of Arrears of Account made in the time of the Testator. The Defendant rendered his Law that he owed them nothing, and prayed that they be examined; but the Court held that they should not be examined of another's Affic, but otherwise of an Attorney, because he might have been informed from his Master, &c. Br. Examination pl. 5. cites 3 H. 6. 46.

2. It is a principal Challenge to a Juror, that he was an Arbitrator before in the same Cause, because it is intended, that he will incline to that Party to which he inclined before; but contrary is it of a Commissioner, because he is elected indifferent. P. Cook Ch. J. said (nulla contradicente.) Godb. 193. pl. 276. Trin. 10 Jac. B. R. Sir Francis Fortescue v. Coake.

3. One Gates an Executor was produced to prove the Will as a Witness, to which Exception was taken because of his Executorship; but it was answered, that he had fully administered. To which it was replied, that afterwards Affairs might come to his Hands; but the Court resolved, that it would not be presumed to bar his Testimony, which was allowed in the principal Case, being in Ejeftament. Tr. per. Pais, 162. cited by Glyn Ch. J. in the Case of Brereton and Tatum. Mich. 1656 B. R. as the Ld. Chandois's Cafe, in which he was of Counsel, and took the Exception.

4. Trustees shall not be examined as Witnesses one against another. Toth. 285. cites Sherborne v. Potter and Townly. 7 Car.

5. A Trustee may be a Witness if he will release his Trust but not if he has conveyed it over, altho' for the King in an Information of Forgery. Sid. 315. pl. 33. Mich. 18 Car. 2. B. R. Stevens v. Gerrard. So if he be in Possession of the Land itself, if it be only as a Servant. 1 Sid. 315. S. C.

S. C and by Maynard and Finch a Witness was admitted in C. B. to prove a Codicill of the Ld. Rutland's Will, upon a Release of his Intereff made while the Jury were at the Bar; and Twilden said, that in a Kentfifh Cafe at the Bar he caused a Release but the Day before the Trial, and it was admitted good; but Windham said, that such are left to the Jury as to the Credit. —

6. In a Trial at Barr to avoid a Patent, a Deputy to the Party that would avoid the Patent was allowed by three Judges against one, to be a Witness, because the Suit was between the King and the Patentee. Mod. 21. pl. 56. Mich. 21 Car. 2. B. R. Owen Haining's Cafe. 7. A
7. A Trustees cannot be a Witness concerning the Title of the same
Land, because the Estate in Law is in him. L. E. 63. pl. 30. cites T. P. Fais, 224.
8. A Trustees may be a Witness against Celfui que Trust ; Per Hale.
Twilden dubitavit, L. E. 63. pl. 31. cites Trials per Puis, 229.
9. A Guardian in Seige shall be admitted to be a Witness for the
Infant ; because he is accountable. Tr. Per Puis, 226.
10. In Evidence to a Jury at Bar, a special Illue by Rule of Court
was directed to try the Custody of Lady Pierce's Manor of Welwood in
Cumberland, whether fines on the Tenants on the Lord's Death be due to
the Heirs or Successors of the Lord during his Minority. The De-
fendant excepted to the Special, that he had Fee on Admission; Sed
non allocatur, and he was sworn. L. E. 79. pl. 74. cites 3 Keb 90.
11. S. had laid himself to be sole Proprietor of a Ship and Tackle, &c.
and the Witnesses swore at the Time of the Action brought, that he was
equally concerned in every Thing, but long since had sold his Interest, so
that now he was not one Farthing concerned in the Consequence of the
Case ; yet the Court held, that he was no competent Witness. Skin.
12. An Executor may be a Witness in a Cause concerning the Estate,
if he has not the Surplusage given him by the Will; Per Hale Ch. J.
And he said he had known it to be adjudged. Mod. 107. pl. 1. Pack.
13. An Executor was admitted to prove the Revocation of a Legacy,
though he had proved the Will, for at the Time of proving the Will
he only swears he believes it to be the said Will, and at that Time he
The Defendant pleaded, that the said Bond was acknowledged by J. N.
to the Plaintiff, for the Office of Under-Sheriff, and that he was Surety
in the said Bond ; and then he pleaded the Statute of 5 & 6. Ed. 6. cap. 16.
against buying and selling Offices, &c. And upon the Trial A. wos pro-
duced as a Witness, to give an Account upon what Occasion this Bond
was acknowledged, &c. And Holt Ch. J. before whom the Cause was tried
Mich. 5 W. & M. at the Sittings for Middlesex, related to admit A.
to be a Witnesses, because it appeared that he was privately inttrrated by
both Parties to make the Bargain, and to keep it secret. And (by him) a
Trustee shall not be a Witness, in Order to betray the Trust. Ed. Raym.
15. In an Action of Assault and Battery brought by the Husband against
the Defendant for an Intent to ravish his Wife, he was admitted an Evi-
dence, (which Holt Ch. J. said,) it was because the Wife cannot
give any Content, though it be not Felony. 11 Mod. 224. pl. 19. Pack. 8
16. And Holt held, that A. having laid 51. of the Event of the Cause,
was no Objection to the Wife of A. being admitted to be an Evidence ;
because it shall not be in the Power of a third Person to disfigure one
who otherwise would be a good Evidence ; and therefore the was ad-
mitted to give Evidence. 11 Mod. 224. pl. 19. Anon.
17. Holt Ch. J. said, that barely being a Factor, does not incapacitate
a Man for being an Evidence in a Cause, otherwise if he be interelTed.
18. A Trustees has been examined as a Witnesses; Per Anthony Keck. A Gmtee
when he appears to be
a bare Trustees is a good Evidence to prove the Execution of the Deed to himself. Wms. Rep 297.
Mich. 1713, says it was so declared in the Cauf of Gofs v. Tracey.
19. Trustees
10. Trustee frequently allowed a Witness in Equity; Per Matter of the Rolls. Mich. 7 Geo.
20. A Trustee shall not be allowed to be examined as a Witness in a Cause wherein he is ordered to account. Barnard. 416. Hil. 1740. in Case of Smith v. the Duke of Chandos.

(E) Witnesses. Persons influenced by Kindred.

Co. Litt. 6. B. S. P.

(F) Witnesses. Who may be. Persons Interested.

1 By Roll Ch. J. upon a Trial, although one who is a Legatee by a Will may not be admitted for a Witness to prove that Will, yet he may be examined to prove a Deed or other Thing, which has not Relation to the Will, in respect of the Interest which he claims by the Will. Sty. 370. Paftch. 1653. Anon.
2. In an Action upon the Statute of Winton, if the Issue be whether the Place of the Recovery be within the Hundred or not, no Inhabitants of Land within that Hundred may be a Witness, but the Owners of the Land, and not inhabiting may. 2 Sid. 2, Mich. 1657. Oliver v. Wallington Hundred.
3. A Witness who subscribed his Name to a Feoffment was produced to prove Livery and Seisin, and though he had afterwards an Estate at Will in Part of the Land, yet he is a good Witness to prove Livery and Seisin, this being in Affirmance of the Feoffment; Per Fleming Ch. J. and the whole Court. Bull. 202. Paftch. to Jac. Anon.
4. A Feoffment in Fee was made to the Use of J. S. and two Witnesses were subscribed to prove the Livery of Seisin. Afterwards one of the Witnesses had an Estate at Will made to him of the said Land, and he being produced to witness the Execution of the Feoffment by Livery of Seisin, was excepted against, because he was now a Party interested in Part of the Land, and fo his Oath was to make his own Estate good. But this Exception was disallowed by the whole Court, and that he might well be sworn as a lawful Witness to prove the executing of a Feoffment by Livery and Seisin, this being in Affirmance of the Feoffment, and he was swor, and his Testimony received and allowed; Per Fleming Ch. J, and tot. Cor. Bull. 202. Paftch. to Jac. Anon.
5. If one produced as a Witness had Part of the Lands in Questions, and had disposed of them after Notice of Trial, although the Sale was bona fide, yet shall not his Evidence be received; for if the Title he has made be disaffirmed, an Action lies against him; but if each Witnesses claims an Estate for Life or Years in Part of the Land paramount, both their Titles, he may be received as an Evidence. Sid. 51. 1 Keb. 134. Mich. 13 Car. 2. Wickes v. Smallbrooke.
Evidence.

6. A Prebendarv makes a Lease of a Rectory to his Soi, with usual Co-
venants. In a Suit by the Son against A. claiming by an antient Lease
and in Possession, the Parke (being then made Bishop of the same Dioces
in which) is allowed to be sworn. Sid. 75. pl. 6. Paclf. 14 Car.

7. In case of Forgery, Perjury and Ufury, the Person griev'd shan't
be receiv'd as a Witnes, because he may have Advantage by the Ver-
dict. Hard. 332. pl 7. Trim. 15 Car. 2. in Scac. in Watts's Cafe.

8. A Legatee after Receipt of the Legacy, without giving any collater-
al Security for Re-payment, will not be compelled by Bill in Chancery to
make Re-payment, but if paid pending such Bill, whereby to let in his Testi-
mony without any Decree, he is no sufficient Witnes; But the Pay-
ment being before, the Court would not admit any Exception, so
much as to her Credit, Et juraur. Keb. 631. pl. 26. Hill. 15 & 16

9. Legatee or Devisee of an Annuity, may be a Witnes to prove the
Will, if he hath given an Acquittance of the Legacy, or released the said
Annuity notwithstanding that this be done pending the Action; And
this is to be proved in Court when that Cause is trying, yet the Party to
releasing is a good Witnes; Per Curiam. Sid. 315. pl. 33. Mich.

10. In Procur by Affigures of Commissioners of Bankrups, the Defend-
ant excepted to a Witnes, because he was a Creditor, and may come
in before a Division made; But after 4 Months after any Dividend,
be a good Witnes; For no other Dividend shall be intended, but here
as no Division being made, he was set aside. 2 Keb. 349. pl. 31.

11. In a Trial at Bar to avoid a Patent, a Deputy to the Party that
would avoid the Patent was allowed by 3 Justices against 1 to be a
Witnes, because the Suit was between the King and the Patentee.

12. In an Action of Deceit for forging a Will, a Legatee was allow'd
and sworn as a Witnes in the Trial for the Forgery; For this makes
nothing to the Probate of the Will, or Recovery of the Legacy in the
Spiritual Court, nor do they take Notice of it. Try. per Paiz, 240.

13. A Special Issue was directed to try the Custome of a Manor, whe-
ther a Fine on the Lord's Death be due to the Heir of the Lord during
his Minority; Exception was taken to the Steward's being admitted a
Witnes, because he had a Fee on Admission; Sed non Allocatur, and
he was sworn. 3 Keb. 90. pl. 31. Mich. 24 Car. 2. B. R. Cham-
pian v. Atkinson.

14. A small Legatee has been sworn to prove a Will. Arg. Vent.
351. Mich. 32 Car. 2.

15. In Ejectment upon a Trial at Bar, the Title of the Lessor of the
Plaintiff was upon the Grant of a Rent, with a Clause of Re-entry
for Non-payment. The Defendant produced the Executor of the Grantor as
a Witnes; It was objected, that he ought not to be admitted, be-
cause the Grantor had covenant'd for his own and his Heirs to pay it;
And that the Executor being bound to pay it was no competent Wit-
nesses; But it was infliicted on the other Side, that this Covenant annex-
ed to a Real Estate, would bind the Heir only, and not the Execu-
tor. But the whole Court were against it; But then it was proved,
that he had fully administered the Inventory; But the Plaintiff giving a
further Charge to maintain his Title, that Witnesses was set aside.
Vent. 347. Hill. 31 & 32 Car. 2. B. R. Cook v. Fountain.

16. In an Information for Forgery, and for publishing a forged Deed
showing it to be forged, it was adjudged upon a Conference with the
Judges
Evidence.

Judges of B. R by a Baron of the Exchequer, that no Person who is or may be a Laver by the Deed, or may receive any Benefit or Advan-
tage by the Verdict being found against the Defendant shall be a Witness. 3 Salk. 172. pl. 4. Watts’s Cafe.

An Executor may be a Witness in a Cause concerning the Estate, if he be not residuary Legatee. Per Hale at a Trial at Bar. 1 Mod. 107. Fountain v. Cook.

17. An Executor was admitted to prove the Revocation of a Legacy, tho’ he had proved the Will, for at the Time of proving the Will, he only Swears he believes it to be the last Will; And at that Time he might not know of the Revocation. Vern. 20. pl. 12. Mich. 1681. Jervois v. Duke.

18. If a Man promises another that if he recover the Land, the other shall have a Legacy of it, he is no good Witness. Per Twifden J. 1 Mod. 21. pl. 12. Mich. 1681. Owen Hanning’s Cafe. Or a Sum of Money, 3 Mod 85. Mich. 1 Jac. 2. B. R. Hicks v. Gore.

19. Bailiffs that served an Execution in breach of an Injunction, find Money hid in the House and carry it away; Ordered, that the Party at whose Suit the Execution was taken out, should make Satisfaction for all Damages which the Plaintiff should swear he had sustained. Per Finch C. and North K. confirmed the Order, and in oium fsi-

20. It is the constant Practice not to permit one that has laid a Wager as to a Matter in Dispute to be a Witness; But if he has confess’d the Wager lost, and has paid it, it shall be intended to be duly paid, and therefore shall be intended to be duly paid, and for that Reason ought to be admitted a Witness. 3 Lev. 152. Mich. 35 Car. 2. C. B. Relous v. Williams.

21. It is usual where a Man is a Legatee, if it was an inconsidera-
ble Legacy, as 5s. (or 5 l. to a Man of Quality) that he should nevertheless be a Witness to prove the Will, per Ld K. North. Vern. 254. pl. 246. Mich. 1684. in Case of Corporation of Sutton Coldfield v. Wilton.

22. Tenant that has nothing but a Kiddel (i. e.) a Wear in the Sea, between High and Low Water Mark, may be a Witnesses to prove if there be a Cuttton to cut Trees without Licence or not. 2 Sid. 9. Mich. 1657. in Case of Chamberlain v. Drake.

23. A Patron cannot be a Witnesses to maintain the Title of his Clerk in Ejectionment, 4 Mod. 17. Pack. 3 W. & M. in B. R. in Case of Jones v. Beau.

24. In an Ejectionment, a Patron is never permitted to be a Witnesses to maintain the Title of his Clerk. 4 Mod. 17. Pack. 3 W. & M. in B. R. in Case of Jones v. Beau.

25. Upon Capture of a Prize, one Part was agreed to belong to the Mafter, and the other two Parts to the Owners; The Mafter disposed of one hundred Cheifs of Lemons to A. B. they bring Account against A. B. and upon Evidence at Guild-Hall a Mariner was allowed to be sworn, though it appeared that he was to have a third Part of the Mafter; For per Holt Ch. J. the Mafter is accountable to the Mariners for their Share, which they shall recover of the Mafter, whether he recovers in this Action or not. Skin. 403. Mich. 5 W. & M. in B. R. pl. 38. Anon.

26. Where a Man makes himself a Party in Interest after a Defen-
dant has Interest in his Testimony, he may not by this deprive the Plaintiff.
Evidence.

Plaintiff or Defendant of the Benefit of his Testimony. As if a Man be a Witness of a Wager, &c. and after bets, this shall not be a Reason to except against his being sworn to prove the Wager. Skin. 586. pl. 5. Trin. W 3 ruled by Holt Ch. J. at Nift Prius in Middlesex. Barlow v. Vowell.

28. Bankrupt shall not be a Witness to prove an Act of Bankruptcy, and said to be refuted; Per Raymond Ch. J. But he admitted a Bankrupt to give Evidence as to the Time of the Act of Bankruptcy. His Wife shall neither be a Witness for or against him to prove Act of Bankruptcy——And 27 Jan. in Canc. per Ld. Ch. Egleham v. Haines, 111. That the Creditor of a Bankrupt was not a Witness, because he swears to increase his own Dividend, whether more or less. So it is in Cases of Commons and Boundaries (that is) to enlarge either. 3dly, That an Issue in Tail in Life of his Father may be a Witness, because he has but a Possibility; But a Remainder-man after Estate Tail is no Witness. 4thly, In this Case, the Object is against a Man who was a Purchaser, i. e. the Son of the Bankrupt, who claimed under Settlement which was in Dispute, (at dictor) led sub Judge, and not determined whether good or bad; But his Deposition was read, because it is but a Possibility of an Interest which may affect him, if Effects sufficient, the Settlement is good between him and the Bankrupt; and this is uncertain how the Effects may hold out, and whether good against the Creditors not determined Upon Examination upon a voir dire, if the Party believes or admits he is interested, or if he denies it, and it is proved upon him, he is no Witness, but in the present Case the Objection only goes to his Credit. Ex relatione magnifi Cruys.

29. An Her at Law may be a Witness concerning the Title of the Land, but the Remainder-man cannot, for he hath a present Interest, but the Heirship is a meer Contingency. Coram Treby Ch. J. 1 Salk. 283. pl. 13. Mich. 10 W. 3. Smith v. Blackham.

30. Upon Trial of an Information for a Cheat, The Fact was, that L. Raym. the Defendant had a Promise of a Note for 51. from his Mother in Law, and by some Slight he got her Hand to a Note of 100 l. Et per Holt Ch. J. the Mother cannot be a Witness, being concerned in the Consequence of this Suit, which is a Means to discharge her of the 100 l. for though the Verdict upon this Information cannot be given in Evidence in an Action upon the Note, yet we are sure to hear of it to influence the Jury. 1 Salk. 283. pl. 12. Mich. 10 W. 3. at Guild-Hall. The Kings v. Whiting.

From the Cafe of Perjury or Forgery, where the Party whose Interest is defeated or prejudiced by the Deed &c. is no Evidence to prove the Perjury or Forgery. 1 Salk. 283. and Ld. Raym. Rep. 596. ut supra.

31. Tenant in Tail, Remainder in Tail, he in Remainder cannot be a Witness concerning the Title of these Lands; for he has an Interest, such as it is. 1 Salk. 283. pl. 13. Mich. 10 W. 3. Coram Treby Ch. J. in Cafe of Smith v. Blackham.

32. A Will of Lands was attested by three Witnefes, whereof the Devisee was one; Adjudged that he is no good Witnefs with respect to this Device. Cart. 514. Hill. 11 W. 3. B. R. Hilliard v. Jennings.

33. A Legatee may be a Witnefs against a Will, because he swears against his Interest; but not a Witnefs for the Will, because he is presumed to be partial in swearing for his own Interest. 2 Salk. 691. pl. 5. in Canc. Oxenden v. Penrice.

54. In
Evidence.

34. In Order to a new Trial, an Affidavit was read, that one of the Witnesses had declared that he had got a Guinea to stifle the Truth, Gould J. said, that an Affidavit of him who had the Guinea was something, but his Saying is nothing. A Witness's laying a Wager in the Cause is no Hindrance to his being a Witness; For the other has an Interest in his Evidence, which he cannot deprive him of. 7 Mod. 31. Trin. 1 Ann. B. R. George v. Pierce.


36. In Action for running over the Plaintiff's Barge with his Ship, Holt Ch. J. would not suffer the Pilot to be a Witness, because he was answerable, if faultly in steering, to the Master. 1 Salk. 297. pl. 22. Hill. 2 Ann. Martin v. Hendrickson.

37. Where a Witness condescends himself interested, the Party shall never be let in to support his Testimony; and this, howsoever it appears, a Decree was made in Canc. on the Testimony of a Witness, but while a Petition was depending for a Rehearing, a Bill was preferred against him, and his Answer condescends himself to be interested, and now his Answer was read against him. Objected, that the Discovery was not by proper Means, but the Witness ought to have been examined to these Points. upon Interrogatories at the Communication, or otherwise Articles ought to be exhibited against him upon Facts which ought to be proved against him for non allocatur, for this could not be discovered otherwise. Articles may be granted to examine the Competency of a Witness as well as to his Credit; Perhaps the Party might have demurred to this Bill, it being to make himself a Criminal, but if a Man will answer such Things as he need not, it is reasonable the other Party should take Advantage of it. Canc. Mich. 2 Ann. Coram LD Keeper Master of the Rolls, Holt Ch. J. and Powell J. The Fact here condescended, was, that he had given Security for Half of the Land to one of the Parties in Case that Party recovered, which he accordingly did do at the Rolls on the Testimony of that one Witness.

38. Tho' a Witness is examined an Hour together at Law, if in any Part of his Evidence it appears that he was a Party interested, the Court will direct the Jury that he is no Witness, nor any Regard to be had to his Evidence; per Wright K. 2 Vern. 464. pl. 424. Mich. 1704. Needham v. Smith.

39. A Witness was examined before the Hearing whether he was interested, but after the Hearing he released her Interest, and was examined again before the Matter. Lord Keeper allowed the Depositions before the Matter to be read. 2 Vern. 472. pl. 430. Mich. 1704. Callow v. Mime.

40. Upon Appeal from the Rolls, it was objected to the Evidence of a Witness examined in the Cause, and read at the Hearing at the Rolls, that since the Hearing in answer to a Bill exhibited against him, he had confessed, that on the Day on which he was to be examined as a Witness, the Plaintiff gave him a Bond, that if the Plaintiff recovered the Land in question, he would convey Part of it to the said Witness. The Lord Keeper, adhered by Holt, C. J. and Powell, J. were of Opinion, that the Answer ought to be read, to take off his Evidence. 2 Vern. 463. pl. 424. Mich. 1704. Needham v. Smith.

41. In Debt upon a Joint and several Bond against one of the Obligors, the other can be no Witness, for these Persons are supposed to be interested, tho' they cannot have any Benefit by any Verdict given. In
Evidence.

In case of Burglary or Robbery, where the Prosecution is entitled to 40l. by late Act's, &c. he may be a Witness; for these Acts do not alter the Nature of the Evidence before, and are Advantages given to encourage Pertons to prosecute; And in Robbery the Examination of the Party robbed is Evidence proper necessestatum rei, because there can be no other Person. Parker, Ch. J. said, that he would have allowed, if all the Seamen had made an Insurance, the Testimony of any of them; But there the Objection was not against the Matter, as Matter, but as he had another Interest.

In case of the Arrival of a Ship, upon an Action for Seamen's Wages, the Seamen may be Witnesses one for another, or else Witnesses must very often be brought from beyond Sea.

In the Case of Bath and Montague, after the Trial there were several Indictments of Perjury preferred, for that the Witnesses swore that Sir J. C. was at . . . in 1701. and when one of these came to be tried, the others that were indicted were admitted as Witnesses.

In an Action for negligence keeping of Fire, any who are Sufferers thereby shall not be Witnesses, tho' the Verdict in one Action could have no Influence in another.

In an Action against an Inhabitor for Goods stolen, the Party himself cannot be a Witness, tho' it may be he had no Servant with him; Per Eyre, J.

In case for Policy of Insurance, the Plaintiff at the Trial produced the Matter to prove that the Ship was taken by the French; Obj. And the Matter being asked, said, that he had another Policy with another Person on the same Ship, and therefore it was intitled that he could be no Witness, because a Party interested, and so not competent to prove that the Ship was taken; And on a Case made, it was resolved in B. R. that he was no Witness; Parker, Ch. J. said, that he had put the Case to all the Judges, and they were of the same Opinion. Pauch. 11 Ann. B. R. Johnson v. Haydon.

42. The Matter in Issue was, which was the Charter by which the Corporation of the Town of Bewdley was to act; Whether by the ancient one, or one of a later Date? Evidence brought to establish the ancient Charter was excepted against, as being a Mortgage under the old Corporation, which they proved by an Answer of his to a Bill in Chancery; but this Answer being so uncertainly penned, as that it might be true, and yet his Mortgage of such a Nature, as not to prevent his Evidence, it was intitled that he might be called to explain the Ambiguity of his Answer; and the Court was of Opinion he might, since his Answer depended upon his Veracity, as much as the Evidence he could then give; And if the one be to be credited, why not the other? But afterwards his Evidence was rejected upon another Consideration, viz. That, in his Answer, he lays the whole Stress of his Defence upon the Matter then in Issue, viz. the Substituting of the present Corporation. te Mod. 151. 152. 12 Ann. B. R. Corporation of the Town of Bewdley.

43. On convicting a Person unqualified for keeping a Greyhound before Justices of Peace, the Information cannot be a Witness to prove the Fact. Pauch. 12 Ann. B. R. the Queen v. Cooper.

44. Suppose one gives or promises a Witness's Money if the Cause go on that Side, he cannot be admitted to give Evidence; Per Holt, Ch. J. 11 Mod. 228. Young v. Slaughter.

45. Plaintiff brought an Action of Trover against Defendant for Lace, and produced one Flyer as a Witness, upon which the Defendant called one to prove that the Plaintiff's Testatrix had declared that Flyer was her Partner as a Pawnbroker, but that it was not known, because he made use of him sometimes as an Evidence; Upon which Flyer was rejected
Evidence.

jefted, it being to enlarge the Testatrix's Estate. Vaughan, Executor of Hilton v. King, Ch. J. at Guildhall. Hill. 6 Geo.

46. One that had insured upon the same Ship, tho' not to the same Place, shall not be admitted an Evidence, the Ship being lost within the Compass of that Insurance, coram King, Ch. J. Hill. vac. 6 Geo. apud Guildhall.

47. Action by Drawee on Bill of Exchange against the Drawer for Non-payment by the Acceptor, Defendant insisted that the Acceptor was broke, and the Plaintiff did not give him sufficient Notice of it, by which he was damaged, which ought to be abated him in Damages, and could have called the Acceptor to prove this; But Prat, Ch. J. would not allow him to be a Witness, because, if the Plaintiff recovered small Damages against the Defendant, the Acceptor would have the Benefit of it. Pach. 8 Geo. Mitchel v. Conaway.

48. In Action for Fees a Person was called who had a like Demand upon Defendant with Plaintiff, but it being only to prove Earl Marlborough's Hand, and not to the Merits of the Demand, he was allowed for that Purpose. At Nifi Prius coram Pratt, Ch. J. Mich. 8 Geo.

49. A Grantor, where he appears to be a bare Trustee, is a good Witness to prove the Execution of a Deed to himself. Wms's. Rep. 290. Mich. 1715. in Cafe of Gofs v. Tracey.

50. In Cafe of a Prescription for a Way through a Gate to an Acre of Land in a common Field, coram Defendant's Part thereof near the Gate. A Person who had an Interest in the Field, and claimed a Way through this Gate into the common Field to his Part thereof, tho' as soon as the Parties came within the Gate some went one Way some another, yet in regard this was a common Interest to all the Proprietors, as in Cafe of a Commoner, and the Witness said, if this was stopp'd at the Gate it would be great Inconvenience, he was set aside; Per Pratt, Ch. J. at Westminster Sittings, Pach. Vac. 1721.

51. A bare Trustee is a good Witness for his cessi que Trust, but not an Executor in Trust, as he is liable to be sued by Creditors, and to answer Caufs. 3 Wms's Rep. 151. Pach. 1733. Croft v. Pyke.

52. A. and B. were jointly committed in Execution at the Suit of the Crown. In an Action brought against the Warden for suffering A. to escape. B. was produced as a Witness to prove the voluntary Escape. It was objected, that this tended to discharge B. as against the Warden, who could not detain him, having suffered A. who was jointly in Execution with him to escape, and that therefore he was interested in the Event of this Suit; But it was answered, that a Verdict in this Cause could be no Evidence in an Action of False Imprisonment, &c. to be brought against the Warden, and the Testimony of B. was received. Gibb 80. 81. Trin. 2 & 3 Geo. 2. at the Sittings in the Eschequer, coram Pengelly, Ch. B. The King v. Huggins.

53. Justice Powys declared, that it had been solemnly agreed by the Judges, that where a Person had a Legacy given, and did release it, he was a good Witness to prove the Will, jo if it was paid him in case of a pecuniary Legacy; But it it was a specific Legacy, tho' it was delivered to him, yet will not such be a Witnesses, because if the Will be set aside, an Action of Trover would lie against such by the Administrator. Autumn Aff. at Brentwood 1720.
Evidence.

(G) Witnesesses. Who may be. Interested Persons, as Members of a Corporation Community, &c.

1. If one or 2 particular Inhabitants of a Town where all claim Common be sued concerning their Common, those not sued shall not be Witneskses for those sued, because it is in Defence of their own Right and Title which is one way or other decided by the event of this Trial. So it is in case of a Mutus Decimaundi and the like; wherein it is ordered many times per Cur. for avoiding unnecessary multiplicity of Suits, that in one Man's Case a Trial may be had for all. Hob. 91. 92. Pash. 14. Jac. in the Star Chamber, Ed. Howard v. Bell, where the Tenants of a Manor joined to defend a Cause against their Lord who supposed all their Estates to be void in Law.

2. An Action was brought by the Corporation of the Weavers of Norwich for a Penalty against a Weaver for working at his Trade in Harwell time. And Atkins J. allowed one of the Corporation to be a Witnessth'one moiety of the Penalty was due to the Corporation, Try. per Paiz 162. Lent Alfizes 1657.

3. Upon Evidence to a Jury at a Trial at Bar, it was agreed that where the Titular deceased Lands to W. R. for Life, Remainder to the Minister and Church Wardens of a Parish for the Maintenance of the Poor for ever, any of the Parishioners of the fame Parish may be a Witness to prove this Devise; 2 Sid. 109. Mich 1653. B. R. Townsend v. Row.

4. Upon a Trial at Bar upon an Issue directed out of Chancery, whether the Manor of S. H. is within the County of Stafford; Exception was taken to some Witnesesses who were produced to prove the manor House of S. H. to be in the County of Salop, because they were of that County themselves; but it was Ruled, that any Person of the County, if he is not within the Hundred where this Manor is, might be a Witness; For as the County Taxes, every Hundred pays its Proportion; but as to the Hundreds there are particular Charges. But it being proved afterwards that there was a General Tax in each County for maintenance of the Suit and therefore no one who was charged thereto may be a Witness. Sid. 192. pl. 21. Pash. 16. Car. 2. B. R. The County of Salop v. the County of Stafford.

5. On an Information for a Riot and Misdemeanor in Chusing a Mayor, the Cause was tried at Bar, and no Evidence was given against 2 of the Defendants; and thereupon they were allowed to be Sworn as Witnesses for the other Defendants, tho' it was objected that they were of the same Corporation; and that they defended the Suit at their own Charge, but this was not well proved. Sid. 237. Hill. 16 & 17. Car. B. R. The King v. Beder.

Evidence against one of them he shall be admitted as an Evidence for the rest. — And in such Case Holt Ch. J. ordered a Felony at the Old Bailey to be brought from the Bar, and so Evidence against Persons indicted with him.

6. On Evidence to a Jury at Bar in Ejaculation, the Defendant challenged a Witnes produced by the Plaintiff to prove a Leave made by the Dean.
Dean and Six Residentiaries of Herford, under whom he claimed, because tho' the Witness was a Prebendary at large and a distant Body, yet as one of the General Corps be had Power to affix, which the Court held to be sufficient to set him aside tho' he has no Interest. 2 Kab. 126, pl. 79


7. The Defendants were severally Convicted of Deer Stealing upon the 3 and 4. W. 3. c. 10. Exception was taken to both the Convictions because the Persons upon whose Testimonies the Defendants were convicted appeared to be of the same Parish where the Facts were committed and so might be entitled to part of the Penalty, and consequently not indifferent and credible Witnesses; but over ruled per rot. Cur. because the Justice of Peace has averred them to be Credible Witnesses, and it does not appear that they were of the Poor of the Parish. Mich. 5 Geo. B. R. The King v. Witford and Savage.

8. In Cale on Assumpsit and Indebitatus to pay Toll of one half-penny for every Frail of Railins, and Four-pence for every Tun of Oil &c. For which the City prescribed by the Name of Water Bailage to be taken of all not Freemen, that bring such Wares by Water to be sold to the City; On not Guilty pleaded and trial at Bar, Maynard excepted to a Witness for the City, because a Freeman; fed Non allocatur; albeit he were disallowed for this Cause in the Exchequer, because albeit the Action be brought by the Mayor and Commonalty, the Benefit being only to the Sheriff, the Innuinity of Citizens is not in Question. 2 Kab. 295 pl. 84. Mich. 19 Car. 2. B. R. Mayor and Commonalty of London v. Gold.

9. In an Action against a Hundred upon the Statute of Hue and Cry some House-keepers appeared as Witnesses who said they were poor and paid no Taxes nor parish Duties; but the Court with taking the Opinion of C. B. held that they were not good Witnesses because when the Money recovered against the Hundred should come to be levied they might be worth something. Mod. 73. pl. 30. Mich. 22 Car. 2. B. R. Anon.

10. In a Dispute about the Toll of a Market, the Town pretending to be Incorporated and to have a Right to the Toll, it was resolved that no Burgio-Holder can be a Witness for the Town; Vent. 212. Pach. 24 Car. 2. Anon.

11. In an Action on the Cafe against the Town of Uxbridge for taking Toll on Thursday Market, it was said no Uxbridge Man of the pretended Corporation can be a Witness, * and so by Hale Ch. J. it was ruled in Cafe of the London Hawkers; And in Smith and Hancock's Cafe that no Freeman could be allowed to prove the Custom of this City that was of the Corporation, 3 Kab. 12 pl. 16. Pach. 24 Car. 2. Cook v. Anon.

12. In Trefpso's the Defendant Justifies as Servant to the Mayor Aldermen and Commonalty of the City of London, Governors of the Hospital of Bridewell by Patent 7 Ed. 6. The Witnesses being most Freeman of the City, Maynard the King's Serjeant would not Consent they should be Swn; and per Cur. in a Quo warranto they could not be Swn, because each Member is liable to the Fine; but this being against Carter, and so a Suit against them as another Corporation viz. Governors of the Hospital, this being in another Capacity and the Action not in the Right, the Petition can be recovered against none but the Defendant Carter, or such as are of the Inhabitants of Bridewell, not against any Freeman or Citizen, as such, by Hale Ch. J. and Wyld; contra by Twifden and Rainstorff; but to avoid this Question, Jefferies for the City prayed Time till next Term, that in the mean Time they might before the Mayor of London in his Court at a Common Hall, as most usually, procure a Temporary Distraint of all the Witness's
Evidence.

nefles that were Freemen to enable them to be Witneses which the Court granted. 3 Keb. 300. pl. 35. Pach. 26 Car. 2. B. R. Lord Dorset v. Carrer.

13. Hale, Ch. J. in * Hancock's Cafe in the Exchequer, in a * See it. Warranto against the City of London, it was agreed that none could be Tryal (H) Witneses for the City of London against the Hawkers, until they were Fiduciaries for the Evidence cannot surrender his Franchise by Consent, there, because the Right was concerned, and every particular Member liable to the Fine he cautioned them to do in this Cafe of Package, and to it was here in the Cafe of Water-Bailage. 3 Keb. 295. pl. 26. Pachh. 26 Car. 2. B. R. Corporation of London v.

14. In cafe of Water Bailies claiming 2 d. per Child for Coals Im- ported; all the Judges (except Jones J.) held that Freemen might be Wit- nesses. 2 Show. 47. pl. 33. Pachh. 31 Car. 2. B. R. King v. Car- penter.

for all Sea Coal imported at London. The Defendants prosecuted for the Duty, and here being taken upon the Prescription, it was tried at Bar. The Defendants produced several Citizens Freemen of London, to prove the Prescription; to whom it was objected that they ought not to be Witneses. Quia in propriis causis but per Cur. it appears, that the Mayor and Sheriffs have all the Profit of the Toll; so that tho' the benefit of the whole Corporation touches all the Citizens, and all Freemen are Members, yet they having no particular Profit to themselves, they are lawful Witneses, for it shall not be intended that they would be partial and perjure themselves for so small and remote Advantage. And the Jury gave Verdict for the Defendants, Mic. 20 Car. 2 C. B. and per Scroggs Ch. J. it cannot be a general Rule that Members of Corporations shall be admitted or refus'd to be Witneses in Actions for or against the Corporations. But every Cafe shall stand upon its Circumstances, to wit, if their Interest be so valuable, as it can be presumed it may occasion Partiality in them or not. 2 Lev. 251. Vent. 31. King v. City of London.

The Ed. K. North Lid, that a Corporation ought to have a Town Clerk, and under Clerks that are not Freemen, that they may be competent Witneses, upon Occasion. And he said, he thought it very hard in the cafe of Water Bailage of London, that no one Freeman of the City, tho' it was not 6 d. Concern to him, could be admitted as a Witnes. But there indeed the Fee was in Quest. Vent. 254. pl. 246. Mich. 1684. Corporation of Sutton Coldfield v. Wilton.

15. In Cafe of a Tell for a Ferry, Watermen have been allowed to be Witneses. Arg. 2. Show. 47. pl. 33. Pachh. 31 Car. 2. B. R. King v. Carpenter.

16. In Cafe for procuring a false Return to a Mandamus, the Defen- dant produced several Freemen of Canterbury to prove the Return true, to which it was Objected, they ought not to be admitted, being Free- men of Canterbury, and a By-Law was produced, by which it was ordered, that the whole Corporation should be at the Charges of the Return. The Defendant, to qualify these Witneses, produced a Re- lease he had given to the Corporation of all Contributions they were liable to on this Account; and on much Debate on a Bill of Exception, all the Court held, that the Witneses ought to have been received. It was agreed, they were good Witneses. 2 Lev. 256 Hill. 30 & 31 Car. 2. B. R. 7 Enfield v. Hill.

Judgment was given — 3 Keb. 559. pl. 26. S. C. but S. P. does not appear.

17. In an Indictment for not repairing Peterborough Bridge; one of the County was admitted to be a Witnes. cited per Dolben J. Vent. 351. Mich. 32 Car. 2. B. R.

18. In Cafe of Duty or Custom for Goods imported, it was held, that Freemen Citizens might be Witneses for the Defendants; for that is a — The Cafe gainst themselves; and Unfreemen likewise, that were not Traders, of the City were of London,
Evidence.

Concerning were allowed likewise for the Defendant. 2 Show. 146. pl. 127. Mich. 32 Car. 2. B. R. City of London v. three Merchants. Bailage, S. P. held accordingly, and seems to be S. C.

19. In Information by Attorney General at the Relation &c. on behalf of themselves and all Inhabitants of the Town of Warwick &c. relating to Charities &c. a Person an Inhabitant receiving Alms is no Witness; For every Inhabitant either pays or is under a Possibility of Paying to Church, Poor, &c. though he pays nothing at present. 13 May, 1737, per Ld. Chancellor at Westminster.

20. If A. B. C. D. and E. claim Common in a Place called Dale, exclusively of all other Persons, and the Common of Acres is in Dispute; B. may be a Witness to prove that A. has Right of Common there; Because in Effect it charges himself viz. He admits another to have Common with himself; But if the Prescription be, that all the Inhabitants of Blackacre ought to have common there, one of the Inhabitants cannot be a Witness to prove that another of the said Inhabitants ought to have Common there; Because in Effect he would swear to give himself Right of Common there. Ruled by Holt Ch. J. at Lent Assizes at Winchester, 1697-8. Ld. Raym. Rep. 731. Hockley v. Lamb.

21. A Suit was for Money given to the Parishoners; None of the Inhabitants ought to be Witenesses; For in Cafes where the Party was concerned in Interest, though never so small, have always prevailed; and it was so resolved in great Debate in the Cafe of the City of London concerning the Water Bailiff; Per Ld. Somers. 2 Vern. 318. pl. 505. Pach. 1694. Dodwell v. Nott.

22. In all Actions to be brought in the Courts at Westminster or at the Assizes, for recovery of any Sums of Money mispent or taken by Church Wardens or Overseers of the Poor; The evidence of the Parishoners other than such as receive Alms shall be admitted.

23. In Anne cap. 10. Enacts that in Informations and Indictments in any Court of Record at Westminster or at the Assizes or quarter Sessions, for not repairing their Highways or Bridges, the Evidence of the Inhabitants of the Town or County, in which such decayed Bridges or Highways lie, shall be admitted.

24. In all Informations on Indictments, for not repairing decayed Bridges, and the Highways adjoining in the Courts of Westminster, or at the Assizes or quarter Sessions of the Peace; The Evidence of the Inhabitants of the Town, Corporation, County, Riding or Division, where such decayed Bridges or Highways lie, shall be admitted.

25. One of the County is a good Witness on a Trial of an Information against the Inhabitants of a County, for not repairing a publick Bridge, though he cannot be a good Juror. 6 Mod. 527. Mich. 3 Ann. B. R. The Queen v. the Inhabitants of the County of Wilts.

26. The Company of Sadlers brought Del in against the Stature of 1 Jac. 1. c. 22. S. 44. against the Defendant; For that being a Sadler he did make Five Hundred Sadles insufficiently, and unhabitually, contra formam statuti, and so became indebted to them in the Forlornce; This Action being now brought for the Penalty, three of the Company were disbarred by the High Court to be legal Evidence, they declaring upon a voir dire, that they had no Assurance of being received again. 6 Mod. 165. Pach. 3 Ann. B. R. The Warden and Company of Sadlers of London v. Jones.

27. Upon Issue joined upon a Prescription for a Toll; The Defendant produced a Witness; The Plaintiff objected that he was a Freeman, and
Evidence.

and so interested; Upon which the Defendants produced a Judgment in the Mayor's Court, whereupon a Seire Facias awarded, and two Nihilis returned, they had given Judgment of his Distraintishment, but upon Inquiry, the Man said he never was summoned, and knew nothing of his Distraintishment; Therefore the Proceeding being irregular, Holt would not admit the Man to be an Evidence, because the Judgment in the Mayor's Court may be avoided. 11 Mod. 225. pl 25. Pauch. 8 Ann. B. R. Brown v. the Corporation of London.

28. And in this Case it was likewise said, per Holt Ch. J. That a Man who uses a Way, may be an Evidence, whether a Toll has been paid; and so in case of a Nuisance; but if he contributes any Thing towards the carrying on the Suit, he cannot be an Evidence. 11 Mod. 225. 8 Ann. Brown v. the Corporation of London.

29. In case of proving the Bounds of a Parish, if the Parishioner is so poor, that he receives Alms he may be a Witness; So if he did not receive Alms; yet if he did not contribute to the Parish Charges he might also be a Witness; but if he paid he could not; Per Justice Powys at Brentwood, Summer Affile, 1702. Said to be agreed by all the Judges. 30. No one living in a Hundred shall be an Evidence for any Matter in favour of the Hundred, though so poor, as upon that Account to be executed from the Payment of the Taxes; Because though he be poor at present, he may become rich. 10 Mod. 150. Hill. 11 Ann. Per Parker Ch. J. Queen v. Inhabitants of Hornsey.

31. In an Action against the Hundred of North-Taunton, Devon. Lent Aff. 1715. Pratt J. said, that it had been the Opinion of all the Judges upon a late Convaluation, that such poor Inhabitants of the Hundred did not contribute to the Church, Poor, &c. might be good Witnesses.

32. An Action was brought by the Corporation of the Weavers of Norwich, for a Penalty against a Weaver for working at his Trade in the Harvest Time, contrary to an Ordinance by them made. And Atkins, J. allowed one of the Corporation to be a Witness, tho' the Mooty of the Penalty was due to the Corporation. Tr. Per Pais, 7th Edit. 329. Sect. 1.

33. A Freeman of Lynn was not allowed per Hale Ch. J. at Norfolk Summer Affizes 1668. to be a Witness to prove the Cafnon of Foreign bought and Foreign sold in that Town. Tr. Per Pais, 163. Harwich v. Twells.

34. An Action of Debt was brought, Summer Affizes Suffolk 1669, by the Town of Ipswich, for 50 l. a Fine set upon one chosed Common Councilman (called their prime Conitable) for refusing to renounce the Covenant, &c. and the Town Clerk (tho' a Freeman) was allowed a Witness to prove Election, Refusal, &c. and the Fine set which is for Necessity, for that none other are, or ought to be present at those Acts. Per Rainford, J. L. E. 67. pl. 43. cites Tr. per Pais 163.

35. In an Action brought by a Commoner for his Right of Common, another Person that claims a Right of Common upon the SAME Title shall not be allowed to give Evidence, and yet it is certain he can neither get nor lose in that Cause; For the Event of the Cause will no way determine his Right; But tho' he is not interested in that Cause, he is interested in the Question upon which the Cause depends, and that will be a Bias upon his Mind. It is not his swearing the Thing to be true that gives him any Advantage, but it is the Thing's being true; And the Law does judge that it is not proper to admit a Man to swear them to be true, which it is plainly his Interest should be true. 10 Mod. 191. Hill. 1 Geo. 1. B. R. in Cafe of Reeves v. Symonds.

36. A
36. A Charity was given for education six poor Persons of the Parish of A. Lord C. Parker would not suffer any of the Inhabitants of A. to be Witnesses, because they were interested, as being eald of the Poor Rates; And held, that a Witness produced, being described to be of the Parish of A. Yeoman, must be intended a House-keeper, and one liable to pay Parish Rates, unless the contrary be made appear. Wms's Rep. 599, 600. Hill. 1719. Attorney-General v. Weyborough.

N.B. The Method of disfranchising is by Information in a Quo Warranto against the Member, who confesses the Information, and thereupon the Plaintiff has Judgment to disfranchise him. Wms's Rep. 596. in a Note added at the End of the above Case.

38. One Iffue whether a Custom for Mortuary or not, at Rumfield in Hampshire, the Inhabitants who received Alms were admitted as Witnesses at Winchester Assizes, Lent 1719, coram King, Ch. J.

39. A Burgess of Bridport no Witness in a Case where the Question was concerning a Duty for setting up Tubs to sell Corn in, the Defendant produced a Leaf or from the Corporation, In Trespass at Dorchester Assizes 1719. coram King, Ch. J.

(H) What Persons may be Witnesses. Judges, Jurymen, &c.

1. The Judge would not suffer a Grand Jurymen to be produced as a Witness, to swear what was given in Evidence to them, because he is sworn not to reveal the Secrets of his Companions. Clayt. 84. pl. 14. 16. Car. before Foster J. Anon.

2. Secretary Morris and Mr. Annesley, President of the Council were both in Commission for the Trial of the Prisoners, and sat upon the Bench; And there being Occasion to make Use of their Testimony against Hacker one of the Prisoners, they both came off from the Bench and were sworn and gave Evidence, and did not go to the Bench again during that Man's Trial, and it was agreed by the Court that they were good Witnesses, tho' in Commision, and might be made use of. Kelynge 12.

3. When a Jurymen was hearing Evidence with his Companions, was sworn to give Evidence upon Prayer of Defendants Counsel, and he gave Evidence publickly to his Companions, and yet continued of the Jury. Sid. 133. in a Note at pl. 3. Patch. 15 Car. 2. B. R.

4. The Jury may go upon Evidence of their own personal Knowledge, being returned de vicinete; Per Vaughan Ch. J. Vaugh. 147. in Bullell's Case.

5. On a Trial at Bar in B. R. in Ejeiction, whether there was a proper and good Tenant to the premises to a common Recovery suffered in Mich. Term; A Bargain and Sale was produced dated before that Term but in Fact executed afterwards; it was proposed to prove this by Mr. Knight an Attorney, against whom it was objected for
Evidence.

that he was an Attorney in the Cause, and he ought not be examined to discover the Secrets of his Clients; But it was ruled that it was the Privilege of the Client and not the Attorney, not to be examined for where a Counsellor or Attorney is intrusted by his Client, and his Secrets are discovered to him, he receives them under a Truith of Secrecy which he is not to break, neither ought he to affit the other Party; So that what the Client tells him, he shall not go and discover; But the Question here is, when the Deed was executed, and whether by the Party or not, for he was concerned in pulling this Recovery, and he present at the Execution of the Deed; It is an All of his own Knowledge, he is to testify and shew the Truth only concerning this Deed, and any one might know this as well as an Attorney. Knight being examined said, the Deed was executed about the latter End of February, or the Beginning of March. 1o Mod. 40. Mich. 10 Ann, B. R. Ld. Say and Seal’s Cafe.


1. In Affize one of the Witnesses was challenged, because he was named Defendant et non allocatur; For he is not sworn upon the Seilin and Defendant, but upon the Deed, and therefore was sworn, and yet his Saying to the Deed may excuse the Tenant of the Defendant; And it was said, that all the Witnesses may be named in the Writ. And per Cur. Witnesses shall not be challenged. Br. Testimonigns, pl. 8, cited 12 Aff. 12.

2. In Affize Deed was denied, and Witnesses were named, one of whom was sworn, notwithstanding that he was named in the Writ as a Defendant, and notwithstanding that he had purchased the Demesne pending the Writ. Br. Testimonigns, Pl. 9, cited 12 Aff. 41.

3. If one has Cause of Action against J. S, and brings Action against J. and several others against whom he has no Cause of Action, and this is by Cover, to take away their Testimony, and it appears upon Evidence to be so, it was held per Cur. that the Justices may and ought to receive their Testimony; And so it was done in this Court, in the Cafe of Dynoke and others. Sav. 34. pl. 81. Mich. 24, and 25 Eliz.

4. Nota; By Fleming Ch. J. and the whole Court, in a Trial at the Bar, where Exception was taken against a Witness, to prove the Execution of a Deed of Feoffment by Livery and Seilin, whereby the Cafe was, A Feoffment in Fee was made to the Use of J. S. and two Witnesses were subscribed to prove the Livery of Seilin; afterwards one of the Witnesses had an Estate at Will made unto him of Part of this Land, and he being produced to Witness the Execution of the Feoffment by Livery and Seilin, was excepted against, because he was now a Party interested in Part of the Land, and so his Oath was to make his own Estate good, but notwithstanding the Exception was disallowed by the whole Court; and it was resolved, that he might well be sworn as a lawful Witness to prove the executing a Feoffment by Livery and Seilin, the Cafe being in Affirmance of the Feoffment. Bull. 202. Patch. 1o Jac. Anon.

5. Two are such, but at the Affizes the Plaintiff proceeds against one only; In such Cafe, he against whom the Plaintiff surceases his Suit may be allowed a Witness in the Cafe. Godb. 326. pl. 418. Patch. 21 Jac. B. R. Anon.

7. Persons
Evidence.

7. In Trepass against A. inmu but B. and C.—B. and C. are admissible as Witnesses, if the Plaintiff has not arrested them, or at the most demanded Process of the Sheriff to do it. Tr. per Pais, 335. 7th Edit. 335. cites Hill. 1651. Coram Roll.


9. In Trepass and Ejeftment by F. against S. Exception was taken against a Witness produced to prove the Leaf of Ejeftment, because he had the Inheritance of the Land's head; But it was for the Plaintiff that the Defendant claimed under the same Person that the Plaintiff did, and therefore the Witness was admitted to be sworn. Sty. 492. Trin. 1655. B. R. Fox v. Swann.

10. If an Action of Battery by Original be brought against two, and one comes in upon the Exigent, there may be a new Original brought against the other simul cum, and those that are waived may be Witnesses in the Cause; But those who are declared against with a simul cum, cannot be Witnesses; Per Roll. Ch. J. Sty. 404. Hill. 1654. Anon.

11. In an Action on the Cause at Common Law, or Bill brought by the Son on Marriage upon Agreement made by the Father, the Father may be a Witness, altho' he also might have had the Bill or Action; By Maynard the King's Serjeant (and which was agreed by all the Bar) in Chancery. Keb. 335. pl. 6. Mich. 14 Car. 2. in the Cafe of Gee v. Spencer.

12. If an Action is brought against two, and no Evidence is given against one, he may be a Witness himself in the Cause; Per Twifden and Windham. Tr. per Pais, 7th Edit. 334. cites Mich. 19 Car. B. R.

13. In Trever, by Affigner of Commissioners of Bankrupts, the Defendant excepted to a Witness because he was a Creditor, and may come in before a Divition made; But after four Months after any Dividend made, he is a good Witness; Forno no other Dividend shall be intended; But here, no Divition being made, he was set aside. 2 Keb. 348. pl. 37. Patch. 20 Car. 2. B. R. Bents v. Mico.

14. In an Ejeftment of a Kettrey, the Grantee of the next Avoidance was not admitted to prove a Grant of the next Avoidance, altho' his Interest was executed by Presentment, tho' said that Assignor of a Leaf might be sworn a Witness to the Affignment of a Leaf, where there were no Covenants. Vent. 15. Patch. 21 Car. 2. in Cafe of Heath v. Pryn.

15. It was moved, that a Person named in the simul cum might be struck out, he being a material Witness, and it was granted. And Keeling said, that if nothing was proved against him, he might be a Witness for the Defendant. Mod. ii. pl. 33. Mich. 21 Car. 2. B. R. Anon.

16. On an Information upon the Statute of Usury, he who borrows the Money may be a Witness after he hath paid the Money, but not before; cited Raym. 191. by Twifden J. to have been resolved in one Long's Cafe.

17. If a Man be named Defendant who is proper to be Witness in the Cause, the Plaintiff must by Order strike out his Name before Answer; But after Answer he may by Order examine him as a Witness, tho' his Name be not struck out out of the Bill, if he be otherwise competent, as if
Evidence.

he disclaims, or has no Interest, or only as a Trustee. 2 Chinn. Cafes, 214. in a Nota, Hill. 27 & 28 Car. 2. in Canc. Anon.

18. In Trephafs against several Defendants, where one who was a Witness for the Plaintiff, was made a Defendant by mistake, and so he continued till Issue joined; and then upon a Motion, his Name was omitted to the Intent that he might be a Witness. Sid. 441. pl. 11. Hill. 21 & 22 Car. 2. B. R. Anon.

20. In Debt against an Heir upon an Obligation, made by his Ancestor and J. S. jointly and severally; J. S. was sworn as a Witness for the Plaintiff. Try. Per Pains. 7 Edit. 334.

21. A Co-plaintiff, though but a Trustee, cannot be examined as a Witness for the other Plaintiff. But if the Plaintiff had made the Trustee a Defendant to his Bill, then the Trust had been upon Oath; whereas now it was only alleged in that Bill; Then the Co-plaintiff disclaiming all Interest upon Oath, might have been a good Witness. Vern. 230. Hill. 1683. pl. 225. in a Nota in the Case of Phillips v. the Duke of Bucks.

22. Nurse was examined as a Witness, though Plaintiff to prove Service of a Decree; And on Debate, the Deposition allowed, and ruled that the Plaintiff’s Oath was sufficient to convict the Defendant of a Contempt, unless the Defendant swear quite contrary, and on Exception to a Master’s Report, the Defendant was found in Contempt. 2 Freem. Rep. 132. pl. 159. Pach. 1692. in Curia Canc. Nurse v. Guillem.

23. A Creditor was admitted by Holt Ch. J. to prove his Bond, and the Debt due upon it, upon plene administravit pleaded, he having before received it of the Administrator, and delivered up the Bond. Ld. Raym. Rep. 745. Pach. 8 W. 3. at Guild-hall. Kington v. Grey.

24. An Action was brought upon a Contract of Matrimony, and a Verdict given afterwards upon an Information of Forgery, the contracted Woman was swore as a Witness for the King against the Plaintiff, in the Action which Holt Ch. J. said the ought not to have been to avoid her own Contract, and therefore inclined to grant a new Trial; for he said he was not satisfied that a Person interested can be Evidence in any Case tho’ in a criminal Matter. Comb. 360. Pach. 8 W. 3. B. R. The King v. Dean.

Opinion was that the Man and his Wife were good Evidence the’ they were interested, and this as well as in Case of an Action upon the Statute of Winton, or in an Indictment on the new Statute of clipping, the Party who is to get by the Conviction, may be Evidence against the Criminal. M&J. Rep. Dean v. Willis.

25. If A. gives Bond to B. conditioned to pay all the Money due from C. to B. in this Case C. is a good Witness to prove what is due. Latw. 663. 665. Pach. 9 W. 3. Ladd v. Garrard.

26. Inquisition upon a Special Commission out of Chancery, found that Ford had committed 5 voluntary Escapes he traversed this Inquisition, and upon the Trial one who was suffered to escape (but was returned to the Prison) was produced as a Witness, it was objected, that this was to favor his own Bond which he had given to be a true Prisoner, and would intitle him to an Action of False Imprisonment against the Marshal, and compared it to the Case of an usurious Bond. But per Cur. the Bond is collateral to the Escape, and the Conquence of his Evidence as to that Bond is not material to disable him from being a Witness.
Evidence.

Witness. And this is a matter privately transacted between the Party and the Officer, of which no one Evidence can be, and it is not like the Cafe of Ulurry, for that makes the Bond void. 2 Salk. 690. pl. 3. Mich. 12 W. 3. B. R. the King v. Ford.

27. Information for building Locks on the River Thames, and it is no Exception to a Witness here that he contributes to carry on the Suit, or that this publick Nusance was to his private Nusance. 12 Mod. 615. Hill. 13 W. 3. Dom. Rex v. Clark.

28 In Indictment for Oppression, Battery, &c. the Party oppressed may be a Witness; Per Holt Ch. J. 12 Mod. 512. Patch. 13 W. 3. Anon.

In case of an Indictment for Battery, he that was beaten may be a Witness, because he can reap no Benefit by the Verdict in another Suit, and the Cause is of small Moment. Hard. 531. Trin. 15 Car. 2. in Seac. per Cur. in Wans's Cafe.

29. In Cafe for arresting a Person arrested on mean Proceeds at the Plaintiff's Suit. The Party rescued appeared and was sworn as a Witness for the Defendant, not being made Party to the Action; Which Holt Ch. J. held not allowed, because he swore to charge himself, if by his Evidence he discharged the Defendant; But said it was what he never had seen before, and that if the Defendant was guilty of the Rescouse, he could not but be a partiep in crimina. However he was sworn, and his Credit left with the Jury. 6 Mod. 211. Trin. 3 Ann. B. R. Wilson v. Gary.

30. If a Man unnecessarily makes any one a Defendant, he thereby cuts himself off from the Benefit of his Evidence, it being his own Fault. But where several are made Defendants, it will not hinder any one of the Defendants from the Benefit of any others that are made so. Indeed in Cafe of Trustees it is necessary that they be made Defendants, and therefore there the Plaintiff may have Benefit of the Evidence. 10 Mod. 19. 20. Patch. 10 Ann. in Canc. Obiter, in Cafe of Gibbon v. Albert.

31. A Plaintiff in a Cause cannot be examined as a Witness, because if the Cause miscarries, the Plaintiffs are liable to Costs. But a Defendant may, because he is forced into the Cause and otherwise a Man might be deprived of all his Evidence by their being made Defendants. Ch. Prec. 411. pl. 277. Mich. 1715. Sic dictum suit, in Cafe of Casy v. Beachfield.


Bar at York Lam. 1714. coram Tracey J. Wa-gerers at a Horfe Race having received their Sums won, on Supposition that the Race was won by the Side they betted, were admitted to give Evidence about the fame Horfe Race.


34. On a Trial at Bodmyn, Coram Mounлагue, B. against a common Carrier, a Question arose about the Things in a Box, and he declared that this was one of these Cazes, where the Party himself might be a Witness, propter necessitatem rei. For every one did not knew what he put into his Box.

35. Action
Evidence.

35. Action against a Carrier going between Exeter and London, for the Loss of a Box, in which were several Sorts of Goods belonging to the Plaintiff a London-wholesale Man, who used Exeter Fair. On the Trial a Difficulty arose on the Proof of the Quantity, i.e. Yards, &c. as well as the Value of several Stuffs pack'd up in the Box. * The Witnesses not coming up to an exact and full Proof thereof, the Goods left unfold and returned to London, being usually put up with the Shop Marks of every one of them as was customary in such Cases, &c. These were affixed part. of Stuff, that remained unfinish'd, yet their entries of the Colour of Fraud or Deceit, and Act of the Plaintiff under these Circumstances, tho' in his own Affair is sufficient to fix the Quantity of these Stuffs from the Marks, &c. whereupon the Jury found per Quer. Summer Affile, Exon coram Eyre J. 1719. v. Berry.

And intent of doing the Thing was to be regarded, tho' no positive Proof, yet could be no Fraud at the time of Packing up the Goods. Per Eyre J. Affile Exon.

36. Banker, Broker or Servant, the same as a Factor; S. bought S. S. Stock, 500 l. at 800 l. per Cent. and took it in the Name of Rogers, and afterwards he desired R. to sell it again, which he did do to one G. at 750 l. per Cent. but G. put off his accepting it from Time to Time (the Contract being 12 Sept.) to 2d. Nov. when R. sold it to another for 209 l. per Cent. and the Difference being 205 l. was given in Damages on an Action upon this Contract against G. Objection at the Trial, that R. was no Witness. 2dly That the Action could not be brought in the Name of S. the Stock being R.'s in the point of Law. Per Cur. R. is a good Witness because he is no way concerned in the Event or Consequence of the Question, nor any witth affected. Patch. B. R. B. 87. Scouling v. Sampire. Coram Prat. Ch. J. at Guildhall Sittings, & Pellea mov'd in Court. R. did not take any Notice of S. at the Time of the Contract. A Factor who makes a Contract in his own Name for the Benefit of the Principal, it is by Authority from him, and in Law it is the Contract of the Principal. This is a stronger Case than that of a Blackwell Factor, because he is to have Commiss'ny-Money out of what is recovered. Factors from the Nature of the Thing as Servants, it is necessary to tell who is the Owner, and to him that Buys is all one. Every Man may impoll his Friend or his Neighbour; every one that Transacts is for that purpose a Factor. He that draws a Bill of Exchange is a Merchant for that purpose. R. had no demand or interest in Question.

37. On a Trial concerning the Construction of a Borough, whether any Person can be elected into the Common Council, but those who are Inhabitants and hold Burgess Tenures; One who comes within both these Qualifications is no Witness to prove the Constitution. But then one Mr. Lee was produced as a Witness for the Defendants to prove it, who was an Inhabitant of the Borough, but it was admitted he had no Burgess Tenure; Whereupon he was allowed by the Court to be a good Witness, as to the right fixing in such as had held Burgess, and also were Inhabitants, since he did not attempt to establish the Right in the Inhabitants only. 2 Ed. Raym. Rep. 1553. Edit. 10 Geo. Stevenson v. Nevilson.

38. Case against a Pilot, for a Neglect of his Servant in not carefully and carefully launching a Ship over the Bar of Exmouth contrary to his Undertaking. the Servant was admitted to be a Witness for his Master. Coram Eyre Ch. B. apud calch. Ex. Sum. Alf. 1724.

admitted to be a Witness for his Master, in an Action against the Master for overturning the Waggon, and breaking a Woman's Arm.
Evidence.

39. A Party ought not to be examined, though by Consent, unless the whole Matter be put to his Oath. MSS. Tab. March 23, 1723. Charteris v. Earl Hyndford.

40. Information on late Gaming Act granted by Court of King's Bench, and tried at Wells Summer Assizes, 1735. Coram Fortetque J. The Lifer who was under Twenty One at the Time of Lofs, was admitted an Evidence to prove the Fact, and afterwards on Motion in Arrest of Judgment, the Court of B. R. were of the same Opinion.


Vent. 49. Parris'sCaf. S. C held accordingly.

1. I N an Information for procuring J. S. fraudulent, & deceptively, to give a Warrant of Attorney to confess a Judgment; J. S. was admitted a Witnes by three Justices against Twifden J. The Suit being for the King. Vent. 49. Mich. 21 Car. 2. B. R. Parry's Cafe, and the Judgment was set aside. Sid. 431. pl. 20. King v. Paris & al.

2. An Action of Debt was brought Summer Assizes Suffolk, 1669, by the Town of Ipswich, for 50l. a Fine set upon one chosen Common Council-man (called their prime Confiable) for refusing to renounce the Covenant, &c. and the Town Clerk (though a Freeman) was allowed a Witnes to prove Election refusal, &c. the Fine Set, which is, for Necessity, for that none other arc, or ought to be present at those Acts; Per Rainsford J. L. E. 67. pl. 43. cites T. per Pais, 163.

3. If an Indictment be against a Man for not repairing a Bridge, that is a publick Bridge, and which he is bound to repair, ratione tenure, it was received that in such Cafes, Perfons of the Country are allowed to be Witnesse; because none else can testify. 2 Show. 47. pl. 33. Pach. 31 Car. 2. B. R. King v. Carpenter. Cro. C. 361.

4. Woman taken away by Force, was allowed to be a Witneses as to her being taken. 4 Mod. 8. Hill 2 W. & M. in B. R. King and Queen v. Pezet.

5. Where a Man is interested in the Confession of that which he swears for, if it be so that the doing the Lift which he is by his Evidence to invalidate or set aside, was a Means to obtain his Liberty or an Exemption from corporal Punishment; he shall be a Witnes, as in the Case of Dure's, (though it be to set aside his own Bond) yet it being given to obtain his Liberty, he shall be a Witnes; Also where the Nature of the Thing admits no other Evidence, as if a Woman give a Note or Bond to a Man, to procure her the Love of J. S. by some Spell or Charm, in an Indictment for the Cheat, though it tends to avoid the Note, yet the shall be a Witnes; Per Holt at Nili Prius. 7 Mod. 119. Mich. 1 Ann. B. R. Queen v. Sewel al. Bean.

6. In Case by a Silk Dyer against his Servant, for Money received to his Use; Upon Evidence it appeared, that A. sending Silk to be died by the Plaintiff, the Plaintiff sent his Servant, the Defendant home with it, and A. paid him for every Parcel as he received it; A. was produced as an Evidence, that he paid the Money to the Defendant; But Holt would not admit his Evidence, for that would be to admit a Creditor [Debtor]
Evidence.

27

to swear in Discharge of him. 11 Mod. 261. pl. 19. Mich. 8 Ann. B. R.
Tybald v. Tregott.
7. And he said, that if a Man pays Money by his Servant, the Servant
may be a Witness; But that is allowed for the Necessity of the Thing.
11 Mod. 261. Tybald v. Tregott.


1. If I employ a Person to sell Wool, or other Goods for me, and he sells
them in his Name, and as his own Goods; yet in an Action brought
in my Name for the Money, the Person employed may be a Witness.
Ex. Lam. 1706.
2. A Bankrupt having released and assigned all his Estate to the
Assignees, may be examined as a Witness for them to prove a fraudu-
 lent Sale by himself to another; Per Cowper C. 2 Vern. 637. pl.

(M) Witnesses. Disabled, by Crimes.

1. PERSONS that had been attainted of Felony, though pardon-
ed, shall not be of a Jury or Witnesses. 2 Bulst. 154. Mich. 11
Jac. Brown v. Crafhaw.—Raym. 369. Collier's Cafe, and Danger-
field was admitted an Evidence.—And S. P. in Raym. 379. Ld.
Cattlemain's Cafe.

2. There is a Difference where the Disability is only the Consequence,
and where it is Part of the Judgment itself. In the first Case, the King
may pardon it, but in the second Case, the King's Pardon will not take
away the Disability. Therefore, if a Man be Convict of Perjury on the
Statute, the King's Pardon will not restore, for it is not a Consequence,
but Part of the Judgment, quod in posterum non fit receptus ac teitis.
Pl. Co. Ent. 368. But a Pardon by Act of Parliament, will restore
him, even in that Case. Quære of a Perjury at Common Law, and if
the Law be the same, for these the Disability is only the Consequence,
and no Part of the Judgment; Otherwise if a Jury be convict in Attaint.
3. A Person Convict of Perjury upon the Statute, and pardoned, cannot
be a Witness, for the Punishment is Part of the Judgment, appointed
by the Statute; Contra of a Conviction at Common Law, for there it
is only a consequential Disability; therefore in the latter Case, the
King may pardon, and that restores him to his Testimony; but in the
former Case, he must reverse the Judgment, or he cannot be restored;
Grepe.
4. A bare Conviction of Perjury, would take away one's Evidence, be-
cause it is an infamous Crime, not lo of Barratry, which was not of an
infamous Nature, without an infamous Punishment were inflicted, as the
Pilory,
Evidence.

Pillory, &c. arg. But the whole Court held contra, and that it was not the Nature of the Punishment, but the Nature of the Crime, and the Conviction thereof, that created the Infamy; and per Holt Ch. J. if one be convicted of Perjury on the Statue, he cannot be restored to his Credit by the King's Pardon; for by the Statute, it is Part of the Judgment that he be infamous, and lose his Credit, but he may be restored to his Credit by a Statute Pardon; But in Indictments of Perjury, at Common Law, the Infamy, is only the Consequence of the Judgment; and therefore the Kings Pardon in such Cases, restores the Party to his Credit; Held upon a Trial at Bar. 2 Salk. 690, 691. pl. 3. Mich. 12 W. 3. B. R. in Cafe of the King v. Ford.

5. By Roll. Ch. J. one that has been burned in the Hand, for Felony, may notwithstanding be a Witness in a Cause; for he is in a Capacity to purchase Lands, and his Fault is purged by his Punishment. Cites Sty. 388. Mich. 1753. Anon.

6. If a Person produced as a Witness has been perjured, albeit no Judgment is entered against him (it being in the Protector's Time, all whole Proceedings were discontinued by Alteration of the Government) yet Evidence to prove him perjured may be given in such Cases. 1 Sid. 51. pl. 16. Mich. 13 Car. 2. B. R. Wicks v. Smallbrooke.

7. In Evidence upon a Trial at Bar, it appeared that one Alcot, one of the Witnesses for the Defendant, was before indicted of Perjury in the Time of Cromwell, and Verdict against him; But by the Death of Cromwell Judgment was not entered, but all Proceedings vacated; And now the Council of the Plaintiff would offer this Verdict in Evidence to weaken the Credit of the Witnesses; But resolved by the Court, that the said Verdict is now totally destroyed, and cannot be given in Evidence. Raym. 32. Mich. 13 Car. 2. B. R. Pitch v. Smallbrook.

8. In Evidence on Information of Perjury it was observed, that one indicted of Perjury may be a Witness in the same Point upon Trial between others till Conviction. Keb. 289. pl. 102. Pach. 14 Car. 2. B. R. in Cafe of the King v. Dawson; cites it as Sir Edward Powell's Cafe.

9. Hawkins having a great personal Estate, and being a Prisoner in Newgate for opprobrious Words of the Lord Mayor of London, and a little disturbed in his Mind, made his Will, attested by several Witnesses; And upon hearing the Caufe in the Prerogative-Court, Sentence was given against the Will, and upon an Appeal to the Delegates, two Records were produced to avoid the Testimony of two Witnesses to the Will, by which it appeared, that one of them was convicted for a Libel, and the other for singing a Ballad against the Government, and both of them adjudged to the Pillory, but no Proof that they stood in it; After these Witnesses were examined in the Spiritual Court, and before Sentence given, there came a general Pardon, by which they were pardoned; And the Question now was, whether their Depositions taken in the Spiritual Court shall be admitted for Evidence; It was agreed, that if their Testimony was not good at the Time when it was taken, the subsequent Pardon would not make it good, and that the Judgment of Pillory makes the Infamy, tho' never executed; But the chief Question was, whether the Judgment for these Crimes should make them infamous, because (as it was objected) it is not from the Judgment, but from the Nature of the Crimes for which the Offenders are convicted, that the Infamy arises, as for such Crimes as import Deceit and Fraud, or Cheats,
Evidence.

Cheats, &c. And if one is convicted of cheating, yet he may be a Witness, if he has not Judgment of Pillory for it. And tho’ Pillory enters Infamy at the Common Law, yet it imports no such Thing either by the Canon or Civil Law, unless the Cause for which it is inflicted is infamous, and it is by these Laws that this Cafe (being concerning a Will) is to be determined, therefore the Matter for which these Witnesses were convicted, being not infamous, either by the Canon or Civil Law, theo’ they had Judgment for the Pillory, their Depositions were admitted for Evidence, and the Sentence in the Prerogative-Court reversed, and the Will sentenced to be good. 3 Lev. 426. Trin. 9 Will. 3. before the Delegates at Serjeant’s-Inn in Fleet-Street, Chater v. Hawkins, &c.


11. 57 Eliz. cap. 9. Sect. 5. No Person being convicted of corruptly procuring any Witnesses to commit, wiltfull Perjury, shall be received as a Witness, and sworn in any Court of Record, until the Judgment given against him be reversed; and, upon every such Reversal, the Party griev’d to recover his Damages against the Person who procured such Judgment.

(O) Witnesses. Disabled, or not.

By Crimes of a lower Sort.

1. Men that are branded with Infamy that they cannot be Jurors, cannot be Witnesses; Yet per Glyn Ch. J. and Newdegate J. Mich. 1657. B. R. Conviction of common Bartrary does not hinder from being a Witness; But Maynard Serj. held strongly against it. Tr. per Pais, 1660. Anon.

2. In respect of a Person that had been burnt in the Hand, if it were for Maydlaughter, and after pardoned, it were no Objection to his Credit, for it was an Accident which did not denote an ill Habit of Mind; But focus if it were for stealing, for that would be a great Objection to his Credit even after Pardon, but the Record of Conviction ought to be produced. 12 Mod. 341. Mich. 3 W. 3. King against Warden of the Fleet.

3. One that has been burnt in the Hand for a Felony may be a Witness, for he is in a Capacity to purchase Lands, and his Fault is purged by his Punishment; per Roll. Ch. J. Mich. 1653. Lord Caillemain’s Cafe, as to the Testimony of Dangerfield.

and as to that he was a good Witness Raym. 320. Trin. 32 Car. 2. B. R. & C. B. Hob. 239. 292. &c. per Hobert Ch. J. Trin. 26 Jan. Searl v. Williams.

The Burning in the Hand was quite natural Pardon as to the Felony.

4. A Witness was convict of Bartrary, and the Record produced, but the Judgment was, to be fined 500 Marks, and to stand in the Pillory. It was argued, that a bare Conviction of Perjury would take away one’s Evidence, because it is an infamous Crime, but not fo of Bartrary, which was not of an infamous Nature, without an infamous Punishment, as the Pillory. But Curia contra, that he is disabill’d by the Conviction; lor it is not the Nature of the Punishment, but the Nature of the Crime, and Conviction that creates the Infamy. 2 Salk. 692. pl. 3. Mich. 12 W. 3. B. R. the seconı Resolutions, in Cafe of the King v. Ford.

5. A
Evidence.


(P) Witnesses. Disabled by not concurring with the Laws.

AN outlawed Person shall not be said to be probus & legalis homo, L. E. 48. pl. 23. cites 33 H. 6. 32 & 33 H. 6. 55. [But as to this I do not find it there. It concerns Jurors and not Witnesses.]

2. A Papish Recusant convicted is no Witness, for by 3 Jac. cap. 5. he is to be excommunicated and taken as such, wherefore a Suggestion in a Prohibition being proved only by two Recusants convicted, a Consultation was granted. 2 Built. 154. Mich. 11 Jac. Brown v. Crawford.

3. The Motion was for an Attachment for Extortion and the Affirmation of a Quaker was offered to be read, which was opposed, and the Case of the King v. Wich was cited, where it was refused in Case of an Information; But on the contrary was cited, Pafch. 5 Geo. 2. Powel v. Ward. Where a Difference was made between an Attachment and an Information; That in the latter an Affirmation is not to be allowed, but that in the former it may, Lee Ch. J. cited a Case where on a Motion for an Attachment, for not obeying an Award, an Affirmation was refused. The Court held it to be a Point of great Consequence, as to the Construction of the Statute of W. 3. of Quakers, and defined it might be argued; But at last it was read by Consent, and so it remains undetermined. Pafch. 11 Geo. 2. B. R. The King v. Bell.

(Q) Witnesses Disabled.

From, or at what Time.

ONE indicted of Perjury may before Conviction be admitted a Witness on the same Point, in a Trial between others. 1 Keb. 269. pl. 102. Pafch. 14 Car. 2. B. R. The King v. Dawson.


(R) Wit-
Evidence.

(R) Witneffes. Disabled by Intereft.

Enabled by some after Act.

1. If a Witnefs has part of the Land in question, and he falls or dif. pokes of it after his coming to London, or at any Time after he has notice of the Trial, he shall not be admitted even tho' he sold it, bona fide, and for a valuable Consideration. Sid. 51. pl. 16. Mich.

2. So tho' be himfelf is not Occupier of the Land, nor has been since the Wit purfued but another by his Commandment, the Court will not admit his Testimony; Because if the Verdict be againft his Title, he that occupies by his Commandment may charge him in Action upon the Cafe. Sid. 51. Wicks v. Smallbrook.

3. A Father offered to teftify a Deed in Pufiance and Affermance of a Leaf made to his Son by himfelf, which the Court allowed, his Intereft being paft away. L. E. 74. pl. 61. cites 1 Keb. 280. pl. 80. Palfch.

4. Legatee or Devице of an Annuity may be a Witnefs to prove the Will, if he has received it or released his Annuity, and this tho' it be after the Action commenced, at any time before Examination; fo of a Trustee, or if one be in Poffeffion as Servant. Sid 315. pl. 33. Mich. 18 Car. 2. B. R. Stephens v. Gerard.

5. In a Trial at Bar in Ejeftment, the Defendant claimed under a Will and offered to prove the Publication of it by B. and Exception was taken to his Evidence; Because he was a Legatee, and had had an Annuity given him by the Will in question, which was confefs'd; But to enable him to be a Witnefs, an Acquittance was produced of the Legacy and a Release of the Annuity, and the Money was proved to be paid for both; To which it was objected, that all this was done pending the Action, which Objection proved to be falle; But per Cur. if it had been pending the Action, yet he shall be admitted as a Witnefs. L. E. 65. pl. 39. cites 2 Sed. 315. Mich. 18 Car. 2. B. R. Stevens v. Gerard.

6. And it has been adjudged that if a Release had been fealed in Court whilst the Caufe was trying, that the Releelor fhould be admitted as a good Evidence. L. E. pl. 39. cites 2 Sid. 315. S. C.

7. On the Evidence at a Trial at Bar, it appeared that the Husband of the Mother of the Infants Legatees in the Will of Michel, took Bond of double the Sums to be paid when the Plaintiff Heir at Law did enjoy the Lands in Quetion against the Will, which per Cur. is to the Testimony of the Mother, and not only to her Credit, and tho' it were released yet this being a champertuous Intereft created by the Party, the Release doth not enable her to be a Witnefs, as on a Release of Legacy it would; that is created by Act in Law, but by Consent the was fwn. L. E. 65. pl. 38. cites 3 Keb. 75. pl. 19. Mich. 24 Car. 2. B. R. Turnfcll, Leilor of Greve, and Gratbooke.

8. Upon a Motion in Account Judgment was had against Defendant quod computar. The Point was, if the Bail fhould be allowed as Evidence
Evidence.

Evidence for him in Chancery, because he swears to discharge himself if the Plaintiff prove insolvent. The Order was by Consent that the Defendant (now Plaintiff) putting in another Bail, the then Bail thou'd be allowed as Evidence as far as by Law he may. Fin. R. 247. Mich. 28 Car. 2. Callham v. Spatman.

9. S. had laid himself to be sole Proprietor of a Ship and Tackle, &c. and the Witnesses swore at the Time of the Action brought, that he was equally concerned in every Thing, but long since had sold his Interest, so that now he was not one farthing concerned in the Consequence of the Cause; Yet the Court held, that he was no competent Witness. Skin. 174. pl. Pach. 36 Car. 2. B. R. Sandys v. Custom-House Officers.

10. Perjury is no more infamous now than it was at Common Law; the Difference is only that where H. is convicted on the Statute that is part of the Judgment to be disabled, but at Common Law it is only a consequential Disability; Therefore in the last Case the King may pardon, and that restores him to his Testimony, but otherwife in the former; For in the Case he must reverse the Judgment or cannot be restored. 9 Salk. 514. Mich. 9 W. 3. B. R. in Case of the King v. Greepe.

11. Original Drawer was offered as an Evidence, in an Action upon a Bill of Exchange to prove that he did not draw the Bill, was denied, because at Law the Burden must fall upon him; But the Party gave him a Release in Court, and that was sufficient. 12 Mod. 345. Mich. 11 W. 3. Anon.

(S) Witnesses. Enabled by Act of the other Party.


(T) Witnesses. Disabled by Suspicion of Fraud.

1. A. and B. were two Brothers; the Goods of B. in his House were taken in Execution, A. supposing them to be his Goods brings a Suit, and B. and his Wife were denied to be Witnesses to prove them the Goods of A. tho' it were to devell the Property out of themselves, because it favoured of Fraud. Q. 12 Mod. 346. Mich. 11 W. 3. Anon.

(U) Wit-
Evidence.


1. In a Trespass against A. one B. was admitted a Witness against him, tho' by his own Confession, he was a joint Trespasser, and by this Oath did call the Damages upon his Companion, and so in a manner freed himself. Clayt. 115. S. C. pl. 200. August 1647. Anon.

2. A Defter refused was allowed as a Witness, his Credit being left with the Jury. 6 Mod. 211. Trin. 3 Ann. B. R. Wilton v. Gary.

3. Son intrusted with his Father's Cash, and to receive and pay Money, gave it away to J. S. The Son may be admitted as a good Witness, his Testimony being corroborated by other Circumstances; Per Holt Ch. J. at Nilt Prius, 1 Sark. 289. pl. 28. Anon.

4. It has been long settled, that it is no Exception against a Witness, that he has confessed himself guilty of the same Crime, if he has not been indicted for it; For if no Accomplice were to be admitted as Witnesses, it would be generally impossible to find Evidence to convict the greatest Offenders. Also it hath been often ruled, that Accomplices that are indicted are good Witnesses for the King, until they are convicted. 2 Hawk. Pl. C. 432. cap. 46. sect. 18.

5. And it has been adjudged, that such of the Defendants in an Information against whom no Evidence is given, may be a Witness for the others. Ibid.

6. It hath been also adjudged, that where A. B. and C. are sued in several Actions on the Statute for a supposed Perjury in their Evidence concerning the same Thing, they may be good Witnesses in such Actions for one another. Ibid.

7. A. and B. in Execution jointly, they both escaped. The King brought Action against the Warden for the Escape of A. and B. was allowed to prove it. Gibb. 80. Trin. 2 & 3 Geo. 2. at the Sittings in Seaco, coram Pengelly Ch. B. the King v. Huggins.

(W) Witnesses. How they may assize themselves, or demean in giving their Evidence.

1. Where a Witness swears to a Matter, he is not to read a Paper for Evidence, tho' he may look upon it to refresh his Memory; But if he swears to Words, he may read it, it he swears he presently committed it to Writings, and that these are very Words; Per Holt Ch. J. Cumb. 445. Trin. 9 W. 3. B. R. Sandwell v. Sandwell.
Evidence.


1. If any Person upon whom any Process out of any Court of Record shall be served, to testify concerning any Matter depending in the same Court, have tendered to him, according to his Calling his reasonable Charges, and do not appear according to the Tenure of the said Process, having no lawful Impediment, he shall forfeit 10l. and yield such further Recompense to the Party griev'd, as any Judge of the Court, out of which the said Process shall be awarded, shall think fit, the said Sums to be recovered by Action of Debt, &c. By the 21 Jac. 28. this Statute is made perpetual.

2. All Persons accused and indicted for Treason shall have the like Process of the Court where they are tried, to compel their Witnesses to appear, as is usual for Witnesses to appear against them.

3. Before the 12 E. 2. cap. 2. the Witnesses were summoned in by the name Venire that was awarded against the Jury. Jenk 47. Co. Litt. 6. b. Reg. Jud. 5.

4. In an Action (on 5 Eliz. cap. 9. 29 Eliz. cap. 5.) good Proof must be made of proving the Subpoena, viz. by leaving a true Copy in Writing with the Party himself, and shewing the Subpoena to him at the same Time, and also by serving him with a Summons or more, according to the Quality of the Peron, and Distance of the Place where the Evidence is to be given. Sty. Reg. 35, 36. Lill. Reg. 25, 207.
Evidence.

5. In criminal Cases, if the Witness be not according to the Time mentioned in the Process with which they were served, an Attachment is against them. St. 579.
7. Plaintiff brought an Action of Debt upon the Statute 5 Eliz. cap. 9 for 10 l. and declared, that he was warned by Subpoena to appear such a Day at one o’Clock in the Afternoon to be a Witness, &c. and upon nil debet pleaded the Subpoena given in Evidence was generally to appear at this Day, and not at such an Hour; and tho’ a Subpoena to appear at such a Day be of that Effect that the Party ought to attend the whole Day, and so, as it was objected, includes that he ought to appear at this Hour, yet in respect of the Variance it cannot be said to be the Subpoena on which the Plaintiff did declare, and therefore he was not-suited; and in this Case no Regard was had to the Ticket left with the Defendant, which was according to the Declaration. Tr. Per Pals, 7th Edit. cites 24 Car. 1. Radford’s Cafe.

(Y) Punishment of Witnesses for refusing to be sworn.

1. Ord Peflon was committed by the Court of Quarter Sessions, Salk. 278, for refusing to be sworn to give Evidence to the grand Jury, on pl. 2. an Indictment of High-Treason. He was brought by Habeas Corpus into B. R. and Holc Ch. J. said, it was a great Contemp, and that had he been there, he would have fined him, and committed him till he bad paid the Fine, but being otherwise, he was baile.

(Y. 2.) Demeanor of the Counsel, as to Witnesses.

1. In examining a Witness, Counsel cannot question his whole Life, as that he is a Whore Master, &c. but if he has done such a notorius Fact, which is a just Exception against him, they then may except against him. March. 83. pl. 136. Pazch. 17 Car. Anon.
2. One shall not ask a Witness a Question, the affirmative Answer to which, may draw him into a Crime. L. P. R. 555.
3. An Evidence given to a Jury may be answered by the Counsel, either by confessing and avoiding it, or else by encountering the Evidence given, with giving stronger Evidence, and of greater Credit on the other Side. Mich. 22 Car. B. R. which is upon the Matter, a Denial of the Evidence given on the other Side to be true, by proving the contrary. L. P. R. 548.
4. The Defendant’s Counsel, ought to conclude by way of Answer to the Evidence that was given to the Jury by the Plaintiff’s Counsel. Mich. 24 Car. B. R. for if the Plaintiff’s Counsel doth begin the Evidence, it is Reason, that the Defendant should speak in Answer to that Evidence, because he is upon the defensive Part, and is to give answer to all
Evidence.

all that is said against him, in Matter of Evidence; but the Plaintiff's Counsell after this, is to sum up his Evidence to the Jury, which is no more than to put them in mind how he hath proved his Case. L. P. R. 551.

5. Upon a Trial at the Bar, the Counsell of that Party who doth begin to maintain the Issue that is to be tried, whether it be the Counsell of the Plaintiff, or the Counsell of the Defendant, ought to conclude the Evidence. Pach. 1650. 1. Man. B. S. that is only sum up his Evidence given; but if he give new Evidence, the other Party hath Liberty to answer it, or encounter it with another Evidence. L. P. R. 551.


(Z) Witnesses. How many are necessary to prove a Thing.

1. Where two or three Offences of the same Species, and against the same Parties, are proved by single Witnesses, viz. one Witness to each Offence, here singularis testis sufficit. King v. Newton, in Canc. Stell. Dy. 99.

2. Of two Accusers, if one be of his own Knowledge, or Hearing, and told it to another, this likewise may be an Accuser. The King v. Thomas, for Treason, Dy. 99. b. pl. 62. Pach. 1 Mar. A Cae is cited, where one who was told it at the third Hand, was admitted an Accuser. And if one Witness, deposed in the Punt in Question, and another in the Circumstance, this shall be sufficient Ground for the Judge to give his Sentence. Dy. 53. b. Marg. pl. 1. Mich. 10 Jac. in the State-Chamber, Adams v. Canon.

3. In the Spiritual Court, one Witness is no Evidence. 2 Roll. pl. 42. Trin. 16 Jac. B. R. in Cafe of Barnewell v. Tracy.

4. When a Trial is by Witnesses regularly, the Affirmative ought to be proved by two or three Witnesses, as to prove a Summons of the Tenant, or the Challenge of a Juror, or the like. But when the Trial is by Verdict of twelve Men, there the Judgment is not given upon Witnesses, or other kind of Evidence, but upon the Verdict, and upon such Evidence as is given to the Jury, they give their Verdict. Co. Litt. 6. b. It is not necessary in any Case at Common Law, that a Proof of Matter of Fact should be made by more than one Witness, and the Authorities cited Inft. 6. b. does not warrant the Opinion thefe founded upon them; Per Holt Ch. J. Carty. 144. Trin. 2 W. & M. in B. R. Shorter v. Friend.—The Reason why the Civil Law requires two Witnesses, is because their Trial is by Witnesses, and not by a Jury of twelve; Pio. Com. 12. a. Serjant Hawkins says, that the Generality of Authorities, cited by Sr. Edw. Coke to prove, that one Witness, was not sufficient to convict a Person of High Treason, (3 Inft. 24, 25, 26) wholly relate either to the Proof of an Effloin, or of a Summons in a real Action, or of the Default of Persons summoned on a Jury or other Matters, rather left to the Point. 2 Hawk. Pl. C. 256. cap. 25. S. 153.

5. There being but one Witness against the Defendant's Answer, the Plaintiff could have no Decree. Vern. 161. pl. 151. Pach. 1683. per Ld. Keeper. Alam v. Jourdan.

In the Cafe of the Earl of Mountague v. the Earl of Bath. Mich. 1693. 2 Chan. Caeas. pag. 122. Ld. Keeper Somers said, he took it that no Decree can be made against a Man's Answer upon the Proof of one Witness.

6. A single Witness against the Defendant's Oath, is not sufficient Evidence to decree against the Defendant, nor will the Court fend it to be tried at Law. 2 Vern. 283. Chrift's Coll. in Camb. v. Widdington.
Evidence.

7 2 W. 3. Cap. 3. Self. 3. No Person shall be indicted, tried, or attainted of High Treason, whereby any Corruption of Blood may happen, or of Mispri son of such Treason, but by the Oaths of two lawful Witnesses, both of them to the same overt Act, or one of them to one, and another of them to another overt Act of same Treason, unless the Prisoner willingly in open Court, confess the same, stand mute, or refuse to plead; or in Cases of High Treason, shall peremptorily challenge above Thirty-five of the Jury.

Provided, that if any Person indicted, as aforesaid, of any such Treason, or Mispri son of Treason, may be outlawed, and thereby attainted there of; and in Cases of High Treason, where by Law, the Party outlawed, may come in and be tried, he shall upon such Trial, have the Benefit of this Act.

And if two distinct Treasons, shall be laid in one Indictment, one Wit ness to one of the said Treasons, and another Witness to another of the said Treasons, shall not be deemed two Witnesses to the same Treason within the Meaning of the Act.

Provided, that this Act shall not extend to Impeachments, or other Proceedings in Parliament.

Nor to the Treasons of counterfeiting the Coin, the great Seal, Privy Seal, Sign Manual, or privy Seal.

(A. a) Objections to the Credibility of a Witness in that particular Cause.

1. A Juror who is challenged for giving his Verdict before Hand or for being of Counsel of the Party or of his Kings cannot give Evidence to the Jury after. Br. General Issue pl. 63. cites 49. Ais.

2. Contra of him who is challenged for taking of Money or such like he shall not give Evidence; for this goes in Reproof and Dihonesty, Note the Diversify. Ibid.

3. A Prisoner having escaped may be a Witness to prove the Escape voluntary, upon Traverie of an Inquisition for the Office of Warden of the Fleet against the Warden. Objection, that he was returned, and he to take his own Bond which he gave to be a true Prisoner and would intitle him to an Action of false Imprisonment and compared it to the Cafe of an ufurous Bond; Sed. per Cur. this Bond is a collateral Matter to the Escape, and the Consequence of his Evidence as to that Bond is not material to disable his being a Witness, and not like the Cafe of Ufury, for that renders the Bond void, and this is a matter tranferred privately between the Party and the Officer, of which there can be no other Evidence. 2 Salk. 690. Mich. 12 W. 3. King v. Ford.

4. The Master may well bring the Action where the Servant was robbed; And to prove what Money the Servant had, which was 200 l. he was caufed to prove to much Money he had delivered to them, and that he had been formerly trusted by his Master, and had well discharged that Trust. Clayt. 35. pl. 62. Aug. 11 Car.

5. A Witness having taken Money, does not incapacitate him from giving his Evidence; but the Jury may give his Credit to his Evidence, otherwise if he take Money upon the Event of the Cause, 11 Mod. 228. pl. 2. Hill. 8 Ann. B. R. Young v. Slaughterford.
(B. a) Witnessess. What Persons in certain Cases shall not be compelled to give Evidence.

1. A N Issue was joined upon a corrupt Agreement, and a Witness was called to prove this Agreement; and being sworn and asked by the Defendants Counsel, what Money he knew to be paid upon that Agreement, he appealed to the Court, and declared, that he was and had been for many Years the Plaintiff's Attorney, and that he was employed by the Plaintiff to draw the Agreement between the Plaintiff who was High-Sheriff of K. and his Under-Sheriff; and therefore prayed, that he might not be put to discover his Client's Secrets wherein he was intrusted; Whereupon the Court declared, that he ought not to be obliged to answer that Question; and thereupon for want of Evidence, the Jury found a Verdict against the Plaintiff. The Court declared, if this should be admitted, it would be a manifest Hindernace to all Society, Commerce and Conversation. Mich. 5. W. & M. L. P. R. 556.

2. A Lawyer who was of Counsel may be examined upon Oath as a Witness to the Matter of Agreement, not to the Validity of an Assurance or to the Matter of Counsel. L. E. 81. pl. 81. March. 83. Oneby's Case.

3. In a Trial at the Bar, one Mr. Cony a Counselor at the Bar was examined upon his Oath to prove the Death of Sir Thos Cony; Whereupon Serjeant Maynard urged to have him examined on the other Part, as a Witness in some Matters whereof he had been made privy as of Counsel in the Cause; But Roll Ch. J., answered, He is not bound to make answer to any thing which may disclose the Secrets of his Client's Cause, and thereupon he was forborne to be examined. Cites Styl. 449. Pach. 1655. Waldron v. Ward.

4. Mr. Aylott having been Counsel for the Defendant, desired to be excused to be sworn on the general Oath as Witness for the Plaintiff, to give the whole Truth in Evidence, which the Court, after some Debate granted, and that he should only reveal such things as he had known before he was of Counsel, or that came to his knowledge since by other Persons; and the particulars to which he was to be sworn were particularly propounded, viz. what he knew concerning a Will in question; Whether he knew any thing of his own knowledge. 1 Keb. 505. pl. 68. Pach. 15 Car. 2. B. R. Spark v. Sir Hugh Middleton.

5. A Clerk attending upon a Grand Jury, shall not be compelled to be a Witness to reveal that which was given them in Evidence T. per Pais. 226.

6. A Solicitor or Promotor, not to be examined as a Witness. Toth. 273. cites Wilfon v. Grove. Trin. 6 Car. ii. B. fo. 626.

7. A Man that Conveys Lands may be a Witness to prove he had no Title, because that is swearing against himself, but he is not compellable to give such Evidence. 2 Ld. Raym. Rep. 1668. Hill. 2 Ann. Title v. Grovet.

8. A Solicitor was produced as a Witness concerning a Recovey of a Clause in a Will alleged to be done by his Client; But it appearing that this Discovery of which he was now about to give Evidence, had been made before the Retainer of him as Solicitor, the Court were of Opinion that he might be swore; otherwise if he had been retained his Solicitor before; the same Law of an Attorney or Counsel. Vent. 197. Pach. 24 Car. 2. B. R. Cuts v. Pickering.

9. A makes several Mortgages to B. C. and D. and in the last Mortgage B. is a Party, and agrees that after he is paid be will stand a Trustee for
Evidence.

for D. It was decreed that C. shall be put before D. for all the Securities being translated by the same Scrivener, Notice to him was Notice to D. 2 Vern. 574. pl 519. Hill. 1706. Brotherton v. Hart and 10. In a Trial at Nift prius at Westminster, one Saundar who had drawn an Indenture of agreement between a Sheriff and his under Sheriff, being produced to prove a corrupt agreement between them, he was not compelled to discover the Matter of it tho' he was not a Counselor; and per Holt Ch. J. it seems to be the same Law of a Scrivener, Skin. 494. pl. 49. Mich. 5 W. and M. B. R. Anon.


1. TH. Lord Mohun put the Court to declare, that a Peer produce d as a Witness ought to be sworn, because he said the House of Lords had made an Order contra. 3 Keb. 631. pl. 26. Parch. 28 Car. 2. B. R. Earl of Shaftesbury v. Lord Digby. the Court were all of Opinion that he ought to be sworn, and so he was, but with a salvo jure — Freem. Rep. 422. pl. 566. S. C. held accordingly. And per totam curiam, tho' a Peer cannot be compelled to be sworn, yet if he be not sworn, whatsoever he speaks is no Evidence, and so he was sworn.

2. Quakers are not sworn when they give Evidence, but only take a solemn Affirmation, and this is by an Act of Parliament made 1 Geo. L. E. 17. pl. 8.

(D. a.) Demeanor of and to Witnesse in general.

How it must be, or may be.

1. Witnesse are sworn to tell the Truth of what they know, not what they believe, for they are to swear nothing but what they have heard or seen. L. E. 16. pl. 4. citess Lib. Affiz. Au. 23. Pla. cit. 11. Vaughan. 142. Bullell's Cafe. Viner, as propounded by the Plaintiffs Counsel.

2. To make Mention of Matters against a Witnes, which is not to the present Purpose, but improper and defamatory, will give a good Action upon the Case. Resolved on Evidence upon a Trial at Bar, MSS. Rep. Mich. 19. Car. 2. in the Case of Sir John Turbatione v. Savage, appear.—Mod. 5. pl. 13. Anon. S. C. but S. P. does not appear.

(Ea)
Evidence.

(E. a.) Witnesses. Persons injured.

S. C. and the Cheat was in exchanging this pretended Wine for Hats of 181 Value. But the Indict-ment was quashed for its being

1. Indictment for a Cheat done to J. S. by imposing upon him a Quantity of Beer mixed with Vinegar and Grounds of Coffee for Port Wine; One of the Defendants pretended to be a Broker, and the other a Portuguese Merchant, for the better carrying on of the Cheat; & per Holt Ch. J. J. S. was allowed to be a Witness to prove the Fact upon the Trial, for in such private Transactions Nobody else can be a Witness of the Circumstances of the Fact, but he that suffers. 1 Salk. 286, Mich. 2 Ann. B. R. the Queen v. Mackartney & al.

called Vinum pretensum. 6 Mod. 501, 502. Mich. 3 Ann.— 7 Mod. 119.


1. If there be diverse Defendants, and one of them does not accuse him- self, but accuses his Companion, another Defendant, he shall not be received as a competent Testimony to condemn his Companion, but if he had accused himself, then he should have been received as a competent Testimony to condemn his Companion. Nov. 154. Anon.

2. A Man attainted of Piracy is not a good Witness to prove another guilty or not guilty of Piracy P. 15 Ja. B. R. per Cur. in one Woodford's Cafe, upon Evidence at Bar, Trial. (H. F.) pl. 2.

3. If a Man upon Examination accuses another of Piracy, and after he himself is attainted of Piracy, and after being pricked in his Conscience sends for the Party accused, and acknowledges before Witnesses that he accused him before falsely, and by Procurement of a Stranger, yet this Confession shall not be taken to enfeebles his Testimony made before his At- rainer, because it is made by a Man attainted. P. 15 Ja. B. R. Wood- ford's Cafe, per Cur. prater Dodderidge, who seemed to incline e contra. 2 Roll. Trial (H. F.) pl. 3.

4. In Trespafs it appeared by the Witness's own Evidence that he himself was one of the Persons guilty of the Trespafs, but was left out of the Declaration; Per Hale, he is a legal Witness, altho' his Credit was lessened by it, because he swears Matter to his own Discharge; nor if Judgment passes against the Defendants, and they have satisfied the Condemnation, he may plead the fame in Bar of any Action brought ag- ainst himself. Mod. 283. Trin. 29 Car. 2. B. R. Lutterell v. Reyn- nell.

5. And this Testimony may be supported by collateral Declarations of his to the same Purpoze, thereby to prove that he was conflant to him- self, whereby his Testimony was corroborated. But those in the usual can are no Witnesses. Ibid.

6. Wit-
Evidence.

5. Witnesses which were Defendants, and which are supressed by Order of the Court, altho' that afterwards there are no Proceedings against them, yet they shall not be allowed of, at the hearing of the Cause; agreed per rot. Car. Godb. 439. pl. 504 Mich. 4 Car. in the Star-Chamber. Huet v. Overy. And this was declared to be the constant Rule of that Court.

6. An Information was against A. for seducing and debauching a young Lady, M. was admitted an Evidence, and sworn in behalf of A. Skin. 81. pl. 23. Mich. 34 Car. 2. B. R. Lord Grey's Cafe.

7. The Defendant was convicted upon the Statute of 13 Car. 2. against Killing Deer, upon Oath of the Informer, who is to have a Moity of the Penalty of 20 l. It was objected, that the Informer ought not to be a Witness, because he is to have a Moity of the Forfeiture; fed per Curiam he is a good Witness. 3 Mod. 114. Trin. 2 Jac. 2. B. R. Jennings v. Hankys.

8. B. was indicted for striking H. in Westminster-Hall sitting the Court, and H. was the Evidence allowed, altho' B. proved that H. offered B. to compound the Prosecution, for such Act shall not invalidate his Testimony, because it shall be intended that such Composition was for, and not for the Contempt done to the Court. Sib. 211. pl. 8. Trin. 16 Car. 2. B. R. the King v. Bockman.

9. C. was indicted for a Middlemear in receiving stolen Goods, knowing them to be stolen, and the very Theft was produced as an Evidence who confessed the Fact, he being brought up by Habees Corpus ad tesi- tificandum from the Compeer; per Holt Ch. J. these Indictments were never thought good by me before I came upon the Bench, tho' I have been over-ruled in it once; but let us try the Fact first, and it shall be confirmed after whether the Indictment be maintainable. And he said, some Judges would try a Trover for Goods before an Indictment for the taking; but he never would do it, but rather get a Juror withdraw-

(G. a) Witnesses disabled by Crime.

Enabled by Pardon, or some After-Act.

1. In the Star-chamber, Exception was taken to one of the Witne- fes, viz. Dr. Spicer, because he had stolen Plate, and had been pardoned for it. But notwithstanding, the Exception the Court did allow of the Testimony of the said Dr. Spicer. Note, It did not appear in the Cafe of Fines, the principal Cafe, whether the Pardon by which Dr. Spicer was pardoned were a general Pardon, or whether it were a particular and special Pardon. L. E. 38. pl. 10. cites Godb. 258. Parch. 21 Jac. 2. R. Sr. Henry Fines Cafe.

2. Note, In the Cafe of the King v. Ford. 2 Salk. 690. it was ar- gued, that a bare Conviction of Perjury, would take away one's Evi- dence; because it is an infamous Crime, not so of Barracry, which was not of an infamous Nature, without an infamous Punishment inflicted, as the Pillory, &c. but the Court held contra, and that it was not the Nature of the Punishment, but the Nature of the Crime, and the Conviction thereof, that created the Infamy; And per Holt Ch. J. if one
Evidence.

one be convicted of Perjury on the Statute, he cannot be restored to his Credit by the King's Pardon, for by the Statute, it is Part of the Judgment, that he be infamous and lose his Credit; but he may be restored to his Credit by a Statute Pardon; but in Indictments of Perjury at Common Law, the Infamy is only the Consequence of the Judgment, and therefore the King's Pardon in such Cases, restores the Party to his Credit. L. E. 37. pl. 7. —— cites 2 Salk. 514.

3. It was resolved by all the Judges, that those Prisoners who were equally culpable with the rest, may be made use of as Witnesses against their Fellows, and they are lawful Accusers, or lawful Witnesses, within the Statute. 1 Ed. 6. 12. 5 & 6 Ed. 6. c. 11. & 1 Mar. 1. And accordingly at the Trial of those Men, some of their Partners in the Treason, were made use of against the rest; for lawful Witnesses within those Statutes, are such as the Law allows; and the Law allows every one to be Witnesses, who is not convicted, or made infamous for some Crime, and if it were not so, all Treasons would be false, and it would be impossible for one who confpires with never so many others to make a Discovery to any Purpos. But the Ld. Ch. B. Hale said, that if one of these culpable Persons be promised his Pardon on Condition to give Evidence against the rest, then that disables him to be a Witness against others, because he is bribed by having his Life to be a Witness, so that he takes a Difference where the Pardon of Pardon is to him for disclosing the Treason, and where it is for giving Evidence. But some of the other Judges, did not think the Promise of Pardon, if he gave Evidence did disable him; but they all advised, that no such Promise should be made, or any Threatnings used to them, in case they did not give full Evidence. L. E. 48. pl. 24. cites Kelynge 18.

4. In Evidence on a Trial at Bar, it appeared, that one Alcott, one of the Witnesses for the Defendant, was indicted of Perjury, in the Time of Cromwel, and Verdict given against him; but by the Death of Cromwel, Judgment was not entered, but all Proceedingsvacated. The Plaintiff's Counsel, offered this Verdict in Evidence to weaken the Credit of the Witnesses, but the Court resolved, that the said Verdict is now totally destroyed, and cannot be given in Evidence. Raym. 32. Mich. 13 Car. 2. B. R. Finch v. Smalbrook.

Keb. 134. pl. 69. Gary v. Smalbrook. S. C. held accordingly. The Court would not admit the Evidence, because all is discontinued by Alteration of Government; But it was agreed, that Evidence might be given viva voce, to prove him perjured; the other Side, to establish the Witnesses Credit, produced a Pardon of the Perjury; But per Cur. that will not do, for it cannot restore him to his Credit. Stad. 51. pl. 16. Wicks v. Smalbrook. S. C.——-

5. If one be convicted of Perjury, upon the Statute, he cannot be restored to his Credit by the King's Pardon; For by the Statute, it is Part of the Judgment, that he be infamous and lose the Credit of Testimony; but he may by a Statute Pardon. But in other Cases, where the Infamy is only the Consequence of the Judgment, the King's Pardon may restore the Party to his Testimony; 2 Salk. 691. in pl. 3. Mich. 12 W. 3. B. R. cited by Holt Ch. J. as held upon a Trial at Bar.

At Common Law, it is only a consequential Disability; Therefore in this Case, the King may pardon, and that restores him to his Testimony; but otherwise, where it is upon the Statute; For in that Case, he must reverse the Judgment, or he cannot be restored. 2 Salk. 514. Mich. 9 W. 3. B. R. The King v. Grep.
Proces against Witnefles. And Punishment of not appearing.

1. 12 E. 2. Stat. 1. cap. 2. Enacts, that when a Deed is denied in the King's Court, wherein Witnefles be named, Proces shall be awarded to caufe such Witnefles to appear as has been ufed, fo that if none of them came in as the great Diffrefs returned, or if it be returned, that they have nothing, or that they cannot be found, yet the taking of the Inqueft, fhall not be deferred; and if the Witnefles come in at the great Diffrefs, and the Inqueft for fome Caufe remains untook, the Witnefles fhalj have the like Day given them, as is affigned for the taking of the Inqueft; at which Day, if the Witnefles do not appear, the Issues that were first returned upon them, fhall be forfeit; and the taking of the Inqueft fhall not be deferred, becaufe of their Abfence. And for Abfence of Witnefles, dwelling within Franchifes, where the King's Writ original does not run, the taking of an Inqueft fhall not be deferred.

2. In quare impedit, it was faid per Belk, that at the latt Affife in Effex, befoe Ludlow in Affife of Rent; The Ifsue was, that ne chargera pas by the Deed, and Proces was made againft the Witnefles, becaufe Witnefles were in the Deed. Finch faid, certainly it was againft the Law, for the Deed is not denied, but Kirton contra; For a Stranger to the Deed cannot have other Nature of Anfwer; For he cannot deny the Deed, therefore the Deed is fo far denied, that a Stranger may deny it, therefore quere. Br. Teftimoignes, pl. 1. cites 43 E. 3. 2.

3. In Ifsue, the Tenant pleaded Bar by one who had nothing but Effate for Life, the Remainder to one J. que Effate the Tenant has, and that the Tenant for Life aliened to the Plaintiff and died, and J. entered que Effate the Tenant has, and gave Colour to the Plaintiff; and the Plaintiff faid, that where he faid, that the first Tenant had only Effate for Life by Leafe of W. N. the Remainder to J. he had Effate Tail by the Deed of W. which he had flowed; and the Tenant faid, that nient le fait & non allocatur, for a Stranger, &c. and therefore he faid, that he dona pas by the Deed, and the others contra; and Proces was againft the Witnefles, as well as if he had had Ifsue upon non eit factum, contra it was faid therefore the next Term. Br. Teftimoignes, pl. 3. cites 2 H. 4. 21.

4. In Affife by an Infant, Deed of the Grandfather, with Warranty was pleaded in Bar, in which Witnefles were named, and the Affife was charged upon the Circumstances of the Deed, without making Proces against the Witnefles. Br. Teftimoignes, pl. 10. cites 18 All. 11.

5. Where the Ifsue was that ne releafpa pas by the Deed before the Note levied, which Ifsue was taken by a stranger to the Deed, Proces was made againft the Witnefles as it was faid; For tho' the Deed is not expressly denied, it is denied in as much as a Stranger may deny it. Br. Teftimoignes, pl. 2. cites 44 E. 3. 34.

6. Where Witnefles make Default at the grand Diffrefs no further Proces shall be made againft them, but only againft the Inqueft; For the Statute of York, is that by Default of the Witnefles at the grand Diffrefs, the Inqueft fhall not be denied by the Abfence of the Witnefles. Br. Teftimoignes pl. 5. cites 8 Afs. 15.

7. Affife againft an Infant who pleaded Release of the Plaintiff bearing Date at E. which was denied, and Witnefles were named in the Deed, by which Proces iffued to Sheriff to caufe the Witnefles to come, and the Inqueft was of the fame Vivfe, where the Inqueft were named, and after it was faid that they cannot take Inqueft of the Forerunners upon Deed bearing Date at E. and after this Pannel was oufed, and Proces continued againft the Witnefles, and Proces to caufe a Jury to come from
Evidence.

from the City of E. notwithstanding that the Tenant be within Age, and cannot be attained of the Difterlin by the Trial of the Deed. Br. Testimoines, pl. 6. cites 20 Afs. 13.

8. In Affife by an Infant, Deed of His Father with Warranty was plead- ed, and inquit was of the Circumstances, and Proceeds was made against the Witnelfes all as well as it he had been of full Age and had de- nied the Deed quod nota, and at the grand Diftrefs they did not come by which the Affife was taken as the Statute wills, without having regard to their not coming, to which it was said that the Statute does not give it, but where the Deed is denied at the Mift of the Parties, fo in this Case; and if the Court will inquire of Office, as above, the Proceeds remains at Common Law, and thereupon they were adjourned into Bank, therefore Quare. Br. Testimoines, pl. 7. cites 11 Afs. 19.

9. In Affife by an Infant, the Tenant pleaded Deed of the Ancestor with Warranty, and the Plaintiff said that Rions poffa by the Deed, and the Affife was awarded without making Proceeds against the Witnelfes, because the Deed bore Date in the Vill where the Land in the Plain lay; For by some if it had bore Date in another County, then Proceeds shall be made against the Witnelfes, Quare inde. Br. Testimoines, pl. 11. cites 22 Afs. 11.

10. In Affife Deed is pleaded at Affife in which are Witnelfes, and the Plaintiff averred all to be dead, et non allocatur, but Proceeds made upon the Statute; For this comes in by Return of the Sheriff. Br. Testimoines, pl. 25 Afs. 14. and 26 Afs. 8 Accordingly.

11. In Affife a Man made Feoffment without Deed and delivered Seifin upon Condition contained in certain Indentures, and Witnelfes were in the Indentures; the Feoffor entered for Condition broken, the other brought Affife; the Tenant pleaded this Matter, he shall not have Proceeds aga- inst the Witnelfes, Contra it the Feoffment had been by Deed, and Witnelfes had been in the Deed of Feoffment, for the Feoffment upon Condition is the Force of the Bar and not the Indentures. Br. Testimoines pl. 14. cites 25 Afs. 1.

12. In Affife by an Infant, Deed of the Ancestor was pleaded, and Witnelfes named, and the Affife was awarded without making Proceeds against the Witnelfes, and good per jucicarias; For Proceeds shall not be made against the Witnelfes but where the Deed is denied, and Infant in Affife shall not be suffered to deny the Deed; For there the Affife shall in- quire of all the Circumstances. Br. Testimoines, pl. 15. cites 29 Afs. 57.

13. In Affife, the Tenant pleaded Release of the Plaintiff, to which the Plaintiff said, that after this the Tenant leaved to him for Years, and after by bis Deed, &c. released to him in Fee. Lud. said, he did not Re- lease by the Deed prif, and the others e contra, and Proceeds was made against the Witnelfes; for the Deed is in a manner denied quod nota. Br. Testimoines, pl. 16. cites 31 Afs. 25.

14. Deed was pleaded in Bar, and the Plaintiff said, that nothing passed by the Deed. And per Townend, Proceeds shall not be made a- gainst the Witnelfes, but Brian and Vaviler Contra. Br. Testimoines, pl. 21. cites 5 H. 7. 8.

15. In Affife by an Infant, Deed of the Ancestor with Warranty was plead- ed in which were Witnelfes, and Proceeds was made against the Witnelfes upon the Circumstances without denying the Deed, quod nota. Br. Testimoines, pl. 17. cites 35 Afs. 9.

16. In Affife of Rent the Defendant pleaded Release of all the Right of the Father of the Plaintiff, in which were Witnelfes, and the Plaintiff said, that now ell failium, and the Defendant would have confessed the Witnelfes dead it the Plaintiff would have-all to have maintained the Affife; and the Plaintiff would not assent but prayed Proceeds against the Witnelfes. Br. Testimoines, pl. 18 cites 41 Afs. 6.

17. In
Evidence.

17. In Allife of Rent the Tenant pleaded **Hors de sou Fic**, the other flewed Deed of Rent-charge made by W. N. Knight, he me charge
and for. Proces was made against the Witne-

18. Allise Baron and Fever, who pleaded Reliefs, which was denied, and in which were Witneses, and Proces was made against them, the Sherif returned that they were dead, and after the Feme was received in Default of the Baron and pleaded the same Deed again, and prayed Proces against the Witneses, and could not have it because the Sherif had returned them dead before, by which the Allise was awarded quod nota. Br. Telfmoignes, p. 20. cites 43 All. 16.

19. In Trefpafs pr Martin and Roft, it a Deed in which are Witneses be pleaded in Trefpafs, and is denied, Proces shall issue against the Witneses, and yet it is Action personal. Br. Telfmoignes, p. 25. cites H. 6. 5. at the End.

20. In Allise, if Deed pleaded is confessed and avoided, it is said that Proces shall not issue against the Witneses. Contra, where the Deed is denied; For in Allise, if the Tenant pleads Jointenancy by Deed, and the Plaintiff shews that the Jointenancy was conveyed pending the Writ, Proces shall not issue against the Witneses. Br. Telfmoignes, p. 25. cites 7 All. 10.

21. In Allise by two the one an Infant, and the other not, and Deed of their Ancestor was pleaded, by which the Allise was awarded at large of the Circumstances against him who was within Age, and he of full Age was compelled to answer, who said, that nothing pissed by the Deed, and Witneses were in the Deed, and therefore Proces was awarded against the Witneses. Br. Telfmoignes, p. 26. cites 26 All. 65.


23. In Ward the Defendant pleaded Feoffment of the Ancestor of the Infant, the Plaintiff said that it was upon Condition to infallof the Heir at his full Age by Collony, to oult him of the Ward, &c. The Defendant said that it was simple and without Condition, or Collution; Prift. and the others e contra, and the Defendant prayed Proces against the Witneses, and had it. Br. Telfmoignes, p. 28. cites 45 E. 3. 22.

24. 5 Eliz. cap. 9. sed. 12. Enactis, that none forced with Proces out of a Court of Record to testify as a Witness (being tendered convenient Charges, and having no reasonable Lett) shall therein make Default, on Proces as pain to forset to the Party grieved 10 l. and besides to yield him such further a Witness. Recom pense as the Judge of the same Court shall think fit, according to the Damage sustained, which said Sums shall be by him recovered in any Court of Records by Action of Debt, in which no Wager, Esoin &c. shall be allowed.

Doubt brought on this Statute for the 10 l. for her not appearing, it was held that she was within the Statute, and that the Tender of the Charges was to be to her, and not to her Husband; and Judgment for the Plaintiff, tho’ it was moved in arrest of Judgment, that the Plaintiff did declare that the Not-appearence was to his Damages, but did not shew what Damages. Cro. E. 150 p. 5. Pass. 35 Eliz. B. R. Hathkbury v. Harvey, &c. Le. 122. p. 160. Hathlome v. Harvey, S C. adjudged for the Plaintiff. A Note of Proces was left at the Defendant’s (the Witneses’) House being 40 Miles from London, and 12 d. to bear his Charges which the Party did accept; and the Party who served the Proces promised the Defendant sufficient Coffs. Exception was taken, till, because the Proces was not served upon the Defendant as the Statute requires, but a Note only thereof, and it being a penal statute, ought to be taken strictly. 20ly, That 12 d. only was delivered, which was no reasonable sum for Coffs and Charges according to the Difiance of the Place, as the Statute speaks, and therefore the Premise that he would give him sufficient for his Coffs afterwards not good, 50ly, The Party who recovers by Force of this Statute, ought to be a Party grieved and dammed, as the Statute speaks, by the Not-appearence of the Witneses; and because the Plaintiff had not avered that he had Coffs thereby, and therefore conceived the Action not maintainable, but for the first

N
Evidence.

the Court was clearly against him, because it is the common Course to put divers in one Process, and to serve Tickets, or give Notice to the first Persons who are summoned, and to leave the Process itself with the last only, and that is the usual Course in Chancery; but if there is only one in the Process, then the Process itself ought to be left with the Party; As to the 2d the Court did conceive that the Acceptance should bind the Defendant, but if he had refused it, there he had not incurred the Penalty of the Statute; for he ought to have tendered sufficient Costs according to the Distance of the Place, which 12d. was not, it being 50 Miles distant. But as to the 3d Exception, the Court was clear of Opinion, that Action would not lie for want of Averment that the Plaintiff was damned for the Not-appearance of the Defendant; And so it was adjudged that the Plaintiff nil capiat, per Billam, Mar. 18, pl. 45. Patch, 15 Car. Goodman v. Weft. — Jo 450. pl. 2. Goodvin v. Weft. S. C. held accordingly — Cro. C. 340. pl. 4. S. C. adjudged for the Defendant. — 5 Mod. 315. Trin. 9 W. 3. Maddilton v. Bow. S. P. the Court of C. B. held the Declaration ill, because the Plaintiff had not set forth any special Damage suffered by him by Defendant's not appearing to give Evidence, as that he was non-verted or could not proceed to Trial for want of the Defendant's Evidence, and a particular Damage must be set forth; And afterward a writ of Error was brought on this Judgment, but it was affirmed, the contrary to the Case of Cro. E. 150. & Le. 122. — In such Case Plaintiff shall have his Costs too. Comb. 449. S. C. — — I Sall. 206. pl. 4. Shore v. Maddilton. S. C. accordingly.

25. One was subpoenaed ad testificandum, and prayed a Privilege from being arrested, which was granted; And per Cur. it will supercede an Arrest upon mean Processes, but not upon an Execution; yet the Sheriff in that Case may be committed for the Contempt. Tri. per Pains, 7th Edition, 330. Scct. 1. cites Mich. 15 Car. 2. E. R.

(I. a) Witneses joined to the Inquest. In what Cases.

1. A Witnesse who was outlawed, was sworn with the Inquest. Br. Testmonignes, pl. 29. cites 34 E. 1. & Fitzh. Processes, 208.

2. Affife was brought by an Infant, and Deed of his Acestor was pleaded in Bar; and per Thinn, Hank and Norson, the Circumstances shall be enquired, and the Witneses joined to the Inquest, quod nota. Br. Testmonignes, pl. 4. cites 12 H. 4. 9.

3. When Processe used to be made out against the Witneses in Carta nominat. to join with the Jury in Trial of the Deed, as was used before the Statute of 12 E. 3. c. 2. (his testibus) being then Part of the Deed, then the Number was uncertain, according as the Number of Witneses were in the Deed; wherefore no Attaint lay, if the Deed were affirmed, because more than Twelve joined in the Verdict. But otherwise, if the Deed was not found, because Witneses cannot prove a Negative. T. per P. 72. cites P. N. B. 106. h. 1 Init. 6. 2 Init. 130, &c.


1. T H E Court was moved to discharge one Collins, that was arrested as he was attending the Court, to give Testimony as a Witnes in a Cause, and for an Attachment against the Parties that did arrest him. Germain Justice, Abente, Roll. Ch. J. Take a Supreme door, and let the Parties shew Cause why an Attachment shall not be granted against them that arrested him. Sty. 395. Mich. 1653. Anon.

2. If
Evidence.

2. If a Witness, coming to testify in a Cause in Middlesex, and be arrested in London, by one knowing the Cause, he hath no Remedy, but by a Halves Corpus, to examine and deliver him thereby; but if there be any Contempt by the Officer, &c. an Attachment, may afterward be awarded against him; for they are as well to have Privilege, as the Parties. L. E. 29. cites 1 Keb. 220. pl. 29. Hill. 13 Car. 2. B. R. Vandevelde v. Llullin.

3. He who has a Subpœna to give Evidence, may have a Writ of Privilege, to protect him going and coming. L. E. 29. pl. 46. cites 1 Vent. 11. Hill. 20 & 21 Car. 2. B. R. Anon.

4. The Courts not only protect the Parties themselves, but all Witnesses are protected undo & redeundo; for since they are obliged to appear by that Process of the Court, they will not suffer any one to be molested, whilst he is paying Obedience to their Writ. G. Hist. C. B. 168. cap. 17.

1. A Prohibition, shall go to Court Christian, if they compel a Man to be a Witness against himself; for (unless in Causes matrimonial, and testamentary) nemo tenetur prodere seipsum. Cro. E. 204. pl. 28. Mich. 32 & 33 Eliz. B. R. Collier v. Collier. S. C. it was in a Cause of Incomintency, and the spiritual Judge would have examined the Parties upon Oath, whether they did the Fact or not; and Prohibition was granted.—4 Le. 194. pl. 357. 32 Eliz. in C. B, the S. C. the Court would advise.—

(L. a. 2) Witnesses. Not to be enforced to give Evidence against themselves.

(L. a. 3) Evidence by Jurors.

(M. a) Examination of Witnesses. What they may be examined to, and how.

1. In some Causes, the Courts of Common Law, do judge upon Witnesses; but they must ever give their Testimony with ease, as in Dower, if the Issue be, whether the Husband be alive or not, &c. 4 Inf. 279.

2. The
Evidence.

2. The Plaintiff's Commissioner, would not let a Witness declare the whole Truth, but "held him strictly to the Interrogatories, to state the Truth." This was held a Misdemeanor, and, that Commissioners to examine, ought to be indifferent, and by all Means to express the Truth, and they are not strictly bound to the End of the Interrogatories, but to every Thing also which arises necessarily upon it, for manifesting all the Truth concerning the Matter in Question. And where one of the Commissioners went out of the Place to the Plaintiff into another Room during the Examination, and had private Conference with him, it was held, that a Commissioner ought not before Publication discover to any of the Parties what any Witness has deploled, not to confer with the Party after he has begun to examine on the Interrogatories, to take new Instructions to examine further than he knew before, and if he does, he is punishable by Fine and Imprisonment. 9 Rep. 70. b. Trin. 9 Jac. in the Star-Chamber. Peacock's Case.

3. The Defendant's Commissioners for examining Witnesses, not at the Time and Place appointed, but refused to join and act in the Execution of the Commision, and upon Affidavit made of this, the Court ordered, that the Defendant should name other Commissioners, and it was prayed, that the Plaintiff might name other Commissioners too; because one of his Commissioners was not there, so that it seemed to have been a Practice; and the Court doubted whether an Attachment lay against the Defendant's Commissioners or not. Et adjusdem. Hard. 170. pl. 6. Trin. 12 Car. 2. in the Exchequer, with Fortescue & al.

4. Where two Witnesses were produced as Witnesses, to prove a Bond suspected of Forgery, the Court upon Motion, ordered the Witnesses to be examined apart, and the one not in the hearing of the other. Sid. 131. pl. 1. Pack. 15 Car. 2. B. R. Guiliams v. Hulie.

5. A Witness swears, but to what he hath seen or heard, generally, or more largely, to what he hath fallen under his Sense; but a Juryman swears to what he can conclude, and infer from the Testimony of such Witnesses, by the Act and Force of his Understanding, to be the Fact inquired after. Vaugh. 142. Per Vaughan Ch. J. in Bulhel's Cafe.

6. The Party who produces a Witness, cannot examine to the Discredit of such Witness; Per Eyre. Devon. Lent Circuit, 1722. And in Criminal Causes, where the Prisoner calls Persons to his Reputation, this gives an Handle to the Crown to give Evidence of the Prisoner's Reputation. Per Page.

(M. a. 2) Examination on a Voire Dire.]

1. Upon a Challenge to a Juror, the Way is to examine him upon a voire dire, as to the Truth of the Challenge. Dy. 195. a. pl. 35. Hill. 3 Eliz.

2. Those that produce an Evidence, ought to examine him in Chief only; But they against whom he is brought, may examine upon a voire dire, if they please, whether he is concerned in Interest. 10 Mod. 151. Pack. 12 Ann. B. R. Corporation of the Town of Bewdley.

3. When a Witness is examined upon a voire dire, and his Testimony is admitted, and upon his Examination, he appears by his Evidence to be interested, no Regard is to be had thereto, but the Jury are to be directed to lay it aside. But how it is in the Course of Evidence of other Witnesses, for before such Examination, the other Party may prove that he is a Party interested, and then his Evidence is not to be admitted at all; This
Evidence.

49

this was said to have been held by Ch. B. Gilbert in the Exchequer, and he committed a Witness who had been examined upon a voir dire, and appeared afterwards upon his Examination to be interested; and he said, that the same did hold in Equity upon the Deposition of such a Witness, the Baron sitting; Per Lord Chancellor. Pachf. 1743. Moore v. Howell.

1. If a Witness be examined for the Defendant de bene esse to preserve his Testimony, and before Answer, and upon an Order of Court for his Examination made upon hearing of Counsel of both Sides, and if after Answer the Witness die before he be examined again, the Answer coming in on the 28th November, and the Witness dying on December 18th following, and he being sick all the Time, so that he could not go to be examined, the Examination of such Witness shall not be read in Evidence, because it was taken before Illue joined in the Cause, and he might have been examined after, and the Defendants did not appear to be in Contempt; Per omnes. J. Hard. 315. pl. 6. Mich. 14. Car. 2. in Scacc. — v. Brown.

2. The Reason why the Court allows the taking of Depositions de bene esse, is either from a Contempt in not answering, and thereby preventing the joining of Illue, or else where the Party is in Danger of losing his Witnesses in case of Death, by reason of Sickness or Age, so that there may be Ground to apprehend their not being examined in chief; Per Lord C. Parker. Wms's Rep. 568. Trin. 1719. in the Case of Cann v. Cann.

3. Upon a Petition for Publication of Depositions taken de bene esse, after Examination in chief of the same Witnesses, in order to compare the said several Depositions so taken in the same Cause, the same was denied by Lord Ch. Parker, and dismissed the Petition, it being admitted on both Sides to be without Precedent; and said, that if the Witnesses examined de bene esse live to be examined in chief, the Depositions de bene esse shall fall to the Ground, and are as it were buried, having answered the whole Purpose for which they were taken. Wms's Rep. 367. Trin. 1719. Cann. v. Cann.

4. It was admitted, that where the Delay is made by a Defendant, so that a Witness cannot be examined in chief, he either losing his Memory, or dying before he can be examined in chief, his Depositions taken de bene esse may be read; But it was argued, that if the Delay is on both sides, that they shall never be read against the Defendant, because he lothes the Benefit of Cross examining the Witnesses. Arg. Mod. 133. Hill. 11. Geo. in Case of Southwell v. Ld. Limerick. — On the first Point the Depositions were allowed to be read. 9 Mod. 210. S. C.

5. A Witness ordered to be examined de bene esse, where the Thing examined into lay only in the Knowledge of the Witness, and was a Matter of great Importance, the Witness was not proved to be old or infirm.

6. Motion to examine a Witness de bene esse, upon Defendant's praying a Month's Time to answer upon this Cause.

O Upon

(M. a. 3) De bene esse.

1. If a Witness be examined for the Defendant de bene esse to preserve his Testimony, and before Answer, and upon an Order of Court for his Examination made upon hearing of Counsel of both Sides, and if after Answer the Witness die before he be examined again, the Answer coming in on the 28th November, and the Witness dying on December 18th following, and he being sick all the Time, so that he could not go to be examined, the Examination of such Witness shall not be read in Evidence, because it was taken before Illue joined in the Cause, and he might have been examined after, and the Defendants did not appear to be in Contempt; Per omnes. J. Hard. 315. pl. 6. Mich. 14. Car. 2. in Scacc. — v. Brown.

2. The Reason why the Court allows the taking of Depositions de bene esse, is either from a Contempt in not answering, and thereby preventing the joining of Illue, or else where the Party is in Danger of losing his Witnesses in case of Death, by reason of Sickness or Age, so that there may be Ground to apprehend their not being examined in chief; Per Lord C. Parker. Wms's Rep. 568. Trin. 1719. in the Case of Cann v. Cann.

3. Upon a Petition for Publication of Depositions taken de bene esse, after Examination in chief of the same Witnesses, in order to compare the said several Depositions so taken in the same Cause, the same was denied by Lord Ch. Parker, and dismissed the Petition, it being admitted on both Sides to be without Precedent; and said, that if the Witnesses examined de bene esse live to be examined in chief, the Depositions de bene esse shall fall to the Ground, and are as it were buried, having answered the whole Purpose for which they were taken. Wms's Rep. 367. Trin. 1719. Cann. v. Cann.

4. It was admitted, that where the Delay is made by a Defendant, so that a Witness cannot be examined in chief, he either losing his Memory, or dying before he can be examined in chief, his Depositions taken de bene esse may be read; But it was argued, that if the Delay is on both sides, that they shall never be read against the Defendant, because he lothes the Benefit of Cross examining the Witnesses. Arg. Mod. 133. Hill. 11. Geo. in Case of Southwell v. Ld. Limerick. — On the first Point the Depositions were allowed to be read. 9 Mod. 210. S. C.

5. A Witness ordered to be examined de bene esse, where the Thing examined into lay only in the Knowledge of the Witness, and was a Matter of great Importance, the Witness was not proved to be old or infirm.

6. Motion to examine a Witness de bene esse, upon Defendant's praying a Month's Time to answer upon this Cause.
Evidence.

Upon hearing of this Cause, a Deed of the Family Settlement of Lands of 3000/ per annum in Ireland was produced and read, but there being some suspicious Circumstances attending the said Deed, an Issue at Law was directed to try the Validity of the said Deed, and if the same was a real or forged Deed, but before the Issue was tried, a Person upon inspecting the said Deed, which by Order was left in the Hands of the Master for all Parties to inspect and examine, declared, that he wrote that Deed with his own Hand in the Year 1708, at the Request of the late Earl Ferrars, as a Copy of a Copy of a Deed bearing Date 1682. So that this Writing could not possibly be a true Deed in 1682, which was not wrote till several Years after the Date, and after the Death of several Parties to the Deed, and the Witnesses made an Affidavit to this Effect, whereupon the Plaintiffs brought a supplemental Bill upon this new Discovery after the Hearing, and Defendants prayed a Month's Time to answer; and now the Question was, if this Witness shall be examined de bene esse before the Answers came in, without the usual Affidavit that the Witnesses is old and infirm, or otherwise in Danger of dying.

Per King C. It is discretionary in the Court to grant, or not to grant Liberty to examine a Witness de bene esse before Issue joined, and those Motions are usually granted upon an Affidavit of Sicknes or Infirmity of the Witnesses, which is not the present Case, the Witnesses being of a middle Age, and in Health, yet he being the single Witness, and alone privy to the Fact, which cannot be proved without him, and all Life being uncertain, I think it reasonable, in the present Case, to let him be examined de bene esse; if he should happen to die before Issue joined the Loss of his Evidence would be irreparable; on the other Hand there can be no great Inconvenience, the other Side being at Liberty to cross examine him, and if he lives till the Trial at Law this Examination will go for nothing, and be must be examined in open Court at the Trial. Motion granted. MSS. post Trin. 4 Geo. 2. in Canc. Countefs of Ferrars v. Earl of Ferrars &c.

(M. a 4.) Of whom it may be.

Of Plaintiffs or Defendants.

1. THE Plaintiff is to be examined upon Interrogatories, Toth. 211. cites 12 and 13 Eliz. fol. 380. Lambert v. Lambert.
2. A Defendant, not being a principal Defendant, might be read as a Witness, if he were examined on the Plaintiff's Party in another Suit between other Persons. Carey's Rep. 29. cites 10th June 1602. 44 Eliz. in the Cafe of Kingston upon Thames.
3. The Plaintiff was examined at the hearing of the Cause; Toth. 211. cites Pach. 6 Car. Kent v. Benham.
4. Note. If a Man be named Defendant, who is proper to be a Witness in the Cause, the Plaintiff must by Order strike out his Name before Answer; but after Answer he may by Order examine him as a Witness, tho' his Name be not struck out of the Bill, if he be otherwise competent, as if he disclaims, or have no Interest, or is only a Trustee. 2 Ch. Cafes, 214. Hill. 27 & 28 Car. 2. Anon.
5. After a Cause had been heard, and referred to an Account, the Plaintiff moved to examine two of the Defendants de bene esse, which was ordered unless Cause; Upon which the Defendant's Counsel took this Difference,
Evidence.

Differens, that tho' it was an Order of Court to examine a Defendant de bene elle, saving just Exceptions, yet when the Cause is open, and it appears that Defendants are Parties interested, it is proper to hear Cause against such an Order before the Witnesses are examined; And this Difference was allowed to be well taken. Vern. 452. pl. 423. Pach. 1687. Glover v. Faulkner.

6. But it appearing that Releases were given to the Defendants, and the Matter to be examined to being only Matter of Account, the Cause was disallowed. Pach. 1687. Vern. 452. Glover v. Faulkner.

7. Plaintiffs cannot be examined as Witnesses, because, as Mr. Vernon said, if the Cause miscarries, the Plaintiffs will be liable to Costs; and therefore their swearing is to exempt themselves, and it is their own Choice that they are made Plaintiffs, for without their Consent they could not have been made so; but the Defendants are forced into the Cause, and if their being made Parties should absolutely invalidate their Testimony, it would be in the Power of any one, who had a mind to oppresse another, and deprive him of his Defence, to make the most material Witnesses Defendants in the Cause, and therefore any of the Defendants to a Suit may be examined as Witnesses, saving just Exceptions to their Credit, Capacity, &c. Gilb. Equ. Rep. 98. Trin. 1 Geo. 1. in Canc. Cafev v. Beachield.

8. Obiter. If a Man unnecessarily makes any one a Defendant, he thereby cuts himself off from the Benefit of his Evidence, for it is his own Fault; But where several are made Defendants, it will not hinder any one of the Defendants from the Benefit of the Evidence of any others that are made so; Indeed, in Cafe of Trustees, it is necessary that they be made Defendants, and therefore there the Plaintiff may have the Benefit of the Evidence. 10 Mod. 19. Pach. 10 Geo. in Canc. Gibon v. Albert.

9. It was held by Macclesfield C. that a Co-plaintiff may be examin'd as a Witness, where the Substance of the Bill was admitted by the Defendant's Answer; for the Reason why a Co-plaintiff should not be examined as a Witness is, because if the Bill is dismiffed he is liable to pay Costs; but where sufficient is admitted by Defendant's Answer to found a Decree upon, there the Reason fails, and there remains no Influence upon the Plaintiff, if he be not concerned in Interest in the Cause. A Deposition of Co-plaintiff allowed to be read. MSS. Rep. Hill. 10 Geo. in Canc. Freeman v. Bridges.

10. One Defendant cannot move to strike another out of the Bill, who has never been served with Process in order to make him a Witness; But the Plaintiff may, and a Defendant may have an Order to examine such Defendant, saving just Exceptions. G. Equ. R. Hill. 183. 12 Geo. 1. in Canc.

11. It is a Rule, that no Co-plaintiff ought to be examined as a Witness on behalf of the Plaintiff, there being apparent Exception against him, viz. his being liable to answer Costs, if the Cause go against him; Ld. Ch. Parker said, there is more Reason that the Defendant should be at Liberty to examine one of the Plaintiffs, (they being a Corporation) ift. Because the Defendant cannot disfranchise any of the Corporation as the Plaintiffs may, (by which they may be made good Witnesses for themselves, and without which, they cannot be made so). And 2dly. If the Plaintiff swears any Thing against himself, it is good Evidence against him, though nothing that he swears can be Evidence for him. Nevertheless, the Practice is otherwise, and this seems to be in Imitation of the Common Law, where the Defendant * cannot examine the Plaintiff, and tho' Equity goes so far, as to give either Side leave to examine a Defendant de bene elle, yet this Rule has not been extended to a Plaintiff, who if he be an immaterial Plaintiff, the Defendant may demur.

Abbrev. Eun. Cafes, 225. pl. 8. S. C. In note the verbis; and says, it was agreed per Curiam.
Evidence.


12. A Parry ought not to be examined, tho' by Consent, unless the whole Matter be referred to his Oath. MSS. Tab. March 23d, 1723. Charters v. Earl of Hyndford.

13. The Defendant being a weak Man, and to be examined on Interrogatories; the Matter was ordered to take such Defendant's Examination, left he should unwarily admit something against himself that was not true. 3 Wms's Rep. 289. Trin. 1734. Paddock v. Brown.

(N. a) Of Evidence in General.

1. EVIDENCE is any Thing offered to a Jury, containing in itself a semblance de verity. 2 Sid. 145. Per Witherington C.B. Hill; in Case of Olive v. Gwin cites Plow. Com. 403. Scholastic's Cafe.

2. The Testimony of Witnesses is in vero, is more effectual to discover the Truth, than their Deposition in Paper by confronting them one with another, and to sift them; as also, by applying certain Questions for which they cannot be prepared. Hob. 325. pl. 393. about 17 Jac in Case of Darcy v. Leigh.

3. Evidentia in legal Understanding doth not only contain Matter of Record, as Letters-Parents, Fines, Recoveries, Inrollments, &c. Writing under Seal as Court-rolls, Accounts, &c. (which are called Instruments) but in a large Sense it also containeth the Testimony of Witnesses, and other Proofs to be produced and given to a Jury, for the finding any Issue joined between the Parties and its called Evidence, because the Point in Issue is thereby to be made evident to the Jury. Probationes deent esse evidentes (i.e.) peripicue etiacles intelligi. Co Litt. 283, a.

4. Evidence to a Jury, is that which may be given in Evidence, as by Parol, Ore tenus, (or) by Writing, as any Paper unsealed, or under Seal; but nothing can be delivered in Evidence to a Jury, but that which is of Record, or under Seal, unless by Consent; per Witherington, Ch. B. in delivering the Opinion of the Court. 2 Sid. 145. Hill. 1658. Olive v. Gwin.

5. Upon motion a Rule was made by Consent that a Deed should be allowed in Evidence at the Affiffies without proving of it. 1 Sid. 269. pl. 23; Trin. 17 Car. 2. Anon.

6. Evidence is only given for Information of the Consciences, and therefore if no Evidence is given on either Part, yet may the Jury find the Verdict either for the Plaintiff or Defendant, cites 3 H. 7. 11. a. Frowick, tho' the Evidence given be exclusive, yet the Jury may find against it, and hazard an Attain if they pleaie, Raym. 495. Mich. 32 Car. 2. B. R. Chichester v. Phillips.

7. Evidence in vero voice is always best; and tho' the Law requires the left Proof that can be bad, yet when better cannot be had, it is satisfied with that which can be had. Refolved. G. Equ. R. 18. Patch. 8 Ann. in Cafe of Ld. Anglesey v. Ld. Altham.

8. Evidence which is contrary to the Matter in Issue, or which is not agreeable to it, is not good. L. E. 469. 7th Edit. lays it down as a Rule.

9. Where the Evidence proves the Effett and Substance of the Issue, it is good. L. E. 470. 7th Edit. lays it down as a Rule.

10. It suffices to prove the Substance, without any precise Regard to the Circumstances. L. E. 471. 7th Edit. lays it down as a Rule.
(P. a) Examination of Witnesses.

After Publication, &c.

1. Witnesses after hearing, examined ad informandum conscien-

tiam judicis. Toth. 287. cites Dalby v. Mare, Feb. 3 Ja.

2. After Interrogatories preferred in the Country by the Defendant, he

may examine other Witnesses, either in Court, or by Commissio.

Toth. 287. cites Long v. Long, about Hill. 7 Ja.

3. Witnesses, after a Hearing, re-examined to clear the Matter, by

the Advice of the Ld. Ch. J. and Ld. Ch. B. Toth. 288. cites Dux Lenox

contra Dom. Clifton, 8 Jac. lib. a. fo. 381.

4. Witnesses examined in the Country, if the other Side have seen their

Interrogatories not to be examined in Court. Toth. 287. cites Hun-
gate v. Crook. Trin. 11 Ja.

5. After Publication, examined Witnesses. Toth. 287. cites Han-
corne v. Emery. Mich. 3 Car.

6. Witnesses examined after Publication allowed. Toth. 287. cites

Weeks v. Thelwall. 9 Car.

7. Witnesses examined upon new Interrogatories, after a Commissi-

on to counterprove a Man's Testimony at Law, upon which a Verdict. Toth.

288. cites Tailor v. Tailor, 9 Car.

8. Examination of a Witness, as after a Hearing, to prove a Court-


9. If one of the Parties after Publication has an Order to examine,

on making the usual Oath of not having seen the Depositories, the other

Party may not only cross examine, but examine at large. North K.


10. A Witness alleged he had mistaken himself at a Commissio,

n being returned, he came to London, and made Oath that he

was surprized; a special Commissioi llued to re-examine this Witness,

which was done accordingly; but this special Commissio was supported

by Motion, by Advice with the Master of the Rolls, with the six

Clerks, as contrary to the Course of the Court. 2 Freem. Rep. 178.


—Chan.

Cafes, 25.

S. C. ac-

Equiv. abr.

162. pl. 3.

S. C.—But

Equiv. abr.

162. pl. 3.

S. C.—But

11. Interrogatories, and the Depositories of Witnesses taken on them were

suppressed, for that the Interrogatories were leading, and then Publication

passed; and on Motion that a new Set of Interrogatories might be drawn

and settled by a Master, for the Examination of this Witness, whose

Evidence was very material, and yet must be wholly lost, if the Court

would not indulge him this Way; and tho' the Practice has been al-

ways against it, and it was infit to be of dangerous Consequence,

yet one Precedent being produced to this Purpofe, and the Interro-

gatories which had been suppressed were such as might have been drawn

by many other Counsel without any Aprehension of their being lead-

ing, the Court, to let in the Party to the Benefit of this Witness's Tel-

timony, ordered Interrogatories to be put in, and settled by a Master

for

P
Evidence.

Spence v. Allen.
12. Articles, never are to be exhibited against the Credit of a Witness, after such Witness has been cross examined to the Merits. MSS. Tab. April 19th, 1726. Oneal v. Odair.
13. After the Defendant has been examined on Interrogatories, and Publication past, the Plaintiff ought not to have a Commision to examine Witnesses, in order to falsify the Defendant’s Examination, this tending to multiply Causes, and make them endless. 3 Wms’s Rep. 413. Hill. 1735. Smith v. Turner.
14. Upon a Motion. After a Decree and Account before the Master, one of the Parties had examined Witnesses, and after the other Side had taken a Copy of Depositions, he exhibited Interrogatories, and was about to examine Witnesses in Contradiction, &c. And now it was moved, that the Party who had taken a Copy, might be staid from examining Witnesses in Contradiction, or that Matter might settle Interrogatories. Lord Chancellor, although no passing Publication before the Master, yet examining after Party has seen Depositions of other Side seems to be within the fame Mitchell and Danger, and though in Account, before Master, by Reason of many Items and Particulars, Parties may examine as several Times as Occasions offers; yet when one Party has closed Examination, as to any particular Point or Fault, the other Side ought not after seeing those Depositions to be admitted to examine in Contradiction. But in the present Case, as the Solicitor had made Oath, that he was informed the Practice was otherwise, and that he might examine after seeing the Depositions, and as the Notice of Motion was in the Alternative, therefore let the Matter settle the Interrogatories. Mich. 1734. Charlewood v. St. Amand.

(P. a 2.) Re-examination. In what Cases.

1. TADLOW being examined as a Witness, calling himself better to mind afterwards, was suffered to amend his former Examinations. and was further examined ad inforamandam. Toth. 286. cites Trin. 27 Eliz.

2. A Witness once examined shall not be called up to be examined upon a further Point. Toth. 286. cites Ld. Scroop v. Sir Tho. Egerton.

Hill. 17 Jac. but Angulliff v. Trevor, not admitted, in Mich. 19 Jac. Toth. 287.

3. Witnesses examined to the Damage on Breach of Covenant, not re-examined on the same Interrogatories, the speaking in the first uncertainly. 2 Chan. Cases, Pauch. 28 Car. 2. Ingle v. Ingle.

Put it is the Practice now of the Court to obtain an Order on Motion and Affidavit of Surprise, to have the Witnesses examined viva voce in Court, or his Depositions amended, the Witnesses being first examined before an Examiner; but when he is examined in Court, or when his Depositions are read, the Order for that Purpose must be produced in Court. Abr. Eq. Cases, pl. 3. Marg.

4. A Witness alleged he had mistaken himself at a Commision, the Commision being returned, he came to London and made Oath that he was surprized; a special Commision issued to re-examine the Witnesses, which was done accordingly, but this special Commision was imperfect by Motion, by Advice of the Master of the Rolls, with the-six Clerks, as contrary to the Course of the Court. Chan. Cases, 25. Trin. 15 Car. 2. Randal v. Richford.

5. Baron
5. Baron and Fene exhibit a Bill for a Demand in Right of the Wife, the Defendants answer, and Witneffes are examined, and Publication passed, but before hearing Baron dies, and the marries a second Husband, and they bring a new Bill for the same Matter; Per Cur. the Wife was not bound by the former Proceedings, and therefore the now Plaintiffs were allowed to examine, as if no Examination had been in the former Cause, per Lords Commissioners. 2 Vern. 197. pl. 180. Mich. 1690. Anon.

6. In a Bill to have the Benefit of a former Decree, Plaintiff cannot examine Witneffes, much less the fame Witneffes, to the Matters in Issue in the former Cause; But on such Bill the Court may examine the Justice of the former Decree; but then it must be on Proofs taken in the Cause wherein the Decree is made; Per Wright K. 2 Vern. 429. Hill. 1700. Johnfon v. Northey.

7. Where the Baron and Fene exhibit a Bill for a Demand in Right of the Wife, the Defendants answer, and the Cause being at Issue, several Witneffes are examined, and Publication passed, but before it proceeds to a Hearing the Husband dies; the Wife marries a second Husband, and they bring a new Bill for the same Matter. It was moved they might be restrained from examining the Witneffes examined in the former Cause, but not allowed by the Court; the Wife was not bound by the Proceedings in the former Cause, and therefore examine as if no Examination had been in the former Cause. 2 Vern. 197. pl. 180. Mich. 1690. Anon.

8. Holt said, it was frequent in Chancery, after a Witness had been examined before a Matter, to examine him again; for he knows too, in all his Time he had known it done but twice. 7 Mod. 157. Hill. 1 Ann. B. R. in Cafe of Grovenor v. Fenwick.

9. A Witness examined was refused to be read because interested, but on a Release given by him may be examined again, and tho' there be no Order of Court for such Re-examination, yet if the other Side does not move to suppress the Deposition for Want of an Order, it is too late to object to it when the Deposition comes to be read. Chan. Prec. 234. pl. 196. Pach. 1704. Callow v. Mime.


11. Motion to re-examine Witneffes to the same Matter they were formerly examined to, the former Depositions being suppressed after Publication, upon the Matter's Report that the Interrogatories were leading, &c. The Cafe of Sawy v. Amhurst tempore Cowper C. was cited as directly in Point, and infifted that the entire Equity of the Cause depended upon the Evidence of these Witneffes, and that it would be extremely hard that the Plaintiff should be for ever debarred of his Right by a Slip of the Counsel, &c.

Contra it was infifted, that this Motion was directly contrary to the prevailing Rules and Orders of the Court, that a Witness ought not to be examined again to the same Matter after his Deposition is suppressed; That in two late Cafes, viz. Harding v. Coalster, and Dollin v. Additon, this Matter was very earnestly pressed by the Counsel, but in vain, and denied by the Court; That it would be of dangerous Consequence to allow a Witness to be re-examined upon new Interrogatories after he has been drawn in to make a Deposition upon leading Interrogatories, for he must swear the same Thing over again to secure himself from an Indictment of Perjury, &c.

Parker C. ordered the Interrogatories and Depositions to be read, and then saif, it is not so clear that these Interrogatories are leading,
Evidence.

perhaps in Strictness they may be, yet probably Counsel may think them right, and so sign them, without any Design to lead the Witnesses, and it would be hard the Plaintiff should lose the Benefit of these Witnesses by such a Slip or Mistake of the Counsel, especially in this Case; so here the Depositions seem very fair and honest, and not at all influenced by the leading Part of the Interrogatories, if the Witnesses should swear directly to the leading Part of the Interrogatories, that might be a Reason not to allow them to be re-examined; but that is not the Case, here the Point in Issue is, if Bond taken in the Plaintiff's Name, and found among the Papers of the Defendant's Tiller, were a Trust for the Defendant or not, and perhaps the Witnesses examined are the only Persons that can give any Evidence of this Matter, and unless he can have the Benefit of their Testimony he is without Remedy, and therefore he ought not to be deprived of their Testimony, since the Interrogatories themselves are not unfair, but rather skilfully drawn, and the Depositions thereupon seem honest, and not in the least influenced by the leading Part of the Interrogatories.

Leave was given to re-examine the former Witnesses to the same Matter upon new Interrogatories, to be settled by the Master. MSS. Rep. Trin. 4 Geo. in Canc. Spence v. Allen.


1. If a Deed be proved to be delivered but not when, it shall be intended to be delivered the Day it bears Date; Per Coke, and directed the Jury accordingly. 1 Roll. Rep. 3. pl. 5. Patch. 12 Jac. B. R. Stone v. Grabham.

2. The Jury may find a Thing upon Presumption, but the Court ought to judge only on what appears in the Record. 1 Roll. Rep. 132. pl. 9. 132 in Hill. 12 Jac. B. R. Iack v. Clarke.

3. A Deed of Fee Simple of Forty Years, may be given in Evidence, tho' it cannot be proved that Livery was made, yet, if Possession has always gone according to the Deed, it is good Evidence to a Jury to find Livery. 1 Roll. 132. Hill. 12 Jac. B. R. in Cafe of Iack v. Clarke.

4. Bill against an Executor, for Performance of Articles made with Teller Fifteen Years ago, in which he was bound to pay £08 l. to the Plaintiff, who acknowledged a Receipt of the Whole, viz. 400 l. in Money, and the reit by a Conveyance of Land. But those Lands being settled on the Wife in Jointure, the Plaintiff brings his Bill. It was decreed, that the Plaintiff having acknowledged the Receipt of 600 l. is an Evidence of the Performance of the Articles, since the Plaintiff made no further Demand for several Years, and it is unreasonable to put an Executor to prove a Precise Payment, after so long a Time. Fin. R. 246. Hill. 28 Car. 2. Duke of Newcastle v. Clayton.

5. Cestuy que Trust, many Years since, granted Leases on great Fines and at low Rents, which he had no Power to do, unless impowered by the Trustees, which did not appear; but the Court said, they would presume, that Cestuy que Trust, had some Conveyances from the Trustees to enable him, and the rather, because it was offered as Proof, that it had been the Opinion of two eminent Counsellors, that he might make the Leases, and that therefore they would presume there was a further Deed from the Trustees.
Evidence.

Trustees to empower them, which is concealed. Skin, 77. pl. 19. Mich. 34 Car. 2. B. R. Lady Stafford v. Luellin.

6. In the Case of Water-bailage in the City of London, Evidence of constant Payment, and their ancient Tables of Duties imported, was judged sufficient, though it was urged there could be no Prescription for it, and Judgment was accordingly pro defendant. 2 Show. 48. pl. 33. Pach. 31 Car. 2. B. R. King v Carpenter.

7. Sixty Years ago, Lands where limited to Trustees to pay Debts, Remainder to A. in Tail, remainder to B. in Tail. A. had Possession, and in Consideration of 800l. Portion, on Marriage made Settlement, &c. and common Recovery suffered, wherein one Moor was Tenant to the Precipe, who vouched A. and he the common Vouchee; Ejectment by Remainder-man after A. who died without Issue. But it being a great while since that Recovery was suffered, a Deed for making Moor Tenant to the Precipe was presumed, and that Debts had been some way or other satisfied, seeing A. had had a Possession for a great while, and it shall be taken that the 800l. received, went to discharge Debts, and Plaintiff was non-suited. Coram Baron Price, Wells Att. Trin. Vac. 1709.

8. Mutual Benefit, is Evidence of an Agreement, as suppose two Men from a River, and each of them has Land between them and the River, and they cut through each others Ground for Water, and that continues twenty Years; Ld. Cowper said, he would presume an Agreement. G. Equ. R. 4. Hill. 6 Ann.

9. Upon a Trial at Bar, a Deed was offered in Evidence, executed Thirty-six Years ago, without proving the Hands, which was opposed by the other Side, but admitted by the Court, who said, there was no fixed Rule about it, but that it had often been allowed, where the Deed was but Twenty-five or Thirty Years old. MSS. Tab. Pach. 11 Geo. 2. B. R. Porter v Gordon.

(Q. a. 2) Evidence sufficient,

Good by Intendment.

1. In an Ejectment, the Plaintiff declared upon a Leaf made and delivered the Day of the Date, but the Witnesses who was to prove the Deed, said he saw the Deed delivered, but could not swear it was delivered the same Day it bore Date. Coke directed the Jury to find it was delivered the Day of the Date, for being proved to be delivered, it shall be intended to be delivered the Day of the Date. 1 Roll. Rep. 3. pl. 5. Pach. 12 Jac. B. R. Stone v. Gubham.

2. The Defendant pretended a Title, as Heir at Law to P. under whose Daughter the Plaintiff claimed. On Proof of it, the Defendant recovered some Verdicts at Law, but the pretended Place of his Birth being a mean Place, and but Seven Miles from his Mother's Houle, and those Verdicts being grounded on Depositions formerly taken in this Court, where the Record of the Bill and Answer could not be found, and the Witnesses at the Trial being of indifferent Credit, and because on an Office at the Father's Death, the Daughter was returned Heir, and no Claim made by the Son for Seven Years, and for that, several Persons claimed under her Title; and at the last Trial, the Jury were credible Persons, and declared, that for Twenty Years and upwards, the Daughter
Evidence.

Daughter was reputed the right Heir, and therefore the Possession was decreed to the Plaintiff. Nels. Ch. R. 7 Car. 1. Floyer v. Strackley.

An actual taking is good Evidence of Conversion, and nothing proved but a tortious Taking of Cattle by way of Trespass, and driving them away; and it was a good Ground for this present Action, and a Conversion shall be intended; otherwise when he comes to them by Trespass, there an actual Conversion shall be proved; Per Holt Ch. J. 6 Mod. 212. Trin. 3 Ann. B. R. in Case of Baldwin v. Cole.

for it is an actual Conversion; but where the Thing comes by Trespass, there must be an actual Demand. Sld. 264. pl. 15. Trin. 17 Car. 2. B. R. Brunc v. Ree.

4. In an Ejectment, Title was made by the Plaintiff, as Lessee for Two-thousand Years of Lands in C. W. which the Defendant would presume was revoked, shewing a Will, Charges, and Settlements, made afterwards by the Mother who was feigned in Fee; But per Cur. Revocation, or Surrender, shall never be intended without Proof that it was actually done. 2 Keb. 483. pl. 22. Pasch. 21 Car. 2. B. R. Moreton v. Norton and Thorner.

5. An Interlineation, without any Thing appearing against it, will be presumed to have been made at the Time of the making of the Deed, and not after. 1 Keb. 121. pl. 62. Pasch. 13 Car. 2. B. R. Trowel v. Cattle.

6. If an Arrest be by Process out of an inferior Court in a Cause not arising within their Jurisdiction, the Party may have an Action against the Plaintiff, who shall be intended Conscunt where the Cause of Action arose, but not against the Judge or Officer who has entered the Plaintiff, or the Officer who has executed it, but the proper and just Remedy is against the Plaintiff. 2 Jo. 214. Trin. 34 Car. 2. B. R. Ollier v. Belley.

7. In a Mayhem, a Trespass is necessarily supposed; Per Cur. Skin. 49. Trin. 34 Car. 2. B. R. in Case of Foot v. Ralfe.

8. But in Trespass, a Trespass is not necessarily supposed, for Trespass will lay where Trespass will not; Per Cur. Skin. 49. in S. C.

9. Where a Recovery in Trespass is pleaded in Bar, it shall be intended, that the Party was recompenced, tho' otherwise where a Bar in Trespass is pleaded in Bar; Per Pemberton Ch. J. Skin. 49. Trin. 34 Car. 2. B. R. in Case of Foot v. Ralfe.

10. It shall be presumed, that a Child born after a Divorce a menys & thoro is a Bastard, unless the Contrary is proved on the other Side. Hawk. C. L. 330. says it was lately so resolved. Queen v. Inhabitants of Westminster.

11. A Title was made from the Black Prince, which could not be out of him but by an Act of Parliament; but yet, because the Possession had gone otherwise ever since, the Court presumed that there had been such an Act of Parliament, though not now to be found. Skin. 78. Mich. 34 Car. 2. B. R. cites Parcar's Case.
1. WHERE the Nature of the Thing in Demand makes a Man to fast of his Proof, the Law will supply it. Per Doderidge, J. 2 Bulk. 310. and cites Fitzh. Corone, pl. 323. In an Appeal of Robbery against one who took from him certain Sacks of Corn, and prayed to have Restitution of his Corn. Inceden there Demanded, if the Corn was still in the Sacks or not, for if out of the Sacks, it would be very hard to make Restitution, and there he restored according to the Value of the Corn; and with this agrees, 7 E. 6. Br. Tit. Restitution, pl. 22. This was fo at the Common Law, and not upon the Statue of 21 H. 8. cap. 11. which gives Writs of Restitution to the Party robbed, and it was before here agreed in this Court, that a Man shall have Restitution, notwithstanding the Property is not known, but he shall have like in Value, and where there is a Defect of Prooi, the Law shall supply this.

2. In Ejecution for the Rectory of Burghfield in Berks, at a Trial at Bar, the Case was, that the Earl of — being a Pophy Receipts com- mit, presented the Letter of the Plaintiff, who was thereupon instituted and indicted; But the Record of this Conviction being, as was supposed, burnt in the Fire, in the Inner-Temple, the Defendant offered to prove it by the Effect thereof into the Exchequer; and by an Inquisition found, and Returned into that Court, of Receipts Lands; and it was held by Hale Ch. Baron, and the whole Court, that in such Case, a Record may be proved by Evidence, because the Conviction is not the direct Matter in Issue, but only an Inducement to it; as if an Approbation was in Issue, the King's Licence, if it cannot be found on Record, it may be proved in Evidence without shewing a Record of it, tho' it is the Foundation of the Appropriation, so where Sr. Paul Pinder's in Trover for Goods, the Proof depended on a Fieri Facias, and venditioni exponas, and because the Fieri Facias, could not be found on Record, it was allowed to be proved in Evidence, but then the Evidence must be very strong. Accordingly the Conviction was admitted to be read in Evidence, but because by the Effect of the Conviction into the Exchequer, it appeared to be at the fame Affises, at which the Party was pretended as a Recusant, which is not allowed, either by the Statute, 23 or 29 Eliz. For a Proclamation is directed to be made at the fame Affises, &c. that the Body of the Defendant shall be rendered to the Sheriff of the fame County, before the next Affises, &c. and therefore it was held, that the Conviction was not well proved, and the Jury found for the Plaintiff, Hardr. 323. Pauch. 15 Car. in Scace. Knight v. Dauler.

3. In an Action of Trover and Conversion for Goods, the Proof depended on a Fieri Facias, and a Venditioni Exponas; but because the Fieri Facias could not be found upon Record, it was admitted to be proved in Evidence. Hard. 223. Pauch. 15 Car. in Scace. cites Sr. Paul Pindar's Cafe.

4. A. in Consideration of 500 l. in Money and Goods which he is to have with his Wife, makes a Settlement, and also impowers her to dispose of 200 l. by Will. The Wife fifteen Years after the Marriage died, and disposed the 1500 l. by her Will. The Legatees after so many Years, shall not be put to prove that the Husband received 500 l. And the Matter of the Rolls upon a Presumption that he did receive it, decreed the 200 l. to be raised with Interest from the End of the Year after the Wife's Death, and with Costs. 2 Wms's Rep. (618) Trin. 1731. North v. Antell.

(S. a.)

(S. a.) Order of giving Evidence.

Who must begin and end.

1. On a Scire facias the Defendant pleaded plene administravit, and the Plaintiff replied Affietts, on which they were at Issue; and in giving Evidence to the Jury, the Defendant began first; not qua extraneum credo, because it was in the negative. Dyer 50. pl. 53. Hill. 6 & 7 Ed. 6. Dean and Chapter of Exeter v. Trewinnacle.

2. In a Writ of Right, quia dominus remittit curiam, the Tenant ought to give his Evidence first, because the mile is joined by him first. Dy. 247. b. 247. b. pl. 75. 8 Eliz. Spyritie v. Mead.

3. So in a Writ of Right, demanding a third Part of so many Acres of Land, because the Defendant is in the affirmative, 3 Leon. 162. pl. 211. Hill. 29 Eliz. C. B. Heidon v. Ibgrave.

4. In a Writ of Right the Defendant shall not give his Evidence first, for the Tenant affirms that he hath more Right, and that ought to be first proved. Goldsb. 23. pl. 2. Trin. 28 Eliz. Heydon v. Ibgrave.


6. The Counsel of that Party which doth begin to maintain the Issue, whether of Plaintiff or Defendant, ought to conclude. L. E. 5. pl. 11. Trials per Pais, 220.

7. This was an Issue out of Chancery that came to be tried at the Bar; and it was, whether one Mrs. Bruerston was of found Memory at the Time of her executing several Deeds; and because the Execution of the Deeds was at several Times, there were four Issues, but each of them turned upon that single Question, the Defendant was to prove that the was of found Memory, the Plaintiff that she was not; and the Counsel of each Side argued who should produce their Evidence first; and the Court took this Difference, that if there is one Affirmative in any of the Issues, the Plaintiff shall first go through his Evidence as to all of them; but in this Case the Affirmative thro' the Whole lies upon the Defendant, and therefore he shall go first through his Evidence. 1 Barnard. Rep. in B. R. 12 Patch. 13 Geo. 1. Tyrell v. Holte and Hopley.

(T. a.) Evidence. At what Time it must be given.

1. Privy Verdict was given in B. R. for the Defendant, but afterwards, before the Inquests gave their Verdict openly, the Plaintiff prayed that he might give more Evidence to the Jury, he having (as it seemed) discovered that the Jury had found against him, but the Justices would not admit him to do so; but aiter that Southcote J. had been in C. B. to ask the Opinion of the Justices there, they took the Verdict. Dal. 80. pl. 18. Anno 14 Eliz. Anon.
Evidence.

2. Where Evidence may be given, after the Prosecutor has replied. L. E. 4. pl. 7. Vol. 238. cites State Trials.

3. Per Cur. If an Executor suffer judgment to go against him by Default upon executing a Writ of Enquiry, he shall not give Evidence of Want of Affets, for he is estopped, as if it had been the Case of an Heir; for he should have pleaded plene administratir, or especially what Affets he has. 6 Mod. 308. Nich. 3 Ann B. K. Treil v. Edwards.


(U. a) What must be produced in Evidence. As Papers, Deeds, &c.

1. N O T E, Upon Evidence to a Jury, between B and W. upon the Dissolution of a Vicaridge, in the County of Warwick, which was Part of the Priory of Dantry, where the Pope by his Bull, gave to the Vicar at least, decimas & alteragium, and it was certified by the Doctoors, that Alteragium will pass to the Vicar, Tithe-wool, &c. And the Ufage was shewed in Evidence, and the Copy of the Pope's Bull; and the Court would not credit that, without seeing the Bull itself; and so the Party was non-suited, and the Jury was discharged. Winch. 70. Hill. 21 Jac. C. E. Birt v. Ward.

2. When a Release is pleaded, be it a Release after Disfeision, or before Disfeision, without shewing it to the Court, though the Jury find it none, being shewn to the Court regularly, it is worth nothing, for the Court ought to judge what Force this Release has in Law. Jenk. 19. pl. 35.

3. But in Cases where Charters have been loft by Fire burning of Houfes, Rebellion, or when Robbers have destroyed them; the Law in such Cases of Necessity, allows the Proof of Charters without shewing them. Jenk. 19. pl. 35.

4. If one do produce a Leaf made upon an Outlawry, in Evidence to the Jury to prove a Title, he must also produce the Outlawry itself, for the Outlawry is the Ground of the Leaf, and by Consequence of the Title which is to be proved; but if he produce the Leaf to prove other Matter, he need not shew the Outlawry; but may have the Leaf only read in Evidence; but in both Cases he must prove the Leaf. L. P. R. 553.

5. And so it is of an Extent, for at the Trial, the Plaintiff must prove by an Exemplification, or examined Copy of the Statute, or Judgment on which the Extent is grounded. So held in a Trial at the Bar, between Johnson and Spencer. L. P. R. 553. cites Palch. 1655. B. S.

6. In an Action of Debt for Rent, upon a Leaf-parcel, and Nil debt pleaded, the Plaintiff must, if it be insifted upon, show his Title to the Land; but upon a Leaf for Years under Hand and Seal, he need not, because the Defendant hath esopped himself by accepting a Leaf, and sealing a Counter-Part. L. P. R. 553.

7. It a Person brings in an Action of Debt for Tythes upon the Statute, upon Nil Debit pleaded, he must if the Defendant puts him to it, prove his Institution, and Inducement, and Reading of the thirty-nine Articles, 

R. otherwise
Evidence.

otherwise he will be nonsuited, for that is his Title to the Tithes. L. P. R. 553.
8. In Debt against Executors, who plead plea administravent, the Plaintiff replied Affidavit at the Day of the original, Scilicet, such a Day, and on this they were at Issue; and on Trial at Middlesex before the Ch. J. the Plaintiff was nonsuited for not producing the Bill; on Affidavit of this, Motion was made for a new Trial, and Twifden, and Windham being only then in Court, said, that the Plaintiff needed not to produce the Bill at the Trial; and therefore if the Plaintiff was overruled in it, he ought to have tendered a Bill of the Exceptions, but shall not have a new Trial. Sid. 226. pl. 21. Mich. 16 Car. 2. B. R. Rogers v. Rogers.
9. One shall not give in Evidence, an Account of the Substance of a Letter, without the Shewing of it, or informing of the Court how it came to be lost. L. P. R. 553. cites Trin. 9 W. B. R. at Guildhall.
10. The Sheriff upon Assignment, does not part with the Possession of the Bond, because if the Plaintiff be nonsuited, the Sheriff must be indemnified, but he must produce it at the Trial; Per Holt Ch. J. 12 Mod. 527. Trin. 13 W. 3. Anon.

(Xa) Evidence. Good by Consent.

1. A Rule of Court was made by Consent, that a Deed should not be given in Evidence at the Affidavit without proving the Execution of it. Sid. 269. pl. 29. Trin. 17 Car. 2. B. R. Anon.
2. Examination of Witnesses cannot be by Consent of Parties before any Judge that is not of that Court out of which the Cause went to the Affidavit, by Twifden and Fother; because the Depositions are not taken before him, as Judge of Affidavit, but as Judge of this Court; Contra by Windham; But per Cur. tho' one Consent to have a Letter read, yet the Jury on Pain of Attaint are not bound to find it, therefore it was agreed that a Bill should be exhibited in Chancery, and answered, and Commissions by Consent go out thence into the Country, to examine such Witnesses in the Country, whereby the Depositions may come in hither judicially. 1 Keb. 249. pl. 12. Patch. 14 Car. 2. B. R. Frankland v. Savill.
3. Though an Affidavit was made, that the Witnesses now in Town living in Wales, could not be had at the Affidavit, yet Hide refused to examine them by Consent of Parties, as used in C. B. 1 Keb. 787. pl. 38. Mich. 16 Car. 2. B. R. ——— v. Kelly.
4. Nota pro regula. Examination of Witnesses by Interrogatories out of Term, by Fother Ch. J. is extrajudicial, and not to be allowed, though the Party consent. Contrary by Twifden and Windham, contentus (if according to Law) tollit errorem; And the Court may as well allow the Examination of Witnesses before a Judge by Depositions, as read the Affidavit of a Person absent, this is no more than the Law allows. Keb. 36. pl. 98. Patch. 13 Car. 2. B. R. Blake v. Page.
5. The Defendant prayed, that the Trial might be stayed on Suggestion, that his material Witnesses were Mariners, and now going to Sea with the Fleet, and would not be ready till Michaelmas Term next. The Court agreed to examine the Witnesses by Consent of Parties, before the Ch. J. the Trial being to be before him; and the Plaintiff it he will, may cross-examine them. 2 Keb. 13. pl. 32. Patch. 18 Car. 2. B. R. Carlin v. Pidgeon.

6. It
Evidence.

6. It was objected, that in an Indictment, Evidence of Discourse preceding, the Fact is not to be given; But Holt said, that they might give in Evidence any Thing that explains the Fact. 11 Mod. 229, pl. 2. Trin. 8 Ann. B. R. in Case of Young v. Slaughterford.

(Y. a) Variance between the Evidence and the Declaration, &c.

1. IT was the Opinion of all the Judges in the C. B. that if a Man D. 219. b. sells two Horses for forty Shillings, and the Plaintiff in an Action pl. 11. cites S. C. of Deed, declares on the Buying of one Horse for forty Shillings, the Defendant may plead, Nil debet, and the Jury must find for him under Pain of Attaint, for here the Words modeo & forma are material, the Contract not being the same that was between the Parties. 21 Ed. 4. pl. 2.

2. So if he had bought one Horse for forty Shillings, and the Plaintiff de- D. 219.clared on a Contract for two; or if there was an Ox bought, and the De- b. pl. 11. clamation was for an Horse; and so in every Case, when the Plaintiff varies from the Contract. 21 Ed. 4. 2.

3. Determin of a Chain containing three Ounces, where in Truth it contains but two; The Defendant may fairly wage his Law. 22 E. 4. 2 b. pl. 8.

4. But otherwise, it is if the Variance be only in the Value of the Chain. 22 E. 4. 2 b. pl. 8.

5. So of a Horse, as to the Value. But if the Count be of a Black Horse, and the Jury find it to be a White Horse; This is against the Plaintiff. 22 E. 4. 2 b. pl. 8.

6. Per Finchden, on a Declaration on a Bond, supposed to be made by two, if non est factum is pleaded, and it is proved to be the Deed of one, and not the other, yet the Plaintiff shall recover against him whose Deed it is. L. E. 206 pl. 20.—cites 49 Ed. 335.

7. Trespasis in D. without Addition, and there is no D. without Addi- tion; yet if he prove Trespasis in D. it will be for him. 12 Mod. 508. cites 9 H. 6. 5.

8. In Account, the Defendant pleaded, that he accounted before A, and B, upon which Iliue was joined, and it was found that he accounted before A only, yet Judgment for Defendant. Hob. 55. cites 46 E. 3. 5. in Case of Folter v. Jackson.

9. In Debt upon Obligation, he pleads, non est factum, upon which they were at Iliue, and the Witnesses say, that it it was delivered at York, which is another Place than where it bears Date, it does not warrant the Iliue. 2 E. 6. 7. 31 H. 6.

10. In Debt upon an Obligation against Oliver St. John, and Alice his Wife as Heir of her Father, the Defendant pleaded Non est factum of the Father, and it was found by special Verdict, that the Obligation was made by the Father of the Wife to the Plaintiff and another, whereas in Truth, the Plaintiff hath declared upon an Obligation made to himself only, without speaking of any other joint Obligee, and that the Plaintiff as Survivor hath brought the Action, and if upon the Matter, it shall be said, the Deed of the Defendant, in Manner as the Plaintiff hath declared; The Jury refer unto the Court, and the Court was clear of Opinion, that the Plaintiff ought to have declared upon the special Matter. 1 Le. 522. pl. 453. Mich. 30 & 31 Eliz. C. B. Dennis v. St. John,

11. In
Evidence.

11. In Ejeclione firne, the Plaintiff declared upon a Leafe, made 14
Jan. 30 Eliz. to have from the Feast of Christmas then last before for three
Years, and upon Evidence, the Plaintiff seaved a Leafe bearing Date the
13 Day of January the same Year, and it was found by Witenesses, that
the Leafe was sealed and delivered upon the Land, the 13 Day of January.
Anderon Ch. J. said, that the Evidence was good enough to maintain
the Declaration, for it the Leafe was sealed and delivered the 15 of Jan-
uary, it was then a Leafe 14 January, quod certai jucliciari concei-

12. The Plaintiff declares, that whereas there was an Issue joined in
Ejeclione firne, brought by the Leffe of the Plaintiff against the De-
fendant, which the Leffe intended to try at the next Asles, in Con-
Sideration the Plaintiff and his Leffe at the Asles would forbear to en-
force their Title, and give but weak Evidence against the Defendant, he
promised to pay him a certain Sum of Money. On non affumipfit pleaded,
tliere was a special Verdict, which found the Affumipit in all Points,
only there were two Issues joined in the Suit, and the Affumipit was in
Consideration of Perbearnance to enforce the Title at the Trial of both Issues;
and it was adjudged for the Plaintiff, because it is said in common Par-
lance, that the Parties have joined Issue, and it may well enough
stand upon two Issues as well as one. Mo. 351. pl. 471. Hill. 36 Eliz.
B. R. Blackwell v. Eyre.

13. A Woman, in an Ejecliment brought against her, pleads a Custum
in the Manor, that the Widow of every Copy-holder in Fee-simple, Fee-
tail, or for Life, would enjoy the Copy-noll for Term of her Life, and the
Custum was traversed; and on Evidence at Nisi prius to maintain the
Custum, they proved he claimed the Estate only during her Widowhood; and
on this Evidence, the Plaintiff demurred; and it was adjudged by the Court,
that the same Evidence did not maintain the Custum pleaded; for the Evidence
was of an Estate only during her Widowhood, and the Custum pleaded,
was for the Estate during her Life, which is a greater

14. In an Action for forging a Deed, The Declaration was on a De-
mile of a Manor, & terras dominicales, and upon not Guilty pleaded,
the Plaintiff gave in Evidence, a Demise of the Manor, & omnes terras domi-
cales, except two Cloys; It was held, per totem curiam, that the
Evidence was good enough, for it is not necessary to continue terras domi-
icales, to be omnes terras dominicales; For the Lands not accepted,
are terras dominicales, and that will maintain the Declaration. Le.

15. A Covenant was, that Leffe for Years, should not cut any Trees so as
to commit waste, and gave Bond for the Performance. In Deed upon
the Bond, the Plaintiff assigned the Breach, in cutting twenty Oaks, by
which they were waffled. The Defendant pleaded, that he did not cut the
said twenty Oaks, nor any of them, made & forma prout, &c. The Plaintiff
joined, that he cut twenty Oaks prout, &c. The Jury found that the De-
fendant cut ten, and Judgment was given for the Plaintiff. D. 115. b.

16. Affumipit was, to deliver certain Monies to the Plaintiff in London,
when be delivered to the Defendant certain Broad-clads there. The
Defendant pleaded Non Affumipit, and it was found specially, that the Af-
sumipit was, that the Plaintiff should deliver certain Broad Cloth of a
Pleadant Colour, and others of other special Colours. The Court thought,
that the special Matter is good Maintenance of the Declaration, and
that the Defendant ought to have paid by way of Anfwer, that the Af-
sumipit was fo special, and have traversed the general Affumipit in the
19. In an Action upon the Case for disturbing the Plaintiff, and their Children and Family, in the Poffeffion of a Pew, in the Church of Berk

enham, the Declaration set forth, that they, their Ancestors, and all those whose Estates they had, had always enjoyed that Pew to fit in the said Church, appertaining to the Manor, to which the Advowson is appen
dant; that they are Lords of the Manor, and Tenants of the Church, the Defendant prescribes to the Pew, as appertaining to his House, ab
quie hoc that the Plaintiffs, their Ancestors, or those whose Estates they have, had the Seat modo & forma, as is set forth in the Declara
tion; and on this Issue was joined, and the Evidence proved them to be Tenants in Common, which was held to maintain the Issue, by Ch. J. Houghton and Chamberlain; so the Plaintiff was nonfuit. Dodderidge differencient. Palm. 161. Patch. 19 Jac. B. R. Snellegar v. Brograve.

20. An Ejectioneis firme and a Trial at Bar, The Plaintiff had declar
ed of a Leafe made to him by Baron and Feme; And that he being out
of Possession they had made a Letter of Attorney to enter, and to deliver
that Leafe, and that they had sealed, and delivered it. And now ruled
that the Declaration is naught, because it is not a Leafe of the Wife,
but of the Husband only; And so it hath been adjudged in one Rich's Case. And the Letter of Attorney of the Wife is void, because it is
only executory. And the Counsel of the Plaintiff confounded that it hath been adjudged accordingly. Noy. 133. 5 Jac. Phimner v. Hoc
tett.

21. Ejectioneis firme of a Leafe of Lucy Lady Griffin, the 7th of Jan
19 Jac. by Indenture dated the 6th of December, 19 Jac. belong, a die da
tas Indenture præd. Upon Not Guilty pleaded, and Evidence to the Jury, the Leafe was flown, bearing date the 6th of December 19 Jac.
and the Habendum was a Tempore Confessionis Indenture, and because a die datus excludes the Day, so as it is not the same Leafe of the Plaintiff declares, it was held that the Plaintiff had mitakane his Action, whereof the Plaintiff was nonfuit. Cro. J. 647. pl. 12. Mich. 20 Jac. B. R. Scavage v. Parker.

22. In Assumpsit for 10 l. due for Corn sold to four Men, and the Evi
dence proved the Sale to be made only to two, this was holden against the Plaintiff, that he did not prove his Case. Clayt. 114. pl. 198. Aug.
1647. before Green Sergeant, Judge of Assise. Anon.

23. Debt on a Bond, and it did appear the Defendant and another were bound jointly in this Obligation, and it was ruled, that though the other Obligor be dead, yet the Plaintiff hath failed in his Declaration, and if Non effæctum be pleaded, and this Bond produced, it shall be against the Plaintiff. Clayt. 119. pl. 210. March. 1647. before Ger
tine J. Judge of Assise. Anon.

24. In an Action of Debt upon an Obligation which was set forth to be
made the 15th of November 25 Eliz. the Defendant pleaded Non effæctum; the Jury found a special Verdict, viz. that it was dated the 15th
of November 23 Eliz. but was not sealed, or delivered, till the 18th of
November 26 Eliz. Et le super totam materiam, the Court shall ad
judge it for the Plaintiff, they find it for the Plaintiff, Et le, &c. And it
being hereupon moved, all the Court without any Difficulty resolv
ed, that this Verdict is found for the Plaintiff, for the Issue being gene
rally Non effæctum, it appears to be his Deed. But peradventure by special pleading he might have helped himself; Wherefore it was ad

31. Indebitatus Assumpsit for 750 l. laid out by the Plaintiff for the Use of the Defendant; upon Non assumpsit pleaded, there was a Trial at the Bar, and the Evidence was, that the Defendant and another now deceased farmed the Excise, and the Money was laid out by the Plain
tiff.
Evidence.

26. If a Promise be made to pay at a Day certain, and the Day is past, the Plaintiff may declare to pay on Request; so if he declares on Payment at a Day certain, and gives in Evidence a Promise on Request, viz. when it is created on Account which gives the Duty; for there the Time is ex abundanti, but when the Action is founded on the Contract it is otherwise, for there the Evidence must pursue the Contract, Trials per Prais. 3d Ed. 184. cites Hill. 1630. B. R. Child’s Cafe.

27. In Assualt and Battery, there was a Demurrer on the Evidence; the Cafe was, that the Defendant, the Day specified in the Declaration, alleged that the Plaintiff assaulted the Defendant, and in Defence of himself, justifies the Beating; The Plaintiff replied, De injuria sua propria ab igne tali caussa; And in the Evidence, the Defendant maintained, that the Plaintiff beat him the Day mentioned in the Declaration, and in the same Place, whereupon the Plaintiff gave in Evidence another Day, and Place viz. &c. which was the Causa of the special Verdict; For if there are two Batters made between the Plaintiff and Defendant at divers Times, the Plaintiff must prove the Battery made the same Day as in the Declaration, and shall not be admitted to give another Day in Evidence; per totam Curiam, Brownl. 233. Trin. 9 Jac. Downes v. Skirmisher.

28. If a Trespass was done the 4th of May, and the Plaintiff alleged the same to be done the 5th of May, or the 1st of May, when no Trespass was done, yet if upon the Evidence it faileth out that the Trespass was done before the Action brought it is sufficient. Co. Litt. 253. a. ad finem; and says, that this is warranted by Littleton, S. 435; who speakeh indefinibly, that the Jury may find the Defendant Guilty at another Day than the Plaintiff toppofeth.

29. Assumpsit for twenty Pounds upon Accompt, and upon the Evidence it appeared to be another Sum, and the Plaintiff was nonfuit, and the Judge held, where an Action is for ten Pounds upon a Contract for a Horse, and the Witness doth not prove the very Sum, but differs a Penny or Twelve Pence, in this Cafe it shall be found against the Plaintiff, and cited the Opinion of Walter Chief Baron to be so, but for the Importunity then was contended a special Verdict should be found; but the Court above did rule the Cafe against the Plaintiff, Quod nota in Allumpfit, where Damages only are to be recovered, for in such Cafe, if Debit had been brought, it is clear, because he doth not hit the Contract, it shall be against the Plaintiff. Claty. 87. pl. 147. July 16 Car. before Fother, Judge of Affife. Ramdien’s Cafe.

30. Action upon a Promise and Declaration, that the Defendant did affure and promise that the Defendant would not sue the Plaintiff, and the Evidence was, that he would forbear his Suit; And this by the Judge doth supposse a Suit already begun, and so doth not maintain the Issue, and upon this the Plaintiff was nonfuit; Claty. 2. pl. 4. Aug. 7 Car. before Dampont, Ch. B. Judge of Affife. Anon.

31. The Plaintiff declared, that the Defendant, in Consideration the Plaintiff would forbear Suit against J. S. for 80 l. which J. S. did owe
Evidence.

kim, the Defendant would f£ him paid, and the Evidence proved that J. S. did owe the Plaintiff only 40 l. and holden that is against the Plaintiff. Clayt. 111. pl. 190. March. 24 Car. Turner Serjeant, Judge of Affile Hargrave's Case.

32. In Affimpt for Money due, it was laid in the Declaration to be payable on Request, but by the Witnesses it appeared that a Forntigite Time was given for the Payment of it, and this the Forntigite Time was pay'd long before the Action brought, yet it was now held a Failer in the Proof of the Plaintiff of his Case as he had laid it. Clayt. 115. pl. 199. August. 1647. before Green Serjeant at Law, Judge.

33. Inhabitants by A the Defendant gives Evidence, that B was Part- ner with A at the Delivery of the Wares, whereupon the Plaintiff was nonfuiet. Tri. per Pais. 167. cites Lent Aff. 1667, at Norfolk. Franklin v. Walker.

34. In an Action on the Case, tho' a Request in the Declaration is laid at one Time, yet a Request at another Time may be given in Evidence, tho' it be several Years distant. Per Wild Recorder, and not denied. Sid. 268. Trin. 17 Car. 2. B. R. King v. Bray.

35. A Promife was made to the Father, on his doing a certain Aff to pay his two Daughters A. & M. 20 l. a-piece. M. alone brought an Action on the Promife for her 20 l. It was objected, that they ought to have joined in the Action; but per Glynn Ch. they have distinct Interest, and so either of them may bring an Action, and it being brought for one 20 l. only, Judgment was for the Plaintiff Nill. Sty. 461. Mich. 1655. Thomas v.

36. Ejecutone firme for so many Acres of Meadow, and so many Acres of Pasture; upon Not Guilty pleaded, the Jury find a demiss de Herbagio & Pennagio of so many Acres; and the Question was, whether this Evidence did, or did not maintain the Illue for the Plaintiff? The Court inclined against the Defendant; Firft, becaufc by the fame Reason, that an Ejecutone upon a Leaf of Herbage, by the fame Reafon, the Plaintiff ought to declare accordingly, as in the Cafe of 27 Hen. 8. where Pasture is granted for ten Oxen, the Precipe must run accordingly and fo here. Secondly, Herbage does not conclude all the Profit of the Soil, but only part of it. as 1 Init. 4. b. Adjournat. Hard. 330. cites 1 Init. 4. b. pl. 5. Trin. 15 Car. 2. in Seace. 'Wheeler v. Toulfon.

37. Award to pay Money in, or at the House of J. S. The Plaintiff said, that it was not paid at the House, which per Curiam is well enough, and if it were paid in the House, it may be given in Evidence on Illue, that it was paid at, &c. and Judgment for the Plaintiff in Debt upon Bond. 1 Salk. 753. Trin. 16 Car. 2. B. R. Fitzherbert v. Hind.

38. At Guild-hall, in an Action for Words per quod maritigium amitit, and upon Evidence, the Plaintiff proved Part of the Words only, but proved, that by Reason of these Words maritigium amitit; and ruled by Holt Ch. J. to be well enough, for it is fufficient if the Plaintiff proves the Loss of Marriage, by Reason of any Words in the Declaration. Skin. 333. pl. 3. Hill. 4 W. & M. in B. R. Geary v. Connop.

39. If A promise B. ten Pounds, in Consideration that he would procure him one who would give him an Annuity of 100 l. per Annum for 900 l. B. does not do it, but procures him one who grants it for 1000 l. and A. does agree for that Annuity. B. cannot bring an Affimpt for the 10 l. because this varies from the Contract, but he may have a Quantum meruit; Per Powell J. 12 Mod. 509. Patch. 13 W. 3. Donon.

40. Plaintiff in Case declared of an Agreement made between him and the Defendant, that the Defendant would let him have the Use of twelve Acres of Turnips for such a Time for his Sheep; and the Evidence was
Evidence.

was, that he would let him have twelve Acres of Turnips; And per Holt, it maintained the Declaration, for the Land did not pass as it would by Grant of so many Acres of Pature; but it is like granting of so many Acres of Corn, whereby the Corn only would pass. 2 Mod. 600. At Nili prius, coram Holt Ch. J. Mich. 13 W. 3. Anon.

41. In Case upon a special Promise to deliver good merchandifable Wheat, upon Non Assumpit pleaded at the Trial, Lent Alsfes, 12 W. 3. at Bedford, before Holt Ch. J. the Plaintiff’s Witness swore, that it was agreed, that he should deliver good second Sort of Wheat. And Holt held this a Variance, and the Plaintiff was nonsuit. Ld. Raym. Rep. 735. Anon.

42. If the Plaintiff is Affees at such a Place, it is good Evidence to prove Affees at another Place; for Affees any where, is Affees every where. 3 Salk. 136. Mich. 12 W. 3. Anon.

43. In Case for retifying Goods which the Plaintiff had distrained for Rent; The Plaintiff declared, that he was seized in Fee of a certain Measuring, &c. and so seised demised to J. S. for a Year, and so from Year to Year, as long as both Parties should please, by a Parol Demise, reserving Rent, and for Rent Arrear he distrained, and the Distrefs was rejected from him by the Defendant, for which the Action was brought; And here the Plaintiff having laid a Settain in Fee upon himself, was fails to prove it; and in proving the Lease, it appeared to be for a Year, and so from Year to Year as long as both Parties pleased, and that the Lease should not go away without giving a Quarter’s Warning; and it was informed on by Eyre and Parker, that the Lease given in Evidence, varied from the Lease declared on, so they failed in proving their Declaration; But per Holt Ch. J. it is well enough, for the Agreement concerning the Quarter’s Warning is only a collateral Agreement, not at all affecting the Land in Point of Interest, but collaterally binding the Person of the Leafe, and therefore it need not be mentioned in the Declaration. 6 Mod. 215. Trin. 3 Ann. B. R. Dod v. Monger.

44. Indictment for breaking the Chamber of Cuysdam Sarre S. in domo manjonalis cuysdami David James, &c. the Evidence was, that it was the House of Janion, not James, and per Parker Ch. J. it will not maintain the Indictment, like Roll. 667; Trefpafs for breaking Plaintiff’s Close in Caberwin in quaelen loco vocat. Caberfield, abutting South on a Mill in the Tenure of J.S. The Plaintiff must prove the whole Abuttment, even its being in the Tenure of J. S. So in the Case of the Queen v. Sudbury, Indictment for an Afflut and Battery, laid as a Riot, were acquitted, and both found guilty; yet all were acquitted, for the Crime was the Riot, and the whole Charge alleged under that Specification and Description. So Indictment for allying a Play, and speaking Words in such a Public in a Playhouse in Lincoln’s Inn Fields, if there be no Playhouse in Lincoln’s Inn-Fields, the Defendant must be acquitted, for though the Words are not local, yet there are made fo. If the Speaking had been allledged in Lincoln’s-Inn-Fields, then it had been laid as a Venue; but here it is otherwise, being alleged as a Description where the Playhouse flood. One may make a Trefpafs local, which is not fo. And in the principal Cafe, the Chamber was local, but the taking and carrying away Goods is not fo, but then all is put together as one Fact under one Description, and you cannot divide them. 1 Salk. 385. pl. 37. Mich. 11 Ann. at Nili prius in Middlesex. The Queen v. Cranage.

45. In an Information for a Libel, the Variance of the Word (not) for (not) was held fatal upon Evidence. 2 Salk. 665. pl. 7. Mich. 5 Ann. B. R. The Queen v. Dr. Drake.

46. There is a Difference between Words spoken, and Words written; Of the Former there can be no Tenor, [viz. a Transcript] for there is no Original to compare them with, as there is of Words written, and
Evidence.

67

and though there have been attempts to plead a Tenor of Words spoken, it has never been allowed; and therefore, if one declares for Words spoken, a Variance in the Owneffion, or Addition of a Word, is not material, and it is sufficient, if so many of the Words be proved, and found, as are in themselves actionable. 2 Salk. 661. pl. 7. Mich. 5 Ann. B. R. The Queen v. Drake.

47. But otherwise in Debt upon a Bond; for upon Non eff factum any Variance is fatal. Ibid. cites Dy. 75. 3 Cro. 503. Hard. 470.

48. In Trespaufs Quare Clamantium fubj. to Needhams, a Proof of Breaking at Needham-market is null, and the Plaintiff must be nonsuit. 2 Salk. 452. pl. 5. Pach. 5 Ann. B. R. The Queen v. the Inhabitants of Needham-market, Barking, &c.

(Z. a) Evidence. What must be pleaded, or may be given in Evidence.

1. Matter in Law shall not be given in Evidence to a Jury, but the other may demur upon it; for Lay Gents cannot discuss Matter in Law as it seems there, but it is not expressly adjudged there. Br. General Iflues, pl. 51. cites 9. H. 6. 33.

2. Waffe, &c. A Man cannot give in Evidence a Licence, or a Release, or that the Ill which he had in Trespaufs of Batterie was of the Affluat of the Plaintiff, and in Defence of the Defendant. Br. General Iflues, pl. 90. cites 12. H. 8. 1.

3. Or that he served the Writ as Sheriff. Ibid.

4. Or that the Forester killed the Man of which the Appeal is brought in the Foray, flying, or such like. Ibid.

5. For these are Justifications which ought to be pleaded; for they cannot be given in Evidence. Ibid.

6. But upon Not guilty pleaded, he may give in Evidence Matter which makes to him Title, and proves that he is not guilty, as Lease for Years, and such like, &c. Ibid.

7. Scire Facias against the Successor of a Parfon, to have Execution of certain Arrears of Annuity recovered against his Predecessor, the Defendant said, that he at D. in another County resigned into the Hands of the Bishop, which he admitted, &c. and so he was not Parfon the Day of the Writ purchased, nor ever after, and the beft Opinion was, that this is a good Plea, but by some nothing shall be entered, but Not Parfon the Day of the Writ purchased, nor ever alter, and the Resignation shall be given in Evidence, and it seemed to some, that all should be entered for Evidence and Plea. Br. Scire Facias, pl. 133. cites 9. E. 4. 49.

8. In Trespaufs it is no Plea to say he entered by Command of the Owner of the Land; but the Defendant shall plead Not guilty, and give this Matter in Evidence. Br. Gen. Iflues. pl. 52. cites 34. H. 6. 43.

9. Entry in Nature of Affife of Common, the Defendant pleaded Non dis- felfsorit, and the Plaintiff gave Presumption in Evidence, and did not allege it in his Count, and yet it was permitted; For it seems that Title cannot be made in the Count in this Action as in the Plaint of Affife, and therefore does not lie of the Common. Br. General Iflue, pl. 68. cites 4 E. 4. 1.

10. In Dower upon the Issue No unques feife que Dower, the Defendant cannot prove in Evidence that the Baron and his first Wife were seised in special Tail, and after made a Discontinuance, and took back an Estate in Fee, whereof he died seised, by which the Issue who is Tenant in Tail is remitted, but this should have been pleaded; for he was once seised of an Estate T

whereof.
Evidence.

whereof the second Wife was dowable. D. 41. pl. 1. Pafch. 30 H. 8.

11. If a Merchant comes to an Inn, and the Host tells him that his House is full, and he cannot receive him, yet he that comes pays down his Goods, and by the Admission of a Guest for with him without the Hostler's Appointment, and his Goods are stowed; In an Action against the Hostler he may plead the general Issue, and give this in Evidence. Bennd. 60. pl. 103. Hill 4 & 5 Ph. & Mar. Bird v. Bird.

12. Upon Non Convict the Plaintiff cannot give in Evidence the Statute of Misrecitals or Nonrecitals to make the King's Grant good, but he should have pleaded the same. D. 129. pl. b. 65. Pafch. 2 P. & M. Heydon v. Ibgrave.

13. Trespass, the Defendant pleaded Not guilty; The Jury found that the Plaintiff was seised with two others as Heirs in Gavelkind, and that the Defendant entred; And upon Motion, without Argument by Popham and Fenner (cæteris abfentibus) it was adjudged for the Plaintiff: For tho' it had been a good Plea in Abatement for the Defendant to say, that the Plaintiff was Tenant in common with a Stranger, yet forasmuch as he hath not pleaded it, he has lost the Advantage thereof, and the finding it by the Jury is not material. The Defendant ought to have pleaded the Jointenancy in Bar; for it is the Close of one only as to a Stranger; and so it seems of Tenants in Common. Mo. 466. pl. 660. Pafch. 39 Eliz. Stowell's Cafe—And so it was laid to be adjudged in this Court in one Stowell's Cafe; where in Trespass brought the Defendant pleaded Not guilty, and the Jury found that the Plaintiff was Jointenant of the Land with a Stranger not named; yet there the Plaintiff recovered, wherefore it was adjudged ut supra for the Plaintiff. Cro. E. 554. pl. 7. Pafch. 39 Eliz. B. R. Deeering v. Moor.

14. Collateral Warranty found by Verdict is of as great Force as if it were pleaded in Bar; Per Periam J. 2 Le. 37. pl. 48. Hill. 31 Eliz. C. B. in Cafe of Johnson v. Bellamy.


16. Where a Provifio in a Deed goes by Way of Defeazance it must be pleaded by him who would take Advantage of it; Contrariwise, where it alters the Sense of the Covenant, by explaining or tying up the Meaning to a particular Time, which would not have been understood on a general Covenant, by which Means it becomes Part of the Covenant. 2 Salk. 573. Hill. 10 W. 3. B. R. Clayton againist Kinalton.

17. In Debt for Rent on a Leafe for Years, the Issue was, whether the Rent was paid or not; The Defendant gave in Evidence for Part of the Rent, that the Plaintiff by Covenant was to repair the House, and did not, and therefore be expended Part of the Rent in repairing the same. Gawdy said, it maintains the Issue, for the Law gives this Liberty to the Lessor to expend the Rent in Reparations, to which Cheneck seemed to agree; but then he shouldn't have pleaded it, and not give it in Evidence on the general Issue. Contra per Fenner, for if the Lessor will not repair, the Lessor can only refer to his Action of Covenant. Cro. Eliz. 222. pl. 1. Pafch. 33 Eliz. B. R. Fenner v. Dorrington.

18. And as to the Redemption of the Rent, he gave in Evidence Payment to Persons who had Rent-Charges out of the Land by the Leffer's Command, and held good Evidence; for Payment to another by the Plaintiff's Appropriations is Payment to himself. Cro. Eliz. 222. pl. 1. Pafch. 33 Eliz. B. R. Fenner v. Dorrington.
Evidence.

19. In an Action of Debt brought against the Defendant as Admini-
istrator, he pleads devises judgments amounting to 670 l. and the Af-
signment of 100 l. debt to the King by Deed enrolled, and he pleaded
that he retained his Debt in his Hand; and he might have given this in
Evidence, or pleaded it at the Liberty of the Defendant. 1 Brown. 75.
pl. 1. 44 Eliz. Bond v. Green.

20. Waife was applicated in husi, viz. in succidento, &c. suadendo devem quar-
cus, &c. whereas the Defendant had only lepp'd and foid the Oaks. It
seems, that as the Waife is applicated he may falsely plead Nil Waife
1 Mar. Anon.

21. Waife was applicated in solidendo folidam in quodam Prato. The De-
fendant pleaded no Waife done. It was found by special Verdict that the
Defendant made the Trench to drain the Water, per quod pratrum meliorat,
&c. whereas the Defendant had only levied and fired the Oaks. It
seems, that as the Waife is applicated he may falsely plead Nil Waife
Anon.

22. Note that upon Evidence given to a Jury, upon the Dissolu-
tion of a Vicarage in the County of Warwick, which was Part of the Priory
of Duntry, where the Pope by his Bull gave to the Vicar Minutas decreas
and Alteragium; And it was certified by the Doctors, that Alteragium
will pafs to the Vicar Tyth-Wool, &c. And the Ulage was shewn in
Evidence, and the Copy of the Pope's Bull; And the Court would not
credit that without seeing the Bull itself, and to the Plaintiff was non-
cruit, and the Jury was discharged. Winch. 72. Hill. 21. Jac. C. B.
Bret v. Ward.

23. It is not a general Rule, that a Matter could not be pleaded specially,
which might have been given in Evidence upon the General Issue; as in an
Action of Debt for Rent, upon Nil debet pleaded, an Entry and Suf-
pension of the Rent may be given in Evidence; But yet that is al-
ways allowed to be pleaded, tho' it might be shewn upon the General
127.

24. 1 Jac. I. 15. If any Action be brought against the Commissioners of a
Bankr upt, or any Person authorized by them, they may plead Not Guilty,
and justify by Virtue of this or the former Act of 13 El. 7. and the whole
Matter shall be produced in Evidence, and if Verdict pafs for the Defen-
dant, he shall have his Costs.

25. 7 Jac. I. 5. If any Action, Bill, Plaint, or Suit upon the Cafe,
Trefpafts, Battery, or false Imprisonment, be brought in any of the Courts at
Wellesmifer, or elsewhere, against any Justice of Peace, Mayor, or Bailiff
of a Town corporate, Headborough, Port-Reeve, Constable, Tithingman,
Collector of Subsidy or Fifteenks, for any Matter or Thing done by reason of
his Office, every such Justice of Peace and Officer aforesaid, and all others
who in their Aid and Assistance, or by their Command, shall do any Thing
concerning their respective Offices, may plead the General Issue Not Guilty,
and give such special Matter in Evidence, as if pleaded had been good in
Law to have discharged the Defendant, and if the Plaintiff be non-cuit, &c.
shall have double Costs. This Statute made perpetual and extended to
Church-Wardens and Overseers, by 21 Jac. 12.

26. C. brought an Action upon the Cafe against one Wood, and
counted that he was seised of a House and 20 Acres of Land, &c. in
Thurfield; and that he, and all whose Estate he hath, have had a
Common in 7 Acres in T. and that he, all, and the, &c. have had one
Way leading thro' the said 7 Acres, and from thence into one Common way
leading to B. and from thence to Blatly, and that the Defendant had
ploughed and turned up the 7 Acres, and stopped the Way. The Defen-
dant
Evidence.

dant pleaded Not Guilty; Resolved that the Trial was good, for Not Guilty, is properly a Denial of Trespass and Disturbance; and tho' he ought to prove Title to the Way, yet it is sufficient if he prove Title to the Way by and thru' the 7 Acres upon Evidence; And yet if the Prescription had been traversed, then he ought to prove all the Way. Hutt. 39, 40 Mich. 18. Jac. Clerk v. Wood.

27. In Action of Trespass, if it appears upon the Evidence, that the Plaintiff had nothing in the Land but in Common with a Stranger, yet the Jury ought to find with the Plaintiff, and if the Defendant would have Advantage of the Tenancy in Common in the Plaintiff, he ought to have pleaded it. Nichols Serjeant was very earnest to the contrary, and took a Difference where the Plaintiff and Defendant are Tenants in Common, and where the Plaintiff is Tenant in Common with a Stranger; but he was overruled, the Action was of Trespass, Quare clausum frigint, &c. Ruled by Walmly, Warburton, and Folter j. 172. Cook and Daniel. Godb. 172. pl. 237. Paflch. 8 Jac. C. B. Berry's Cafe.

28. In a Writ of Right, if the Tenant join the Mise upon the more Right, he cannot give in Evidence a collateral Warranty, for he has not any Right by it, and therefore it ought to have been pleaded. 1 Inf. 283. a.

29. Assumpsit to pay Money on the Marriage of his Daughter, the Defendant on Non assumpsit gave in Evidence a Discharge of the Contract; but Hale Ch. J. before whom the Cause was tried at Guildhall, said he ought to have pleaded Exoneration; but that this mitigates the Damages. 2 Lee. 81. Hill. 24 and 25. Car. 2. Abbot v. Chapman.

30. In an Action on Trojan of Goods, the Defendant pleaded Sale in the Market overt, whereby he justifies the Conveyance; And it was held to be no Plea, because it amounts but to the General Issue, and ruled accordingly, that if he did not plead, a Nihil dicit should be entered, Cro. J. 165. pl. 3. Trin. 5. Jac. B. R. Johns v. Williams.

31. 'Twas held that if Colourable Payment of Money by a Purchaser, is recited when in truth none was paid, this Estate is invalid against him that comes in Bona fide for a valuable Consideration, and this may be given in Evidence well enough without pleading it. Clayt. 32. pl. 55. Aug. 11. Car. Barkley, J. Ballard v. Sitwell.

32. Accessory for Damage done, &c. and Issue joined upon the Freehold, and the Plaintiff did allege that the Defendant had made a Lease before the Caption, and holden no Evidence, but he ought to have pleaded it, &c. and for this Cause, the Plaintiff was non suitor, but the Jury did enquire of the Damages and Costs by Direction of the Court, and so is the Practice in Replevins. Clayt. 91. pl. 155. Mar. 16. Car. Whitfield Serjeant, Judge of Assise. Dicken son v. Malliverd.

33. It was said by the whole Court, that a Consideration is not traversable upon an Assumpsit, but they ought to plead the General Issue, and the Consideration ought to be given in Evidence. Hett. 50. Mich. 3 Car. C. B. Wilkins v. Thomas.

34. Action for Cafe for Assumpsit, the Defendant pleads Non Assumpsit and upon Evidence gave the statute of Gaming in Evidence, and allowed by Jeffries, Ch. J. Otherwise it seems, if it had been Debt upon a Bond, &c. then it ought to be pleaded. Skin. 195. pl. 9. Trin. 36. Car. 2. C. B. Anon.

35. One Joint tenor or Tenant in Common, or Parcener, cannot bring Trover against another and if he does, 'tis good Evidence on the General Issue of Not Guilty; But if one Joint tenor brings Trover against a Stranger, in that Cafe the Defendant may plead it in Abatement, but cannot

36. In Trespass, Quare Clamavit, it is a Plea in Abatement to say, that the Plaintiff is Tenant in Common with another, but it cannot be given in Evidence upon Not Guilty, as it may where one Tenant in Common brings Trespass against the other. Vent. 214. Trin. 24 Car. 2. B. R. Anon.

37. When an Executer or Administrator had done what they ought to do, they may plead Plena Administratut, and give the special Matter in Evidence; But when Judgments are due, and Bonds jured, they cannot give that in Evidence, but must plead it, because the Goods to fastity are in their own Hands, and do not properly administered, tho' liable to the Judgment; Per Vaughan, nemine contradicente. Freem. Rep. 150. pl. 171. Pach. 1674. Anon.

38. Depositions taken coram non judice, are not allowed to be used at a Trial at Law. Chan. Caies, 306. Hill. 29 & 30 Car. 2. Stock v. Denew.

39. In Affumplit, Exoneravit ought to be pleaded, but being given in Evidence, it mitigated the Damages. 2 Lev. 81. Hill. 24 & 25 Car. 2. B. R. per Hale, Ch. J. Abbot v. Chapman.

40. If an Action is brought upon a Promise in Law, Payment before the Action brought may be given in Evidence, but where the Action is grounded on a special Promise, there Payment, or any other legal Discharge must be pleaded. Mod. 210. pl. 42. Hill. 27 & 28 Car. 2. C. B. Fits v. Preelfone.

41. Upon a Motion for a new Trial, the Case appeared to be, that the Lord of a Copy-hold Manor ought to repair a common Bridge, and the Cutton was, that he might take necessary Timber for this Purpofe upon any of the Copy-hold Lands, the which he had done, and in Trespass for it by a Copy-holder, he would have given this Matter in Evidence upon Non culp; but it was not allowed, for he ought to have pleaded it as in Hob. 174, 175. Trespass for selling Trees, the Defendant pleaded Non culp. He cannot maintain this Plea, except the Trees were his actually before he fell, for if he had but a Liberty to fell, he ought to have pleaded it, and not pleaded Non culp. Skin. 321. pl. 2. Trin. 4 W. & M. in B. R. Anon.

42. An Action on the Cafe brought on Affumplit to secure Goods from Perils, thofe of the Sea excepted; In this Cafe it was held by the Court, that in Affumplit in Faet, on a Non Affumplit pleaded, a Release cannot be given in Evidence to take away the Affumplit, but only in Mitigation of Damages; but on Affumplit in Law, and a Non Affumplit pleaded it may, because it takes away the Affumplit. Quere, says the Reporter, if in an Affumplit, either in Faet or Law, on a Non Affumplit pleaded, Performance can be given in Evidence. Sid. 236. pl. 3. Hill. 16 & 17 Car. 2. B. R. Beckford v. Clark.

43. In an Affumplit in Consideration of the Marriage of his Daughter on Non Affumplit pleaded, Exoneravit cannot be given in Evidence to discharge the Promise, but only in Mitigation of Damages, but it ought to be pleaded. Cited per Hale. 2 Lev. 81. Hill. 24 & 25 Car. 2. B. R. Abbot v. Chapman.

44. Any Thing in the same Statute, upon which a Suit is commenced, may be given in Evidence, but if it be in another Statute, it must be pleaded; But since the Statute of 21 Jac. 1. upon the General Hufe, any Thing may be given in Evidence and Exculpe of the Party; Per Hale Ch. J. Hard. 231. pl. 6. Trin. 14 Car. 2. in Scacc. in Cafe of Hammond v. Taylor.
Evidence.

46. In Treveron Not Guilty, the Evidence was, that the Goods were taken and sold by Virtue of a Commission of Sewers, and held good. All. 92. Mich. 24 Car. B. R. Combs v. Cheney.

47. Custom of Foreign Attachment may be pleaded or given in Evidence. 3 Keb. 221. Mich. 15 Car. 2. B. R. in Cafe of Bennet v. Thorn.

48. The Statute of Limitations may be given in Evidence, as well as pleaded, as had been ruled by Ld. Ch. J. Hale; But agreed per Cur. that the best Way is to plead it. Skin. 24. (bis) Mich. 33 Car. 2. C. B. Philpot v. Walcot.

49. Debt for Rent against an Assignee, and Nil debet pleaded; upon which they were at Illue, and the Defendants gave in Evidence an Assignment of the Term before the Rent incurred; It was objected, that this was a fraudulent Assignment, and so void; and of this Opinion upon the Trial was North Ch. J. but after, the Cafe being in Court upon many Debates, and much Litigation of the Matter, it was ruled that it might be given in Evidence as it was cited by Pemberton. Pach. 4 Will. & Mar. in B. R. and not denied per Cur. to have been adjudged betwixt Chrifly and Wilcox. Skin. 318. Chrifly v. Wilcox.

50. Regularly, whatsoever is done by Force of a Warrant or Authority, ought to be pleaded. Tr. per Pals, 3d Edit. 377.

But by the Statute 23 H. 8. c. 5. any Thing done by the Authority of the Commission of Sewers may be given in Evidence on the General Illue. Tr. per Pals, 3d Edit. 577.

51. In Trespaies against one for gleaning on his Ground; Per Hale, Norfolk Summer Allize 1668. The Law gives Licence to the Poor to glean, &c. by the general Custom of England, but the Licence must be pleaded specially, and cannot be given in Evidence on Non culp. cites Tr. per Pals, 202.

52. In all Cases where one cannot have Advantage of the special Matter by Way of Plea, there may have Advantage of it in Evidence; As for Example, the Rule of Law is, that one cannot justify the Death or killing of a Man, and therefore if one kills another in his own Defence, he cannot plead this specially, but he may give this in Evidence; so in Defence of his House against Thieves and Robbers, &c. Try. per Pals, 3d Edit. 377.

53. The Defendant was a Vintner in Beverley, and the Plaintiff sued him for 5 l. for selling Wine for not being licensed according to the Statute of E. 6. by the Justice of Peace there being a Corporation, and shewed the Defendant did inhabit there; and Jury found for the Plaintiff to the Value of one Pint of Wine sold by the Defendant, and to prove the Defendant guilty, it was proved that the Daughter of the Defendant bought in the Wine, and did receive the Money for it; and this was held good Evidence that the Defendant himself sold the Wine, without Proof that the Money came to his Hand, or that it was his Wine, &c. Clayt. 150. pl. 275. August 1650. before Baron Thorpe Judge of Nifi Prius, Smalls v. Davie.

54. Assimplit against a Feine who pleads Coverture tempore promissorum, Plaintiff demurs, because it amounted to the general Illue. Pet Cur. where it is Matter of Law that amounts to the General Illue, it may be pleaded, and is no Caufe of Demurrer; for Matter of Law in that Cafe is Matter of Fact, which avoids the Action, and so may be pleaded or given in Evidence as Defendant pleases. 12 Mod. 101. Mich. 8 W. 3. James v. Fowks.

55. It is no General Rule that a Matter cannot be pleaded specially, which might be given in Evidence upon the General Illue. 2 Vent. 295. Mich. 1 W. & M. Sarsfield v. Witherly.

56. As
Evidence.

56. *As in Debt for Rent an Entry and Suspension of the Rent may be given in Evidence upon *Nil debet*, yet it is always allowed to be pleaded, and so *Nil habitus in tenementis*. 2 Vent. 295. ibid.

57. *And wherever the Matter pleaded contains Matter of Law* it is allowed to be pleaded, tho' it might be shewed upon the general Issue. 2 Vent. 295. cites Hob. 127.

58. At Guildhall an *Action upon the Caze* was brought for Money received to the Use of the Plaintiff, the Defendant would have given in Evidence upon *Non assumpsit*, that the Money was *condemned upon a common Attachment* within the City of London, the which was opposed, because the Condemnation was *after the Action commenced in the Courts above*; To which it was answered, that tho' it was after the Action commenced, yet it was before *Non Assumpsit* pleaded, and so well enough, *Non allocatur*; for the Difference is, where the Condemnation is before the Action commenced, there the Defendant may plead *Non Assumpsit*, and give the Attachment in Evidence; but where the Condemnation is after the Action commenced, the Defendant ought to plead it. Skim. 639. pl. 3. Pach. 8 W. 3 B. R. Briat v. Gyll.

59. If *Action be brought against Administrator by the Name of Executor*, he cannot plead in Bar *Ne unques Executor*, and give in Evidence he was Administrator, because he allows himself to be liable. 12 Mod. 45. Mich. 5 W. & M. Anon.

60. A *Tenant in Tail* had acknowledged a *Judgment* or Recognizance and died; upon a *Scire Facias* against his Heir and Tertenant the *Sheriff returned a Sc. Feci*, and there was *Judgment by Default*. In *Ejection* it was ruled, that the *Issue in Tail* could not give in Evidence, that the *Compositor was only Tenant in Tail*, because he might have pleaded it to the *Scire Facias*; a *Caze* cited by Holt Ch. J. Comb. 446. Trin. 9 W. 3. in *Caze of Lambert v. Cameret.*

61. *Action in Name of Camettt b. Lambert, Verdict* and *Judic. pro. Quer. Writ of Error coram vobis; Error in fact asigned that C. before the Trial, &c. died; L. says, that he was alive, et ad tunc in plena vista existit et hoc petit quod inquiratur per Patriam, per Holt Ch. J. You are stopped in Evidence to shew that Plaintiff died before the original *Action*; for by the Plea you admitted him to be alive; but here Defendant in Error by his Pleading seems to have fet Plaintiff loose from his *Eitoppel*, whereas if he had said *ab suo hoc* that he had died before the Action brought and the Trial, he had hampered him; and the Evidence was admitted, and left to the *Jury*. Comb. 446. at the *Sittings at Nifi Prius at Guild-hall, June 1697. Lambert v. Cameret.*

62. In *Debt for Rent*, and *nil debet pleaded*, the *Statute of Limitations may be given in Evidence*, for the *Statute has made it no Debt at the Time of the Plea pleaded, the Words of which are in the present Tense*. *Aliter, in an Action Sur Assumpsit*; for the *Plea of Non Assumpsit* relates to the Time of making the *Promise*. 1 Salk. 278. pl. 1. coram Holt, Ch. J. at Nifi Prius at Hereford, 1690. Anon.

63. If an *Act of Parliament makes Writing necessary to a Common Law Matter* where it was not necessary by the *Common Law*, you need not plead the Thing to be in Writing, but give it in Evidence; but *where a Thing is originally made up by Act of Parliament*, and required to be in *Writing*, you must plead it with all the *Circumstances required by the Act*, as upon the *Statute H. 8. of Wills*, you must plead a *Will to be in Writing*; but a collateral *Promise*, which is required to be in *Writing* by the *Statute of Frauds*, you need not plead to be in *Writing*, tho' you must prove it so in Evidence; Per Holt Ch. J. 2 Salk. 519. pl. 17. Trin. 15 W. 3. Anon.

64. No
Evidence.

64. 43 El. 2. S. 19. If any Person shall be prosecuted for what he shall do in Pursuance of this Act for the Relief of the Poor, he may plead the general Issue, and give the special Matter in Evidence, and in Case the Plaintiff be non-jus, &c. the Defendant shall recover treble Damages, with Costs.

65. So in Battery or Mayhem for breaking a Limb, &c. the Loss of Time may be given in Evidence upon the common Declaration. Carth. 296. Hill. 5 W. & M. B. R. in Case of Child v. Sands.

66. After Condemnation on a Seizure, the Rule is, (viz.) if the Action is Trespass, the Condemnation may be given in Evidence upon the General Issue, because thereby the Property is divested out of the Party; But if the Action is Trespass, then the Matter may be specially pleaded; per Ward Ch. B. Carth. 327. Trin. 6 W. & M. in Seac. in Case of Martin v. Wilsford.


68. Where a Proceeds goes by way of Defraude of a Covenant, it must be pleaded on the other Side; otherwise where by way of Explanation or Reaffirmation of the Covenant; Per Holt. 2 Salk. 574. Trin. 10 W. 3. Clayton v. Kinton.

69. Diversity was said to be where the Fact is complicated, and may be apt to involve the Jury; in such Case, that the Court may be the better able to direct the Jury, the special Matter may be pleaded. Arg. 12. 538. Trin. 13 W. 3.

70. Consequential Damages may be given in Evidence in an Action on the Statutes against suing in the Admiralty, though not mentioned in the Declaration, as, that he lost the Profits of his Voyage; but if it be laid specially in the Declaration, (viz.) per quod, he lost the Profits, &c. it is but Surplusage. Carth. 296. Hill. 5 W. & M. in B. R. in Case of Child v. Sands.

71. In an Action on the Case for Fees, &c. the Defendant pleaded the Statute of 1 Jac. that no Bill was delivered under his Hand; Per Cur. this Statute may be given in Evidence on the general Issue Non Assumpsit. cites Show. 338. Mich. 3 W. & M. Milner an Attorney v. Crow dall.

72. Upon all general Issues, you may give special Matter in Evidence. If you give Colour, you may plead it specially; as in Debt for Rent, you may plead Nil debet, and give Release in Evidence; Per Holt. 12 Mod. 377. Pauch. 12 W. 3. in Case of Paramount v. John ton.

73. When you have a good Matter in Bar, and an Opportunity to plead it, you shall not give it in Evidence; Per Holt Ch. J. 12 Mod. 412. Trin. 12 W. 3. in Case of Rook v. Sherif of Salisbury.

74. Trespass for entering the Plaintiff’s House, and keeping the Possession thereof for so long; Defendant pleads, that J. S. was seized in Fee thereof, and he being lofeid, gave Licence to the Defendant to enter into, and possesg the said House, till he gave him Notice to leave it; that thereupon he entered, and kept the House for Time mentioned in the Declaration, and had not any Notice to leave it all the Time; and a special Demurrer because the Plea amounted to the general Issue; And per Co. be might have given this Matter in Evidence against all People, except J. S. but against him he must have pleaded it. So he should here either have pleaded the general Issue, or given Colour to the Plaintiff; Ergo Jud. pro quer. 12 Mod. 513, 514 Pauch. 13 W. 3. ——— v. Saunders.

75. 8 & 9 W. 3. cap. 26. Sec. 6. No Retaking shall be given in Evidence in an Action of Escape, unless specially pleaded, and Oath be made by the Keeper of the Prison that such Escape was without his Consent; but if such Affidavit prove false, such Keeper shall forfeit 500 l.

76. If
Evidence.

77. If a Man be indicted for Murder or Felony, he may plead Not guilty, and give a Pardon in Evidence; but if he have Occasion to plead a Pardon in Bar of any collateral Matter, there he shall not plead to Issue, and give the Pardon in Evidence; as if a Seize &c. were brought upon a Recognizance, there you must plead the Pardon; Per Holt Ch. J. 12 Mod. 613. Hill. 13 W. 3. in Cale of Ingram v. Foot.

77. Case on Bill of Exchange pleaded, that Defendant after Acceptance gave a Bond in Discharge of it, and on Demurrer it was objected, that it amounted to the General Issues; for the Debt upon the Bond being extinguished by the Bond, the Defendant ought to have pleaded a Non Assumpsit, and to have given the Bond in Evidence, and the Court seemed to be of that Opinion, but by Consent, the Defendant pleaded the General Issue. 5 Mod. 314 Mich. 3 W. 3. Hacklithaw v. Clerk.

78. In all Causes where a Man admits the Action, were it not for special Matter, that Matter may be specially pleaded; though it may likewise be given in Evidence on the General Issue. 12 Mod. 97. Trin. 3 W. 3. Hulley v. Jacob.

79. It is not a Rule, that because a Matter may be given in Evidence, that therefore it must not be pleaded specially; for it often happens to be in Election of Defendant, either to plead it specially or not, as he shall be advised; Per Car. Cartn. 337. Trin. 7 W. 3. B. R. Hulley v. Jacob.

80. Where the Matter of the Plea confisles the Cause of Action, but avoids, the Defendant may plead specially, tho' he might have given it in Evidence; Otherwise where the Matter of the Plea does not avoid but deny. 1 Salk. 344. pl. 2. per Curiam, Mich. 8 W. 3. B. R. in Cale of Hulley v. Jacob.

51. In an Action upon the Case on a Bill of Exchange, Defendant pleaded that he was at Paris, as a Traveller, &c. and there drew the S. C. the Bill, &c. but that he was never a Merchant; it was held, that this being Matter of Law it might well be pleaded, tho' objected it amounted to the General Issue; and if the Matter would avail the Defendant, he might give it in Evidence on Non Assumpsit. 2 Vent. 295. Mich. 1 W. and M. Sarsfield v. Witherly.

amongst foreign Merchants upon Bills of Exchange, if Perks who took on themselves to draw such Bills, should not be liable to the Payment thereof, they all agreed, that the Judgment should be reversed. — Comb. 152. S. C. and per Palkeschen Ch. J. it may be either pleaded specially or given in Evidence; and that, to avoid the involving a great deal of Matter in the Issue, and that it is a Merchandizable Act, and hinders him from pleading it, and the Crown is laid for Merchants and other Persons Negotiators; And the Judgment was reversed, for that he is a Merchant by the taking up of Money and drawing the Bill. — Show. 125. S. C. in Error, in Cam. Sect. and Judgment for the Plaintiff.

82. At a Trial at Hertford Summer Assizes 10 W. 3. in Cae for flopping the Plaintiff's Lights the Defendant pleaded Not Guilty; and gave in Evidence that the Corporation of Hertford were Lords of the Soil, were, &c. and preferred to set up Stalls there, being near the Market-place. And it was admitted by Holt Ch. J. to be given in Evidence upon the General Issue, because this is to claim Property in the Soil, but where the Defendant, or he under whom he claims, claim only a particular Benefit, as Common or Easement, as a Way, and not the Property in the Soil; he ought to plead it specially, and cannot give it in Evidence upon the General Issue pleaded. Ld. Raym. Rep. 732. 10 W. 3. Kent v Wright.
Evidence.

83. Where there is a special Matter to avoid the Plaintiff’s Action which the Defendant cannot give in Evidence upon the General Issue, he may in such Cause plead it specially; but he needs not where he can give it in Evidence on the General Issue; Adjudged. 3 Sailk. 155. pl. 11. Mich. 12 W. 3 Anon.

84. So where there is a mere Matter of Fact to avoid the Plaintiff’s Action, the Defendant may plead the General Issue, and give it in Evidence; But if the Matter of Fact contains likewise Matter of Law, the Defendant may either plead specially or generally, and give the special Matter in Evidence. 3 Sailk. 155 pl. 12. 12 W. 3. Anon.

85. It was ruled by Holt Ch. J. upon Evidence at a Trial at Nisi Prius at Norwich, Summer Assizes, 12 W. 3. that it, in Indebtitatus Assumptis for Goods sold and delivered, upon Non Assumptum pleaded, the Defendant gives in Evidence, that the Debt was attacked by foreign Attachment in London upon a Plaint issued by J. S. (to whom the Plaintiff was indebted) against the Defendant, &c. the Defendant will be driven to prove that the Plaintiff was indebted to J. S. because the Plaintiff has no Notice of the foreign Attachment; And therefore it may be only a Contrivance by the Defendant, and J. S. to bar the Plaintiff of his present Action. 2dly. In such Cause the Plaintiff may shew in Evidence, that the Suit in London was after an Original filed by the Plaintiff in some one of the Superior Courts; And that will avoid the Operation of the foreign Attachment. 3dly. If the Original did not issue before the Plaintiff was entered in London, but only was antedated, and bore Telle before, and no Arrest was made before upon it; that will not avoid the foreign Attachment; But this latter point Holt referred for his further Consideration. But (as audi vel) he was afterwards of the same Opinion, Ld. Raym. Rep 727. Palmer v. Hook or Gouche.

86. In Trespass for Goods, the Defendant confestis the Taking, but says he bought them in Market-overt, per Holt. 12 Mod. 377. 12 W. 3. In case of Paramour v. Johnfon, cites to Co. Byfield’s Cafe.

87. But it is indulgence to give Accord with Satisfaction in Evidence upon Non Assumpti pleaded; but that has crept in and now is settled. Per Holt 12 Mod. 377. Pach. 12 W. 3. In case of Paramour v. Johnfpon.

88. Debt for Rent upon Demise; as to Part, Nil debet, as to the other Part, Nil habebit in Tenementis, &c. but bdel ill; for in Contruction of Law Nil habebit, &c. goes to the Whole, and having also pleaded Nil debet, that makes the Plea double; for on Nil debet, Nil habebit, &c. might have been given in Evidence, but by pleading Nil Debet, the Demise was admitted; and then by saying Nil habebit, &c. it is repugnant; but he should have traversed the whole Demise. 4 Mod. 254. Hill. 5 W. and M. in B. R. Combs v. Talbot.

89. As the pleading a Releafe, Coverture or Infancy, in an Assumptis, and yet those Things might be given in Evidence upon Non assumptum pleaded; However the Defendant some Times may not be willing to put such Matter of Law to the Judgment of the Jury, or perhaps may design to save the Costs of a special Verdict. Carth. 337. per Cur. Trin. 7 W. 3. B. R. in Cafe of Hufley v. Jacob.

90. Feme Coverture may plead Non assumptum and give Coverture in Evidence, because Coverture makes it no promisie; the name of Non est factum to a Bond. 6. Mod. 230. Mich. 3 Ann. B. R. Anon.

91. In Trespass, Quare clausum fregit, Not Guilty was pleaded, and on Trial the Defendant gave Evidence that it was in a Highway; And per Cur. *is a special justification, and ought not to be allowed to be given in Evidence on the General Issue. 1 Sailk. 287. Mich. 5 Ann. B. R. Watfon v. Sparks.

In an Action of Trespass, Quare Clausum fregit, the Defendant pleaded Not Guilty, and at the Trial before Mr. Baron Carter at the Assizes for Devonshire, offered to prove that the Place was a Common Highway; but the Judge not allowing him to go into the Evidence, the
Evidence.

the Plaintiff obtained a Verdict; Upon this the Defendant moved for a new Trial, and the single
Question was, Whether upon this Issue the Defendant can give in Evidence a Highway? And it was
inquired whether it is a Highway, in which case it might be given in Evidence, and that the
contrary would be a great Surprise upon the Plaintiff, who comes only to
prove the Trefpafs, and not to controvert whether the Place be a Highway or not; And the Cafe
in Salto, 157, was relied upon; For the Defendant it was said, that in many Cases the Party may
either plead the special Matter, or give it in Evidence; That nothing is more special than the Claim of
Foreign Attachment, which yet is received in Evidence upon Non assumpsit; So in Ejacmtm al-
most any Thing is given in Evidence; That several Statutes have enabled Defendants to plead
the General Issue, as those of the 9th and 27. Jac. 1. That perhaps a private Way (being a private
Right, and as it were a Profit Apprinder in Alieno sole) must be pleaded, but that it brotherwife of a
Publick Highway, being the Concern of the Publick, for whom the King is a Trustee; And that
it could be no Surprise, since nothing can be more notorious than a Highway, and the Plaintiff cannot
but know his own Cafe; but all the Court were clear of Opinion for the Plaintiff; That the Old
Rules of Special Pleading are not to be departed from, which would create great Confusion and In-
convenience; That they were founded in great Wisdom and Experience, and that if ever any Per-
sons have difliked or thought meanly of them, the least that can be said of such Persons is, that they
understood nothing of them. That wherever a Defendant admits the Fact charged, but insists either
upon a general or special Reason in Justification or Excufe, he must plead it specially. That where
any Acts of Parliament allow the contrary, the Court is not to contradict them; but as they extend
only to particular Cases they are out of the Question. That as to Ejacmtm, it is true, any Title
may be set up in Evidence; and the it has proved very inconvenient, yet the Law being to settle it,
it is too late to complain. However, 'tis not to bad in that Cafe, because the Party may bring a new
Ejacmtm. That the only Pretence for allowing a Highway in Evidence is, that it is the Soil of the
Crown, and the King, (its said) has the Freehold in Truth for all the Subjects of England;
whereas it is notorious, that the Freehold belongs to the Lord of the Soil through which the High-
way runs; and, in consequence of his Ownership, has a Right to all the Profit, as the Treas,
Grfs, &c. And lastly, They held, that the admitting such Evidence must be a great Surprise
upon the Plaintiff, who having enjoyed the Lord as his Freehold, has no Reason to suppose it is a
Highway, or that Defendant will insist upon it as such. Accordingly the Court were clear of Op-
inion for rejecting the Evidence, but would make no Rule till they had consulted with the rest of
the Judges; And the last Day of the Term the Ch Justice reported, that at his Request the Lt.
Ch. Justice of the King's Bench had put the Question to all the Judges, by whom it was fully de-
bated, and that a great Majority of them were of Opinion, that upon a Plea of not Guilty to an Aftion
of Trefpafs Quae clauum trep, the Defendant cannot give in Evidence, that the Place where, &c.
is a Highway; Upon which the Rule for a new Trial was discharged. Trin. 14 Geo. 2. C. B. Sal-
man v. Courtemay.

92. The Plaintiff brought Trefor as Administrator, and declared upon the Possession of the Intestate, and upon Not Guilty pleaded at the Trial; the Counsel for the Defendant offered to give in Evidence, that the pretended Intestate made a Will and an Executor; But Holt Ch. J. over-
ruled it, and took this Diversity, that where an Administrator brings Trefor upon his own Possession, the Defendant may give in Evidence a Will, and an Executor upon Not Guilty; otherwise if it be on the Possession of the Intestate, (as in the principal Cafe,) for there the Defen-
dant ought to plead it in Abatement, and if he does not, he shall not

93 Where a General Jurisdiction is given by Statute, and a Proviso ex-
cptis particular Persons or Things, all those may be given in Evidence; for
it the Party or Thing is not within the Act, the Person accused is not Guilty; but where the Jurisdiction is limited and confined to par-
ticular Persons or Things with a Proviso of Execution, this must be

94 If an Administrator bring Trefor upon the Possession of the Intestate, and Not Guilty is Pleased, then the Defendant cannot give in Evidence a Will and Executors appointed, but that ought to have been pleaded in Abatement, 7 Mod. 141. Hill. 1 Ann. in B. R. 13. Blainfield v. March.

95 But if Trefor had been on the Possession of the Administrator, there
upon Not Guilty he might take Advantage of that Matter in Evidence.
7 Mod. 141 Hill. 1 Ann. in B. R. 13 Blainfield v. March.
Evidence.

96. On Not guilty pleaded in Trespass it was given in Evidence, that the Place was an Highway. The Cafe was, the Plaintiff had altered the common Highway, and set out another over his Field, as more commodious for him, and it was further given in Evidence pro quere, that the Defendant had opened a Gate set up on his new Way per quere, and held, that he might jutily the pulling of it down on Not guilty pleaded; Per Baron Price at Sarum. Trin. V. 1711.

97. Whatever is a Discharge of the Action may be given in Evidence on Non Assumpsit, so a Release or Discharge by a second Agreement will be good Evidence on Non Assumpsit without pleading it; For as a Promise is made by Parol, so it may be discharged by Parol; Per Pratt; but Eyre and Fortrefue J. e contra, and that it ought to be pleaded. Patch 7 Geo. B. R. Allen v. Jacob.

98. Where any Thing goes in Denial of the Fact, there it must be given in Evidence on the general Issue, because whatever denies that Cause of Complaint is Matter proper to be exhibited to the Jury, who are Judges whether the Fact was so or not; And therefore Actions of Trover and Assumpsit, which are modern Inventions to get rid of Law-wagers, which lay in the ancient Actions of Debt and Detinue were so formed, that almost every Thing may be given in Evidence on the general Issue. Gilb. Hist. & Prat. of C. B. 52.

99. Thus in Trover, the Plaintiff declares on the Property of Goods and Chattels, and that they came to the Defendant by finding, whatever Matters were alleged that confers Property in the Plaintiff will intitle him to his Damages, and whatever denied it is on the general Issue; and therefore laying by Defrauds, Releases, and the like, which were accidentally pleaded in this Action, are not given in Evidence, because they disaffirm the Property of the Plaintiff on which his Action is founded. Gilb. Hist. &c. of C. B. 52, 53.

100. So in Assumpsit, the Action is formed on a Contract, and the Trespass to the Plaintiff in the Non Performance of it, and the Issue is Non Assumpsit, instead of the old Issue, which was Not guilty, as Non Diminit was on an Action of Debt on a Lease, and Non detinere on the Detaining of Goods, yet on the Issue, every Thing may be given on Evidence which disaffirms the Contract, for that goes to the Gift of the Action, since there is no Contract to be performed at the Commencement of the Action, there could be no Trespass for the Non-performance of it, and therefore a Release goes to the Gift of this Action; For it shews there was no Contract at the Time the Action was commenced; For as in Trover he must have a Right to the Thing declared on; therefore every Thing which shows the Contract to be void, as Nonage, or more Money left by Lay than the Statute allows, may be given in Evidence on the general Issue; For on a void Contract, the Plaintiff has no Right to any, therefore this and the like goes to the Gift of the Action. Gilb. Hist. &c. of C. B. 53.

101. In a Declaration about a Seat, you need not allege the Repairing, but must prove it upon the Trial; Coram Baron Cummins, at Taunton Assizes. Hill. V. 1727-8.
What Things may be given in Evidence. And of what.


1. _The Act_ or Order of Ecclesiastical Court for granting Letters of Administration proved by the Book is good Evidence. Lev. 25. Pauch. 15 Car. 2. B. R. Garret v. Lister.


3. Two _Commoners_ in Behalf of themselves, and all the _Commoners_ within H. prefered a Bill in the Dutchy Court against the Owner of the Land, in which they claimed Common, &c. and upon hearing the Cause, the Common was decreed for them. The Dutchy Court was put down, and the now Defendant having purchased Land within H. the Plaintiff, who was a Commoner when the Decree was made, but not a Plaintiff in that Cause, exhibited his Bill against the now Defendant to have the Use of the Depositions taken in the Cause in the Dutchy Court at a Trial to be had at the Assizes, and the Defendant demurred to the Bill, and allowed, because neither the Plaintiff nor the Defendant were Parties to the former Cause, tho' the Suit there was the same Cause upon which the Action of Law was now brought, and of general Concernment; and it seemed hard, considering that the Defendant here claimed under the Defendant there. Hardr. 22. Mich. 1655. in Scacc. Stanley v. Pegg.


1. In an _Action_ the Defendant pleaded the Composition _Act_ ; the Plaintiff replied _Not tis._ Record, and upon the Day given to the Defendant to bring in the Record, he produced the printed Statute; Per Holt Ch. J. an _Act_ printed by the King's Printer is always allowed good Evidence of the _Act_ to a Jury, but was never yet allowed to be a _Record_ without an _Exemplification_ under the Great Seal, and it must be pleaded as exemplified. 2 Salk. 566. Trin. W. 3. B. R. Anon.

2. A private _Act_ printed among the publik Acts, hath been allowed in Evidence; Per King Chanc. Trin Vac. 1727.

3. Even a Private _Act_ of Parliament in Print that concerns a speake County, as the _Act_ of Bedford-Levela, may be given in Evidence without comparing it with the Record; Per Holt Ch. J. 12 Mod. 216. Mich. 10 W. 3. at Guild-hall, in Case of Dupais v. Shepherd.

4. A Copy of an _Act_ of Parliament is no Evidence unless the _Act_ had been _before allowed_ of, and so made a Record of this Court, for otherwise nothing shall be allowed of as a sufficient Evidence of the _Act_ but the _Exemplification_ of it under the Great Seal, and the Reason is, because the Court is a Party, which cannot pray Oyer as the Party may; so that the Court would be in a worse Condition than a common Person, if they were to receive for Evidence a Copy offered them. 10 Mod. 126. in Case of the Univerlity of Cambridge, cites 35 H. 6. 14. and this was allowed to be so per Curiam.

5. _Antient Usage_ for 3 or 400 Years is good Evidence of a Law. If an _Act_ of Parliament be lost, or embezzled, the Law remains still. 12 Mod. 181. Hill. 9 W. 3. King v. Hewson.

6. A printed Copy of a private _Act_ of Parliament, or _Ordinance obse- lete_, was disallowed by all the Court to be given in Evidence, unless

Y
Evidence.

it had been examined by the Original, Keb. 2. pl. 4. Pach. 13 Car. 2. B. R. Anon.

As by an-

cient Copies,

Transcripts,

Books,

Pleading,

and Memo-

rals, the Court must not admit the same to be put in Issue by a Plea of Nul tiei Record. Hale's Hilt. of the Law. 13, 16.

8. Act of Parliament produced in Evidence for selling Delinquents Estates was sworn to be examined by the Parliament-Roll, and that it was a true Copy, before it was admitted to be read in Evidence. Sci. 462. Mich. 1655. in Case of Thurle v. Madonna.

The printed Statute-book is good Evidence of general Statutes, but not of private ones, Tr. per Pals, 232.

10. The Copy of a private Act of Parliament may be given in Evidence; and it upon collateral issue it is to be proved that such a one was Justice of the Peace or Baronet, &c. common Reputation is sufficient to prove, without shewing the Commission or Letters Patent of the Creation. L. E. 59. pl. 12. cites Tr. per Pals, 226. 3 Jac. 2.

11. A printed Copy of an Act of Parliament is not to be given in Evidence, if not examined by the Rolls, and sworn to be a true Copy. L. E. 59. pl. 13. cites Tr. per Pals, 232. 3 Jac. 2.

12. A private Act that concerned Rochester Bridge, tho' printed by RAital, was not allowed in Evidence, not being examined by the Record. Otherwise of general Statutes; there the printed Statute-Book is good Evidence. L. E. 59. pl. 14. cites Tr. per Pals, 232.

[A. b. 2] Admission.

1. Finding by special Verdict or Admission on former Pleading is good Evidence, unless the contrary appear. 1 Keb. 720. pl. 50. Pach. 16 Car. 2 B. R. in Case of Lee v. Boothby.

2. At Guild-hall in an Action for Work done, &c. the Plaintiff gave in Evidence to charge the Defendant a Copy of a Bill delivered to the Defendant, and copied by the Order of the Defendant, and diverse Exceptions were taken by the Defendant to the Bill, &c. First to the Quantity of the Work done, and the others were Marks against diverse parcels; &c. if O and N. intending by it that these Parcels were wrought for others, and not for the Defendant, and other Exceptions there were to the Price, and he ordered the Servant to indorse upon the Backside the Exceptions to the Quantity and Price, but to omit the Marks O. and N. and it was ruled by Holt Ch. J. upon Evidence, First, That this Copy of a Bill delivered was Evidence, as a Copy of a Bill and not a Copy of a Copy, and the Bill is an Original as well as the Book. 2dly, That the Acceptance of a Bill delivered without Objection but to some particular, is an Admittance of the Residue to be true. 3dly. That the ordering a Copy of the Bill indorsed ut supra, omitting th: Marks O. and N. and this Copy with the Exceptions being ordered to be delivered to the Plaintiff, it is a Wearing of the Exceptions signified by those Marks. 4thly. Tho' it was objected that this Evidence is a Confession, and therefore it ought to be taken together; Yet per Holt Ch. J. they are not Part of a Confession (which ought to be of the same Thing) but a Cavil
Evidence.

83

Cavl or Objection as to the Price or Quantity, &c. Sea. 672. pl. 11. Mich. 8 W. 3. B. R. Worral v. Holder.

3. In Debt upon a Bond, Defendant pleaded that he became a Bankrupt, that a Commission was taken, &c. and that Bond was given to induce Plaintiff to sign the Certificate, and so void, &c. Issue on this and at the Trial coron Powys at Guild-hall in ablenia Ch. J. Defendant was held to prove the whole Matter; and he being not able to do it, there was a Verdict progruer. But on a Motion for a new Trial, this Verdict was ordered to stand as a Security, and a new Trial was granted, because what they were called upon to prove was admitted by the Plaintiff, which was only whether the Bond was given as afo intentions to induce the Plaintiff to sign the Certificate. Mich. 8 Geo. B. R. Chace v. Lewis.

[A. b. 3] Affidavit.

1. A Man being about to convey Lands to a Purchaser made Oath before a Master in Chancery, that there was no Incombrance on the Estate; in an Ejectment brought, this Affidavit was produced in Court, but not suffered to be read but as a Note or Letter, unless the Plaintiff would produce a Witness to swear that he was present when the Oath was taken before the Master. 3 Mod. 36. Mich. 35 Car. 2. B. R. Smith v. Goodler.

2. The Plaintiff or the Defendant may make an Affidavit in their own Cause depending here; and it may be filed, but it may not be admitted in Evidence in the Trial of the Cause between them. L. P. R. 522. cites Mich. 1656.

3. Th'o an Affidavit cannot be read in Evidence, yet if the Party who made the Affidavit be sworn, and gives Evidence, his own Affidavit may be read against him, and this is allowable to shew in what he contradicts himself. SKin. 403. pl. 39. Mich. 5 W. and M. in B. R. the King and Queen v. Rachel Taylor.

4. On Question on a Trial, whether the Property of a Parcel of Wine was in the Defendant, in order to ascertain whether Alien or British Custom was due for them, a Paper under his Hand, being an Affidavit he had made at the Custom-house, was given in Evidence, he swearing in it that the Wine was his. Patch. 4. Geo. B. R.


1. In Error of a Judgment given in Linn, the Error assigned was, that the Judgment was given at a Court held there on the 16th Day of Feb. 26 Eliz. and that this Day was Sunday, and it was so found by Examination of the Almanacks of that Year; upon which it was ruled that this Examination was a sufficient Trial, and that a Trial per Pais was not necessary, altho' it were an Error in Fact; and so the Judgment was reversed. Cro. E. 227. pl. 12. Patch. 33 Eliz. B. R. Page v. Faucett.

2. Upon Evidence in a Trial at Bar the Question was, if one was of full Age at the Time of his Will made by him; And upon Evidence it appears that he was born the 14th of Feb. 1608, and he made his Will when he was of the Age of 21 Years within two Days; And to prove his Nonage, the Defendant produced an Almanack in which his Father had Writ the Nativity of the Devisor, and it was allowed to be strong Evidence. Raym. 84. Mich. 15 Car. 2. B. R. Herbert v. Tuckal.

3. Tho' in inoocEble Terms the Court is not bound to take Notice on what Day of the Month the Returns are, yet when it is alleged of Record what Day of the Month the Return is, the Court may take Notice of it, and the Day of Return shall be tried by Almanacks and not per
Evidence.


1. Deeds before Time of Memory may be given in Evidence. 2 Sid 146. cites 12 H. 4. 23.

2. The Opinion was, that a Deed which was before Time of Memory may be given in Evidence, but not pleaded, which fee in Avowry, 12 H. 4. 21. For the Plaintiff in Avowry pleaded Release of the Rent, by H. Son of the Emprors, then Duke of Normandy, and after pleaded asso Confirmation thereof by this same H. when he was King of England, viz. H. 2. and there the Letters Patents of the King (as the said Confirmation) may be pleaded, yet because the principal Deed was a Deed by him when he was Duke and Subject, which cannot be pleaded, because it is before Time of Memory, and cannot be tried, yet it may be given in Evidence, by which he pleaded, Fons de jon Fee, and gave the Deed in Evidence. Br. General Illue, pl. 56. cites 12 H. 4. 21. 23.

3. In Annuity they were at Issue upon Traveyce of Prescription, the Plaintiff gave a Deed in Evidence, bearing Date after Time of Limitation, scil. after the Time of R. 1. and the Defendant would have demurred in Law upon it, and well might per Cur. by which the Plaintiff would not have it for Evidence, but gave other Evidence. Br. General Illue, pl. 55. cites 34 H. 6. 36.

4. In the Cafe of a Charter of Feoffment, if all the Witnesses to the Deed are dead (as no Man can keep his Witnesses alive, and Time weareth out all Men) then a continual and quiet Possession for any Length of Time will make a strong or violent Preemption, which stands for Proof; ior Ex diuturnitate temporis omnia praemununt fo- lennitur effe aet ; Also the Deeds may receive Credit per Collationem Sigillorum, Scripturae, &c. And super fideam Chartarum mortuis Telli- bus, erit ad Patriam de necessitate recurrendum. Co. Lit. 6. b.

5. An antient Deed is Good Evidence, without proving or Seal on it. 1 Keb. 877. pl. 27. Patch. 17 Car. 2. B. R. Wright v. Sherrard.

6. A Deed found in Archives of the Chapter of Heretford, was read to prove an Endowment of a Vicaridge, being but concurrent Evidence, tho' it appeared not to have been ever sealed or delivered. 2 Keb. 126. pl. 79. Mich. 18 Car. 2. B. R. Smith v. Rawlin. 

7. An antient Writing that is proved to have been found amongst Deeds and Evidences of Land, may be given in Evidence, although the executing of it cannot be proved; for it is hard to prove antient Things, and the finding them in such a Place is a Presumption they were honestly and fairly obtained, and preferred for Use, and are free from Suspcion of Dithonesty. Try per Pais, 220. cites 24 Car. B. R.

8. An original Leafe could not be produced, being an ancient Leafe, but the Grandson of the Leffer produced a Counter-Port found amongst the Evidences of his Grandfather; This was allowed for Evidence, tho' there was no subscribing Witnesses to it; For Justice Windham said, he had seen many Deeds in Queen Elizabeth's Time without any. Lev. 25. Patch. 13 Car. 2. B. R. Garret v. Lifer.

9. Where a Deed before Time of Memory is supported by Ufeage, after such Deed is pleadable and good, but that the Books which lay Deeds before Time of Memory shall not be pleaded, are to be intended Deeds of such Liberties and Franchises, as cannot be claimed or supported by Ufeage in Pais.
Evidence.

Parl, as if one claim Goods of Felo de se by Deed before Time of Memo-
ry, he cannot shew his Deed, and say Virture cujus, &c but must 
tell an ancient Confirmation, or a Claim and Allowance in Eyre; So in 
this Case, if they had pleaded the Deed, and relied upon it Virture 
cujus, &c. it had been naught; but when they shew the Deed, and 
likewise a Usage to support it, it is sufficient. Skirn. 239. pl. 4. Mich. 
1 Jac. 2. B. R. James and Trollop.

must be allowed in Eyre, and so my Ld. Roll. in his Abridgment (1 Roll. 649. pl. 8.) is to be un-
derstood, whereupon Judgment was affirmed. 2 Mod. 522. 523. S. C.—

10. An old Deed is good Evidence without any Witness to swear that 
it was executed; Per Holt Ch. J. 3 Salk. 154. 18. Hill. 8 W. 3 B. R. 
Lynch v. Clerke.

11. Whether the Indorsements on a Bond by the Obiige, after his Death 
and after thirty five Years entering into it, shall be given in Evidence at 
Law to take off an Objection to the Antiquity of the Bond, 8 Mod. 
278. Trin. 10 Geo. Serle and Barrington.

[A. b. 6.] Ancient Tables of Duties.

1. In the Case of Water-Baillage in the City of London, Evidence 
of constant Payment, and their ancient Tables of Duties impor-
ted, was judged sufficient, though it was urged there could be no Prescription 
for it, and Judgment accordingly for Defendant.—2 Show. 43. pl. 

[A. b. 7.] Apprentices Indentures.

1. 8 Ann. cap. 9. S. 43. No Indenture of Apprenticeship to be admitted in 
Evidence, unless Oath made, that Duties are paid.

2. It was ruled by Holt Ch. J. at Summer Assizes at Rigate, 10 W. 
3. that the Service of an Apprenticeship seven Years beyond the Sea, though 
the Defendant was not bound, excules from the 5 Eliz. cap. 4. Ld. 

[A. b. 8.] Appropriations.

1. A Man had got a Presentation to the Parfonage of Gosnall in Lin-
colnshire, and brought a Quare Impedit, and the Defendant pleaded an 
Appropriation; there was no Licence of Appropriation produced, but 
because it was ancient the Court would intend it. Said per Hale Ch. J. 
in 1 Mod. 117. pl. 17. Pasch. 26 Car. 2. Green v. Proude.

[A. b. 9] Arreft.

1. Where the Issue was upon an Arreft, the Plaintiff demurred upon 
the Evidence, because the Defendant who pleaded it had not produced 
the Process itself, because Matters of Record cannot be tried but by 
Fitzharris.—It was agreed per Cur. that the Writ ought to have been 
produced in Evidence; but by the Demurrer the Arreft (being Matter of 
Fact) is contested, tho' it be such Matter of Fact as is to be proved 
by Matter of Record; and the Jury might know of their own Know-
ledge that there was a Writ, and the Judgment was affirmed. Lev. 87. 
Fitzharris v. Bojen. S. C.

[A. b. 10] Assault.

1. In Trespasses of Assault, Battery, and Wounding, the Defendant 
pleaded the Plaintiff began first, and the Stroke he received, whereby
Evidence.

he lost his Eye, was on his own Assault, and in Defence of the Defendant; and on Trial at the Bar now by Evidence it appeared the Plaintiff threatened the Defendant, and said, Were it not Affise Time he would tell him more of his Mind, which was said bending his Fists, and with his Hand on his Sword; Yet per Cor. this is no Assault, as it would be without that Declaration; but it was farther sworn, that the Plaintiff with his Elbow push'd the Defendant, which if done in earnest Discourse, and not with Intention of Violence, is no Assault, nor then is it a Justification of Battery after a Retreat, as Phineas Andrew's Café; And the Jury not believing the Defendant, found for the Plaintiff, and gave 500 l. Damages; 2 Keb. 545. pl. 13. Mich. 21 Car. 2. B. R. Turberville v. Savadge.

2. In Action of Battery, which was laid in the Declaration to be the 18th Day of February 1621. Defendant pleaded Son Assault demeane, &c. and at Issue upon that, and Defendant proved an Assault by the Plaintiff, but another Day, and ruled that this doth not prove this Issue for the Defendant, because the Justification shall refer to the Time laid in the Declaration, if the Defendant do not difference the Times in his Plea; and in such Case, when the Defendant intends to shew the Assault was at another Day and Place, he shall shew that such a Day before that in the Declaration, as here 8th February the Plaintiff did him Assault, and would have beaten him, and traverse the Day in the Declaration. Clayt. 110. pl. 187. March. 24 Car. Turner Serjeant, Judge of Assise, Hardcastle v. Lockwood.

3. But fee in the Cafe of an Officer, who is not tied up to special Pleading, it seems he upon Not Guilty may vary in his Evidence to justify from the Time in the Declaration, &c. Quod nota. And the Prejudice may come to the Plaintiff's being unpardoned perhaps in such Case to a Reply; whereas when the Matter is by Pleading brought to a special Issue, he knows his Work, &c. Clayt. 110. 24 Car. Hardcastle v. Lockwood.

[A. b. 11] Attorney's Bill.

1. Attorney’s Bill, though not signed, is Evidence for his Executors, as well as for himself, and perhaps several of the Things could not in their Nature be proved by Record; Per Holt. Cumb. 348. Mich. 7 W. 3. B. R. Blackeler v. Crofts.


1. It is no Satisfaction for a Witness to say, that he thinks or persuades himself, and this for two Reasons, by Coke; 11th. Because the Judge is to give absolute Sentence, and ought to have more Ground than thinking, 2d. That Judges, as Judges, are always to give Judgment secundum allegata & probata, notwithstanding that private Persons think otherwise. Dy, 53. b. Marg. pl. 15. Mich. 19 Jac. in the Star-Chamber. Adams v. Canon.


S. C. cited by Holt Ch.
J. 2 Ed.
915. Trim.
2 Ann.
in the Courts of the Admiralty ought to bind generally according to Jus Gentium; and that if we did not observe the Sentences given abroad, we would not observe ours, which would be a general Inconvenience; and if the Merchant in this Case had received Wrong, he ought to apply to the Admiralty and Council, this being a Matter of Government; and that the King, if he saw Cause, would send an Ambassador Lieger into France, who would take Care that Right should be done; and that if Right be not done, then the King would grant Letters of Marque and Reprisal; and in this Case they remembered Cortinon's Cafe. Skin. 79. Mich. 34 Car. 2. B. R. Hughes v. Cornelius.

2. Lefilor brought Debt for Rent against Leflice upon a Deem of the Privy Council of India, which was held to be well, being founded on the Privy of the Contrary, which is not transitory; but if a foreign Illue, which was local, should happen, it may be tried where the Action is laid, and there may be a Suggestion on the Roll for that Purpose, that such a Place in such a County is next adjacent, and that it may be tried by a Jury from that Place according to the Laws of that County, and upon Nil debent pleading you may give the Laws of Nl debent that Country in Evidence. 2 Salk. 651. pl. 31. Trin. 3 Ann. B. R. Way v. Halley.

3. In Trower and Conversion, the Custom of India was found concerning the Buying and Selling of Slaves, and it was held that the Action would lie well enough. Freem. Rep. 452. pl. 616. Trin. 1677. B. R. Anon.

4. To prove a Delivery of Goods to the Defendant, an Exemplification of an Entry made in the Custom-House of Rotterdum, and attested by a Publick Notary, and sealed with the publick Seal there was offered in Evidence, but the Court would not admit it. 8 Mod. 75. Balch. 8 Geo. the King v. Mahon.

5. Per Ld. Chan. Mich. 10 Geo. Where a Suit is for a Debt or other Thing, a Sentence in another Country is not binding; but the Court here must examine into the Matter, in Order to form a Judgment; Contra, where the Suit here is in Order to carry that Sentence into Execution, for then the Proceedings here are founded upon the Sentence, and not upon the Debt.

6. Exemplification of a Sentence given in a foreign Country, shall be read as Evidence here to prove that such Sentence was given there without any further Proof. 9 Mod. 66. Mich. 13 Geo. Anon.

7. Copy of an Agreement registered in Holland, and attested by a Publick Notary there, may be given in Evidence for Defendant, especially since he proved that the Plaintiff took out another Copy of the same Agreement, and would not now produce it, so he knew the Agreement, and could not be surprized. 8 Mod. 322. Mich. 11 Geo. Wallond v. Van Mofes.

8. Affidavit by a Plaintiff in Holland attested by a Publick Notary, shall be admitted as good Evidence to hold Defendant to special Bail here. 8 Mod. 323. Mich. 11 Geo. Wallond v. Van Mofes.

9. A Bill of Exchange on B. who is Resident at Legborn, payable to C. three Months after Date; the Bill is negotiated through several Hands, and indorsed to one who lived at Legborn. B. accepts the Bill, and about a Week afterwards B. had Advice, that A. had stopped Payment, S. C. and he refused to pay, and by a Suit in Court at Legborn, B. got a Sentence to be discharged from the Acceptance and Payment. He brought a Bill for Injustice and was relieved, and be infested upon the Sentence at Legborn. Mich.
Evidence.

Mich 13 Geo. per Ld. Ch. King, the Court at Leghorn had Jurisdiction of the Thing, and of the Person, and he cited the Cafe of a Person that committed Murder in Portugal, and was tried there and acquitted, and afterwords upon a Prosecution here on Statute H. 8. he alleged the former Trial, and it was allowed, v. the Cafe of the Admiralty Jurisdiction in R. A. b. A Suit is for Seamen's Wages in the Admiralty, and there is a Diminution, this allowed on Non Assumpsit at Law; Objected, that this Sentence was Matter proper for Detention at Law, and that the Sentence was wrong in itself, not sufficient Proof there of A's Insolvency, but by Certificates of three Merchants, which is no Proof here, that this was of Acquittal of Acceptors, for Insolvency of the Drawer is not the general Law of Merchants, nor local at any other Place; But Ld. Ch. thought he was bound by Sentence, and he relied upon the Sentence, and perpetual Injunction granted; he said, that when he was Ch. J. he always allowed foreign Sentences to be given in Evidence. Debt contracted in Holland by Work done, the Party comes here, he shall be liable according to the Civil Law, and Bill and Relief. Mich. 13 Geo. Can. Burrows v. Temineaw.


1. The Infant Guardian's Answer in Chancery of a Fiduciary in Trust, was refused by the Court to be given as Evidence; Because he was living, and not Party to the Suit, which was only between the Heir, and Cofliuent que Trust Keb 281. pl. 83. Patch. 14 Car. 2. B. R. Anon.

2. Allegations by a Complainant in a Bill in Chancery shall by a Copy be made Use of as Evidence against the Complainant in a Suit at Law, for it shall be intended to be exhibited by his Consent and PRIVATY; But per Bridgman, there is a Difference when there is a Proceeding upon such Bill, and when not; for in the first Case, it shall be admitted in Evidence, but in the second not. If Bill be preferred for PRIVATY of the Plaintiff, an Action lies, Sid. 221. Mich. 16 Car. 2. B. R. Snow v. Phillips.


4. An Answer in an English Court is good Evidence to a Jury against the Defendant himself, but not against either Parties, yet it is not binding to the Jury. Godb. 326. pl. 418. Patch. 21 Jac. B. R. Anon.

5. If the Plaintiff will read the Defendant's Answer in Chancery against him in Evidence, the Defendant may likewise take Advantage thereof; for all is Evidence, or none. 3 Salk. 154. Hill. 8 W. 3. B. R. per Holt Ch. J. Lynch v. Clerke.

6. An Answer in Chancery cannot be given in Evidence, for the Party who made it, or against a third Person not deriving any Title under him. 8 Mod. 181. Trin. 9 Geo. Hilliard v. Phaley & al.

(A b. 15.) Books.

1. Scrivener's Book to prove a Consideration paid (as a Tradesman's Book) is no Evidence for himself, but for any other it is; so a Tradesman's Book after his Death.—We have allowed a Burfer's Book of a College for Evidence, per Holt. Cumb. 249. Patch. 6 W. and M. in B. R. Smart v. Williams.


3. Shop
Evidence.

3. Shop-Book allowed as Evidence on Proof of the Servant's Habit that entered it, and that was used to make the Entries, (he being dead) and so. Proof was required of the Delivery of the Goods; And per Holt Ch. J. the Statute 7 Jac. 1. 12. says, a Shop-Book shall not be Evidence after the Year, &c. It is not of itself Evidence within the Year. 2 Salk. 690. pl. 2. Hill. 11 W. 3. Pitman v. Maddox in Middlesex. — 1 Salk. 285. Price v. Ld. Torrington.

4. Ordered that the Register-Books of a Dean and Chapter should be made use of at a Trial, for they are Publick Books. Comb. 247. Pach. 6 W. and M. in B. R.

So of Transfer Books of the E. India Company, &c. For they are the Books of a publick Company, and kept for publick Transitions in which the Publick are concerned, the Books are the Title of the Buyers of Stocks by Act of Parliament. 7 Mod. 129. Hill. 1 Ann. B. R. Gery v. Hopkins.

5. Evidence of Beer delivered was thus, the Draymen came every Night to the Clerk of the Brewhouse, and gave him Account of the Beer they had delivered out, to which the Draymen set their Hands, and that the Drayman was dead, but that his Hand was set to the Book; And that was held good Evidence of a Delivery. 1 Salk. 285. pl. 18. Trin. 2 Ann. Coram Holt Ch. J. at Nifi Prius at Guildhall. Price v. the Earl of Torrington.

6. Shop-Book of itself singly without more is not sufficient; Ut sup.


8. It is: Action be brought by a Shop-keeper for Money due on Sale of Goods, we never inorced him to produce his Books; but if very slender Evidence be with him, then if he will not produce his Books, it brings a great Bur on his Caufe. Per Cur. 6 Mod. 264. Mich. 3 Ann. B. R. in Case of Ward v. Apprice.


10. The Plaintiff exhibited his Bill in the Exchequer for Tithes of Houses in the Parish of St. Helen's in London, according to the Statute 37 H. 8. the Defendants in their Answer set forth a customary Payment in Lieu of all Tithes, and thereupon a Trial was directed at Law; and now the Plaintiff exhibited another Bill against the Parishioners, that the Leifer-Book in their Custody must be produced in Evidence at a Trial, which Book concerned him, as well as the Parish; and upon a Demurrer to this Bill, because it was only to provide himself of Supplemental Evidence after hearing the Cause, it was decreed, that the Demurrer was ill, because the Bill was to have Supplemental Evidence in the same Cause, and in the same Way of Proceeding, but collateral to it, viz. at a Trial at Law, besides these are common Evidences for both Parties, they are like Court-Rolls, which belong as well to the Tenants as to the Lord of the Manor, and therefore they may bring a Bill to have the Use of them. Hardr. 18c. Pach. 13 Car. 2. in Sacc. Langham v. Lawrence.

11. The Entry of the Names and Titles of Persons in a Church-Book, either for Marriages or Births, (though not forged) cannot be positive Evidence of the Marriage or Birth of any Persons, unless the Identity of the Persons by such Entries intended are fully proved, and also strengthened with Circumstances, as Cohabitation, the Allowance of the Persons themselves, &c. Draycot v. Draycott. Parl. Coll. n. 88.

A a 12. Surrey
Evidence.

12. Survey Books of a Manor, which are ancient, unless signed by the Tenants, or they appear to be made at a Court of Survey are no Evidence; they are else only private Memorials; Per Baron at Exon. Summer 1719.

13. But old Court-Rolls are Evidence. So Rentals, or Accounts of Money received by the Steward were allowed at Winchester and Dorchester Affiles, Lent 1719. coram King Ch. J.

14. But Rentals without Money received and paid upon them are nothing, but Payment makes them of Effect. Ibid.

15. A Corporation Book was offered in Evidence to prove at the Affiles a Member of the Corporation not in Possession and refused. 1 Salk. 288. pl. 26 Paich. 7 Ann. B. R. Wright v. Sharp.

16. The Books of a Corporation, containing their publick Acts are very proper Evidence, yet some Account ought to be given of them by whom kept, &c and a Book sent in 1707, during the Mayoralty of Sharpe, and Entries made therein by him, or by his Party in the Corporation of Elections and other publick Acts, but not produced by the Town-Clerk, &c were disallowed, and this was agreed per Cor. B. R. on Motion for a new Trial; it looks us if the Book was made for a particular Purpofe, there being no other Acts entered in it by the proper Officer, nor any Acts but of this Mayor only who has been adjudged no Mayor; Yet their common Books are Evidence in regard they contain a Register of their publick Transactions. Paich. 4 Geo. B. R. Cafe of Thetford.

17. In a Cafe between Dr. Bennet and Inhabitants of Cripple-gate, the Parish-Books were admitted as Evidence both for the Plaintiff and Defendants, as also Books belonging to the Dean and Chapter of St. Paul's, in which were entered Leases made by the Predecessors of the Leifor's Vicars of Cripple-gate. In this Cafe the Court of B. R. ordered Plaintiff should have an Inspection of the Parish Books, and Copies of what he pleased. Coram. Prat Ch. J. Hill. 5 Geo. apud Guild-hall.


7 Jac. 1. 12. None keeping a Shop-Book, his Executors or Administrators, shall be allowed to give in Evidence for Wares or Work above one Year before the Action brought, unless they have obtained a Bond or Bill for the Debt, or brought an Action thereupon within one Year after the Wares delivered, or Work done.

This Act shall not hold Place between Merchant and Merchant, Tradesmen and Tradesmen, or Merchant and Tradesman, for any Thing falling within the Comps of their mutual Trades and Merchandize.

Provided always, that this Act, or any Thing therein contained, shall not extend to any Intercommunication of Traffick, Merchandizing, Buying, Selling, or other Trading or Dealing for Wares delivered, or to be delivered, Money due, or Work done, to be done, between Merchant and Merchant, Merchant and Tradesman, or between Trade and Trade, for any Thing directly falling within the Circuit or Comps of their mutual Trades and Merchandize; but that for such Things only, and every of them shall be in Cafe as if this Act had never been made, any Thing therein contained to the Contrary notwithstanding.

18. At Guild-hall; In Execution for a Messuage in London, it was objected against the Title of the Plaintiff, that this was a Messuage above 40l. per Ann. Rent, and that the Custom of the City is, that there ought to be Warning given for the Space of Half a Year where the Messuage is of such a Rent, and by the Space of a Quarter of a Year, where it is under such a Rent; and an ancient Book in French was produced in which
Evidence.

which such Custom was registered; the which was allowed to prove the Caultom. Skim. 649. pl. 7. Trin. 8 W. 3. B. R. Tyley v. Seed.

19. A Shop Book was allowed as Evidence in Indebitatus Assumpsit on a Taylor's Bill, it being proved, that the Servant that writ the Book was dead, and this was his Hand, and be accouch'd to make the Entries, and no Proof was required of the Delivery of the Goods; and the Ch. J. said, it was as good Evidence as the Proof of a Witness's Hand to an Obligation, and held, that though 7 Jac. cap. 12. says, that a Shop-Book shall not be Evidence after the Year, &c. that it is not of itself Evidence within the Year. 2 Silk. 690. pl. 2. Hill. 11 W. 3. Putman v. Maddox.

20. The Book of any Merchant is no good Proof, nor may be allowed to be read touching any Debt due to him; but as to any Debt against himself it may be good enough. Keb. 27. in pl. 68. Pauch. 13 Car. 2. B. R. cited by Twifden, as the Case of [LLC R. LLC], and this was agreed by the Court.

21. Shop-Books have sometimes been allowed to be read as Evidence at the Hearing, and sometimes rejected. Toth. 91. Cary's Rep. 45.

22. In Evidence to a Jury, Twifden observed a Case between Lee and Lee, that the Book of any Merchant is no good Proof, nor may not be allowed to be read touching any Debt due to him, but of any Debt against himself it may be good enough; which was agreed per Cur. Keb. 27. pl. 78. Pauch. 13 Car. 2. B. R. Crouch v. Drury.

23. Where a Man is charged only by an Oath or Book, the same shall be his Discharge, especially where the Parties are dead which amounted to Length of Time, which was held a good Reason for allowing it; As where an Executor had kept a Book of Accounts, relating to her former Husband's Estate, and then she married R. and the same was kept and continued on; And R. going Governor Abroad, he went with him, as did the Servant that kept the Book of Account, and it was proved, that the Book was made up from Vouchers, and had paid good Part of the Monies, and the Witnesses believed all the Monies paid, and Plaintiff charged Defendant only by the Book; Decreed per Ld. Wright. Mich. 1701. Abr. Equ. Cakes. Darfon and Earl of Oxford v. Executors of Colonel Ruffell.

Where Books were lost in the Earthquake at Smirna, so that Plaintiff could charge Defendant only by Defendant's own Books, the same Books were admitted to be his Discharge. Abr. Equ. Cakes. 10. cited as then lately adjudged, in Cace of Mellifl v. Turner.

24. A printed Book being an Inventory of the Estate of late South-Sea Stock, which was directed to be made by an Act of Parliament, and to be left with one of the Barons of the Exchequer, and published by the Speaker was allowed as Evidence per King Chan. Trin. Vac. 1727.

25. Pauch 6 W. & M. B. R. it was said, per Curiam, that a Shop-Book is not Evidence for the Tradesman, but is good Evidence against him, or for a Stranger. The same Law of a Scrivener's Book for Money paid by him, or received to the Use of a Stranger, or the Book of a Barter of a Colledge, Ex Relatione Magellfi Place. Ld. Raym. Rep. 745. Anon.

(A. b. 16) Certificates.

1. In Debt against Skiff of Bucks, for the Reward given by the Statute 6 & 7 W. & M. to those that should discover and confesse Clippers and Canners. Note; Here Plaintiff had a Certificate my Lord Ch. J. Holt, who tried the Malefactor, of his having been convicted on the Plaintiff's Evidence, which being produced, though under my Lord's Hand, yet it was proved by my Lord's Clerk to the Jury. 12 Mod. 310. Mich. 11 W. 3. Bignoll v. Rogers.

2. The
Evidence.

2. The Certificates of Clerks of Affidavit or Peace is made sufficient Evidence of a Person’s being convicted and ordered for Transportation, so as to make him guilty of Felony without Benefit of Clergy for returning. 6 Geo. 23. S. 7.


1. An Answer in Chancery may be given in Evidence to a Jury against the Defendant himself, but not against other Parties; Per Ley Ch. 1. Chamberlain and Dodridge J. Godb. 326. pl. 413. Patch. 21 Jac. B. R. Anon.

2. A Bill in Equity in the Court of Wards was exhibited against two Defendants, one of them in his Answer claimed a Title, but the other did not, but set forth several Things in his Answer to make out the Title of the other Defendant, and in Action between other Parties concerning the same Title, it was moved that this Answer might be given in Evidence, but it was denied; but by Chamberlain J. his Answer might be given in Evidence against himself. 2 Roll. Rep. 311. Patch. 21 Jac. B. R. Beriford v. Philips.

3. Defendant’s Answer in an English Court is a good Evidence to be given to a Jury against Defendant himself, but not against others. Godb. 326. pl. 415. Patch. 21 Jac. B. R. Upon producing the Answer it was objected, that it could not be read, not being taken off the File, but only in the Custody of one of the six Clerks; but Powell J. said it might be read on swearing the fix Clerk, and to it he had always been held. 11 Mod. 275. pl. 24. Hill. 8 Ann. B. R. Riley v. Adams.

4. In Hilary Term, 22 Jac. a Commission issued to examine Witnesses returnable in Easter Term following; the Commissioners began to examine on Monday the 28th of March 1625. which was the Day after the Death of the King, and continued examining till Friday following, and then, and not before, they had Notice of the Demise of the King; yet it was adjudged that the Depositions should stand, especially in being in a Court of Equity, where the Proceedings are De Jure Naturali, and not by the strict Course of Law; And if any Witnesses examined on such Commission should be perjured, he might be punished by the Statute 5 Eliz. cap. 9. For being examined before Notice of the King’s Demise, what they did was legal. Cro. C. 97. pl. 24. Mich. 3 Car. C. B. Crew v. Vernon.

5. Payment by Decree in Chancery is not pleadable at Law, or to be given in Evidence there, and in such Case a Bill in Equity is the proper Remedy. 3 Chan. R. 3. 13 Car. 2. Jones v. Bradshaw.

6. By Twifden, decrretal Order under the Seal of the Exchequer, which recites all the Proceedings, or Exemplifications, &c. under the Great Seal hath been allowed to be read as Evidence; but by Aleyne not attlex it have the Bill and Answer, which Windham agreed. But by Twifden, where the Decree is produced only in Paper, then the Bill and Answer ought to be adjoined, but not so when the Decree is under Seal. And in C. B. Strif v. Strif, the Judges admitted a Decree to have been under Seal; and yet would not allow it without Bill and Answer. And by Aleyne, it is usual to disallow such Decrees, but an Exemplification of the Chancery, Per Cur. always recites the Bill and Answer. Moreton Serjeant said, he never did see the Seal of any Court denied to be given in Evidence. 1 Keb. 21. pl. 62. Patch. 13 Car. 2. B. R. Trowel v. Castle.

7. At
7. At hearing the Cause, the Plaintiff offered to give in Evidence a Bill formerly exhibited against him by the now Defendant; it was objected, that it ought not to be given in Evidence, unless it was proved that it was exhibited by the Order, Direction, and Privyty of the Defendant; for any Man may file a Bill in another's Name, and the Court was of the same Opinion. N. Ch. R. 102. 16 Car. 2. Woollet v. Roberts.

8. It was objected, that a Bill in Chancery is no Evidence, because it only contains Matter suggested perhaps by a Counsel or Solicitor, without the Privity of the Party; but per Cur. after Debate the Copy of the Bill against the same Party, it was admitted as Evidence, for they said they would not intend that it was preferred without the Privyty of the Party, and if it was, he had good Remedy against them that so preferred it by Action Jus Cafes, but they said that this Evidence is not so valid as a Letter of the Party and Note; and it was not urged, that the Defendant had answered in Chancery, and they had proceeded upon it, which, as it seems to me, is the better Reason why it shall be allowed to be Evidence, for the Prosecution of the Plaintiff takes away that Objection, that it might have been preferred without his Privyty by a Stranger. And the Sittings after the Term, at Guildhall London in C. B. where I was a Counsel, when a Bill in Chancery was offered as Evidence, Bridgman Ch. J. demanded if there had been any Proceedings upon it, otherwise he would not allow it; and because the Answer to the Bill, and other Proceedings upon it were shewn, it was allowed for Evidence. Sid. 221. pl. 8. Mich. 16 Car. 2. B. R. in Cafe of Snow v. Phillips.

9. A Bill in another Cause is no Evidence against the Plaintiff in it, unless it be proved to be exhibited with his Privity. Chan. Cases 64. Hill. 16 & 17 Car. 2. Woollet v. Roberts.

10. In Evidence in a Trial at Bar by Leafe of one Wright, an Answer of one Lewis Mordant surviving Trustee, under whom the Plaintiff claimed, was offered, but being after a Conveyance made by him the Court refused; but had it been before, per Windham and Moreton, it would be good against all claiming under him; which Twifden denied, because an Answer doth not discover the whole Truth, and therefore shall be admitted only against the Party himself that made it, and not of one Defendant against another, much less against a Stranger. 2 Keb. 424. pl. 57. Mich. 26 Car. 2. B. R. Mills v. Barnardiston.

11. Upon Trial of a Title of Land, a Bill in Chancery was given in Evidence against the Complainant, tho' it was held to be of flight Moment. Vent. 66. Pacli 22 Car. 2. B. R. Mews v. Mews.


12. It was said that a voluntary Affidavit before a Master in Chancery cannot be given in Evidence at a Trial. Stv. 446. Pacli. 1655. Anon.

13. The Defendant obtained an Injunction in this Court; the Defendant moves to dissolve it, and obtained an Order to dissolve it; before the Order was drawn up, the Defendant arrests the Plaintiff; and it was held clearly that this was a Conempt to the Court, and the Defendant was ordered to be committed; for it is no Order till it is drawn up and passed by the Register, for the Register's Minutes are only a Warrant for an Order, and no Order. 2 Freem. Rep. 46. pl. 51. Mich. 1679. in Curia Canc. Anon.

15. An Answer in Chancery is Evidence of a Deed against all that claim under that Person, and Reputation of claiming so is sufficient to put a Party upon thewng another Title. Ld. Raym. Rep. 311. Hill. 9 Will. 3. the Earl of Suffolk v. Temple.

16. Answer
Evidence.

At a Trial, if an Answer in Chancery be given Evidence, it shall not be admitted as Evidence at Common Law, unless proved to be sworn by him against whom it is produced. It ought to appear that Part of it which is given in Evidence be pertinent to the Matter contained in the Bill, for else it shall be accounted void and superfluous; per Holt Ch. 1 at Guildhall, Cumb. 473. Pach. 10 W. 3. B. R. Kington v. Read.

17. The Plaintiff proving his Pedigree would have given in Evidence the Answer of an Infant by his Guardian to a Bill in Chancery, but it was held it could not be read. Cumb. 156. Mich. 1 W. & M. Eccleton v. Speke.

18. A Man makes an Answer in Chancery prejudicial to his Title, and after conveys away his Estate, this Answer cannot be read against the Absence by any claiming under Alienor. 6 Mod. 44. Trin. 2 Ann. B. R. Ford v. Ld. Grey.

19. An Order in Chancery is not to be given in Evidence, without producing a Copy of the Bill on which it was made. 6 Mod. 149. Pach. 44. Ann. B. R. Turner v. Nurse.

20. A Decree between other Parties may be read as a Precedent, though not as Evidence. January 23d, 1717. MSS. Tab. Austin v. Nichols.

(A. b. 18.) Chirograph of a Fine.


2. Chirograph of a Fine is of so high a Nature that no Parol Evidence shall be allowed to falsify it; Admitted Arg. 10 Mod. 42. Mich. 13 Ann. B. R. in Lord Say and Seal's Cafe.

(A. b. 19.) Circumstances.

1. De Morte Viri, in Cafe of Dower brought by the Wife after the Husband had been absent 7 Years beyond Sea, may be by Circumstances; and in such Cases, Qui melius probat, melius habet. D. 185. a. Pl. 68. Pach. 2 Eliz. Thorn alias Thorp v. Rolf.

2. A Man has 2 Manors of D. and levies a Fine of the Manor of D. Circumstances may be given in Evidence to prove what Manor he intends. Trial (Y. c. 3) Pl. 11. cites 6, 7 E. 685. per Montague, and 12 H. 7. 6.

3. Circumstantial Evidence ought never to be admitted where better may be had, ex Natura Ret, because Circumstances are fallible and doubtful, and it is upon this reason that a Copy of a Record is good, because one cannot have the Record itself; but a Copy of a Copy will not do. Arg. 12 Mod. 500. Pach. 13 W. 3. Dillon v. Crawley.

(A. b. 20.) Collateral Warranty.

1. Where a Collateral Warranty binds, this may well be given in Evidence; for although it does not give a Right, yet in Law this shall bar and bind a Right. T. per P. 157. cites Lib. 10. 97.

2. A Col-
Evidence.

Smith v. Tindall.

(A. b. 21.) Comparison of Hands.

1. In Debt upon a Bond upon Issue of Non est factum, if Plaintiff prove the Witnesses deponent, or that he has made strict Enquiry after them, and cannot hear of them, he shall be let in to prove their Hands; Per Holt, Ch. J. at Nili Pris, 12 Mod. 607. Mich. 15 W. 3. Annon.

2. A Parish's Book between 1645 & 1654 was produced, to prove a Modus in the Parish of H. one Saunders Reefer, and to prove that this was his Hand-writing and his Name to it. One P. said he had examined the Parishes-Books of that Kind, where Saunders's Name was as Reefer, and therefore believed the Name on the Book was the Writing of Saunders; this was allowed to be read, because the Parish-Books was not in the Plaintiff's Power to produce, and be also proved that one R. in Diocese with Plaintiff had discovered to him, that he had those Papers from the Hands of one S. who was Saunders's Daughter, and saw that delivered to Plaintiff, and R. was dead. Per Lord Chanc. 6 Dec. 1736. in Cane.

(A. b. 22.) Condemnation of Goods seised.

1. Trover for a Parcel of Brandy, coram Baron Price at Bodmin, T. Vac. 1716. an Information in the Name of the Attorney-General in the Exchequer, and an Acquittal thereupon, and a Judgment were given in Evidence the Brandy being seised, &c. to which the other Side objected, but the Judge refused to admit any Evidence against this Determination, or to let the Parties in to contest the Fault over again, which had been tried on the Information. So if Goods are condemned in the Exchequer the Party shall never try this Matter over again in a Collateral Action.

2. If Goods are condemned by the Court and proclaimed as forfeited, the Property is altered, so as no Action of Trespass or Trover will lie by the Proprietor against the Person that seizeth them; adjudged by the whole Court. Raym. 336. Mich. 31 Car. 2. in Seaco. Ekins v. Smith.

(A. b. 23.) Confession of one against another.

1. The Question was, if the Confession of an Under-Sheriff of an Esca- pe be any Evidence against the High-Sheriff; and adjudged that it is, for though the Sheriff is liable, yet the Under-Sheriff gives him a Bond to save him harmless, and therefore it will all fall upon him. And therefore his Confession is good Evidence, because in Effect it charges himself. Ed. Raym. Rep. 190. Estt. 9. Will. 3. Yabley v. Doble.

2. Confession of Delivery of Goods in the Court of Requests may be given in Evidence against the Defendant at Law. Mar. 103. pl. 175.

3. In an Information for publishing a Libel, the Defendants own Confession was given in Evidence against him, but per Holt Ch. J. if there was no other Evidence against him but his own Confession the whole must be taken, and not so much of it as would serve to convict him. 5 Mod. 167. Hill. 7 W. 3. King v. Pain.

All these Condemnations have relation to the Seizure to try the Property, so that an Action at Law brought after the Seizure, and before the Condemnation, will be the same as after the Condemnation. Per King Ch. J. at Winchester, Lent 1719.

3. If Goods are condemned by the Court and proclaimed as forfeited, the Property is altered, so as no Action of Trespass or Trover will lie by the Proprietor against the Person that seizeth them; adjudged by the whole Court. Raym. 336. Mich. 31 Car. 2. in Seaco. Ekins v. Smith.

(A. b. 23.) Confession of one against another.

1. The Question was, if the Confession of an Under-Sheriff of an Esca- pe be any Evidence against the High-Sheriff; and adjudged that it is, for though the Sheriff is liable, yet the Under-Sheriff gives him a Bond to save him harmless, and therefore it will all fall upon him. And therefore his Confession is good Evidence, because in Effect it charges himself. Ed. Raym. Rep. 190. Estt. 9. Will. 3. Yabley v. Doble.

2. Confession of Delivery of Goods in the Court of Requests may be given in Evidence against the Defendant at Law. Mar. 103. pl. 175.

3. In an Information for publishing a Libel, the Defendants own Confession was given in Evidence against him, but per Holt Ch. J. if there was no other Evidence against him but his own Confession the whole must be taken, and not so much of it as would serve to convict him. 5 Mod. 167. Hill. 7 W. 3. King v. Pain.

at the same Time, that he had paid it, this Confession shall be valid as to the Payment, as well as to his having owed it. Per Hale Ch. J. and so is the common Practice. Try. per Pais. 299.
Evidence.

4. Confession is the worst sort of Evidence that is, if there be no Proof of a Transafion or Dealing, or at least a Probability of Dealing, between them as in the principal Case there was, the one being a Sailor, the other a Master of a Ship. Per Holt. 7 Mod. 42 Mich 1 Ann. B. R. Anon.

5. A Point was referred at the Sittings of Niti Prius, whether the Proof of the Indorfer of a Promissory-Note his Acknowledgment that the Name indorsed on the said Note was his Hand-writting, be sufficient to prove the Indorsement in an Action brought by Plaintiff as Indorfer against Defendant as Drawer; the Objection was, that no Person's Confession but the Defendant's himself can be Evidence, and the Indorfer's Hand must be proved. The Objection was held good; and the Verdict, as to the second Promiss in the Declaration, was ordered to be vacated. Barnes's Notes in C. B. 314, 315. Mich 6 Geo. 2. Hamings v. Robinson.

6. The Examination of the Prisoner himself (if not on Oath) may be read as Evidence against him; but the Examination of others (though on Oath) ought not to be read if they can be produced, Viva Voce; St. Tr. 1 Vol. 169. 750.—2 Vol. 275.

7. In Sayer's Case Mich. 9 Geo. in a Case of High-Treason Mr. Stanley an under Secretary of State gave Evidence of L's Confessions, upon his Examination before the Council, which though taken in Writing, yet the Writing was not read.

8. Where there is any Confession or Trust between the Parties, the Con'Neill of one in an Answer, &c. might be given in Evidence against the other, though it might be a Question if conclusive or not. Per Ld. Chan. 8 Mod. 180. Trin. 9 Geo. Hilliard v. Phaley.

(A. b. 24) Conspiracy.

1. In Conspiracy for inducing him of Felony, &c. the Plaintiff was put to prove the Indictment was formed in Evidence a true Copy, then he was put to prove what the Witnes's swore to the Jurors, who did procure them to swear and give such Evidence; and Proof was, that one W. gave the Evidence to the Jury of Life and Death, that the Plaintiff stole the Goods, &c. but the Witnes's now in Court swore, that his Oath was the Plaintiff took them, but not that he stole them; it was found for the Defendant, Ur. credo. Clayt. 126. pl. 224. March. 1647. B. R. Burnley's Cafe.

2. Holt Ch. J. expressly declared, that these kinds of Actions are not to be encouraged, but that the Judge before whom any of them are tried ought to hold the Plaintiff to a Proof of express Malice in the Defendant in his Prosecution by way of Indictment, for if it does not appear, that the Prosecution was grounded on Malice, the Action is not maintainable, but the Plaintiff must be nonsuit. Carth. 417. Trin. 9 W.

3. B. R. in Case of Savil v. Roberts.

12 Mod. 211 S. C. & S. P. by Holt Ch. J. in delivering the Opinion of the Court. —
1 Salk. 15; 15. pl. 5. 5 Salk. 16. S. C. accordingly —

2. In an Action of Conspiracy for indicting the Plaintiff of Felony, and the Defendant in his Defence did prove he had Goods stolen, and therefore did prefer an Indictment which was found Inoramus, and then it was proved he did prefer a second Indictment, after he had Notice the Goods were taken by another and returned to the Plaintiff, and for this the Jury found him guilty, and that Malice was in this Prosecution, which is the chief Cause to maintain this Action; and moreover it was proved, that the Defendant had brought Actions at Law, which was a civil Proceeding for the fame Goods supposed to be stolen, which was urged to shew the malicious Prosecution; but for this, the Judge held this of itself would
Evidence.

not maintain this Action, for the Party whose Goods are stolen, may proceed both ways without Malice: and also it was held a second Indictment may be preferred upon better Evidence, without making the Prosecutor liable to this Action; so Note it was the Notice of the Matter abovefaid only did maintain this Action; but see by me how the Defendant was bound to believe such Notice, &c. Clayt. 83, 86. pl. 144. July, 16 Car. Johnson v. Stanclif.

3. In Information for Conspiracy and Attempt to rob Sr. Robert Gaire, and binding themselves by Oath to execute the same, and lying in wait, &c. they as to the Oath was out of the County, viz. at the Devil Tavern, which is in London, wherefore not regarded, no Overt Act, or lying in wait was proved, without which, per Curiam, the Information will not I.e., as a Fact, and Verdict for the Defendant, there being no certain Appointment of Time, Place or Person, &c. 3 Keb. 799. pl. 58. Trin. 29 Car. 2. B. R. the King v. Parkhurst and Eling.

2. If two or three Persons meet together, and discourse and conspire to act one another falsely of an Offence, it is of itself an overt Act, and is indictable. Per Holt, Ch J. but per Powell J. that to make a Meeting to consult and conspire criminal, they ought to come to some Resolution. 11 Mod. 55. Pach. 4 Ann. B. R. in Cafe of Queen v. Bafs.

(A. b. 25) Conflat.

1. If a Man has lost his Letters-Patents, he may have new Letters-Patents out of the Chancery, it he shews to the Chancellor, that he has lost them, Per Either quere inde, for it seems, that he shall not have but a Conflat, & Non Negatur ibidem. But admitted upon the Argument, whether he shews the Letters-Patents of the Gift of the King, or nor, but that he has lost his Letters-Patents, and has a new Patent, that it shall be intended a Conflat, as it seems to me, that in this Cafe it shall serve him to juez or plead, as well as the first Patent. Br. Parentes. pl. 58. cites 22 H. 7. 12, 13.

(A. b. 26) Copies.

1. In Ejeçtion, the Jury found that the Lesnor of the Plaintiff had released all Right in the Land to J. S. but they found, that the Release itself was not thrown to them, but a Copy thereof. Per tot. Cur. This Release may well be found thus to defend a Possession. Cro. E. 863. pl. 41. Mich. 43 & 44 Eliz. C. B. Brome v. Car.

2. There was a Covenant between the Parties to levy a Fine of Lands to T. upon Condition, that if he did not pay so much Money by such a Day, that it should be to the Use of C. and his Heirs; the Fine was levied, and before the Day of Payment, C. released to T. all his Right in the Land, and all Demands, but afterwards supposing that the Release he made before the Condition broken was not a sufficient Discharge of the future Ufe, he brought an Ejeçtion, and at the Trial a Copy of this Release was produced in Evidence, and all the Court held, that this Release might well be produced in this Manner, it being to defend the Possession. Cro. Eliz. 863. pl. 41. Mich. 43 & 44 Eliz. C. B. Broom v. Car.

3. If Parties have Matter of Evidence by Records of this Court, they ought to produce the Records themselves; Copies of them are not allowable; Rulled per Curiam in the Exchequer. Lane 97. Hill. 8 Jac. Smith v. Jennings.

4. This Court ordered Copies of Depositions and other Records to be recorded and ufed, and to be authentick, and this was with the Aff
Evidence.

A Copy is not to be admitted as Evidence, but where it appears, that the Party producing it could not produce the Original, its Mod. 74. Hill. 10 Ann. B. R. the Queen v. Sutton. — Fin. R. 302. The same as to a Deed, to lead the Use of a Fine, and decreed a Copy to be good Evidence at Law, and in Equity against Defendant, his Heirs, and Assigns, and all claiming under him, or his Father, since the Year 1653, that his Father sold the Lands, and paid the Fine to the Plaintiff. Norwich v. Sanders.

6. Where the Defendant has the Deed in his own Hands, which concerns the Land in Question, and will not produce it, in such Case, the Copy thereof shall be permitted to be given in Evidence, and so it was, and the Plaintiff swore, it was once in his Hand, and this was a true Copy of the Deed, and himself did examine it. Clayt. 15. pl. 24. Mar. 1633. before Vernon Judge of Aisle. Anon.

8. Plaintiff having only a Copy of a Deed of Encumbrance, under which the Plaintiff, the Original being lost, and the Defendant having a Counterpart, the Plaintiff prayed the Copy might be compared with the Counterpart, and if it agreed, that the same might be allowed in pleading as a good Deed, sealed and delivered, referred to a Master to settle the same. N. Ch. R. 82. 13 Car. 2. Griffin v. Boynton.

9. Plaintiff claimed Lands by a Will, which was proved, the Original was taken out of the Prerogative Office; Decreed that the Copy of the Probate of the Will out of the Register's Book in the Prerogative Office should be admitted in Evidence at Law at any Trial, which should be had concerning the Title of the said Lands, as the true original Will. N. Ch. R. 82. 13 Car. 2. Georges v. Foster.

10. Copy of a Deed pretended to be bad from the Defendant's Counsel without seeing the very Deed, or comparing it with the Copy not allowed. 1 Mod. 94. pl. 3. Pach. 24 Car. 2. B. R. Lord. Peterborough v. Mordant.

11. He that takes out a Copy of Part of a Record must at least take out so much as concerns the Matter in Question, or else the Court will not permit it to be read. T. per Puis, 166. 3d Edition.

12. A Copy of a Record is not true, unless it be transcribed in the same Language, and therefore a Translation shall not be given in Evidence, as where a Record is in Latin, and the Copy in English. T. per Puis, 228. 3d Edition.

13. Part of a long Patent was copied out, and sworn true, and it was so much of it as did concern the Thing in Question, and the Counsel of the other Part did oppose this to be Evidence, and the Judge did in the End reject its being shewn by Parcels; for that there may be Proviso's, &c. in the Patent, and the Witness could not swear be did read the Roll throughout of this Patent, so that no more was in it than now shewn. Quod nota, if he could, it seems it had been admitted. Clayt. 142. pl. 259. March 1650. Nelthrop v. Johnson.

15. A Copy of a Record in the Lord's House would not be admitted to be given in Evidence at Langhorn's Trial. cites Lang. Try. 44.

17. In Evidence to a Jury, the Recovery was proved by Copy of the Roll under the Steward's Hand, the Roll being lost 3 Car. but without Proof there was such a Roll, the Court refused to allow it, although Possession had gone along with it according to the Recovery; and although this be Copyhold, whereof the Rolls are not in the Custody of the Party,
Evidence.

Party, but of the Lord, and no Records but all done at one Court, and the Copy found but of late, without other concurrent Evidence of a Court then held; but per Cur. such a Copy would be good Evidence of the Copyholders Estate, but not of such a Recovery being a judicial Act, but this Recovery being recited in a Roll of Court within four Years after, the Court admitted it. 1 Keb. 567, pl. 14. Mich. 15 Car. 2. B.R. Snow v. Cutler and Stanley.

18. A Copy of the Counterpart of a Lease being lost, was given and allowed in Evidence. T. per Pais 292, cites Mich. 15 Car. 2. Strode v. Dr. Holt. B. R.

19. A printed Copy of an Act of Parliament is not to be given in Evidence if not examined by the Rolls, and sworn to be a true Copy. Try. per Pais 232.

A Copy of an Act of Parliament is no Evidence, unless the Act had been before allowed of, and so made a Record of this Court, for otherwise nothing shall be allowed of as a sufficient Evidence of the Act, but the Exemplification of it under the Great Seal; and the Reason is, because the Court is Party which cannot pray Oyer as the Party m.v. so the Court would be in a worse Condition than a common Person, if they were to receive for Evidence a Copy offered, Arg. cites 35 H. 6. 14, and this was allowed to be so, per Cur. 10 Mod. 126. Hill. 11 Ann. B. R. University of Cambridge's Cafe.


21. Copy of a Lease which the Lord had in his Hands, whereby the Tenant had Power to make Leases, is good Evidence without swearing it a true Copy; cited by Windham, Keb. 720. pl. 50. Patch. 16 Car. 2. B. R. in the Cafe of Lee v. Bootheby, as the Cafe of Sir John Rogers.

22. So is Copy of Court-Roll under the Steward's Hand, who was Counsel for the Lord Plaintiff, and was admitted good for the Copyholder; but contra of short Notes by Way of Breviar, which the Court agreed. Ibid.

23. If upon Evidence it be proved that the adverse Party has the Deed, the Court will admit Copies to be given in Evidence. Mod. 266. Trin. 29 Car. 2. C. B. in Cafe of Baffett v. Baffett.

24. A sworn Copy of a Record may be given in Evidence, but the surest Way is to have it exemplified under the Great Seal, or at least the Seal of the Court. 10. Rep. 92. 8. Hill. 8 Jac. in Leyfield's Cafe.

25. Copies of Court-Rolls examined by the Steward allowed to be good Evidence in Ejectment, without bringing the Rolls themselves into Court. Cumb 138. Mich. 1 W. & M. in B. R.

26. Copy of an Original is Evidence wherever the Original is Evidence, if prov'd a true Copy; but the Copy of the Probate of a Will is no Evidence, because that is but a Copy of a Copy. Per Holt Cumb. 337. Trin. 7 W. 3. B. R. The King v. Haines.

27. Copy of short Note of a Judgment in an inferior Court allowed by Hale at Huntington Affizts as good Evidence, though the Judgment was not entered upon Record. Per Holt. Cumb 337. Trin. 7 W. 3. B. R. The King v. Haines.

28. Copies of Court-Rolls, or Proceedings in Ecclesiastical Courts, &c. are good Evidence; it is usual for inferior Courts not to draw up their Records, but only short Notes, and Copies of those short Notes being pubick Things are good Evidence, otherwife of private Things; for Copies of Rent-Rolls are no Evidence, but the Original must be produced, Per Holt Ch. J. Cumb. 337. Trin. 7 W. 3. B. R. The King v. Haines.

29. The
Evidence.

29. The Question being proposed in this Case to the Justices of C. B. whether the Copy of a Bank-Bill remaining upon the File in the Bank of England was good Evidence or not? They all agreed that it was, and that it was like the Copy of an Involment of a Parish-Register, the Bank being a Publick Body established by Act of Parliament for publick Purposes. 3 Salk. 155. pl. 8. Pach 9 Will. 3. Man v. Cary.

30. In this Case it was held per Holt Ch. J. that the Copy of a Probate of a Will is good Evidence where the Will itself is of Chattels; for there the Probate is an Original taken by Authority, and of a publick Nature; otherwise, where the Will is of Things in the Realty, because In such Case the Ecclesiastical Courts have no Authority to take Probates, therefore such Probate is but a Copy, and a Copy of it is no more than a Copy of a Copy. 3 Salk. 154. pl. 7. Hill. 8 Will. 3. B. R. Hoe v. Nelthorpe.

31. The Plaintiff being a Purchaser prays Writings and a Partition, the Defendant inferred there was an Entail; the Court gave the Plaintiff a Year to try the Title. In Ejectment a Copy of the Deed of Entail was produced, but the Original was lost, and not proved to be executed, and to Verdict for the Plaintiff. On the Coming on of the Cause on the Equity referred, the Defendant inferred that he ought not to be bound by one Trial in a Matter of Right of Inheritance; Sed non allocatur, a Decree only for a Partition, Tamen quere. Trin. 1691. 2 Vern. R. 232. Bllman v. Brown.

32. In an Action for Work done, &c, the Plaintiff gave in Evidence, to charge the Defendant, a Copy of a Bill delivered to the Defendant, and copied by the Order of the Defendant, and divers Exceptions were taken by the Defendant to the Bill, filed. First, the Quantity of the Work done, and the others were Marks against diverse Parcels, filed. O. and N. intending by it that these Parcels were wrought for others, and not for the Defendant, and other Exceptions there were to the Price, and he ordered the Servant to indorse upon the Backside the Exceptions to the Quantity and Price, but to omit the Marks O. and N. and it was ruled by Holt Ch. J. upon Evidence, first, That this Copy of a Bill delivered was Evidence, as a Copy of the Bill, and not a Copy of a Copy, and the Bill delivered is an Original, as well as the Books. 2dly, That the Acceptance of a Bill delivered without Objection but to some Particulars, is an Admittance of the Refuse to be true. 3dly. The ordering a Copy of the Bill indorsed ut supers, omitting the Marks O. and N. and the Copy with the Exceptions being ordered to be delivered to the Plaintiff, it is a Waiving of the Exceptions signified by those Marks. 4thly. Tho’ it was objected that this Evidence is a Confession, and therefore it ought to be taken together; yet per Holt Ch. J. they are not Part of a Confession (which ought to be of the same Thing) but a Cavil or Objection as to the Price or Quantity, &c. Skin. 672. Mich. 8 W. 3. B. R. Worrall v. Holder.

33. Copy of a Will examined at the Prerogative-Office allowed in Evidence, tho’ it is but a Copy of a Copy, for the Entry-in the Entry-Books is the Original quod hoc (otherwife to make Title to Lands by Devise) to whom is Executor. Cumb. 248. Palce 6 W. & M. in B. R. Smart v. Williams.

This is but a Copy, and therefore it ought to be produced, and a Copy out of the Book will not suffice; but a Copy of a Probate of a Will where the Court has Jurisdiction is good, because the Probate itself in such Case is an original Act of the Court. Skin. 584. Trin. 7 W. 3. B. R. in Case of the King v. Haines.

34. Though
Evidence.

34. Though an old Manuscript found among the Evidences of a Family may be Evidence, because an Original, yet a Copy would not, because it is liable to the Miftake of the Transcriber; Per Holt Ch. J. Skin. 623. pl. 17. Mich. 7 W. 3. B. R. in Cafe of Steynet and the Burgeffes of Droitw. 
35. On Evidence the Court said, that a Copy of a Court-Roll of a Manor is good Evidence; for where the Original is Evidence, there a Copy is; Copy of a Private is good Evidence. 12 Mod. 24 Pagch. 4 W. & M. Trial on the Custom of the Manor of Bray. 
36. The Copy of a Town-Clerk's Book was not allowed Evidence to charge a Man in a Criminal Matter. Skin. 584. Trin. 7 W. 3. B. R. The King v. Haines. 
37. Copy of a Record is good, because one cannot have the Record itself; but a Copy of a Copy will not. Arg. 12 Mod. 502. Pagch. 13 W. 3. in Cafe of Dillon v. Crawley. 
40. Copy of a Will examined at the Prerogative Office is not to be allowed as Evidence to make Title to Lands by Devise, yet where it concerned only a Mortgage Term it was allowed (tho' it was opposed as being only a Copy of a Copy) for the Entry in their Ecclesiastical Books is the Original Quod bon. Comb. 248. Pagch. 5 W. & M. in B. R. Smart v. Williams. 
41. Wherever an Original is of a publick Nature, and would be Evidence it produced, an immediate sworn Copy thereof will be Evidence; Per Holt Ch. J. 3 Salk. 154. pl. 6. Linch v. Clerk. 
42. As the Copy of a Bargain and Sale, or of a Deed inrolled of a Church-Register, &c. Ibid. 
43. But where an Original is of a private Nature, a Copy is not Evidence, unless the Original be burnt or lost. Ibid. 
44. A Copy of an Entry in the Books of the Office of Franchise was disallowed to be Evidence, wherefore the Book itself was produced. Ld. Raym. Rep. 745. ruled by Treby Ch. J. at Guild-hall. Pagch. 10 W. 3. Selby v Harris. 
45. It was ruled by Holt Ch. J. in B. R. Mich. 10 W. 3. that if a Man defers a Thing that is designed to be Evidence against himself, a small Matter will supply it; And therefore the Defendant having swore his own Note signed by him, a Copy sworn was admitted to be good Evidence to prove it. Ld. Raym Rep. 731. Anon. 
46. A Copy of a Fine or Recovery is good Evidence, so as it be sworn to be a true Copy, and examined; Per Holt Ch. J. 3 Salk. 154. pl. 6. Hill. 8 W. 3. B. R. Lynch v. Clarke. 
47. That wherever an Original is of a publick Nature, and would be Evidence, if produced, an immediate sworn Copy thereof will be Evidence, as the Copy of a Bargain and Sale, or of a Deed inrolled, of a Church-Register, &c. but where an Original is of a private Nature, a Copy is not Evidence, unless the Original is lost or burnt; Per Holt Ch. J. 3 Salk. 154. pl. 6. Hill 8 W. 3. B. R. Lynch v. Clarke. 
48. Copies of Affidavits proved to be examined by the Originals on the File, and produced in Evidence was allowed (these Affidavits taken before Commissioners in the County) It was objected, that this was no Evidence, unless the Commissioner who gave the Oath was present to prove that the Defendants were the same Persons who made Affidavits before him, Sed Non allocatur; coram Justice Eyre in Oxford-Circuit, and adjourned to B. R. pro Opinione; Pagch. 4 W. & M. On Indictment.
Evidence.

ment of Perjury; and per tot. Curiam, the Copies are sufficient Evidence. Carth. 220, the King v. James.

49. A Copy of an Original is Evidence wherefore the Original is Evidence, i.e. if proved a true Copy; but the Copy of the Probate of a Will in the Ecclesiastical Court is no Evidence, because that is but a Copy of a Copy. Hale at Huntington added allowed a Copy of a short Note of a Judgment in an Inferior Court as good Evidence, though the Judgment was not entered upon Record. Matters of Evidence arise from constant Usage, as well as from what is strictly legal; Copies of Court Rolls, or Proceedings in Ecclesiastical Courts, &c. are good Evidence; we know it is usual for Inferior Courts not to draw up their Records, but only short Notes, and Copies of these short Notes being publick Things are good Evidence; but otherwise of private Things, for Copies of Rent-Rolls are no Evidence, but the Original must be produced. Comb. 337. Trin. 7 W. 3. B. R. the King v. Hains, Alderman of Worchester.

50. In a Trial at Bar concerning a Lease, and when the same was to take Effect in Possession, a Copy of a Survey taken in the late Times in 1647, by Virtue of a Commission granted by the Powers then in being was admitted as Evidence; and was then said, that those Surveys were taken with great Care, and had been often admitted in Evidence; But the Reason why the Copy was admitted here was, because it was proved that the Original was removed from Gurney-bowle to St. Faith's under St. Paul's, and were there burnt in the great Fire; And Northy showed me a Cafe in Mich. 25 Car. 2. B. R. between Berry and Halfed, where such a Survey was admitted in Evidence, by Hale Ch. J. Freem. Rep. 509. pl. 684. Mich. 1699. Underhill v. Durham.

51. Holt Ch. J. said, that at Huntington before Hale Ch. J. the Book of a Town Clerk was read; and if the Book may be read, a Copy of the Book may be read, tor in all Cases where the Original is Evidence, the Copy is Evidence; but if the Original be a Copy, there a Copy of such Original may not be read, as a Book for Probate of a Will of Land. Skin. 584. Trin. 7 W. 3. B. R. in Cafe of the King v. Hains.

52. A Copy of the Book at Doctors Commons was produced in Evidence to prove such a one to be Executor; it was objected, that it was no Evidence, because it was but a Copy of a Copy, and the Book ought to be produced, or the Will with the Probate, or a Copy of the Probate, Non allocat:; For per Cur. it being a Will of Goods, the Act of the Court is the Original, and the Will is proved by the Act of the Court before that it is under the Seal with the Probate, and fo a Copy of the Act of the Court is sufficient; but if it was a Will for Lands, there a Copy would not be sufficient; but they ought to have the Entry, and Book itself there; Per Holt Ch. J. Skin. 431. Paich. 6 W. & M. B. R. cites it as in a Trial at Bar the same Term in Andrew Newport's Cafe.

53. Mich. 8 W. 3. C. B. In Ejectment, a Motion was made for a new Trial, because the Party against whom the Verdict was given, produced in Evidence a Fine, and the Copy of the Involvement of a Deed, which led the Uses of it; And Rokeby J. before whom it was tried, refused to admit this Copy of the Involvement to be Evidence; And resolved in C. B. that such Copy is Evidence, prima facie, but the Party shall not be slaughtered by it, as by the Record, but may controvert it, as forged, &c. because Involvement at Common Law, and that for some Purpose; and they relied upon Mr. Kendall's Cafe. (See it now reported, 3 Lev. 387.) And ot this Opinion, Powel J. was generally; But Treby Ch. J. doubted, whether such Evidence generally speaking was Evidence; But here he agreed with the other Justices, viz. Powel and Nevill; because it was only to lead the Uses of the Fine, which might be done by Parol. Ld. Raym. Rep. 746. to W. 3. Taylor v. Jones.
Evidence.

54. Copy of a Note given by A. to B. which being left with C. the Copy was taken by C. who is since dead. — According to the Copy it seems, that under the Note, the Defendant B. had subscribed an Acknowledgment, that nothing was really due; this though not proved to be a true Copy (C. being dead, and the Note in the Hands of B.) and though B. had sworn in his Answer, that there was no such Acknowledgment subscribed, was allowed to be heard as Evidence being the Hand-writing of C. and on producing the Note which was on stamped Paper, it appeared, that the Bottom was torn off; Per Cowper Ch. 2 Vern. 603. pl. 54r. Hill. 1707. Winne v. Lloyd.

55. A Deed made by Robert Spencer and Elizabeth his Wife to declare the Uses of a Fine levied by them of the Wife's Inheritance being lost, but having been inrolled for safe Custody, upon the first Hearing of these Causes, it being objected, that the Convenance was not a Bargain and Sale, and so did not operate by the Inrollment; and that therefore the Copy of the Inrollment not to be allowed as Evidence; and the Court seemed to be of that Opinion. But an Illue at Law being directed to try whether the Deed to lead the Uses of the Fine was duly executed by Mr. Spencer and his Wife, the Lt. Ch. J. allowed the Copy of the Inrollment to be given in Evidence, and a Scrivener also who drew the Deed being examined, a Verdict passed for the Plaintiff, that the Deed was duly executed. 2 Vern. 591. pl. 529. Mich. 1707. Combs v. Dowell, and Squire v. Dowell.

56. A Copy of a Roll of Court signed by the Officer of the Court is no Evidence in any other Court, unless the Judge of the Court for his Hand to it himself, but at Nisi Prius the Hand of the Officer is enough because it is the same Court. 10 Mod. 169. Hill. 1 Ann. B. R. Stennil v. Brown.

57. Warrant to a Confiable to distress Goods by Virtue of an Act of Parliament; he makes a Diffires and returns the Goods to the Offender but keeps the Warrant. Resolved that a Copy of the Warrant in this Case will be good Evidence. 6 Mod. 83 Mich. 2 Ann. B. R. Morley v. Staker.

58. The Copy of the Writ, and the Return thereof into the Crown-Office is Evidence enough of the safe Return of a Mandamus to be the Mayor's. 6 Mod. 152. Patch. 3 Ann. B. R. Queen v. Chapman Mayor of Bath.

59. A Copy of a Deed leading the Uses of a Fine, and enrolled for safe Custody only, allowed to be read as Evidence as a Trial at Law. 2 Vern. pl. 529. Mich. 1707. Combes v. Spencer.

seems to be S. C. a Scrivener who drew the Deed, being examined, a Verdict passed for the Plaintiff that the Deed was duly executed. —

63. A Copy of the Record of a Deed enrolled may be given in Evidence against the Party acknowledging it as well as any other Copy of a Record, but it shall not be good against a Stranger; per Holt Ch. J. and Powell. Mich. 5 Ann. B. R. 3 Lev. 387, 388.

64. On Trespasses at the House of the Warden of the Fleet, to prove the Possession not in the Plaintiff, a Copy of an Inquisition finding a Forfeiture of the Office, with a Judgment thereon of Seizure was produced, fed non allocatur. Trin. 9 Ann. B. R.

65. A Copy of a Rule of Court signed by the Officer of the Court is no Evidence in any other Court, unless the Judge of the Court set his Hand to it himself; but at Nisi Prius the Hand of the Officer is enough, because it is the same Court. 10 Mod. 169. Mich. 11 Ann. B. R. at Nisi Prius, Guild-hall, London, in Cafe of Stennil v. Brown.

66. The
Evidence.

66. The Copy of a Revocation of the Deputation of an Office was offered in Evidence of the Revocation, but not allowed, because it did not appear but the Original might be produced. 10 Mod. 74. Hill. 10 Ann. B. R. Queen v. Sutton.

67. A Copy of the Condemnation of a Ship in the Admiralty Court of France was refused as Evidence, for Want of an Exemplification under the Seal of the Court. 10 Mod. 102. Hill. 11 Ann. B. R. Stennil v. Brown.

68. Motion was made that a Justice of Peace might produce on a Trial an Indictment for Subornation of Perjury an Examination taken before a Justice of Peace from a Woman, who at the Solicitation and by Procurement of the Defendant, had charged such an one with being the Father of a Bastard Child; the Woman had been convicted of Perjury; and per Cur. a Copy of the Examination is no Evidence, because it deprives the Party of contending whether it were his Hand subscribed to it or not, and therefore the Original ought to be shown, and so it is in all Caches where written Evidence is produced which is grounded upon being under a Man's Hand; and a Rule was made, that the Justice Produce facet the Examination at the Trial, and the Party to have Copies in the mean while. It was said, that the Reason of allowing Copies of the Bank or East-India Books was because the Handwriting must be proved; and Fortescue J. added, that in an Indictment for Perjury, in an Affidavit the Original ought to be produced, tho' he said there had been some Question about this Matter, and a Copy was not sufficient. Mich. 5 Geo. B. R. The King v. Smith.

69. 8 Geo. cap. 25. S. C. 2. Copies of Recognizances, in Nature of Statute Stipul. signed by the Clerk or his Deputy, if Original lost, good Evidence.

(A. b. 27) Counterparts.

1. Y. Covenants with C, to make an Affurance of Blackacre before Easter by Indenture. Y. dies, the Covenant not performed, and the very original Deed comes into the Hands of the Executor of Y. and C. brought a Writ of Covenant on the Counterpart, and it was laid by the Court, that it does not lie without the Deed itself; Per Walmly, he may have an Action of Detinue to recover the Deed. Nov. 53. Yelverton v. Cornwallis.

2. In Evid. Title was under a long Term, but the original Lease could not be produced, but being an ancient Lease, the Grandson of the Leffer produced a Counterpart found among the other Writings of his Grandfather, and this was allowed for Evidence, though no Witnesses were subscribed to it; And Windham J. said, that he had seen many Deeds in the Time of Queen Elizabeth without Witnesses. 1 Lev. 25. Pack. 13 Car. 2. B. R. Garret v. Lister.

3. Per Holt Ch. J. In a Cafe in my Ld. Hale's Tint: between Comb and Mayo, a Counterpart of an ancient Deed was admitted as Evidence of the Deeds, and the special Verdict was drawn up, as finding the Deed with a Proov Potev by the Counterpart, which he said was done to preserve the Precedents; and now by all the Court, the Counterpart of a Deed without other Circumstances is not sufficient Evidence, unless in Cafe of a Fine, in which Cafe a Counterpart is good Evidence of itself. Salk. 287 pl. 23. Mich. 3 Ann. B. R. Anon.

4. Trin. 9 Ann. C. B. Sr. Wm. Pole's Cafe, Arguedo. In Order to induce the Court to the Counterpart of a Deed where the Original could not be produced, it was said there ought to be good Reason shown to the Court, as if. That the Deed is lost; 2dly. That it in the Adversaries Hands; 3dly. That the Possession was gone according to the Deed, and if Possession has not gone according to the Deed, there ought to be a
Evidence.

very good Account given why it did not; The Court C. B. was divided in their Opinion. There was now a Bill of Exceptions and Writ of Error brought in B. R. but no Judgment was there given, the Cause being agreed.

(A. b. 28) Court-Rolls.

1. As to the Time of a Surrender made, or Court held, the Rolls of the 4 Le. 115; Manor are no concluding Evidence; but shall be tried by the Country. S. C. & C. 

2. to maintain Cauternary Defeents the Court enforced the Parties according, which maintained the Custom of shew Presidens in the Court-Rolls to prove the Utige; And Coke Ch. 4 said, without such Proof, that it had been put in Use, though it had been deemed and reported to have been the true Custom, yet the Court could not give Credit to the Proof by Witnesies. 4 Le. 232. pl. 395; Patch. 5. Jac. C. B. Ratcliff v. Chaplin.

3. If Proof be to be made of a particular Benefit, which the Lord of the Manor is to have, no better Proof can be of this than by the Rolls of the Court; for no Proof can be more directly and particular, than by setting down of all the Rolls in certain; Per Whittlock 4. Per Doderidge J. the Lord ought to shew that the Rent or Heriots, &c. was paid; for the Steward may put in what he will, 325, ut ante; afterwards Judgment was for the Lord. 3 Bullit. 324. Hill. 1 Car. B. R. Hungerford v. Haviland.

4. Proclamations whereby the Lord claims Foreseizure of a Copyhold Lev. 61. Sought ought to be proved Vroh Woe, and not by the Court-Rolls only; held in Evidence to a Jury. Keb. 287. pl. 98; Patch. 14. Car. 2. B. R. pear.

5. On Traveole of Tenure by Suit of Court-Rent of 16 s. and Relief in Replevin; As Evidence of the Relief, several antient Rolls Tempore H.8. and E. 6. and Eliz. and Jac. 1. were produced shewing Relief due for the Estate in Quetion, and also for other Estates; also Old Accounts of Balfils of the Manor in which Reliefs were mentioned; also there was Parol Proof, the Rent and Suit of Court, and Verdict Pro Domino Maneri; for in Case of Heriots, Justice Levins allowed of such antient Memori- 

als, tho' no Evidence could be given of any modern Payment; that till the Time of Queen Elizabeth these Rolls were kept regularly and well by Counsel, but since this Time they were drawn up by Attornies and others not skilled in the Law, and fo were not of that great Authority as formerly; that a Relief was incident to a Tenure of Seige * Lit. S. 

† By Rent and Fealty, and upon Death of the Tenant the Heir ought to pay double the Rent; that Seisin of the Rent was Seisin of the Fealty, and Seisin of Fealty was Seisin of all Manner of Services; that the Statute of Car. 2. had abolished the llavius Part of the Tenures, but had prefer- 

mure by Fealty only. 

† No Relief where Te- 

presume the Relief or other Services had been released; that tho' the refrbiseption here was to hold a Court-Leet and Court-Baron every || But if Te- 

yearly Rents or Provis which may be delivered or paid, the Lord may detrain immediately; yet Year within a Month after Michaelmas and Easter, and Court-Barons are to be held in other, and are not tied down to this Rule by any \n
corporal Statute, yet of late Years they have usuellely been held together, and as it is the general Practice, it is well enough. Mr. Hele's Case, Lord of the Manor of King's-Nympston, curam Baron Price, at Lent, Devon. 1717, 1718.

E e [A. b. 29]
Evidence.

[A. b. 29] Decrees.

1. A Decree of Chancery, or other Court of Equity is not any Evidence in a Court of Common Law, as in Walfingham's Case. Agreed per Curiam. 2 Sid. 75. Paech. 1658. B. R. in Cafe of Marret v. Sly.

2. A decretal Order under Seal, which writes all the Proceedings on Exemplification under the Great Seal, hath been allowed to be read; per Twifden, but per Allen contra, not unless it hath the Bill and Answer, which Windham agreed; but by Twifden, where the Decree is produced only in Paper then the Bill and Answer ought to be adjourned, but not so when the Decree is under Seal; and in C. B. Stiffe v. Stiffe the Judges admitted a Decree to have been under Seal, and yet would not allow it without Bill and Answer; and by Allen it is usual to disallow such Decrees, but an Exemplification in Chancery, per Curiam always recites the Bill and Answer. Moreton Serjeant said he never did see the Seal of any Court denied to be given in Evidence. Keb. 21. pl. 62. Paech. 13 Car. 2. B. R. Towell v. Cattle.

[A. b. 30.] Deeds; tho' the Witnesses not proved dead or beyond Sea.

1. Where Affile is adjourned for Difficulty, and the Plaintiff shows Deed which he gave in Evidence, the Court shall not regard it if the Deed be not enter'd of Record; for we adjudge only of that which is sent to us of Record, and we cannot know it if it was given in Evidence or not if it does not come to us of Record. Br. Generall Issue pl. 35. cites 18. Aff. 3.


3. Seals broken off from a Deed to lead the Uses of a Recovery subsequent, yet being proved it was done by a little Boy, and that the Seals were once annexed, and the Razures of the Parts agreed upon Examination, it was admitted to guide the Uses. Lat. 226. Mich. 3 Car. Anon.

4. The Defendant produced a Deed under the Plaintiff's Hand and Seal, whereof were Witnesses Names; but because they did not prove the Witnesses dead, nor that they were gone to Sea, though they alleged it, it was not permitted at first to be given in Evidence; but afterwards, upon Proof that it was read at a former Trial, it was sufferers to be read. Freem. Rep. 34. pl. 103. Pæch. 1673. Phillips v. Crawly.

5. Twifden said he had seen Adumbration given in Evidence after the Seal was brok: of, and to Wills and Deeds. 1 Mod. 11. pl. 34. Mich. 21 Car. 2. B. R. in Cafe of Clerk v. Heath.

6. Certificate of a Bishop that has but a small Bit of Wax upon it, may be read as Evidence that A. had taken the Oath according to the Uniformity Act. Per Twifden J. and not objected to. Mod. 11. pl. 34. Mich. 21 Car. 2. B. R. Clerk v. Heath.

7. It was said, that where there is a Common-Seaal put to a Deed, that is Title enough of itself, without Witenefs to prove it, or that the major Part of the College be agreed; and if it was said that it was put to by the Hand of a Stranger, that shall be proved on the Side that says so. Skin. 2. pl. 2. Mich. 33 Car. B. R. LD. Brounker v. Sir Robert Atkins.

8. Upon
8. Upon a Trial at Bar the Plaintiff made Title by an Act of Parliament 16 & 17 Car. 2 the Defendant's Defence was upon a Proof in that Act, which saved all Rights to the King, and Easates before 1639, made with Power of Revocation, by Sir Robert Carr the Father, and then not actually revoked. The Defendant would have set up a Settlement made before that Time, and proved it sealed and delivered before that Time, and to prove that it was not actually revoked by Sir Robert Carr, offered an Abstract of the Deed, and a Copy made upon it, with an Opinion, all under the Hand of Mr. Justice Ellis, with the Depositions of Mr. Justice Ellis in Chancery in a Case between Sir Robert Carr the Son and his Mother; wherein it appears to be a Deed in Force after Sir Robert Carr's Death, though not cancelled and cut in Pieces; yet the Court refused it as Evidence, and would not allow the Deed to be read. Skim. 225 pl. 2. Mich. 36 Car. 2. B. R. Scroope v. Carr.

9. Deeds not stamped will not be allowed to be given in Evidence. Vid. the Stamp Act, 5 & 6 W. & M. cap. 21.

10. A Deed of Bargain and Sale acknowledged by the Bargainer, and enrolled, by which a Term for Years was assigned, was given in Evidence without any Proof made of the Bargainer's Sealing and Delivery thereof, and after Debate it was allowed, per Holt Ch. J. and Eyre J. and ret. Cur. For the Acknowledgment of the Party in a Court of Record, or before a Master Extraordinary in the Country (as this was) is good Evidence of its being sealed and delivered, and such an Acknowledgment stops a Man from pleading Non est factum. Also Enrollments of Deeds on the Statute are admitted every Day in Evidence, without Witnesses of the sealing and Delivery; and it is the Acknowledgment which gives it Credit, and not its Operation or Contents. Falk. 220 pl. 7. Patch. 6 W. & M. in B. R. Smart v. Williams. This Deed was enrolled some Years after the Date, and it was object- ed that the Lord passed by the Deed and not by the Enroll- ment, being of a Term for Years, was in case of a Bargain, and Sale of Lands in Fee, the Estate passes by the Enroll- ment, and cited C. L. 223 b. that the Enroll- ment is no Evidence. But Holt Ch. J. said that how strong the Evidence is must be left to the Jury, but is Evidence. For in Case of Enrollment where Land passes, it cannot be a Proof of the Deed by the Help of the Statute, but by the Common Law; and that there was an Enrollment at Common Law, and that in Case of a Bond enrolled the Party is ept to plead Non est factum, and that though the bare Enrollment is not Evidence, yet the Acknowledgment is Evidence of as high a Nature as a Recognizance to this Purpose. Comb. 247. &c. Smart v. Williams. — 31 Lev. 387.

11. Also they held a sworn Copy of a Deed enrolled, good Evidence. Falk. 214 ibid.

12. Counterpart of ancient Deeds left good Evidence with other Circumstances, but not of itself, but of a Deed leading the Uses of a Fine, it is good Evidence of itself. 6 Mod. 225. Mich. 3 Ann. B. R.

[A. b. 31] Depositions.

1. Manlye has taken Oath; the Deposition of Witnesses examined on the Behalf of the Plaintiff, and remaining in this Court, are to be given in Evidence at a Court-Baron holden at Potton in the County of Bedford on Monday next, therefore Publication is granted. Cary 50. 5 & 6 Ph. & Mary Manlye v. Simonce.

2. If the Party cannot find a Witness, then he is as it were dead to him, and his Deposition in an English Court in a Cause between the same Parties Plaintiff and Defendant may be allowed to be read to the Jury, so as the Party make Oath he did his Endeavour to find his Witnesses, but that he could not see him, nor hear of him. Godb. 326. pl. 418. Patch. 21 Jac. B. R. Anon.
4. Proces by Deposition taken here in a former suit shall be allowed in this, notwithstanding all the parties be alive. Cited by Tanfield J. Lane. too. in Patch. 8 Jac. in the Exchequer, in Gooche's Cafe.

5. Upon an Evidence in an Election, a Judge between the Plaintiff and Defendant, the Court would not suffer Depositions of Witnesses taken in the Court of Chancery or Exchequer to be given in Evidence, unless Affidavits be made that the Witnesses who deposed were dead. Godb. 193. pl. 276. Trin. 10 Jac. in C. B. Sir Francis Fortescue v. Cooke.

6. In Evidence given to a Jury, Hutton said, that Testimony examined in a Court which is not of Record, as in the Spiritual Court, tho' it be in the Compu of which they have Jurisdiction, yet it shall not be read here; but the other three Justices to the contra, and they all agreed, that Depositions taken in the Council of York or Marches of Wales shall not be received here; but afterwars they agreed with Hutton in that Cafe, because it never was used to be done, and they would not make this a Precedent. Litt. Rep. 167. Mich. 4 Car. C. B. Anon.

7. Depositions taken in the Dutchy, and exemplified, were offered in Evidence and rejected, because the Anwer of the Defendant was not also exemplified, so that it may appear to be the same Matter and Title; so that it seems they might then have been allowed. Clayt. 9. pl. 17. Mar. 8 Car. before Damport Ch. B. Judge of Affile. Albroke's Cafe.

8. A Witness examined for the Plaintiff, and to be cross-examined for the Defendant, but before he could be cross-examined died; yet this Court ordered his Depositions to stand. Chan. Rep. 90. 10 Car. 1. Lord Arundell v. Arundell.

9. Depositions in Ecclesiastical Court not allowed because not a Court of Record. March 120. pl. 198. Mich. 17 Car. And it was held, per two Justices contra one, not allowable, tho' the Parties affent to the Allowance.

10. Depositions taken in the Ecclesiastical Court, cannot be given in Evidence at a Trial at Law, because not taken in a Court of Record, the Party that deposed it is dead; Crawley held, that by Content they might; Fother and Reeves contra, yet admitted that Depositions taken in a Court of Record might be given in Evidence. March. 120. 1 Cro. 396. pl. 198. Mich. 17 Car. Anon.

11. A Person subpoenaed to give Evidence at a Trial did not appear, but it being sworn that he came Part of his Journey, and fell sick upon the Road, so that he was not able to travel any farther, his Depositions in Chancery, in a Suit there between the Parties about this Matter were admitted to be read. Mod. 283. pl. 29. Trin. 29 Car. 2. B. R. Luttorell v. Reynell & al.

12. Depositions taken in Chancery in perpetuum rei memoriam, upon a Bill exhibited to prove a Will cannot be given in Evidence on a Trial at Common Law, unless there be an Answer put in and produced. Ellis Ch. J. said it has been so resolved several Times in B. R. and C. B. and it was resolved so in Dutton's Cafe, upon a Trial at Bar concerning his Will forged by Mr. Colt. Raym. 335. Mich. 31 Car. 2. in Can. Scacc. cites it as the Cafe of Bray v. Whitegale.

But where such Bill was dismisst; because it prayed Relief, and it being only to perpetuate the Testimony, ought not to be set down for Hearing; Yet the Master of the Rolls said, that the Plaintiff would at Law have the Benefit of these Depositions notwithstanding the Dismissal of the Bill. At the Rolls, 2 Wm's Rep. 162. Trin. 1725. Hall v. Hoddefdon.
Evidence.

15. A Bill was dismissed at the Hearing for want of Equity, yet the Manner of the Rolls said, and allowed the Plaintiff to use the Depositions in this Cause at a Trial at Law in cause of the Death of the Witnesses, tho' the Bill did not pray to perpetuate the Testimony. 3 Chan. R. 22. Hill 1667. Moyier v. Peacock.

16. Depositions taken Coram non Judice, were not allowed to be used at a Trial at Law. Chan. Cafes, 305. Hill 29 & 30 Car. 2. Stork v. Denew.

17. It was ruled, that the Examination in Chancery of one between the same Parties, and cross-examined there should be read before the Delegates. 2 Chan. Cafes. 250. Hill 30 & 31 Car. 2. Gargrave v. Far.

18. Ordered upon long Debate, that Depositions of Witnesses taken in a former Cause thirty Years since, where the same Matters were under Examination, and in Hube as in this, (the Point being concerning Incumbrances, and Dampification in both Causes) should be made Use of in this Cause, albeit the Plaintiff in this Cause, and those under whom he claims were not any Parties in the former Cause, inasmuch as the Tenants were then Parties, and the now Plaintiff's Title did not then appear, and the Witnesses were dead; and Preludens were cited for this between Trumpl Hall and Doctors Commons, where Dr. North's Depositions taken in a former ancient Cause, where neither of the now Parties were Party, was read, and the like between Culton and Vangham. Chan. Cafes. 73. Palch. 18 Car. 2. Tewi v. Greihan.

19. It was said by Justice Ellys, that it was resolved by the whole Court of B. R. in the Cause of Dutton upon a Trial at Bar, concerning his Will forged by Mr. Colt, that Depositions taken in Chancery in perpetuam rei Memoriam upon a Bill for that Purpose exhibited, cannot be given in Evidence at a Trial at Law, unless there be an Answer put in and produced; and to be said he has known it several Times resolved, both in B. R., and C. B. Raym. 335. Mich. 31 Car. 2. in Scacc. Powle's Cafe cites it as the Cause of Dutton v. Colt.

20. The Ch. J. refused Evidence of Depositions in Chancery, because no Rule was made on the Hearing to allow them, but only a subsequent Order of Court after Dismission, and it appeared not whether they were taken here or beyond Sea, nor in English or foreign Language, but only Affidavits, that the Witnesses were Foreigners, and could not be found; But the Court conceived, if the Depositions were according to the Course of the Court they ought to be allowed; Sed condendum eis inter Partes. 1 Keb. 685. Pl. 91. Hill. 15 & 16 Car. 2. B. R. Sr. Martyn Novels Cafe.

21. Depositions taken on a Bill of Revivor and dismissed, cannot be used on an original Bill. 3 Chan. Rep. 49. Hill. 21 & 22 Car. 2. Backhouse v. Midleton.

22. Depositions taken de Bono offe by Order of Court, shall not be admitted, if put in before the Defendant has answered, lor then they are taken before Hube joined, but in the same Court they may, though not in a Court of Law; and therefore the Court is to procure an Order of Chancery requiring the adverse Party to admit such Evidence; yet this does not bind the Courts of Common Law. 2 Jo. 164. Mich. 33 Car. 2. B. R. in Piercy's Cafe.

23. But otherwise it may be where the Defendant has been in Contempt for Non-appearance, where the Bill is brought for preferring Testimony seems to be admitted. Mich. 14 Car. 2. in Scacc. Hard. 315. Brown's Cafe.

24. Depositions shall not be used as Evidence in a Suit at Law, where any of the Parties at Law were not Parties to the Suit in Equity, for being Strangers.
Evidence.

Strangers they were not capable of preferring Interrogatories or examining such Witnesses; And therefore such Strangers shall not be bound by them, and insomuch as they cannot be read against them, no more shall they be read for them. Hard. 472. pl. 1. Hill. 19 & 20 Car. 2. in Sacc. Ruthworth v. Countess of Pembroke.

25. Depositions of Witnesses taken before the Coroner against the Aider and Alfisher to a Murder at which he was present, and against the Person that did it, who were afterwards dead, or unable to travel, were read by the Opinion of all the Justices, the Coroner first making Oath, that such Examinations are the fame he took upon Oath, without any Addition or Alteration whatsoever; Resolved by all the Judges. Keling. 55. 18 Car. 2. Ld. Morley's Case.

26. Upon an Indictment for Murder, the Question at the Trial was, whether the Depositions of a Witness taken before the Coroner should be read in Evidence against the Criminal, it appearing, that the Witness was gone beyond Sea, and as suppos'd at the Instigation of the Offender; And it was here ruled, that it should be read, for being beyond Sea is the same Thing as if he was dead; But all (except the chief Justice) were of Opinion, that a Deposition taken before a Justice of Peace could not be read, but the Authority of Coroner super vultum Corporis is very great, and in some Cases it is a Record, and not traversable. 2 Jo. 53. Trin. 28 Car. 2. B. R. the Case of Thatcher and Waller.

27. Depositions taken in a former Cause cannot be read in any other Cause with one that does not claim under the Party with whom those Depositions were taken; But if a Legatee brings a Bill against the Executor, and proves Affets, another Legatee though no Party may have the Benefit of those Depositions. Vern. 413. pl. 390. Mich. 1680. Coke v. Fountain.

30. Upon a Bill exhibited in Chancery to perpetuate Testimony, the Defendant, who was Heir at Law, stood in Contempt and could not answer, and thereupon the Plaintiff had a Commiission and examined Witnesses to the Matter of his Bill, de bene effe, and the Defendant joined in Commiission and cross-examined some of the Witnesses produced for the Plaintiff, and before the Answer came in the Witnesses died; and upon a Trial in Ejectment in which the Plaintiff made Title under this Will, the Question was, whether these Depositions could be given in Evidence, and a Verdict was taken for the Plaintiff, but the Petitioner stayed, till the Opinion of the Court was had on this Point, and it was not questioned, but it the Defendant had answered, and those Depositions had been taken after Answer they had been good Evidence against the same Parties, and those that claim under them; and per Eyre J. it might be very inconvenient if this should not be allowed as Evidence, how otherwise can a Devisee examine Witnesses in Perpetuam Rei Memoriam? for the Heir at Law will not answer to the Plaintiff's Bill, and on the other Side, he will not call in Question the Title of the Devisee, as long as he has Witnesses alive to prove the Will, but as soon as they are dead, then he will commence his Suit. 1 Salk. 278. pl. 3. Mich. 4 W. & M. in B. R. Howard v. Tremaine. Per Cur. nothing can make it Evidence but the Necessity of the Thing; it is true, in Cales of Wills it may be necessary to examine Witnesses to perpetuate their Testimony, but in this Case the Plaintiff was non-suited upon Evidence Vivae Voce, and afterwards exhibited a Bill, and obtained these Depositions upon Examination of his own Witnesses, which is but Paper-Evidence at the best, and therefore they inclined not to allow it, Tamen Quae.

4 Mod. 147. S. C.

31. De-
Evidence.

31. It was inquired upon by the Solicitor General that the Depositions taken before the Court of King's Bench against the Lord of Bath in the other Cause are no Evidence in this, because the Trial is not between the same Parties, and Depositions are never Evidence but where they are mutual, and this Defendant does not claim under any Party to the former Suit, but per Cur., they may be read, because the Defendant sheltered himself under the others Title, and the Title of the Land is not in Question, but to whom the Rent shall be paid. It the Defendant gives the Plaintiff's Answer in Chancery in Evidence he may inquit to read only such Part as he will; for it is like Examination of Witnesses; but the other Side may inquit to have the whole read after. 5 Mod. 9. Mich. 6 W. & M. E. of Bath v. Battersea.

32. On a Trial on an Information for a Libel, Depositions taken before B. R. upon Advice with the Judges of C. B. In Cases of Felony such Depositions before a Justice, if the Defendant die, may be used in Evidence by 1 and 2 Ph & M. cap. 13. But this cannot be extended farther than the particular Case of Felony.

1 Salk. 281. Hill. 7 W. B. R. The King v. Pain

The Court would not allow it to be given in Evidence.—Ld. Raym. Rep. 729, 730 S. C. accordingly, and the Information was refused to be examined.—5 Mod. 167, S. C. and the Ch. J. declared that it was the Opinion of both Courts, that these Depositions should not be given in Evidence, the Defendant not being present when they were taken before the Mayor, and had lost the Benefit of a Cross-Examination.—

33. To prove a Jointure (the Jointure Deed being lost) Depositions in Chancery were produced, and offered to be read (the Bill and Answer being taken off the File and lost) but prayed to be proved by the Six Clerk's Book, that it was once filed, and produced an Involvement of the Decree, which mentioned both Bill and Answer; and the Court held that the Deed being lost the Proof might be supplied by Memorials. 5 Mod. 210. Patch. 8 W. 3. Barley's Cafe.

34. An Appeal was from the Commissioners of Excise to the Commissioners of Appeals upon the Statute 12 Car. 2. cap. 23. The Queen's Counsel no Story was, whether the Depositions of Witnesses, and their Examination wrote by the Clerk of the Commissioners of Excise shall be read in Evidence and at length upon this Appeal, or whether the Commissioners of Appeals should not re-examine the Witnesses Vivae Voce. The Court (mutatis Omnipotens) held that the Commissioners ought to examine the Witnesses de novo on the Appeals, and that it was the Intent of the Act, and the Commissioners of Appeals had Authority given for that Purpose by the Act to administer Oath, and this was just, because the first Sentence might be by Rep. 221. Default, or the Depositions might misrepresent, or not represent the whole Case; and that on Appeals from Orders of Justices Examination is always De Novo; therefore a Prohibition was granted; but Holton, the Clerks of Ch. J. said that his private Opinion was, that if the Witnesses were dead, they might use the Depositions. 5 Salk. 555. Mich. 8 W. 3. B. R. Breedon v. Gill.


35. Depositions taken before Justices of the Peace cannot be read upon Appeal to the Quarter-Sessions, nor can Depositions taken before Commissions.
Evidence.


36. If a Witness who is not likely to be had at a Trial be examined before a Judge and cross-examined by the other Party, and his Depositions put in Writing; yet if at the Trial it be proved, that the Party might have had him there his Depositions are not to be read. Per Car. 12 Mod. 493. Pach. 13 W. 3. Anon.

37. If a Witness going to Sea be by Rule of Court examined upon Interrogatories before a Judge, and the Trial comes on before he is gone, his Depositions shall not be read, but he must appear, for the Rule was made on Suppositional of his Absence. 2 Salk. 691. Pach. 13. W. 3. B. R. Anon. and by Consent of the Parties. Per Prat. Ch. J.

38. These Depositions in perpetuam, &c. cannot be made Ufe of against any others but the Defendant who were subpoenaed to defend the Matter, or some claiming under them some Interest accrued since the Bill preferred. Prac. Reg. 36, 37.

40. It was ruled by Holt Ch. J. at Lent Affixes at East-Grimstead, 11 W. 3. 1699, that if an Answer to Interrogatories in Chancery be given in Evidence at a Trial, they ought to be proved by the Examiner himself to have been the same Day that is mentioned upon them. Ld. Raym. Rep. 734. Goring v. Evelin.

41. At Lent Affixes at Thetford, 12 Will. 3. 1699. Holt Ch. J. refused to admit Depositions in Chancery to be given in Evidence after the Bill was assized; but it was referred as a Point for his further Consideration, and conference had with the Practitioners in Chancery; he gave his Opinion, that notwithstanding such Difmission of the Bill, the Depositions were good Evidence. And so he ruled it afterwards at Guildhall at the Sittings after Hillary Term. 1 Ann. Ld. Raym. Rep. 735. Smith v. Veale.

42. Several Persons were examined as Witnesses no ways concerned in Interest, and the Cause heard, and Issues directed to be tried, but the Trials were not carried on, and the Cause slept many Years, and after abated; and then those Persons who had been examined as Witnesses became Hears at Law, and thereby interested in the Matter; The Cause was revived and heard, and the same Issues directed to be tried; and the Persons who had been so examined (being now Plaintiffs) prayed to have an Order that their Depositions taken when they were disinterested might be read as Evidence at Law for themselves; and my Lord Keeper ordered accordingly, and likened it to the Cause where one is the only, or only surviving Witnesses to a Deed becomes after the Party interested, his Hand may be proved at Law; so if a Witness to a Deed becomes blind. Then the Cause proceeded to Trial at Bar in C. B. where the whole Court held these Depositions could not be read without Consent, the Parties being living; but the Defendant contented, and had a Verdict for him, and the Plaintiff obtained a new Trial, and then would have had the same Order; but my Lord Keeper said, since the Judges had resolved otherwise, he could not take upon him to make that Evidence which was not, and therefore only ordered they should be read in Evidence, as by Law they might. Abr. Equ. Cales, 224. Trin. 1702. Holcroft v. Smith.

Freeman's Cases in Equity, 260. pl. 529 & c. accordingly.


43. Depositions were taken in Chancery in Perpetuam rei memoriam, and it happened afterwards that the Inheritance of the same Land descended to a Person who was sworn as a Witness, and he was now a Party to the Suit in Equity, and upon a Question in C. B. whether these Depositions could be read, Trevor Ch. J. held they ought; but Trace

...
Evidence.

44. The Depositions of one in Ireland, or elsewhere out of England, where Glib Equ. no Process will fetch him may be read as Evidence to prove the Re- Rep. 16. 16. cord, as also in a Case one be sick, &c. Per Gould and Powel. J. it is bet- ter to have Witness's Viva Voce, where they may be had; but suppose the Record be out of the Queen's Dominions, or in the West-Indies, or in Scotland, a Deposition would do in such Cases; Per Powel. J. the Law requires the best Evidence that can be had, but we cannot compel any one to come out of Ireland, nor oblige any one to go and in- form himself in Order to be a Witness; but the Rule is to be interpreted with respect to the Persons deposing, as that a Man's Affidavit shall not be read when he is here to give his Evidence Viva Voce; yet the Depositions of those that are absent may be read; Per Holt Ch. J. and cited Cro. 531. but said, he would not warrant the Authority of the Case. 11 Mod. 210. pl. 1. Paul. 8 Ann. B. R. Ld. Altham v. Ld. Anglesey.

45. Depositions in another Cause in which the Matters in Question were not in Issue, cannot be read. MSS. Tab. 1705. Allibone v. Attorney-General.

46. Regularly the Depositions in Chancery of a Witness shall not be given in Evidence if he be alive, altbo' be beyond Sea, as in Ireland, &c. otherwise if he be in France, or another Kingdom not subject to the Kingdom of our King. Tr. per Pals, 7th Edit. 385, 386.

47. Depositions in a former Cause, where neither Plaintiff nor Defen- dant were Parties cannot be read as Evidence, but Depositions in a Cause where either Plaintiff or Defendant were Parties may be read as Evidence against such Plaintiff or Defendant. MSS. Tab. January 20th, 1702. Ld. Peterborough v. German. —February 25th, 1717. Everard v. Ashton.

[A. b 32] Examination.

1. One examined in Admiralty Court, used here at the Hearing. Toth. 283. cites 16 Eliz. 2. a. 10. 330. Watkins v. Furland.

2. A Witness not to be Examined Viva Voce at the Hearing. Toth. 287. cites Wright v. Moor, 6 Car.

3. To examine Witnesses upon Oath for Proof of Acquittance, Pay- ments, and other Disbursements upon Hearing. Toth. 257. cites Comes Kenrie v. Gore. Patch. 6 Car.

4. Nota pro Regula. Examination of Witnesses by Interrogatories out of the Term, by Foster Ch. J. is extrajudicial, and not to be allowed, though the Party content; contrary to Twifden and Windham, con- fensus (it according to Law) tollit errorem; and the Court may as well allow the Examination of Witnesses before a Judge by Depo- sitions, as read the Affidavit of a Person absent; this is no more than the Law allows. 1 Keb. 36. pl. 98. Patch. 13 Car. 2. B. R. Blake v. Page.
5. The Defendant having prepared for a former Trial, which the Plaintiff delayed, and would not proceed then, but now spurreth a Trial on again, whereupon the Defendant prayed that it might be stayed on suggestion that his material Witnesses were Mariners, and now going to Sea with the Fleet, and would not be ready 'till Mich. Term next. The Court agreed to examine the Witnesses by Confront of Parties before the Ch. J. the Trial being to be before him, and that the Plaintiff, if he would, might cross-examine them. 2 Keb. 13. pl. 32. Pattch. 13 Car. 2. B. R. Catline v. Pidgeon.

6. If one Witness be examined for the Defendant de bene esse to preserve his Testimony upon a Bill preferred, and before Answer, and upon an Order in Court for his Examination made upon hearing Counsel on both Sides; and if after Answer the Witness dies before he is examined again the Answer coming in on the 28th of Nov. and the Witness’s Death happening on the 18th of Dec. following, and be being fick all the mean Time, so that he could not go to be examined, the Examination of such Witness shall not be read in Evidence, because it was taken before Illue joined in the Cause, and he might have been examined after; and the Defendant did not appear to be in Contempt. Held upon Evidence in the Exchequer per Curiam, by Advice of all the other Judges consulted with thereupon. Hardr. 315. pl. 6. Mich. 14 Car. 2. Brownie’s Cafe.

7. The Witnesses may be examined before a Judge by Leave of the Court, as well in Criminal Causes as in Civil, where a sufficient Reason appears to the Court, as going to Sea, &c. and then the other Side may cross-examine them. Comb. 63. Mich. 3 Jac. 2. B. R. Matthews v. Port.

8. In a Trial at Bar May 14, 1705, of an Illue directed out of Chancery to try if a Leafe was made in Pursuance of a Power, which was to make Leaves for the Left Rent that could be got; a Witness named Raffley was examined in Chancery concerning the Value of the Land, having been Collector of the Rents; and at the Time of his Examination in Chancery he referred to and consulted his Rental. But now at this Trial he was become blind, and therefore his Examination in Chancery, and Depositions there were admitted to be read; because if he had been so ill as that he could not have come to the Trial, they had been good Evidence, and now he is disabled to consult the Rental, by the Act of God, and therefore the same Reaon holds. He also gave Evidence of what he remembered besides. 2 Ld. Raym. Rep. 1166. Eaft 4 Ann. Kinlman v. Crook.

9. Where a Supplemental Bill is brought after Publication in the original Cause, it is irregular to examine the Witnesses to a Matter that was in Illue, and not proved in the original Cause, and such Proofs are not to be read. March 31st 1725. MSS. Tab. Bagnall v. Bagnall.

Evidence.

of the Roll, or of so much thereof as shall serve for the Matters in Variance, under the Great Seal; and the Exemplification or Confat of the Involvement shall be of the same Force, as the first Letters-Patent should be, if the same were pleaded or proved.

Marg. pl. 13 cites it as Sir Robert Sidney's Cafe, and says that br. Patents, 97, which cites 52 H. 8. is to be so intended. — S. C. cited accordingly. 3 Le 249. Mich. 52 Eliz. R. and W. were Patentees of an Office. R in the Act of W. beyond Sea surrendered the Patent in Chancery, and was cancelled there, and a Remembrance thereof ordered but not enrolled, that they both had surrendered, &c. whereupon a new Patent was made by Qu. Mary to a third Person, reciting the former Surrender as made in the Names of both. W. on his Return from beyond Sea had to have an Exemplification or Conflat by the 2 § 4 E 6 cap 4. It was much doubted if the Patentee himself shall be intended within the Purview and Benefit of the said Nature, because the Title and Preamble thereof declares the Mischief that those who purchase Parcel of the Lands in the Patent contain'd of the Patentee or his Heirs, shall, by the Surrender or Lost of the original Patent; but as it seems by that first Sentence of the Purview the Patentees themselves shall be aided, D. 169. a pl 13 Hill. 1 Eliz. Wrath v. Walgrave — S. C. cited. per Cer. 4 Rev. 51. 3 as resolved that his Words, "At and every Patentee and Patentees, &c." is a distinct Clause of itself, and extends to all Letters Patents whatsoever, either concerning Lands, &c. or Persons, &c. or any Thing or Matter whatsoever; for in the next Clause 1, "Any Lands, Tenements, or Hereditaments, &c. or any Thing whatsoever;" and afterwards towards the End, "As shall and may serve to and for such Title, Claim and Matter." and therefore this Act extends to Letters-Patents of Creation of Dukes, Marquises, &c. and to Pardon of Treasons, and all other Letters Patents which at the Time of Exemplification or Confat are in Force, and lawfully surrendered or cancelled, which concern any Inheritance, Franchifement, or Chartels, any Thing or Matter, real, personal, or mixt whatsoever. — Co. Litt. 225 b. 5. b. — S. C. cited and allowed as to the Point of Pardons. Carth. 152. Patch. 2 W. & M. in Br. K. in the Cafe of Bille v. Harcourt.

4. Exemplifications of Depositions taken in Chancery to prove one's being of Age when he was Elected a Free was allowed as Evidence, and the Jury regarded it more than the Free's being reversed for Non-age. Dy. 301. pl. 40 Trin. 13 Eliz.

5. 13 Eliz. cap 6. An Exemplification, or Confat of a Patent under the Great Seal is sufficient for the Patentee.

6. The Court ordered an Exemplification of a Deed to be pleaded at Law where the Deed could not be brought. Toth. 153, 154. cites 33 Eliz. Fuller v. Smith.

8. 13 Eliz. cap 6. An Exemplification of the Involvement of the Letters-Patentees by H. S. E. 6. Qu. M. Ph. & M. Qu. Eliz. or any of them, since the 4th Feb. in the 27 H. 8. or hereafter to be granted by the Queen, her Heirs or Successors, shall be of as good Force to be sworn and pleaded in behalf of the Patentees, their Heirs and Successors, and Assigns, and every other Person having any Estates from, by, or under them, or any of them, as well against the Queen, her Heirs or Successors, as against any other Persons whatsoever, as if the Letters-Patent themselves were produced.

17 Eliz. cap. 9. S 8 The Exemplification of Records of any Fine or Recovery involved, or any Part thereof, in the twelve Shires of Wales, and the Town of Havenford Welf, under the judicial Seal, or in the Counties Palatine under the Seal of the respective County Palatine, shall be of as good Force as the original Record itself.

10. In Ejecution upon the Issue of Not Guilty, the Defendant gave in Evidence a Recovery in Wales in a Snap et Deforceat, and Issue being tendered thereupon, the Defendant produced an Exemplification under the Seal of the great Seilions, but not the Record itself, whereupon the Plaintiff demurred to the Evidence, and after long Arguments it was said by Judges, that an Exemplification of a Record in Wales might not be given in Evidence while the Record itself is in Being, unless the Great Seal were exemplified under the Great Seal, and then the Court ought to take Notice; but not of other inferior Seals, but an Exemplification may be produced in Evidence in the same Court to prove a Ment for the Record upon a Nul Tiel Record pleaded, but agreed that a sworn Defendant, Copy
Evidence.


11. In Evidence to a Jury at Bar of Eiffex in Ejectment, Maynard pro Defendant offered an Exemplification under the Great Seal in 1538. of Depositions in Chancery, whereby a Conveyance made in 86. and left, was proved, and the Court agreed, that being so old, and the Records of the Rolls burnt since, it is good Evidence. tho' the Bill and Answer were not in it, which, per Twidten and Maynard, was used but thirty Years last past, and before it was not usual to infer the Bill and Answer; and this was given in Evidence in a former Trial here at Bar, tho' it appeared to be a Bill of Discovery by Francis Moor and Rich. Moor his Father, under whom the Plaintiff claimed as Heir, the Defendant as Purchaser, because the Depositions of such are never published without Notice given to both Parties. 2 Keb. 31. pl. 65. Patch. 13 Car. 2. B. R. Blower v. Ketchmere.

12. Copies of Depositions are not to be allowed to be allowed or exemplified 2 Chan. Rep. 36. 21 Car. 2. Brabant v. Perne.

13. The Defendant setting up an Entail, the Plaintiff exhibited an Exemplification of a Recovery in the Marquis of Winchester's Court in Ancient Demence, the other Side objected that they did not prove it a true Copy, but because it was ancient the Court said they should not be loof strict upon the Evidence of it, for the other Side said the Court Rolls were burnt in the Basing-house in the Time of the Wars, and Hales said the Mayor of Bristol had offered in Evidence an Exemplification of a Recovery under the Town-Seal of Houses in Bristol, the Records being burnt, and that Exemplification was allowed for Evidence. 1 Mod. 117. pl. 17. Patch. 26 Car. 2. B. R. Green v. Proude.

14. Will exemplified under the Great Seal is not Evidence to a Jury in Ejectment. Cumb. 46. Pachtch. 3 Jac. 2. B. R. Anon.

15. In Replevin, Exception was taken to the Aweavy, that the Denise of the Manor for ninety-nine Years was alleged to be to St. H B. &c. by Indenture under the Great Seal printed by Involvement of the said Indenture in Chancery it appears, but did not produce any Exemplification or Conflat thereof, but after it is alleged that this Indenture is lost; but that the Saying that the Indenture is lost is not sufficient; for it this should be allowed the Statute of 3 & 4 El. 6. cap. 4. was made to no Purpose, by which Act in such Case, Title may be made by producing an Exemplification or Conflat, &c. And to this all the Court at first inclin'd if it was not aided by the Conflating it in the Bar by a direct Bane & Verum est; But afterwards Powel and Rockby Justices held, that it was not aided; but this was not fully resolvd per Curiam; And the Reporter adds a Quare allo it Advantage can be taken of it unless by special De-murrer. 2 Laww. 171, 1172. Hill. 1 W. & M. in Case of Hill v. Bolton.

16. Exemplification of Letters Patents of a Grant of Feoffame Rents was produced, but it is ar less as concerned this grant was shewn forth and good. Cardif. 209. Hill 3 W. & M in B. R. Tucker v. Hodges.

17. Plaintiff
Evidence.

17. Plaintiff would have read in Evidence an Exemplification of Part of a Patent, but Defendant objected, that nothing but the Patent itself, or an Exemplification, or Copy of the whole could by Law be Evidence; And it was not suffered to be read in Evidence, notwithstanding the Statutes of 3 & 4 of Ed. 6. & 13 Eliz, where the other Side have no Time to consult the Patent-Roll, and so may be surprized by an im-perfect Exemplification. Chan. Prec. 59. Mich. 1695. Attorney-General at the Relation of the Inhabitants of Steins v. Taylor.

19. To prove the Delivery of Goods to a Master of a Ship, an Exemplification of the Entry thereof was offered in Evidence, which Entry was made in the Custom-House Books at Rotterdam, attested by a publick Notary, and sealed with the Publick Seal there; but the Court would not admit this Exemplification to be given in Evidence. 8 Mod. 75. Pauch. 3 Geo. the King v. Maion.

[A b. 34] Fine.

1. A Fine may be given in Evidence to a Jury, though not under the Seal of the Court or Great Seal. Pl. C. 410. b. Mich. 13 and 14 Eliz. Newy's v. Larke.

[A b. 35] Foreign Letters in a strange Language.

1. In a Cause in Chancery, between Two Jews several Letters written in Portuguese were translated (without Order of the Court) and the English Copies were proved to be true Copies of the Originals; but per Matter of Rolls there are no Evidence, for the Court always appoint a Translator, and he would not allow these English Copies to be read, although it was said the Portuguese Letters were also proved. Pauch. 9 Geo. in Chancery.

[A b. 36] Goldsmith's Note.

1. Goldsmith's Note to pay is Evidence of his receiving Money. 1 Salk. 4 and 5 Ann. 283. pl. 14. Hill. 12 Will. 3. Ford v. Hopkins. In the Note itself is Evidence now of the Consideration, yet it is not conclusive Evidence, but turns the Proof upon the Defendant to shew that there was no Consideration given for such a Note; and so he can shew that it is still a simple Contract, and so but a Nudum Pactum unde non oritur Actio. And of this Opinion was Ed. Chancellor King, and directed it to be so ruled at Nii Prias. Gubb. Rep. 154. Mich. 1 Geo. 1. in Chancery Brown v. Marks.


1. On a Trial at Bar in Ejectment this Question arose, whether the Answer of a Guardian in Chancery shall be received as Evidence in B. R. to conclude the Infant, there being some Opinions that it ought to be read, and the Defendant's Counsel infiling on the contrary, Mr. S. swears in his Justice Eyres being the rightful Justice was sent to C. B. to know their Answer. Opinions, who returned made this Report, that the Judges of that Court were all of Opinion, that such Answer ought not to be read as Evidence, for it was only to bring the Infant into Court, and to make him a Party. 3 Mod. 258. Mich. 1 W. & M. in B. R. Eggleston v. Spake. So as to have an Opportunity to take Depositions and to examine Witnesses to prove the Matter in Question, and an Infant is never concluded by any Matter contained in his Answer per Guardian. Garg. 79. S. C. — Show, 89. Edelstone v. Spake S. C. but S. P. does not appear. — Comb. 156. S. C. but S. P. does not appear. —

H h (A b.)
Evidence.

(A. b. 38) Hearfay.

1. To prove a Discharge of Tithe by Unity of Possession in the Time of the Abbot, and at the Time of the Dissolution two Persons testified, that they had seen a Deed of Appropriation of the Parsonage to the Abbot, for which Reason they verily thought there was an Unity of Possession at the Time of the Dissolution; But it was ruled to be no Proof for it may be intended not to continue, and a Consulatation was granted, but they said that Hearfay shall be allowed for a Proof. Cro. E. 228. pl. 17. Pach. 33 Esiz. B. R. Stanhamp. v. Cullinger.

2. On a Modus alleged, it was agreed, that where the Statute appoints Proof of the Survivals to be by two, it is sufficient if two affirm that they have known it to be so, or that the common Fame is so. Nov. 29. Anon.

3. On a Modus suggested, and Illue joined upon it, the Witnessess said, that for a long Time as they heard say, the Occupiers of that Farm, &c. had used to pay annually to the Parson three Shilling to all Tithe, and it was agreed, that a Proof by Hearfay was good enough to maintain the Survivals within the Statute. 2 E. 6. Nov. 44. Web v. Pews.

4. Hearfay from others is not to be applied immediately to the Prisoner; however those Matters that are remote at first may serve to prove that there was a general Conspiracy to destroy the King and Government; and so was the constant Rule and Method about the Peple Plot, first to produce Evidence of the Plot in general; By Ch. J. cites Sidney's Cafe, Try. per Pais. 56.

5. Being proved by Persons of good Credit all along the Road of the Parliament's Proclamation, is good Evidence of Notice in an Action of Life Imprisonment. 2 Show. 300. pl. 302. Pach. 31 Car. 2. B. R. Verdon v. Deacle.

But then the Record of that Trial must be reduced, else the Evidence is not to be admitted; Per Pemberton Ch. J. Show. 163. pl. 152. Trin. 33 Car. 2. B. R. Anon.

7. Though a Hearfay was not to be allowed as a direct Evidence, yet it might be made Use of to this Purpoe (viz.) to prove that a Man was constant to himself, whereby his Testimony was corroborated. 1 Mod. 283. pl. 29. Trin. 29 Car. 2. B. R. Lutterell v. Rynenn.

8. In a Suit between A. & B. A. produced a Deed. In a Suit afterwards between C. & A. it was Viva Voce proved, that A. in a Caufe between A. and B. produced such a Deed which proved so and so, &c. Per Cur. it is good Evidence, for here A. may give that very Deed in Evidence if he will, which C. cannot, because it is in A's Custody. Carth. 80. Nich. 1 W. & M. in B R. Eccleton v. Speke.

9. The Saying of old Men not to be given in Evidence on Illue, whether Parcelor not Parcel, as they may in Cafe of a Modus; Coram Baron Bury, at Luncdefon. Lain. 1710.

10. Question in Ejection, whether such a Parcel belong to one or other; the Declaration of a Person who held under both, and Deed was allowed as Evidence by Ld. Ch. J. Hardwick. Summer Alikes at Exeter 1735. between Roll and Fellow.

13. In the Case of Murder, what the Deceased declared after the Wound given, may be given in Evidence. Coram King Ch. J. spud Old-Daily, 1720. the King v. Ely.

12. In
Evidence.

12. In Trower’s Case, Pa Sch. 8 Geo. B. R. the Court would not admit the Declaration of the Deceased which had been reduced into Writing to be given in Evidence without producing the Writing.


2. In Ejectment at a Trial at Bar, a Herald’s Book being antient, was admitted as Evidence to prove a Pedigree, and an Inquisition poll Mortem is likewise Evidence, but not concluding Evidence. 2 Jones 224. Mich. 34 Car. 2. B. R. Earl of Thanet v. Forder.

Book was refused. Ibid.

3. In this Case the Visitation-Book of the County of Worcester by the Heralds was allowed as Evidence, being an Original, but a Copy has been often disallowed. Comb. 63. Mich. 3 J.c. 2. B. R. Matthews v. Porter.

4. An Entry in the Herald’s Office shall not be allowed good Evidence to prove a Pedigree for an Heri; because they are not Matters of Record, but allowed only as circumstantial Evidence. L. P. R. 557.

Per Hale Ch. J. 1 Salk. 281. pl. 9. Mich. 7 W. 3.

5. Herald’s Books not allowed as Evidence to prove a Pedigree at Sarum Assizes, Lent 1719. Coram Fortescue A. in Ejectment, for he said it was made up by the Party that signed it, and returned into the Office, and not the Entries of any Public Office.

[A. b. 40] History.

1. A General History may be given in Evidence to prove a Matter relating to the Kingdom in general, because the Nature of the Thing requires it, but not to prove a particular Right or Confinage. 1 Salk. 281. pl. 9. Mich. 7 W. 3. B. R. Scainer v. the Burgesses of Droitwich.

2. In Ejectment for the Baronry of Cockermouth, and all the Honours, Mannors, &c. of Joceline the late Earl of Northumberland of the Family of Percy in the County of Cumberland, Sir William Dugdale’s Book of the Baronage of England was offered in Evidence; sed non allocatur. 2 Jo. 162. Mich. 33 Car. 2. B. R. Percy v.

3. Dugdale’s Monasticon was refused in Evidence to prove the Abbey of Fountains of the Order of Cistercians in the Exchequer in this Term, because it might be proved by the Records in the Court of Augmentation. The same Law of Dugdale’s Baronage in Piercy’s Case is the only feco observavi. Skinn. 624. pl. 17. Mich. 7 W. 3. B. R. in Case of Steyner v. Droitwich Burgesses.

4. A Deed was produced 1 W. & M. and Chronicles were admitted to prove that K. Philip did not go the 8th which was in the Deed at that Time. 12 Mod. 68. Mich. 7 W. 3. cites Neal v. Jay.

So that the Deed must needs be forged. ibid. Salk. 281.

cites it as the Case of Neale v. Fry.

5. Upon
Evidence.

5. Upon an Illue out of Chancery, whether by the Custom of Droit

wich Saltpits could be sunk in any Part of the Town, or in a certain Place only. Cambden's Britannia was offered in Evidence but relufed, for the
Court held that a General History might be given in Evidence to prove a
Matter relating to the Kingdom in general, because the Nature of the
Thing requires it, but not to prove a particular Right or Custom. So in
the Case of St. Katherine's Hospital Hale Ch. J allowed a Chronicle
though in May - to be Evidence of a particular Point of History in E. 3. Time. 1 Salk.
to oppose it,
and said it was done by Consent, yet the Chief Justice said he knew not what better Proof they
could have, and Waller said that in the House of Lords it was admitted by testimony in Bridgewater's
old Manuscripts may be Evidence, because an Original, but not a Copy for it is liable to a Mistake
of the Transcriber. Skin. 625. pl. 17. 5 C. 12 Mod. 95. 8. C accordingly. —

6. There was a Trial at Bar concerning the Right of visiting University-
College in Oxford. One of the Illues in this Case was, whether King
Alred was Founder? and the Counsel for the Plaintiff would have
given in Evidence several Historians as to this Point. But the Ch. J.
declared that such Evidence is never admitted, unless in Proof of a
Point concerning the Government; the rest of the Court did not deny it, accordingly it was waved. 1 Barnard Rep. in B. R. 14. Palf. 13

[A. b. 41] Indorsement.

2. Ld Raym.
Rep. 370.
Mich. 11
Geo. 8. C
A new Action was brought on the said Bond, and on a Trial before Ray-
mond Ch. J. he admitted the Indorsements to be read, and the jury
found for the Plaintiff, upon which a Bill of Exceptions was filed, and
the Ch. J. signed them, and afterwards Judgment was given for the Plaintiff and on Error brought, the same was affirmed in the House of
Peers. —

(A. b. 42) Inquest of Office.

1. An Inquest of Office is no concluding Evidence. 2 Jo. 224. Mich.
34 Car. 2. B. R. King v. Fowler.

2. An Inquisition not admitted to be read as Evidence, there being no
3. An
Evidence.


(A. b. 43) Inrollments of Deeds.

1. It was said by Glyn Ch. 1. that if divers Persons do seal a Deed, and but one of them acknowledge the Deed, and the Deed is thereupon inrolled, this is a good Inrollment within the Statute, and may be given in Evidence as a Deed inrolled at a Trial. Sty. 492. Mich. 1655. in a Trial at Bar. Thurlv v. Madison.


3. A Question arising whether an inrolled Deed should be Evidence without further Proof, a Difference was taken where the Plaintiff passes by the Inrollment, as in a Bargain and Sale, there it is an Evidence; but where it is only for sale Unfeigned, there it is not otherwise than against the Party who sealed it, and all claiming from, by, or under him, and so far it shall. 2 Freem. Rep. 259. pl. 327. Trin. 1702. Lady Holecroft v. Smith.

4. At a Trial at Bar in Ejeclment, the Question was upon a Concernment of a Leafe, which was to be upon the Determination of a Lease then in Being to Queen Elizabeth, of certain Lands belonging to the Church, and to prove such Leafe to the Queen, an ancient Book in which Entries were of Leases of these Lands ever since H. 7th's Time, and this was found amongst the Evidences of the Bishops (this being Bishop's Land) was offered, but opposed, because not such Good Evidence as they might have had; for the Lease being made to the Queen it must have been inrolled, and then they might have brought a Copy of the Inrollment; for without an Inrollment the Queen could not take, and it is better Evidence of a Lease in fact as well as in Law than the Book, and therefore must be produced. 6 Mod. 249. Mich. 3 Ann. B. R. Shillinglee v. Parker.

5. To Anne. 18. Where in any Declaration or Pleading whatsoever, an Indenture of Bargain and Sale inrolled shall be pleaded with a Protest there in Curia, the Person so pleading it may produce a Copy of the Inrollment of the Bargain and Sale, which being examined with the Inrollment, and signed by the proper Officer, and proved on Oath to be a true Copy shall be of the same Effect, as if the original Indenture of Bargain and Sale were produced. Provided, that this Act shall not give any Benefit in pleading, or deriving a Title to any Rent which hath not been paid or leased within twenty Years next before the Time of such pleading or deriving a Title.

(A. b. 44) Inspecimus.

1. It is said, that one may not dwell in Evidence to a Jury an InSpecimus of a Deed inrolled in Chancery, unless it be a Deed of Bargain and Sale inrolled here; for if it be a Deed of Feoffment, he must dwell the Deed itself, for the Inspecimus is no Matter of Record; but per Roll Ch. 1. though it be the Inspecimus of the Inrollment, and not of the Deed itself, yet if it be an ancient Deed it may be given in Evidence. Sty. 445. Pach. 1655. Anon.

2. The Defendant in an Ejectment on Trial at Bar, gave Evidence on an Inspecimus of a Leafe by the Act of B. which the Court disallowed, being a private Deed and may be forged, and an Inspecimus lies only of Matter of Record, whereas they issued an Allowance of the same Deed in the Court of Augmentations, which per Cur. is good against the King. 2 Keb. 294. pl. 79. Mich. 19 Car. 2. R. Kirby v. Gibbs.
Evidence.

3. A Conflat or Inspecimus of Letters-Patents made since 27 H. 8. may be pleaded by the King's Patentees, or any claiming under them, as well against the King as any other. Hawk. C. L. 311. (225)

(A. b. 45) Inventory.

1. In an Action of Trespass upon Not Guilty pleaded, an Inventory of the Goods was given Evidence to the Jury, as the Goods were appraised by Upholsters, Judgment for the Plaintiff. 4 Leon. 243. pl. 395. Patch. 8 Jac. C. B. Arden v. God.

2. Jones moved, that Hadings Sheriff of Middlesex, might bring in an Inventory of Goods taken in Execution by Fieri Facias for Evidence (in Tresper) of the Value of the Goods which the Court granted in a Suit between other Parties, the Sheriff being not charged, albeit he be not compellable on such a Writ, but only on Extent, and he agreed to bring it at the Trial if he could find it. 2 Keb. 277. pl. 39. Mich. 19 Car. 2. B. R. Baxter and Cramfield v. Seix.

(A. b. 46) Jointenancy.

1. Jointenancy cannot be given in Evidence, but must be pleaded in Abatement. L. Evid. 231. pl. 27. cites Tryal per Pais 297. Hill. 1652. Jones v. Randal.

(A. b. 47) Journal.

1. Journal of the House of Commons is no Evidence, because they have no Power to give an Oath; Per Jeftifies Ch. 1. in Oates's Tryal.

2. Journal of the House of Lords proved and admitted in the Bishop's Trial, to prove the King's Speech 1662, and the Opinion of the House of Lords about the King's Power in Ecclesiastical Affairs.


1. In an Action for a malicious Prosecution brought against the Defendant for inducing a Bailiff for forcibly taking away his Goods without a legal Authority, the Plaintiff to justify his having Authority produced the Minutes of a Judgment in the Court-Baron, and likewise a Warrant for Execution made upon it; but the Judge was of Opinion that the Judgment ought to have been drawn up, and that the Minutes were not Evidence of it. Accordingly the Plaintiff was nonsuit, though Serjeant Urlyn submitted it, that 2 Mod. 306. is contrary to the Judge's Opinion. 2 Barnard. Rep. in B. R. 406. Hill 7 Geo. 2. Pitcher v. Rinter.

[A. b. 49] In what Cases a Negative must be proved and what shall be Proof thereof.

1. In a Suit for Tythes in the Spiritual Court the Defendant pleaded that the Plaintiff had not read the thirty nine Articles, and the Court put the Defendant to prove it, though a Negative, whereupon he moved for a Prohibition which was denied; for in this Case the Law will presume that a Parson has read the Articles; for otherwise he is to lose his Benefice; and when the Law presumes the Affirmative then the Negatives is to be proved. 1 Roll. Rep. 83. pl. 29. Mich. 12 Jac. B. R. Monke v. Butler.

2. Witnesses cannot testify a Negative, but an Affirmative. 4 Infr. 279. Cap. 64.

3. Where
Evidence.

3. Where there is an Affirmative Affidavit and a Negative Affidavit, the Affirmative Affidavit of the Plaintiff is to be taken. Cumb. 48. Pach. 2. Jac. B. R.

4. Defendant swore an Affidavit, and Information against him for it, although a Negative cannot be proved yet the Court directed that they should first give their probable Evidence, and that the Defendant should afterwards prove his Affirmative if he could. Cumb. 57. Titn. 2. Jac. 2. B. R. The King v. Combs.

(A. b. 50) Nonuit.

1. Debt on a Bond in which Obligee had made a material Rasure, Defendant pleaded Non est Factum, and Plaintiff finding that Defendant upon Oyer had discovered the Forgery, he countermanded the Notice. The Court said the best Way was for Defendant to carry the Cause down by Proviso, and if the Plaintiff would suffer himself to be nonsuited, whereby the Suit would be at an End, and the Plaintiff intended to take his Bond out of Court, yet that Nonuit would be great Evidence against him in another Action to be brought thereupon. 6 Mod. 233. Mich. 3 Ann. B. R. Selby v. Green.

(A. b. 51) Notary Publick's Certificate.

1. It was resolved that a Copy of an Agreement registered in Holland, and attested by a Publick Notary there, may be given in Evidence for the now Defendant, especially since he proved that the Plaintiff took out another Copy of the same Agreement, and would not now produce it; therefore the Copy which the Defendant had taken out was given in Evidence, for it is plain that the Plaintiff knew the Agreement, he having taken a Copy thereof, so could not be surprized. 8 Mod. 322. Mich. 11 Geo. Sir John Walrond v. Jacob Senior Henricus Van Motes.

2. The Court held that a Plaintiff who was in Holland might make Affidavit there, and get it attested by a Publick Notary; and that it should be admitted as Evidence to hold the Defendant to special Bail here. 8 Mod. 323. Mich. 11 Geo. in Cause of Sir John Walrond v. Jacob, &c.

(A. b. 52) Office found.

1. Note, by Choke and Bryan an Office before an Eickeater shall not be given in Evidence unless it be exemplified, nor it shall not otherwise be delivered to the Jury unless it be under the Great Seal of England, no more than a Testimonial, and it is good Law. Bro. Gen. Ill. pl. 75. cites 21 E. 4. 25.

2. Office post Mortem found was held to be no concluding Evidence. 2 Jones 224. Mich. 34 Car. 2. B. R. Earl of Thanet's Case.

(A. b. 53) Parliament Rolls.

1. Upon View of the Parliament Roll of the Star 2 Ed. 6. for Payment of Duties, and comparing it with the Declarations in the Causes between Bowes and Broadhead, and Burrell and Herbert, it was found that the Star was rightly recited, notwithstanding what had been objected, and the Journal-Book of Parliament proceeded to the contrary; and thereupon Judgment was given in both Causes, and Court said they were to be ruled by the Parliament-Roll and not by the Journal-Book. And the same Day in the Cause between Boyer and Fawcifbur for the same Reason, and the Court ordered the Parliament-Roll to be brought into Court the next Term to make it appear other
Evidence.

ther an Adjournment in Parliament was well recited, and would not credit the Journal-Book. Style 155. Mich. 1649. B. R. Anon.

(A. b. 54) Parol Evidence contrary to Writing.

S. C. cited by Ld. Ch. B. Reynolds, Gibb. Rep. 212. Hill. 4 Geo. 3. who stilled the Ld. Chancellor in the Case of Fitzgerald v. Falconbridge, and his Lordship said, that though the general Rule is, that no Parol Agreement or Evidence is to be admitted against a Deed, or a TrufT expressed in a Deed; yet a Declaration fully proved and made before a Deed was drawn, and it appearing plainly to be the Design of executing the Deed for a particular Purpofe is proper and right. 2 Chan. Cofes. 186. Mich. 2 Jac. 2 Harvey v. Harvey.

2. Parol Evidence may be given concerning the Election of an Alderman, &c. in a Corporation, against an Entry in the Corporation-Books by the Town-Clerk, or other Officer, for these may be cooked up for the Purpofe; Per Parker Ch. J. Patch. 4 Geo. B. R.


(A. b. 55) Prefentment of the Forrefters.

1. The Prefentments of the Officers of the Forest was fufficient Evidence, that fuch Wood and Timber was felled, and there was no other Evidence given. 1 Jo. 268. 8 Car. Itin. Whitlock's Cafe.

(A. b. 56) Prefumption. Length of Time.

1. Prefumptions are of three Sorts, viz. Violent, Probable, Light and Temorary; Violent Prefumption is many Times Plena Probatio, a clear Proof; As if one be run thro' the Body with a Sword in a Houfe whereof he infantly dieth, and a Man is feen to come out of that Houfe with a bloody Sword, and no other Man was at that Time within the Houfe. Probable Prefumption moveth little; But Prefumption Levis, or a light Prefumption moveth not at all; Cites Bracton.

2. The Abbot of S. held the Parfonage of B. in the Country of L. appropriate, which, as a Parfonage Impropricate came to K. H. 8. by the Ditolution of Monarclies, 31 H. 8. who in the 37th Year of his Reign granted it in Fee-Farm, under which Grant the Plaintiff claims; the Defendant has obtained a Prefentation of the Queen, and to deftoy the faid Prefumption did fliew the original Inftument of it 22 Edw. 4. with Condition that a Vicarage fhou'd be comptemibly en- dowed, and alledged that the faid Vicarage was never endowed, and therefore the Impropriation was void, and in Truth there was no Instrument, nor any direct Proof of the Endowment of the Vicarage; but becaufe the faid Rectory was during all the Time of the Impropriation supposed reputed, and taken to be appropriate, and all that Time a Vicar preftented, admitted, instituted, and indued, and ferved; and fofe his First-Fruits and Tenthis, it was refolved by all the Court, that it fhall be presumed that the Vicarage, in refpeft of Continuance, was lawfully endowed, for that Omnibus praemunant jfolentis eft ad a; and it fhall be of dangerous Prefumption to examine the Orig- inals of Impropriations of any Parfonages, and the Endowments of Vicarages, becaufe the Originals of them in Time will perih, and fo it was decreed for the Plaintiff. 12 Rep. 4. Trin. 30 Eliz. in the Exche- quer-Chamber, Crimes v. Smith.

3. An
Evidence.

3. An *impropriation* shall not be void because of an *ejdito-tail in the Paton, Grantee, &c.* but it shall be presumed, by Reason of ancient and continual *Poffellion*; *that an ancient grant* was made by one that had Power to make it, and that it was duly made; for if any *objection or exception* should now prevail, the ancient and long *Poffellion* of the Owners of the said *Rectory shoald* hurt them; for if these *objections or Exceptions* had been made in the *Life-times of the Parties*, without any *question* they had been answered, or otherewise in so many *successions of Ages* it would have been impeached or impugned. 12 Rep. 4. Hill. 4 Jac. Bedle v. Beard and Wingfield, in *Canc.*

4. In *Square Impedit* in C. B. the Suit was flayed by Aid *Prayer*, and the *Record* removed into Chancery; the *Plaintiff* moved for a *Procedendo*, and upon Oyer of Caule before Bromley Ld. Chan. &c. *Plaintiff* showed a *Gift in Tail* of the said Adowment to his *Antecedor* 18 R. 2. and a *Verdict* for his *Antecedor* 12 H. 3. and a *Pretention* by his *Grandfather of a Clerk* who was admitted, instituted, and inducted, with *Poffellion* for certain Years, and other *Matters* to prove his *Title*; yet because the *Defendant*, and those from whom he claims *time out of mind* had the *Poffellion* of the *Patronage* as *improper* (having *interruption* for a *small Time*) and it would be a *dangerous Precedent* to *Owners of Impropositions*, being able to maintain the *Impropositions* to be *perfect* in all Points, *requisite* to the making an *absolute* and *compleat Improposition*, the *Impropositions* being made of ancient *Time*; it was resolved that no *Procedendo* in *Loquela* should be granted in *Canc.* 12 Rep. 3. Patch. 4 Jac. Ld. St. John v. *Dean of Gloucester.*

5. If a *Deed of Feoffment* be given in *Evidence* to have been *made forty Years* past, but it cannot be proved that *Livery* was made, yet *Poffellion* has *all along gone with the Deed*; this is good *Evidence* to the *Jury*; *Per Coke Ch. J.* who said, that in such Case he would direct the *Jury* to find a *Livery*; *For it shall be intended*; *but if the Jury find all this Matter* specially, *we cannot adjudge it a good Feoffment without Livery.* Roll. Rep. 132. in *pl. 9. Hill.* 12 Jac. B. R. but that the Court ought to judge upon that which appears upon the Record.—

6. If a *Parson* showed that for *two hundred Years* certain Land was *Parcel of his Glebe*, it is not therefore of *Necessity* that the other should produce a *Confirmation* from the *Patron*, and *Ordinary*; for the *Continuance in Poffellion* makes it *intendable* to be according to *Law* when it was made. *Cro. J. 456. pl. 13. Mich. 15 Jac. B. R.* in *Cafe of Griffin* v. *Stanhope.*

7. Where there had been *four Sisters*, and the *Question* was as to their being alive, and who should prove it *Chamberlain and Dodderidge* held, *that they shall be intended to be alive if the Contrary be not proved.* 2 Roll. Rep. 461. Mich. 22 Jac. B. R. Throgmorton v. *Walton.*


9. About *eighteen Years* before the *Bill filed*, *Moyle the Father* became bound in a *Bond* of 200 l. conditioned for the *Payment* of 100 l. to the *Ld. Robert* the *Defendant* at a certain Day long since past; *afterwards the Oblige purchased Lands of* (Rofecarrick) *the principal Obligo* to the *Value* of 700 l. which *Purchase* was made about *four Years* before Rofecarrick's *Death*; after his *Death* *Moyle* took out *Administration* to him, and being *fued* upon this Bond, exhibited his *Bill for Relief*, and in *Regard of the Antiquity of the Bond*, and for that Rofecarrick *himself never said in his Life-time* it was *presumed*, that the Kk

Defendant
Defendant did deduc the Debt out of the Purchase-Money; and notwithstanding there were no Proofs of the Payment of the Money made, the Court decreed, that the Defendant should be restrained from the Proceeding at Law on the Bond; Per Ld. Coventry. N. Ch. R. 9. 5 Car. 1. Moyle v. Ld. Roberts.

10. A Sleeping Mortgage of Seventeen Years due, which Time the Mortgagor and a Purchaser under him have been in quiet Possession, and the Mortgagge having purchased Lands of the Mortgagor and paid him Money shall be presumed to be satisfied, and decreed that the Mortgage-Deeds be delivered up to be cancelled. Chan. Rep. 8 Car. 1. 6o. Sibton v. Fletcher.

11. After long Possession as for Twenty five Years, Livery and Seisin shall be presumed; for this is much favoured in Law as well as in Equity. Vern. 196. in pl. 192. cites 11 Car. 1. Biden v. Loveday.

12. Reconveyance of Lands, which were a Security for a Recognition to pay an Annuity, gives a probable Reason to imagine that the Recognition was discharged, and no Part of the said Annuities being paid for several Years after, and though demanded yet being denied; decreed that the same be vacated. Chan. Rep. 102. 12 Car. 1. Baldwin v. Proctor.

13. Whether after Forty Years Possession of a Copyhold under a Will, a Surrender to the Usé of the Will shall not be presumed? Ld. Keeper was clear that the Want of a Surrender should be supplied, Surrerers being kept by the Lord and his Stewards, who are oftentimes changed, and not so careful as they should be, and therefore a Surrender might be lost without the Default or Negligence of the Party. Vern. 195. pl. 192. Mich. 1683. Lyford v. Coward.

14. Length of Time is only a Presumption of Payment, and there is a Difference between Debts and Legacies as to their Antiquity. Legacies always appear upon the Face of the Will, and so an Executor knows what he ought to pay without being ask'd or told; but for Debts and other dormant Demands, against which he cannot provide without Notice, the Statute had Reason to limit the Time. Vern. 256, 257. pl. 140. Mich. 1684, in the Case of Parker v. Ath.

15. Where two Falls are alledged against the same Man, and it be questioned whether it be the same Man, it is sufficient that it be reported; and this is good Evidence, unless some one else of the same Name be produced. L. E. 278. pl. 8. cites Oats 2. Try. 15.

16. If Defendant pleads Payment of a Bond or Bill, and it appears that the Debt is very old, and hath not been demanded nor any Use paid for it for many Years, a common Premotion is good Evidence that the Money is paid, and the Juries used to find for the Defendant in such Cases. Try. per Pais, 7th Edition, 311.

(A. b. 57) Probate.
Evidence.

4. In Ejection of Term for Years; The Plaintiff claimed by Letters of Administration granted by the Archbishop of Armagh (the Lands lying in Ireland) and the Defendant produced a Probate of a Will made by the Testator, and in which Defendant was made Executor, and this was under the Seal of the Bishop of Ferns (where the Lands lay). This is conclusive Evidence, and nothing can be given in Evidence against it but Parry's or its being obtained by Surprize; and if a Verdict be given contrary to the Probate, the Defendant ought to demur upon the Evidence, and not the Court, but in bring a Writ of Error, for if he does the Judgment will be affirmed only upon the Writ of Error.

5. To prove the Sealing and Delivery of a Deed, and not knowing the Parties that did it is not good Evidence, but if he knows the Party upon whose Seal it is good enough. T per Pats, 172.

6. In a Writ of Error on a Judgment in the Common Pleas in Ireland in Ejection this Question arose upon a Bill of Exceptions, which was preferred, because the Judges there would not direct the Jury that the Probate of a Will before the Archbishop of Canterbury in which Province the Testator died, and also before the Bishop of Ferns was sufficient, and concluding Evidence, but only that they were good Evidence, and so left it to the Jury; To which the other Side moved in Evidence Letters of Administration of the Goods under the Seal of the Primate of Ireland. The Thing in Question was a Lease for Years in Ireland, claimed by the Lessor of the Plaintiff under the said Administration, and on the first Opening of the Cause, Judgment was affirmed. 2 Jon. 146. Patch. 33 Car. 2. B. R. Philips v. Chichester.

The first Judgment was in C. 3, in Ireland, and affirmed in Error there in B. R. and now affirmed by the whole Court of B. R. here in England, because though the Evidence be conclusive, yet the Jury may hazard an Assent if they please, and the proper Way had been for the Defendant to have demurred on the Plaintiff's Evidence. Raym. 404. Chichester v. Philips. S. C. —

7. At Rygate in Surry, Summer Assizes to W. 3 it was ruled by Holt Ch. J. upon the Evidence, that because in the Spiritual Court after Probate of a Will six Months are allowed to register it, and when it is registered, it is registered by the Original, but the Probate is signed by the Register only upon the Attestation of the Proctor and the Examination of him; therefore a Will proved in 1696 in the Archdeacon's Court of London, and the Office was burnt in the Fire of London soon after, and the Probate was produced in Evidence to prove the Will with all those Circumstances; It was denied by Holt Ch J. to be good Evidence to prove the Will. Ld. Raym. Rep. 732. Anon.

8. N. B. In this Case, though the Will was made in 1685, yet intitled to have it proved, and the Court would not allow the Probate to be read, that being in Nature only of a Copy, and cannot be read as to Lands, unless the Original be left. The Will was proved in a former Cause, and Order for reading the Depositions in that Cause, but the Will produced not being marked by the Examiner as an Exhibit, Objection was taken by Counsel as to its being read, but the Will being set forth in the Verbal in the Interrogatory, and being examined in Court with it, the Will was ordered to be read; But agreed it could not be read out of the Interrogatory, because that is no more than a Copy and only Evidence when the Original is lost. And King Chanceller examined the Officer who brought the Will into Court, where he had the Will, &c. though no Order in the Cause to examine Viva Voce. Wifeman's MSS Rep. Mich. 2 Geo. 2. in the Cause of Lady Jones v. Ld. Say and Seal.
Evidence.

(A. b. 58) Proceedings in Courts Spiritual.


2. In Debt upon a Bond by an Executor’s Plea No unques Executor, 1 Lev. 235, &c. and on this Issue at a Trial a Will under the Seal of the Ordinary was offered in Evidence, upon which the Defendant offered to prove that the Will was forged; but per Cur (in a Cafe stated by the Opinion of the Court) nothing can be given in Evidence against what is a Judge and allowed in the Spiritual Court, but it may be given in Evidence that it is not the Seal of the Ordinary, or that the Seal is forged, or that it is rejected, for those Things are in Affirmation of the Spiritual Proceedings. No Difference between an Administration under Seal, or a Will of Goods under Seal. So here the Defendant may give in Evidence that there were bona notabilia, contra that another is Executor, or that the Tetter was not Compos Mentis, for these fall to the Proceedings of the Ordinary in Cases where no is a Judge. 1 Sid. 359. Raym. 404. 407. Comyn’s Rep. 150. c. Pach. 20 Car. 2. B. R. Noell v. Wells.

3. In Trepass the Defendant pleaded Simony in the Plaintiff (against whom a Sentence of Decree had been given in the Spiritual Court for the Simony) and now upon the Trial the Defendant offered to read the Proofs in the Spiritual Court, but was not allowed, because those Courts are no Courts of Record; but the Sentence of Deprivation was allowed to be read. It was objected against reading them, that the Plaintiff ought not to be concluded of his Interests in his Freehold by what was done in the Spiritual Court. But the Court said that the Spiritual Court did not by Sentence oust him of his Freehold, but that it was a Consequence of the Sentence; and that Simony being a Matter they had properly Cognizance of (for the’ since 31 Eliz. cap. 6. the Temporal Courts have Jurisdiction, yet that Statute has not taken away the Jurisdiction which the Spiritual Court had at Common Law) they ought not to ravel into the Grounds of the Sentences, but to give Credit to them, as they should in a Certificate of Marriage or bastardy and other Things which lie within their Conscience, so that they must take him as guilty of Simony, he being deprived of it in the Spiritual Court. Frew. Rep 84 pl. 103. Pach. 1673. Phillips v. Crawley.

4. Upon a Trial at Bar in ejectment the sole Question was, if Sir Robert Carr was actually married to Isabella Jones by whom he had Ilene, and under whom the Plaintiff claims. The Defendant by Way of Anticipation to the Evidence which the Plaintiff was about to give, moved the Court, that the Plaintiff ought not to be allowed to prove a Marriage between them, because there was a Sentence in the Arch, upon a Suit brought against her Cause Juxtapositions marriage; by which it was decreed, that there was no Marriage between them, but that they were free one of another, and that they might marry separately, which they afterwards did. And this Sentence was now offered in Evidence by the Defendant’s Counsel, as a Bar to conclude the Plaintiff from any Proof of the Marriage; unless he could shew that the same was repealed. And upon Debate the Court were all of Opinion, that this Sentence, whilst unrepealed, was conclusive against all Matters precedent, and that the Temporal Courts must give Credit to it until it is revered, it being a Matter of meer Spiritual Conscience. And hereupon the Plaintiff was nonsuit. Carth 225, 226. Pach. 4 W. & M. B. R. Jones v. Bow.

5. A Matter which has been directly determined by their Sentence cannot be gainaid, their Sentences are conclusive in such Cases, and no Evidence shall be admitted to prove the contrary; but that is to be intended.
Evidence.

129

tended only in the Point directly tried; otherwise it is if a collateral Matter be collected or inferred from their Sentence; as where, because the Administration is granted to the Defendant, therefore they infer that the Plaintiff was not the Defendant's Husband, as he could not have been taken to be, if the Point tried in their Court had been married or unmarried, and their Sentence been not married. Per Holt Ca. J. 1 Salk 290. pl. 30 Hill. 7 Ann. Blackham's Case.

6. Proceedings in the Spiritual Court against the Father for Incontinency with the Mother cannot be given in Evidence against the Children not deriving any Title under her to the Lands in Question, and the Intent of reading it being to shew that the Mother's Marriage was not until after their Births, was not allowed by the Judge to be read, which the Ld. Chancellor thought hard of. 8 Mod. 180. Trin. 9 Geo. Hilliard v. Phaley.

7. But if there was a Marriage and they were divorced for Concupiscence, such Sentence would have been conclusive Evidence to invalidate the Children born in Wedlock before the Divorce, and what could be better Evidence in a Court of Law to shew there was no Marriage than a Sentence in the Spiritual Court carried on in a regular Suit, and pronounced in the Life-time of the Parties that they were guilty of Fornication, and the Proof of the Commutation-Money paid by the Father. Per Ld. Chan. 8 Mod. 180. Trin. 9 Geo. Hilliard v. Phaley.

[A. b. 59] Proclamation.

1. In Case on a Wager about the Day on which the Peace was concluded it was held by Holt Ch. J. that a printed Proclamation was good Evidence tho' not examined by the Record enrolled in Chancery, nor proved to have been under the Great Seal. 12 Mod. 215. Mich. 10 W. 3. Dupuis v. Shepherd.

2. Proclamations must be examined with the Original; Per King Chan. Trin. Vac. 1727.

[A. b. 60] Receipt.

1. In Debt for Rent, on Reference to the Secondary to see if all were paid, he reported, that a Receipt of the last Half Year's Rent was shewed in Discharge of all former Arrearages; but per Cur. this is only Evidence of Payment of all, but is no Discharge of the former Arrear, unless it be under Hand and Seal, and then but by Eltoppel. 2 Keb. 345. pl. 25. Patch. 20 Car. 2. B. R. Coome v. Denne.

2. A Receipt of the last Half Year's Rent is Evidence that all before was paid. L. E. 204. cites Tr. per Pais, 211.

[A. b. 61] Recital.

1. It was said, that if a Deed express a Consideration of Money upon the Purchase made by the Deed, yet this is no Proof upon a Trial that the Monies expressed were paid, but it must be proved by Witnesses. Syr. 462. Mich. 1655. B. R. Thurle v. Madfon.


3. Error of a Judgment upon a Demurrer to Evidence in C. B. the Witnesses to the Sealing and Delivery of a Deed being falsified did not appear; But to prove it the Party's Deed, they proved an Indorsement made by him thereupon three Years after, reciting a Proceeding, that if he paid such a Sum the Deed should be void, and acknowledging that the said Sum was not paid; and a Fine was levied of the very L 1 Lands
Evidence.

Lands mentioned in the Deed to Crawly, and by the Indorsement he expressly named it to be his Deed, and upon this the Deed was read; and now it was objected, that this was not good Evidence, because not the best the Nature of the Thing could bear, but only circumstantial, which never ought to be admitted; where better may be had ex Natura ret, because Circumstances are fallible and doubtful; and it is upon this Reason that a Copy of a Record is good, because one cannot have the Record itself, but a Copy of a Copy will not do. Holt Ch. J. said, Can there be better Evidence of a Deed than to own it, and recite it under his Hand and Seal? Et per totam Curiam Judgment affirmed. 12 Mod. 500. Palsch. 13 W. 3. Dillon v. Crawly.

4. A Fine was produced but no declaring the Uses; but a Deed was offered in Evidence which did recite a Deed of Limitation of the Uses; and the Question was, Whether that was Evidence? And the Court said, that the bare Recital of a Deed was not Evidence, but that if it could be proved that such a Deed had been, and left, it would do, if it were recited in another; and it not being proved that ever there was a Deed leading the Uses of the Fine, the Counsel on one Side opposed the said Deed of Recitals being at all read; But the Court said, we cannot hinder the Reading of a Deed under Seal, but what Use is to be made of it is another Thing. 6 Mod. 45. Mich. 2 Ann. B. R. Ford v. Ld. Grey.

5. The Recital of a Leave in a Deed of Release is good Evidence of such Leave against the Reciter and those that claim under him; but not as to others, without proving there was such a Deed, and that it was lost or destroyed.

6. A gave a Bond to B. for Payment of 2000 l. within a Year after his Death (he having seduced her and had a Child by her) afterwards A. by Deed-Poll reciting that he had given a Bond (as above) agreed the 2000 l. should be laid out in Annuity for the Use of B. and the Child for their Lives. A. died. B. sued the Administrator on the Bond, but there being only one Witness to it, and (tho’ his Handwriting was proved, yet) he swearing that he did not see the Bond sealed and delivered, B. was nonsuited, and brought her Bill to be paid out of the Affairs. Ld. Chan. King held, that the Recital in the Deed, that A. had given such a Bond was sufficient Evidence of there having been such; that it is a Confection by the Obligor himselt, and stronger than a verbal Confection, being under his Hand and Seal, and decreed accordingly. 2 Wm’s. Rep. 432. Hill. 1727. Annandale (Marchionefs) v. Harris, & c contra.

[A. b. 62] Record.

1. When the Party makes a Title by Record, he must prove it under the Great Seal, unless in the same Court, and Day is given to bring it in. Pl. C. 411. a. Mich, 13 & 14 Eliz. in Cafe of Newys v. Larke.

If 'Nul tie Record be pleased, the Plaintiff must have in Readiness the Record exemplified under the Great Seal, unless in Cafe of Letters-Patent. 2 Sid. 145. Per Witherington Ch. B. in delivering the Opinion of the Court, Hill, 1648. cites 6 Rep. Eden’s Cafe, and Birtus’s Cafe.
Evidence.

3. A Deed of Uses was lost, and to supply it, Evidence was given, that the lost Deed had formerly been shewed in Evidence in the Exchequer upon an Action there quizzed, the Land being helden in Capite, and the Record thereof was shewed, and this was allowed for Evidence. Chit. 85. pl. 131. 16 Car. before Foller J. Ld. Wharton’s Cae.

4. If a Record be given in Evidence the Jury may find it, tho’ it is not Sub Pede Sigilli, if they have other good Matter of Inducement to prove it; but if it be given in Evidence, it must be Sub Pede Sigilli; Per Rol. Ch. J. Sty. 22. Pach. 23 Car. B. R. in Case of White v. Pynder.

5. Indebitatus Assumpsit for. 5 l. received to the Use of the Plaintiff for Fees of his Office of Clerk of the Peace for Oxfordshire; upon Non Assumpsit pleaded, it was infilited, that the Plaintiff had forfeited the Office by not taking the Oaths within the Time appointed by Law, and to prove it, the Record of Sessions was given in Evidence, and held good. 1 Salk 284. Mich. 12 W. 3. B. R. Thruton v. Stafford.

6. No particular Crime shall be proved against a Witness, except the Record of his Conviction be produced. L. E. 35. pl. 2.

[A. b. 63.] Recovery. In other Courts than those of Westminster.

1. Upon a Trial in Herefordshire for Lands in the County of Brecknock, A Recovery a Recovery had in the Grand Sessions of Wales was produced in Evidence under the Great Seal of that Court; and it was objected, that the Courts at Westminster could not take Notice of it; but adjudged, that since the Grand Sessions is appointed by Act of Parliament, viz. by the Statue of 24 H. 3. cap. 26. the Courts of Westminster ought to take Notice of it. 2 Sid. 145. Hill. 1659. in Scacc. Olive v. Gwynn.

2. by all the Justices, prater Harper, Mich. 13 & 14 & Blit. in Cae of Newy v. Larke. —And it may be delivered in Evidence; Per Witherington Ch. B. in delivering the Opinion of the Court in the Cae of Olive v. Gwynn; cites S. C. But the Chirograph of a Fine may be given in Evidence, but not delivered in Evidence.

[A. b. 64.] Register-Book.


[A. b. 65.] Rent. Discharge thereof.

1. In Debt for Rent, on Reference to the Secondary to see if all were paid, he reported that a Receipt of the last half Year’s Rent was shewn in Discharge of all former Arrearages; But per Cur. this is only Evidence of Payment of all, but it is no Discharge of the former Arrear, unless it be under Hand and Seal, and then but by Eftoppel. 2 Keb. 346. pl. 25. Pach. 20 Car. 2. B. R. — Coomes v. Denne.

[A. b. 66.] Rentals.

1. Bill in Chancery by Trustees of a Charity, to subject an Estate to a Rent of 3 l. 13 s. 7d. against the Owners of the Land, one whereof was lately Purchas’d, but had referred Money in his Hands on Account of this Rent, though not certain out of what Lands it was issuing. Several Court-Rolls were read where this Rent was mentioned, but not said out of what Lands,
Evidence.

Lands, others mentioned Lands in such a Place. They read also Papers, (Copies of Rentals given to Bailiffs to collect by) and read Evidence, that these Bailiffs charged themselves with the shall there mentioned, for the Charge of the Bailiffs Receipt that makes these Rentals Evidence; So the Bailiffs Accounts. Decree for Plaintiff against all Defendants, they joining in Defence, and it not appearing out of what particular Lands the Rent was illuing, to no Remedy at Law. Pach. 11 Geo. in Canc.

2. Antient Rent-Rolls proved by a Receiver, denied to be read as Evidence, but the Decree reversed. April 1727. MSS. Tab. E. Anglesey v. Ram.

3. A Rental was but weak Evidence, unless Payment also proved, and not sufficient de se; Coram Baron Cummins, at Taunton Alitics, Hill. Vac. 1727-8.

(A. b. 67) Reputation common.

1. The Judges shall apprehend Words as they are intended in Places, where the Land demanded lies. Palm. 102. Pach. 17 Jac. B. R.

2. Useage may expound ancient Charters where the Words are obsolete and obscure, and may bear several Sentences, but contra where the Charter is of modern Date. The Reputation and Declaration of People, may be given in Evidence to explain old Words in a Conveyance in the Description of an Estate or Lands; Coram Baron Price, at Launcetton. 7 W. 3. B. R. The King v. Hains, Alderman of Worcester.

3. No Witnesses should be asked how the Defendant stands affected; but if the Defendant give Evidence of a general Reputation, it may be answered by particular Influences on the other Side for the King. Comb. 337. Trin. 1727. 3. B. R. The King v. Hains, Alderman of Worcester.

4. The Copy of a private Act of Parliament may be given in Evidence, and if upon collateral Issue it is to be proved that such a one was Justice of the Peace or Baronet, &c. Common Reputation is sufficient Proof without shewing the Communion, or Letters-Patent of the Creation. L. E. 89. citos T. per Pais, 226.

(A. b. 68) Rule of Court.

1. It was was ruled by Treby Ch. J. of C. B. at Guildhall, Pach. 10 W. 3. that it at the Trial at nisi Prius a Rule of the Court of C. B. or B. R. be produced under the Hand of the proper Officer, there is no need to prove it to be a true Copy, because it is an Original. Ld. Raym. Rep. 745. Selby v. Harris.

(A. b. 69) Seals of Courts.

1. A Recovery under the Seal of Brecknock is Evidence; Per Witherington Ch. B. 3 Sid. 146. Hill. 1658.

2. The Seal of Chester may be given in Evidence; Per Witherington Ch. B. 2 Sid. 146. Hill. 1658.

3. The Courts at Westminster ought to take Notice of the Seal of the Grand Seffions in Wales, their Authority being by Act of Parliament, and the Profits of those Seals are appointed to be paid into the Court of Exchequer; Per Witherington Ch. B. 2 Sid. 146. Hill. 1658.


[A. b.
Evidence.

(A. b. 70) Sentence. In the Exchequer, as to Goods forfeited.

1. Upon a Seisure of Goods, as Brandy, &c. if the Property is once determined in the Exchequer upon an Information, &c. and the Defendant acquitted, the Title shall not afterwards be drawn over again in another Action. So if Goods are condemned, the Party is bound by this, and shall not have Liberty afterwards to contest this in a collateral Action; Curram Baron Price, at Bodmy. Trin. Vac. 1716.

(A. b. 71) Signet Manual of the King.

1. In Case between A. & C. in Chancery, the King by Letters under his Signet Manual certified the Manner and Substance of the Agreement between them, and it was allowed as Proof beyond Exception. Hob. 213. pl. 271. 9 Jac. Abigayle v. Clifton.

(A. b. 72) Similitude of Hands.

1. In Debt upon a single Bill for the Payment of 200l. an Demand, upon Non eft factum pleaded, one Witness gave full Evidence of the Sealing and Delivery. On the other Side was produced a Person of the same Name and Surname with the other subscribing Witnesses, who acknowledged that the Hand was very like his, but that it was not his Hand, and that he never knew either of the Parties, nor the other Witnesses, neither could the other Witness say that he was the Man; and both their Reputations being proved good, Holt Ch. J. ordered both to write their Names, which they did, and left it to the Jury, who found for the Plaintiff. 6 Mod. 167. Patch. 3 Ann. B. R. Osbourn v. Holier.

(A. b. 73) Things done or sworn at another Trial.

1. In an Action of Debt for Tythes the Cafe was, these Tythes were in Lease to F. for Life, Remainder to the Plaintiff for Life; and at a Trial for these Tythes had by F. the first Tenant for Life in Possession, several Witnesses were examined, which are dead; and it was now moved that the Depositions taken in that Cause might be read as Evidence for the new Tenant for Life in Remainder; but it was denied, because he in Remainder was neither Party or Privy to the first Suit. 2 Roll. Rep. 211. Mich. 18 Ja. B. R. Shotbolt v. Frances.

(A. b. 74) Evidence given upon an Indictment cannot be offered by either St. 324, 224. Party as Evidence upon an Appeal of Murder brought for the same Offence, S. C. and S. P. accordingly. But Dods-ridge J. held that Tenant for Life and he in Remainder have all one Title, and for it seemed to him that the Witnesses for that first Lease when it was for the same Title, may be examined for him in Remainder; But that as this Case is, he said that it cannot be so, because it appears that there was Covin in the bringing the last Suit, upon which the Trial was in the Court of Wards, for the Tenant for Life and he in Remainder for Life shall not be prejudiced by the Recovery and Judgment had against the particular Tenant for Life; for these are Privies to the Action, and Privies in Interest, and Recoveries had against Privies to the Action shall not prejudice Privies in Interest, for they are Strangers to the Suit, and the Action might have been brought against the other also who were Privies in Interest; and this was agreed to by all. Ibid. 212.

2. The Evidence given upon an Indictment cannot be offered by either St. 324, 224. Party as Evidence upon an Appeal of Murder brought for the same Offence, S. C. and S. P. accordingly. But Dods-ridge J. held that Tenant for Life and he in Remainder have all one Title, and for it seemed to him that the Witnesses for that first Lease when it was for the same Title, may be examined for him in Remainder; But that as this Case is, he said that it cannot be so, because it appears that there was Covin in the bringing the last Suit, upon which the Trial was in the Court of Wards, for the Tenant for Life and he in Remainder for Life shall not be prejudiced by the Recovery and Judgment had against the particular Tenant for Life; for these are Privies to the Action, and Privies in Interest, and Recoveries had against Privies to the Action shall not prejudice Privies in Interest, for they are Strangers to the Suit, and the Action might have been brought against the other also who were Privies in Interest; and this was agreed to by all. Ibid. 212.

3. Information against Buckworth for a Perjury; upon Not Guilty pleaded, a Witness was produced to prove the Perjury; what one (who is since dead) swore at the Trial in which the Perjury was supposed to be committed;
Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.

Evidence.
Evidence.

135

the said Will; after the Death of the Stranger such letter may be read as circumstantial Evidence, to prove that such Duplicate of the Will was sent by the Tuitior to the said Stranger.

3. If a Man produced as a Witness for the Plaintiff in Evidence con-

fesses that there was such a Will made as the Defendant's Counsel presents, and under which the Defendant makes Title to the Lands in question; yet that is not sufficient Proof, to prove that there was such a Will, but the

Will itself ought to be produced, or other legal Proof made of it.

4. If several Estates in Remainder be united in a Deed, and one of the

Remainder-Men obtains a Verdict for him in an Action brought against him for the same Land, that Verdict may be given in Evidence for the sub-

sequent Remainder-Man, in an Action brought against him for the same Land, though he does not claim any Estate under the first Rem-

ainder-Man, because they all claim under the same Deed. Ld. Rayn.


11. Conviction at Suit of the King for Battery, &c. cannot be given in Evidence in an Action of Trifles for the same Battery, nor Vice Veris. 12 Mod. 339. Mich. 11 W. 3. in Case of King v. Warden of Fleet.


13. No Record of Conviction or Verdict can be given in Evidence, but such where the Benefit may be mutual, viz. where the Defendant as well as Plaintiff might have made Use of it, bring it into Court, and give it in Evidence in Case it did for him. So if the Record had been for the Plaintiff's Advantage, and that they could not give it in Evidence, the Defendant should not give it in Evidence for that very Reason; and this was resolved at another Trial at Bar before this Term, between Sherbon and Walter Clarges, where a Verdict between the Earls of Bath and Mountrague, upon the very same Point and Title now in Quetition, viz. the Legitimacy of Christopher Duke of Albemarle was denied for Evidence. Ibid. 12 Mod. 339. Mich. 11 W. 3. King v. Warden of the Fleet.

14. In an Inquisition against the Warden of the Fleet for Misdete-

neanors, whereby he was to forfeit his Office, a Prisoner who had given Bond to be a true Prisoner was produced to prove that the Warden suffered him voluntarily to escape; Refolved, that a Conviction of the War-

den upon the Prisoner's Evidence of an Escape would be no Evidence a-

gainst the Warden in Debt on the Bond to be brought by the Warden a-

gainst the Prisoner, so as to let it stand as a Bond for Favour and Favour, nor in Action of false Imprisonment by the Prisoner for retaking him, because it would not be between the same Parties. 12 Mod. 339. Mich. 11 W. 3. King v. Warden of the Fleet.

15. Evidence given at a former Trial, and between other Parties, &c.

is not Evidence in another Trial, &c. L. E. 32 pl. 60. cites State


16. By Juries, though in Sirens we do not use to admit of what

others have sworn at another Trial, unless the Party be dead that swore it; Yet the Prisoner is something indulged so far as to be admitted to prove it. L. E. 278. pl. 9. cites Oats's 2 Vol. State Tr. 40.

17. No Evidence ought to be given of what an Accomplice has said, especially if not in the same Indictment. L. E. 32. pl. 61. cites State

Tr 2 Vol. 436.

18. Yet a Prisoner may bring Evidence to prove the Witnesses gave a
different Testimony before a Justice of Peace, or at another Trial; But the Court will not command the Depositions taken before the Justice to be produced for him to make use of. L. E. 32. pl. 62. cites 2 Vol. State Tr 578

19. Answer in Chancery by a Matter cannot be given in Evidence a-
gainst the Children not deriving any Title under her to the Lands in Que-

tion.
Evidence.

...and the Intent of reading it being to shew that the Mother's Marriage was not till after their Births was not allowed by the Judge to be read, which the Lord Chancellor thought hard of. 8 Mod. 185. Trin. 9 Geo. Hilliard v. Phaley.

20. In Trelfa, the Defendant produced a Deed under the Plaintiff's Hand and Seal, whereunto were Witnesses Names, but because they did not prove the Witnesses dead, nor that they were gone to Sea, though they allledged it, it was not permitted at first to be given in Evidence; But afterwards upon Proof, that it was read at a former Trial it was suffered to be read. Freem. Rep. 84. pl. 103. Pasch. 1673. Phillips v. Crawley.

21. Where a new Trial is directed upon the same Issue between the same Parties, and a Witness examined at a former Trial dies before the second Trial, Depositions made by him in Chancery whence the Issue was directed, and also what he swore at the former Trial may be given in Evidence. 2 Wms's Rep. 563. Hill. 1729. Coker v. Farewell.

22. On feigned Issue from the Exchequer to try a Custom about grinding at Bosdy-Mills in Devon by all the Inhabitants of the Parish, former Decrees were admitted to be read in Evidence, and said that former Verdicts about Customs had been admitted as Evidence, although not conclusive Evidence; At Exon. Alife, Lent. 1731.

(A. b. 74) Torn Papers, Books, &c.

1. In an Action upon the Caff for taking the Profits of the Under Clerk of the Treasury, a Note obtained by the Ld. Finch Master of the Office formerly, of the Officers Subscription that they were but Servants (which by Allen for the Plaintiff is no more than some Parishoners Subscription to pay Tythe in Kind) which will not bind others; which the Court agreed, and refused to let it be given in Evidence, especially Part being cut off. 1 Keb. 258. pl. 36. Pasch. 14 Car. 2. B. R. Whitchurch v. Pagett.

2. To prove taking of the Oath, &c. in the Act of Uniformity a Certificate was produced that had only a small Bit of Wax upon it. Per Twidden if it were sealed, though the Seal was broken off, yet it may be read as we read Recoveries after the Seal broken off; and said he had seen Administration given in Evidence after the Seal broken off, and so Wills and Deeds. 1 Mod. 11. pl. 54. Mich. 21 Car. 2. B. R. Clerk v. Heath.

(A. b. 75) Transfer Books of a Company.

1. Transfer Books of a Company were allowed as Evidence. 7 Mod. 129. Hill. 1 Ann. B. R. Gery v. Hopkins.

(A. b. 76) Verdict.

1. A Verdict against one under subjoin, either Plaintiff or Defendant claims may be given in Evidence against the Party so claiming. Contra if neither claim under it. L. E. 95. pl. 22. cites Duke v. Ventres. Mich. 1656. B. R. Try, per Pais, 286.

2. Finding by special Verdict, or Admission by former Pleading is good Evidence, unless the contrary appear; agreed per Curiam. Keb. 750. pl. 50. Pasch 16 Car. 2. B. R. Lee v. Boothby.

3. In an Ejectment brought by a Recovery, or in Debt upon Statute of E. 6. by a Proprietor of Tythes, they may give in Evidence a Verdict for a former Lease, because the Parties to this Action could not have been Parties to the former Suit in that the then present Leesee could be only Party. Hard. 472. Hill. 19 and 20 Car. 2. Ruthworth v. Pembroke.
4. Verdict on a former Trial ought not to be read as Evidence on a new Trial in the same Cause. Per Saunders Ch. J. 2 Show. 255. pl. 262. Hill 34 & 35 Car. 2. B. R. Rogers and Ux v. Godward. 

it may. Carth. 191. Hill 2 & 3 W. & M. in B. R. City of London v. Clerk—For if it were in Af- 

firmance of Plaintiff's Title they could not read it; as being between other Parties; and what would not be Evidence for one shall not be for the other. But notwithstanding the Verdict was read to let them in to give Evidence that a Witness produced by Plaintiff had sworn now directly contrary to what he had sworn at the Trial. 12 Mod. 245. Mich. 11 W. 3. Sir Walter Clarges v. Sherwin.

5. Upon a Trial at Bar, in Ejectionment it was resolved per Curiam, that it is a Plaintiff hath a Title to several Lands, and brings an Ejection against several Defendants, and recovers against one, he shall not give that Verdict in Evidence against the rest, because the Party, against whom the Verdict was had, might be relieved against it if erroneous, but the rest cannot, though they claim under the same Title, and all make the same Defence. 3 Mod. 141. Mich. 3 Jac. 2. B. R. in Cafe of Lock v. Norborne.

6. So if two Tenants will defend a Title in Ejectionment, and a Verdict should be had against one of them, it shall not be read against the other unless by Rule of Court. Ibid. 142.

7. But if an Ancester has a Verdict, the Heir may give it in Evidence, because he is Privy to it; for he who produces a Verdict must be either Party or Privy to it, and it never shall be received against different Perfons, if it does not appear that they are united in Interest; therefore a Verdict against A, shall never be read against B. For it may happen that the one did not make a good Defence which the other may do. 3 Mod. 142. Mich. 3. Jac. 2. B. R. in Cafe of Lock v. Norborne.

8. Verdict in a Civil Cause may be given in Evidence in a Criminal Cause; but not Vice Versa; and Court said, they would hardly grant a new Trial where a Verdict might become Evidence in a Criminal Cause. 12 Mod. 319. Mich. 11 W. 3. Richardson v. Williams.


(A. b. 77) Water Courtesies. Diverting them.

1. In Trepaps upon the Cafe in turing Part of a Course of Water Bend 214. running from a Spring in C. by a Conduct to his House. The Evidence pl. 319. S. C. was that A. finding an ancient Pipe in his Yard, through which the Wa-

ter was conveyed to the Plaintiff's House, put a Quill and a Cork into the said main Pipe, and so drew Water to serve his House, and stopped it as he pleased, and after his Death his Wife continued to do the same; and it was held that the Action lay; for every Opening was a new Divertion. D. 319. b pl. 17. Mich. 14 & 15 Eliz. Moore v. Brown

2. In Action on the Cafe a special Verdict was found that the Plain-
tiff was involved of a Stream running through his Land; and that about Sixty Years since he had erected a Water-Mill upon his own Freehold; and likewise it was found, that the Defendant was seized of an an-
cient Event upon the same Stream above the Plaintiff's Mill, and how that the Defendant had pulled down the said Dam, and thereby diverted the Stream from the Plaintiff's Mill, whereupon the Plaintiff com-

mences this Action. Pollexfen argued for the Plaintiff, and cited Pla-

mer 29 a. and 1 Cr. 575. and took that to be a clear Cafe, that the Stream being the Plaintiff's, the Defendant could not divert it, and so held the Court, that an Action had lain for diverting a Stream, though no Mill had been erected; and that therefore it must not be sworn to be an ancient Mill, as it must where he preterite to have a Water-Course. N n

skim. 175. S. C. Curis 

advise 

vult. — 3. 

Lev 175. 

Nulmes v. 

Hebleth-

wate S. C. 

adjudged for 

the Plaintiff 

in C. B. and 

judgment af-

formed in B. 

R — Carth. 

84 Heble-

thwaito v. 

where Palmer.
Evidence.

Mich. 1 W. where the Water is not his own, so the Court said, was the Meaning & M. in B. of Lutterell's Cafe, 4 Rep. 86. for there prescribing to the Water and Judgment affirmed; but Holt Stream is his own, so there needs no Prescriptions. Skin. 65. pl. 10. Ch. 462. Mich. 34 Car. 2. B. R. Palms v. Heblethwait.

(A b. 78) Year Books.


2. A Year-Book is Evidence to prove the Course of the Court. 1 Salk. 281. Mich. 7 W. 3. B. R. Steiner v. the Burghesses of Droitwich.

(B. b) What Things may be given in Evidence. Variance in Time or Place, &c.

1. Evidence which is contrary to that in Issue, or which is not answerable to the Matter in Issue is not good; as nothing passed by the Deed, and Evidence that it is not his Deed is not good, for it is contrary to the Issue, and to that which he acknowledged in his Plea by Imputation. Kitch. 241. cites 5 H. 4. fo. 2.

2. Upon No Guilty in Trespass de usure rapta. et abducta cum Bonis viri in London, it is no Evidence for the Plaintiff, that the Adultery was committed in Southwark, and in Ratcliff in Middlesex, whence the Defendant conveyed her to Richmond in Surrey; for this does not prove the Defendant guilty in London. Dy. 256. b. pl. 10. Mich. 8 & 9 Eliz. Anon.

3. In Ejectment the Plaintiff declared of a Lease 14th Jan. and the Evidence was of a Lease the 13th, it is well; for if it was sealed and delivered the 13th, it was a Lease the 14th. 4 Le. 14. pl. 52. Mich. 32 Eliz. C. B. Price v. Fosler.

4. Though an Ejectment be laid on a certain Day, yet if it be proved to be at any Time before the Action brought, or after the Lease made it will do, but not otherwise. 1 Bull. 122. Parch. 9 Jac. Hall v. King.

5. If the Trespass in the Declaration is laid in one Day, and the Evidence is of Trespass in another, it is well whether the Time be before or after the Day laid. So if a Promife is laid to be made one Day, if this be found to be made of another, yet it is good. 1 Roll. Rep. 353. pl. 1. Parch. 14 Jac. B. R. in Cafe of Coke v. Lankafter.

6. Yet a Declaration was, that a Teflator for such a Consideration in certain to him given 30th October 11 Jac. promises to pay so many Quarters of Barley before such a Feast next following, &c. whereas the Teflator was dead before 30th October 11 Jac. and held, that the Millake being
Evidence.

1 In Debt upon a Recognition the Defendant pleaded Nul Tiell Recognition, upon which Issue was joined, and a Recognition upon Condition was certified, and held good Evidence to maintain this Issue; for Recognition upon Condition is a Recognition. Hob. 55. per Hobart Ch. J. cites 36 E. 3. 5.

2 So it is it the Variance of the Contract be in the Things sold; for it cannot be the same Contract. D. 219. b. in pl. 11. cites 21 E. 4.

3. The Plaintiff pleads a Lease simply, and gives in Evidence a Lease upon Condition, and for that it is not; and if the Condition is performed, it is good; for the Evidence proves the Effect and Substantie of the Issue, and for that it is good. Kitch. 242. cites 14 H. 8. 20.

4. In Action on the Case by the Husband on an Assumpsit made to him; The Evidence was, that it was made to his Wife, to which he agreed; this is good. Kitch. 242. cites 27 H. 8. 29.

5. If in Formedon in Descendan on a Gift in Frank Marriage, upon Travels and Issue of the Gift, a Deed of Gift in Free Marriage, with a Remainder over to the Demendants being given in Evidence will not maintain Demandant's Writ. Plow. 14. a. Arg Hill. 4 E. 6. in Case of Reniger v. Fogafla.

6. If Plaintiff declare on a Lease by Parch, and the same is transferred, Evidence of a Lease in Fait will not maintain it. Plow. 14. a. Ibid.

7. So of an Agreement; a Special Agreement will prove it. Pl. C. 8.

b. Arg. Hill. 4 E. 6. in Case of Reniger v. Fogafla.

8 In Debt to perform Covenants, whereof one was, that he should not cut any Trees to do Waife, the Plaintiff assigns the Breach in cutting down twenty Oaks; Defendant pleaded that he did not cut twenty, nor any of them, whereupon Issue was joined, and the Plaintiff proved ten Oaks only to be cut down, yet held sufficient Evidence to maintain the Issue; for the Cutting of the ten Oaks must needs be a Breach of the Covenant not to do Waife. Dy. 115. b. pl. 67. Pufch. 2 & 3 P. M. Terit v. Dunle.

9. In

(C. b) Proof. Good or not, tho' it comes not fully up to the Suggestion.
9. In a Writ of Entry of seventy Acres of Land in H. the Tenant pleaded, that one C. was seized in Fee, and leased the Land to him for Life, &c. the Demandant replied, and likewise made a Title under the said C. abique hoc, that he leased to the Demandant Modo & Forma, &c. and the Jury found that C. and his others were seized of the seventy Acres, and of a Messuage in H. &c to the Use of the said C and that they all joined in a Lease of the said House with the Appurtenances unto the Tenant; One Question was, if this Demise by Celif or Us and his Fossfees jointly, be Matter sufficient to maintain the Issue for the Tenant. D. 152. a. pl. 31. Hill. 4 & 5 P. & M. Drew v. Marrow. 10. Issue was taken upon the Custom of a Manor relating to a Copyhold Estate, whether the Widow ought to hold for Life, and the Evidence proved only during her Widowhood; and ill; Quod nota. Heath's Max. 84. cites 1 & 2 Eliz. Dyer. 192. 11. Upon Issue that by the Custom of B. the Widow of every Copyholder in Fee-Small or Life is to enjoy it for Life, Evidence of enjoying it During Widowhood won't do, for it is a Lease Estate. D. 192. a. pl. 23. Mich. 2 & 3 Eliz. 3. Linley v. Dickson. 12. Debt on a Bargain for 20 l. upon Non Debret the Defendant may give in Evidence that the Bargain was only for twenty Marks. D. 219. b. pl. 11. Mich. 4 & 5 Eliz. Blackwell v. Seigglin. 13. In Trespass the Defendant pleaded, that one Tindal was seised in Fee by Proletiation, and died seised, and that the Land descended to the Defendant; the Plaintiff replied, and traversed the Seisin in Fee, upon which they were at Issue, and that the Evidence to prove the Seisin in Fee was, that Tindal was so seised a long Time before he died, and alienated, and never was seised after. It was said, that this Evidence did not maintain the Issue, for the Seisin in Fee upon which the Issue was taken, must be intended a dying seised, and not a general Seisin at any Time during his Life, and Perryam and Anderson were of that Opinion. 4 Lec. 97. pl. 200. Trin. 29 Eliz. Patton v. Townend. 14. In Replication for 1000 Beaufis, the Defendant justifies by Reason of Property, and in Issue thereon the Defendant in Evidence may sustain a lesser Number, and drive the Plaintiff to prove a greater Number, and what he fails of shall go in Mitigation of Damages, notwithstanding that the Number in the Plaintiff be by the Defendant's Plea Quodammodo admitted. 1 Le. 43. pl. 54. Mich. 28 & 29 Eliz. C. B. Wood v. Foster. 15. G. P. brought Trespass against L. Parfon of the Church of D. for the taking of certain Carts loaded with Corn, which he claimed as a Portion of Tithes in Right of his Wife, and suppos'd the Trespass to be done the 27th of August 29 Eliz. and upon Not Guilty it was given in Evidence on the Defendant's Part, that the Plaintiff delivered to him a Licence to be married, bearing Date the 28th of August 29th Eliz. and that he married the Plaintiff and his said Wife the same Day, so as the Trespass was before his Title to the Tithes. And it was helden by the whole Court, that that Matter did abate this Bill; but it was helden, that if the Trespass had been aligned to be committed one Day after that, it had been good; but now it is apparent to the Court, that at the Time of the Trespass aligned by himself, the Plaintiff had no Title, and therefore the Action cannot be maintained upon that Action, for which Caulte the Plaintiff was nonsuit. Le. 104. pl. 138. Pach. 30 Eliz. B. R. Pawlet v. Lawrence. 16. The Plaintiff declared of a Lease made by the House or College of St. Thomas, and the Lease shewn in Evidence was by the Master of the House or Hospital, and yet well; for the Variance is not material; because College and Hospital are all one. 1 Le. 215. Mich. 32 & 33 Eliz. 3. C. B. Cheney v. Smith. 17. Assumpsit
Evidence.

17. Assumpsit to deliver the Plaintiff certain Monies in London, when the Plaintiff delivered to the Defendant certain Broad Clothsthere; upon Non Assumpsit the Jury found a special Verdict, that the Assumpsit was, that the Plaintiff should deliver certain Broad Cloths, some of Pleasant Colours, and the other of other several Colours; the Court thought, that the special Matter thus found maintained the Declaration; and that the Defendant ought to have pleaded 1 that the Assumpsit was thus special, and traversed the general Promise in the Declaration. Mo. 460. pl. 659. Pach. 39 Eliz. 3. Cheney v. Hawes.

18. His Freehold must be intended his own Freehold, and in his own Right, and finding that it was the Freehold of the Avosant's Wife is not sufficient. Cro. El. 324. pl. 52. Mich. 38 & 39 Eliz. B. R. Bonner v. Walker.

19. If the Suggestion be, that the Parson or Proprietor of the Rectory, and his Predecessors had twenty Acres of Pature, and twenty Acres of Wood in Satisfaction of the Tithes. If the Witnesses prove the twenty Acres of Pature, but do not prove the twenty Acres of Wood, it is Proof sufficient. For the Substance is proved, that he held Land in Satisfaction. Cro. E. 736. pl. 4. Hill. 42 Eliz. B. R. Allen v. Pigott.

20. A promised B. to pay him for such Beasts as if. S. should buy of him, so much as if. S. should agree to pay for them at any future Time. B. shall J. S. several Beasts partly for ready Money, and partly upon Trust. This is within the Promise. Cro. E. 507. pl. 9. Hill. 43. Eliz. B. R. Phillips v. Turrer.

21. In Trelpas the Defendant pleaded a Devise to him and his Heirs, which being traversed in Pluribus & foram, and Ilile hereupon the Will given in Evidence devised the Lands in this Manner, to J. S. for ninety nine Years, and that J. S. shall have all my Lands of Inheritance if the Law will allow it him; And held good, for the Law allows it to be a Devise in Fee. Hob. 2. Hill. 8 Jac. Widlake v. Harding.

22. In Case against Sheriff for an Ecape, it was found that the Party was taken in Execution by the former Sheriff, and not by Defendant, but delivered by him to Defendant; yet the Imprisonment and Ecape being found, Plaintiff had Judgment. Cro. J. 380. pl. 8. Mich. 13 Jac. B. R. King v. Andrews.

23. If the Ilile be whether J. S. was taken by Force of Cojuatem brevis de Capias ad satisfacientiam; a Taking by Force of an Alias Cap. is good to maintain this Ilile; or for Alias & Plurals are but Distinctions of Numbers, a Capias is the Substance, and an alias Capias with a little Addition that might be spared. Hob. 54. Titm. 13 Jac. Per Hobart Ch. J. Foster v. Jackson.

24. Tit on this Ilile a Taking by Force of a Capias pro fine, or a Capias utlatgatsum with a Prayer of the Plaintiff to remain in Execution for him is not sufficient to maintain the Ilile; for though he be taken by a Capias, and also helden ad Satisfacientiam, yet he was not taken by Force of a Ca. Sa. which is a Kind of Writ certain. Hub. 55. Per Hobart Ch. J. Ibid.

25. But if the Ilile had been whether taken by a Capias at the Suit of A. a Taking by Force of a Capias at the Suit of B. and then a Delivery of a Capias at the Suit of A. who thereupon charged him with this Suit is good Evidence to maintain this Ilile; for as to this Execution it is in Law a new Taking. Hub. 55. Per Hobart Ch. J. Ibid.
26. So it is if it be proved, and found that the Defendant cut down ten Acres; for the very Iffue in Law is Wafle or no Wafle, the reft is but Certainty of Form. Hob. 53 in Cafe of Foller v. Jackson.

27. In Replevin, the Defendant made Confeffion, for that P. was felled of six Acres of Land, &c. in Fee, and granted a Rent-Charge out of it to (the Plaintiff) W., his Son in Tail, and for the Rent Arrear he avowed the Taking the Cattle, &c. The Iffue was, that the Rent did not pass by this Grant; Hobart faid, that The Aunciant ought to prove, that the Grantor was felled of six Acres or more, but not lefs, as four or five Acres if he would maintain this Iffue. Winch. 15. Trin. 19 Jac. Bennett's Cafe.

28. In a Replevin, Iffue was whether one and all whole iflate he had in a Manor had used to tether their Horses to Stakes in a Place called B. ab & pft ifeam Pent. annuatim, and the Jury found that they had used fo to do in Vigi. Pentecotes, in fifeo Pentecotes, die Lune in femimanre Pentecotes aut Poifan ad fiam libitum Annuatim; And adjudged, that it did not maintain the Preffcription, because it was more large, and alfo gave a Choice. Hob. 64 pl. 66. Trin. 22 Jac. Johnfon v. Throughgood.

29. In Affumftif for 11. lent to the Defendant at feveral Times, it is no Evidence for the Defendant, that he owed only 10 l. for the Action being for diverfe Things the Plaintiff fhall recover the 10 l. and be barred for the Refidue otherwife when the Contrad is entire, and fo of an entire Affumptif. Dy. 219. b. pl. 11. Marg. cites 3 Car. in Seacc. Walter v. Boats.

30. The Point in Iffue was, if J. S. devised Lands to J. N. and his Heirs or not; the finding a Devife to B. for Years Remainder to J. N. and his Heirs is not a Finding according to the Iffue; for the Iffue is upon an immediate Devife in Posselfion. Jo. 224. pl. 5. Pafch. 6 Car. King v. Newdigate.

31. In an Action of Trespaft for Taking of a Stack of Corn if the Defendant pleads Not Guilty, and the Jury find him guilty of five Quarters of Grain proventienitus of Parcel of the faid Stack it is good Evidence, and good Verdict P. 10 Car. B. R. between Anguilh and Methofd Adjudged it being moved in Arreft of Judgment. The Delaration was, that he took Unam Acrem Siliginis Angilhe A goalfejtede or Stack of Rye; And the Jury as to eight Combes, and two Bufhels Siliginis de infracripfo Acrevo Siliginis in Narratone Specificatos found the Defendants guilty, and for the Refidue Not Guilty; and this adjudged good Evidence, and a good Verdict, and this afterwards Tr. 11 Car. affirmed in Writ of Error in the Exchequer-Chamber by the whole Court.

2 Roll. 684. Trial (F. 1) pl. 6.

32. Affumptif was brought for 10 l Money lent; The Defendant pleaded Non Affumptif, and the Judge admitted him to prove Payment before the Action brought, which if the Defendant can do, then there was no Confederation to charge him in this Action. Clay. 71. pl. 123. Aug. 1639. before Vernon and Henden J. Blesbie's Cafe.

33. In an Action of Wafle for cutting and felling of Trees upon Nulnum Valtum fecir, if the Jury find that be rooted the Trees, and did not cut them, that is a Variance. 2 R.O. Ab. 730. cites Trin. 7 Jac. in C. B. 34. Affumptif for the Price of a Bealt, and declares that the Agreement to pay fo much as the Bealt fhould be worth reasonably, and the Witneffes proved the Agreement to be that the Defendant would give content for it; and this was ruled good Evidence to prove the Promife laid, and in common Sense the Words amount to fo much. Clay. 148. pl. 271. Aug. 1549. before Thorpe Judge of Nifi Prius. Bland v. Tenant.

35. An Action upon the Cafe was brought againft one for Nuffance in digging a Hole in fuch a Way, whereby the Plaintiff as he was travelling in that Way with his Horses did fall into the said Hole and hurt himfelf, to his Damage, &c. To which the Defendant pleaded Not Guilty, and the
Evidence.

the Plaintiff gave in Evidence that one J. S. his Servant was driving the Horse in the said Way, and for that the Defendant had digged the more-faid Hole in the said Way, the Plaintiff's Horse fell therein, and was spoiled, and rendered thereby unfit for Service; but held no good Evidence to maintain the Illsee; Roll Ch. J held that it ought to find the Way and the Hole digged, and all the Matter conducing to the Illsee, and therefore let the Verdict be quashed, and a new Verite awarded. 

St. 33. Trin. 1652. B. R. Anon. 

36. If in Trespafs Defendant in pleading doth entitle himself to a House and Land, to hold of the Lord according to the Custom of his Manor, and upon a Trial he gives the Custum in Evidence for the Lands only, that will not maintain the Illsee. Brown's Anal. 14. 

37. On a Declaration, Quare Defendens Cumstaine et impeissum, the Plaintiff cannot give in Evidence Words only but Acts, as arresting, charging or convening him before a Justice of Peace for Felony. Raym. 


38. If he fail of his Proof in the same Nature his Plea is, it is ill. Heath's Max. 83. 

39. There is a Difference as to the Evidence on a Declaration of a Trespass Quare Cladium & alta enormia; for when it arises ex turpi Causa, the particular Wrong may be given in Evidence on such a General Declaration under the Words (alio enormia) because the Law will not compel the Party to shew it on Record, but in all other Cases the Special Matter must appear in the Declaration, nor shall any Evidence be given of Facts that are not in it. Sid. 225. pl. 17. Mich. 16 Car. 2. B. R. Sippora v. Buffet.

40. At Guildhall in an Action for Words per quod Maritigillum amissit, upon Evidence the Plaintiff proved Part of the Words only, but proved that by Reason of these Words Maritigillum amissit; and ruled by Holt Ch J. to be well enough, for it is sufficient if the Plaintiff proves the Loss of Marriage by Reason of any Words in the Declaration. Skirn. 333. pl. 3. Hill. 4 W. & M. B. R. Geary v. Commp. 

41. If a Man brings a Prover for a Ship, and upon the Evidence it appears that he has but the Sixteenth Part of it; this is good, and the Interest of the others may be given in Evidence in Mitigation of Damages. Skirn. 649. pl. 4. Patch. 3 W. 3. B. R. in Cale of Dockway v. Dickenson. 

42. A Where the Time of Payment is past at the Time of Acceptance of a Bill of Exchange, the Acceptance can be only to pay the Money, and if the Defendant was to absurd as to promise to pay the Money Secundum tenorem Bille, yet that is no more in Law now than a Promise to pay the Money generally; but it is better to declare on a general Promise to pay the Money. 1 Salk. 127. pl. 8. 10 W. 3. B. R. Jackson v. Pigot. 


44. In Cale for running over the Plaintiff's Barge with his Ship, Holt Ch. J. would not let any Damages to be recovered for the Goods, because not let forth particularly, saying, they ought to be set forth specially;
Evidence.

...as where an Action is brought for burning his House; so in Case for Words, per quod he left her Marriage with J. S & others Persons, He said he would not suffer them to give in Evidence a Loss of Marriage with any Body but J. S. 1 Salk. 257. pl. 22. Hill. 2 Ann. at Guildhall. Martyn v. Hendrickson.

45. In Trespass Quare Clausum fregit in D. if the Defendant pleads Liberum Tenementum, and Illue is thereupon joined, it is sufficient for the Defendant to shew any Close in which is his Freehold, but if the Plaintiff gives the Close a Name, he must prove a Freehold in the Close named. Adjudged in C. B. and affirmed in Error in B. R. 2 Salk. 453. pl. 2. Hill. 2 Ann. B. R. Helwis v. Lamb.

46. In Local Actions as in Trespass Quare Clausum fregit, the Plaintiff cannot prove a Trespass but where he lays it, nor lay it in any other Place than where it is, but it is otherwise in Actions tranitory, so that a Proof of a Trover for Trees cut down in Ireland, is good upon a Declaration of Trover in Middlesex. 1 Salk. 290. pl. 29. Trim. 7 Ann. Brown v. Hodges.

47. Assumpsit for Meat, Drink, &c. found by the Plaintiff for the Defendant, upon Evidence it appeared that it was found for the Defendant's Apprentice and not for himself, and held that the Plaintiff could not recover upon this General Count. Coram Prat Ch. J. apud Guildhall. Mich. 5 Geo.

48. Action upon the Cafe Plaintiff declared that whereas he had put a Gelding to the Defendant to be depastured, the Defendant promised Salvo cujusdiendum, and he had so inordinately rid the said Gelding that by Means thereof the Gelding died. The Ch J. was of Opinion that the Plaintiff had not proved the Declaration, because he had no Evidence that the Defendant promised Ad salvo cujusdiendum eundem, but only that the Plaintiff put him to the Defendant to Grafs. Coram Prat Ch. J. Hill. 6 Geo. apud Westminster Ford v. Osborn.

(D. b.) Proof. At what Time it must be.

1. PROOF of the Thing for which the Assumpsit is made need not be before the Action is brought, but may be in the Action Show. 845. cites Griffith's Cafe.


3. 1 W. & M. cap. 16. sect. 2. No Evidence of Simony shall be given, unless the Party supposed to be guilty of it be then living, or were in his Life convicted of the said Simony at Common Law, or in some Ecclesiastical Court.

(E. b.) In what Cases new Evidence shall be given.

1. IN an Attaint the Defendant may give new Evidence, but not the Plaintiff: The Reason seems, because the Defendant is to defend himself. D 212. a. pl. 34. Patch. 4 Eliz. Kent v. Paramar.

2. An Appeal was from the Master of the Rolls's Decree, and it was a Question whether new Evidence that had arisen between the Hearing and Decree and the Appeal should be received, and it was held per Lord Keeper
Evidence.

Keeper Holt Ch. J. and Powel J. that all the Matter at the Rolls had fallen to the Ground on the Appeal, and it was now the same Thing as if nothing had ever been done in it, and by Consequence the new Evidence ought to be admitted. 6 Mod. 257. Mich. 3 Ann. B. R. per Holt Ch. J. in Case of St. Clement’s v. St. Andrew’s Parish.

(F. b.) What Evidence the Parties may inform each other or Strangers to produce; as Court-Rolls, Books of Account, Church-Books, &c.


2. A Difference arising between an Improprictor and the Parifhioners concerning the Right of an House, he brought an Ejfeetment, and moved, that the Church-Wardens might shew him the Parish-Books, and give him Copies of what concerns his Title, and they might be produced as Evidence at the Trial; and said, that such Copyholders, on such Motions, have frequently had Rules for the Steward to grant Copies, and that the Court-Rolls be produced at the Trial; But, per Curiam, this Case differs from the Case of Copyholders, because all the Tenants of the Manor have an Interest in the Court-Rolls; but, in the principal Cafe, the Improprictor hath a distinct Interest from the Parishioners; for it was not a Parochial Right, but a Title, which is now in Question, and therefore it was not reasonable that the Parish-Books be produced, which would be to shew the Defendant’s Evidence; besides, Church-Wardens are not a Corporation without the Parson. 5 Mod. 395. Pash. 10 W. 3. Cox v. Copping.

3. Ejfeetment for a House by the Improprictor against the Church-Wardens of the Parish of Aldgate; Exe for the Plaintiff moved, that he might have a Rule to see the Parish-Books, upon Suggestion that they would make the Title appear, and that they were common Books belonging to all the Parish, and that it did not differ from the Cases where a Rule is granted for the Defendant to see Court-Rolls and the Books of a Corporation; but denied per Curiam, for where the Parson claims a distinct Interest from that of the Parish, it is not reasonable to compel the Parish to discover their Title by shewing the Books, which are kept only for their own Use, but the Title of the Copyholder depends upon the Court-Rolls; fo of Corporation-Books, which differ from the present Case. Ld. Raym. Rep. 337. Pash. 10 Will 3. Anon.

4. An Information was preferred against the Defendants being Custom-House Officers, for forging of a Bond supposed to be given by a Merchant to the King for his Customs. And Motion was made on Behalf of the Prosecutor, to have the Custom-House Books, in which the Entries were made, &c. brought into Court to convict the Defendants; but the Motion was denied, because the said Books are a private Concern, in which the Prosecutor has no Interell, and therefore it would be in Effect to compel the Defendants to produce Evidence against themselves; and the Court never makes such Rules, but only of Records, or Deeds of a publick Nature. Ld. Raym. Rep. 705. Mich. 13 Will 3. The King v. Worfeham, & al.
Evidence.


6. The Defendant and eight others were incorporated under an Act made in the 39 Eliz. by the Name of the Surveyors of the Highways of Aylesbury in the County of Bucks, and were Trustees of a Charity called Bedford's Gift. An Information was preferred against the Defendant for executing this Office, being an Office of Trust, without having took the Oaths, contrary to 25 Car 2. to which he pleaded Not Guilty; and now Mr. Raymond moved for a Rule, that the Prosector might have two Books produced which these Surveyors kept, in which they entered their Elections, and also their Receipts and Disbursements, and that he might take Copies of what he thought necessary, and that the Books might be produced at the next Assizes at the Trial; but per Curiam denied, because they are perfectly of a private Nature, and it would be to make a Man produce Evidence against himself in a criminal Prosecution. 2 Ld. Raym. Rep. 927. Trin. 2 Ann. 'The Queen v. Mead.

7. The Plaintiff, and likewise the Defendant, and several others were Part-Owners of a Ship, and the Defendant received several Sums of them for the Use of the Ship, and gave Receipts for what he received, and afterwards he laid out the said Sums in the Ship and Voyage, of which he kept an Account, and in which Book Allowances were made him for what he so laid out, which Book belonged to the Plaintiff, and to the Defendant, and all the Part-Owners, but was now in the Possession of the Plaintiff, who brought an Indebitatus Affidavit against the Defendant for so much Money received to his (the Plaintiff's) Use; Upon Affidavit of this Matter, the Court was moved, that the Plaintiff might produce the Book at the Trial, or give the Defendant Copies of what Allowances had been made, that he might use it as Evidence for him at the Trial, but it was denied; 'tis true, if Covenant is brought on an Indenture, and the Defendant swears he never had a Copy, the Court will not compel him to plead till the Plaintiff give him a Copy; but here the Plaintiff should have taken up his Note upon his Account allowed, and he was truited with the Book by all the Parties concerned, and if he breaks his Trust, you must seek for Remedy in Equity. 6 Mod. 264. Mich. 3 Ann. B. R. Ward v. Apprice.

8. On a Motion in Case for a false Return to a Mandamus, that the Plaintiff might have the Sight of the Books of the Corporation to take Copies of them in order to be made Use of on the Trial (to prove the Election of a Bailiff of Bewdley) a Rule was granted for taking Copies of any Thing relating to the Election, but nothing else, for these Books are publick Things, and ought to be seen, and are made Use of in this Case, and on a Quo Warranto against the Corporation there may be a Rule to produce the Books themselves. A Case was cited, that it had been so ruled in Case of the East-India Company, for them to produce their Books. On a Question between two Copyholders, any one of them may move for a Rule to have the Sight of the Books and Rolls of the Manor. Pach. 6 Ann. B. R. Slade v. Walter.

9. But on a Question between two Persons who had a Right to the Manor, the Court denied a Rule to produce the Rolls of the Manor at the Trial, it being out of the common Case when it is between two Tenants. Pach. 6 Ann. C. B. Wood v. Whitcomb.

10. N. B. The Court will not order the Copy of a Charter, nor the Charter itself to be produced, because the same is enrolled, and a Copy may be had from the Record.

11. On
Evidence.

11. On Motion by Dean and Chapter, Leave was not given to inspect Books, and Papers of the Vestry of the Parish of St. Margaret Webster, after a Query about the Right of Nominating a Clerk of the Parish, which was between the Parish and the Dean and Chapter, being but a private Thing, and no publick Concern, but only between private Persons as to the Right of Nomination. Patch. 13 Ann. B. R. Turner v. Gethin.

12. In Case between Dr. Bennet and Inhabitants of Cripplegate, the 2 S. 8. Parish-Books were admitted as Evidence both for the Plaintiff and Defendant, as also Books belonging to the Dean and Chapter of St. Paul's, in which were entered Leaves made by the Predecessors of the Lector Vicars of Cripplegate. In this Case, Court of B. R. ordered Plaintiff should have an Inspection of the Parish-Books and Copies of what he pleased. Coram Prat Ch. J. Hill. 5 Geo. apud Guildhall.

13. Rule for Defendant to shew Cause why an Information in Nature of a Quo Warranto should not be exhibited for exercising the Office of Bailiff of Driftwick, and on Motion, it was ordered, that they might have Access to the Books of the Corporation in Order to make their Defence. Mich. 7 Geo. B. R. The King v. Littleton, &c.

14. The Court ordered Defendant at Plaintiff's Expense, to give him a Copy of the Articles for Epitom Races, and produce the Same at the Trial. Defendant was the Stake-holder, and Plaintiff, whose Horse won the Guinea or Plate, could not proceed to Trial without the Articles. Barnes's Notes in C. B. 316. Mich. 8 Geo. 2. Gracewood v.

15. This was an Action brought upon the Statute 9 Anne, against Conyn's Deputy Post-Master of Carlisle, for the Penalty of 500 l. Rep. 155. for his persuading a Person to Vote at the late Election of Members to serve in Parliament; Defendant moved for Inspection of the Corporation-Books; Per Cur. Defendant is Laid to be an Elector, and having a Right to Vote, he is entitled to inspect the Books by the Act of Parliament; To this Purpose the Books are publick, and therefore let Defendant have the Inspection of that Part of the Corporation-Books where the Names inspect the Freemen are enrolled, and Copies at his own Expense, Barnes's Notes in C. B. 154, 155. Trin. 10 Geo. 2. Richards Qui tam, &c. v. Patinfor.

made accordingly. (Reeve Ch. J. absent) though it was objected, that the Plaintiff was no Freeman, and ought not to be admitted to inspect the Books to make Evidence for his Action, nor is there any Affidavit, that the Right of Election is in the Freeman; But it was answered, that the Plaintiff has a Right by being Plaintiff in the Action to see what relates to the Fact on which the Action is grounded.

16. Defendant moved for Leave to inspect the Books of the Conick Lamp-Office, and had a Rule to shew Cause, which was discharged; Per Cur. the Proprietors of these Lamps are not a Corporation, their Books are publick, nor do they appear to be Trustees for Defendant. Barnes's Notes in C. B. 155. Trin. 11 & 12 Geo. 2. Smith v. Huggins.

(H. b.)
Evidence.

(H. b) In what Cases a Special Matter may be given in Evidence.

COMMON, Rent-Service, Rent-Charge, Licence, &c. ought to be pleaded, and not given in Evidence upon General Issue, Contrary to Leave of Land for Years. Br. General Issue, pl. 81. cites 25 H. 8.

2. If a Villain pleads Frank, and of Frank-Estate he may give Manumission in Evidence; for this is Manumission in Fact. Br. General Issue, pl. 82. cites 25 H 8.

3. Ent where he is manumitted by All in Law, as Suit taken against him by his Lord, or Obligation made to him by the Lord, or Leave for Years, &c. for these are Manumissions in Law, of which the Jury cannot differ, and therefore shall be pleaded. Br. Ibid.

4. In Trespass for breaking his Gate and beating his Servant, and carrying away his Goods. Upon Not Guilty pleaded, the Jury found this Special Matter; Scil. That Sir T. B. was feiled of the Land, where, &c. and leased the same to the Plaintiff and one A. which A. assigned his Moiety to C by whose Commandment the Defendant entered. It was moved that that Tenancy in common between the Plaintiff and him, in whose Right the Defendant justified, could not be given in Evidence; and so it could not be found by Verdict, but it ought to have been pleaded at the Beginning. But the whole Court was clear of another Opinion, and that the fame might be given in Evidence well enough. 3 Leon. 83 and 94, pl. 123. and 137. Mich. 26 Eliz. B. R. Role's Cafe.

5. Whenever a Man cannot take Advantage of the Special Matter by Way of Pleading, there shall take Advantage of it in the Evidence. For Example, the Rule of Law is that a Man cannot justify in the Killing or Death of a Man, and therefore in that Case he shall be received to give the special Matter in Evidence, as it was So defending, or in Defence of his House in the Night against Thieves and Robbers, &c Co. Litt. 283. a.

6. In any Action upon the Cafe, Trespass, Battery, or of False Imprisonment against any Justice of Peace, Mayor or Bailiff of City or Town Corporate, Headborough, Portrewe, Contable, Tithingman, Collector of Subsidy or Fifteenth in any of his Majesty's Courts at Welfminter, or elsewhere, concerning any thing by any of them done, by Reason of any of their Offices aforesaid, and all other in their Aid or Affiance or by their Commandment, &c. they may plead the general Issue, and give the special Matter for their Excuse or Justification in Evidence. Co. Litt. 283.

7. A Defendant cannot in any Action upon Not Guilty pleaded, give in Evidence a Licence, but he may give a Gift in Evidence. Brown's Anal. 15.

8. In an Action of Trespass, where the Defendant pleads Not Guilty, and makes Title by a Stranger it is no Evidence to say that he committed the Trespass by the Commandment of the Stranger, but ought to plead the same, as he must do the Licence of the Plaintiff himself. Ibid.

9. If the Defendant pleads Nil debet to an Action of Debt upon a Contract, he may give in Evidence, that the Contract was conditional, or he may plead the same without Traversing. Ibid.

10. The like upon Non Assumpsit pleaded to an Action upon the Cafe.

11. Upon the Plea of Non detinet, the Defendant cannot give in Evidence a Mortgage. Brown's Anal. 15.

12. Neither
Evidence.

12. Neither can the Defendant upon Such Illue give in Evidence, that he had the Thing of the Plaintiff as a Pledge for Money not yet paid. Brown's Anal. 16.


14. Upon the Illue Non dimittis to an Action of Debt for Rent upon a Lease-Pard, the Plaintiff cannot give in Evidence a Lease by Deed, but he may give a Lease conditional, as an Agreement conditional in Evidence. Br. Anal. 16.

15. Upon Non est saltum pleaded generally the Defendant may give in Evidence, that the Plaintiff afterwards pulled the Seal off from the Deed; dubitatur. Brown's Anal. 16.

16. But upon Non est saltum pleaded generally the Defendant may give in Evidence Minime literatur. Brown's Anal. 16.

17. The like upon Delivery of the Deed as an Escrow. Brown's Anal. 16.

19. Debt for the Arrears of Rent upon Lease for Years; upon Nil debet per Patriots pleaded, it is good Evidence to prove Quod non dimittis. Brown's Anal. 16.

20. Debt for the Sale of a Horse for 40s. the Defendant may plead Nil debet, and give in Evidence, that the Sale was of Two Horses for 40s. or of an Ox for 40s. and good. Brown's Anal. 16.

21. Trepsafs for taking of Gameawks, Not Guilty pleaded, and Evidence given, that the Defendant had a Lease of the Woods where the Hawks were taken, and good, because he thereby makes a Title to himself. Brown's Anal. 16.

22. In Trepsafs Not Guilty is pleaded, and the Defendant gives in Evidence a Lease for Years, and good, but Secus of a Lease at Will, because that is determinable at Phaibour. Brown's Anal. 17.

23. In Trepsafs De bonis Captis, the Defendant pleads Non Culpa, and gives in Evidence, that he recovered the same Goods by Verdict, and had them delivered to him in Execution, and good. Brown's Anal. 17.

24. In Trepsafs, and Not Guilty pleaded, the Evidence was, that the Property was to J. S. who gave them to the Defendant, and good. Brown's Anal. 17.

25. But in Trepsafs, where Not Guilty was pleaded, the Evidence was, that the Property was to J. S. and that the Defendant as his Servant, and by his Commandment took the Goods in the Count and ill; For he thereby conflatesfeth the Trepsafs, and yet justifies the same. Brown's Anal. 17.

26. In Trepsafs, Not Guilty was pleaded, the Evidence was, that Leusa in Quo, &c. fluat liberum Tenementum J. S. who licensed the Defendant to Enter, by Virtue whereof he entered accordingly; but no good Evidence, because it is a Justification. Brown's Anal. 17.

27. In Trepsafs of Battery, and Not Guilty pleaded, the Evidence was, that the Battery was done in the Defendants own Defence, and ill. Brown's Anal. 17.

28. In Covenant the Illue was, whether the Defendant had made an Estate sufficient in Black Acre to the Plaintiff or not, and the Evidence was, that the Estate was not of such a Value, and ill, for it is not answerable to the Matter in Illue. Brown's Anal. 17.

29. Debt upon an Obligation for letting one go at large upon a Main-prize, and doth not say the Plaintiff is Sheriff, the Defendant may plead specially, and to conclude his Plea by Way of Non est saltum, but cannot plead Non est saltum generally, because contrariant. Brown's Anal. 17.
Evidence.

30. In Trespas Quaer Clasium fregit, it is a Plea in Abatement to say that the Plaintiff is Tenant in common with another, but cannot be given in Evidence upon Not Guilty, as it may where one Tenant in common brings Trespas against the other. Vent. 214. Trin. 24 Car. 2. B. R. Anon.


Yet this may be answered by proving that this was by the Leafe of the Leffe. Vent. 277. Mich. 27 Car. 2. B. R. Per Hale Ch. J. in Case of Hodgkins v. Robertson and Thornborough.

32. In Debt against Leffe, he may plead Nil debet, and give the Expifion in Evidence. Vent. 258. Pach. 26 Car. 2. B. R. Anon.


34. If a Citizen is chosen Sheriff of London, and the Mayor and Aldermen refuse a reasonable Excuse, the Party is not bound by such Refusal, because he may give it in Evidence upon Nil debet pleaded in an Action of Debt brought for the Forfeiture, and there the Validity of the Excuse will be tried by a Jury. Carth. 483. Pach. 11 W. 3. B. R. Per Holt Ch. J. in the Case of London City v. Vanacker.


36. One Joohtenant, or Tenant in common, or Partner cannot bring Trover and if he does, tis good Evidence on the General Issue of Not Guilty. But if one Jointenant brings Trover against a Stranger, in that Case the Defendant may plead it in Abatement, but cannot take Advantage of it in Evidence. 1 Salk. 290. pl. 29. Trin. 7 Ann. B. R. Brown v. Hedges.

In Account

Brown’s Anal. 15. S. P.

1. Debt upon Arrears of Account, the Defendant said, that he owed him nothing & Forma, and gave in Evidence, that there was no such Account; and Newton said for Law, that the Evidence is good, and and also be may say in Evidence if there was Account, that yet he owes him nothing, and yet he might have said for Plea, No such Account. Br. General Iflu. pl. 7. cites 20 H. 5. 24.

Brown’s Anal. 15. S. P.

2. In Debt upon Account before Auditors, the Defendant may plead Nil debet, and give in Evidence that No such Account. Br. General Iflu. pl. 39. cites 9 H. 7. 3. Per Fineux.

3. And in Debt upon a Lease for Years, if the Defendant pleads Nil debet, he may give in Evidence that Non Dimittit prout, &c. Quaer inde. Ibid.

In Annuity

Brown’s Anal. 15. S. P.

1. In Scire Facias of Annuity against a Parson, if he pleads that Not Parson, he may give in Evidence Resignation, and the Jury is bound to find it. Br. General Iflu. pl. 62. cites 9 E. 4. 49.

Annuity
Evidence.

In Appeal.

1. He who pleads Not Guilty in Appeal, cannot give in Evidence that he was Sheriff and hanged him. Br. General Illue, pl. 45, cites 12 H. 81.

2. Or that he was a Forester and killed him flying. Ibid.

In Afficts.

1. Debt against Executors, if they are at Issue upon Afficts enter-mains, it is good Evidence that they have sold the Land by the Will of the Testator, and have the Money. Br. General Illue, pl. 4, cites 3 H. 6 3.

2. So that they have recovered in Trespass of Goods taken in the Life of the Testator. Ibid.

3. So in Debt of 10 l. to prove that they have to the Value of 40 l. Ibid.

In Bastardy.

1. Bastardy was pleaded in the Plaintiff in whom the Defendant had Br. Villein, pleaded Villeinage, and the Defendant said, that the Eponoys were at D. sect. 20. &c. which contained all these Lives within which Time the Plaintiff was born, & Non Allocatur, by which he concluded over, and fo Muller and not Bastard, and proved that all be entered & Non Allocatur; For nothing was entered but Muller and not Bastard. Br. General Illue, pl. 13. cites 18 H. 6 17.

2. In Affile of Mortdafter, the Tenant said, that he was ready to hear the Recognizance, and in Evidence would have Bastardized the Plaintiff, and was not suffered; For he has pleaded against him as Mullier, but the Affile was charged upon all the Points of the Writ, but in this Case the Tenant cannot bastardize him; And so see that it ought to have been pleaded. Br. General Illue, pl. 34. cites 12 All. 3.

As to Common.

1. In Affile by Commoner, where the Lord has approved, and the Plaintiff has Common to Land in this Vill, and in another Vill, he shall take the first Vill for Plea, that he has twenty Acres there, and by Protestation that he has forty Acres in another Vill to which he has Common here, and join Issue upon the Sufficiency of the Common, and give the Matter in Evidence that he has Common Appellant there to his Land in several Vills. Br. General Illue, pl. 83, cites 16 E. 3. and Fitzh. Common, 9.

2. In Trespass the Issue was upon Prescription to Common with so many Beasts Time out of Mind, and gave in Evidence Common for Cause of Villeinage; and it was held no Evidence; for the Issue shall be intended by Prescription only, and the Evidence is Prescription and Consideration that the one shall have Common with the other. Br. General Illue, pl. 93, cites 13 H. 7. 13.

3. In Action on the Case for disturbing the Plaintiff in Enjoyment of his Common, the Defendant may plead the General Illue, and give the Issue in Evidence. 8 Mod. 120, 121. Hill. 9 Geo. 1. Molte v. Benner.

In Debt.

1. A Servant is retained taking Yearly 20 l. or a Robe of the Price of 20 l. Br. Defte. which is Arrear, the Defendant said, that he has paid the Robe Yearly at pl. 112. D. in the County of S. &r. And per Moyle he shall say Nil Debet, and cites S. C. give
Evidence.

give the special Matter in Evidence; For it amounts to Non Debet, &c.
Br. General Issue, pl. 27. cites 9 E. 4. 36.
2. But where the Payment is of another Thing than of Money the Plea
is good, and he shall not be compelled to the General Issue; Per Little-
ton, Choke and Needham J. Ibid.
3. And the Defendant may plead, that the Plaintiff departed out of his
Service, and shall not be drove to the General Issue, Quod Nota Bene.
Ibid.

In Debt against Corporation.
Br. Abbe,
pl. 9. cites
S. C.

1. In Debt against an Abbot a Man may count generally, that the 10 l.
borrowed came to the Use of the House, and shew in Evidence how, as in
Buying of Bread and Beer, or in Defence of a Suit against the Abbot, or on

In Debt against Executors.
1. In Debt against J. S. Executor of the Testament of W. if he impares, he
cannot plead to the Writ that he is Administrator, and not Executor, and there-
fore by Advice of the Court be pleaded Ne Unques administered as Execu-
tor, and give in Evidence, that he was Administrator, and not Executor; Per Cur.
2. In Debt against Executors who plead Ne Unques Executor, &c. or
Riens enter-mains, upon which they are at Issue upon Assets, or that Ad-
ministrator-urunt, &c. and do not shew what they administered, or what is the
Assets; yet it is good; for it shall be given in Evidence. Br. General If-
ssue, pl. 87. cites 9 H. 7. 14.

In Detinue.
Br. Dower,
pl. 54. cites
S. C.

1. Detinue of a Writing by which J. M. Abbot of C. and the Covent
granted a Carody and Penfion of 3 l. per Ann. and the Office of Portership of
the said Abbey to W. S. for Term of his Life, who granted it over to the Plain-
tiff and the irst Deed also, &c.Fadrum illud Detinet, &c. The Defendant
pleaded Non Detinet, and the Jury found that he sold as above, &c. but
it was agreed between them that the Defendant should retain the Deed till
40 l. was paid, of which 7 l. is paid, but not the r£7 l., therefore Detinet, &c.
Per Danby, this Matter is a good Bar, and ought to have been pleaded,
and otherwise he shall not take thereof Advantage, by which the Plain-
2. And in Detinue if the Defendant pleads Non Detinet, and it is found
that it was delivered in Mortgage, the Plaintiff shall recover; For this
ought to have been pleaded. Ibid.
3. If a Man bails Goods to J. S. and after buys a Horse of J. S. and a-
grees that he shall have the Goods bailed for the Horse, and after he brings
Detinue of the Goods bailed, and he plead Non Detinet, and all found as
above, the Plaintiff shall recover, because the Matter was not pleaded.
Ibid.

In Dower.

1. The Tenant said, that the Feene had an elder Baron than he of whose
Document he now claims, which elder Baron is yet in full Life, Judgment,
Ex Non Allocatur, by which he added to it, and so Ne unques Accouple
in lawful Matrimony, and nothing was entered but Ne unques Accouple,
&c. and Writ awarded to the Bishop to certify it, and this Matter shall
be Evidence before the Bishop, &c. Br. General Issue, pl. 29. cites 39
E. 3. 15.

2. In
Evidence.

2. In Dower of Rent, the Defendant said, that the Baron had nothing in 8, unless jointly with J. S. who is yet alive; the Plaintiff replied, that J. S. released to her Baron all his Rights, &c. Thirn asked where the Release was? Skrene said, it does not belong to us; Per Thirn it is better for you to say that if she gave Dower la poit, and give the Release in Evidence. quad the Court conceit, by which Skrene took Iliffe accordingly. Br. General Iliffe, pl. 48. cites 14 H. 4. 83.

3. In Dower of Rent, Hill said, Ne unque seife que Dower la poit, Horton said, J. S. granted the Rent to the Baron payable at Michaelmas next, and before the Day the Baron died, and so was he seised in Law, and demanded Judgment; Thirn bid him say generally, that seife que Dower la poit, and give your Case in Evidence, and to well notwithstanding the Doubt of the Lay Gents; for they ought to credit the Law. Br. General Iliffe, pl. 49. cites 17 H. 4. 88.

4. In Dower, the Tenant said, that S was seised in Fee, and insoff'd him in Fee, and after he leased to the Baron to hold at the Will of the Leffor next Tenant, which estate he continued all his Life, Abfque hoc that he was seised of such estate que Dower la poit; and all this Matter entered in the Roll, and not only the General Iliffe, by Reason of the long Continuance of Poffeflion for Doubt of the Intelligence of the Lay Gents. Br. General Iliffe, pl. 53. cites 39 H. 6. 9.

5. In Dower, the Tenant demanded the View, the Demandant said, that the View be ought not to bare; For our Baron dyed; the Defendant rejoined, that her Baron dyed did not die seised of such estate that she might have Dower, Prifj, and the Tenant e contra, but the Court and the Prothonotaries doubted of this Iliffe, and the next Day Starkey said, that the Baron died seised of the seife Real. Per Cur. you shall not have this by Plea, but shall give it in Evidence; for the Course of the Entry is that the Baron died seised, and this seems to be in such Estate Que Dower la poit, and the others e contra; for otherwise this cannot come in Evidence. Br. General Iliffe, pl. 47. cites 21 E. 4. 22.

False Imprisonment.

1. In false Imprisonment, if the Defendant had arrested the Plaintiff, and justify'd by Warrant of the Peace which came to him after the ArisT made there, the Plaintiff may say, that De fes Vert demerfs Abfque hoc, that he had any Warrant, and shall give the Matter in Evidence. Br. General Iliffe, pl. 23. cites 14 H. 8. 16.

2. In false Imprisonment, the Defendant said, that his Master imprison'd the Plaintiff in a Chamber and locked the Door, and delivered the Defendant the Key to keep, which he did, and because the Plaintiff was Clerk of the Court, he was drove to the General Iliffe, and gave the Matter in Evidence, felc. the Cause of the Imprisonment. Br. General Iliffe, pl. 78. cites 22 E. 4. 45.

Grant.

1. In second Deliverance the Defendant avowed for Damage Feafant, because A. leased to B. for twenty Years, and B. granted to him his Term, and the Bluffs were Damage Feafant, &c. The Plaintiff said, that such a Day B. granted the Term to him absque hoc that he granted to the Defendant before the Grant made to the Plaintiff, and so to Iliffe, and the Plaintiff at the Niti Prius gave in Evidence a Grant upon Condition that if he should obtain the Favour of the Leffor, and pay so much as J. N. shall say, and that he obtained the Favour of the Leffor, and pay 3 l. as J. N. awarded, &c. and good Evidence, notwithstanding that the Defendant said, that nofe between his Grant and the Performance of the
Evidence.

Condition, the Lessor said to this Defendant that he never gave his Favour to the Plaintiff, and yet good, because when the Plaintiff came to him he gave to him his Favour, Quod nota, and so well for the Part of the Plaintiff. Br. Gen. Issue, pl. 24. cites 14 H. 8. 17.

Hors de fon Fee.

1. If a Man pleads Hors de fon Fee, the other shall not shew Tenure, and so within his Fee, but shall say that within his Fee, Prist only, and shall give the Matter in Evidence. Br. General Issue, pl. 70. cites to E. 4. 10.

Maintenance.

1. In Maintenance the Defendant tendered Justification that is no Maintenance; that is to say, that he, at the Prayer of the Party for whom, &c. gave his Counsel to sue Superfederat, &c. which is no Maintenance, therefore Not Guilty shall be entered, and the Matter shall be given in Evidence. Br. General Issue, pl. 20. cites 22 H. 6. 33.


Non est Factum.

1. In Debt, per Broke J. where I deliver a Deed to J. N. as an Evidence upon certain Conditions performed, to deliver over as my Deed, and he delivers it over, the Conditions not performed, I may say Non est Factum, and give the Matter in Evidence. Br. General Issue, pl. 25. cites 14 H. 8. 23.

2. In Debt upon an Obligation the Defendant may plead Non est Factum, and give in Evidence that he is Lay, and not Letter’d, and that it was read to him in another Form, and so he did, Quod nota. Br. General Issue, pl. 22. cites 15 E. 4. per Brian.

3. Where a Man pleads that he was a Layman, and not Letter’d, in Avoidance of a Deed, and that it was otherwise read to him, &c. and so Non est Factum, there all shall be entered; and yet he may say Non est Factum, and give the Matter in Evidence, but the other Form is better for the Intelligence of the Lay Gent. Br. General Issue. pl. 33. cites 19 H. 6. 9.

4. In Trespass, where a Leaf by Deed of Master and Conferences is pleaded, it is only Argument to say that there were no Conferences at the Time of the making. Br. General Issue, pl. 41. cites 10 E. 4. 4.

5. Where a Deed of the Father is pleaded, to say that he had no such Father; for he shall say Non est Factum, and shall give the Matter in Evidence. Ibid.

6. Where a Deed is pleaded in Bar, the other says Riens Pausa by the Deed, he may give in his Evidence that Not his Deed; per Brian, but he said at another Time in the same Term, that he shall not give in Evidence that Not his Deed; For when when he pleads that Riens Pausa, &c. then it is not denied but that it is his Deed, but Riens Pausa by it, and per Keble, he shall give it Evidence, therefore quære, for it shall not. Br. General Issue, pl. 58. cites 5 H. 7. 8.

Rent. Affise.

1. In Affise of Rent if Not Fort is pleaded, the Plaintiff may give in Evidence a Grant of the Rent in another County, and Diffens in this County. Br. General Issue, pl. 62. cites 9 E. 4. 49.

Receipt,
Evidence.

Receipt, and Counter-Plea.

In Precipe quod reddat, if J. N. prays to be received upon Default of the Tenant for Life, the Demandant may counterplead that nothing in Reversion, without fleeing how the Reversion was destroyed, but shall give this in Evidence; for a Stranger had Title to enter, and entered, but it is not expressly ruled, but taken de gree. Br. General Illue, pl. 57. cites 8 H. 6. 16.

Rent. Avowry.

1. Avowry for Rent, and that the Tenant held by Fealty and Rent, and for the Rent Arrear, &c. and the Plaintiff said that Hors de son Fee, and the others contra, and the Defendant gave in Evidence a Deed before Time of Memory, and Seisin of the Rent; and per Cur. this does not prove the Illue. Br. General Illue, pl. 2. cites 27 H. 8. 20.

2. By which he gave in Evidence Seisin of the Suit of Court; for Seisin of the Rent is not Seisin of the Services; and per Fitzherbert clearly, he shall not give it in Evidence, because in his Avowry he does not alledge other Tenure but of Fealty and Rent only, Quod Nota; And Seisin of the Rent is not Seisin of the Fealty. Ibid.

Rent. Replevin.

1. Replevin of a Sow and Pigs, the Defendant justified for the Sow, and to the Pigs said No Prift pas; and it was found by the Jury, that the Sow was with Pig at the Time of the Taking, and after tharowed her Pigs and well, and the Plaintiff recover'd; and so it seems that this Matter was given in Evidence, and therefore this is a Special Taking in Law. Br. General Illue, pl. 88. cites 18 E. 3. and Fitzh. Replevin, 34.

Statutes Penal.

1. In Debt upon the Statut of Farms, 21 H. 9. cap. 13. if the Defendant says, That Non habuit nec tenuit ad firmam contra firmam Statut, &c. he may give in Evidence that he took it in Mainenace of his Howe by the Provisio in the Statute; Per Fitzherbert and Shelley J. But Baldwin Ch. J. denied it, and said, that he shall plead it. Quere. Br. General Illue, pl. 2. cites 27 H. 8. 20.

Tenure.

1. In Rent, if the Plaintiff counts of Tenure by Homage, Fealty, and Esnance, and be disfraine for the Rent-Arrear, and the Defendeis made Reocus, and the Defendant pleads Not Guilty, he shall not give in Evidence that there was no such Tenure. Br. General Illue, pl. 93. cites 9 H. 7. 3.

2. And he who pleads Riens Arrear in Avowry does not deny the Tenure, and therefore shall be pleaded, and not given in Evidence. Ibid.

Trespafs of Battery.

1. Trespafs of Battery and Wounding, the Defendant pleaded Not Guilty, and the Plaintiff gave in Evidence to the Jury that he was mathem'd at this Time, and the Jury find it accordingly to the Damages of 18 L. and the Justices upon View of the Malhem gave Judgment of the 18 L. and
Evidence.

and 22 l. more, feil. 40 l. in all. Br. General Issue, pl. 30. cites 39 E. 3. 20.

2. In Trespafs of Battery, if the Defendant pleads Not Guilty, and it is found that it was of the Assault of the Plaintiff, and in Defence of the Defendant, the Plaintiff shall recover; for it ought to have been pleaded. Br. General Issue, pl. 19. cites 22 H. 6. 33.


Trespafs of Clofses, &c. Broken. &c.

1. Trespafs of Clofe broken in C. the Defendant justified in K. Absque loco that he is guilty of any Trespafs in C. and had the Plea by Award, and was not drive to the General Issue Not Guilty in C. and to have the Matter in Evidence, but the Plaintiff was forced to reply that Guilty in C. prout, &c. quod nostra, per Cur. Br. General Issue, pl. 26. cites 4 H. 6. 13.

2. Trespafs in D. in the County of N. of Trespafs local the Defendant justified at D. in the County of L. Absque loco that he is Guilty at D. in the County of N. and was not suffered to have any Thing entered but the General Issue, and to give in Evidence that the Trespafs was in another County. Br. General Issue, pl. 52. cites 9 H. 6. 62.

3. In Trespafs of breaking his House, if the Defendant says that there is no House there, this is no Plea; but he may say Not Guilty, and shew this in Evidence that there is no House there. Br. General Issue, pl. 59. cites 22 H. 6.

4. In Trespafs against two, if the one justifies for the Land, and the other says, that he came in Aid to him, to put the Beasts of the other Defendant into the Land of the same Defendant, this is no Trespafs to the Plaintiff, by which he pleaded Not Guilty, and gave the Matter in Evidence. Br. General Issue, pl. 60. cites 22 H. 6. 56.

5. In Trespafs in a Free Warren, it is no Plea that it is the Frank Tenement of W. N. who commanded him to enter, &c. for it is only Argument, by which he said, Absque loco that the Plaintiff has Warren ibere, &c. by which he had nothing entered but the General Issue. Br. General Issue, pl. 53. cites 34 H. 6. 43.


7. In Trespafs upon 5 R. 2. of a House and Shop, it is no Plea that the Shop is Parcel of the House. Br. General Issue, pl. 67. cites 3 E. 4. 28.

8. Nor of such Action in D. and S. to say that all is in D. Ibid.

9. Nor of the Manor of D. in S. to say that twenty Acres extend into T., but shall have the General Issue, and shall give the Matter in Evidence; for the Plaintiff in thofe shall recover only Damages. Ibid.

10. But those are good Pleas in Assise and Precipe qual reddat, where the Land itfelf shall be recovered. Ibid. and cites 4 E. 4. 31. and 10 E. 4. 11. accordingly.

11. In Trespafs of Entry ubi ingressus non datur per legem by a Prior, it is a good Plea that the Plaintiff was not Prior at the Time, &c. and so in Action brought by Warren, Sheriff, or Master of the Prison of his Servant, it is a good Plea that he was not Warden, Sheriff, or Servant at the Time, and shall not be compelled to plead Not Guilty, and give this Matter in Evidence. Br. General Issue, pl. 42. cites 12 E. 4. 7.

12. If my Wife or Servant without my Notice puts my Cattle into another’s Land, who brings Trespafs against me for the eating his Grafs, if I plead Not Guilty, I cannot give the special Matter in Evidence, because
Evidence.

caufe it is contrary to the Illue; Per Keble. Keilw. 3. b. pl. 7. Mich.
13. In Trefpafs upon Not Guilty, Licence cannot be given in Evi-
dence, Br. General Illue, pl. 46 cites 12 H. 8. 1.
Br. General Illue, pl 45. cites 12 H. 8. 1.
15. Upon Not Guilty or Goods taken in Trespass, a Gift is good cites S. C.
16. In Trespass, if the Defendant pleaded Not Guilty, he cannot give Kitch 245.
in Evidence the Hedge of the Plaintiff, which the Plaintiff ought to
prove, was open, and the Beasts of the Defendant entered, &c. For this
ought to be pleaded ; for it is Matter of bar, and also confesses the
Trespass, and proves a Justification which is not pleaded, and therefore
it is lost. Br. General Illue, pl. 1. cites 19 H. 8. 6.
17. In Trespass, it a Man entitles a Stranger, and justifies by his Com-
mend, this ought to be pleaded, and not given in Evidence upon Not Tort,

In Trespass of Goods carried away.

1. In Trespass of Goods carried away the Defendant justify'd, because
J. N. was poffeffed, and gave to the Defendant, by which he took them,
Abufe be, that he took any Goods of the Plaintiff, and per Cur. No-
thing shall be entered but Not Guilty, and the Matter shall be in Evi-
dence. Br. General Illue, pl. 5. cites 5 H. 6. 11.
2. Trespass in D. of Fish taken the Defendant justify'd by Common
of Pifhary in the same Placp appertain to his Frank-Tenement in B. to the
Middle of the Stream, which Stream extends between B. and D. and so he
justify'd in B. Abufe be, that he is guilty in D. and nothing was en-
tered but Not Guilty, and yet per Cur. they may suffer all to be en-
tered, fo that it is at their Discretion. Br. General Illue, pl. 32. cites
14 H. 6. 23.
3. In Trespass De bonis, &c. it is no Plea that the Plaintiff had no
Goods, for it is only Argument. Br. General Illue, pl. 53. cites 34 H. 6.
43.
4. Trespass of taking of Hawks, the Defendant pleaded Not Guilty, the
Defendant gave in Evidence that the Plaintiff leased to him the Wood for
Twenty Years, and during the Term the Hawks bred in the Wood, and he
took them, and good Evidence, and so the Leffe shall have the Hawks,
Square if the Trees were reserved as in 14 H. 8. Br. General Illue, pl. 43.
cites 16 E. 4. 1.

Waft.

1. Waft in cutting of Trees, the Defendant pleaded No Waft done, and
gave in Evidence, that the Plaintiff leased to him, and granted to
Cut Trees for Reparations, and that the House was ruinous at the Time of
the Demife, and be cut for Reparations, and the Plaintiff demur'd, and
recovered per Judicium. Br. General Illue, pl 46. cites 12 H. 8. 1
he cannot give in Evidence justifiable Waft, as to repair the House, &c.
S. F. 2 Upon
Evidence.

2. Upon no Wafte done pleaded, he may give in Evidence, that the House was burnt by Enemies or Thunders, or that it was ruinous at the Time of the Demife made, and fell, or by great Wind or Tempest. Br. General Issue, pl. 46. cites 12 H. 8. 1.

3. Wafte was affigned in Bofcis, viz. in succindendo & vendendo Ten Oaks, &c. whereas he had only lopp'd and fored them. It seemed that as the Wafte is affigned, the Defendant may safely plead Nul Wafte done, and give the Special Matter in Evidence. D. 92. a pl. 16. Mich. 1 Mar. Anon.

4. Wafte was affigned in digging Poffum in quodam Prote. The Defendant pleaded Nul Wafte done. It was found by Special Verdict that the Defendant made a Trench to carry off the Water, Per quod Poffum uel mutatur & non Pejoratur. It was argued that this Matter ought to have been pleaded in Bar, but the Opinion of the Court was, that it was not any Wafte. D. 361. b pl. 12 Hill. 20 Eliz. Altman's Cafe.

5. If one does Wafte, and before the Action brought, the Lefse repair'd it, and after the Lefse brought an Action of Wafte, and the Lefse pleads Quod non fest Vofum, he cannot give in Evidence the Special Matter. Co. Litt. 283. a. in Principio.

(II. b.) Evidence. What may be given in Evidence in Mitigation of Damages.

1. Upon No Guilty pleaded, the Defendant may give in Evidence, that a Shop is Parcel of the House. Heath's Max. 78. cites 3 Ed. 4. Bro. (General Issue) 67.

2. So upon this Plea the Defendant may give in Evidence a Lease; but not a Lease at Will no more than a Licence. Heath's Max. 78. cites 14 H. 3. 16 Ed. 4. 1. 25 H. 8. Bro. (General Issue) 82.

3. Where the Lavo is, that in Trophus of Goods taken the Plaintiff shall recover the Value of the Go as there; Per Culp. If the Plaintiff re-bis his Goods, and yet proceeds in his Action, the Defendant shall give this in Evidence, that the Plaintiff re-had them to eafe him of the Damages, Br. General Issue, pl. 11. cites 11 H. 4. 54.

S. P. For it the Plaintiff has not his Goods again in the Plaintiff shall recover Damages to the Value of the Goods, but if he has then again he shall not recover Damages but for the taking, and Derime Quoqualique rerum relabat, &c. and all this shall come in Evidence quod nota. Br. General Issue, pl. 15. cites 19 H. 6. 54——But the Defendant shall not plead to the Writ that the Plaintiff had his Goods again, Quod nota bene. Br. General Issue, pl. 15. cites 19 H. 6. 54.

4. So in Wafte he cannot upon Nul Wafte fait pleaded give in Evidence that he cut the Timber for Reparations. But in Wafte he may give in Evidence that the Premisses were ruinous at that Time, or burned by Enemies or the like. Heath's Max. 78. cites 12 H. 8. 1.

5. But Tithe in an Envanger upon such a Plea, and to justify by his Commandment, is no Evidence, but ought to plead the said Antier, as the Licence of the Plaintiff himself (as it seems) or one pretendent Common, &c. Heath's Max. 78. cites 25 H. 8. Bro. 81.

6. In a Replication, the Parties were at Issue upon the Property, and it was found for the Plaintiff, and Damages entire were affified, and not for the taking by itself, and for the Value of the Cattle by themselves, for the Judgment upon that is absolute and not conditional; and also if the Plaintiff had the Cattle, the Defendant might have given the name in Evidence to the Jury, and thn they would have affiffed Damages accor
Evidence.


7. In Trespas for taking away the Plaintiff’s Goods, it will be good Evidence for the Abridgment of Damages to prove that the Plaintiff had Part of his Goods again. Brown’s Anal. 15.

8. But if the Defendant pretend an Interest from a Stranger in the Land itself, although but an Estate at Will; yet he may plead Not Guilty. Heath’s Max. 78.

9. In Evidence to a Jury in Action upon the Case against one convicted of Perjury and pardoned, to recover Damages only; the former Conviction, by Potter and Windham may, notwithstanding the Pardon be given in Evidence being collateral; as in calling one Thief, after Pardon his former Ill-Convocation may be given in Evidence in Mitigation of Damages, which Twifden denied; for he may falsify or traverse it in this collateral Action, but by the rent, though it be not conclusive, yet it is good Evidence to induce Belief. 1 Keb. 236. pl. 95. Patch. 14 Car. 2. B. R. Howard v. Golding-Prentice.

10. It was held by the Court that in Allumplit in Fact on a Non Allumplit pleaded, a Release cannot be given in Evidence to take away the Allumplit, but only in Mitigation of Damages; but on Allumplit in Law and a Non Allumplit pleaded it may, because it takes away the Allumplit. Quere, says the Reporter, if an Allumplit either in Fact or Law, on a Non Allumplit pleaded, Performance can be given in Evidence, Sid. 236. pl. 3. Hill. 16 & 17 Car. 2. B. R. Beckford v. Clark.

11. In an Allumplit in Consideration of the Marriage of his Daughter, on Non Allumplit pleaded, exoneravit cannot be given in Evidence to discharge the Promise but only in Mitigation of Damager; but it ought to be pleaded; Per Hale. 2 Lev. St. Hill. 24 & 25 Car. 2. B. R. Abbot v. Chapman.

12. If a Man bring Tresor for a Ship, and upon the Evidence it appears that he has but the Sixteenth Part of it, this is good, and the Interest of the others may be given in Evidence in Mitigation of Damages. Skir. 640. pl. 4. Patch. 8 W. 3. B. R. Dockwray v. Dickenson.

13. License by Husband to Wife to lie with another Man cannot be pleaded in bar to an Action of Trespas by Husband, nor that she was a notorious lewd Woman, but the Matters may be given in Mitigation of Damages. 12 Mod. 232. Mich. 10 W. 3. Coot v. Berry.

14. Though an Executor, de Son Fort pays Debts duly with all the Afficts that come into his Hands, yet the rightful Executor shall maintain Tresors against him, but he may give such Payment in Mitigation of Damages; yet the Right of the Action and Verdict shall go against him. Per Holt Ch. J. 12 Mod. 441. Hill. 12 W. 3. Anon.

15. In Case for Words, which imported the committing of Adultery by the Plaintiff with Jane at Stile, the Defendant in Mitigation of Damages may give in Evidence that the Plaintiff committed Adultery with Jane at Stile, but not, that he committed Adultery with any other Woman. Per Holt Ch. J. at Brentwood Summer Assizes 13 Will. 3. ruled accordingly. Lid. Raym. Rep. 727. Smithies v. Dr. Harrison.

16. Case of Fanderous Words by the Defendant of Plaintiff, who was an Attorney, the Baron would not allow any thing to be given in Evidence on the Defendant’s Part which tended to justify the Words, though in Mitigation of Damages only, and often so practised, but his Opinion was, that any thing which tended to show a Provocation, or any Transcation between the Parties giving Occasion for Speaking the Words was proper in the Defendant to make out, because these Matters cannot be pleaded, nor would he allow any thing that concerned a Stranger to be given in Evidence on the Trial, nor any particular Credit to be given of the Plaintiff.
Evidence.

Plaintiff, but if the Defendant had a Mind to examine to this the Question must be asked in general. Coram Baron Price at Bodmyn, Trin. Vac. 1716. Dennis v. Pawling.

(K. b.) What may be given in Evidence where the Plea is in Aggravation of Damages.

1. 

WHERE an Information contains some particular Offences, as Extortion, &c. and afterwards there are General Words, which may include Offences of the same Nature as the same, &c. if the Plaintiff proves the particular Offence, be may give Evidence of the other Offences included in the General Words, and this he may do in Supplement and Aggravation of the particular Offences contained in the Bill, and the Court will give the greater Sentence against him; but if he does not prove the particular Offence, then it is otherwife. 2 Brownl. 151. Patch. 1612. in the Star-Chamber, Doctor Manning’s Case.

2. In Cape for Words, if they are in their own Nature actionable, the Jury may consider the Damage which the Party may sustain; but if a particular A vention of Special Damages makes them actionable, the Jury are only to consider such Damages as are already sustained, and not such as may happen in future; Per Cur. 2 Mod. 150. Hill 28 & 29 Car. 2. in Cape of Lord Townsfend v. Hughes.

3. In an Action of Trespafs, Affault, and Falle Imprisonment, Quo

usque finem fecit septem Librarium. Upon Evidence at the Trial it appeared that there was but $ t. paid by the Plaintiff to the Defendant for his Deliverance, which varied from the Declaration, that being 7 l. But the Ch. J. said, it was well enough ; for the Action is for the Tres

pafs and Falle Imprisonment, and the other is only in Aggravation of Damages. L. P. R. 595, 596. cites Trin. 8 W. 3. in C. B.

4. In Trespafs for entering the Plaintiff’s Houfe, and beating his Wife, or Children, or Servants, &c. the latter Matters are only alleges as an Aggravation of the Damage to shew the Manner of the Entry; for the disturbing the Quiet of the Family is an Injury to the Plaintiff, tho’ an Action will not lie for it singly; but the Wounding a Servant, or Loss of his Service cannot be given in Evidence, but he must bring his Action, however the Plaintiff may give in Evidence, Per quod Serviens amitus. 2 Salk. 642. pl. 14. Trin. 5 Ann. B. R. Newman v. Smith.

(L. b.) Evidence. Repugnant to the Issue.

But Quere if it should not be fol. 9,
By General Issue, pl. 33. S. P. by Brian; but Keble contra; but Bock says, it seems it shall not, and cites 5 H. 7. 8.—Iblid. pl. 79. cites H. 7. 3. S. P. by Brian.

1. If one pleads that nothing passed by the Deed, he cannot after give in Evidence that it is not his Deed; for it is contrarying. Kitch. 242. cites 5 H. 7. fol. 2.

2. In Detaine, the Defendant faith doth not detaine; he cannot give in Evidence that he hath it in Pawon; for it is contrarying. Kitch. 242. cites 9 H. 7.
Evidence.

3. In a Replication, the Taking was supposed to be in a Place called Kelforn-lyng, and the Defendant says, that the said Place contains 200 Acres of Pasture, which are, and by Prescription have been Parcel of the Manor of Kelforn, (and omits naming the County where the Manor lay) which Manor is and was Solam & Liberum Tenementum of the Defendant; and avows the Taking of the Cattle Damage-tenant; the Plaintiff in Bar to the Avowry pleads, that the Place where is Parcel of the Manor of Kelforn, in Kelforn aoreaid, and conveys a Title to himself, and traverth its being the Avowant's Freehold, and Ilue was taken on the Traverle; and at Nili Prius the Plaintiff gave in Evidence, that there was no Manor of Kelforn, and consequently the 200 Acres could not be Parcel of it; and by the Opinion of the whole Court, this Evidence was adjudged repugnant to the Plaintiff's own Traverle. Dy. 183. a. pl. 58. Pach. 2 Eliz. Anon.

4. An Action of Debt was brought upon a Lease for Years, the Defendant pleaded Non est factum, he cannot give in Evidence, that the Bond was made for Usury, because it is contrary to the Ilue. Ow. 55. Mich. 29 & 30 Eliz. Anon.

5. In Debt upon an Obligation made for Usury, if the Defendant pleads Non est factum, he cannot give in Evidence, that the Bond was made for Usury, because it is contrary to the Ilue. Brown's Anal. 17.

6. In Affise, Tenant pleads Nil Tort niul Diffusin, he cannot give in Evidence a Release of Right after the Disseisin; for it is an implied Confequen of the Diffusin, and repugnant to the Plea of No Tort no Diffusin. Jenk. 18. pl. 33.

7. So in Waste, if Defendant pleads No Waste done, and gives a Release in Evidence, it is of no Ule; for the Evidence is repugnant to the Plea. Jenk. 19. pl. 35.

(M. b) Evidence. Admitted by what Plea or Action.

1. In Debt on Account stated, and Nil Debet pleaded, it was urged that pr. General this conflicted the Account, and therefore it ought not to be given Ilue, pl. 7 in Evidence, that there never was any such Account; But per Newton cites S. C. Ch. J. it may be given in Evidence, or pleaded. L. E. 199. cites 20 H. 6. 24.

2. If the Plaintiff pleads Son-Affault, he cannot give in Evidence that he made no Battery; For he acknowledged the Battery by his Plea. Keilw. 55. b. pl. 4. Mich. 20 H. 7. Guilford v. Grainford.

3. In a Replication in the Avowry, prescribes to have Common Appurtenant, but doth not shew and aver that the Cattle were levant & couchant upon the Land, &c. And for that it was held to be naught by the Court Vid. 15 E. 4. 32. But in this Case the Ilue was joined upon the Prescription; and by the other Pault is allowed as conflict, and is helped after Verdici by the Statute. Nov. 145. cites 5 Rep. 43. a. Mich. 3 Jac. Jeffry v. Boys.

4. In a Warranta Charter upon Warranty, his Ancestor the Defendant pleaded Rias per Rectem; By the Court, Judgment shall be entered for the Plaintiff without Trial if he will; For the Warranty is contell Pro Tc.
Evidence.

lcco et Tempore; For the Trial may be long and chargeable. Nov. 140. Thompson v. Jackson.

5. Error of a Judgment in the Palace-Court in Assumpsit, in which Action the Plaintiff was to prove Arrest as a Consideration of the Promiser, and not producing the Writ the Defendant demurred on the Evidence, but yet the Plaintiff had Judgment, and now the Error assigned was, that he ought to produce the Writ; for the King's Writ are Records, and to be proved only by themselves, which is very true; but here the Defendant had demurred upon the Evidence, and by that Means had confessed the Writ, and the Arrest is Matter of Fact, though it is to be proved by Matter of Record, and the Jury might know that there was a Writ; if so, then by the Demurrer to the Evidence, all Matters of Fact are confessed, which the Jury might know of their own Knowledge. 1 Lev. 87. Mich. 14 Car. 2. B. R. Fitzharris v. Bojoun. See Dyer, 239. See Error (G) 50. S. C.

6. In an Action of Trespass for Breaking and Entering the Plaintiff's Close, to which Not Guilty the General Issue is pleaded, the Defendant cannot give in Evidence, that the Indefence was defective, because thereby the Trespass is confessed. Brown's Anal. 14.

7. Assumpsit in Consideration the Plaintiff would deliver to J. S. ten Quarters of Malt, to pay for it upon Repueft, if J. S. did not, and sets forth, that he did deliver it, and J. S. did not pay for it, and that he requested the Defendant such a Day who had not paid it; and at a Trial at Middlesex before Twifden and Wyndham, the Defendant would have put the Plaintiff to prove the Repueft, but the Judges would not fuller it; for the Repueft was transferable, and not being transferred is admitted, and the Issue is only on the Assumpsit, the Defendant having pleaded Non Assumpsit. 1 Lev. 166. Pach. 17 Car. 2. B. R. Anon.

8. In Debt on a Bond, the Defendant pleaded No unques Accouple in loyal Matrimoniy; This admits a Marriage, but denies the Legality of it, whereas a Marriage de Facto is insufficient, and whether legal or not legal is no ways material. 2 Salk. 437. pl. 1. Trin. 1 W. & M. in B. R. Alleyn v. Grey.


11. Ejeftment on a Demife by a Corporation aggregate Verdict Pro Quer in C. B. Error brought, and objected that the Demife is not set forth to be by Deed, Judgment affirmed; For Demife is confessed to be good by confessing Lease, Entry and Oyster; and Jury could never have found for Plaintiff if there had not been good Demife. 12 Mod. 113. Hill. 8 W. 3. Anon.

12. Action against an Administrator upon a Note, who pleaded Plene Adminiftravit; and it was objected, that this Note was assigned to J. S. Ruled, that by the Plea the Right of the Action is admitted, and the Property of the Note in another may not now be objected; otherwise if he had pleaded Non Assumpsit. Skin. 650. pl. 8. Trin. 8 W. 3. B. R. Mitchel v. Mee.

13. In Debt on Bond brought by an Administrator, if the Defendant pleads Non efi Fadums, the Plaintiff in Evidence need not shew the Letters
Evidence.

(No. 1) Evidence. What may be given on the General Issue, upon Not Guilty.

And what may be given in Evidence in the following Cases.

1. A Defendant cannot in any Case upon Not Guilty pleaded give in Evidence a Licence, but he may give a Gift in Evidence. Brown's Anon. 15.


3. Where the Defendant pleads the General Issue, and shews in Evidence, that the Plaintiff hath no such Cause of Action as is brought, nor no Cause of Action; this is good Evidence upon the General Issue. Kitch. 237.

4. Upon the General Issue any Thing may be given in Evidence, which proves that the Plaintiff had no Cause of Action. Try. per Pais, 7 Edit. 440.

5. Upon the General Issue, it is good Evidence for the Defendant to convey to himself the same Interest and Title by Evidence. Try. per Pais, 7 Edit. 441.

6. As in Trespasses for GoFsawks, and Not Guilty pleaded, Evidence that he had a Licence of that Wood for Tears where they were taken, is good; For it is his Title. Ibid.

7. After taking the General Issue, the Defendant cannot give in Evidence any Thing that goes in Discharge of the Action. Try. per Pais, 7 Edit. lays it down as a Rule.

8. Regularly by the Common Law, if the Defendant has Cause of Justification or Exculpe, he cannot plead Not Guilty; For then in Evidence it shall be found against him; For that conveys the special Matter and conclaves and justifies the Battery. Co. Litt. 282. b.

(O. b. 2) Assault and Battery.

1. Where the Issue in Trespasses for Assault and Battery is Not Guilty, and the Defendant gives in Evidence Son Assault Deny, the Evidence is not good. Heath's Max. 84. cites Keilway, 55.

2. 12
Evidence.

2. In Trespas of Battery of his Servant per quod Servitum Amilit, the Defendant may plead Not Guilty, and give in Evidence a Jusification of such Battery, which is not any Loss of Service as a Thrusting away. 2 Roll. (P. 1) pl. 5. cites 14 Jac.

3. In Trespas of Battery, and Not Guilty pleaded, the Evidence was that the Battery was done in the Defendant’s own Defence, and ill. Brown’s Anal. 17.

4. If one enter upon Land, whereof I am in legal Possession, and I desire him to go off my Land, and he refuse it, then after this I may use Violence, and thrust him off; But I cannot wound him, or knock him on the Head. Skin. 228. pl. 7. Hill. 36 & 37 Car. 2. B. R. Kingston v. Booth.

5. Two or three are doing an unlawful Act, as abusing the Parents-by in a Street or Highway, if one of them kills a Parent-by, it is Murder in all, and whatsoever Mischief one does, they are all guilty of it; and it is lawful for any Person to attack and suppress them, and command the King’s Peace; and such Attempt to suppress is not sufficient Provocation to make Killing, Manslaughter, or Non Assalt de malefic a good Plea in Trespass against them; Per Holt. 12 Mod. 256. Mich. 10 W. 3. Aliton v. ——

6. Trespass by Baron and Vize for driving a Coach over the Wife; Per Quod the Husband was put to great Expenses in curing his Wife; Per Powel if the Baron shall not give in Evidence what Expenses he was put to, but the Surgeon may be examined to give Account of the Wound, but no farther, for the Baron may bring an Action for the other. Hill. 8 Ann. B. R. Dod and Ux. v. Radford.

(O. b. 3) As to Attachment of Goods.

1. If Attachment and Condemnation be before a Writ purchased, it may be given in Evidence on a General Issue, because it is an Alteration of the Property before the Action brought. 1 Salk. 280. pl. 6. Patch. 5 W. & M. Brook v. Smith.

(O. b. 5) Attaint.

1. In Attaint, the Plaintiff shall not give more in Evidence, nor produce more Writuses than he gave to the petty Jury; but the Defendant may give more in Affirmance of the first Verdict; agreed plainly for Law. Dyer 53. b. pl. 11. Trin. 34 H. 8. Rolle v. Hampden.


1. In Detinue Defendant pleads Non detinet, he cannot give in Evidence that the Goods were pawned to him for Money, and that it is not paid, but must plead it; but he may give in Evidence a Gift from the Plaintiff, for that proveth that he detaineth not the Plaintiff’s Goods. Co. Litt. 253. a.

(O. b. 5) In Ejectment.

1. If an Ejectment be brought of twenty Acres on a Lease of twenty Acres, if the Defendant plead Non Ejectit, there if he is found Guilty but in ten Acres, the Plaintiff shall recover, but he should not, if the Defendant had pleaded Non Dimittit. Dal. 105. pl. 50. 15 Eliz. Anon. 2. In
2. In an Ejectiome firme brought by the Leffee of a Copyholder, it is sufficient that the Count be General, without any Motion of the Licence; and if the Defendant plead Not Guilty, then the Plaintiff ought to prove the Licence in Evidence. 2 Brownl. 40. Hill. 8 Jac. C. B. Pet- 

ty v. Evans.

3. Collateral Warranty may be given in Evidence, and found by the Jury on Not Guilty pleaded in Ejectiome firme. 10 Rep. 97. b. per Cur. in Seymour's Case, and cites 1 Rep. Chudligh's Case.

4. Entry and Clain made upon the Land within five Years after the Death of the Baron of the Counties of Peterborough to avoid a Fine, the being Iffue in Tail, proved by one Witness, and allowed at a Trial in Bar. Sid. 166. pl. 25. B. R. Mich. 15 Car. 2. Floyd v. Pollard.

(O. b. 6.) False Imprisonment by Peace-Officers.

1. In any Action upon the Case, Trespass, Battery, or of False Imprisonment against any Justice of the Peace, Mayor or Bailiff of City or Town Corporate, Headborough, Portrewe, Constable, Tithingman, Collector of Subility or Fifteenth in any of his Majesty's Courts at Westminster, or elsewhere, concerning anything by any of them done by Reason of any of the Offices aforesaid, and all other in their Aid or Affiliation, or by their Commandment, &c. they may plead the General Iffue and give the special Matter for their Excute or Justification in Evidence. C. L. 293.

2. In an Action of False Imprisonment, the Defendant pleaded Not Guilty, and gave in Evidence the Warrant of a Justice of Peace to arrest the Plaintiff, and holden good Evidence to maintain the Iffue, though he is no Officer who did execute this Warrant. See the Stat. of 7 Jac. cap. 5. It seems this is warranted by Words in that Stat. &c. any others which do any thing by Command of Justice of Peace, and other Officers there named. Clayt. 54. pl. 93. Aug. 13 Car. coram Barkley Judge of Affize. Wenpeny's Case.

3. The Officer cannot justify the Imprisonment of a Man for Non-Payment of Taxes under the general printed Warrant which the Collectors have signed by two Justices of Peace. But they ought to have a special Warrant. Ruled upon Evidence at a Trial in False Imprisonment by Holt Ch. J. at Norwich Summer Affizes, 12 W. 3. Ld. Raym. Rep. 740. Matters v. Butcher.

(A. b. 7) As to False Return of Writs.

1. In Action on the Case for a False Return of a Mandamus (which was directed to the Mayor and Aldermen of London) brought against the Mayor. He may give in Evidence, that he voted against the Return and was over-ruled by the Majority to make this Return. And this would be good Evidence upon Not Guilty pleaded, and upon such Proof the Plaintiff would be nonsuited. Carth. 171. Hill. 2 & 3 W. & M. in B. R. Rich v. Pilkington.

2. On Information against a Mayor for making a False Return to a Mandamus, commanding him to proceed to the Election of a Town Clerk for the Corporation in the Room of one B. to which he returned, that before the Arrival of the Writ J. S. had been duly chosen and sworn into the said Office. And it appeared on Evidence, that the Right of Election was in Thirty Common Council Men; that the Mayor at such a Time before the Arrival of the Writ had summoned them to meet U in
in Order to the Election; that Twenty eight met, that Three Candidates were set up, that Two of the Twenty eight voted for one, that Thirteen voted for another, and the Mayor and Twelve more voted for the Third, that the Mayor, pretending to have a calling Voice, declared this Man duly elected, and at another Court swore him in. And the following Points were in this Case ruled by Holt Ch. J. 1. That there needs no more Evidence to prove this Return to be the Mayor's, but the Copy of the Writ and Return thereof in the Crown Office. 2. That though upon the Conflagration the Majority be against him, and make a Return in his Name, yet it shall be taken to be his if he does not come and disavow it. 3. That it is not necessary to prove a Delivery of the Writ to the Mayor, no more than to a Sheriff in a False Return against him. 4. That notwithstanding the Writ is to be delivered to the Mayor as the most visible Part of the Corporation. 5. That this Action for a false Return may be brought against the whole Corporation, or against any particular Member of it. 6. That the Mayor or other Head Officer of common Right has no calling Voice; but such a thing may be by particular Constitution, as by Prescription or Charter. 7. If there be an Equality of Votes, and therefore they cannot choose, upon Mandamus they must agree, or else they shall be all brought up as in Contempt, and laid by the Heels till they do agree, for after a Jury is sworn they shall be impounded till they all agree, but here it suffices that a Majority do agree. And here the Mayor was found Guilty. 6 Mod. 152. Paefch. 3 Ann. B. R. The King v. Mayor of Bath.

(O. b. 8) As to Highways.

1. Per Holt Ch. J. upon a Prefentment for not repairing a Highway, on Not Guilty, you cannot give any Thing in Evidence, but only that the Way is repaired. If they plead they ought not to repair, they must set forth who ought. You cannot give in Evidence no Highway, but may traverse it. Eyres contra Dolbin, They may give in Evidence that it is no Highway, but not that they ought not to repair it. 12 Mod. 13. Mich. 3 W. & M. The King v. the Inhabitants of Hornsea.

Carth. 212. S. C. The Defendant upon a Prefentment that a Highway was out of Repair, removed it by Cerrionari and pleaded Not Guilty; Per the other Justices contra Holt, it may be given in Evidence that it was no Highway.—Show. 270. 291. S. C. and S. P. by Holt Ch. J. but Eyre J. contra, & adjournatur.

2. Upon an Indictment against a Parish for not repairing a Highway, they can give nothing in Evidence upon a Not Guilty, but that the Way is in Repair; but if it be against a particular Person, he may give Evidence that others ought to repair it. Comb. 396. Mich. 8 Will. 3. B. R. The King v. Ireton and Inhabitants in Cumberland.

[O. b. 9] Maintenance

2. If upon the General Issue the Defendant gave in Evidence, That at the Request of the Party he gave him Counsel to sue out a Superfec- deas, and good, because no Maintenance; but in that Case ought of Necessity to plead the General Issue. Heath's Max. 81. cites 22 H. 6. 35.

2. But if he in Evidence shew a special Maintenance, as sworn in a Jure Patronatus, and the like that will not stand with the General Issue, Heath's Max. 81. cites 28 H. 6. 6.

(O. b.
Evidence.

(O. b. 10) Parco Fraço.

1. Action upon the Statute of (Parco Fraço) Not Guilty, and Evidence that he has no Park is good. Kitch. 237. cites 19 H. 6. 10. 7.

(O. b. 11) Trepass.

1. Upon Not Guilty in Re cous, the Defendant shall not give Non Tenure in Evidence. Heath's Max. 76. cites 9 H. 7. 3.
2. Upon Not Guilty, it is no Evidence to say that the Inclosure was defilier, because thereby the Trepass is complicated. Heath's Max. 76. cites 19 H. 8. 6.

(O. b. 12) Trepass.

1. Trepass, Not Guilty, and Evidence, that the Property was to J. S. who gave them to him, is good. Kitch. 239. cites 9 H. 6. fo. 11.
2. Trepass, Not Guilty, and Evidence that the Place where the Trepass was done is the Freehold of another, and not of the Plaintiff, is good. Kitch. 237. cites 4 E. 4. fo. 5.
3. Trepass, the Defendant pleads Not Guilty, and gives in Evidence, that it is the Freehold of another, and good; for then the Plaintiff hath no Cause of Action. Kitch 238. cites 4 E. 4. 5.
4. Trepass, Not Guilty, and in Evidence a Lease for Years is good. Kitch. 239. cites 12 H. 8. 1. 2.
5. It my Cattle escape into the Soil of another through the Fault of the Fences, which he ought to repair, I cannot plead Not Guilty and give this in Evidence, because such Evidence acknowledges the Trepass, and justifies it. Co. Litt. 232. b. pl. 2. 21 H. 8. Anon.
6. Trepass, Not Guilty, the Defendant may give a Lease for Years in Evidence; Contrary to a Lease at Will, for this is determinable at Pleasure. Kitch. 239. cites 25 H. 8. General Ifue, 82.
7. Trepass, the Defendant pleads his Freehold, and gives in Evidence a Fine with Proclamation; it is good, for it is a Title. Kitch. 239. cites 27 H. 8. 27.
8. Per Cur. upon Not Guilty, it is good Evidence for the Defendant to shew that the Land belongs to another, and put the Plaintiff to shew Title. Keil. 61. pl. 6. Hill. 20 H. 7.
9. In an Action of Trepass, where the Defendant pleads Not Guilty, and makes the Title by a Stranger, it is no Evidence to say that he committed the Trepass by the Commandment of the Stranger, but ought to plead the same, as he must do the Licence of the Plaintiff himself. Brown's Anal. 15.
10. In Trepass Not Guilty was pleaded, the Evidence was, that Locus in quo just liberum Tenementum of T. S. who licensed the Defendant to enter, by Virtue whereof he entered accordingly, but no good Evidence, because it is a justification. Brown's Anal. 17.

Br. General Ifue, pl. 5. cites 5 H. 6. 11. S. P.

Vaughan Ch. J. Freem. Rep. 44. pl. 52. in Cafe of Fox v. Grundie.

12. In Trepass Not Guilty was pleaded, the Evidence was, that Locus in quo just liberum Tenementum of T. S. who licensed the Defendant to enter, by Virtue whereof he entered accordingly, but no good Evidence, because it is a justification. Brown's Anal. 17.

15. In
13. In Trespass *De Bonis captis*, the Defendant pleads *Non cul.*, and
gives in Evidence, that he recovered the same Goods, by Verdict, and had
them delivered to him in Execution, and good. Brown's Anal. 17.

14. In Trespass, and Not Guilty pleaded, the Evidence was, that
the Property was to J. S. who gave them to the Defendant, and good.
Brown's Anal. 17.

15. But in Trespass, where Not Guilty was pleaded, the Evidence was,
that the Property was to J. S. and that Defendant was his Servant,
and by his Commandment, took the Goods in the Count, and
ill; for he thereby confesseth the Trespass, and yet justifieth the same.
Brown's Anal. 17.

Kitch. 229. cites 16 E. 4.
Br. General
Issues, pl. 45.
cites 16 E. 4.

16. Trespass for taking of Goshawks, Not Guilty pleaded, and Evi-
dence given, That the Defendant has a Lease of the Woods where the
Hawks were taken, and good, because he thereby makes a Title to

17. Trespass of Goods carried away the Defendant pleads, *that
the Property of the Goods was not in the Plaintiff,* and that is no Plea in
Trespass, but in Replegiare. And some for that seem, that this is
no good Evidence in Trespass, upon a Plea of Not Guilty. Kitch 239.
cites 27 H. 8. fo. 25.

18. Trespass of Goods taken, the Defendant may plead Not Guilty,
and Evidence that he recovered, and had them delivered in Execution,
and is good. Kitch. 239. cites 12 Book of All. 73.

19. In an Action of Trespass the Defendant pleaded Not Guilty,
and if he might give in Evidence, that at the Time of the Tres-
pass the Freehold was to such an one, and he as his Servant, and by his
Commandment entered, was the Queffion; and it was said by Coke, that
the fame might goe well enough, and so it was adjudged in Trivi-
lian's Cafe; for if he by his Commandment he enters has Right,
at the fame Inland that the Defendant enters the Right is in the other,
by Reafon whereof he is not Guilty as to the Defendant, and Judg-
ment was given accordingly. 1 Leon. 301. pl. 414. Trin. 31 Eliiz. in
Dierfly v. Nevel.

20. In Trespass for breaking his Clofe, upon Not Guilty pleaded
he cannot give in Evidence that the Beaffs came thro' the Plaintiff's
Hedge, which he ought to keep; nor upon the General Ifue jufjifi's, by
Reafon of a Rent-Charge, Common, or the like. Co. Littr. 283.

21. In Trespass, Tender of 28. 6 d. in Amends was pleaded, and
averred that the said Sum was fufficient; this was upon the new Sta-
tute 21 Jac. and Ifue taken upon the Suficiency of the Amends. In this
Cafe the Defendant began the Evidence to prove the Amends fufficient,
and was directed to fhow the Trespass, what it was, and prove the
Tender, &c. and the Plaintiff in this Cafe was not permitted to fhow or
prove more Trefpafl's than one of which he had declared. And that which
the Plaintiff fets forth shall be the Trespass, and not that which the De-
fendant fets forth if they vary; then the Plaintiff did prove it to the Val-
ue of 5 s. and the Defendant would have left it to the Jury, whether
the Trespass of two Beaffs in April in Grafs-Ground could be of that
Value, but the Judge would not permit it fo for the Jury to judge, as if
no Proof was when the Witnefs had expressly proved it to the Value of 5 s.
when the Defendant had failed to make Proof what the Trespass was,
fo to apply his Amends tendered to that Trespass, in which he had
failed before. Clayt. 70. pl. 122. Affil. a. Aug. 1639. before Vernon
and Hendon Judges.

22. Where
Evidence.

22. Where Not Guilty is pleaded in Trespas, a Release cannot be given in Evidence; for such Evidence and the Defendant's Plea is contrary. A Release implies a Confession of the Trespas, and a Discharge of it by the Release. Jenk. 280. pl. 4.

23. For making a Trespas continuando there ought to be a Re-entry of the Plaintiff, and for the not proving thereof the Plaintiff shall have Damages only for the first Entry. L. of E. 7th Edition, 430. cites Mitch. 22 Car. 1.

24. Trespas was brought Quare Domum & Claenum fregit, & bona ibid. The Reporter adds Quaera-tionem.

25. In Trespas Quare Claenum fregit, it is a Plea in Abatement to say that the Plaintiff is Tenant in common with another, but cannot be given in Evidence upon Not Guilty, as it may where one Tenant in common brings Trespas against the other. Vent. 214. Trin. 24 Car. 2.

26. Where Corn, &c. is taken away at several Days the right Way is to say Tali Die & diversi Diebus, & Vicibus inter Diem & Diem Diem; for if it be laid on a certain Day with a Continuando Plaintiff can give no Evidence but one Day, though they may choose their Day, for which is done on one Day cannot be continued. Comb. 427. Trin. 9 W. 3. C. B. Anon.

27. In Trespas for breaking the Plaintiff’s Cloke, and treading his Grafs, &c. the Defendant upon Not Guilty pleaded, cannot give any Matter of Right in Evidence, not even in Mitigation of Damages; Per Holt Ch. J. 6 Mod. 153. Patch. 3 Ann. B. R. Dave v. Smith.


1. Action upon the Cafe of finding his Goods, and converting them to the Use of the Defendant, Not Guilty, and Evidence that they were not Goods of the Plaintiff is good. 3 Mar. and 33 H. 8. Action upon the Cafe 209. Otherwise it is in Trespas. Kitch. 237. cites 27 H. 3. fol.

2. Action upon the Cafe of Finding Goods, and converting them to his own Use; the Defendant pleads Not Guilty, and Evidence that they were paid to him for 10 l. is good. Kitch. 239. cites 4 E. 6. Br 143.

3. Trover and Conversation brought by the Citizens of Colchelter, against the Farmery of the Toll of the Citizens of London, for taking their Goods; Upon Not Guilty pleaded, there was a Trial at Bar by a Hartfordshire Jury, where the Defendants contended the Taking the Goods; but that it was for Non-payment of Toll, which the Defendants claimed by Custom; The Citizens of Colchelter claimed to be free by the Charter of King Richard, and the Citizens of London proved by divers Records and Entries in their Books, that the Citizens of Colchelter had paid Toll; it was objected against the Defendants Evidence; that it was not good upon the General Issue, but that they ought to have pleaded the Matter specially; and the Court held accordingly; For it is not like to a General Action of Trespas, for there they ought to have pleaded the Custom specially; but in Trover any Thing may be given in Evidence on the General Issue, which may prove the Conversation to be lawful; The Jury gave a general Verdict for the Defendant and Judgment.
Evidence.

7 Mod.
141. S. C.
held accordingly.—


4. In Trover and Coverton, upon Not Guilty, the Evidence was, that the Goods were taken and sold by Virtue of a Commission of Sewers; and it was ruled, that this Matter might be well given in Evidence upon Not Guilty pleaded, as detaining of Beasts in a Market for Toll. Allen. 92. Mich. 24 Car. B. R. Combs v. Cheney.

5. The Plaintiff brought Trover as Administrator, and declared upon the Possession of the Intestate; And upon Not Guilty pleaded at the Trial, the Counsel for the Defendant offered to give in Evidence, that the pretended Intestate made a Will and an Executor; But Holt Ch. J. over-ruled it, and took this Diversity, That where an Administrator brings Trover upon his own Possession, the Defendant may give in Evidence a Will and an Executor upon Not Guilty; Otherwise if it be on the Possession of the Intestate, (as in the principal Case) for there the Defendant ought to plead it in Abatement, and if he does not, he shall not give it in Evidence. 1 Salk. 285. pl. 17. Mich. 1 Ann. Blainfield v. Marsh.

6. In Trover for Million Lottery Tickets, upon Evidence it appeared, that the Plaintiff had given to a Goldsmith the Ticket in Question to receive the Money due on them, that some Payments were due and some were not, and gave a Note to pay the Plaintiff so many Million Lottery Tickets; that the Plaintiff's Tickets were delivered to the Defendant by the Goldsmith upon this Note, which was produced and read as Evidence against the Plaintiff; And per Holt Ch. J. the Way and Manner of Trading is to be taken Notice of, and the best Proof that the Nature of the Thing will afford is only required; When Goldsmiths give their Notes no Persons are by to be Witnesses, and their Notes to pay Money or Tickets are Evidence of the Receipt of their Money. If the Exchequer or any private Person had paid to the Goldsmith the Money for the Tickets, it had been a good Payment against the Owner, but whether it would be so where Tickets not due are bought for a valuable Consideration he doubted, but as the Goldsmith here had Tickets here of the Plaintiff and Defendant, the Delivery of the Plaintiff's Tickets to the Defendant was no Change of the Property or any Consideration; for though the Owner gave the Goldsmith Power to receive Money for the Tickets, he did not give him Power to change them for other Tickets, and the Plaintiff had a Verdict. If the Money is stolen and paid to another, the Owner of the Money can have no Remedy against him that received it; But if Bank-Notes, Exchequer-Notes, or Million-Tickets, or the like, are stolen or lost, the Owner has such an Interest and Property in them, as to bring an Action into whatsoever Hands they came; Money or Cash is not to be distinguished, but the Notes or Bills are distinguishable, and cannot be reckoned as Cash, and they have different Marks and Numbers on them. 1 Salk. 283, 284. Hill. 12 Ann. Guildhall. Ford v. Hopkins.

(O. b. 15) Warren.


(O. b. 16) Waife.

1. In Waife; Upon the Plea of No Waife done, Defendant may give in Evidence any Thing that proves it Not Waife. As by Tempelt, Lightning, Enemies, &c. but he cannot give in Evidence Justifiable Waife, as to repair the House, &c. Co. Lit. 83. a.
Evidence.

2. If Lessor does waft, and before Action brought be repairs it, and afterwards Lessor brings Action of Waft, and Lessor pleads Quod Non fecit Valsuo, he cannot give the special Matter in Evidence. Co. Litt. 283. 2.


1. Debt, and per Lakin in Writ of Right the Mife is joined, and pr Enquest, the Tenant gave in Evidence a Release made in another County, the Grand pl. 59. cites Affijo ought to find it; for it is said elsewhere, that nothing may be pleaded S.C. in this Action but Collateral Warranty, but all others shall be given in Evidence. Br. Droit de refto. pl. 48. cites 9 E. 4. 49.

(P. b. 1) Evidence. For or against what Persons having Relation to others.

Accessory.

1. Indictment of A. as Accessory to B. and C. Evidence proves him Accessory only to B. this maintains the Indictment. L. E. 286. pl. 37. 2. Two indicted as Principals; Evidence proves one Accessory before, he shall be discharged of that Indictment. L. E. 286. pl. 40. cites H. P. C. 266.

(P. b. 2) Bail.

1. In Action against the Bail, who pleads Render of Principal in Discharge, there must be a Copy of the Judgment and of the Commitment given in Evidence. Per Holt Ch. J. 12 Mod. 559. Mich. 13 W. 3. Anon.

(P. b. 3) Bailiff and Receiver.

1. In a Trial at Nisi Prius at Guildhall, it was ruled by Holt Ch. J. that where the Mayor and Commonalty of London had constituted J. S. their Bailiff to receive their Rents, and to make Demand of them, and to make Entry; upon Evidence in Ejection, such General Authority is not sufficient to authorize a Bailiff to take Advantage, and make Demand of a Rent accrued due after the Authority given; for it is a new Right attached, and ought to be a special Authority for this Purpofe. Skin. 413. pl. 10. Hill. 5 W. & M. in B. R. Dixon v. Smalley.

(P. b. 4) Baron and Feme.

1. Upon Evidence in an Action upon the Cafe for Meat, Drink, Washing and Lodging found for the Wife of the Defendant by the Plaintiff; the Proof was that the Wife came in a noceffitious Cafe, and said to the Plaintiff that she was the Wife of the Defendant, and that he had turned her out of his House, and allowed her 50l. per Annum, but that he would not pay it; upon which Holt Ch. J. was of Opinion that the Husband is not chargeable, for it being apparent that the did not cohabit with her Husband, the shall not have Credit to charge him without his Consent, and though it was proved that he had paid another who had received and tabled her before the Plaintiff had received her; yet the Plaintiff was
Evidence.

non suit; For Holt Ch. J. said if a Wife cohabit with her Husband, and by it gains a Credit, though the depart without the Leave of her Husband, and come to London, and becomes in Debt the Husband shall be charged till Notice given of her Elope ment, for it shall be intended to be with the Consent of her Husband; but after Notice the Husband shall not be charged without his Consent. Skin. 323. pl. 2. Mich 4 W. & M. in B. R. Peirce v. Welden.

2. At Nill Prius at Westminster, an Action was brought for Money received to the Use of the Plaintiff; upon the Evidence it appeared to be Money secretly deposited by the Wife, and a Note taken for it in the Name of a third Person, and after the Death of the Wife the Action was brought by the Husband; and in this Case it was proved that the Wife said that she had received the Money deposited again; and an Exception was taken that this is not Evidence, Sed non allocatur, for the Matter being tranfacted by the Wife, and the Cafe depending on, upon this Transcation, that which the Wife said is Evidence. Skin 647. pl. 4. Trin. 8 W. 3. B. R. Webb v. Plummed.

3. Though it was pretended that there was a Recovery in Husband's Time, and that they would prove by the Sheriff who had a Writ of Execution; yet they having not the Judgment on which the Execution was, it was ruled they could not give that in Evidence. Per Holt. 12 Mod. 346. Mich. 11 W. 3.

4. Though Feme Covert Seal, and deliver a Deed, yet the may plead Non effet factum, and give Coverture in Evidence. Per Holt Ch. J. 12 Mod. 609. Hill. 13 W. 3. Anon.

(P. b. 3) Carriers.

1. A Box of Jewels was delivered to a Ferryman, who knowing not what was in the Box, threw them over-board into the Sea, and resolv'd he should answer for it. Cited by Roll. All 93. Mich. 24 Car. B.R. as was ruled in one Barcroft's Café.

2. Trover lies not against a Carrier for Negligence, as for losing a Box, but it does for an actual Wrong; as if he breaks it to take out Goods or sell it. Per Cur. 7 W. 3. B. R. That a Denial was no Evidence of Conversion, where the thing appeared to be lost by Negligence, but if that does not appear, or it the Carrier had it in his Custody, when he denied to deliver it, it is good Evidence of a Conversion. Coram Tre vor Ch. J at Nill Prius at Guildhall. 2 Mod. 655. pl. 4. Anon.

4. A Box was sent from Somersetshire by Taunton Carrier to Lon don, directed to Mr. Were at the Temple; he goes to the Inn to enquire for the Box, and leaves Word that it should be brought to him by a Porter, this was on the 26th of Dec, when the Carrier comes in, the Porter belonging to the Carrier, takes this Box and other Goods, and carries them in a Cart to the Temple-Gate, where he takes out the Box and enquires for Mr.Were's Chambers, but a Person unknown conducts him to the wrong Chambers, where he leaves the Box, and it was never more heard of. In Action against the Carrier, his Witnesses said the Box was directed to Mr. Were's N°. i in the Temple; but this was denied by Mr. Were, his Chambers were in the Paper-Buildings, but the Box was delivered in Tank field Court next the Arch and paid for. Two Courts in Declaration on General Custom about Carriers, the other on an Undertaking to carry from Taunton to London, and there to deliver the Box to Mr. Were. There was Money, a Great Coat, a Pye, a President-Book, &c. in the Box. Having proved Goods put into the Box and Value, it was objected that the Delivery to the Porter was a Discharge to the Carrier, it being by Mr. Were's Order. But Baron Commins in Direction to Jury, said that the Question was, whether the Box was delivered ac cording
Evidence.

173
cording to the second Count; and if Box was delivered to Carrier as directed, and not altered, and if pursuant to Mr. Were's Order, otherwise he seemed to think that the Carrier was not discharged of his Undertaking, and if the Goods were carried out of the Inn by the Porter without the Order of the Party, that the Carrier was liable. But the Jury discovering their Intention to find for Defendant the Plaintiff was non-suited. Coram Baron Cummins at Taunton Ass. Hill. Vac. 1727-8.

[P. b. 6] Custom-House Officers:

1. In the Court of Exchequer Ld. Ch. Baron Bury, Montague and Page against Price held, that where an Officer had made a Seizure, and there was an Information upon it &c. which went in Favour of the Party, who afterwards brings Trespass, the proving these Proceedings was sufficient to excuse the Officer; it was competent to make out a probable Cause for his doing the Act. Mich. 6 George.

[P. b. 7] Executors and Administrators.

1. Debt against Executors, upon Plene Adminastravit pleaded, they gave in Evidence, that they had paid the Part of the Testator's Goods with their own Money, which they had pawned for the full Value, and that they had paid the full Value of the Rfs due to discharge his Debts, and the Testator's Bond, and was held good Evidence. Dyer 2. pl. 3. in Com. Scacc. Mich. 6 H. 8. But where the Acton was on a Debt upon Debts, upon Contrasts made by the Testator, had not been good Evidence to maintain such Plea, because they were not compellable. Dy. 32. a. pl. 2. Patch. 28 & 29 H. 8. Anon.

2. In Debt against Executors, the Issue was upon Assets in their Hands on Day of the Affton brought, and the Evidence was, that a Sum of Money to the Value of the Debt was brought in on that very Day into the Prerogative Court of Cant. and there delivered to the Executors as a Debt due to the Testator, which they paid the same Day to a Creditor of the Testator, by the Order of, and in the said Court; Sed non allocatur as an Administrator, but shall be held Assets to the Plaintiff, tho' the Writ was purchased the same Day after Payment of the Money. But it should have been pleaded specially, and then perhaps the Defendant might have sided himself thereby; whereupon the Jury found Assets generally, Die Imperationis Breviss, without giving any special Verdict. D. 208. a. pl. 16. Mich. 3 & 4 Eliz. Anon.

3. The Plaintiff sued as Administrator for Goods, and Non Detinuer was pleaded, and the Defendant produced in Evidence Letters Testamentary of the same Man, who was supposed to die intestate, and it was admitted as good Evidence. Clayt. 66. pl. 115. Affile July 1638. before Barkeley Judge. Preston v. Hall.


5. If an Executor bring Traver upon the Possession of his Testator, upon Not Guilty he should not be put to prove himself Executor; Secus, if he had brought it on his own Possession. 7 Mod. 141. 1 Ann. B. K. per Holt Ch. J. at Guild-hall, in the Case of Blainfield v. March.

6. Traver by an Administrator, the Plaintiff declared of a Possession in the Intestate, and of a Loss by him in his Life-time, and then he lays the Conversion
Evidence.

Conversion to be in his own Time, &c. Per Holt Ch. J. the Defendant should have pleaded it in Abatement, and it cannot be given in Evidence upon Not Guilty pleadcd, because here the Property is laid in the Intestate. But if the Plaintiff had declared upon a Property in himself, and it had appeared upon the Evidence that he claimed the Goods but as Administrator to J. S. &c. there the Evidence of an Executor had been a Bar to the Plaintiff, because it would have deceived his Property, upon which his Action is founded. And a Verdict was given for the Plaintiff, and intire Damages. 2. Ed. Raym. Recp. 824. Marshfield v. Marth.

(P. b. 8) Inn-keepers.

1. At Guildhall upon Evidence the Case was, a Man had a Horse in an Inn, and came thither, and directed that the Innkeeper should not give him any more Food, for he would be responsible for it; and the Question was, if for the Food after this Direction given by the Inkeeper to the Horse, he who brought the Horse thither shall be charged or not; and Holt Ch. J. at first inclined that this is a Discharge, and that the Horse (though he might be retained by the Inkeeper yet) is but in the Nature of a Discharge, and it being in the Custody of the Inkeeper in his Inn, this is a Pound-Covert, and the Horse ought to be afterwards sound and maintained at the Peril of the Inkeeper; but after Mutata Opinion, he directed that this was not a Discharge, for then any Innkeeper might be deceived, and it is the Jeepening of an Innkeeper's Security, who may detain, and by the Custow of London sell the Horse for his Keeping, Skin. 648. pl. 6. Trin. 8 W. 3. Gilbert and Berkeley.

2. If a Man brings a Horse to an Inn, and directs the Matter to put him into a Stable till it cools, and then send him to Grofs, if the Horse be stole before he sends him to Grofs he shall answer for him; though if he had sent him to Grofs pursuant to the Owner's Desire he would not be answerable; and so he shall be chargeable till he has performed the Trutl repos'd in him, and as soon as he has performed it he shall be discharged. Per Holt Ch. J. 12 Mod. 484. Patch, 13 W. 3. in Cofe of Lane v. Sir Robert Cotton.

(P. b. 9) Landlord and Tenant.

1. At Guildhall, in Ejecutament for a Melfuage in London, it was objected against the Title of the Plaintiff that this was a Melfuage above 40 l. per Annum Rent, and that the Cusow of the City is, that there ought to be Warning given for the Space of Half a Year where the Melfuage is of such a Rent, and by the Space of a Quarter of a Year where 'tis under such a Rent, and an ancient Book in French was produced, in which such Cusow was registered, the which was allowed to prove the Custom; but the Question was, if this Custom gave the Party an Interest, or only entitled him to an Action, if it be asst within the Time, as in the common Cases of Leaves for Years, or at Will, with Agreement for a Quarter's Warning; if the Party depart without warning, an Action of Debt does not lie for the Rent, but an Action on the Cofe founded upon the Agreement, and though Holt Ch. J. said, that he had heard that North C. J. had ruled upon Evidence that the Custom gave an Interest; and it was objected, that if it did not give an Interest it was not of any Benefit to the Citizen, who ought to have a reasonable Time to remove his Effects; yet the Ch. J. inclined e contra, and it was referred for his Consideration. Skin. 649. pl. 7. Trin. 8 W. 3. B. R. Tyley v. Seed.

2. If
Evidence.

2. If the Plaintiff were Leflee the Lesfor might lawfully enter to see Waffe; and there to make him a Trespassor the Leflee ought to follow some Misbehaviour in him, as cutting a Tree, destroying the Corn, or staying on the Land all Night, &c. Per Holt Ch. J. 12 Mod. 532. Mich. 13 W. 3. in Case of Chancey v. Win & al.

(P. b. 10) Master and Servant;

1. In an Action upon the Case for Money received by the Defendant for the Use of the Plaintiff, the Evidence was that the Defendant was Apprentice to the Plaintiff, and this was for Service done in a Ship of the King's, during the Apprenticeship; and the Intentions of Apprenticeship being produced to prove the Defendant Apprentice to the Plaintiff; it was inferred that the Hand of the Defendant ought to be proved; to which Holt Ch. J. agreed, unless the Indenture be enrolled. Skin. 579. pl. 2. Patch. 7 W. 3. B. R. Anon.

2. If my Servant has a Note for Money due to me or other Goods, which in their Nature are not properly in the Custody of a Servant, that is Evidence Prima facie that he has an Authority from me to apply them to such Use as he does after put them to; but the Contrary may be given in Evidence, as that he comes by the Note by undue Means, or had it to another particular Purpose; Per Holt Ch. J. 12 Mod. 504. Mich. 13 W. 5. Anon.


(P. b. 11) Merchant and Insurer.

1. A injured the Freight of a Ship from all Losses and Damages, Comb. 56. which should befall the Ship or Merchandize in her, excepting only 5 Perils of the Sea. The Ship was taken by Pirates; and to prove that Pirates are Perils of the Sea, a Certificate of Merchants was read in Court that they were so esteemed. But the Court desired to have the Master of the Trinity-House, and other sufficient Merchants to be brought into Court to satisfy the Court Viva Voce on the Friday following. Sty. 132. Mich. 24 Car. Pickering v. Barkley.

2. In an Action brought upon a Policy of Insurance of a Ship, if it appears upon the Evidence, that the Ship was condemned by Proces of Law and forfeit; by this Sentence the Property and Ownership are destroyed, and there is no Remedy upon the Policy of Insurance; Ruled by Holt Ch. J. May. 31. at Guildhall. Patch. 10 W. 3. 1698. Ld. Raym. Rep. 724. Anon.

3. It was ruled by Holt Ch. J. May. 31. Patch. 10 W. 3. at Guildhall, that in an Action upon a Policy of Assurance of a Ship, if the Plaintiff's Witnesses swear, that the Ship was condemned by Proces of Law, it is good Evidence to prove it; but if the Defendant had offered that Matter in Evidence by his Witnesses, it would not have been sufficient without producing the Sentence of Condemnation. Ld. Raym. Rep. 732. Anon.

[P. b. 12.]
Evidence.

[P. b. 12] Partners.

1. In an Action on the Case for Money had and received to the Plaintiff's Use, it appeared upon Evidence, that Layfield and the other Defendants were Bankers and Partners, and that the Plaintiff had given Layfield 20l. for which he received a Ticket in the Double-Exchange Lottery, and Layfield undertook to pay what Benefit should happen thereupon; That the Ticket came up a 40l. Benefit, and for that Money the Action was brought against Layfield and Partners; And it was objected for the Defendants, That it did not appear that any of them had undertaken to be Trustees in the Lottery but Layfield, and therefore be only ought to be charged, and not his Partners; To which Holt Ch. J. answered, That they were Partners in their Trade, and Goldsmiths, and that the Adventurers put their Money in upon the Credit of the several Goldsmiths that had undertaken to pay the Benefits; And it should be presumed, that the All of Layfield was the All of the others, and should bind them, unless they could shew a Disclaimer or Refusal to be concerned in it. 1 Salk. 292. pl. 33. coram Holt Ch. J. at Nifi Prius. Layfield's Cafe.


1. An Action upon the Case against a Sheriff upon an Escape suffered by his Bailiff upon a mean Process, and it was proved in Evidence as necessary to make this Case that there was such a Debt, that such a Process and Warrant was, and is a due Debt. And lastly, That the Party arrested was become insolvent, otherwise he should not have recovered Damages to the Value of his Debt, as here he did upon all this proved Evidence as arofeaid. Clay. 34. pl. 59. Affid. a. Aug. 11 Car. Barkley Judge. Templest v. Linley.

2. In Trespass brought against the Sheriff for Goods taken, upon Not Guilty pleaded, he gave in Evidence, that he levied them in Execution by Virtue of a Fieri facias. The Plaintiff made Title to the Goods by a prior Execution, but fraudulent, and by Bill of Sale made of them to him by the Officer, viz. the Sheriff Predecessor to the Defendant. And upon this Trial before Holt Ch. J. at Hertford, Lent-Assizes 1693. 11 Will. 3. it was ruled by him after Argument of the Counsel on both Sides, that the Defendant, though Sheriff, ought to give in Evidence a Copy of the Judgment. But it would have been otherwise if the Trespass had been brought by the Person against whom the Fieri facias issued. Ed. Raym. Rep. 733. Lake v. Billers and al.

(P. b. 14) Strangers.

6 Mod. 44. it cannot be read against Alience by any claiming under Alienor.

1. If one makes an Answer in Chancery, which may be prejudicial to his Estate, it may be given in Evidence against him, but not against Alience. 1 Salk. 286. pl. 19. Hill. 2 Ann. B. R. Ford v. Grey.

(P. b. 15) Successors.

1. The Lease of a Bishop not warranted by the Statute is avoidable by the Successor only and not by himself; Per Curiam, Keb. 182. pl. 153. Mich. 13 Car. B. R. in Cafe of Scudamore v. Bellision.

2. Plaintiff was non-suited in ejectment against the former Master of St. Catherine's in a former Trial, and this was given in Evidence now against the new Master, though the Counsel objected, that the Master comes not to Privity, and that there was more given in Evidence here than
Evidence.

than at the former Trial; But per Pemberton Ch. J. the Succeeder comes in under his Predecessor, and is like to an Heir and Aunuer. Skin. 15. Mich. 33 Car. 2. B. R. Ld. Brounker and Sir Robert Atkins.

(P. b. 1) Traders.

1. The way and manner of Trading is to be taken Notice of, and the best Proof, that the Nature of the Thing will afford, is only required. When Goldsmiths give their Notes, no Witnesses are by, and their Notes to pay Money or Tickets are Evidence of the Receipt of the Money; Per Holt Ch. J. 1 Salk 283. pl. 14. Hill 12 W. 3. Ford v. Hopkins.

(Q. b. 1) What must be given in Evidence in Respect of the Plea.

Account.


3. In Debt upon an Account, the Defendant may plead Null and Accounts or Nil debt, and give in Evidence that there is no Account between the Parties. Heath's Max. 9. cites 20 H. 6. 24. 4. Upon an Inlimul Computaflet, the Plaintiff must be sure to prove the Day of the Account and Sum certain; Agreed upon, otherwife he will be nonfuit. L. P. R. 25.

5. In an Inlimul Computaflet, if the Plaintiff proves a Penny less, or more than is laid in the Declaration he must be nonfuit. Trin. 2 Ann. Hill v. Rebow.

(Q. b. 2) Non Cepit.

1. Replevin of a Sow and Pigs, the Defendant justified for the Sow, and to the Pigs. No priff pas, and it was found by the Jury that the Sow was with Pig at the Time of the Taking, and jarved her Piggs and well; And fo it seems that this Matter was given in Evidence, and therefore this is a Special Taking in Law. Br. General lisc. pl. 58. cites 18 E. 3. and Fitch. Replevin. 34. Br. General lisc. pl. 7. cites S. C. & S. P. by Newton.

2. Action of Extortion against the Sheriff, who pleads that he took not and Evidence that by Prescription he hath a Barr Fee of every one which he takes, and is good; For it is no Extortion. Kitch. 238. cites 21 H. 7. fo. 17.

3. On Non cepit, the Evidence was, that there being a Contention about some Sheep which were then in an Highway, or had been seifed as felons Goods, &c. one P. came to F. and giving Bond to restore the Sheep to him, who had Right to them, he took the Sheep into his Keeping, &c. and further that the Servants of F. had seifed the said Sheep to his Use, for F. Non Cepit; Per Cur. 1 Le. 42. pl. 54. Mich. 28 & 29 Eliz. C. B. Wood v. Folter.

Goth 112. pl. 155. Wood v. Ath and Potter. S. C. held accordingly; For he that does not appear, does not take. — Ow. 159. S. C. but S. P. does not appear. Z z

4. In
Evidence.


(Q. b. 3) Contract.

1. If the Plaintiff in his Declaration mistake the Contract, either in the Sum or in the Thing itself, Nil debet will be a good Plea. Heath's Max. 80. cites 21 E. 4. 20.

2. The Defendant may give in Evidence, that the Contract was conditional, or may plead the same as appears there without Traversing; The like, as it seems upon Non Assumpsit in Action upon the Case. Heath's Max. 79. cites 28 H. 8. Dy. 29.


1. B. covenants that he was seised of Black-acre in Fee simple, where in Truth it was Copyhold Land in Fee according to the Custom; Per Cur. the Covenant is not broken; and the Jury shall give Damages in their Consequences according to that Rate that the Country values Fee simple Land more than Copyhold Land. Noy. 142. Gray v. Briscoe.

2. In Covenant the Issue was, whether the Defendant had made an Estate sufficient in Black-acre to the Plaintiff or not; and the Evidence was, that the Estate was not of such a Value, and ill, for it is not answerable to the Matter in Issue. Brown's Anal. 17.

[Q. b. 5] Non Dimitt.

1. If a Demife to the Baron and Feme be pleaded, a Fine Sur Release to them is No Evidence to prove the same. Heath's Max. 80. cites 50 E. 3. 6.

2. If a Man lease Land by Indenture dated the 30th August 23 H. 8. to have from the Feast of St. Michael next ensuing for 21 Years, and after the same Leifs by Indenture reciting the said Lease, and that it was due date the 6th of August 23 H. 8. &c. leases it for Years to commence from the Expiration of the first Lease, and it is pleaded, that he be leased by Indenture dated 30th August 23 H. 8. as above, and after by other Indenture, reciting that he had demised by Indenture dated the 30th of August 23 H. 8. demised it as above, and Issue is taken that he Non Dimitt. Medo & Forma. The last Indenture may be given in Evidence, tho' the Date of the first Indenture be mistaken, for it is not material, but the Effect of the Issue is upon the Demise. D. 116. pl. 70. 2 & 3 Mary adjudged.

And because the Words of the second Lease made to Lambert and R. his W. &c. till the End of 20 Years then next immediately after the Demise and Indenture of the said Half be fully ended and expired, and were not to have and to hold, &c. for the said Years, &c. after the said first Demise and Indenture fully ended, &c. the said Lease made to L. and his W. was good notwithstanding the false Recital of the 6th Day of August mentioned in the said Indenture, and that this Recital was as void, and the said Lease made to L. and his W. took Effect by the Demise, and Habendum, and so was the Opinion of all the Justices of C. B. upon viewing all the Indentures, by which the said Parties proceeded to Issue upon the Demise, and it was found with the Plaintiff upon a Verdict at large, and he had Judgment with whom the Author of the Book was of Counsel. Bend. 59. pl. 71. Mich. 1 & 2 Ph. & M. Mount v. Hoogken.

3. It was held by all the Justices that if a Man leases by his Deed certain Parcels of Land, and names them severally, and after the Lessee rases the Deed, and puts one of the Parcels out of the Deeds, by this all the Deed is become void, for the Deed is entire in itself, and cannot stand in Part and be void in Part. But whether the Lessee shall have Advantage to plead this as a Lease by Parol without pleading the Deed, was made a Question, and it was held by Dyer that he might, inasmuch as it was a Demise
Evidence.

a Demise of the Lands, and all is of one Effect a Lease by Parol and a Lease by Deed. Mo. 32. pl. 116. Trin. 4 Eliz. Anon.

4. In an Action of Debt for Rent, the Defendant pleaded Non Dim. militi, and the Evidence proved a Demise only in Part, and it was held that it did not maintain the Issue for the Plaintiff. Dyer 290. pl. 22. Patch. 9 Eliz. Anon.

Mo. 8a, pl. 211. S.C. adjudged that the Plaintiff cannot have Judgment for any Part, but they ought to sue again upon Demise of so much as is found to be demised only.—Bend. 117. S. C.

5. If an Ejsusion be brought of Twenty Acres, on a Lease of Twenty Acres, if the Defendant plead Non eject; there, if he be found guilty but in Ten Acres the Plaintiff shall recover; but he should not, if Defendant had pleaded Non Dim. militi.

6. Baron and Feme Tenants in Tail made a Lease to the Defendant referring Rent, and the Baron died, and then the Wife died. In Debt by the Plaintiff as Heir for Rent-Arear, and counted of a Lease made by the Baron and Feme, the Defendant pleaded Not dimisurant, and upon Issue joined the Jury found Quod Dimisurant by Indenture, and that the Husband died, and that after his Death the Wife entered, and disaggreed to the Lease, and within the Term died. Anderdon held clearly that by this Verdict the Issue was found for the Defendant, viz. and the Non dimisurant; For it is now no Lease Ab Initio, because the Plaintiff hath not declared upon a Deed; and also by the Disagreement of the Wife, and her Occupation of the Land after his Decease, the hath made it the Lease of the Husband only. Le. 192. pl. 274. Mich. 31 & 32 Eliz. C.B. Thetford v. Thetford.

judged accordingly.—S. C. cited as adjudged. And. 350.—

7. On Non Dimisurant, that the Lease is void for any Cause may be given in Evidence, or the special Matter may be known. 6 Co. 67. b. Mich. 4 Jac. C. B. Finch's Cafe.

8. Upon the Issue Non Dimisurant to an Action of Debt for Rent upon a Lease Parol, the Plaintiff cannot give in Evidence a Lease by Deed, but he may give a Lease Conditional, as an Agreement Conditional in Evidence. Brown's Anal. 16.


10. Upon Non Dimisurant Mobio & forma, one shall have Advantage of the Date and Number of Years. Heath's Max. 80. cites 1 & 2 Maria. D. 116.

11. If in an Ejsusion the supposed Demise be laid to be after the first Day within the Term, altho' that regularly the Declaration has Relation to the first Day of the Term, yet shall not fictitious Relations hurt, in case it be proved that the Bill was filed before the supposed Date of the Lease; For it was Matter of Evidence, and examinable. Sid. 432. pl. 23. Mich. 21 Car. 2. B. R. Proderg's Cafe.


1. Upon Issue Ne Unques feiles que Dower, the Tenant may say Seise que Dower, and give in Evidence a Release of Dower; Quod tota Curia concilii. Br. General Issue, pl. 43. cites 11 H. 4. 33.

2. Upon the Plea of Ne unques feiles que Dower, the Defendant shall not give in Evidence an Essetale upon Condition, or other Essetale in pl. 1. Patch. the Husband descendants by the Reunion of the Heir or the like. Heath's 53 H. 8.

Max. 91. cites 30 H. 8. D. 41.

Q. b.
Evidence.


1. In Debt upon Escape in the Exchequer against the Sheriff of London of suffering a Man by them arrested by Ca. Sa. and in Execution to Escape, the Defendant cannot say that he did not Escape, and give in Evidence, that he was not arrested; For the Arrest is confessed if he says that he did not Escape. Br. General Issue, pl. 59, cites 34 H. 8.

2. An Action upon the Case against a Sheriff upon an Escape suffered by his Bailiff upon a mean Process, and it was proved in Evidence as necessary to make this Case that there was such a Debt, that such a Process and Warrant was, and a due Debt and lawly, That the Party arrested was become infamous, otherwise he should not have recovered Damages to the Value of his Debt as here he did upon all this proved in Evidence as aforesaid. Clavt 34, pl. 59. 11 Car. 2. Tempelt v. Linley. 8 & 9 W. 3. 26. No Retaking shall be given in Evidence in an Action of Escape, unless specially pleaded, and Oath made by the Keeper of the Prison, that such Escape was without his Consent; but if such Affidavit prove false, such Keeper shall forfeit 500 l.

8 & 9 W. 3. 26. No Retaking shall be given in Evidence on the Trial of an Issue in an Action of Escape against the Marshal, Warden, or their Deputies, or other Keepers of Prisons, unless the same be specially pleaded, nor shall any special Plea be received or allowed, unless Oath be first made in Writing by such Defendant, and filed in the proper Office, that the Prisoner escaped without their Consent or privity, and if such Affidavit shall appear to be false, such Marshal, Warden, or other Keeper, shall forfeit 500 l.

If the said Marshal, Wardens, or their Deputies, or the Keeper of any other Prison shall after one Days Notice in Writing for that Purpose refuse to bow a Prisoner committed to the Creditor or his Attorney; such Refusal shall be adjudged on Escape.

And if any Person desiring to charge a Person with any Action or Execution, shall desire to be informed by the said Marshal, Warden, their Deputies, or the Keeper of any Prison, whether such a Person be a Prisoner, the said Marshal, &c. shall give a true Note in Writing to such Person or Attorney upon Demand thereof at his Office, or he shall forfeit 500 l. And such Note in Writing specifying that such Person is an actual Prisoner in his Custody, shall be accepted as sufficient Evidence, that such Person was at that Time in actual Custody.

4. It is absolutely necessary to charge the Marshal in Debt for Escape, that he have Notice of the Party's being charged in Execution; Per Car. 12 Mod. 635. Hill. 13 W. 3. Anon.

(Q. b. 8) Non est Factum.

1. Whether upon the Plea Non est Factum generally the Defendant may give in Evidence, That the Plaintiff afterwards sold the Seal off from the Deed, Dubitat. Brown's Anal. 16.

2. But upon Non est Factum pleaded, generally the Defendant may give in Evidence Minus literatur. Brown's Anal. 16. If it was read to him different from what it really is. Vide Faits (S).

3. Two Seal a Deed, the Seal of one is broken off. He shall say Non est Factum upon the special Matter, as upon a Rasure or Interlining, or where
Evidence.

where the Man is not lettered; and this shall avoid the Deed, though the Seal of the other remains entire. Br. Obligations, pl. 43; 3 H. 7. 5.


16. If the Stranger to whom the Deed was delivered as an Efcrow, delivers it over to the Party before the Condition performed, this may be, and the Evidence upon an Action brought upon this Bond; Per Brooke.

Br. General Litue, pl. 25. cites 14 H. 8. 28.

efl Factum, but Twidden and Wild J. doubted. 5 Keb. 142. Manning v. Backurn.

5. If in Debt on an Obligation the Defendant plead Non efl Factum, and upon Trial gives in Evidence, that the Seal of the Bond was broken off, and put on again, or that any Part of it was rated, it will be a Good Proof to bar the Plaintiff. Heath's Max. 84. cites 5. Rep. 119. and 11 Rep. 27.

6. On Non efl Factum, it is good Evidence, that upon Payment of a Sum agreed upon by Obligor and Obligee, the Plaintiff took the Defendants Seal off the said Obligation. Dy. 112. Upon Demurrer al Evidence. a.


7. But if a Deed had been delivered to A. to be given to the Plaintiff, and the Plaintiff refuses it is no Evidence on Non efl Factum; for by the first Delivery it was the Defendants Deed, and no subsequent Relativ shall have Relation to avoid it Ab initio; Yet if the Deed had been delivered to A. to be given to B. upon the Performance of Conditions, if A. delivers it before the Performance of the Conditions, the Maker may plead Non efl Factum. It is no Evidence if the Plaintiff is a Monk, nor that he is another that bears the same Name, yet it is good Evidence that the Bond was made by another who bears the same Name with the Defendant. D. 163. 167. pl. 14. Trin. 1 Eliz. Taw v. Bury.

8. Carus asked the Judges whether Razzure may be given in Evidence on Non efl Factum pleaded? Dyer and other Judges answered not; because he thereby acknowledges the Deed to have been once his Deed, and avoids it by a Subsequent Matter, and therefore must plead specially. Mo. 66. pl. 179. Trin 6 Eliz. Anon. Savil. 71. Manwood v. Harris.

9. In all Cales when the Obligation was once his Deed, and after before Action brought it becomes no Deed, either by Razzure, or Addition, or other Alteration of the Deed, or by breaking the Seal, in this Case though it was once a Deed, yet the Defendant may safely plead Non efl Factum; for without Question at the Time of the Plea which is in the present Time, it was not his Deed. 5 Rep. 119. b. Trin. 2 Jac. C. B. in Whelpdale's Cafe.

10. Coverture may be given in Evidence Non efl Factum; but Infancy must be pleaded; Per two Justices. 3 Keb. 228. pl. 40. Trin. 25 Car. 2. B. R. Cole v. Delaune.

11. Upon Non efl Factum to a Bond, one of the Witnesses being sub-
promed did not appear; and it was offered to prove that he owned it his Bond, but denied. Arg. 12. Mod. 500. Pach. 13 W. 3. Dillon v. Crawly.

12. Though Feme Covert seal and deliver a Deed, yet the may plead Non efl Factum, and give Coverture in Evidence; Per Holt Ch. J. 12 Mod. 609. Hill. 13 W. 3. Anon.


14. Infancy, or made by Divers, cannot be given in Evidence upon Non efl Factum, Lib. 5. Whelpdale's Cafe, 119. because thereby the Bond is not void, but only voidable; otherwife the Bond of a Feme Covert, or Monk; for there the Bond is void, and fo Non efl Factum; and lo of a Bond made to a Feme Covert, and the Husband disfagreets to it, or by A a a

Husband

And. 4. pl. 8. S. C.
Bendt. 76.
pl 117. S. C.

3. —
Evidence.

Husband and Feme Non et Factum of the Wife. T. per Pais, [467] 376.

(Q. b. 9) Librum Tenementum.

1. In Trespass the Defendant pleaded that the Locus in quo, &c. is six Acres in D. which are his Freckets; On Issue thereon, if the Defendant has six Acres in D. and the Plaintiff other six Acres there, the Defendant cannot give in Evidence that the Trespass was committed in his own Land; for his Plea shall be intended to refer to the Plaintiff’s Land, for until he names specially the Land, he does not vary from the Plaintiff’s Meaning, consequently the Plaintiff need not make any new Alignment. Dy. 23. b. pl. 147. Mich. 28 H. 8. Anon.

(Q. b. 10) Molliter Manus Impoifuit.

1. You cannot justify beating of a Man in Defence of your Possession, but you must say you did Molliter Manus imponere. Molliter Infultum legit in Defence of Possession is not good, but a Contradiction. Mod. 36. pl. 86. Hill. 21 & 22 Car. 2. B. R. Jones v. Trelilian.

2. There is a Force in Law as in every Claflum fregit, and there must be a Request, but contra against an actual Force. A Wife may justify an Assault in Defence of her Husband, and so may Servant of his Master, but *Not a Master in Defence of his Servant, because he may have an Action Per quod Servitutum amicit. If a Perfon hold up his Hand to strike the Husband, the Wife may make an Assault to prevent the Blow; But a Man cannot justify an Assault in Defence of his House, Goods, or Close, but must plead Molliter Manus impoifit.

3. If one enters my Ground, the Owner must request him to depart before he can lay Hands on him to turn him out; For every Impoiftio Manum is an Assault and Battery, and this Breaking of the Close in Law cannot be justified without a precedent Request; But if one breaks down the Gate, or breaks open a Door, or comes into my Close Vi & Armis, I need not request him to be gone, but may lay Hands on him immediately; for it is but returning Violence with Violence; so if one forcibly takes away my Goods, I may oppose him without any more ado, for there is no Time to make a Request. An Attempt to take or rescue any Thing in my Possession is an Assault on my Person, and a Taking from my Person. 2 Salk. 641. pl. 12. Ann. B. R. Green v. Goddard.

(Q. b. 11) Ne Inseoffa pas.

1. If a Man pleads Fœcissement of one Jointenant to his Companion by a strange Name, or of a Feme Covert to another Similitur, the other may say that Ne Inseoffa pas, and give the Matter in Evidence; Per Cur. and the Court shall instruct the Jury of the Law. Br. General Issue, pl. 13. cites 18 E. 4. 29.

(Q. b. 12) Ne Unques Executor.

1. An Action of Debt was brought against J. S. Executor of the Testator W. he imparls, and therefore he cannot plead to the Writ that he is Administrator, and not Executor, and therefore, by the Direction of the Court, he pleaded Ne Unques Administrator as Executor, and gave in Evidence that he is Administrator, and not Executor per Curiam. Quod nota. Br. General Issue, pl. 61. cites Ed. 4. 4. 2. On
2. On the same Plea an Executor gives in Evidence a Commission ad Colligendum, in which was an Authority ad Ventendam; But this was an ministration, and the Ordinary had no Authority to sell Goods that they were in Danger of perishing, and the Brevet de Colligendo ought to express the proper Name of the Commisso or Ordinary. Dy. 855. b. pl. 8. Mich. 8 & 9. Eliz. Anon.

3. Upon Ne Unques Executor, Ne Adminifieer come Executor, it is good Evidence by Defendant to produce the Letters of Administration by which he administrated, and that he did not administer before the said Letters, for then he cannot be an Executor de bon tort. Dy. 305. b. pl. 61. Mich. in B. R. in Cafe of Har- ding v. Sal- keld, and denied by Holt Ch. J. and Eyres, exteris tantentibus; and Holt said, that he shall be charged notwithstanding.—12 Mod 46. S. C. cited, and denied to be Law; and rather an Evidence to charge the Defendant than discharge; they might have been pleaded in Abatement but it is no Plea in Bar.

4. Executor de bon Tort, pleads Ne Unques Executor, &c. Execu- tion was against him for the whole Debt, viz. 60 l. atbo' in Truth he had not medled but with one Bedstead of small Value. Noy. 69. Anon. about 39 Eliz. and there said that one Mr. Olley had been charged to 100 l. and he had meddled but with one Bible, therefore take Heed, and plead special Matter.

5. If Executories, after Ne Unques Executors pleaded, may give in Evi- dence that the Parties are living ? Wylye Recorder of London conceived they may; but the Court doubted. 1 Keb. 414. pl. 120. Mich. 14 Car. 2. B. R. Anon.


7. In an Action upon the Cafe against the Defendant for Goods sold, he if there be came and pleaded in Bar, that he was Executor, where the Plaintiff Judgment a- gainst him as Administrator; and upon a Demurrer adjudged for Administrator, the Plaintiff, for it was but in Abatement, for the Matter is if he be chargeable or no; and tho' it was said that this was well pleaded in of Executive, Bar to the Action, as in Robinson's Cafe, 5 Rep. 32. and that he upon Evidence of Ne Unques Executor, he may give Letters of Administration in Proof, Dy. 305. this was denied per Holt Ch. J. and Eyres, exteris tantentibus; and Holt said, that this notwithstanding, he shall be charged, but he said it is otherwise of Letters ad collin- gend. bona defuncti; but where one sues as Executor, the Defendant may plead by Way of Estoppel that he was Administrator, &c. Skin. 365. Harding v. Salkeld.

Executor or Administrator, he is still chargeable to Plaintiff, and it is no Plea in Bar to say Admi- nistrator and not Executor. Cumb. 222, 221. Mich. 5 W. & M. in B. R. Harding v. Salketh. 12 Mod. 46. S. C. accordingly, per Holt Ch. J.—Skin. 265. pl. 9. S. C. accordingly. —1 Salk. 256. pl. 4. S. C. held accordingly.—

8. But Bona Notabilia may. —But not that Teflator was Non Com- pas. Sid. 359. in S. C.

(Q. b. 13.) Ne Unques for Receiver.

1. In a Writ of Account as his Receiver, if the Defendant pleads Never his Receiver, &c. He cannot give in Evidence, that the Plain- tiff bailed to him the Money to deliver over to J. S. the which he has done accordingly, &c. Tho' this special Matter proves that he is not accountable, because upon the Delivery he was accountable conditionally; (that
Evidence.

(That is to say) if he did not deliver it over. D. 196. b pl. 1. cites 3 Eliz. between Sir George Speake v. Hungerford.


1. Debt for Rent upon a Demise for Years, the Defendant pleads Nil habuit in Tenementis, the Plaintiff replies, that he had a good, and sufficient Estate to make the Demise to the Defendant Modo & Forma, &c. Sell, that he was seised in his Demise as of Fee, upon which Issue is joined; and upon Evidence it was objected, that he ought to shew an Estate in Fee; Non allocutur, for the Issue is joined upon the good and sufficient Estate to make the Demise; and any Estate is sufficient for this Purpose, out of which the Estate demised may be derived; and all added after the Sell, is but Form; but if he had not said, that he had a good and sufficient Estate, but only said, that he was seised in his Demise as of Fee, then he had been restrained to prove such Estate; Per Holt Ch. J. Skin. 624. pl. 18. Mich. 7 W. 3. B. R. Wilfon v. Field.

2. Debt for Rent on a Demise by Plaintiff to Defendant; Defendant pleaded, that Plaintiff Nihil habuit in Tenementis, Plaintiff replied that he was possessed of a Lease for 41 Years made to him by the Lord W who had full Power to demisse; and though the Judgment was reversed for a Fault in the Declaration; yet the Replication was held good without Letting forth a Title, which Holt said was true; and that in that Case it was not necessary to set out a Title, for Nihil habuit in Tenementis was the Issue; for if Defendant pleaded Nihil habuit in Tenementis, the Plaintiff may reply; Quod factis habuit in Tenementis, viz. in Feeod or any other Estate on the Trial whereof he may give any other Estate in Evidence; the alleging any particular Estate being only Form, the Issue being whether he had any thing in the Premisses. 12 Mod. 191. Patch. 10 W. 3. Silly v. Dally.

[Q. b. 15] Non Feoaffavit.

1. If one plead Ne Enfeofa Pas, he may give in Evidence that the Parties were Servo-Tenants. Heath's Max. 80. cites 18 Ed. 4. 29.

2. In Trespas, it was resolved upon Evidence at Barr, that where the Defendant entitles himself to Land, by a Feoffment made to A. to the Use of the Defendant of a Manor in which, &c. is Perced, that that was naught, because no Attornement is shewn to be made to the Feoffee to the Use of A. though it was shewn that the Tenants have paid their Rent to the Defendants. Noy. 146. Evelinge v. Sawyer.

(Q. b. 16.) Non tenet Modo & Forma.

1. Coffavit, that he held divers Lands by entire Service, he did not hold in Manner and Form, and gives in Evidence, that he holds by several Services, is good, for he hath no such Caufe of Action. Kitch. 238. 13 H. 7. 16. 24.

(Q. b. 17) Note of Hand.

1. A Note of 5000L from A. in which he owned himself indebted to B. his Brother, to whom he was not any Ways indebted, and of which Note B. knew nothing, but A. kept it always in his own Coffedy, and on his Death it was found among his Papers, was decreed to be looked upon only as Matter initiate, or intended and never perfected, and the Court
Evidence.


[Q. b. 18] Plene Administravit.

1. Note that if Executors plead Plene Administravit in Action of Debt, and give in Evidence Payment of Legacies, the Plaintiff in the Action of Debt may demur in Law thereupon; for such Administration is not allowable in Law before the Debts paid. Br. Ass'ts enter maines, pl. 10. cites 3 H. 8.

2. Case was brought against Executors; they were at Issue, upon Nothing in their Hands; it was given in Evidence on the Plaintiff's Part, that a Stranger was bound to the Testator in 100l. for Performance of Covenants; which were broken; for which the Executors brought Debt upon the Obligation depending which Suit, both Parties submitted themselves to the Arbitration of A. and B. who awarded, that the Obligor should pay to the Executors 70l. in full Satisfaction, &c. and that the Executors should release, &c. which was done accordingly. And it was agreed by the Court, that by the Release it shall be taken in Judgment of Law, that the Executors have Assets to the Value of the whole 100l. And although the Executors were compelled by the Award to make the Release, yet it was their own Act to submit themselves to the Arbitrayment. 3 Le. 53. pl. 77. Mich. 15 Eliz. C. B. Anon.

3. In Debt against an Administrator, and Plene Administravit pleaded, the Judge did allow him to give in Evidence Judgments precedent without pleading it, and Ward Serjeant of the other Side did yield to it. It was also Ruled, That an Acquittance proved in Evidence for 100l. paid to a Creditor is good in Discharge of an Inventory, and if the Debt was compounded for less than the Acquittance mentions, this shall come on the other Part to prove; and the rather it was held so here, because this Acquittance was from an Officer of the King's for Customs due, and they do not use to take less than is due. Clayt. 65. pl. 112. Aliss. a. July 1638. before Barkley, Judge. Baraclough's Case.


5. On a Plene Administravit, Defendant cannot give in Evidence of Judgments &c. since the Issue joined, nor since the Writ purchased, but these must be pleaded. For Issue is whether Plene Administravit at that Time. But though he cannot give such Evidence, yet he may plead it. 3 Salk. 153. pl. 4. Hill. 8 W. 3. C. B. Anon.

6. On Plea of Plene Administravit, a Judgment was given in Evidence against the Testator, and that Execution had been taken out against the Executor, and that a third Person gave a Note to the Sheriff for the Money. This is not Evidence of the Judgments being satisfied as when Satisfaction is entered upon Record, or the Money paid or levied by the Sheriff, for on a Ca. Sa. the Sheriff will be liable to an Ecape, or a Fieri Facias may be sued against the Defendant; Per Powell J. at Excm. Lent Assizes 1710. Tackel v. Bingham.

7. It is no Plea where he is charged in Debts and Detinets, because he is charged for his own Occupation. 1 Mod. 185. in pl. 17. Trin. 26 Car. 2. C. B. Anon.

8. A Bond was put in Suit against an Executor who pleaded Plene Administravit, that he was a Bond Creditor himself and paid himself; on a Trial it appeared there was an Interlacement of 50l. after the Bond was executed; So at Law the Bond was entirely void. New Application B b b was
Evidence.

was made, that though the Bond be void at Law that it may be con- 
\ded as good Equity for what it was really given. Chancellor, This 
at most can be a Charge at simple Contract, for you yourselves have 
destroyed it’s being as a Bond, so it is as if it never had been; so \can be no 
Bar to the Payment of a Debt of a Superior Nature. Sel. Cases in Canc. in 

9. Neither is it now necessary to prove the Execution of the Bonds, but 
producing the Bond is sufficient, though held otherwise formerly; Coram 

10. On Plea Administravit, Rent due and paid, if Covenants or 
Leaves are produced, must give Evidence of their Execution, or of Parties 
being in Possession and paying Rent, it may be sufficient to shew the Right 
of Leitor to the Rent ; Coram Probyn J. at Wells Summer Assizes 
1728.

11. A Feme sole Executor made a Deed of Gift of Tiditor’s Goods in 
Truf, but continued Possession of them and married J. S. and the Baron 
likewise had Possession of them. An Action of Debt is brought by a 
Creditor of Tiditors, and fully Administered pleaded. The Verdict 
shall pass for the Plaintiff upon this Evidence, for this Alienation being 
 Fraudulent was void to all Creditors, and so as to the Plaintiff the Goods 
continued the Tiditors, and were Affets in the Defendant’s Hands. 
Went. Off. Executors, 189, 190. says it was so held in B. R.

19. At Exeter, Lent Assizes 1711, it was declared as Holt’s Opinion 
that where old Bonds cancelled, and delivered up were given in Evidence 
by an Executor, the Party must prove the Payment of the Money; but 
of late the Practice had been otherwise, for these are sufficient of them- 
selves, unless there be a Suspcion of Fraud, as when their Bond, are to 
Relation.

(Q. b. 19) Riens per Dicent.

1. An Action of Debt was brought against Executors; they are at Iff- 
\ue upon Affets in their Hands; it is good Evidence that they have sold 
Land by the Will of the Tiditor, and have the Money; and so is a Re- 
covery in Trufps of Goods taken in the Lire of the Tiditor. Br. Ge- 
\eral Issue, pl. 4. cites 3 H. 6. 3.

2. In an Action of Debt upon an Obligation against an Heir, if Defen- 
dant pleads Riens per Dicent, and Plaintiff maintains that he has Af- 
\ets, it may well be given Evidence, that the Defendant before the Writ 
\ purchas’d aliened the Affets by Fraud, and Coni to defeat the Plaintiff, and 
so it is void by the Statute 13 Eliz. though it was not pleaded, because 
it is upon the General Issue. Adjudged. 5 Rep. 60. Mich. 33 Eliz. 
B. R. Gooc’h’s Cafe.

3. In Debt against an Heir, he pleads he hath nothing in Fee by De- 
fent, and in Evidence it appeared he had Fee, but depending upon an Es- 
\tate Tail, and upon this a special Verdict, fee by me this Issue against 
the Defendant; for he ought to have pleaded this specially, and so it 
\ was done in Cafe of Trasford Hill, 31 Eliz. and concluded Under de- 
bium Prædictum solvere Non Potuit, and fee of the Rent or Service 
\ depending upon this Reversion, and of what Value they shall be, &c. 

4. Debt against the Heir upon the Bond of the Aecitor, &c. Riens 
\ per Dicent was pleaded. The Heir gave in Evidence an Extent against 
him upon a Debt owing by his Father upon Bond to the King; And it was 
rulled by Holt Ch. J. that a Copy of the Bond sworn, or the Bond itself, 
cought to be given in Evidence the Suit being by a Creditor, otherwise the 
Extent should not be allowed. And for Want of this Holt disallowed 
such Extent. Summer Assizes 1699. at Darby. And next Morning in an- 
other
Evidence.

other Trial between Horne and the said Defendant Adderley, the Bond acknowledged by his Ancestor to the King was produced in Evidence, the Issue being the same as in the other Action. Ld. Raym. Rep. Rep. 734, 735. Sherwood v. Adderley.

5. In Debt against the Heir who pleads Rians per Dificent; Proof that the Father was slain, and that the Heir did enter after his Death is well enough; for it shall be presumed Fact-simple, till the Contrary be shown. T. per Pais, 225.


1. Upon the Statute of Winton in Case against the Hundred; The Evidence must be sift & Ex Parte Quer. Many Infallaces have been where Persons have pretended to have been robbed but never were. 3dly. The Character of the Person robbed ought to be clearly made out, with such other Circumstances, as may confirm his Credit. 3dly. That the Party robbed ought to give Notice of the Robbery immediately to the next Constable or Vill, and he need not delay it till he has a Justice of Peace his Warrant, for this is not necessary, that a Hue and Cry may be levied, for the Intent of the Law is not else answered, this being intended for the immediate Pursuit of the Robbers. 4thly. This Hue and Cry ought not to describe the Person by his Cloaths, &c. for these may be altered, but the Horse with his Colour, &c. Upon a Motion for a New Trial, which was granted, there being some contrariety in the Evidence concerning the Description of the Robbers, whether they were Horfemen or Foot-Pads, he soon after the Declaring they were on Foot to a Shepherd, but wavering on the Trial they were Horfemen. Upon Trial coram Parker Ch. J. Trin. 3 Geo. Regis B. R. Keil v. Hundred of Eltham Middlesex.

(Q. b. 21) Son Assault Demesne.

1. M. throws a Bottle at C. and C. returns another; this is justiable in C. and lawful, and though he had wounded M. he might have justified it in an Action of Assault and Battery. For the first throwing the Bottle manifests a malicious Design. Kel. 128.

2. In Trespas by Baron and Feme for Battery of the Feme, the Defendant pleaded Son Assault Demesne of the Wife; Plaintiff replied, that the Defendant was going to wound her Husband; Defendant demurr’d and Judgment Pro Quer. for the Wife may justify an Assault in Defence of her Husband; To may a Servant of his Master, but not a Mäster in Defence of his Servant, because he may have an Action Per quod Servitium amiri, nor can a Man justify an Assault in Defence of his Freehold, Housf, or Clofe, but can only say Molliter Manus impofuit. 1 Salk. 407 pl. 2. Mich. 7 W. 3. B R. Leeward and Ux v. Batliee.

On Son Assault Demesne, the Evidence was that there had been some contref about taking Sea Sand near Penzance, and the Wife of one of the Persons objecting, &c. strikes with her Fist a Man loading Sand in Pots on Horleshack; Words arise and the Woman attempts to let the Sand fall out of the Pots by taking out the Pin, but the Man drives her from him, and then beats her very much, but the Judge held this could not be given in Evidence to maintain this Issue, for though it was a continuing of the first Quarrel, and if the Woman had been kill’d it would have been but Unlawful, not Se defendendo, because this last beating cannot be justified. Holt Ch. J. always held that if one strikes me, and then runs away, and I follow and beat him; in an Action for this, I cannot plead Son Assault Demesne, for the Words of the Plea are, Influltum tecum & ipsum verberati voluit per quod Defendans seipsum erga Quer.

ad
Evidence.

ad tune & ibidem defendebat, &c. Hill. Vac. 1716. Coram Eyre Ch. J. at Launceton.

4. In Assault and Battery against Four; all pleaded So Assailant Denoue; Evidence that the Plaintiff struck one first, and then another, and then a Third, and then a Fourth. Every Defendant ought to have pleaded singly, and as the Plea was joint the Assailant ought to have been proved. Per King Ch. J. at the Castle at Exon. 1716.

(Q. b. 22) Nul Tort.

1. In Attaint in Affize the Tenant cannot plead Feeviment upon Condicion without Deed, but shall say Nul Tort, and shall give this in Evidence, and the Jury is bound to find this in Pain of Attaint. Br. General Iflue, pl. 72, cites 18 E. 4. 12.

2. Affize by a Woman of certain Land the Defendant shall not plead Discominance by the Baron, but shall say No Tort, and shall give the Matter in Evidence. Br. General Iflue, pl. 64, cites 45 Aff. pl.

3. In an Affize it the Tenant pleads No Tort, No Dillefin, he cannot give in Evidence a Releafe after the Dillefin, but he may give in Evidence a Releafe before the Dillefin, for then upon the Matter there is no Dillefin. C. L. 283.

For this Releafe after the Dillefin is an implied Confession of the Dillefin, and repugnant to the Plea of No Tort No Dillefin. Jenk. 18, 19. pl. 35.

4. If the Lesser releases to the Lessee for Years, and his Heirs, and the Lessee upon ousting of him after the said Release brings an Affize against the Leslor, the Jurors upon Evidence of the said Release may find no Diffecin, for the Release was before the supposed Dillefin. Jenk. 19. pl. 35.

5. So upon the General Iflue in an Affize the Recognitors may find a Feeviment upon Condicion, and that the Plaintiff entered for the Condition broken. Jenk. 19. pl. 35.

6. In an Affize it the Tenant pleads Nul Tort, Nul Dillefin, he cannot give in Evidence a Releafe after the Dillefin, but a Releafe before the Dillefin he may, for then there is no Dillefin upon the Matter. Tr. per P. [467] 376.

(Q. b. 23) Nul Wafe.

1. Wafe, no Wafe done was pleaded, he may give in Evidence, That the House was burnt by the King's Enemies, or by Thunder, or it was ruined at the Time of the Lease is good; or that it fell either by Wind or Tempelt. Br. General Iflue, pl. 46, cites 12 H. 8. 1.

2. Wafe was alligned in Bofcis, viz. In Succedendo, & Vendendo decem Quercus, &c. and the Truth was, that the Defendant had but lipped and fired the Oaks. Whether he may falsely plead No Wafe done, and give this special Matter in Evidence? And it seems, that he well may, as the Wage is alligned. D. 92. a. pl. 16. Mich. 1 Mar. Anon.

3. In Wafe alligned in Dominus; the Defendant pleaded Nul Wafe done, and gave in Evidence, that the Houses were sufficiently repaired before the Action brought; The Court held, that this Evidence maintains the Iflue, but he should have pleaded it in Bar, because now it is contested that there was once a Wafe. D. 276. a. pl. 51. Trin. 10 Eliz. Anon.

5 Rep. 119. b. 8. Cited per Cur. and says, that the Defendant ought to plead the special Matter, and cannot plead Nul Wafe done, for the Entry is in the Prater Tenke, viz. Quad non fecit Vallum.

4. Wafe
Evidence.

4. Waite was assign'd by Altman in Fodendo Fosiam in quodam Prato, the Defendant pleaded No Waite done, and it was laid by a special Verdict, that the Defendant made the Trench to drain the Water, Per quod Pratum Melioratur & non Pejaratur. And it was said for the Plaintiff by Mead, that this Matter ought to have been pleaded in Barr, but by the Opinion of the Court it is no Waite. D. 361. pl. 12. Hill. 29 Eliz. Altman v. ———

5. In an Aélion of Waite in an House, if Defendant pleads No Waite done, he cannot give in Evidence that it was sufficiently repaired before the West purchased, because the Waite is acknowledged at one Time, and therefore ought to plead in Barr. 2 Roll Trial (E. f.) pl. 3. cites as repairing the House, and gives the Defendant's Case. and 5 Rep. 119. b. Whelpdale's Case. he may give in Evidence any Thing which proves it no Waite, as by Tempest, Lightning, Enemies, &c. Co. Litt. 253. So he may give in Evidence that they were ruinous at the Time of the Lease.

6. In an Aélion of Waite, upon the Plea Nul Waite fait, he may give in Evidence any Thing that proclaims it no Waite, as by Tempest, by Lightning, by Enemies, and the like; but he cannot give Evidence justifiable Waite, as to repair the House, or the like. If one does Waite, and before the Aélion brought the Leifie repairs it, and after the Leelor brings an Aélion of Waite, and the Leifie pleads Quod non fecit Vosnum, he cannot give in Evidence the special Matter. Co. Litt. 83. a.

7. In a Dispute between the Lord of a Manor and a customary Tenant about opening a Copper Mine (where no such ever was known to be before) and selling the Ore, it was proved that the Tenants had used to cut Timber from off the Premisses, and also to dig Stone and sell it. Ed. Chan. Cowper said, as to the Evidence that the Tenant might do one Sort of Waite, as to sell Timber and dispose of it, this might be by special Grant; but that it is no Evidence that the Tenant has a Power to commit any other Sort of Waite of a different Species, or that of disposing of Minerals. Wm's Rep. 406. Hill. 1717. Bishop of Winchelsea v. Knight.

8. But a Custom impowering the Tenants to dispose of one Sort of Mineral, as Coals, may be an Evidence of their Right to dispose of another Sort of Mineral, as Lead out of a Mine. Ibid. 408.

(R. b. 1) Proved in Evidence, what must, or may be in, or as to the Plea.

Affump't.

1. Aélion upon the Cave that the Defendant promised to the Plaintiff that if the Plaintiff would discharge j. T. of such Execution in which he is at the Suit of the Plaintiff, that then if the said j. T. did not satisfy the Plaintiff by such a Day, the Defendant would do it, and counted accordingly, and they were at Issue upon Non Affump't, and the Evidence to the Jury in Proof of the Affump't, and the Truth of the Matter also, was that the Defendant promised the Plaintiff's Wife in the Plaintiff's Absence, and when he came to his Wife he agreed to it, and dis- charged
Evidence.

2. When an Action upon the café on Affumplcit is brought, and two Considerations or more are laid in the Declaration, but they are not collateral but purportant, as A. is indebted to B. in 100 l. and A. promises B. that in Consideration he owes him 100 l. and in Consideration that B. shall give him 2 s. that he will pay B. the 100 l. such a Day, it B. brings his Action upon this Affumplcit, and declares it the Consideration of the 2 s. be not performed, yet the Action lies; but if they are Collateral Considerations, which are not pur- sant, as if I. in Consideration that you are my Counsel, shall ride with me to York, promise to give you 20 l. here all the Considerations must be proved, otherwise the Action cannot be maintained. Arg. says, this Difference was taken by all the Justices in B. R. 19 El. Le. 296. pl. 105. 28 & 29 Eliz. B. R. in Cafe of Crifp v. Golding.—

If a Promise is founded on two Considerations, and Plaintiff declares on one only, he shall never have Judgment. Le. 300. pl. 410. Hill. 31 Eliz. B. R. Simms v. Wellcort.

3. Upon an Indebitatus Affumplcit, the Evidence ought to be Contract or Receipt without Deed, and not a Specialty, as an Obligation, or Deed of Leafe and Arrears, for he ought to sue upon the Specialty. Mo. 340. pl. 460. Mich. 34 & 35 Eliz. Anon.


5. If in Affumplcit upon two Considerations, the one is good, and the other idle, it that which is good be proved, it is sufficient, and though he fails in Proof of the other, this is not material, because it is vain to al- ledge it, and it is as if it had not been alledged. Cro. J. 127. pl. 19

Trin. 4 Jac. B. C. Crifp v. Garnel.

6. In a Café in Chancery the King under his Sign Manual certified to the Ld. Chancellor a Promise made to him in Behalf of another, and this Certificate was allowed good Evidence. Hob. 213. pl. 271. about the 9th Jac. Lord Abigny v. Lord Cliton.

7. Afjumplcit upon an Accompt, and the Proof was, that the Plain- tiff’s Servant did demand such Sum promt, &c. of the Defendant, who did acknowledge the Debt, this is held good Evidence, Quod Nota. Clav. 98. pl. 165. Abiza Aug. 23. 1641. Whiffield J.

8. Upon Non Afjumplcit pleaded to an Action upon the Cafi, Defen- dant may give in Evidence that the Promise was conditional, or he may plead the same without Traverse. Brown’s Anal. 15.

9. In Afjumplcit for 20 l. Debt, upon the Evidence it did appear that Part of the Money was paid, and the Judgment did beftare if the Plain- tiff had not failed in his whole Café, because the Consideration is not as he hath made his Café to be, but after he was satisfied the Law was otherwise, and gave Direction the Plaintiff should recover the Residue of the Money not paid, but it seems otherwise where the Considerations were several, as for the Price of a Horfe sold to the Defendant, and for Money lent, and one Action for both, there both must be proved to be due. Clav. 145. pl. 264. March 1650. Linley’s Cafi.

10. Where
Evidence.

10. The Plaintiff had taken a Distress for Rent, and the Defendant promised, if he would re-deliver it to him, he would pay the sum demanded for Rent; the Distress was delivered, and now he sued for the Money upon the Promiss, and the Plaintiff, in this Case was put to prove there was Rent due, &c. Note; for I did not doubt, because the Defendant hath Benefit by Re-delivery of the Distress, &c. Ergo. Clayt. 139. pl. 250. Alifie Aug. 1649. Thorpe J Gower v. Wilkington.

11. Where an Indebitatus is brought for divers Goods and Merchandizes sold and delivered, there it is requisite for the Plaintiff to prove more Goods than one particular Thing sold, and also to prove a Price agreed upon, otherwise the Action will not lie. But where a Quantum Meruit is laid, there he needs not to prove any Price agreed upon, but only the Delivery of the Goods, and the Value of them at the Time the Delivery was made. Therefore it is most secure always in an Action for Goods sold, or Work done, to lay a Quantum Meruit with an Indebitatus Assumpfit; but if only one particular Commodity sold, there you must mention the Commodity so sold particularly in the Declaration, and not lay Goods sold. L. P. R. 117.


was nonestint. 2 Lev. 144. Trin. 27 Car. 2. B. R. Seaton v. Gilbert.—Vent. 170. Mich. 25 Car. 2.
S. P. by Hale Ch. J.—

13. In an Action grounded upon a Promiss in Law Payment before the Assumpsit brought is allowed to be given in Evidence upon Non Assumpsit. But where the Action is grounded upon a Special Promiss, there Payment, or any other legal Discharge must be pleaded. 1 Mod. 210. pl. 82. Hill. 27 & 28 Car. 2. C. B. Fits v. Freestone.

14. In a Case on Non Assumpsit the Statute of Limitations has not been given in Evidence, for it speaks of a Time past, and relates to the Time of making the Promiss. 1 Salk. 278. pl. 1. Coram Holt Ch. J. at Nifi Prius at Hartford. 1690. Anon.

15. In Assumpsit the Defendant pleaded, Quod ipse performavit omnia ex Parte sua performanda, and it was ruled, that this amounts only to the General Issue. Quere, for the Assumpsit is admitted, so that this is but a Defearge; and Quere of the Cafe of Hatton and Morse, if it be not contra. 1 Salk. 394. pl. 5. Mich. 2 Ann. B. R. Sea v. Taylor.

16. Assumpsit for Macro, Drink, &c. found by the Plaintiff for the Defendant; upon Evidence it appeared, that it was found for the Defendant’s Apprentice, and not for himself; and held that the Plaintiff could not recover upon this general Count. Coram Prat Ch. J. apud Guildhall. Mich. 3 Geo.

(R. b. 2) Non Assumpsit infra sex Annos

1. An Acknowledgment of the Debt within Six Years was sufficient to revive it, and to prevent the Statute, though no new Promiss was made. And this was held sufficient to maintain the Issue, viz. that the Teftator Assumpsit, because the Promiss did not give any new Cause of Action, but only received the old Cause, and was of no other Use but to prevent Bar by Statute of Limitations. Carth. 471. Mich. 10 W. 3. B. R. Heylin v. Haftings.

S. C, and S. P. held accordingly.—
Evidence.

2. Non Assumpsit intra sex Annos to an Action as Executor. On a Trial Proof was, that there was a new Promise made within Six Years, but it was a Promise made to Executor, not to Testator. Ex per Cur. he should have declared accordingly. 1 Salk. 23. pl. 16. Mich 3 Ann. R. Dean v. Crane.

cenor might declare of a Promise to himself; Sed adjournator; and in Hill, Term upon Conference with all the Judges, it was held that the Evidence did not maintain the Declaration. So on this Plea if Evidence be, that Goods were sold above Six Years ago, and that the Defendant being requested to pay denied that he bought the Goods, but further said, prove it and I will pay you; here this Promise, though conditional, as the Condition was performed doth revive the Debt; and will bring it back again within the Statute, for the Defendant waves the Benefit of the Act, as much as by an express Promise. 1 Salk. 29. pl. 19. Hill. 13 W. 5. B. K. Heyling v. Haslings.

3. Lent Affizes 1717. Exon coram Baron Price, Plaintiff declared on a Note dated 16 Years ago. Plea Non Assumpsit intra sex Annos; Evidence that the Defendant did own the Note within Six Years, saying he did acknowledge it to be his Hand, and it was ruled sufficient to bring the Case within the Statute.

(R. b 3) Non Consciscit.

1. The Issue Ne dona pas may be maintained by a Devise. And upon a Feoffment, a Lease and Release are good Evidence. Heath’s Max. So. cites 15 E. 3. Bro. 95.

2. If Assignment be pleaded to be granted by Deed, and Issue is taken by a Stranger to the Deed, that he did not grant by the Deed, if it can be proved that he granted it without Deed, as it may be (as there is held) or by other Deed it is good, because the Deed is surplus, and the Effect of the Issue is upon the Deed, and not the Deed. 43 E. 3. 1. b. 2.

3. In Waste brought by the Grantee of a Reversion, the Lease may plead the He in Reversion did not grant by his Deed, or that nothing passed by his Deed, and give in Evidence that he never made Attornment, or may traverse the Attornment; Per Knightly and Fitzherbert. D. 31. a. pl. 215. Hill 23 H. 8.

4. In a Formeden upon Non Dedit, it is good Evidence that the De- nor had nothing in the Land at the Time of the Gift; For he cannot traverse that he had nothing at the Time of the Gift Dy. 122 b. pl. 23.

5. An Issue in Trespaus was, whether or no Dominus Consciscit secundum confuetudinem Manerii? And the Evidence was, that the Lord had lately granted, but never before that Time; The Jury here must find Non Conscissil; for although in Truth Conscissit, yet Non Conscissit secundum confuetudinem Manerii, which was, the Point in Issue. Le. 55 56. pl. 70. Pasch. 29 Eliz. C. B. Kempe v. Carter.

6. If nothing passes by the King’s Letters-Patents, it is a good Plea, that Non Conscissit per litteras Patentes. For if nothing passed, then by Consequence Non Conscissit. 4 Rep. 71 b. Trin 33 Eliz. C. B. in Hynd’s Cafe.

7. In Debt for Performance of Covenants Defendant pleaded the Grantee of a Rent-Charge had granted it over, and Issue thereupon, and found for Defendant, and moved in Arrest of Judgment, that No Attornment is fecundum confuetudinem Manerii; and it was held per three Justices to be good, and well aided by the Statute of Jeosales, and though Issue may be taken either upon the Grant or upon the Attornment, yet the Issue upon one being found, the other is implied. D. 31 b. Marg. pl. 215. cites 33 & 34 El. B. R. Gourney v. St. Edward Cleere.

8. If nothing passes by the King’s Letters, one may plead Non Conscissit, and give the Invalidity in Evidence. 6 Co. 15. b. Mich. 36 & 37 Eliz. B. R. Eden’s Cafe.
Evidence.

9. But in Ejectment of a Manor, which consisted of Demeines, Rents and Services, &c., an Attornment must be proved, because the Rents and Services could not pass without it. 3 Mod. 36. Mich. 35 Car. 2. B. R. Smith v. Goodier.

10. On Non Conscissit to a Grant of a Reversion, you need not prove an Attornment, for the Traverfing the Grant is an Admittance of the other. 1 Salk. 90. pl. 2. Mich. 5 Ann. B. R. Hudfon v. Jones.


1. If the Defendant pleads Nil debet to an Action of Debt upon a Contract, he may give in Evidence that the Contract was conditional, or he may plead the same without Traverse. Brown's Anal. 15.

2. Debts for the Sale of a Horse for 40s. the Defendant may plead Nil debet, and give in Evidence, that the Sale was of two Horses for 40s. or of an Ox for 40s. and good. Brown's Anal. 16.

4. Debts upon Arrearages of Account (the Defendant said) that he owes him nothing in Manner and Form, and Evidence that there was no such Account is good, for he hath no such Cause of Action. Kitch. 233. 2 H. 6. to 26.

5. Debts upon Arrearages of Rent upon a Lease for Years, he owes him nothing, and Evidence that he did not demifc is good. Kitch. 237. cites 7 H. 7. to 3.—But I do not obfcive it there.

6. The Defendant upon Nil debet may give Nc Lefts pas in Evidence. Heath's Max. 79. cites 9 H. 7. 3.

7. In Debt for Rent on a Lease Parol, the Defendant pleads Riens lay doit, he may give in Evidence any Matter to fhew the Title out of the Plaintiff's Sec Contra, where the Defendant pleads Riens Arrear, such Plea tacitly admits a Title in the Plaintiff. 9 H. 7. 3.—But I do not obferve it there.

8. One had Leafe for Years of Land of a Stranger rending Rent, and for the Arrearages brings Debt, the Defendant pledges, That he owes him nothing, and may give in Evidence, that he never was feised of the Land; But, if he pleads Riens Arrear, or levied by Difref, he cannot give in Evidence as before as it seems. May fay, He did not leafe. Roll. Trial. 657. pl. 21. 7 El. Tr. 9 H. 7. 3. May fay, Ne Lefts pas.

9. In Debt upon an Account, the Defendant may plead Nullum tale camplum, Oui Nil debet, and give in Evidence, that there is no Account between the said Parties. Brown's Anal. 15.

10. Debt for the Arrear of Rent upon Lease for Years, upon Nil debet per Patriam pleaded, it is good Evidence to prove Such non dimiffit. Brown's Anal. 16.


11. In Debt upon a Lease, Defendant pleaded Payment, and in Evidence shewed he paid it to Segnificators of the Common Wealth, the Plaintiff being a Deliqucnt, and Ruled this was good Payment to prove the Office, which was a Payment to the Plaintiff himself. Clayt. 129. pl. 231. Affif. a. Mar. 1643. before Thorpe Serjeant, Judge of Affife. Aon.

12. If he who has Rent-Services or Rent-Charge, accepts Rent due at the last Day, and thereof makes acquaintance, all the Arrearages due before are by this discharged. 3 Rep. 65. b. in a Nofa by the Reporter lays, that it was so adjudged in C. B. Hill. 10 Eliz. Hopkins v. Morrison. And the Reporter adds, that in the Cafe of Rent-Service and Rent-Charge, he who receives it is not compellible to make acquaintance; but the doing it is his own voluntary Act to which the Law does not compel him.

D d d

13. In
13. In Debt for Rent, on Reference to the Secondary to see if all were paid
Ex Matone Hugos, he reported, that a Note of Receipt of the left Half
Year's Rent was showed in Discharge of all former Arrears; but per
Car. this is only Evidence of all, but it is no Discharge of the former
Arrear unless it be under Hand and Seal, and then but by Epitome, where-
upon, paying Coils, a new Trial was agreed to stand on Payment,
without entering into the Title. 2 Keb. 346. pl. 25. Pach. 25 Car. 2.
B. R. Coomes v. Denne.

14. In Debt for Rent, if the Defendant pleads Nil debet, he may give
Entry and Expulsion in Evidence; Arg. said to have been the Opinion of
the Judges, and the Court now did not deny it. Mod. 118. pl. 18.
Pach. 26 Car. 2. B. R. in Brown's Case.

15. In Debt for Rent on Nil debet pleaded, the Statute of Limitations
may be given in Evidence (for the Statute has made it no Debt at the
Time of the Plea pleaded, the Words of which are in the present Tenie.
1 Salk. 278. pl. 1. Coram Holt: Ch. J. at Nifi Prius at Hertford 1690.
Anon.

16. Debt for 10l. Pro eo quod caus the Defendant had accounted with
the Plaintiff of divers Sums as due, and upon that Account was found in
Arrear 3l. Per quod alias accessit to have the said 3l. Camqua time the said
Defendant had borrowed of the said Plaintiff 10l. to be paid on Re-
quest, De quibus quidem separabitus dominos fam. this Defendant after-
wards satisfied 8l. yet the 10l. hath not paid, Plea Nil debet. On the
Trial they gave in Evidence only 8l. It was urged, that could not
be Evidence of the Mutatus, for that was one entire Contract, and an-
other Contract for 8l. was not the same they had declared upon, and
of that Opinion was the Lord Ch. J. Holt. Show. 215. Pach. 3 W.
& M. Steart v. Rowland.

17. In Nil Debtor, a Release is good Evidence. 5 Mod. 18. Hill. 6

18. If a Citizen is chosen Sheriff of London, and the Mayor and Alder-
men refute a reasonable Exuse, the Party is not bound by such Refusal,
because he may give it in Evidence upon Nil debet pleaded in an Action
of Debt brought for the Forfeiture, and there the Validity of the Exuse
will be tried by a Jury. Carth. 483. Pach. 11 W. 3. B. R. London
City v. Vanacker.

19. In Case of a By-Law on Debt for Forfeiture a reasonable Excuse of
Refusal may be given in Evidence in Non debet. Carth. 483. Pach.

20. L. said by Disrfs et Sic non Debtor, Payment or Release is good
Evidence, otherwise of Raisure. 1 Salk. 294. pl. 15. Trin 12 W. 3. B.
Galliway v. Sufach.

21. In Debt the Defendant may plead a Release, because it admits
the Contract, which is a Colour of Action, and yet he might give it
in Evidence upon Nil Debtor. Per Holt Ch. J. 1 Salk. 394. pl. 2. 1

22. So in Aflumpt: the Defendant may plead Payment, because it ad-
mits the Aflumpt, and yet he may give it in Evidence on Non Afl-
sumpt: so was the principal Case, and so ruled Per Holt Ch. J. 1 Salk.

23. In
Evidence.


25. Defendant on such Plea may give in Evidence, that the Rent Day was not incurred. Per Powell J. Holt's Rep. 567. S C.

[R. b. 5] Non Detinet.

1. Upon the Plea of Non Detinet, the Defendant cannot give in Evidence a Mortgage. Brown's Anal. 15.

2. Neither can the Defendant upon such Issue give in Evidence, that he had the Filing of the Plaintiff as a Pledge for Money not yet paid. Brown's Anal 16.

3. But Quere, If he may give in Evidence an Agreement after the Bailment? That doth alter the Property. Heath's Max. 79.

4. In a Detinue of a Pledge, if the Defendant pleads Non detinet, he shall not give in Evidence How it is his Pledge, for it is a Special Matter. 20 H. 75. 22 H. 6. 33 b. 9 H. 7. 4 b. for the Property continues generally in the Pledger. Roll. Trial. (E. 1) pl. 9.

that proves that he detains not the Plaintiff's Goods. C. L 283.

(R. b. 6) Debt upon Bond against an Heir.

1. In Debt on Bond against an Heir, he pleaded Riens per Descend. The Verdict went against him, because he omitted bringing the Settlement to the Trial. Cited by Holt Ch J. 2 Salk. 647. pl. 16. Mich. 10 W. 3. B. R. in Cafe of Witts v. Solehampton, as in a Cafe which he said he remembered.

2. Debt upon Bond of 1400. The Defendant pleaded the Statute of *Utresat*; and upon a Trial of it Issue being joined, before Trevor Ch. J. of C. B. the Sitting after the Term at Westminster, the Question was, whether the Plaintiff should be compelled to give in Evidence a Specification? And this Point was reserved for his Opinion at his Chambers. Where afterwards it was argued by Serjeant Hooper for the Plaintiff, and by Mr. Raymond for the Defendant; and he held clearly the Negative, because the Bond was admitted by the Plea; and where the Party is not bound to give the Bond in Evidence, he is not bound to give in Evidence the Specification. And the Poitea was delivered to the Plaintiff. 2 Lo. Raym. Rep. 832. Hill. 1 Ann. Puiter v. Duncombe.

(R. b. 7) Ejection.

In an Ejection of Lands in Kent, it was agreed, that if Land be allotted to be in Kent it shall be presumed to be Gavel-kind Land, if the contrary is not proved; but that the special *Casuus incident* to Gavel-kind ought to be proved; as that the Husband shall be Tenant by the Curtesy without having Issue, &c. 2 Sid. 153. Pach. 1659. B. R. Brown v. Broker.

2. When he that sued an *Ejigum* brings an Ejection to try the Title, he must in Evidence show the *Ejigum* filed. L. E. 263. pl. 28. cites Try. per Pair, 191.

3. Per
Evidence.

3. Per Hale Ch. J. if A. lets to B. and B. C. to try the Title, the general Confession extends only in the Lease made to C. not to that to B. 1 Vent. 243 Mich. 25 Car. 2 Anon.


5. Per Cur. 29 or 25 Years Possession is a good Title in Ejectment as well as a Bar to an Ejectment.

6. Where the Lesor of the Plaintiff has a special Title as to enter for a Condition broken where there is no Ejectment to Entry, there needs no attual Entry to be proved, but the general Confession will supply it; So is the modern Practice though some Books are al contra. Vent 248. 332. And agreeable hereto was the Opinion of Hale. Holt Ch J. accordingly. 1 Salk. 259. pl. 13. Mar. 26. 1702. at the Affizes. Little v. Heaton.

7. Scire Fecias by Administrator upon a Judgment in Delt against Terre-tenants reciting the Judgment; Execution awarded; Eject Inquisition and Lands extended; on an Ejectment it was held that the Judgment upon the Scire Fecias was a sufficient Title, and the first Judgment need not be given in Evidence. 1. Salk. 276. pl. 4. Mich. 3 Ann. B. R. Trevivian v. Lawrence.

8. In Ejectment, firmes upon Not Guilty, upon Evidence to the Jury at the Bar the Cae was such that Cotewell had a Lease for Years of the Prebend of Sutton-Regis in the County of Bucks made in the Time of H. 8. and being expired, he now claimed under a Lease from a nominal Prebendary thereof founded in the Cathedral of Lincoln: But the Plaintiff claimed by Letters Patent thereof from King James, made the Seventh of King James to Brent and his Heirs, who granted the same to the Widow of Sir W. R. whose Daughter and Heir Sir Gervase Elves married; and the Possession was according to this Grant; whereupon the Question was, If they ought to shew how it came to the Crown? Hale Ch J. said that the Statute for Confirmation of Patents, Jac. takes Notice that Prebend did come to the King. And in Edward the first's Time was a Devise, that all that claimed Terra Regis should shew how it came to the Crown, which often vanished away, &c. L. E. 263. pl. 30. cites T. per Pais, 230.

9. In late Times in a Trial at this Bar, Mr. Latch did nonsuit the Plaintiff upon a Claim of Monastery Lands, although he proved the House had it, because he did not make out how it came to the House; but since that Time, the Court have intended it well come to the House, the Possession having went accordingly with it. L. E. 263. pl. 30. cites Try. per Pais, 230.

10. And he said he was of Counsel in a Trial at Bar for an Improprition, where it was infiled, that it was presentative till Edward the Fourth's Time, and could not be appropriated without the King's Licence; Quod Cur. conceifit; and he could not produce the Licence; yet because it was enjoyed ever since Edward the Fourth's Time as appropriate the Court did intend a Licence, and that the Patent was lost before the Enrolment, and accordingly the Verdict went. L. E. 263. pl. 30.

11. Then the Defendant offered to read a Copy of a Lease out of the Ledger-Book of the Dean and Chapter of Lincoln, but it was disallowed by the Court, for the Book itself is but a Copy; and a Copy of a Copy is no Evidence. And in this Case the Court did prejudice the Grant to be lost; and thereupon Judgment was for the Plaintiff. L. E. 264. pl. 30. cites Try. per Pais, 230.

12. It has been ruled in Evidence at the Affizes, that a Cottager on the Lord's Wofle lives there by the Lord's Consent, and so is only a Tenant.
Tenant at Will, but this is very doubtful where there has been a long Possession. Per Prat Ch. J. Mich. 11 Geo. B. R.

13. The Plaintiff was Lord of the Manor of Ewell in Surry, and brought his Bill claiming an House in Ewell built upon the Waste, it was said by Ld. Chancellor, that the Lord of a Manor is never said to be out of Possession of what is built upon the Waste that is his, and that upon a Trial before Judge John Powell touching some Cottages or Tenements built upon the Waste, though the Lord had not been in actual Survey of the Cottages or Tenements in Question for 60 Years, and there had been several fines levied thereon, by the Opinion of the Judges the Lord had a Verdict 13 July 1726, in Canc. Lloyd v. Bartlet.

(R. b. 8) Ejecktion of a Rectory.

1. A Recteur to entitle himself in an Ejecktion brought of a Rectory must give in Evidence Admission, Institution and Induction, 2dly. His reading and subscribing the Articles, 3dly. His Declaration in the Church (within the Time limited by the Statute) of his full and free Affent, and Content to all the Things contained in the Book of Common Prayer. Sid. 220. pl. 8. Mich. 16 Car. 2. B. R. Snow v. Phillips.

2. But it is not necessary to give in Evidence the Title of the Presenter, for the Institution upon the Title of a Stranger is sufficient Title against him who has the Right in an Ejecktion, though otherwise in a Qua. Imp. Sid. 221. S. C.

(R. b. 9) Eftovers.

1. In an Action of Trespass for taking away Timber, the Defendant pleaded a Custom within the Manor, to have the same as Eftovers to be burned in Terris & Tenementis ; and Issue being taken on the Custom, the Defendant gave Evidence only of a Custom as to the Messuage ; And it was adjudged, that this Evidence did not maintain the Issue. Godb. 234. pl. 326. Mich. 11 Jac. C. B. The Bishop of Chichester and Strodbick's Cafe.

(R. b. 10) Parco Fraâto.

1. Where in Parco Fraâto the Defendant did plead Not Guilty, and gave in Evidence, that the Plaintiff had not a Park by Prescription, nor by Grant, and it was held good. Heath's Max. 77. cites 18 H. 6. 22.

(R. b. 11) Per quod Servitium Amilis, &c.

1. Trespass for beating his Servant need not be an hired Servant according to 5 Eliz. but one hired for any certain Time. A Person hired to lead Corn, not entertained in Plaintiff's House, but went every Night to his own House, is not a Servant within this Action. Clayt. 133, 134 pl. 241. Aug. 1649. Thorpe J. Linley v. Baxter.

2. Where a Trespass is laid with a Per quod, &c. as for Instance, Per quod Servitium, &c. or Per quod Confortium Uxoris amilis, there whatever comes under the per Quod must be proved, other wise the Plaintiff Ece cannot
Evidence.

cannot have a Verdict, because that is the Gift of the Action; admitted. 8 Mod. 372. Trin. 11 Geo. in Cafe of Philips v. Fith.

(R. b. 12) Policies of Insurance.

1. Condition of a Bond was, that after Arrival of a Ship from such and such Places, that A. should pay ten Pounds, and twelve Pence per Month for every Pound for every Month; and if the said Ship be driven back, stayed or hindered by disfress of Weather, or Leakage, so that the return not, then upon Payment of ten Pounds Condition to be void. Defendant pleads, that by Reason of the Perils of the Sea, the said Ship was drown'ed in the Sea. The Question was, whether this was an hindrance within the Words of the Condition, and holden it was; But Pemberton said, that if they had been taken by the Turks, or perished any other Ways then by Leakage, or Disfress of Weather, and that had been set forth in Pleading it would not have been within the Condition; Judgment for the Plaintiff. Skin. 3. pl 4. Mich 33 Car. 2. B. R. Pim and Elliot.

2. In Trover for a Ship and Cargo, the Envoice and Bill of Loading was given in Evidence, the which was oppo'd; because though it be Evidence between the Freighter and the Matter, yet in this Case, the Freighter and Matter are but as one Peron, and it shall not be Evidence against a third Peron; Non Allocatur; For the Bill of Loading is always read in Cafe of a Policy to prove Goods on Board, (the which was admitted, but not to prove the Value) and here though the Certainty of the Value does not appear, yet inomuch that the Goods were proved to be bought and paid for by the Plaintiff, and to amount to such a Sum, and that the Envoice and Bill of Loading agreed, and that they were entered, as put on Board such a Ship, and that they were carried to the Place where the Ship was taken, and that when the Ship was taken there were such Goods on Board, and the Master being dead, his Hand to the Bill of Loading was prov'd, and the Master if he was present might be sworn; and therefore in this Case they might prove his Hand; for the Reasons the Bill of Loading was read; upon the Reading of which it was objected, that the Cargo was shipped by A. and B. and Company, and B. being dead, the Action brought by A. only is ill, because it appears, that others have an Interest who ought to be named; Non Allocatur; for it does not appear, and this ought to be prov'd, (but in this Cafe it feemeth as if it might be presumed) and if there are others, this is a Matter in Abatement, and it ought to be pleaded; and the Difference is, where it is an Action founded upon a Tort, as here, and Not Guilty pleaded, and where it is founded upon a Contract; for there it is Non Assumpsit, because it is another Contract, but the Party may make a Tort joint and severally; and if a Man bring Trover for a Ship, and upon the Evidence it appears, that he has but the sixteenth Part of it, this is good, and the Interest of the others may be given in Evidence in Mitigation of Damages. Skin. 640. pl 4. Parch. 8 W. 3. B. R. Dockwray v. Dickenfon.

3. In an Action upon the Cafe upon a Policy, the which warranted, the Ship shall have four Paffes, scil. A Paff from the King of France, from the King of France, from the King of Poland, and the States of Holland, and the Goods were to be the Goods of such a Polish Subje't on Board the Ship, vocat. the City of Warsaw; An Action upon the Policy being brought, it appeared upon the Evidence, that the Paffes bore Date in April or May, and that the Ship to which they applied these Paffes then was regnant, & vocat. by another Name, and that the was not named the City of Warsaw before the August following; and therefore there were not good and effectual Paffes for this Ship, according to the Guaranty of the Policy, the which intended good Paffes, and not elusory vain Paffes,
Evidence.

Pails, and they being a Fraud upon the Subscribers, the Policy shall not bind them; Also another Objection was made, the which was, that the Pails were for Goods that belonged to the Subjects of the King of Poland, and so retained only to them; but the Goods on Board were not of the Subjects of Poland, but of Holland, and therefore not within the Intent of the Policy; It was also intimated, that the Policy being for Goods of such a without Account, they ought to prove that they had any Goods on Board, or had shipped any Goods by Order of a third Person, tho' being without Account they need not prove the Particulars, and that so was the Practice, which was not contradicted; Per Holt Ch. J. Skim. 404. pl. 41. Mich. 3 W. & M. in B. R. Anon.

(Q. b. 13) Possessory Actions.


(R. b. 14) Quantum Meruit.

1. Assumpsit for the Price of a Beast, the Plaintiff declared that the Agreement was to pay so much as the Beast should be reasonably worth, and the Witnesses proved the Agreement to be, that the Defend- 12 Mod. 97. dant would give Content for it; and this was ruled good Evidence to Birt v. prove the Promife laid, and in common Sense the Words amount to so Strode. S. C. much. Claty. 148. pl. 271. Affife Aug. 1650. before Baron Thorpe Judge of Nifi Prius, Bland v. Tenant. 

2. So on an Indebitatus Assumpsit for Wares sold, and no Evidence 12 Mod. 97. should be given of an Agreement for the certain Price. Twifden said Car. 2. B. R. Jemy v. Norrice. he should direct it to be found specially. 1 Mod. 295. pl. 39. Trin. 29 12 Mod. 97. Car. 2. B. R. Jemy v. Norrice.

3. In a Quantum Meruit for Rent, and Non Assumpsit pleaded, an 12 Mod. 97. expres Promise must be proved. 3 Lev. 150. Trin. 34 Car. 2. in C. B. Show. 142. Johnson v. May. 

4. Assumpsit, on Consideration that he had assumed to serve Defen- Show. 142. dant as Commissioner to examine Witnesses in a Suit betwixt him and B. Collington, h. S. C. adjudged that the S. C. adjudge- he ought to be indifferent, and it is unlawful to be paid for such Ser- ed that the tion; [As a Promife, in Consideration that Plaintiff would take a Spe- Action lies. cial Warrant and Arrest, to pay such a Sum, is void. Noy. 78.] If a —Salk. 330. Man, in Consideration of Money, undertakes to do Execution, it is not Pl. 1. S. C. good. 2 Cro. 103.] But per Cur, a Commissioner is named by the Party, Collington, it is intended he would favour him, and therefore it is a Chal- S. C. held accord- lenge to the Favour that he is a Commissioner at the Denomination of ingly. — the Party, tho' no principal Challenge. 1 Inf. 157. b. And a Com- missioner takes Pains to attend the Examination of Witnesses, and therefore defends Recompence as well as a Commissioner of Bankruptcy; and there is a Difference between him and a Sheriff. Judgment pro Quer. 12 Mod. 9. Mich. 3 W. & M. Stockwell v. Colliton.

5. If
Evidence.

5. If A. promises B. 10 l. in Consideration that he would procure him one who would give him an Annuity of 100 l. per Annum for 900 l. B. does not do it, but procures him one who grants it for 1000 l. and A. does agree for that Annuity. B. cannot bring Action for the 10 l. because this varies from the Contract; but he may have a Quantum Meruit. 12 Mod. 500. per Powell J. Patch. 13 W. 3. Anon.


7. A Curate to one Vinicombe Rector of Bigbury in Devonshire, brought and maintained a Quantum Meruit for his serving the Cure. Devon. Alf. Lent, 1734-5.

(R. b. 15) Trespas.

1. In an Action of Trespas, Quære Domum & Clausum fregit, & bona aportavit, the Defendant in Truth committed the Trespas by Virtue of the Commission of Bankruptcy; and it was said by the Court, that because the Plaintiff declared for an Entry into his House, the Defendant cannot plead Not Guilty, and give the special Matter in Evidence, but must plead the Commission of Bankruptcy, and all the special Matter; but if it had been for the taking of Goods only, he might have pleaded Not Guilty generally. Quære rationem, Lit. R. 356. Hill 6 Car. C. B. Anon.

2. In Trespas with a Continuando, it was held upon the Evidence, that it is not needful to prove a Re-entry in case the Action is brought against the first Trespasor, as it ought to be done where it is against a Stranger, as against Feoffee, &c. of the first Trespasor. Clayt. 5. pl. 3. August, 7 Car. before Damport, Ch. B. Anderson’s Cafe.

3. In Trespas, the Place where is in a Common Field, in a Place called The two Furlongs, this is good without Abuttals, which are dangerous to prove; and it Abuttals be in such a Cafe as this of one or two Sides the Parcel of Ground, it is sufficient to declare the Place; and here one Witness spoke to the Trespas, and another to the Abuttals, and the other knew thereof, but not that it was the Plaintiff’s Land; this does not make a perfect Evidence, and it was directed to be the best in such a Cafe as this for both to go to the Land before, and be that saw the Trespas to keep the Place to the other who knows the Abuttals. Clayt. 158. pl. 184 Alfies April, 3 Car. Whitfield Judge. Brodebent v. Chadwick.

4. For making a Trespas Continuando, there ought to be a Re-entry of the Plaintiff, and for the not proving thereof the Plaintiff shall have Damages only for the first Entry. Tr. per Pais, 234. Cites Mich. 22 Car. 1. 5. Trespas was laid the first of May with a Continuando, &c and the Plaintiff could not prove the first Trespas, tho’ he could prove the Diversis Vicibus after, and for this Cause he was nonuit; for the first Trespas is the main. Clayt. 141. pl. 256. August, 1649. before Thorpe J. Walker v. Dawson.

6. In Trespas with a Continuando to recover more Profits, an Entry and Possession of the Land before the Trespas must be proved, and also another Entry after the Trespas. Tr. per Pais, 199.

[R. b. 16] Trespas with a Continuando.

1. In Trespas for breaking his Close with a Continuando, it was moved by Coke, that the Plaintiff needed not to shew a Regress to have Damages for the Continuance of the first Entry faciles, for the mean Profits and that appears by common Experience at this Day. Gawdy J. said,
Evidence.

said that whatsoever the Experience be, I well know that our Books are contrary, and that without an Entry he shall not have Damages for the Continuance, if not in Case where the Term or Estate of the Plaintiff in the Land be determined, and to such Opinion of Gowyd the whole Court did incline, but they did not resolve the Point, because a Regres was proved. Le. 326. pl. 416 Trin. 31 Eliz. b. R. Rawlin's Cafe, and cites 20 H. 6. 15, and 38 H. 6. 27.

2. Trefpafs was laid with a Continuando from such a Day till such a Day, the Party is not obliged upon Evidence to prove the precise Time alleged in the Continuando; but he ought to prove a Trefpafs at such Time within the Time alleged in the Continuando; but if he will prove the Continuando, and give the single Trefpafs in Evidence, he may. Skin. 641. pl. 5. Paefch. 8 W. 3. Wilton v. Powell.

3. Though it is the Practice in Trefpafs for the Mean Profits, to lay a Trefpafs at one Day, and give Damages in Evidence done at several Days that is not Law, and ought not to be allowed; but in such Case it ought to be laid Diverifis Dibus & vicibus, and then several Trefpafs may be given in Evidence. Per Powel J. Ld. Raym. Rep. 240. Trin. 9 Will 3. in Cafe of Fontleroy v. Aymer.

4. Where the Plaintiff was ousted and made a Re-entry he may bring Trefpafs, and declare that he entered such a Day Continuando, &c. or that he entered such a Day, Et diversis Dibus & Vicibus between such a Day and such a Day. 2 Salk. 639. pl. 7. Hill. 1 Ann. B. R. Monkton v. Pathley.

5. Of Alls done which terminate in themselves, and once done cannot be done again, there can be no Continuando, as hunting or killing a Hare, or 5 Hares, but that ought to be alleged that Diverifis Dibus & Vicibus inter such a Day and such a Day he killed 5 Hares, or cut and carried away Twenty Trees; and where a Trefpafs is laid in Continuance which cannot be continued, Exception ought to be taken at the Trial; for he ought to recover but for one Trefpafs; Per Holt Ch. J. The Court held that hunting might be continued as well as spoiling and confounding his Grafs, or cutting his Grafs. 2 Salk. 639. pl. 7. Hill. 1 Ann. B. R. Monkton v. Pathley.


1. In Trover Plaintiff ought to prove Property of Goods in his, and at least a Demand and Refusal, and if there be severa\ Parcels, the orderly Way to give Evidence, is to make an Inventory of them, and prove the Property of the Goods mentioned in it, and Demand and Refusal of them. Per Holt. 12 Mod. 344. Mich. 11 W. 3. Anon.

2. In Trover on Not Guilty plead. d. every thing may be given in Evidence except a Relief; there may be a special Plea in Trover, and a Matter of Law may be pleaded. Per Cur. B. R. Hill. 6 Geo.

(S. b) Where the Onus Probandi lies on the Plaintiff, and where on the Defendant.

1. If he directed out of Chancery was, whether Land assigned for Payment of a Legacy were deficient in Value, and if he was joined upon the Deficiency; the one alldging, that it was not; And per Cur. though averring that it was deficient is such an Affirmative as implies a Negative, yet
yet it is such an Affirmative as turns the Proof on those that plead it, if he had joined the Issue that the Lands were not of Value, and the other had averred that they were, the Proof then had lain on the other Side. 12 Mod. 526. Trin 13 W. 3. Berry v. Dormer.

2. And if one plead Infra Etatem, which is no more than that he is Not of Age, and Issue is thereupon; he that pleads the Infra Etatem must prove it; per Cur. 12 Mod. 526. in S. C.

3. A. gives B a Policy to receive 100 l. if Saragossa were not in the Hands of King Charles such a Day. In an Action on this Wager, Non Assumpsit was pleaded, and after the Policy had been proved, and Objection was made, that the Defendant ought to prove, that Saragossa was in the Hands of King Charles, and that the Plaintiff was not to prove the Breach of the Policy, it being in the Negative, and it was ruled by Parker Ch. J. at Guildhall London Trin. 9 Ann. And though it was objected in my Lord Hallifax's Case in an Information in Saccarito for not transmitting Ordinario impertios Rotaules into the Remembrancer's Office; &c. the Proof laid upon the Preceptor; But the Court said, there is a Difference, for this was to charge a Man with an Omission, or Neglect in his Duty or Office, &c. Per Parker Ch. J. at Guildhall Trin. 9 Ann.


5. Where a Plea is in the Affirmative, the Proof lies upon the Defendant. 8 Mod. 150. Trin. 9 Geo. Hiliard v. Phaly.

(T. b. 1) What shall be Evidence of what.

Accessory.

1. WO three or more are doing an unlawful Act, as abusing the Passers-by in a Street or Highway, if one of them kills a Passenger or submits to attack and suppress them, and command the King's Peace; And such Attempt to Suppress is not a sufficient Provocation to make Killing, Manslaughter, or Subsequent Denunciation a good Plea in Trespass against them; Per Holt. 12 Mod. 256 Mich. 10 W. 3. Afton v.——

2. Such as actually accompany another in the Execution of an unlawful Act, are as much Principals as the very Actors. As Seconds in Duelling. Quere Tamen. Hawk Pl. C. cap. 31. pl. 31.

(T. b. 2) Acting as an Alderman, Justice of Peace, &c. without qualifying themselves.

1. Information for exercising Office of Alderman and Justice of Worcestershire, not taking the Oaths within three Months after his Election to be Alderman; Not Guilty pleaded; tried at Bar. Proof by Town Clerk, that he was chosen Alderman such a Day; Then Copy of the Entry in the Court-Book of Worcestershire was offered in Evidence for the King, which being objected, Holt said, Now here, to prove that Defendant acted as an Alderman and Justice, you must not only show the Record (or perhaps he is not concluded by that Entry in a Criminal Case) nor can you prove it by Witnesses only, for then the Defendant may object, here is the Record; So that it must be proved both Ways. Then a Copy of the Entry in the Court-Book
Evidence.

Book was read; but the Names of the Persons before whom the Court was held were not set down; And Holt said it could not be proved by Witne-

ses or Parol who set as Judges; but if it had been said Coram A. Mayor, 

and B. and C. Aldermen & cæteris Aldermenannis, it might have been sup-

plied by Parol Evidence, but here no one is named; And Sr. Samuel 

Eyres J. being sent to C. B. they were all of the same Opinion, that it 

ought not to be admitted in Evidence. Then they gave in Evidence an 

Order for Relief of the Poor under Defendants Hands as to not re-

ceiving the Sacrament within three Months; Objected, that could not 

be Secondum forum Statut without producing a Certificate; Holt Ch. 

J. said, the Want of a Certificate is equally penal; but it is a distinct 

Offence with which the Defendant is not charged. N. B. The Mayor 

adjoined the Seffions from the 8th to the 22d January, which was the 

first Day of the Seffions if within the three Months and before the 22d 

For though the Seffions be all but one Day, yet they may, and often do 

enter their Adjournment Seffio Incbost. call dic & continuas ulque talem 

diem. Comb. 337, 338. Trin. 7 W. 3. B. R. The King v. Hains, Al-

derman of Worcester.

[T. b. 5] Administration.

1. Title being made to a Term by one as Administratrix, no Letters 

of Administration produced; the Book of the Ecclesiastical Court where it 

was granted, being produced wherein was entred the Act or Order of the 

Court for granting it was allowed good Evidence. Lev. 25. Pach. 13 

Car. 2. B. R. Garret v. Lifer, said by Twidten to be the Cafe of the 

Earl of Manchesfer.

2. Twifden he had heen Administration given in Evidence after 

the Seal broke off, and fo of Wills and Deeds. Mod. 11. pl. 34. Mich. 24 


3. The very Point of Hargrave’s Cafe, 5 Rep. 31. was agreed and re-

solved. And that that Cafe was alter reverfed in the Exchequer-Cham-

ber, but it was for another Cafe; And Williams said, That he had 

viewed the very Record of that Cafe accordingly, in which Cafe is, If 

A. brings Debt against B. as Administratrix to J. S. without saying that 

J. S. died Intestate, yet it is good; For it may be that J. S. made a Will 

and Testament, and yet Administration might be commited to the De-

fendant by Reufal, &c. But otherwife it is where the Plaintiff is Admi-

nistrator, there he ought to shew that Party died Intestate. Noy. 137.

Sr. Richard Franck’s Cafe.


1. Exemplifications of Depositions taken in Chancery to prove a Person's 

being of Age allowed of. Dy. 301.

2. To prove the Nonage of a Person that made a Will an Almanack 

was produced, in which his Father had wrote his Nativity, and it was 

allowed to be strong Evidence. Raym. 84. Mich. 15 Car. 2. B. R. 

Herbert v. Tuckall.

3. Where a Person will take upon himself to trade and act as of Age, he 

ought to be presumed to be of Age, and no Evidence of Parish Regis-

 ters ought to be admitted against it; said to be the Opinion of Trevor 


(T. b. 5)
(T. b. 5) Agreement.

1. In Allife, it was found by Verdict, that two Coparceners of a Merchant Pri-Partry, and one led the Part to A for Term of Life, who led the Part to three at Will, who performed the Soil of the other Coparcener, and cut Wood, and moved Ruffs, and the other Coparcener quitted Possession, and brought Allise against Leifie for Life, and against two of the Tenants at Will; and it was found also, that the Tenant at Will managed the Soil to the Use of the Leizor, but the Leifie for Life had nothing of the Profits, and that the other Coparcener might have taken the Profits if he would, and that the Leifie for Life did not command his Tenants to take the Profits, nor knew any Thing of it, but he agreed to what they had done, as the Jury thought, insomuch as after that he knew that the Tenants at Will had occupied the Manner, he did not cause them to make Glee; And per Cur. this is no Agreement, and therefore the Leifie for Life is no Dilefior, and also one of the Tenants at Will is not named, who by this Act is a Dilefior and Tenant at Will with the others; therefore by Award the Plaintiff took nothing by her Writ. Br. Allife, pl. 345. cites 57 Aff. 8.

2. An Agreement reduced into Writing, and variant from the Parol Agreement, shall not be explained away by giving the Parol Agreement in Evidence, and the Jury ought to have no Regard to this Parol Agreement. Vide the Case of a Policy of Insurance Skin. 54. Trin. 34 Car. 2. B. R. Kaines v. Sir Robert Knightly.

3. The Authorities are many in the Court of Chancery, that Bonds have been considered as Evidences of Agreements, and Obligors held to a Specifick Performance, and not allowed to forfeit the Penalty. 10 Mod. 528. 518. Mich. 10 Geo. per Parker Chanc. in Case of Parks v. Wilton.

The condition of a Bond was for Performance of a Marriage Agreement, and decreed that the Obligor should not be permitted to forfeit the Penalty, but that the Bond should be construed as an Evidence of the Agreement — Nell Ch. Rep. 203. Patch. 1692. Holtham v. Ryland. S. P. held accordingly by Ed. C. Semen. — 2 Won's Rep. 214 per Ed. C. Macclesfield, Mich. 1724. Camel v. Buckle.


5. The Plaintiff brought his Action upon a Special Agreement entered into by the Defendant, whose Brother was in Execution in the Fleet for Running of Goods. The Agreement given in Evidence upon the Opening of the Case was only verbal; that the Plaintiff should endeavour to procure the Defendant's Brother a Pardon; and that, in Consideration of this, the Defendant should give the Plaintiff 1000 l. if he succeeded, and what his Labour was worth if he should not. The Defendant upon this produced a Bond of 2000 l. in Evidence, with Condition that the Defendant should give the Plaintiff and one Mrs. Hennville 1000 l. if the Pardon should be produced in six Months. This Bond indeed was since cancelled; but the Counsel laid it down as the first Agreement; and an Agreement is in its own Nature a Thing intire, and therefore it shall not be intended that one Part of it was put into Writing, and the other not. The Plaintiff however desired to give farther Evidence, that the Intent of the Bond was only to reduce one Part of the Agreement in Writing, as it was the Chief, and to bring Mrs. Harenville to witness this. The Defendant's Counsel objected against her Evidence, as she was one of the Co-obligees, and therefore interested with the Plaintiff. However the Court allowed to give both these Matters in Evidence. Barnard. Rep. in B. R. Trin. 2 Geo. 2. Brown v. Hatch.

(T. b.)
Evidence.

(T. b. 6) Alia Enormia.

1. In Trespas Quare Clauum & Domum sregis, & Alia Enormia, ch. 205, &c. intulit, on Nul Culp. Per Curiam, where a Matter arises Exturps Causa, (viz.) An Injury per Defendant to the Daughter of the Plain- riff under Colour that he would marry her, &c. The Act may be given in Evidence upon such a Declaration under the (Alia Enormia) because the Plaintiff the Law will not compel the Party to shew it of Record; but in all other Cases of Trespass, the Special Matter for which Damages shall be given ought to be pleaded, as in Trespass for taking a Horse, &c. The Plaintiff shall be given in Evidence, put what is expressed in the De- claration. 1 Sid. 225. pl. 17. Mich. 16 Car. 2. B. R. Sippor v. Baffet.

of great Damage given: The Court conceived that this may well be given in Evidence, without laying Quod Intulitum fictit super Filiam, &c. and so of the Wife, but this is the better Way; and Judgment for the Plaintiff.—The Alia Enormia shall not be intended of Collateral Matter, but of Matter incident to the Act done; Per Roll Ch. J. Sty. 202. Hill. 1649. in Case of Watton v. Nor- bury.—

2. If a Man is charged with two particular Facts in an Indictment, and divers other Crimes in general Terms; if the two particular Facts are not proved nothing can be given in Evidence on the Alia Enormia, or the General Charge.

(T. b. 7) Alien.

1. Upon Issue of Alien or not, it is no Evidence that in Deed of Bar- gain and Sale, he called himself a Freeman, and so likewise in a Fine, or that be traded, tho’ 22 H. 8. cap. 8. prohibits under Pain of all their Goods; for a Denizen can only be made by Patent or Parliament, and therefore ought to be proved by Matter of Record, and if the Letters of Indenitization are lost, he may have a Confat. 2 Bulst. 33 Mich. 10 Jac. St. Olave’s Cafe. So that Proof by Appellation is none at all.

(T. b. 8) Alien in Fee.

1. In a Consimili Cafu, the Demandant may count of an Alienation in Fee, and if the Alienation be traversed Modo & Forma, he may main- tain his Issue by an Alienation in Title for Life, because they are all alike material. Hob. 105. per Hobart Ch. J. Arg. Trin. 13 Jac.

(T. b. 9.) Answer.

1. In some Cafes, if a Man put in two Answers, it is not sufficient to produce and prove a Copy of one of them; Per Powell J. Lent Affises, Devon. 1710.

(T. b. 10) Affises.

1. Where the Issue is upon Affises en mains del. Esecutor, it is good Evidence for the Plaintiff to say, that he sold the Land by the Appointment of the Tiator, &c. Heath’s Max. 82. cites 3 H. 6. 3.

2. If the Issue is Affises at such a Place, it is good Evidence to prove Affises at another Place; for Affises any where is Affises every where. No. 47. in pl. 147. Pach. 5 Eliz.

G g g

3. Upon
Evidence.

3. Upon Plene Administravit the Issue being that Defendant had Affairs Die Imprerationis brevis Originalis, viz. — Die — It is not necessary that the Plaintiff in Evidence produce the Original, or a Copy thereof; for the Day of the Test is admitted in Pleading; Per Windham and Tiffin. J. and if it were over-ruled at the Trial a Bill of Exceptions ought to be tendered, but this was not a Reason for a new Trial, for by the Opinion of the Ch. J. in Middlesex the Plaintiff was nonsuited. 1 Sid. 226. pl. 21. Mich. 16 Car. B. R. Rogers v. Rogers.

4. In Debt by Husband and Wife against an Executor, who pleaded Plene Administravit, and upon Illue it was proved that Executor had discharged a Debtor of the Intestate out of Ludgate, taking a Bond from him for the Debt; and it appeared that he was so extreme poor that he was downright starving, yet the Debt was adjudged Affairs in the Executor's Hands. Besides the Executor had not an Inventory, and therefore it was said that they ought to intend Affairs. 12 Mod. 346. Mich. 12 W.

3. Anon.

5. In Debt upon Bond brought against the Defendant as Heir to his Father, &c. Riens per Dicent pleaded, the Plaintiff replied Affairs, and Illue thereupon. And the Evidence was, that the Obligor, the Defendant's Father, devolved to the Defendant his Son and Heir certain Misfluages in Exchequer-Alley in Fee, but chargeable with an Annuity, or Rent-Charge payable to the Defendant's Mother; and it was held by Holt Ch. J. that these Misfluages descended to the Defendant, and were Affairs, for (by him) the Difference is, where the Devise makes an Alteration of the Limitation of the Estate, from that which the Law would make by Defect. — Ld Raym. Rep. 728. Emerson v. Inchbird, cites Trin. 13 Will. 3. B. R. Guildhall, London.

6. Action of Debt upon a Bond against an Executor, who pleads Plene Administravit; the Plaintiff's Counsel gave into Court the Inventory taken in the Spiritual Court, and put it upon the Defendant to discharge himself. Holt said, that where in the Inventory it was set down separate Debts those shall not be Affairs, unless the Plaintiff can prove that the Defendant has received them. But those Debts which are not set down separate, whether Arrears of Rent, or any other, shall be recounted Affairs, whether paid or not. 11 Mod. 225. pl. 21. Pach. 8 Ann. B. R. Anon.

7. A Person having a Judgment against the Ancestor is no Witness to prove Affairs upon Riens per Defect. — Per Baron Price. Devon Aff. 1716. Lent.

8. Bonds not received and of long Standing are Evidence of Affairs, unless Caution is shewn, why the Executor did not call them in. At Devon Affizes. Lent 1719 Coram King Ch. J.

9. Trees in a Nursery are no Affairs in the Hands of an Executor. At Devon Lent Affizes 1735. Coram Reynolds Ch. B.


Cro. E. 648. pl. 37. Holiday v. Hicks. S. C. adjo. — Ibid. 661. pl. 9. S. C. adjudged for the Plaintiff. — Ibid. 746. pl. 25. Hill. 42 Eliz. S. C. in Cam'. Sack. and Judgment reversed. The Declaration was, that he Casualter perdit the Money; and when he had left the Possession thereof, he had left the Property also, because it cannot be known.
3. Per Montague Ch. J. It a Citizen of London promises to his Daughter's Husband to give him a Child's Portion by the Custom of London, the Evidence between the Wife and the Children is certain enough, and it is known how much every Child shall have. 2 Roll. Rep. 104. Trin. 17 Jac. B. R. Anon.

4. In Evidence to a Jury it was held, that Proclamations whereby the Lord claimed Forfeiture, ought to be proved Prove Verce, and not only by the Court-Rolls. 1 Keb. 257, pl. 98. Patch. 14 Car. 2, B. R. Patelon v. Danges.

5. In Debt on Award, the Plaintiff counted of a mutual Agreement and Submission ad performand' an Award, which was made, that the Defendant should pay 50 l. to the Plaintiff, Et tuper Receptum inde, the Plaintiff should deliver up Writings and give a general Release; And per Hynd and Cur. The mutual Submission is no Promise in itself, but only an Evidence of it. 1 Keb. 599, pl. 72. Mich. 17 Car. 2, B. R. Tilford v. French.

6. A Wife in Consideration, that L. would permit her to enjoy, &c. till Lady Day, &c. promised to pay the Rent in Arrear at her Husband's Death, and also so much for the Time; as to first Part it is, void being within the Statute, and being void as to one Part it cannot stand good as to the other; For it is an entire Agreement, and the Action could not be brought for one Sum only without Variance from the Promise. Note, it did not appear that the Widow was Executrix or Administrator to her Husband. 2 Vent. 223-4. Mich. 2 W. & M. in C. B. Ld. Lexington v. Clarke.

7. In an Action for the Profits of an Office, it is not necessary to shew every particular Sum received by the Defendant, but it is good Evidence for the Damage to shew the Profits of the Office Communiatus Annis. 2 Vent. 171. Patch. 2 W. & M. in C. B. Earl of Mountague v. Ld. Preston.

8. S. brought Action against A. B and C. — A. promised in Consideration that he would not prosecute the Action then, &c. (it being at the Affises) he would pay 10 l. and the Costs of Suit. Action lies on his Party concerning a Promise notwithstanding the Statute; For this cannot be laid to be a concerned in the former Action, and this is as original Promise, and A. himself was liable.

9. At Guildhall; In an Action upon the Cofe upon mutual Agreements the Evidence was, a Note in the Nature of a Bill of Parcels to this Purpoe, Bought by Anne Knight of ——-Hopper hundred Pieces of Muslins at 40 s. per Piece, to be fetched away by ten Pieces at a Time, and paid for as taken away. It being objected, that intomuch there was not any Promise to deliver the Goods, and the Plaintiff accounted upon such a Promise, that he had failed, it was anwered that the Agreement being to pay 20 l. when ten Pieces were taken away, and so for every ten Pieces; that this implies a Promise to deliver them, the which seems to be Reason; but a Promise was proved to this Purpoe, and so a Verdict for the Plaintiff. Skin. 647, pl. 5. Trin 8 W. 3, B. R. Knight v. Hopper.

10. Assumpsit upon 29 Car. 2, cap 3, where the Plaintiff has an Action against the Party for whom an Undertaking is, there no Action will lie against the Undertaker, without the Promise be in in Writing; Secus where no Action doth lie against the Party; for then the whole Credit it entirely upon the Account of the Undertaker, and the other is looked upon as his Servant, and the Sale and Contract is in Judgment of Law to the Undertaker, though the Delivery be to the other Party as is Servant; i. e. upon the Original Contract or Agreement, but this Dil-
Evidence.

Difference does not hold where the Action is upon a Matter collateral to the Contract, there an Action lies. 6 Mod. 249. Mich. 3 Ann. B. R. Bourkamire v. Darknell.

11. A Man promised to pay a certain Sum upon the Return of a Ship which happened not to return in Two Years after the Promise made, and on a Question, whether this was within the Statute of Frauds and Perjuries, whereby no Action is to be brought upon any Agreement that is not to be performed within one Year from the making thereof, unles in Writing, &c. and held by all the Judges, that it was not within the Statute, which extends only to such Promises, where, by the express Agreement of the Party, the thing is not to be performed within a Year. 1 Salk. 280. pl. 5. Paish. 5 W. and M. in C. B. Anon.

12. In Allumptit upon a Note for 10l. 15s. given by the Defendant to the Plaintiff, and Non Allumptit pleaded, upon Trial the Plaintiff produced and proved the Note. The Defendant in Discharge of himself produced the Record of a Foreign Attachment, wherein the said Debt was attached by the City-Process for the Satisfaction of a Debt demanded there of the Plaintiff, and was there condemned; and it was ruled by Trevor Ch. J. that this was a good Discharge, but that if the Plaintiff in this Action could have shewed the Original, wherein he declared to be precedent to that Attachment, so that it had appeared that this Court was pollæfled of an Action for the Demand of this Debt before it was attached, then should the Plaintiff have recovered his Debt notwithstanding such Evidence; But the Declaration in the Record here was betwixt the Time of the Attachment and the Condemnation. 1 Salk. 291. pl. 32 Coram Trevor Ch. J. at Nili Prius. Savage’s Cafe.

13. If a Person seeing a Surgeon afflilting another that had received Hurt in one of his Limbs, says to him, pray take Care of the Man or do your best for him, or when will you come again &c. these Expressions do not make the Speaker liable to pay the Surgeon; it amounts to no Employment; Contra, it another should direll a Surgeon to take Care of a Man, &c. or use any other Expression, whereupon the Surgeon should lay out Money and Expences, and cure the Man, &c. Devon, Summer 1710. Coram Parker Ch. J. at Nili Prius, Palmer v. Barret.


15. If a Man enters into a Bond, and does not perform the Condition, the Obligee may bring an Allumptit, and give the Bond in Evidence of it. 10 Mod. 30. Trin. 10 Ann. B. R. in the Cafe of Michil v. Reynolds.

16. Indebatus Allumptit on Play at Baffet. The Promise as laid, was to pay the Money to each other, which each other should lose; the Evidence was, that the Defendant having lost his Money did promis to the Plaintiff to pay him what Money he should lose by Bills in London. Baron Price seemed of Opinion that it was not sufficieni Evidence, &c. Cafe stated, Wells. Lam. 1711. Langdon v. Herbert.

17. So in the Cafe of Corke and Baker, which was tried coram J. Powys at Lewes in Sulix, which was that the Defendant promised the Plaintiff to marry her within a Twelve-Month after the Death of his Father. A Cafe was made of it, and argued coram C. B. who determined it not to be within the Statute upon the same Reason neither was it within the other Branch, which lays the Defendant shall not be answerable for the Debt or Miscarriage of another, or upon any Agreement on Consideration of Marriage, unles in Writing.

18. A Promissory Note is prima facie Evidence since the Statute, nor is it necessary to prove the Consideration of it; But yet Fraud, Cheat, Extortion,
Evidence.

Extortion, or Satisfaction may be given in Evidence by the Defendant to avoid it; if the Consideration was to be proved the Act would signify nothing, and tho' the Note be without any Consideration, yet the Note will be good; Per Parker, Ch. J. Hill. 3 Geo. B. R. Appleby v. Beadle.

19. And by him at the Sittings, upon an Objecting being made, that since the Statute a Promisory Note could not be given in Evidence on a Count for Money lent, &c. as Evidence thereof, but it was in Nature of a Specialty, it was Ruled c contra; for the Plaintiff may declare upon the Note if he will, or give it in Evidence.

20. At Bodmyn, Llammas 1716. an Objecting was, that the Note which was given in Evidence, was given upon Terms which were not performed, & allocatur, per Baron Price; Bullet v. Bartb. And one Baldwin's Case before Holt Ch. J. was cited, where above an 100 l. being left at Play, the Loser having a Bill of Exchange endorsed it, and then the Indorlee bringing his Action, on Trial it was ruled, that the Contract being made void by the Gaming Act, it might be given in Evidence. So it may where a Note is made upon an Unjust Contract.

21. A Miftris's Jest her Servant to Market to sell Barley; when he returned his Mistrees asked him what he had done? He answered that he had sold, &c. and when she asked him for the Money, he said, She need not trouble herself about that, he would be answerable to her for it if not paid, &c. Coram Price at Lancelton, Autumn. Cir. 1729. It was held not to be within the Statute.

22. Overseers undertake to pay for the Care of a poor Person to a Surgeon, there must be Evidence of an express Promis to maintain the Action. Price B. at Lancelton, Sum. All. 1729.

(T. b. 12) Attaint.

1. What was not given in Evidence to the Jurors shall not be admitted Dy. 212. a, to be given in Evidence in Attaint, and so the Plaintiff was nonfuitd. pl. 24. a. Patch 4. Eliz. it was agreed, for Law, that if the Defendants in the Attaint give new Matter in Evidence to inforce the first Verdict, which was not given in Evidence before to the first Jury, that the Plaintiff in the Attaint shall have Answer to it, and disprove it as he can, but he cannot give other Evidence, nor inforce the Evidence first given with more Matter than was disclosed before.

(T. b. 13) Augmentation of Vicarages.

29. Car. 2. cap. 8. sect. 3. Every Archbishop, Bishop, Dean and Chapter shall before the 29th of September next, cause every Lease or Grant whereupon such Augmentation is made, to be entered in a Book of Parchment to be kept by their Registrars; and every other Ecclesiastical Person shall cause every such Lease, &c. made by himself, or his Predecessors, to be entered there, for which no Fee shall be paid, save only 5 s. at most to the Clerk; which Entry be examined by the respective Archbishop, Bishop, &c. and by them attested in the said Book to be a true Copy, and that the Augmentation was for such Use, shall be as a Record, a Copy whereof proved by Witnesses shall be Evidence at Law.

1 Geo. 1. cap. 10. sect. 20. All Augmentations, &c. to be made in Pursuance of this Act shall be entered in a Book, and the Entries being approved and attested by the Governors, shall be taken as Records.

H h h [T. b,
Evidence.


1. In Account against B. generally as his Bailiff of the Manor of S. he pleaded, that he was Receiver Adigue but that he was Bailiff. The Plaintiff, to prove him Bailiff, gave in Evidence a Certificate in that Manor for the Freeholders yearly to elect at their Courts there a Person called the Part-Receiver of the Abbot's Rents of his Frank Tenants, to collect Rents Ratione tenure, and that such elected Person used to account, and have Allowance before the Abbot's Auditors, and said that the Defendant was chosen, &c. The Defendant demurred on this Evidence, and per Opinionem Curiae it will not maintain the Action, for the Count against him is as Bailiff generally, and the Evidence charges him specially by Reason of his Tenure, therefore he should have made a special Count. Keil 76 a. pl. 23. Mich. 21 H. 7. Bucktail (Abbot) v. Horfwill.


1. 5 Geo. 2. cap. 30. § 41. Upon Petition of any Person, the Ld. Chancellor may order such Commissions, Depositions, Proceedings, and Certificates, to be entered of Record; and in Case of the Death of the Witnesses proving such Bankruptcy, or in Case the said Commissions, or other Things shall be lost, a Copy of the Record of such Commissions or Things, signed and attested as herein mentioned, may be given in Evidence to prove such Commissions and Bankruptcy, or other Things; and all Certificates which have been allowed, or to be allowed, and entered of Record, or a true Copy of every Certificate signed and attested as herein mentioned, shall and may be given in Evidence in any Courts of Record, and without further Proof taken to be a Bar and Discharge against any Action for any Debt contracted before the signing of such Commission, unless any Creditor of the Person that hath such Certificate shall prove that such Certificate was fraudulently obtained.

2. There is no need to produce at the Trial the Petition made to the Ld. Chancellor, because it may have been by Parol, though the Practice has been otherwise. Ld. Raym. 741. ruled by Holt Ch. J. at Lent Aflizes at Thetford, Kirne v. Smith and al.

(T. b. 16) Causing or Procuring.

1. In an Action on the Case brought for a False Return of a Mandamus, the Plaintiff was put to prove that the Defendant caused the Return to be made, which he did in this Manner, viz. he proved that the Defendant was personally served with an Alias Mandamus; and that he told the Person so served him with this Writ, that he would take Care a Return should be made; and farther, two Rules of Court were produced, viz. one for an Attachment against the Defendant for not making a Return, and the other to discharge that Rule for an Attachment upon Payment of Costs, and appearing to the Action, &c. And this was admitted to be good Proof as to that Matter, and the Plaintiff had a Verdict. Carth. 229. Pach. 4 W. & M. in B. R. Vaughan v. Lewis.

(T. b. 17) Clerk in Orders.

1. Whether a Man be Clerk in Orders or not is triable by his Ordination. Per Holt Ch. J. 12 Mod. 452. Pach. 13 W. 3. in Case of Wilmot v. Tiler.

(T. b. 18)
Evidence.

(T. b. 18) Common.

1. In an Action of Trespass, the Defendant justified, by Reason that he, and all those whose Estate he had, had Common in the Place for so many Beasts beyond the Memory of Man; and the Parties were at Issue on the Prescription, and the Plaintiff gave in Evidence that he had Common of Visinage appendant to his House; and it was resolved, that the Evidence did not maintain the Issue; for although both begin by Prescription, yet common of Visinage does not begin by a bare Prescription, but a Prescription on Consideration, that the other shall have Common in like Manner in his Soil. L. E. 235. pl. 37. cites 13 H. 7. 13.

2. In a Replication in the Assay, prescribes to have Common Appurtenant, but doth not shew and aver that the Cattle were levant and couchant upon the Land, &c. and for that it was held to be novated by the Court. Vide. 15. E. 4. 32. But in our Case the Issue was joined upon the Prescription. And by the other Fault is allowed as confess'd. And is helped after Verdict by the Statute. Nov. 145. Jeffrey v. Boys. cites 5 Rep. 43. a.

3. In the Case of a Common you must prove the Use and the Appurtenance. Per Richardson Ch. J. Litt. R. 295 Trim. 5 Car. C. B.

4. A Traverise being joined upon Title of Common, it was admitted that a Rel ease of all Right of Common in that Place should be given in Evidence, and needed not to be pleaded as he might have done; on the other Part it was shewed the Common did belong to Land, which was entitled, which cannot pass by Release, no more than the Land itself, &c. can, and for that Gaue the Issue in Tail, who was Plaintiff, here did recover. Clayt. 9. pl. 16. Mich. 8 Car. before Damport Ch. B. Judge of Alfize. Atkinson's Case.

5. A Replevin was brought for 300 Head of Cattle, viz. so many Oxen, so many Steers, &c. the Defendant makes Cominance as Bailiff to J. S. and justifies for Damage-Fearant. The Plaintiff replies, that J. D. and all whose, &c. he had in such a Melleague, and 40 Acres of Land, Time out of Mind, have had Common, &c. and shews he had a Lease from J. D. and to put in the Cattle to use his Common; To which the Defendant rejoins, and justifies ut supra, absque hoc, that they were the Cattle of the Plaintiff levant and couchant upon, &c. Not only the Levancy and Couehancy is the Measure of this Common, but the Property of the Party likewise; For if they be levant and couchant, and yet be a Stranger's Cattle asfigned into the 40 Acres, of they be the Party's Cattle levant and couchant upon some other Land, and not upon the 40 Acres; in either of these Cases they ought not to use the Common, for a Man cannot use his Common with the Cattle of a Stranger, or with his own Cattle levant and couchant upon any other Land than that in which he hath Common Appurtenant; It is true, if a Man borrows Cattle to improve his Land, they may be put upon the Common for that he hath a special Property in them, and so are paid his Cattle, and for this was cited F. N. B. 180. and Roll. Common 402. and of this Opinion was the Court; wherefore Judgment was given for the Defendant. Skin. 137. Mich. 35 Car. 2. B. R. Molliton v. Trevilian.

6. The Defendant prescribed for Common for all Cattle, &c. at all Times of the Year, but upon Evidence it appeared that they had Time out of Mind Common of Palture in the said Common for all the Cattle Levant and Couchant, &c. at all Times in the Year (Sheep only excepted for a certain Time) Resolved per Cur. that they had failed in the Prescription, and that the Evidence would not maintain the Plea; and that the Prescription should have been specially pleaded with this Exception. Carth.
Evidence.

Carth. 241 Pasch. 4 W. & M. in B. R. The King v. the Inhabitants of Hermitage.

7 Error of a Judgment in C. B. in an Action Sur Cave, where the Plaintiff declared he was lawfully possessed of a Tenement, and that he ought to have Common of Pature in 1000 Acres, in a Place called, &c. for all Commonable Beasts levant and couchant on the Tenement aforesaid; that the Defendant made Cony-burrows, whereby the Plaintiff could not enjoy his Common, in tunc ample & beneficatus modo. Defendant demurred, and this Matter is not traversable, for all Right of the Common must be given in Evidence upon Not Guilty, or elie Plaintiff cannot recover; and if so, it is to no Purpoe to set it forth in the Declaration. 12 Mod. 98. Trin. 8 W. 3. Birt v. Strode,


1. Tenant for Life suffers a Common Recovery. TheRemainder-Man brings his Ejecution. The Plaintiff gave in Evidence a Copy of the Recovery, but no Evidence that there was a real Tenant to the Precipice. Mr. Baron Price allowed it; For though the Tenant to the Precipice must be proved against a Stranger, yet there is not that Occasion for it when it is made against the Party himself that suffers the Recovery. So a Person claiming by Virtue of a Recovery must shew that there was a Tenant to the Precipice, because that is in his Privy, but here it is otherwise, for it is not in the Privy of the Remainder-man; he had not the Deeds by which the Tenant to the Precipice was made, and if this (which is all that the Remainder-man in the Nature of the Thing can do) be not allowed, it is but for the Tenant for Life when he makes a Tenant to the Precipice by Deed, and the Remainder can never take any Advantage of it. Coram Baron Price, Winchester Summer Assizes, 5 Geo.

2. In every Common Recovery, it shall be presumed there was a good Tenant to the Precipice till the Contrary be made appear of the other Part, and rather than it shall be void, the Court will intend, that the Tenant was in by Differens. 2 Lutw. 1549 cites Cro. J. 454, *435. the Cafe of Lady Griffin v. Stanhope; and said that so it was ruled by Powel J. of B. R. in a Trial at the Assizes at York.


1. It was given in Evidence to prove the Affent to the Ravisher that she married him, and agreed, and assented in the Sanctuary of Weymister, though in going to the Sanctuary she was persuaded to dissent, for Lofs of her Inheritance, and she said that the wo-ld dissent. And that afterwards she was brought into the Star-Chamber before the Counsell, and there it was demanded if she agreed or not, who said that he was her Baron, wherefore she would not relinquish him. And it was said for the Defendant, that the Espousals and all the Affents were by Durels Force and Fear of the Ravisher, and it cannot be said Affent, unleas he be at Liberty freely without Fear or Durels, which seem, to be Law there, but because when she was before the Counsell she might have disaffreed, and did not, but assented, therefore it was held free Affent, by which the Affizie found for the Plaintiff, and the Plaintiff recovered per Cur. Quod Nor. Br. Ent. Cong. pl. 94. cites 5 E. 4. 53.

2. It is not conclusive Evidence to prove the Woman's Consent to the Ravisher, to shew, that she lived some Years with him as his Wife, and
Evidence.


2. Per Car. on Affidavit of the Lie given by any Man to another in the Hall, they will bind him to his good Behaviour; so for any Provocations that may induce any Quarrels or Stricking. 1 Keb. 559. pl. 77. Trin. 15 Car. 2. B. R. Collins v. Man.


4. One may be committed for a Contempt done to the Court; but the Matter of the Contempts must be certain and not doubtful, and must be either in open Court or upon Affidavit made thereof. (Mich. 22 Car. B. R.) For else the Party may perchance be wrongfully committed, which the Court will be cautious not to do. L. P. R. 305.

5. Where a Man is arrested upon an Attachment the Contempts shall hold good, tho’ No Affidavit be filed at the Time of taking forth the Attachment; if it be filed before the Return of it. Vern. 172. pl. 166. Trin. 35 Car. 2. Anon.

6. Defendant was reported to have fully answered none of the Interrogatories, and to be in Contempt of others; and being brought into Court to receive judgment, the Question was, whether all the Affidavits in a Caufe of Lait’s Jones, containing the whole Charge against Defendant, ought to be now read, or only such of them as relate to that Part of the Charge, which Defendant, on his Examination, has fully answered. The three Prothonotaries reported, that Defendant being in Contempt, his Examination goes for nothing, and Affidavits containing the whole Charge was read. Barnes’s Notes in C. B. 190, 191. Hill. 12 G. 2. The King v. Willis.


1. The Substance of a Deed cannot be proved but by the Deed itself, unless it is burnt, or in the Possession of the Plaintiff himself; and if so, then this Matter as it happens must be sworn, and that the Deed was executed; Per Holt Ch. J. 3 Salk. 154 pl. 6. Hill. 8 Will. 3 B. R. Lynch v. Clerk.

2. In an Information for a Riot upon the Person of Sir F. W. a Letter of the Professor’s was admitted to be read for Defendants; but then they produced a Witness to swear the Contents of another Letter which he deposed was the same. Hand of the Letter produced, but own’d to be never saw Sir F. W. write, and was therefore disallowed. Skin. 673. pl. 12. Mich. 8 W. 3. B. R. The King v. Sir Thomas Culpepper.

3. If a Deed be left by an inevitable Accident, it may be proved by a Copy, but not by Parol Evidence, tho’ there should be no Copy. B A produced a Contents of a Deed that was not left, but was proved to be in the Possession of the other Party; for here if the Defendant was wrong’d by the State of the Deed, it was in his Power to set all right by producing the same, and it was good Evidence, for here A may give that very Deed in Evidence if he will, which C cannot, because it is in A’s Custody. Carth. 5a. Mich. 1 W. & M. Eccleston v. Speke.

[T. b.
[T. b. 23] Conviction.

1. Copy of a Conviction before Commissioners of Excise is good Evidence, without producing the original Book of Entry; and it need not be proved that the Commissioners did give the judgment recited in the Copy of the Conviction. Carth. 346. Patch. 7 W. 3. B. R. Fuller v. Forch & al.

(T. b. 24) Copyhold.


2. Proclamations whereby the Lord claims Forfeiture of a Copyhold, ought to be proved _Viva voce_, and not by the Court-Rolls only; held in Evidence to a Jury. Keb. 287. pl. 98. Patch. 14 Car. 2. B. R. Parson v. Danges. Alias, Ld. Alisbury's Cafe.

3. It shall be presumed that an Enfeoffment is cut off some Way or other, when many Admittances since have been in Fee-Simple. Scrogs 69.

4. The Dispute was between the Lord of the Manor and the Devisee of a Copyhold of the same Manor; And it was ruled by Holt Ch. J. Lent Affifies 1693. at Cambridge. That the Recital of the Will in the Copy of the Admittance was good Evidence of the Devise against the Lord or any other Stranger; But if the Suit had been between the Heirs of the Copyholder and the Devisee, the Will itself ought to have been produced.


6. A Paper-Book was produced of the Acts of the Court in which the Admissions and Surrenders of the Copyhold Estates were entered, but Baron Carter at Thetford Affises held it no Evidence. He said, That the Roll ought to have been upon Parchment, and in Writs way should have been in the Form of Rolls made up in the Courts above; But that if the present Admission had been entered in a Parchment Book, he should have allowed it for Evidence. He said, he did agree that in a late Cafe the Ld. Ch. Baron and two other Barons were of Opinion that such Paper-Book was good Evidence, but at that Time he declared his Opinion to the contrary, and of this Opinion he still continued. 2 Barnard. Rep. in B. R. 405, 406. Hill. 7 Geo. 2. at Thetford Affises, Chance v. Ded.

7. But upon producing a Copy of this Admission, the Baron allowed it as Evidence, and said it has often been so. 2 Barnard 406. Hill. 7 Geo. 2. Ded.

8. A Paper-Writing signed by the Lord of the Manor testifying such Surrender made by the Lord himself of Copy-Lands to the Use of the Surrenderer's Will, and the Plaintiff's Attorney's Oath that it was signed by Hand-writing of the Lord himself, was allowed good Evidence, tho' the Lord himself was not present in Court to prove it. Per Baron Carter at Thetford Affises. 2 Barnard. Rep. in B. R. 406. Hill. 7 Geo. 2. Chance v. Ded.

9. Where a Surrender is in the Hands of the Lord himself it is not necessary that it should be presented at the next Court. Per Baron Carter at Thetford Affises, 2 Barnard. Rep. 406. Hill. 7 Geo. 2. Chance v. Ded.

10. It was infilled, that no Evidence could be given to prove Lands to be Copyhold but the Rolls themselves, but Baron Carter was of a different
Evidence. 215

(T. b. 25) Custom of a Manor.

1. To prove customary Defents the Court enforced the Parties which maintained the Custom to shew Precedents in the Court-Rolls to prove the Usage; and Coke Ch. f. said, without such Proofs that it had been put in Use, though it had been deemed and reputed to have been a true Custom, yet the Court could not give Credit to the Proof by Witneffes. 4 Le. 242, pl. 395. Patch. 8 Jac. C. B. Rancliff v. Chaplin.

2. To prove that the Custom of the Manor of S. was descenfible to the eldest Daughter, it was fhown that it was Parcel of the Manor of Odam, which was ancient Demefne, in which Manor such Custom is. But on the other Part it was fhown, that it cannot be Parcel of the Manor of Od, because it appears by diverse Records that this Manor of S. was held of the K. by Grand Serjeancy; and though it was agreed there was fuch Custom in the Manor of Od, yet as the Manor of S. holds by fuch Service it cannot be Parcel of the Manor of Od. But it was answered that this Tenure in Grand-Serjeancy was created by K. E. 2. and if fhuch ancient Custom was, it cannot be destroyed nor altered by Alteration of the Tenure, and this was agreed by all the Justices. Wherefore because diverse Precedents were fhewn, that Lands of the Freeholders used to descend there to the eldest Daughter, and that Lands in S. used to be recovered in a Writ of Right Gfle in the Court there it was left to the Jury to enquire if there was any fuch Custom; but the Jury could not agree, fo a Juror was drawn by Confeft and a new Trial prayed, &e. Cro. C. 484. pl. 8. Mich. 19 Car. B. R. Moulin v. Dalton.

3. It appeared by an ancient Book of Survey that by the Custom of the Manor of which the Estate was held the Copyholds there should not only go to the youngeft Son, but alfo in Case the youngeft Son died without Issue, it fhould go to his youngeft Brother, and not to the eldest and if no Sons then it fhould go to the youngeft Daughter, &e. The Question being, whether upon the Death of the youngeft Son it fhould go to his youngeft Brother, or to the eldest; the Chancellor directed an Issue for Trial of the Custom. Vern. 489. Mich. 1697. Edwin v. Thomas.

(T. b. 26) Custom of Merchants.

1. The Custom of Merchants ought to be proved by thofe that have had frequent Experience, and have known Cases fo ruled. Skin 54 pl.

(T. b. 27) Evidence relating to Deeds.

1. On Non eff Factum it was found that the Defendant submitted and fealed the Bond, and caf it upon a Table, and the Plaintiff took it without any other Delivery, or any other thing amounting to a Delivery. Held that this is no Delivery. Le. 140. pl. 193. Hill 90 Eliz. C. B. Chamberlain v. Staunton.

2. And this is not like the Case lately adjudged here that the Obliger subscribed and fealed the obligation, and caf it upon a Table, fay-
Evidence.

ing, this will force, which was held a good Delivery; the speaking the Words being a Circumstance by which the Will of the Obligor appear-
that it shall be his Deed. Ibid.

3. A Witness proved the Delivery of a Deed, but could not say it was on the Day of the Date; Coke Ch. J. directed the Jury to find it according to the Date since it was proved to be delivered, and it shall be intended to be on the Day of the Date. Roll. R. 3 Pachen. 12 Jac.


4. The Contents and Sufficiencies of Deeds are not to be proved by Testimony of Witnesses, the Confustruction of Deeds being the Office of the Court. 3 Ch. Rep. 92. 16 June 17 Car. 1. Earl of Suffolk v. Green-

vill.

5. Plaintiffs were the Defendants Sitter’s Children, and on a Bill against Defendant (being an Infant) to discover a Deed, the Question was, if the Defendant’s Father had settled Lands on Plaintiff’s Mother; the Proof was, that about Two Years before her Marriage he had put her in Possession of these Lands, and had attested on her said Marriage to settle them on her and her Heirs, and the Defendant (then an Infant) was a Witness to the Articles. But though there was no other Proof of such Deed of Settlement, yet the Court decreed for the Plaintiff, but it was conceived a hard Case to decree an Equity on a Deed which had no other Proof. N. Ch. R. 94. Kingdon v. Manwaring.

6. Where there is a Common Seal put to a Deed of Corporation that is Title enough without a Witness to prove it, or that the major Part of the College be agreed, and if it be said, that it was put to by the Hand of a Stranger that shall be proved on the Side that says fo, Sic dicit fuit. Skn. 2. Mich. 33 Car. 2. B. R. in the Cafe of Ld. Brownister v. Sir Robert Atkins.

7. Indenture enrolled of Bargain and Sale is good Evidence, though it is not proved to be executed by the Bargainer. Cumb. 247. Pach. 6 W. & M. in B. R. Smart v. Williams.

8. A Deed to lead the Uses of a Fine Sur Concessit need not be proved per Testes. Try. per P. 209.

9. To prove the sealing and Delivery of a Deed, and not know the Party that did it, is not good Evidence; but if he knows the Party upon Sight of him it is good enough. Try. per Pais, 172.

10. Upon a bare Recital in a Deed of a Deed of Uses on a Fine, Proof must be made that there was such a Deed. 6 Mod. 45. Mich. 2 Ann. B. R. Ford v. Ld. Grey.

11. A Copy of a Deed leading the Uses of a Fine, and enrolled for safe Custody only, was allowed to be read as Evidence at a Trial at Law. 2 Vern. 471. pl. 429. Mich. 1704. Combes v. Spencer.


terborough v. Germain.

14. A Mortgage Deed was produced in Court, dated 11 April 1710, and some of the Officers of the Stump Office attending affirmed that by the Stump on that Deed it could not be made in the Year 1710, but in the Year 1711 or after; because that Stump was not used before the Year 1711, so that there was a strong Presumption it was antedated on Purpose to over-reach the Settlement on the Plaintiff, whereupon the Ld. Chan-
Evidence.

(T. b. 25) Demand of Rent.

1. Where a Demand is made of Rent in Order to avoid a Leafe, it
must be made of the half half Year only. Coram Prat Ch. J. apud Croydon
Affises in Autumn, 1720.

(T. b. 29) Denizen.

1. Denizen or not cannot be sufficiently proved but by Matter of Re-
cord; Per Williams J. 2 Buls. 34. Mich. 10 Jac. Olave School’s Cafe
in Southwark.


1. Dugdale’s Baronage not allowed in Evidence to prove a Defent.
2 Jones 164. Mich. 33 Car. 2. B. R. Piercy v. ———
2. Chart of Pedigree, no Evidence of itself without shewing the Books
and Record whence deduced to prove Defent. 2 Jones 224. Mich. 34
Car. 2. B. R. Earl Thaness Cafe.

[T. b. 31] Devaflavit.

1. In Debt against Executors suggesting a Devaflavit, an actual Dev-
vaflavit must be proved as well of Money as of other Chattels; For now the
Party is chargeable in his own Right. 2 Keb. 676. pl. 55. Trin. 22


1. Held in Cafe of a Devise of Land, that the Shewing the Will un-
der Seal and Proot that it was examined by the Original is good Evidence
without shewing the Original. Clayt. 57. pl. 98. July 1638, before
Parkley Judge of Aflife, Lodges Cafe.
2. The Point in Issue was, if J. S. devised Lands to J. N. and his Heirs
or not ; the Finding a Devise to be for Years Remainder to J. N. and his
Heirs is not a Finding according to the Issue; For the Issue is upon an
immediate Devise in Possession. Jo. 224. pl. 5. Patch. 6 Car. the King
v. Newdigue.
3. Copy of a Will examined at the Prorogative Office is not Evidence
to make Title to Lands by Devise. Cumb. 248. Patch. 6 W. & M. in
B. R. Smart v. Williams.
4. A Will under which a Title is made for the Plaintiff must be [s]een
to the Court itself, and not only a Copy of it, which they refuse to admit.

[T. b. 33] Disfranchiefement.

1. A Disfranchifing of a free Burgafs of Newcastle by an Act of Com-
mon Council was allowed without producing the Charter; Per Tracey J.
York Aff. 1714.

[T. b. 34] Earnest Money paid. The Effect thereof.

1. Earnest Money paid on an Agreement for Goods binds the Bargain,
but the Money must be paid on fetching away the Goods, because no other
Time of Payment is appointed. The Earnest only binds the Bargain,
and gives the Party a Right to Demand; but then a Demand without
Payment of the Money is void. After Earnest given, the Vendor can-
not fell the Goods to another without a Default in the Vendee, and therefore if the Vendee does not come and demand the Goods, the Vendor ought to go and request him, and then if he does not come and pay, and take away the Goods in convenient Time, the Agreements is dissolved, and he is at Liberty to sell them to any other Person. 1 Salk. 113. pl. 2. PaSch. 3 Ann. Coram Holt Ch. J. at Guildhall. Langtott v. Tyler.

[T. b. 35] Ejdement.

1. If a Leassee brings an Ejqdement and has a Verdict, and afterwards the Reverfioner brings an Ejdement likewise, the Reverfioner shall have Advantages of the Verdict and give it in Evidence ; Per Cur. Hardr. 472, Hill. 19 & 20 Car. 2. in Scacc. in Cafe of Rufhwirth v. Pembroke (Countefs) and Currier.


1. A. was duly chosen Parliament Man, but B. was returned, and upon a Petition to the Houfe of Commons, A. was voted well chosen, and the Return amended. In Cafe brought by A. for a false Return ; it was adjudged, that as this Cafe was it did not lie, because it appeared upon Record, that he was returned. But if instead of an Action on the Cafe he had brought an Action on the Statute, it would have been well; for there the Clerk's Notes would have been Evidence. Holt's Rep. 629. 635. Mich. 5 Ann. Kendall v John.

[T. b. 37] Endowment.

1. Though there can be no Proof of an Endowment, but because of long Possession and being Presentative, decreed to be enjoyed 9 Car. A Cafe between Grimes and Smith in the Exchequer-Chamber. Toth. 270. cites Neave v. Litter, about 39 Eliz.

2. A Deed found in the Archives of the Chapter was admitted to prove an Endowment of the Vicar, being but concurrent Evidence, though it appeared not to have been ever sealed and delivered. 2 Keb. 126. pl. 79. Mich. 18 Car. 2. B R. in Cafe of Smith v. Rawlins.

3. Payment is Evidence of the Endowment of a Vicarage, and no Man can prove other Endowment, and a Confultation was denied. 2 Keb. 729. pl. 13. Hill. 22 & 23 Car. 2. B. R. Brigham v. Robfon.

[T. b. 38] Entail.

1. If there was a Gift in Tail, Reversion in the Crown before the Statute De Donis, and the Possession hath been Time whereof in Purchasers, if the Possession cannot be proved to be in the King alter the Statute of W. 2. it shall be intended to be made Polt prolem Sulfittatam, and before the Statute De Donis. Cro. J 445. pl. 13. Mich. 15 Jac. B. R. Griffin v. Stanhope.

2. An old Inquisition finding an Entail created about two hundred Years since was let up to defeat a Purchafe ; Ld C. Parker said, that if there was not the clearcut Proof imaginable of such an Entail, the Jury was in the Right not to find it. Wms. Rep 671. 673. Mich. 1720. Leighton v. Leighton.


[T. b. 39]
Evidence. 219

[T. b. 39] Entry and Suspension.

1. In Ejecution Firmae in Evidence to the Jury, where three several Parcels of Land lay in one County, and the Lady Argol having Right (as the thought) to let them all to the Plaintiffs who brought the Action, and the Lands were in the Hands of three several Leissee of Cheyny. She made a Lease by Deed, and delivered it as an Ejector to J. S. and made likewise a Letter of Attorney to J. S. to enter in her Name upon all the Lands, and to deliver unto her Leissee the Deed as her Deed. Wintesfs proved, that the entered upon one Leissee in the Name of all the Land; And Jones J. thought it well done, because it the Freehold be in one, though there be several Leissee for Years, Entry in one Acre in the Name of all is good enough; Yet Brideman held there ought to be Proof of the Entry of the Leissee into all Acres. At last it was fully proved, that the Entry of the Attorney and the Leissee was into all.

2. In Evidence to the Jury on a Writ of Entry for diffusion, the Demand was for a Manor, and Non Difference pleaded for Tenant, Demandant gave in Evidence, that the Tenant had entered into the Demises of the Manor and put him out; Counsel for the Tenant put the Demandant to prove, that it was a Manor, and that the Tenant had received the Attornment of the Tenants, because a Manor cannot subsist without Tenants, and the Demandant failing to prove this was nonsuit. Arg. Lat. 62. Pach. 1 Car. Argol v. Cheyny.

3. In Evidence to a Jury, it was offered as Evidence of an Entry a Note thereof subscribed by the Person that entered, and the Wintesfs thereto were dead, and their Hands only proved, and that it was done by Direction of Hyde J. of the C. B. who testified it, which after some Doubt the Court would not admit, without proving actual Entry, especially being to avoid a Fine; but they admitted what Hyde said, as a good Inducement to the Jury, but no convincing Evidence. 1 Keb. 502. pl. 62. Pach. 15 Car. 2. Pryer v. Combes.

4. At a Trial at Nilia Prius in Middlesex, a Fine and five Years being given in Evidence upon Ejaculatio in Bar of the Title of the Leissee of the Plaintiff, the Plaintiff showed, that at the Time of the Fine levied he was an Infant, and that within three Years he came to the Lands in QuelLion, and at the Gate of the House said to the Tenant that he was Heir of the House and Land which he held, and forced him to pay more Rent to the Defendant; Upon which it was demanded, if he entered into the House when he made the Demand; and it was said that no; upon which it was said that the Claim at the Gate was not sufficient the which was agreed; But then it was proved, that he entered the House when he made Claim, the which being co Instante it was well enough; Per Holt Ch. J. though the Claim was but at the Gate, but after it appearing that there was a Court before the House, so that though the Claim was at the Gate, yet it was upon the Land, and not in the Street; and therefore it was ruled to be good without QuelLion. Skin. 412. pl. 8. Hill 5 W. & M. in B. R. Anon.

5. In proving Entry and Claim it is necessary, first to prove the Claim to be upon the Land claimed (without special Cause) Secondly, that it be animad. clamaundi. 6 Mod. 44. Mich. 2 Ann. B. R. Ford v. Ld. Grey.

6. A Deed of Title to Leissee of the Plaintiff of a Vill except Black-acre, the Statute of Limitations being pleaded, and an Entry and claim being offered in Evidence to avoid it, they were put to prove the Entry to have been
Evidence.

been in another Place than was excepted. 6 Mod. 45. Mich. 2 Ann. B. R.

If an Entry be in Part only (though small) and Lefsee re-entered, yet the Rent is suspended, for Part of Profit is taken from the Lefsee. 1 R. ab. 930.—Leflor enters lawfully as by Surrender, Forfeiture, &c. into Part the Rent is extinct as to Part.

Co. Litt. 148. b. — Ejectment and Disturbance of Common and Incluflure against Commoner is not SUSPENSION.


(T. b 40) Estate at Will.

1. No Estate at Will can be without Entry, for that is Opposum in Objecto. His Entry proves his Intent to hold at Will. Arg. Mar. 70. Mich. 15 Car. in Cae of Leake v. Dawes.

(T. b 41) False Imprisonment.

1. Every Restraint of Liberty implies a taking in Law; as if A. comes into B's Houfe to eat and drink, &c. A. detains B. in his Houfe, an Action of False Imprisonment lies. 3 Bull. 98. Mich. 13 Jac. in Cae of Withers v Henley.

2. If an Arreft be by Proces out of an inferior Court in a Cause not arisjng within their Jurisdiction, the Party arrested may have Action against the Plaintiff, who shall be intended conftant where the Cause of Action arofe, but not against the Judge or Officer who has entered the Plaint, or the Officer who has executed it. But the proper and juft Remedy is against the Plaintiff. 2 Jo. 214. Trin. 54 Car. 2. B. R. Ollee v. Belfey.

3. A. has a Chamber adjoining to the Chamber of B. and has a Door that opens into it, by which there is a Passage to go out; and A. has another Door, which C. stops so that A. cannot go out by that. This is no Imprisonment of A. by C. because A. may go out by the Door in the Chamber of B. though he be a Trespafler by doing it. But A. may have a speCial Action upon his Cause against C. Ruled by Holt Ch. J in Evidence at a Trial at the Summer Assizes at Lincoln 1699 in an Action of False Imprisonment. And the Plaintiff was non-suitor. Ld. Raym. Rep. 739. Wright v. Wilfon.

4. The Ld. Ch. J of B. R. in the late King's Reign signed a Warrant for apprehending the Plaintiff, and the Defendant being a Confable arrested him on the fame after the late King's Demife, and thereupon the Justices of Sessions granted a Warrant for his Commitment. Eyre Ch. J. that the Warrant of the Ld. Ch. J. became void by his late Majesty's Demife, fo that the Imprisonment having been upon a void Proces, an Action of False Imprisonment now brought by the Plaintiff well lies. Gibb. So. Trin. 2 & 3 Geo. 2. at Nifi Prius in Middlesex. Anon.

(T. b 42) False Return.

1. On an Information for a False Return to a Mandamus, there needs no other Evidence to prove the Return to be the Mayor's but the Copy of the Writ and Return in the Crown Office; that though upon a Confitution the Majority be against him, and make a Return in his Name, yet it shall be taken to be his if he does not come and difprove it. That this is not necessary to prove a Delivery of the Writ to the Mayor, no more than to a Sheriff
Evidence.

201

a Sheriff in a False Return against him. 6 Mod. 152. Patch. 3 Ann. B. R. The Queen v. Chapman.

(T. b. 43) Fee Farm Rents.

1. Old Rent Rolls admitted to be Evidence to prove Fee Farm Rents, for being very ancient it cannot be supposed they were made with a View to serve the present Purpose. MSS. Tab. 12. April 2, 1729. Newburgh v. Newburgh.

(T. b. 44) Fees.

1. No Court has a Power of settling the Fees of its Officers, so as to conclude the Subject, but thus far they may go, as to judge what are reasonable Fees; and in a Quantum meruit by the Officer for such Fees, the Judges affixing them reasonable may be good, but not conclusive Evidence to a Jury; and so of the Table of usual Fees of a Court not newly erected; and after it is once found reasonable by a Jury, then it may become conclusive Evidence, and so it has been adjudged, 15 Car. 2, between Beal & Prior for the Fees of the Register of the Office of Insurance. Per Holt Ch. J. 12 Mod. 609. Hill. 13 W. 3. B. R. in Cafe of Ballard v. Gerrard.—cites Hard.

(T. b. 45) Fines levied.

1. If a Fine be pleaded in the same Court, there it Suffices to be exemplified in the same Court, but if a Man pleads it in another Court he ought to shew it exemplified under the Great Seal of England in Chancery, if he will plead it, but he may give in Evidence the Seal of C. B. Br. Montrams pl. 65. cites 24 E. 3. 46.

2. In a general View the Justices may find of themselves a Fine if they know of it, though not shewn by any of the Parties, and it be true that there is such a Fine, they may find it by Credit of any that have seen it; and the Parts indented shewn forth is usual Testimony of the Truth of such Fine. Pl. C. 410. b. Mich. 13 & 14 Eliz. in Cafe of Newys and Scholasticia v. Clarke.

3. Whatever the Jury may take Cognizance of themselves may be given in Evidence by Words or Copies, or other Arguments of Truth as of Fines or Recoveries. But in Pleading a Man cannot make to him Title in any Cafe by Record without shewing it under the Great Seal; or as Welton J. says, must bring it under the Great Seal by a Day affixed; but such Day shall not be given where it is given in Evidence, and the finding it by the Jury is sufficient; and they may find it of themselves, though it be not shewn to the Jury in Evidence, and so may do it on Circumstances inducing Verity. Pl. C. 411. Mich. 13 & 14 Eliz. in Cafe of Newys and Scholasticia v. Clarke.

4. A Fine with Proclamations, when given in Evidence, ought to have the Proclamation Indorsed on it, and it is not enough to say that it is Secundum Formam Statuti. Held in a Trial Per Scrogs Ch. J. 2 Show. 126. pl. 105. Trin. 32 Car. 2. B. R. Anon.

5. If a Fine be given in Evidence with Five Years Non cliain, &c. the Fine must be shewed with the Proclamations under Seal, and the Chirograph will not serve. Try. per Pais, 229.


L 11

7. The
Evidence.

7. The Caption and Covenant are never given in Evidence to prove a
Fine, they not being at the Efficiency of the Fine; Per Cur. 10 Mod. 45.
Mich. 10 Ann. in Ed. Say and Seal's Case.

(T. b. 46) Right of Filiery.

1. In Case of a private River the Lord's having the Soil is good Evidence
to prove that he has the Right of Filiery, and it puts the Proof upon
them that claim Liberam Piscariam. But in Case of a River
that flows and refloes, and is an Arm of the Sea, there Prima facie it is
common to all; and if any will appropriate a Privilege to himself, the
Proof lies on his Side; Per Hale Mod. 105. pl. 14. Hill. 25 & 26 Car.
2. B R. Anon.

[T. b. 47] Fraudulent Conveyance, or Sale.

1. Action in the Case for Fraudulent Sale of Horse to the Plaintiff, as
the proper Horse of the Defendant, who recovers it was the Horse of J. S.
because the Plaintiff could not prove that the Defendant knew it not to
be his own Horse, (for the Declaration must be, that he did it fraudulently,
and knowing it not to be his own Horse) the Defendant having
bought the Horse in Smithfield, but not legally told'd; the Plaintiff

2. In Ejectment Plaintiff declared, that A. was seized in Fee of a
Manor, and in 1647, for the Consideration of 2000l paid to him,
made a Pecuniary to J. S. and J. N. and their Heirs in Trust for B.
Defendant made a Title under the Marriage-Settlement of A. who in
17 Jac. married E. M. and then settled the said Manor upon himself
for Life, and on his Issue in Tail, and that the Defendant was Heir in
Tail. But on the other Side it was infirmit, that this Settlement was
fraudulent against the Purchaser, and that it could not be thought other-
wise, because both the Original and Counter-part was found in A's Study
after his Death. An Objection was made to the Settlement itself,
which recited, That whereas a Marriage was intended between the said A.
and M. now in Consideration thereof, and of a Portion, he conveyed the
said Manor to the Possessor, to the Use of himself for Life, but doth not,
lay from and after the solemnization of the Marriage; so that if she had
not married A. yet after his Decesase she would have enjoyed the Estate
for Life. Upon the whole Matter the Jury found for the Defendant.
3 Mod. 36. Mich. 33 Car. 2. B R.

3. Upon a Question, whether a Conveyance made by a Bankrupt a
short Time before All of Bankruptcy committed were fraudulent or not?
These Points are agreed by the Court; 1st, That a Sale being to a near
Relation of the Party's was some Mark of Fraud, tho' not a conclusive
one, because Relations might be real Creditors, or give a valuable
Consideration. 2dly. The Non-Payment of Money at the Time of execu-
ting the Deed is another. 3dly. It is some Evidence of a Bona fide Con-
veyance, that the Deed mentions Money paid; but that had need of other
corroborating Circumstances, as Enjoyment, &c. 12 Mod. 439. Hill. 12

(T. b. 48) Hand-Writing.

1. In the Bishop's Trial it was declared by Powel J. That in Civil
Affions a Juener Proof was sufficient to make out a Man's Hand, as by a
Letter to a Trademan, or Correspondent, or the like; But in
Criminal Cases the Proof ought to be positive and substantial, not by
Belief.
Evidence.

This was in proving Ld. Chichester's Hand, but the Court was divided.

2. On a Trial at Bar about a Will, one of the Witnesses would not swear that he saw the Testator seal and publish his Will. Holt Ch. J. said If there be three subscribing Witnesses to a Will, this is sufficient within the Statute; For otherwise it would be in the Power of a third Person to defeat the Will, and therefore, if proved to be his Hand, and that he set it as a Witness to the Will, it is sufficient to satisfy the Statute. Skyn. 413. pl. 9. Hill. 5 W. & M. in B. R. Davrell v. Glascock.

3. Where there are two Witnesses to a Deed who are dead, if there be full Evidence to prove one of their Hands, and any Evidence that Endevours have been used to find one to prove the other's Hand, it is sufficient, for perhaps the Witnesses might be a Stranger, and it would be a hard Task to prove his Hand; Per Cur. Cumb 248. Pach. 6 W. & M. in B. R. in Case of Smart v. Williams.

4. To prove a Hand-Writing by Similitude, and by those who have known the Hand, tho' the Party was not seen to write it, was allowed sufficient Proof of at reasonable Writing in Sidney's Case; for this is said to be as much Proof as the Thing is capable of, especially where the Writing is found in his Possession. Sid. Try. 51. Yet Sidney said, it had been declared in the Lady Carr's Case to be no lawful Evidence in Criminal Causes. L. E. 279. pl. 19. Cites Sidney's Try. 32.

5. In an Action of Debt upon an Obligation, and Non est Factus pleaded, a Witness was sworn who said, that his Hand was subscribed as a Witness; but he did not see the Obligation sealed and delivered; Upon which the Court demanded of him, if ever he set his Hand as a Witness but where he saw the Sealing and Delivery; and he said that No; but that he never saw it; upon which one was sworn to prove the Hand of the other Witness who was dead, the which was opposed; but Holt Ch. J. said, that a Man shall not lose his Obligation, because they have tampered with his Witness, and he allowed the Plaintiff to prove the Obligation by Comparison of Hands of the other Witnesses. Skyn. 639. pl. 2. Pach. 8 W. 3. B. R. Burton v. Toon.

6. At Summer Assizes at Warwick 1699, a Deed was produced to which there was two Witnesses, one of whom was blind. It was ruled by Holt Ch. J. that such Deed might be proved by the other Witnesses, and read; or might be proved, without proving that this blind Witness is dead, or without having him at the Trial, proving only his Hand. And so it was done in this Case. Ld. Raym. 734. Wood v. Drury.

7. Debt upon Bond by G. as Executor of C. against N. which C. happened to be the only surviving subscribing Witnesses, and his Subscription was proved by Parity of Hands. Per Parker Ch. J. that G. being disabled by proving the Will, is as if there was no Witnesses in Being, where Parity of Hands may be allowed. So in Case of Depositions in Chancery, which were taken before any Interest accrued to the Deponent, and in Case of a Will, if an Interest accrues to the Witnesses subscribing, &c. after he had made his Subscription, this may be proved by Parity of Hands. Hill. Vac. 37. at Guild-hall Sittings, Godfrey Executor of Chamberlain v. Norry.

9. Where
Evidence.

9. Where a Witness would swear to the Hand-writing of another, he must be able to say, that he has seen such a Person write, unless where there has been any fixed Correspondence by Letters, and that it can be made out that the Party writing such Letters is the same Person that attested the Deed, and then that will be sufficient. Per Raymond Ch. J. Gibb. 196. pl. 9. Hill. 4 Geo. 2. Ld. Ferrers v. Sherley.

10. If a Witness to a Deed is dead, it is sufficient to prove his Hand without the Hand of the Party. Per Pratt Ch. J. Trin. Vac. 1719.

11. Case on Promisory Note for 10 l. attested by two Witnesses, one of them said that his Name was very like his Hand, but he never saw the Note executed, for he remembered the Time, when he was called in to witness some Writings between the Parties there were only two Half Sheets, and each of them stamped, but no such Paper as the Note was attested by him, the other Witness said the same. Upon which the Plaintiff produced the two Half Sheets, and the Witnesses swore to the Execution of them. Whereupon Pratt Ch. J. left it to the Jury, on the Similitude of the Hands between the Deeds proved and the Note, and the Jury found for the Plaintiff. N.B. One of the Deeds mentioned the Sum of 10 l. paid by the Defendant to the Plaintiff, by which the Jury thought was intended the Note under his Hand. Papch. 6 Geo. at Niti Prius Carbone v. Cotton.

12. Two Witnesses to a Bond, one in Bedlam and mad, and the other in Africa, on Order to prove an Exhibit Vide Voce in Chancery, a Witness proved this Fact, and their Hands to the Bond as it dead. Per Ld. Chan. Trin. 5 & 6 Geo. 2. Cane.

13. It both Witnesses are beyond Sea proving the Hand of the Party is not sufficient, but in such Cases it is usual to prove the Hand only of one of the Witnesses, and that they are beyond Sea, and proving both their Hands not necessary, (ut dictur.) Trin. 5 & 6 Geo. 2. in Case of Smith v. Richards.

14. Similitude of Hands no Evidence, but saying that he was well acquainted with his Writing, and knew it to be the Party's, is so. Per Bury Ch. B. at Francia's Trial, pa. 18.


1. In Evidence to a Jury to prove J. S. to be Heir to W. S. the Court would not accept the Pedigree drawn by a Herald at Arms for Evidence, nor will offer the Jury to have it with them, but it is only Information for Direction. 2 Roll. Abr. 681. J. J. pl. 2. cites Papch. 8 Jac. B. Plumpt. v. Robinson. Papch. 12 Jac. B. without any Proof by Office, or other Substantial Matter; Per Curiam.


(T. b. 50) His Freehold, Money, &c.

2 And. 48.

1. His Freehold must be intended his own Freehold, and in his own Right, and finding that it was the Freehold of the Advocate's Wife is not sufficient. Cro. E. 524. pl. 52. Mich. 38 & 39 Eliz. B. R. Bonner v. Walker.

S. C. &

S. P. held accordingly by three Justices, but one doubted.

2. In
Evidence.

2. In Trepass the Defendant pleads, that the Place where is his Freehold, and gives in Evidence a Fine with Proclamations; it is good Evidence, because it is a Title. Brown's Anal. 16.

3. The Declaration is, that the Plaintiff was robbed of 10 l. de Denarius sive Quaerens; and upon the Evidence it appears, that the Plaintiff was the Receiver of the Lady Rich, and had received the said Money for the Use of the Lady; and Exception was taken to it; but it was not allowed; for the Plaintiff is accountable to the Lady Rich for the said Money. L. E. 52. pl. 5.

(T. b. 51) Imprisonment at the Time of the Outlawry.

1. Error to reverse Outlawry for one who was in Prison at the Time of the Outlawry under the Custody of the Bishop of E. in his Prison, and the Bishop certified that he was in his Prison at the Time of the Outlawry, &c. and another would have avowed for the King that he was at large at the Time, &c. and was not permitted contrary to the Certificate of the Bishop; Brooke says and to fee, that the Certificate of the Bishop is as credible in other Cases, as in Case of Bailardy. Br. Certificat de Evesque, pl. 23. cites 15 E. 3.

(T. b. 52) Incumbent.

1. In a Suit for Titles in the Spiritual Court, the Defendant pleaded, that the Plaintiff (the Parson) had not read the thirty nine Articles, and the Court put the Defendant to prove it though a Negative; whereupon he moved for a Prohibition which was denied; for in this Case the Law will presume, that a Parson has read the Articles, for otherwise he is to lose his Benefice, and when the Law presumes the Affirmative then the Negative is to be proved. Rep. 3. pl. 29. Mich. 12 Jac. B. R. Monke v. Butler.

2. In Case of Titles, &c. If the Plaintiff be a Parson, Vicar or other Ecclesiastical Person, and claims the Tithes in Right of the Church, or Benefice whereof he is Incumbent, he is in Stricknes bound to prove his Institution and Indulgence, and all Things else required by Law to qualify him to be the Incumbent of the Church to which the Tithes belong, and yet after proving if such Plaintiff hath been for several Years in Poffession, he is not ordinarilu put to prove those Matters, unless the Defendant in his Defence shews some Reason why the same ought to be proved, &c. But the Law has not determined how many Years such Plaintiff ought to be in Possession to prove on to excuse his being put to such Proof. But that seems to be left to the Judge's Discretion, though I conceive three or four Years may suffice. L. E. 128. pl. 98.

(T. b. 53) In Custodia Marechalli.

1. The Entry of the Commissiur will not charge the Marshal in Escape, unless the Party be in Custody. Sid. 220. pl. 5. Mich. 16 Car. 2. B. R. Snow v. Phillips. And it was ruled per Cur. that in Ejectment, Admission, Institution and Indulgence is good Title without shewing any Right in the Prefentor; For upon the Prefentment of a Stranger it is good Matter to bar him that has Right in Ejectment, and put him to his Qua. Imp. Ibid.

2. To prove a Person in Custody of the Marshal of B. R. it is sufficient to shew a Charge against him, &c. if in mean Processe without proving any Commissiur upon the Roll, but if he is to be considered as a Prisoner in Execution, there the Commissiur upon the Roll must be proved. 1 Sid.
Evidence.

247. pl. 5. Hill. 16 & 17 Car. 2. B. R. in Case of the King v. Povey, & al.
3. N. B. after a Committitur in the Office the Marshal must be served with a Rule, or there must be a Committitur in the Marshal's Book upon a Reddedit le. 1 Salk. 272, 273. pl. 3. Mich. 13 W. 3. B. R. Watfon v. Sutton.

[T. b. 54] Inrolment.

1. Upon Evidence agreed by the Court, that if the Bargainer continues Possession after Inrolment, that he is a Differior. For the Statute transfers the Frank-Tenement to the Bargaine. Noy. 106. Bellingham v. Allopp.

2. In a Trial at Bar between Thirlie and Madison it was said by Glyn Ch. J. that it serves Person's do seal a Deed, and but one of them acknowledge the Deed, and the Deed is thereupon enrolled, this is a good Enrollment within the Statute, and may be given in Evidence as a Deed enrolled at a Trial. Sty. 462. Mich. 1655. B. R. Thurle v. Madison.

[T. b. 55] Infimul Computaverunt.

Noy 87. S. C. accordingly.


2. Assumpfit for 20l upon Account, and upon the Evidence it did appear to be another Sum than 20l. and it was ruled against the Plaintiff, and he was nonsuit, and the Judge held where an Action is for 10l. upon a Contract for a Horse, and the Witness doth not prove the very Sum but differs 1 d. or 12 d. in this Case it shall be found against the Plaintiff, and cited the Opinion of Walter Ch. B. to be fo, but for the Importance then was contented a special Needit should be found. But the Court above did rule the Case against the Plaintiff. Quod Nota in Assumpit, where Damages only are to be recovered, for in such Cases if Debt had been brought it is clear, because he doth not hit the Contract, it shall be against the Plaintiff. Claty. 57. pl. 147. July 16 Car. before Foister Judge of Alliz. Ramdlen's Cafe.

3. Assumpit upon an Infimul Computaverunt, and Non Assumpit pleaded, and the Plaintiff produced a Writing without Seal, which justified the Debt to prove his Case, but it was held no good Evidence, for it is another thing, and he should have declared Quod Indebitatus Assumpit, &c. and upon this the Plaintiff was urged to be nonsuit. Claty. 57. pl. 146. July 16 Car. before Foister Judge of Alliz. Kirbie v. Emerson.


5. To prove an Infimul Computaverunt it was proved that the Defendant and Plaintiff's Wife reckoned that the Defendant had borrowed at one Time 40s at another Time 40s, and at another Time 4l. and this came to 8l. and he promised to pay it; Sir Bar. Shover urged that this could not maintain an Infimul Computaverunt, for that it was only a reckoning on one Side, for there was neither Payment nor Deduction on the other, and at that Rate paying one and one was two would make an Account, but Holt Ch. J. over-ruled him, that it was good Evidence of an Account, and so they had a Verdict Quod compt. pro Quer' & quod Reidi' pro Defendi'. Show. 215. Pasch. 3 W. & M. Styart v. Rowland.

(T. b. 56)
Evidenced.

(T. b. 56) Intestate.

1. In Debt it was agreed, that Testament proved under the Seal of the Ordinary is no Evidence to the Plaintiff in Debt against Administrators to say that the Debtor died Intestate, and therefore it seems that this is no Record to bind, as judicial Acts shall bind at the Common Law. Br. Ordinary, pl. 4, cites 44 E. 3. 16.

2. Error was signified, that one pleaded (cum Testamento Annexo qui obit Intestate) which is absurd, and repugnant; it is well (per Cur.) for though one makes a Will, yet if he makes no Executor he is an Intestate. Camb. 20. Patch. 2 Jac. 2. R. B.

(T. b. 57) Judgment.

1. Action for Cave for a False Return of Nulla bona for £1 1s., when there were Goods sufficient; and the Plaintiff declared on a Judgment in Common Banco, and on Evidence produced a Copy of a Record, Mich. 8 W wherein was writ in the Margin Cook (who is one of the Posthumous of the Common Pleas) but there was no Placit coram, &c. at the Top, for which Omition the Defendant insisted that there was no fair Copy of a Record that it did not appear who this Cook was. That the Plaintiff declared of a Plea held before Sir G. Tracy, and it did not appear that the Record produced by him was such a one, and of that Opinion was Holt Ch. J. who tried the Cause, which the Plaintiff perceiving was nonsuit. 12 Mod. 127. Trin. 9 W. 3. Crawley v. Bawdry and Woll.

[T. b. 58] Legitimo modo acqiertatus.

1. In Cave for a malicious Indictment of the Plaintiff for Barrettery he set forth that he was Debito Modo inde exoneratus, and at the Trial to prove this he produced a Nolle ulterius prosequi by the Attorney General; but the Chief Justice held strongly that the Evidence did not maintain the Declaration, and that the Non Prof. was only putting the Defendant Sine Die, and that New Proceeds might be made out upon the false Indictment, and that it would be hard to allow a Man that gets off by a Non Prof. to maintain an Action for a malicious Prosecution. Indeed he pleaded Not Guilty, and the Attorney General had confessed it, that would have done. 6 Mod. 261. Mich. 3 Ann. B. R. Goddard v. Smith.

[T. b. 59] Levancy and Couchancy.


[T. b. 60] Lewdness.

1. Being caught in a House of Bawdry, or a disorderly House at a seasonable Time is not Evidence of a lewd Person. Per Holt Ch. J. but several Affidavits being afterwards read of her Lewdness, the Court committed her till the find Sureties of Good Behaviour. 12 Mod. 566, 577. Mich. 13 W. 3. Elizabeth Caxton’s Cave.

(T. b. 61)
Evidence.

(T. b. 61) Libel.

1. The Finding two or three Copies of a Libel in a Person's Chamber, without disconcurring of it, or delivering of it out, is no Publication; Per Cur. 2 Keb. 502. pl. 66. Pach 21 Car. 2. B. R. The King v. Fitton.


2. Depositions before a Justice of Peace, the Deponent being dead, is Evidence only in Felony, but not in Information for Libel against the Government. 1 Salk. 281. pl. 8. Hill. 7 W. 3. The King v. Paine.

3. If a Libel be made in Writing, and afterwards burnt, and one remembers the Contents, and disliates to another, who writes it, the Writer is Maker of a Libel; He that takes a Copy of a Libel in Writing, tho' he be not the Author, is guilty of making a Libel. Per Holt Ch. J. Comb. 359. Hill. 8 W. 2 B. R. In Case of the King v. Paine.

4. Indictment for compounding, writing, making and collecting several Libels, In uno quorum continetur inter alia justa tenorem, & ad effectum sequentem, (setting out the Words;) Jury found Verdict of Not Guilty as to all except Scriptio & Collectio. And after Exception in Arrest of Judgment, held per Curiam, 1sfl. That it is not necessary to set forth all the Libel, but if any Thing qualifies that which is set forth, it must be given in Evidence. Regularly where a Man speaks Treason, God save the King will not excuse him. Ad Efectum singly had been naught, for the Court must judge of the Words themselves, and not of the Construction the Prosecutor puts upon them; but Jus tux tenorem imports the Words themselves; for it is the Transcript. 3dl. Writing and Collecting is criminal, not but that Collecting had been better out of the Cafe. Bare copying out of a Libel by one that is neither Contriver or Compofer, is criminal. The Nature of a Libel consists in putting the infamous Matter into Writing, not in the infamous Matter; For if a speaks such Words, unless such Words are put into Writing, it is no Libel. In all Cases where a Man does that Acts which makes a Thing to be what it is, he is, and must be construed the Doer of the Thing. It A. contrives any treasonable Matter, and another writes down the Contrivance, the Writer is as guilty as the Inventor. 4thly. The bare having a Libel is not a Publication. If a Libel be publicly known, the having a written Copy of it is an Evidence of a Publication, but otherwise where it is not known to be published. Writing a Copy of a Libel is writing a Libel, but whether it be so or not, when the Jury finds a Man guilty of writing a Libel, he must be taken to be guilty of writing the Original, and a Copy could not be given in Evidence. The Copy of a Libel is a Libel; for such a Copy contains all Things necessary to the Constitution of a Libel, i.e. the scandalous Matter and the writing; and it has the same pernicious Consequence, for it perpetuates the Memory of the Thing, and some Time or other comes to be published. Such Copying is not a Publication, only Evidence of a Publication. 5thly. Objection, Writing a Copy may be a lawful Act, as by the Clerk that draws the Indictment, or by a Student who takes Notice of it. But answered, that the Matter, abstraitly considered, is unlawful, but if the Writing was innocent, there ought to be a special finding of these particulars which distinguishes and excuse it. What an Officer or Student does is not a Libel, because it is not done At Insufficiam of the Party, but to bring the Offender to Punishment. The Writer is held to be a Contriver Mo. 813. 9 Co 59. b. 6thly. When a Libel appears under a Man's own Handwriting, and no other Author is known, he is taken in the Manner, and it turns the Proof upon him, and it he cannot produce the Compofer, it is hard to find that he is not the very Man. Making is the Genus, and Compofing and Contriving is one Species; Writing
Evidence.

229

Writing a second Species, procuring to be written a third Species. 2 Salk. 417. Hill. 10 W. 3. B. R. "The King v. Bear.

5. Printing a Libel is publishing it; and if a Man is not able to give an Account how he came by it, it makes him the Printer, and of Consequence the Publisher. So the Delivery by a Printer to S. is a Publication by the Printer, and the Receiver is an Actor in that Publication, it he does not forthwith carry it to a Magistrate; If a Libellous Paper be found in a Man's Cellary, (as upon a Shelf in one's House or Shop, which was S's Cafe) it shall be thought he printed it, unless he can give a good Account how he came by it to excuse himself. Per Parker Ch. J. Hill. 9. of the King v. S. S. Geo at Guild-hall Sittings. Rex v. S. S. R. to S. S. R. 17 Geo. 3. S. S. R. S. C. S. O. &c.

(T. b. 62) Liking Goods &c.

1. If Goods be bought upon Liking, the Vendee must return them, otherwise his detaining or not finding them back is a sufficient Evidence of a Liking; So if he declares but Dislikes, but after dispos'd of them, So it Goods be sold on Liking, and before the Day on which Party by the Agreement is to come to him, he sells or dispos'd of all or Part of them, it is a Liking; and Time of Liking, or Dillikings of Goods is eight Days. 12 Mod. 369. Mich. 11. W. 3. Burch v. Story.

(T. b. 63) Limitations.

1. If an Affummis is made to perform a Thing upon Request or Notice, and more than six Years past the Promise, yet if the Notice or Request be within six Years before the Action this is good, and not restrained by the Statute, the Cause of Action was not before Notice or Request. If on an Affummis a Damnification be Part at one Time and Part at another, here he may have an entire Action after the last Time, and this is out of the Statute. 1 Jo. 329 Mich. 9 Car. B. R. Pecke v. Ambler. Joi 194. pl. 4. Mich. 4 Car. B. R. Shutford v. Persewo. 8. P. held accordingly. —Though the Promise was made ten Years before, yet the Cause of Action is the Non Payment upon Request after the Thing done or happening, and if the Action be brought within the Time of the Statute after the Beach, it is well enough. Goo. L. 139. pl. 14. S. C.—Godb. 437. pl. 322. S. C. adjudged accordingly.

2. On a Trial at Niti Prius before Holt Ch. J. it was held by him, that the Plea Non Affummis infra sex Annos ante impetrat' br's is Original. Repl. Aff. infra sex Annos ante impetrat' br's praed. viz. such a Day, &c. there in Evidence you need not shew the Original. Show. 272. Trim. 3 W. & M. Edwards v. Thomson.

3. So in a Plea Administravit, where the Date is mentioned upon Record, there you need not shew it in Evidence, though it were only by Way of, Viz. Show. 272. Edwards v. Thomas.

4. On an Indebitatus for 9l. the Defendant pleaded Non Affummis infra sex Annos, on which Issue was taken. The Plaintiff proved a Debt of 9l. due ten Years before, and an Acknowledgment of the Debt within six Years, and an Offer to pay 5l. for the whole; Per Hale the Plaintiff was not sued, for the Acknowledgment of the Debt is no more than is done by the Plea, but there must be a new Promise of the Debt within six Years to make that Action hold, and here the Promise or Offer to pay 5l. gives no Action for the 9l. L. E. 175. pl. 51. cites Bafs v. Smith, Suffolk Summer Aflifes 1668 —T. per Pairs, 127.

Nun

5. Action
5. Action on the Case brought by an Executor upon several Promises made to have been made to the Tzforator, the Defendant pleads the Statutes of Limitations upon which Issue was joined. It appeared upon Evidence, that the Tzforator had been dead seven Years before the Action was brought; but the Executor gave in Evidence a Promise made to himself within one Year, which was the Point saved at the Trial; A Verdict was given for the Plaintiff; Per rot. Cur. although the Owning of the Debt is a Continuation of it, and takes away all Preumption of its having ever been paid, and consequently brings it out of the Statutes; yet this Verdict did not maintain the Issue, and was set aside, because the Promise being made to the Executor, could not be made to the Tzforator.

6. W. possessed of a Term for a thousand Years assigned it to P. for collateral Security against a Bond in which P. was bound jointly with W. for the Debt of W. in 1655. W. died, leaving R. his Son his Executor. W. died leaving C. his Wife his Executrix, and D. his Daughter his Heir. In 1674, R. Executor of P., and the Executrix of W. and D. the Heirs of W. assigned this Term of 1000 Years to J. H. with Condition that upon Payment of 200l. the Consideration of the said Assignment by C. the Executrix, &c. receiv'd the Profits till 1691, and paid the Interest to the same Time; And per Holt Ch. J. it was ruled at Maidstone Lint Allies, 13 W. 3. in an Ejectment brought by the Executor of J. H. 3dly, That he was not barred by the Statute of Limitations, because the Statute did not prejudice at the Time of the Assignment, there being but nineteen Years elapsed, and then the Joining of him in the Assignment who had the Title to take Advantage of the Statute, gives a new Title; 3dly, Per Holt Ch. J. if a Man makes a Mortgage for collateral Security, although the Mortgage is not in Possession for twenty Years and more, yet it the Interest be paid upon the Bond according to the Agreement of the Parties, it shall not be barred by the Statute of Limitations. Ed. Rayn. Rep. 74o. Hatcher v Fineux.

7. A Lector who publishes an Advertisement in a News-Paper, that all Debts due from him should be paid, this will revive Debts barred by the Statute of Limitations, so as that they shall be paid. Chan. Prec. 385. pl. 265. Pach. 1714. in the Case of Andrews v. Brown.

8. So one who by his direct's that his Debts shall be paid, or makes any Provision for the Payment of his Debts in General, thereby receives a Debt barred by the Statute of Limitations. Chan. Prec. 386. Pach. 1714. in Case of Andrews v. Brown.

9. So an acknowledgement and a Promise to pay a Debt which is barred by the Statute of Limitations, is sufficient to maintain an Action for Recovery of it; But a bare acknowledgment is not. Chan. Prec. 387. in Case of Andrews v. Brown.

(T. b. 64) Living or Dead.

The Baron's brothers and others swore, that the Baron being a Miniler parted this Kingdom at Mary Propper Religionem, and was absent these seven Years in Germany, and that no Merchant of Germany, nor English Person who has travelled there can hear any Tidings of him;
Evidence.


3. 19 Car. 2. cap. 6. 8. 2. If such Persons for whose Life any Estates shall A Lease be granted, shall absente themselves seven Years, and no Proof be made of the Lives of such Persons in any Actions commenced for Recovery of such Tenements by the Lessees or Reversioners, the Persons upon whose Lives such Estates depended shall be accounted as dead; and the Judges shall direct the Jury to give their Verdict, as if the Person abseniting himself were dead. Year to commence after the Death or other sooner Determination of the Estates of J. D. the Father and J. D. the Son, in Possession of the Life Term, if they or either of them so long lived. In Exemption, the Death of J. D. the Son was positively proved, but as to the Father Proof was, that he was reputed dead, and not heard of in fifteen Years; Holt Ch. J. was of Opinion, that this Case is within the Statute, because J. D. the Lessee in Exemption had a Term in Reversion in the Land, and so was a Reversioner within the very Letter of the Statute; and the Defendant not being able to prove that J. D. the Father was alive at any Time within seven Years last past the Plaintiff had a Verdict. Carth. 246. Trim. 4 W. & M. at Exon Affile. Holman v. Exon —

4. 6 Ann. cap. 18. Such Nominees or Tenants of particular Estates on Assignment in Chancery by any Claimant to the Reversion, &c. that they have Cause to believe such Persons dead shall be ordered to be produced, and if not produced shall be taken to be dead; but if it appears afterwards, that such Nominee or Tenant was alive, such Tenant, &c. may re-enter, and recover the Missive Profits.

[T. b. 65] Lost Deeds.

1. A Release was offered to be depo'd, that it had been seen by some at the Bar, it being affirmed, that by usual Means it was lost; but the Lord Chancellor said the Oath should be, that be saw it sealed and delivered, and not that he saw it after it was a Deed; For in Munson the Justices Cafe, a Deed was brought into the Chancery, and a Vidimus upon it, being but a counterfeit Copy, and after the Fraud discovered, and the true Deed produced, therefore no Allowance to be given of a Deed without producing the Deed, or proving the Execution thereof, and here appears what Want we have of Notaries and their Deputies. Cary's Rep. 43, 44. cites Nov. 1 Jac.

2. A Deed of Uses was lost, and to supply it Evidence was given, that the lost Deed had formerly been seen in Evidence in the Exchequer upon an Alienation there questioned, the Land being holden in Capite, and the Record thereof was shewn, and this was allowed for Evidence. Clay. 89. pl. 151. July 16 Car. before Foster Judge of Affile, Wharton's Cafe.

3. In Cases where Charters have been lost by Fire, Burning of Houses, Rebellion, or where Robbers have destroyed them, the Law, in such Cases of Necessity, allows the Proof of Charters without shewing them. Jenk. Deedsburnt. 19. at the End of pl. 35. Necessitas factit factum quand sit as non sit hic citum. but that in 12 Ali pl. 16. the Judges would not suffer a Deed to be given in Evidence which was not produced and shewn to the Jurors. But Ibid. 61, a, the Court said, that in the said Case of the Casualty by Fire, there ought to be great Circumpection and Difcretion in the Judges.

4. A.
4. A Proof that there was a Revocation is sufficient for the Heir without producing the Deed itself, which was taken away by the Defendant himself. Keb. 12. 13 Car. 2. B. R. Negus v. Reynall.

5. A Lease recited in a Release was admitted to be proved by the Witnesse of the Release, without proving the Lease itself; which was embossed by Herbert Leffer of the Plaintiff. Keb. 12. pl. 28. 13 Car. 2. Negus v. Reynall.

6. The Lease was lost, but three Witnesse swore there was such a Lease, and others swore that it was burnt, and taken out of the Plaintiff’s Trunk by the Defendant, which per Cur. is Title sufficient to an Estate without producing the Deed; contra to a Debt, because the Party must say hic in Curia prolat. 2 Keb. 493. pl. 22. Pach. 21 Car. 2. B. R. Moreton v. Horton and Thorer.


8. In a Quatre Impedit, the Plaintiff declared upon a Grant of the Advowson to his Ancestor, and in his Declaration says Hic in Cur’ prolat, but indeed he had not the Deed to shew. Serjeant Baldwin brought an Affidavit into Court, that the Defendant had gotten the Deed into his Hands, and prayed that the Plaintiff might take Advantage of a Copy thereof, which appeared in an Inquisition found temp. Ed. 6. Cur. When an Action of Debt is brought upon a Bond to perform Covenants in a Deed, and the Defendant cannot plead Covenants performed without the Deed, because the Plaintiff had the original Deed, and perhaps the Defendant took not a Counterpart of it, we use to grant Imparailces till the Plaintiff bring in the Deed, and upon Evidence if it be proved that the other Party has the Deed, we admit Copies to be given in Evidence. But here the Law requires that the Deed be produced; You have your Remedy for the Deed at Law. 1 Mod. 266. pl. 17. Trin. 29 Car. 2. C. B. Anon.

9. A Recovery was suffered in Ireland in the Time of Oliver Cromwell, and the Original was lost, but Proof was made that there was an Original. The Question was, Whether the Court might cause an Original to be put upon the File, and so supply the Loss of it? The Judges sent out of Ireland hither to search for Precedents, for which they were much blamed by the Chancellors, for that by the Law an Original might be supplied, Proof being made of it, though the Recovery were suffered in the Time of another King, and so he said it had been frequently done; That Originals in King James’s Time had been supplied in King Charles’s Time, &c. 2 Freem. Rep. 30. pl. 33. Hill. 1677. Tregunnell’s Cafe.


11. A Jointure Deed was lost. It was proved that long since the Jointure’s issued a Fine Sur Conception, and demised the Lands to W. for 99 Years, if he so long lived, for securing the Payment of 400 l. who assigned the same to M. and both found in a Lease for 60 Years to J. S. if the said Jointure should so long live, at the yearly Rent of 260 l. This was admitted a sufficient Proof of the Jointure. 5 Mod. 211. Pach. 8. W. 3. Barley’s Cafe.

12. And to the like Purpose they produced Depositions in Chancery, which they offered to be read, the Bill and Answer being taken off the File, and lost; But they offered to give an Account that it was once filed, which was by the Six Clerks Book, and produced an Involvement of the Decree, which mentioned both Bill and Answer. And the Court being of Opinion, that the Jointure-Deed being lost, they might supply the Proof by Memorials.
Evidence.

rials thereof, since it was impossible to show the Deed itself, the Plaintiff had a Verdifier for so much as was in Joynure. 5 Mod. 210, 211. Palfch. 8 W. 3. Barley's Cafe.

13. Where a Deed is lost or burnt, a Copy, or Counterpart, or the Contents will be admitted to be given in Evidence, but not except it be proved that there was such a Deed executed. Skinn. 673. pl. 12. Mich. 8 W. 3. B. R. in the Cafe of K. v. Sir Thomas Culpepper.

14. In Ejectment, the Plaintiff claimed a Title under a Settlement of his Mother's Ancestor, but could not produce the original Settlement, of which he gave this Evidence, viz. He proved that it came to the Hands of the Lady Baltinglaf who was Tenant for Life, and died, and who, having committed a Forfeiture by suffering a Common Recovery, brought the Deed to Mr. Grange to advise with him about it; He proved likewise, that it was produced before a Master in Chancery in a Suit there depending, and that a Copy of it was made, but that Lady Baltinglaf got the Copy away; That this Copy was produced at a Trial at Law upon a Power as to making Leases, in which there was a special Verdifier found, and the Settlement was set forth in the verba, the Record of which Verdifier was now produced; He proved, that a Bill in Equity was exhibited against my Lady Baltinglaf, to avoid a Lease made by her, and that the Settlement was set forth in this Bill, and admitted by the Lady in her Answer, to the Plaintiff had a Verdifier upon this Evidence. 5 Mod. 384. 386. Hill. 9. W. 3. Matthew v. Thompson.

15. Where an old Term was granted by a Bishop to Queen Eliz. and by her assigned over, and by her Assignee assigned over, as is supposed, to J. S. who, and several Generations after him, have had and continued in Possession, but the House of one of the Family being burnt in the Year 1643, where it is also supposed the original Assignment was burnt, and twelve Years afterwards a Grant of the Reversion of the Term mentioned to be a Term of above 120 Years, was held to be a good circumstantial Evidence to prove the Grant of the Term from the Assignee of Queen Eliz. L. P. R. 356. cites Mich. 11 W. B. R.


17. Bare Recital of a Deed is not Evidence; but if it could be proved that such Deed had been lost, it would do, if it were recited in another. 6 Mod. 45. Mich. 2 Ann. B. R. Ford v. Grey.

18. Note, A Settlement of Sir G. Binion, under which the Plaintiffs, who were his Sistress, claimed, being lost, but being proved in Chancery by the Plaintiffs themselves Thirty Years since, who were not then concerned in Point of Interest, but are since entitled by that Deed, it was ordered that a Copy of the Deed should be admitted to be read at Law, and likewise that the Plaintiffs Depositions should be read to prove the Deed, although they now claim under the Deed. 2 Freem. Rep. 260. pl. 329. Trin 1702. Lady Holcroft and al. v. Smith.

19. Counterpart of ancient Deed lost is good Evidence with other Circumstances, but not of itself. But of a Deed leading theUses of a Fine is good Evidence of it. 6 Mod. 225. Mich. 3 Ann. B. R.

20. The Counterpart of an ancient Deed was admitted in Evidence, and a special Verdifier being found in the Cafe, finding the original Deed is concluded Prunt per the Counterpart it did appear; and this was done to preserve the Precedent; cited by Holm Ch. J. 6 Mod. 225. Mich. 3 Ann. as in Lt. Hale's Time, Mayow v. Comb.

21. And now all the Court held that the Counterpart of the ancient Deed which might be lost, was good Evidence with other Circumstances, but not of itself without other Circumstances; but that the Counterpart of a Deed

---

Evidence.

a Deed leading the Uses of a Fine was of itself good Evidence. 6 Mod. 225. Mich. 3 Ann. B. R. Anon.

22. In a Trial on ejectment between Sir Edward Seymour and his Mother in Law, the Court allowed the Contents of a Deed to be given in Evidence by Witnesses, who put the Contents of it in Writing upon Memory 4 or 5 Days after the reading the Deed. The Court leemed of Opinion that in Case a Deed was lost by some inevitable Accident, that there it might be proved by Copy. But in Case there was no Copy the Contents of it could not be proved from the Memory of those that knew the Deed, and though it was hard for a Man that had no Copy to lose the Benefit of his Deed, yet the admitting that Sort of Evidence would be greater. But here the Opinion of the Court was founded upon a particular Reason; for the Deed by which the Plaintiff was to prove his Title was not lost but proved to be in the Hands of the Defendant; so that in this Case the Danger of allowing this Sort of Evidence is none at all; for if the Defendant was wronged by any Parol Evidence it was in his Power to set all right by producing the Deed. 10 Mod. 8 Palch 9 Ann. B. R. Sir Edward Seymour's Cause.

and was the Defendant. It was proved that after the Death of his Father in Devon, the Deed was seen at his House in Dover Street, Walfiniber, and there read over to the Attorney of Sir Edward Seymour and others, who had a Commission from the Prerogative Office to inspect the personal Estate of his Father, and afterwards it was put into the Scrutore, which was carried to Maiden-Bradley in Wiltshire, where it was again taken out of the Scrutore and read over by my Lady's Attorney in the Presence of several Persons. This was held good Evidence of there being such a Deed; Per Parker Ch. J. Powel and Powys, though it was objected there ought to have been some Account given of the Execution of this Deed, and by whom. It was sworn by one Witness that the Father's Name was to the Deed, and by another Witness that Sir Robert Clayton's Name (a Trustee) was to the same also, but who the rest were that signed, sealed and delivered it could not be proved, nor who were the Witnesses indorsed on the Back of the Deed, and it was held that the proving the Deed in this Manner could do no harm, for if it was not true it was in the Power of the Defendant to shew the contrary. But when the Plaintiff's Witnesses came to prove the Contents of the Deed, and particularly the Uses, there was some Variance in the Evidence, and the Plaintiff was therupon put in fuit. Palch 9 Ann. B. R. Sir Edward Seymour's Cafe.

(T. b 66) Malicious or vexatious Prosecutions, &c

1. In an Action upon the Cafe for maliciously prosecuting an Indictment for Perjury against him, of which he was acquitted, upon Not Guilty pleaded it appeared upon the Evidence that the Defendant was a Justice of Peace, and procured some as Witnesses to appear against him, and his own Name was indorsed upon the Indictment to give Evidence. The Court agreed this did not make him a Prosecutor; for if a Justice of Peace knows any Person that can give Evidence against one that is indicted, he ought to caufe him to do it. But it was proved on the Defendant's Side, that this Indictment was drawn up by an Order of the Sessions; Wherefore Kelynge Ch. J. said that the Plaintiff declined to be bound to his good Behaviour for bringing the Action. 1 Vent. 47. Mich. 21 Car. 2. B. R. Girlington v. Pittfield, S. C.

2. Nonuit is sufficient Evidence that there was no Cause of Replevin, at least it is Evidence of a Vexation. Pet Holt Ch. J. 12 Mod. 54. Trin. 13 W. 3.

3. In Case for a malicious Prosecution for Felony, brought after Acquittal, it was agreed that the Declaration must agree with the Indictment substantially; and here the Indictment being for stealing Unus Sinistralus, Anglicly a Callico Quilt, and the Declaration Unus Sinistrorum, it was adjudged a material Evidence; but the Declaration having besides laid generally, that he charged the Plaintiff with Felony before a Justice of Peace, it was held sufficient to maintain the Action; and likewise that it was necessary here for Defendant to prove a Felony committed.
Evidence.

committed, and a probable Cause; of Suspicion. 12 Mod. 555. Trin. 13 W.
3. Anon.

(T. b. 67) Manor and Contents of a Manor.

1. In Ejeclament, a Leafe was pleaded of a Manor, whereof the Fields in which were Parcel. Illue was joined Quod Non Diminit Manerium. It was found, that there were not any Freeholders, but diverse Copyholders, and that it was always known by the Name of a Manor; Adjudged, that this shall pass for him who pleaded the Demise of the Manor. Arg. 2 Brownl. 223. Hill. 7 Jac. B. R. cites Finch v. Durham.

2. A. In forma pauperis had a Decree against C. for the Manor of B. that the Contents of the Manor were doubtful. C. shewing ancient Deeds, that proved divers Parcels of the Lands claimed by Force of the Decree by A. to be of another Manor, which notwithstanding the Lord Chancellor, Egerton ordered, that it should be put to Jury, and they to find as the Contents of the Manor had gone by usual Reputation sixty Tears past, and not to have it paired, and defalked by such antient Deeds. Cary’s Rep. 33, 34.

(T. b. 68) Mariners Wages.

1. If a Skip be bound for the Eaft-Indies, and from thence to return to England, and the Skip unlares at a Port in the Eaft-Indies, and takes Freight to return to England, and in her Return she is taken by Enemies; The Mariners shall have their Wages for the Voyage to the Eaft-Indies, and for Half the Time that they stayed there to unlares, and no more; Ruled by Holt Ch. J. June 4, 1700, at Guildhall at Nili Prior. Ed. Raym. Rep. 739. Anon.

(T. b. 69) Marriage.


2. What can get better Evidence in a Court of Law to shew that there was No Marriage than a Sentence in Spiritual Court carried on in a regular Suit, and pronounced in the Life-time of the Parties, that they were guilty of Fornication, and Proof of the Commutation Money paid by the suppos’d Father. 8 Mod. 182. Trin. 9 Geo. in Cafe of Hiliard v. Phaley.


4. For the Proof of a Marriage was given in Evidence Cohabitation for twenty Years, that they came from Lincolnshire to London, lodged together in Wild-Street, that the Husband was a Papist, and were married by such a one who was the Portugal Ambaffador’s Chaplain, for which Reason no other Person was present, that he in his Life-time acknowledged her was his Wife, and desir’d the Witnesses to use her as such, and that a little before and on the Day of his Death, declared in the Presence of his Physician, and several others now produced as Witnesses, that he was married to her. 8 Mod. 180. Trin. 9 Geo. Hiliard v. Phaley.

5. A. and M. were married at the Fleet-Prifon by different Names, and an Entry was made in the Register there of the Marriage there such a Day, between Robert Marlhall and Anne How, of &c not being the Names either of the Man or Woman; This was adjudged in the Spiritual
Evidence.

6. A marriage was not allowed on a trial, it being signified to the Court, that a sentence in the Arches had been given that there was no marriage, and the Temporal-Courts must give credit thereto till it is reversed, it being a matter of mere Spiritual Cognizance. Carth. 225. Paich. 4 W. & M. B. R. Jones v. Bow.

[T. b. 70] Marriage Agreement.

1. In debt upon an obligation, Cook Ch. J. said, and that so was the Opinion of the Civilians, that a Disagreement to the marriage had under the age of consent at the age ought to be published in court, otherwise the issue may be battarded; for a Disagreement in writing is not sufficient Disagreement, nor a good proof. Noy. 153. Anon.

2. Agreement on marriage was to settle 500l per annum. Jointure. Lands were settled, but they were worth only 400l. per annum. Decreed by Jeffries Ch. J. to make up the lands 500l. per annum. and this on the evidence of the Father and Uncle, that when the husband proposed the treaty of marriage he offered to settle 500l per annum, and after took notice the jointure settled was not of that value, and talked of making it up to 500l. But no covenant or agreement proved whereby he bound himself to make a jointure of that value, and the portion not equivalent; but the husband was trusted to draw the settlement. Vernon 17. Mich. 1631. Benjon v. Bellasis.

3. In an Assumpsit on a contract to marry, any lawful impediment may be given in evidence, as that the parties were within the levitical degrees, &c. for this makes the promise void; but it is otherwise of a pre-contract; per Holt Ch. J. 5 mod. 412. Mich. 10 W. 3. Harrison v. cague, & ux.

If such a promise is not in writing, defendant may give in evidence the statute of 29 Car. 2. that the parties were within the levitical degrees, &c. for this makes the promise void; but it is otherwise of a pre-contract; per Holt Ch. J. 5 mod. 412. Mich. 10 W. 3. Harrison v. cague, & ux.

4. S. was indicted for forcibly taking, carrying away, marrying, and carnally knowing P. R. a virgin having an estate, &c. Holt Ch. J. summed up the evidence, and gave the following Directions to the jury. 1. You are to know that if the was taken away by force, and afterwards married, though by her consent, yet he is guilty of felony; for it is the taking away by force that makes the crime, if there be a marriage though by her consent. 2. In the next Place it is to be observed, that she was taken by force, and a stratagem was used to give an opportunity thereunto, and the arrest was but a colour. 3. You may consider upon the evidence how far the prisoner was concerned in the first force, it is true he was not at the arrest, and did not appear till she was brought to H's house, and under the pretence of bailing her, she was carried to the vine tavern, where there was a parson ready, and the marriage was had in such a manner as you have heard; now it is left to you to determine whether the marriage was not the end of the arrest; and if so how it could be possible for such a force to be committed to effect the prisoner's design, and he not privy to it. 4. If it can be imagined he was not privy to the colourable arrest, yet she was under a force when he came to her at H's house, and from thence she was carried by force into the vine tavern, where she was married. That is a forcible taking by him at H's house, and though when
when she was at the Vine Tavern she did express her Content to be married, yet it appears that even then she was under a Force, and had no Power to help herself. She was also under a Force when she was carried to B's, and put to Bed; nay, when she was carried to the Justice of the Peace, even then she was under a Force, and all that she said was not freely, but out of Fear; such a Fear would avoid any Bond, for she was under Imprisonment; but however, it the first Taking was by Force, and she had consented to the Marriage, the Offence is the same, it is Felony. He was convicted and executed. Holt's Rep. 319. Mich. 1 Ann. B. R. Swenfden's Case.

5. If there be an Express Promise of the Marriage by the Man, and it appeared that the Woman consented it, and by her Actions behaved herself so as if she agreed to the Matter, though there be no actual Promise, yet that shall be sufficient Evidence of a Promise of Marriage on the Woman's Side. Per Holt Ch. J. 6 Mod. 172. Paff. 3 Ann. B. R. Hutton v. Manel.


1. The Surnise to have a Prohibition was, that the Inhabitants of D. of which he is an Inhabitant, have paid annum Med. Decimand, and they were at 11f. 6d. and he proved only that he himself had paid it; and yet well and no Confultation, for every Particular is included in the general, and proved by it, and it appears sufficient Matter for a Prohibition, and to oult a Spiritual Court of their Conufance. zdly. Agreed, that where the Statute apponts Proof of the Surnise to be by two, it is sufficient if two affirm that they have known it to be so, or that the common Fame is so. Nov. 23. Anon.

(T. b. 72) Money received or laid out to a Man's Use.

1. In an Action upon the Case for Money received by the Defendant for the Ufe of the Plaintiff, the Evidence was, that the Defendant was Apprentice to the Plaintiff, and this was for Service done in a Shop of the King's during the Apprenticehip; and the Indentures of the Apprenticeship being produced to prove the Defendant Apprentice to the Plaintiff, it was infufed that the Hand of the Defendant ought to be proved, to which Holt Ch. J. agreed, unless the Indenture be enrolled. Skin. 379. pl. 2. Patch 7 W. 3. B. R. Anon.

2. In Case for Money had and received to the Plaintiff's Ufe, the Evidence that the Plaintiff's Wife was Executrix, and that the Money was paid to the Defendant as due to her, and the Plaintiff was nonsuitis, for it being paid without any Authority from the Husband, it remains as a Debt due to the Executrix, and the Action ought to have been by Baron and Feme as Executrix, and it the Baron had died, the Feme might bring an Action for it, but if the Money had been received by Authority from the Husband, then it had been as his Receipt, and as his Money, and the Action in his Name alone had been well, and the Money would have been Affairs in her Hands. 1 Salk. 282. pl. 10. Patch, 8 W. 3. B. R. Anon.

3. Action upon the Case was brought for Money received to the Ufe of the Plaintiff, the Defendant would have given Evidence upon Non Affirmat, that the Money was condemned upon a common Attachment within the City of London, which the was oppoited, because the Condensation was after the Action commenced in the Courts above, to which it was answered, that though it was after the Action commenced, yet it was before Non Affirmat is pleaded, and so well enough; Non allocator; for the Difference is where the Condensation is before the Action
Evidence.

4. In Account the Care on Evidence was this, A. gives a Note to B. upon C. for B to receive it for the Use of A. B. owes C. Money, and C. upon this Note discharges B. thereof, whereupon A. brings his Action against B. and it lies. 12 Mod. 309. At Nisi Prius at Guildhall. Coram Holt. Paych. 13 W. 3.

5. A. orders B. to receive Money from C. for him, B. orders C. to pay the Money to D. to whom B. owes Money; C. accordingly does pay it; A. shall maintain an Action against B. as for so much Money received to his Use. Per Holt C. J. 12 Mod. 565. Mich. 13 W. 3. Anon.

6. So if in that Case B. had drawn a Bill upon C. for the Money, or generally for so much Money, if C. has no Effects of B's in his Hands; his answering such Bill is a Payment of A's Debt to B. for which A. may maintain his Action against him. Per Holt C. J. 12 Mod. 565. Mich. 13 W. 3. Anon.

7. In an Action for Money laid out to Defendants Use; it was held upon Evidence, that Promissory Note given to the Plaintiff's TEsfator to allow a young Student at Cambridge 20l. per Annum, would not maintain the Declaration, though it appeared the TEsfator had laid out this Sum yearly for the Defendant, because the Defendant refused to do it himself. Barnard Rep. 301. Hill. 3 Geo. 2. 1727. Goody. v. Mosely.

(T. b. 73) Mortuary.

1. On this whether Mortuaries were due by Custom or not, the Account-Book of receiving them by an Impropritor was allowed at Winchester Lent Assizes 1719. Coram King Ch. J. in a Rumsey Caufe, and he said he could not distinguish this from a Parfon's Book, which was al-
ways in the Exchequer, Per Curtum Scaccarii, though he could not give a Reason for it.

(T. b. 74) Murder of Bastards.

The Statute of 18 Eliz. concerning Bastard Children, does not extend to the Care of a Child born of a Woman married, whose Husband was not within the King's Dominions when the Child was begotten or born. Two Orders were made for the reputed Father (not the Husband) to maintain it; but it was moved to quash it, because the Statute of 18 Eliz. gives the Justices no Jurisdiction but where the Child was born out of lawful Matrimony; and because it was not alleged in the Order that the Husband was beyond Sea for the Space of Forty Weeks before the Birth of the Child, and it is not sufficient to say that he was beyond Sea at the Time of the Conception, because that is what in Nature cannot certainly be known. And for this last Reason the Orders were quashed; but the Court bound the Defendant by Recognizance to appear at the next Quarter Sessions for Middlesex, being inclined to bring the Case within the Statute of 18 Eliz. because of the frequent Michiels of this Kind which have happened among Servants Wives. Cartb. 409, 472. Mich. 10 W. 3. ib R. The King v. Alverston.

(T. b. 75)
Evidence.

[T. b. 75] Nonage.

1. If the Question upon a Writ of Error brought to reverse a Fine or Recovery for Nonage, Whether the Party be of full Age, or within Age? It shall be tried by the Court by Inspection of the Party during his Infancy, and not by a Jury. Hill. 22 Car. i. B. S. But there must be other concurrent Proof made to the Court, as well as by viewing the Party, viz. by producing the Parish Register-Book where the Person was christened, and also Affidavits of some Persons who can swear to the Time of the Birth; For the Court may be deceived, if they should rely only upon the View of the Party. L. P. R. 46.

(T. b. 76) Non Assumpsit.

1. There is a Diversity between Assumpsit in Fact and Assumpsit in Quaere, if it cannot be given in Evidence to toll the Assumpsit, but only in Mitigation of Damages; but upon Assumpsit in Law, and Non Assumpsit pleaded, a Release may be given in Evidence, because the Assumpsit is tolled by it; Agreed per Cur. Sid. 236. pl. 3. Hill. 16 & 17 Car. 2. B. R. Beckford v. Clarke.

2. In an Indebitatus Assumpsit for Money lent, the Defendant pleaded Non Assumpsit, and gave Infancy in Evidence, and it was agreed by ten Judges, that upon the General Issue such Evidence had been of late admitted. 1 Salk. 279. pl. 4. Palfich. 5 W. and M. in C. B. Darby v. Boucher.

Full Fact entitle the Plaintiff to an Action; This was held clearly by Treby Ch. J. in S. C. ibid.—

3. Fine Court may plead Non Assumpsit, and give Coverture in Evidence; because Coverture makes it no Promise. 6 Mod. 230. Mich. 3 Ann. B. R. Anon.

(T. b. 77) Non Compos.

1. Devising a greater Estate in Land to a younger than to an elder Son, and limiting a Remainder over in Fait on either of his said Sons dying with (instead of without) Issue, is no Evidence of Testator’s being Non Compos. 8 Mod. 59. Mich. 8 Geo. Burr v. Davall.

(T. b. 78) Non est Factum.

1. In Debt upon an Obligation the Issue was Non est Factum; The Ow. 8. Michael’s Case, S. C. and Judgment. Goldib. 85. pl. 2. S. C. adjudged for the Plaintiff, for there was no Fault in him.

2. Non est Factum cannot be pleaded generally upon the Statute of Usury, or the Statute of Sheriff’s; Per Cur. Hob. 72. in pl. 86.

3. If
Evidence.

3. If two Men are bound jointly, and the one is sued alone, he may plead this Matter in Abatement of the Writ, but he cannot plead Non est Factum; For it is his Deed, tho' it be not his sole Deed. Co Litt. 283 a.


(T. b. 79) Notice.

1. Upon the use of Notice in a Patron upon Refusal for Illitterature, Quare. If fixing a Note to the Church-Door will be sufficient Evidence. Dy. 327 b. b. pl. 7. Mich. 15 & 16 Eliz. Anon.

2. Being told by Persons of good Credit all along the Road of the Part. Proclamation, is good Evidence of Notice in an Action of False Imprisonment. 2 Show. 300 pl. 302. Pach. 35 Car. 2. B. R. Verdon v. Deacle.

3. If a Husband and Wife cohabit, and the Wife deals separately, her Contract shall charge the Husband; for Cohabitation is sufficient Evidence of Notice. 6 Mod. 162. Pach. 3 Ann. B. R. Langford v. Administrator of Tyler.

(T. b. 80) Not taking the Oaths.

1. Record of Sessions given in Evidence to prove the Plaintiff had not taken the Oaths, per Holt Ch. J. this Record is Evidence. Indeed, if there is a Mifentry, it may be supplied and corrected by other Evidence, for he should not be concluded by the Miftake or Negligence of the Officer; But still 'tis a Record, and some Proof, tho' not a complete Proof, and might be left to the Jury. 1 Salk. 284. pl. 16. Mich. 12 W. 3. Thurston v. Statford.

2. Upon any Trial for Forfeiture for not taking the Oaths, &c or making such Registry as aforesaid, a Certificate thereof under the Hands of the proper Officer shall be allowed as Evidence of the Defendant having taken the said Oaths, or subscribed such Declaration of Fidelity, or taken the Es- feft of the Affuration Oath respectively as aforesaid.

(T. b. 81) Nul Diffelfin.

1. If in Assise the Tenant pleads Nul Tort Nul Diffelfin, he cannot give in Evidence a Release after the Diffelfin, but a Release before the Diffelfin he may; For then upon the Matter there is no Diffelfin. Co Litt. 283 a.

(T. b. 82) Number of Acres in a Fine.

1. On Trial in the North, whether Lands were comprised in a Common Recovery or not, being as described but 28 Acres, yet the Full was they were 120 Acres; Yet none, because the Intent of the Party is what is to govern in these Cases, and these 28 Acres shall not go according to Statute, but the Estimation of the Parties. Per King Chan. Trin. Vac. 1727.

(T. b. 83) Nuiances.

1. In an Indictment for erecting Posts and Rails in a Highway, it was held necessary to prove, that the Party indicted did set them up for a Continuation of them, or not suffering them to be removed, would not serve. — Hale Ch. J. said if there be no special Matter to fix it upon others.
Evidence.

241

241

Lנכ. but Ami ? Per The Anon. according to the Fact, though not directly to the Issue may be given in Evidence upon it, as here taking of Money to get People pafs. And it is no Exception to a Witness here, that he contributes to carry on the Suit, or that this publick Nuisance was to his private Nuisance ; Per Holt Ch. J. 12 Mod. 615. Hill. 13 W. 3, the King v. Clark.

3. It was ruled by Holt Ch. J. at the Sittings at Westminster, Hill. 9 W. 3, B. R. in an Indictment for a Nuisance, that the Building of a House in a larger Manner than it was before, whereby the Street became darker, is not any publick Nuisance by Reason of the Darkening. Md. Raym. Rep. 137. The King v. Webb.

4. A Thing may be a Nuisance at one Place, and not so at another, as in Chester; As stinking Dy-Water is not so at Taunton or Wellington in the Way of Trade; Coram Pengelly Ch. B. at Taunton Assizes, Lent 1729-30.

[T. b. 84] Original Writ.

1. The Certificate from the proper Officer is the only Way of Trial what the Original in the Action was, and he having certified, that a Quare Clautum Frequent was the Original, the Court is bound to give Credit to this Certificate, Arg. and the Court was of the same Opinion. 10 Mod. 318. Mich. 2 Geo. 1. in Case of Doucett v. Chaplin cites Cro. J. 108. 479. Noy. 4. Cio. C. 272. 281. Brownl. 96. Yelv. 108.

[T. b. 85] Parcel of a Manor.

1. Of Land being reputed Parcel of a Manor in the King's Cafe, How and How in the Cafe of a common Person. 2 Roll. Prerogative, 186. [L b] pl. 9.

2. When the Priorites were suppreffed a Commiffion issued, and a Certificate was made upon all the Poffeffions and the Value which belonged to the Priorities, and therefore it is good Evidence upon an Issue, if Land was Parcel of a Priory or not, that the Certificate makes no mention of it. Litt. R. 36. Trin. 3 Car. C. B. Anon.

[T. b. 86] Payment Modo & Forma.

1. Frequent on Condition, that the Feoffor paid so much Money at such a Day and Place. The Defendant pleaded, that he paid the Money at the Day and Place Modo & Forma, and gave in Evidence before the Day, and produced an Acquittance referring the same; And adjudged ill, for by laying at his Pleading he has made the Day and Place Parcel of the Issue, and to restrain him, I should have been specially pleaded. Mo. 47. pl. 41. Patch. 5 Eliz. Anon.


2. In Debt upon a Bond of 40 l. for the Payment of 20 l. at a Day and Place certain; The Defendant pleaded, that he had paid the said 20 l. according to the Condition, upon which they were at Issue; and at the Q q q Nul


2. In Debt upon a Bond of 40 l. for the Payment of 20 l. at a Day and Place certain; The Defendant pleaded, that he had paid the said 20 l. according to the Condition, upon which they were at Issue; and at the Q q q Nul
Evidence.

Nili Prior, the Defendant gave in Evidence, that he had paid the Money to the Plaintiff before the Day, and the Plaintiff had accepted it. All which Matter the Jury found specially, and referred the same to the Justices; And it was said by the whole Court, That that Payment before the Day was a sufficient Discharge of the Bond; but because the Defendant had not pleaded the same specially but generally, that he had paid the Money according to the Condition, the Opinion was, that they must find against the Defendant, for that the special Matter would not prove the Illue; And the Lord Dyer said, That the Plaintiff's Council might have demurred upon the Evidence. Godb. 10. pl. 14. Mich. 24 Eliz. C. B. Anon.

3. In Debt upon Bond, the Condition was for Payment of a Leffer Sum at a certain Day and Place. The Defendant pleaded Payment at the Day and Place. The Jury said that be paid before the Day at another Place, and that the Plaintiff accepted it. All the Court held, that Payment before the Day was Payment at the Day, and Judgment for the Defendant. Cro. E. 142. Trin. Eliz. C. B. Bond v. Richardson.

4. The Receipt in the Mortgage-Deed and Condition of Redemption on Repayment of the Money, and Defendant's Oath that he paid it, the Court inclined was Evidence enough of Payment of Mortgage-Money after 10 Years against any Perfon; But the Plaintiff standing upon it that it was not sufficient as against the Plaintiff, who claimed as Jointref, there was farther Evidence. Chanc. Cases, 119. Hill. 20 & 21 Car. 2. Goddard v. Complin.

5. The Case was, that a Bargain and Sale was pro diversis considerationibus generally, and this was admitted in Evidence to prove Money reversa paid; and it be paid by one of the Bargainers, this is sufficient for all to raise the Use unto all. See if it is paid to one of the Bargainers, if that be not good also. Claty. 145. pl. 263. Mar. 1650. Harley v. Thompon.

6. It was said by Glyn Ch. J. at a Trial at Bar, that if a Deed express a Consideration of Money upon the Purchase made by the Deed, yet this is no Proof upon a Trial that the Monies expresseed were paid, but it must be proved by Wistnesse. St. 462. Mich. 1655. Thurlue v. Madifon.


8. Adjudged, that where the Illue is Payment at the Day and Place, in such Case, Payment before the Day, or at any other Place is good Evidence, for Payment before the Day, is Payment at the Day. 3 Salk. 156. pl. 13. Mich. W. 3. Anon.

9. If a Man contracts for Goods, and after his paying them away gives the Seller a Goldsmith's Note for the Money, this does not amount to
Evidence.

243

to Payment; But if it were given at the Time of the Contract, it would be prima facie Evidence that it was taken in Payment. And if a Man upon a Contract made before takes such a Bill, and keeps it till the Party on whom it is drawn becomes insolvent, in an Action brought by him upon that Bill against the Buyer he shall be barred; but he shall recover the Debt upon the original Contract; Per Holt Ch. J. 12 Mod. 408. Trin. 12 W. 3. Anon.

10. If I set my Name as a Witness to a Receipt, this is not in Testimony of the Receipt of the Money, but of the Party setting his Hand. Holt Ch. J. Exeter, Lammas 1706

11. A Receipt of the last Half-Year's Rent, is Evidence that all before was paid. Tr. per Pais, 7th Edit. 315.

12. Plaintiff'sd to the Defendant 100 l. South-Sea Stock for 400 l. the Defendant upon the Transfer produced a Note of Mitford's and Martin's of 500 l. which the Plaintiff received, and gave him a Note on Mr. Brand his Goldsmith for 100 l. which the Defendant received. The 500 l. Note was given between 12 and 1 at the S. S. House, and Mitford and Martin lived in Cornhill, so that the Plaintiff might have gone immediately and received the Money; but instead thereof, about 4 that Afternoon, being the 19th of October, he gives the 500 l. Note in at the Bank, who at 11 the next Morning sent a Servant to receive the same. Mitford and Co. paid from 8 till 9 that Morning, and then stopped. The Ch. J said The Plaintiff was not obliged to go immediately to receive the Money after the Receipt of the Note, tho' the Goldsmiths lived so near, but had a convenient Time by the Law allowed, and left it to the Jury whether this was fo, and they found for the Plaintiff that it was not, and that there was no Laches in the Plaintiff. Coram King Ch. J. apud Guild-hall, Hill. 7 Geo. Holms v. Barry.

13. The same Day the like Case was in B. R. coram Pratt Ch. J. inter Moor and Warner, and differed only in this, that the Plaintiff here sent the Note himself, and went the next Day about 10 to receive the Money, and the like Direction and Verdict was given as in the former Case.

14. P. had a running Account with B. a Banker, in whose Hands he had 3000 l. B. paid him 1000 l. for which P. instead of a Receipt, gave him a Promissory Note, who assigned it to H. B. became a Bankrupt; H. sued the Note; and on the Trial, P. not being able to prove that B. at the Time of the Assignment was a Bankrupt, H. recovered; Now Bill is brought for an Injunction, and to have a Discovery whether the Assignment was not made after the Time it bore Date. It was inferred, that tho' this was a Promissory Note, it should be considered only as a Receipt, he having at that Time Money in Hands, and could not be imagined he intended to be liable on the Note at the same Time that so much Money was due to him; and if fo, the 1000 l. should be taken as so much Money paid and deducted out of the 3000 l. to should come in for his distributive Share of 2000 l. of the Bankrupt's Estate, and not to be a Creditor for 3000 l, and pay the 1000 l. Ld. Chancellor, If People are so careless to give Notes instead of Receipts, it is more fit they should suffer than innocent People who know nothing of their Transactions. Bill differed. Sel Cates in Can. in Ld. King's Time, 42, 43. 11 Geo. Pembem v. Bland and Hoskins.

15. Where Discounts are allowed by Course of Trade for prompt Payment, or on balancing Accounts at a first Time, these Allowances are as actual Payments, and fo to be understood and taken; Per Ld. Chan. King, 25 April 1729.

16. One of the Subscribing Witnesses to a Conveyance, the Consideration whereof was 8 l. said, that he saw Gold paid at the Time of executing the Deed, and that after the Execution he heard the Vendor acknowledge.
Evidence.

judge that he had received his Purchase-Money; but Ld. Ch. Hardwicke said this is not such a sufficient Proof of the Payment of the Consideration-Money in a Deed as may be expected. Barn. Chan. Rep. 189. Patch. 1749. Fleetwood v. Templeman.

(T. b. 87) Pedigrees.

1. At a Trial at the Bar between Baxter and Folter, concerning the Title of Land, a Copy of an Incription upon a Grave-Stone in London was admitted in Evidence to prove a Pedigree. L. P. R. 552. cites Mich. 1656. E. S.

2. Charter of Pedigree, is no Evidence of itself, without shewing the Books and Records whence it is deduced, to prove Defect, though the Heralds swore that the Pedigree was deduced out of the Records and ancient Books in the Office. 2 Jones 224 Mich. 34 Car. 2. B. R. Earl of Thaner's Case.

3. A Copy of an Incription on a Tomb-stone, allowed to prove a Pedigree. Sry. 298.

Though Herald's Books are allowed to prove a Pedigree, yet this is because they have not better Evidence, and this is their proper Business about which they are employed, and therefore there is some Credit to be given to them, but they do not deserve much, because they are so negligently kept. Skin. 623. pl. 17. Mich. 7 W. 3 B. R. in Cafe at Steyne v. the Burgesses of Droitwich.

4. Herald's Books are allowed to prove a Pedigree, but that is because they have not better Evidence, and this is their proper Business about which they are employed, and therefore there is some Credit to be given to them, but they do not deserve much, because they are so negligently kept. Skin. 623. pl. 17. Steyne v. the Burgesses of Droitwich.

5. Inter Zouch and Waters apud Guildford Lent Affizes 5 Geo. A Book out of the Herald's Office was allowed to prove the Plaintiff was not descended from one William Zouch of Pilton, as also an old Book of my Lord Oxford's Library mentioning the Pedigree of William Zouch of Pilton, which was signed by himself.

(T. b. 88) Perjury.


2. Exception was taken to a Witness, that he was convicted of Perjury, and they offered a Copy of a Verdict, on which there was never any Judgment in Oliver's Time. But the Court would not admit the Evidence, because all is discontinued by the Alteration in the Government. But it was agreed, that Evidence might be given Viva Voce to prove him perjured; the other Side to establish the Witness's Credit, produced a Pardon of the Perjury; but per Cur. that will not do, for it cannot reprove him to his Credit. Sid. 51. pl. 16. Mich. 13 Car. 2. B. R. Wicks v. Smallbrook.

3. Jews were sworn as Witnesses by Keeling Ch. J. at Guildhall on the Old Testament only, and afterwards on its being moved in B. R., if this was an Oath by the Stat. 5 Eliz. cap. 9, which might be adjourned for Perjury, and the Court held that it was, and within the General Words of Sacro Saneta Evangelia; so of the Common-Prayer Book that bas the Epistles and Gospels; but by Windham that of a Psalms-Book only it is not so. 2 Keb. 314. pl. 25. Hill. 19 & 20 Car. 2. B. R. Robeley v. Langton.

4. An
Evidence.

4. An Information was for Perjury in Ejectment, the Defendants
    unjustly upon Not Guilty; and now upon Evidence to prove this Per-
    jury, one was produced to prove what one, since dead, swore upon the
    first Trial, and it was allowed. Per 2 Justices against Keeling Ch. J.

5. Depositions of Witnesses before Commissioners in Chancery are not to
    be allowed as sufficient Evidence to convict one of Perjury, &c. Comp.

6. Upon an Information of Perjury in an Affidavit in C. B. made be-
    fore Commissioners in the Cause there, a Copy of the Affi-
    davit produced, and proved to be made on of by him, upon a Motion
    in the Cause was held to be good Evidence; but a Copy of an Affidavit
    only produced against a Man, without Proof that he made it, used it,
    or was concerned in the Cause will not do. Show. 397. Thin. 4 W.

7. In an Indictment in Perjury upon an Answer in Chancery; ruled
    first, that the Complainant in Chancery is no Witnesses pending the
    Suit. 2dly. That if the Bill be dismissed he is a Witnesses. 3dly. The
    Bill being taken off the File, it is no Evidence, for it is not a Record after
    it is taken off the File. 4thly. Though the Bill taken off the File be
    not Evidence, yet a Copy of the Bill made when the Bill was upon
    the File was read. 5thly. There being but the Oath of the Procurator,
    and to Oath against Oath, the Defendant was acquitted. Skin. 327. pl.

8. In an Indictment of Perjury before Holt Ch J. at Guildhall,
    ruled in Evidence, First, That though the Perjury be assigned in an
    Affidavit made at Sergeant's Inn; yet it is good if it be in Chester, or
    any other Place within the same County. 2dly. That it ought to be proved
    that the Affidavit was read, and used against the Party, for without
    using it the bare making of an Affidavit, without producing and using
    it will not be sufficient. Skin. 403. pl. 39. Mich. 5 W. & M. in B R.
    The King and Queen v. Taylor.

9. A False Oath any Way conducive to the Matter in Issue, or a Guide
    to the Jury, though it be but circumstantial, is Perjury. 12 Mod. 142.

10. If it be Matter that tends to the Discovery of Truth, though but a
    Circumstance, as that such a one wore a blue Coat whereas he was a red,
    it is Perjury; but if he tell an impertinent Story nothing to the Purpose,
    then it is not so. 12 Mod. 142. Mich. 9 W. 3. King v. Griebe.

11. If a Man speaks to the Credit of a Witness, which is not directly
    to the Issue, yet if false, that is Perjury. 12 Mod. 142. Mich. 9 W. 3.

12. At a Trial, the Question was upon Money lent, and it being ob-
    jected, that it was improbable, the Plaintiff being a cautious Man, should
    lend such a Sum without a Note; a Witness was produced to prove that he
    had lent a greater Sum to a Person then in Court without a Note, which
    Person gave he did not; and upon Motion to file an Information of Per-
    jury against him for the Oath, Court held it reasonable. 12 Mod. 142.
    Mich. 9 W. 3 King v. Griebe.

13. Mandamus to admit Morris to the Freedom of the City of Lincoln,
    Carth. 448. he having served Seven Years Apprentice, which the Mayor refused, be-
    cause would not take the Freeman's Oath, he being a Quaker, but ol-
    fered to make a solemn Affirmation according to the late Act, 7 W. 3.
    cap. 54. And the Court were of Opinion, that he ought to be admitted
    on his solemn Affirmation; for the Office of Freeman is no Place of Pre-
    fent or Office in the Government within the Statute; By his serving the Ap-
    prenticeship he had a Right in the Freedom, and his Admission where-
    unto the taking of an Oath is not essential, but only by Custom; and the
    Intent of the Act was, that unless in those Cities excepted by Pro-
vivo, the Affirmation of a Quaker should be as available as his Oath; and though it was returned in this Case, that every Freeman had the Liberty to run a Cow upon the Common within the said City, yet that will not alter the Case. 12 Mod. 190. King and Morrice v. the Mayor and Commonalty of Lincoln.

14. To convict a Man of Perjury a probable Evidence is not enough; but must be a strong and clear Evidence, and more numerous than the Evidence given for the Defendant, for else it is only Oath against Oath. Per Parker Ch. J. 10 Mod. 194. Mich. 12 Ann. B. R. in the Case of Q. v. Mulford.

15. A Person swears that he saw and read such a Deed, and it proved on the Trial to be only the Counterpart which he saw, and yet held no Perjury, because only a Mistake. 10 Mod. 195. A Case cited by Parker Ch. J. in Case of Q. v. Mulford.

16. Parker Ch. J. held that Perjury may be committed in circumstantial Matter; but it must be a very material Circumstance, a Circumstance of that Weight, that without it he could not hope to find Credit with the Jury. 10 Mod. 195. In Case of Q. v. Mulford.

17. In an Indictment for Perjury in an Answer in Chancery, though at Common Law. yet the false Oath must be voluntarie & corrupte, and therefore if it appeared that the false swearing was in a Point not material, it was an Evidence that the Oath was not corrupt, and so it was determined in the Case of the King v. Buskett in Ch. J. Parker's Time, upon which the Defendant was acquitted; and that to convict a Person of Perjury there must be more Evidence than a simple Oath, otherwise it would be only Oath against Oath. In this Case the Perjury was alleged to be in Answer to a Bill filed such a Term, and the Copy of the Bill produced was an amended Bill by Order of the Court of a subsequent Term, Objected, that this was not the Bill to which the Answer was put in, for that was to the original Bill, Sed non allocatur, for the amended Bill is Part of the original Bill. Coram Eyre and Fortescue J. apud Weetminister. Mich. Vac. 6 Geo. The King v. Waller.

[T. b. 89] Possession.

1. The Law does ever favour Possession as an Argument of Right, and does incline rather to long Possession without shewing any Deed, than to an antient Deed without Possession; And after a long Possession Omnia Praesum debent Solvuntur esse aedia. 2 Inst. 118, 362.

2. Possession of fifty nine Years maketh no Title in Law to a Common, if the Commencement thereof can be showed since the Time of the Reign of R. 1. but the said long Possession is great Evidence, and a strong Presumption of the Right of Common, & Stabilitur Pretiumoni donec Proboetur in Contrarius. 2 Inst. 477. 2 Mod. 277, 278.

3. In Ejecution on a Trial at Bar, the Statute of Limitations was intituled on; and this Point was ruled by the Court, That the Possession of one Jointenant is the Possession of the other, so far as to prevent the Statute of Limitations. 1 Salk. 285. pl. 19. Hill. 2 Ann. B. R. Ford v. Grey.

4. Ejecution at Launceston Summer Assizes 1732. Coram Fortescue A. that where in Order to remove an Objection of twenty Years Possession, Evidence was given of an Entry about fifteen or sixteen Years back, this bare Entry is not sufficient, unless something more was done, or there had been some Proceedings after it.

5. Where the Tenements of a Manor are sold to several Persons, and the Manor divided into Parts, the Enjoyment is the proper Evidence to whom Parts of any of the Waste of Manor do belong; Coram Pengelly Ch. B. at Exon Lent Assizes 1729-30.

[T. b. 90]
Evidence.

[T. b. 92] Prescription.

1. Where several Interruptions are proved to be made, it is an Evidence against the Custum. Ley. 56. Trin. 7 Jac. in Borough of Doncaster's Cafe.

2. The Defendants prescribed for Common for all Cattle, &c. at all Times of the Year. In the Evidence it appeared the Sheep were excepted for some Time in the Year; Resolved per Cur. that they had failed in the Prescription, and the Evidence did not maintain the Plea; and that the Prescription should have been specially pleaded with this Exception. Carth. 241. Patch. 4 W. & M. in B. R. the King v. the Inhabitants of Hermitage, &c.

3. A Prescription is capable of Proof by shewing an Usage of such a Thing by ancient Witnesses, which is an Evidence of a Prescription; Per Holt Ch. J. 12 Mod. 683, 684. Hill. 12 W. 3.

4. Upon an Issue whether the Tenentes occupatores ought to repair a Fence (which is a Thing not of common Right) though by Tenentes is meant Owners of the Fee-simple, and by Occupatores those that claim under them, and the Prescription is only annexed to the Tenentes, yet it will be good Evidence on a Travers of Prescription, that the Tenants for Years have from Time to Time fenced and repaired, for perhaps the Estate has not since Time of Memory been in the Possession of the very Owner of the Fee. 1 Salk. 336. Mich. 9 Ann. B. R. Starr v. Rookesby.

[T. b. 91] Priority of Birth.

1. A Man had eight Sons, the three last were all born at a Birth. Question on Ejectment, which was the Eldest? they were baptized by the Names of Stephanus, Fortunatus and Achicus. Declaration of the Father were proved, that Achicus was the Youngest, and he took these Names from St. Paul in his Epistles. The Son of Fortunatus was Lessor of the Plaintiff and e contra, it was proved from the Declarations of one M. F. who was a Relation and at the Birth, and upon the Birth of the Second Child took a String and tied it round the Arm to know the one from the other, &c. Objection was made, that the Declaration of this Woman was not Evidence seeing it was since the Death of the fifth Son (the said Stephanus, and all the other Sons dying before him without Issue) when there was a Difficultie about this Matter, but what this Woman said soon after the Birth was allowed in Evidence, when there was no Protest of a Controversy; Per Reynolds Ch. B. at Devon. Aifies Lent 1731.

[T. b. 92] Rape.

1. A Woman's positive Oath of a Rape without concurring Circumstances is seldom credited. If a Man can prove himself to be in another Place, or in other Company at the Time the charges him with the Fact, this will over throw her positive Oath; So if she is wrong in the Description of the Place, where it was impossible the Man could have Access to her at that Time; as if the Room was locked up, and the Key in the Custody of another Person, this will take off much from her Evidence; And I remember one particular Case at Hertford Aifies, where the Woman depoosed, that a Gentleman ravished her in a Pond that was dry at that Time, and the Prisoner brought Evidence to shew, that the Pond was then full of Water, and upon this the Jury acquitted him. 5 Readings on the Statute Law. 49.
Evidence.

(T. b. 93) Records.

A Record must be pleaded Sub Ped. de Sigilli, or else the Court cannot judge of it, but if a Record be given in Evidence, tho' it be not Sub pede Sigilli, the Jury may find it, if they have any other good Matter of Inducement to prove it. Per Roll. J. Sty. 22. 54. S. C.—Hardr. 126. Arg. cites S. C. That in Evidence to prove to a Jury a Dem clausit extremum out of the Exchequer, the Record itself could not be found, but a Warrant for it, and an Entry of it in the Docket Book was proved, and upon Demurrer it was adjudged no Evidence, because a Record cannot be proved but by itself.

So the Decree in H. 8. Time for Title is lost, yet it has been often allowed that there was one. 1 Vent. 257. Patch. 26 Car. 2. B. R. Anon.


(T. b. 94) Rector of a Church.

1. In Ejectment for a Rectory, the Lessee of the Plaintiff, after his proving his Admission, Institution and Induction, must likewise prove his reading the Articles, and his subscribing them, and his Declaration in the Church of his full and free Asent and Consent to all Things contained in the Book of Common Prayer, and that this was done within the Time limited by the Statute. Sid. 220. pl. 8. Mich. 16 Car. 2. B. R. Snow v. Phillips.

[T. b. 95] Release.

1. A Deed of Pecuniary may be given in Evidence as a Release, if it be without Livery. Clavt. 32. pl. 55. Aisfe August, 11 Car. Ballard v. Sitwell.

2. If Accord be, that a general Release to the Time of Award may be given, a Release to the Time of the Submission is a good general Release. 12 Mod. 8. Mich. 4 W. & M. Anon.

3. In Indebitatus Assumpsit, and Non Assumpsit pleaded, Defendant produced in Evidence a Deed of Composition which Plaintiff had signed to take 7 s. in the Pound, and a Receipt of the Money which was paid to him, and in this Deed was a Covenant from the Creditors that they would upon being paid release, &c. Per Ch. B. Reynolds, this being a Covenant to release, is not to be as Evidence of a Release, which he would have allowed; for what discharge the Promiss or Debt may be given in Evidence, and this differs from a Covenant not to sue, which in the Player's Café, Clayton v. Kinaston, was held to amount to a Release; and he
Evidence.

he said the Acceptance of the 7s. in the Pound was a Satisfaction, and Plaintiff ought not to recover. Devon Allies, Lent 1731. King v. Hill:

4. Non est Factum was pleaded to a Release made to A. and B. and now to prove this Deed it was given in Evidence, that A. formerly in an Aiton with him had pleaded this Release in Bar, and that the Release was entered upon the Record in facie verba, and now that Record was shewed forth and read, being proved to be a true Copy; and this was admitted for Proof of this Release. Clayt. 62. pl. 108. July 1638, before Barkley Judge of Allife. Anon.

[T. b 96] Reputation of being Part.

1. E 6. granted the Manor of E. &c. certain Pertinencies & omnes Terras, Bosco, &c. (ante servant, usitatem, accept & reputat, ut Mentem &c. Parcel Minierii predicti) On a Writ of Intiution for Woods, the Defendants pleaded this Grant, and averred that the said Woods of L. and S. &c. is true et antea fuerunt reputati ut parcel minimer predicti? Domino &c. Judice pro Regin.; For as to the Objection that (ante hoc) is uncertain as to the Time, when Parcel, whether 10, 20, or 100 Years, &c. Per Cur. it refers to the Possession and Time past, and there being no former Time or Possession mentioned it shall refer to the last Time Possession past in the Crown. Yet the Word Reputat was too uncertain to be referred as it is here pleaded, without saying that it had been Time out of Mind Parcel; And is not like Cases of Common Fame and Voice to arrest a Person suspected, or for the Reputation of an Infant Ballard, which are Things personal and transitory, and as a small Time may induce and make a Reputation, so it may destroy its Continuance; It is a Thing of Common Right, and doth not oppugn any Verity, but to make Things of Inheritance to be reputed Parcel of a Manor, when in Truth they are not Parcel In Fatto & Jure; this is against Common Right, and cannot be induced without a Prescription. Common Appendant is created at the Time of the Tenure, and so need not be claimed by Prescription as Common Appurtenance must, which can have no Effect, nor be claimed but by Prescription. But if the Defendant made it imputable by pleading that these Woods were, and had Time out of Mind been reputed Parcel, &c. in the Case of a common Person Proofs of such an Issue may be by vulgar and common Reputation of the People of the Vill, or of other Vills, &c. yet in the Case of the King the Evidence must be by Matters of Record or Writing, as by express Valuation thereof between the Prince and the Subject in the Particulars of the Purchafe, or in the Surveys and Books of Accounts of the Auditors, Receivers, Bailiffs, &c. always entered and answered in the Rolls as Parcel of the Manor. Co. Ent. 35o b. 38t. The Queen v. Wilkin and Imber.

2. Bargain and Sale of the Chafe of W. with all Profits thereunto belonging, or therewith used, or reputed, or known as Part thereof; the Question was, whether certain Woods lying on one side of the Chafe passed; the Evidence was, that they had been severed from the Chafe by a Hedge, and from the Dominions of another Lord, than he who owned the Chafe, but on the other side the Evidence was, that the Deer had used to browse in these Woods for the Space of 60 Years, and that the Keeper of the Chafe had his Walk there for so long Time; adjudged that though they shall not pass by those Words (all that his Chafe or W.) yet they shall pass by the ensuing Words (or reputed &c.) for the Usage for so long was sufficient to ground a Reputation, that they were Parcel of the Chafe. 2 Sid. 1. Mich. 1657. B. R. Dodswoth's Cafe.
Evidence.

3. In a special Verdict in Ejectment, the Cape was, there were Lands, which in Truth were not Parcel of the Manor, and yet were reputed as such; and a Grant was made of the Manor, and all Lands reputed Parcel thereof; the Jury found that these Lands were formerly Parcel of the Manor, but divided from it, and afterwards united again to it, and in the Possession of him who held the Manor, and bare since been demised by Copy of Court-Roll; and per Curiam, these are great Marks of Reputation, and therefore the Londs shall pass: But if the Jury had found that the Lands in Question had been reputed Parcel of the Manor and had found no more, it would not have passed; because the Reputation so found might be intended a Reputation for a small Time, fo reputed by a few, or by such as were ignorant and unskillful. 2 Mod. 69. Pach. 26 Car.


[T. b. 97] Request.

1. If three assume to pay or give, &c. upon Request, &c. if the Request be made to one of them it is good. Nov. 135. Breeton's Cape.

2. It was said by Wylde Recorder of London, and not denied by any one, That on a special Request alluded in the Declaration, that a Request at any other Time, though several Years before may be given in Evidence; But on a Sæpans Requisit, it was agreed, that a Request any Time may be given in Evidence. Sid. 268. pl. 19. Trin. 17 Car. 2. B. R. King v. Bray.

[T. b. 98] Resignation.

1. In a Quære Impedit it was resolved and agreed by all upon Evidence at Bar, 1t. That a Resignation to a Prior does not make the Church void, until it be accepted by the Bishop and acknowledged before him; So that a Presentation in the mean Time was void. 2d. The special Verdict finds an Instrument under the Seal of the Bishop upon which was inscribed, that the Resignation was acknowledged and accepted by the Bishop; Yet that is no absolute finding that it was a Resignation in Faço. Nov. 147. Smith v. Foaves.


[T. b. 100] Reviver of Promises.

In Assumpsit, upon Non Assumpsit infra se Annos pleaded, the Evidence was, That after the six Years the Defendant affirmed to pay, if the Plaintiff would come to Account; and it was ruled by Holt Ch. J. at Hertford, Lent Assizes 1701, March 25. that this did not revive the Promise, because it was not an actual Promise. Ld. Raym. Rep. 741. Sparling Executor of Sparling v. Smith.

(T. b. 101.)

1. Upon a Trial at Bar, the Plaintiff made Title by an Act of Parliament, 16 & 17 Car. 2, the Defendant's Defence was upon a Proviso in that Act, which saved all Rights to the King, and Estates before 1639, made with Power of Revocation by Sir Robert Carr the Father, and then not actually revoked. The Defendant would have set up a Settlement made before that Time, and proved it sealed and delivered before that Time; and to prove that it was not actually revoked by Sir Robert Carr, offered an Abstract of the Deed, and a Cafe made upon it, with an Opinion all under the Hand of Mr. Justice Ellis, with the Depositories of Mr. Justice Ellis in Chancery, in a Cafe between Sir Robert Carr the Son and his Mother, wherein it appears to be a Deed in Force after Sir Robert Carr's Death, tho' now cancelled and cut in Pieces; yet the Court ruled it as Evidence, and would not allow the Deed to be read. Skin. 205. Mich. 36 Car. B. R. Scroop v. Carr.

[T. b. 102] Right of Soil.

1. The Court seemed to incline that the Soil of a Path Way belonged to him that had the Land on both Sides, and that is the Cafe as well of a Highway as of a Path Way; And it is good Evidence to prove such Matter, who built used to cut down the Trees, or cleanse the Way. Cited 2 Le. 148. pl. 182. Trin. 30 Eliz. B. R. in Cafe of Berry v. Goodman.

[T. b. 103] Riot.

1. To make a Person guilty of a Riot, there must appear to be an unlawful Assembley of three or more Persons, with Intent to do an unlawful Act which must be done. Arg. and agreed per Holt and Powell J. 11 Mod. 100. 102. pl. 8. Mich. 5 Ann. B. R. Queen v. Solely & al.


1. In an Esquifement upon a Sale by the Sheriff of a Term for Years on F. Fa., it is not necessary to produce a Copy of the Judgment, as in Cafe of an Elegit or Outlawry, for in this latter Cafe the Exigent and Judgment must be produced. Devon. Lent 1711. Coram Powys.

[T. b. 105] Scisier.

1. Giving a Party Notice of a Dog used to bite Sheep is sufficient to support the Scisier, if any Damage afterwards happens; Coram Baron Cummins at Taunton All. Hill. Vac. 1727-8.

[T. b. 106] Seats in a Church.

1. In an Action for a Disturbance as to a Seat in the Church, the Plaintiff ought to prove the Reparation in Evidence, though he does not alledge it in his Declaration, and because he did not do it the Issue was directed against him by Hale Ch. B. For it appeared by the Evidence, that the Parish had built and repaired the said Seat. Sid. 203. Puffch. 16 Car. 2, at Winchester Assizes, Stevens's Cafe.

(T. b. 107) Seisin in Fee of the King and others.

1. Upon Issue, that the King was not seised of B. Tempore Confessio- nis Litt. Patentium in Dominico tuo ut desedo. it is good Evidence, that the
Evidence.

the King made a Gift in Tail of B to A. Remainder to C in Tail, and that after A being attainted of Treason, the King was seised of B, and continuing in Possession after A's Death without Issue made the Letters-Patent; For by the Death of A. without Issue, the Remainder vested immediately in C. and his Entry being voved to him by the general Words of 33 H. 8. cap. 2. And the King having only the Reversion in Fee in him at the Time of the Grant, cannot be said seised in Dominio suo ut de feideo, though there was a Rent and Tenure incident thereto. Dy. 100. Culpeper v. Bulb

2. Seisin of Tenant to the Precipe being in an ancient Recovery was allowed without proving; Per Hale Ch. J. Mod. 117. pl. 17. Palfch 26 Car. 2. B. R. Green v. Proude.


4. On Issue of Seisin in Fee, Proof of a Receipt of Rent of six Years seemed not sufficient Evidence of that Seisin, but no one appearing on the other Side, Prat Ch. J. let it to the Jury, who found accordingly.

(T. b 108) Settlement.

1. Plaintiffs were the Defendant's Sisters Children, and on a Bill against Defendant (being an Infant) to discover a Deed, the Question was, If Defendant's Father had settled Lands on Plaintiff's Mother.—The Proof was, that about two Years before her Marriage he had put her in Possession of the Lands, and had attointed her to have them in her Heirs; and the Defendant (then an Infant) was a Witness to the Articles. But though there was no other Proof of such Deed of Settlement, yet the Court decreed for the Plaintiff.—But it was conceived a hard Case to decree an Equity on a Deed, which had no other Proof. N. Ch. R. 94. 16 Car. 2. Kington v. Manwaring.

(T. b 109) Simony.

1. Upon a long special Verdict, the Question came to be this, Whether or no a Sale of an Adobe with a Covenant to present such a Person as the Bargaine shall nominate be a Simonial Contract, the Church at that Time being full of an Incumbent by Ufurpation, and a Quare Impediment to remove him, and by the Church shall be now void from the Death of the last Incumbent, and so pleaded without taking Notice of the Ufurpation, which was a mere Nullity —and the Judge is an Estoppel for all Men to say the Church is full; and if the Church should be laid to be full upon an Ufurpation, that this would be a Means to elude the Statute; for then it is but getting one to usurp, and the Patron may tell the Avoidance to whom he pleases, and then bring a Quare Impeachment and remove the Ufurpation, and to the Grantee come in. Skin. 90. pl. 7. Hill 17 Car. 2. C. B. Walker and Hamerley.

2. A Bond was produced conditioned to pay 100 l. a Year generally, and they said, that an Action of Detinue was brought upon it; Whereupon A. the Obligee brought Bill in Chancery to be relieved against it, by which he inflicted his being entered into for a fumantial Cause, to which it was answered in Chancery by the Obligee, that A. was presented by C. but it appeared, that C. who presented A. allied as Servant for B. the Obligee who was the Tenant. And upon producing the Answer and other Proceedings on the Bill, Ld. Ch. J. Bridgman admitted the Bill in Chancery for Evidence
Evidence.

1. It would not be sufficient to prove an Usuage for the sole Pasture to shew, that the Tenants had only fed it, unless it were proved also, that the Lord had been oppo'd in putting in his Cattle, and the Cattle unpounded from Time to Time; Per Hale Ch. J. Vent. 165. Mich. 23 Car. 2. B. R. Hoskins v. Robins.

2. Upon Usuage of Payment according to the Condition, the Condition was, That if the Obligor would pay 10 l. immediately after the Obligee shall enjoin him to a Mill, &c., it is no Evidence that he paid 5 l. before and 5 l. after, for the Money was no Duty till the Feoffinent, and so it cannot be intended Parcel of that Sum; Contra where a certain Day is limited, for then it is a Duty before the Day. On Plea of Payment at the Day the Jury find Payment before, and good, because Payment before is Payment at all Times. Dy. 222. b. pl. 22. in Marg. cites Trin. 9 Eliz. Anon.

3. In Debt upon a Bond of 40 l. for the Payment of 20 l. at a Day and Place certain; The Defendant pleaded that he had paid the said 20 l. according to the Condition, upon which they were at Iliue, and at the Nisi Prius the Defendant gave in Evidence, that he had paid the Money to the Plaintiff before the Day, and that the Plaintiff had accepted it; All which Matters the Jury found specially, and referred the same to the Justices. And it was said by the whole Court, that that Payment before the Day was a sufficient Discharge of the Bond; But because the Defendant had not pleaded the same Specially, but Generally, that he had paid the Money according to the Condition, the Opinion was, that they must find against the Defendant, for that the Special Matter would not prove the Iliue; And the Lord Dyer Ch. J. said, That the Plaintiff's Counsel might have demurred upon the Evidence. Godb. 10. Mich. 24 Eliz. C. B. Anon.

4. If a Bond be of 20 Years standing, and no Demand proved thereon, or good Cause of so long Forbearance shown upon a Solvit ad Diem, Holt Ch. J. said he should intend it paid; A fortiori on a Note, if it be any considerable Sum. 6 Mod. 22. Mich. 2 Ann. B. R. Anon.
254

Evidence.

(T. b. 112) Submission to Arbitration.

1. In Assumpsit Defendant pleaded a Submission of all Matters in Difference to Arbitrament, and and Award, &c. The Plaintiff denied the Submission Modo & Forma, Ilile was joined. The Evidence was a Submission of all Matters touching Accounts, and because Plaintiff could not prove other Matters in Difference but Matters of Account, it was allowed good Evidence, and he was nonsuited. Allen. 90. Mich. 24. Car. B. R. Johnson v. Rawle.

(T. b. 113) Such Liberties.

1. Where the Vill of L. claims Liberties by Grant of the King by these Words, Such Liberties and Franchises as the Vill of N. has, &c. they ought to shew Record or Prescription proving what Liberties and Franchises N. has, and then well, as it seems there. Br. Patents pl. 31. cites 20 E. 3 and Fitzh. Avowry 129.

(T. b. 114) Surrender of Lease, Office, &c.

This was a Lease granted in King Edward 6th's Time for 99 Years by a Prebendar, to commence after other Leases expired, Leafer employed Friends to take new Leases of succeeding Prebendaries in Truth for him. The Question was, whether this was a surrender of the antient Lease, for the Court seemed to think that it was good Evidence against so antient a Lease. But the next Day the Jury came and found that it was not a Surrender; and (the Reporter says) it seems not reasonable that a Lease in Truth, and which is in another Person, and made in majorem cautionem shall be a Surrender. Sid. 75. Gic (al. Gec) v. Rider.

(T. b. 115) Tender.

1. In the Case of Jay and Rider, as it was told me, Wyndham said, that Contrats by Trustee to make a new Lease is a present Surrender of the old Lease of Cettiay que Truit, being by his Alien; which Foster and Twifled doubted; but all agreed such Contract to be good Evidence to a Jury of a Surrender; and it was so found by Verdict. 1 Keb. 285. pl. 23. Pach. 14 Car. 2. B. R. Anon.

2. As to Tender of Goods to be loaded on board a Vessel, Holt Ch. J. took a Difference between Cumberfome and Portable Goods. That if a Tender be made of Cumberfome Goods to a Ship, which is not moveable from one Part of the Key to the other, I am not bound to carry them to the Ship-side; but if I bring them to a convenient Place from whence I may load them on board, and offer the Master to send them on board, this is a good Tender. Show. 149. 150. Pach. 2 W. & M. Stone v. Gilliam.

3. If Refusal be averred, it is good Evidence of a Tender to the Person, which would be good at any Time of the Day, because the averring of a Refusal implies the Defendant's being present, who ought to accept it; but if the Party were not present, it ought to be shewed, that he did not come, and that you were there, and made Tender on the Time of the Day on which the Law appoints it to be done; and that is the last Time of the Day on which it may be done conveniently; Per Holt
Evidence.


(T. b. 116) Things done at a former Trial.

1. None can be admitted to give Evidence of Things done at a former Trial, without the Proceedings thereat be proved. 12 Mod. 555. Trin. 13 W. 3. Anon.

(T. b. 117) Tithes discharged.

1. To prove a Discharge of Tithes by unity of Possession in the Time of the Abbot, and at the Time of the Dissolution two Persons testified that they had seen a Deed of Appropriation of the Patronage to the Abbot, for which Reason they verily thought there was a Unity of Possession at the Time of the Dissolution. But it was ruled to be no Proof, for it may be intended not to continue, and a Consultation was granted. But they said, that Hearing shall be allowed for a Proof. Cro. E. 228. Stranahan v. Cullington.

2. On the 2 E. 6. to prove a Discharge of Tithes by Unity, precise Proof need not be made; but it is sufficient to swear that since the 31st of a Mo. H. 8 it has been always reputed to be discharged by Unity; or that he had commonly heard it to be so, or the like. 2 Roll. R. 125. Mich. 17 Jac. B. R. Congley v. Hall.

3. And in Cases of Tithes to support their Payment Evidence is allowed more extensively than in any other Case. A Paper 1639. signed, &c. to prove a Composition for Rabbets on Brampton Burroughs by the Predecessor of the present Vicar, &c. was read by the Barons (Page Herein) though no direct Proof that the Defendant claimed under the Person that signed it the Warren (that is, Burroughs) &c. it appearing that it was of an ancient Date, that the Estates mentioned in it were as Defendant now had, and there being Proof of the Hand-writing of one of the Witnesses, &c. But afterwards held that it was not sufficient to support Plaintiff's Demand for the Uncertainty, as that there might be a Warren another Place, or a Piece of Ground so called, or the Composition might be for other Tithes arling out of the Warren. Hill. Vac. 1718. Gregory v. Lutterel. Books of Accounts, Memorandums, &c. of a preceding Vicar may be made use of as Evidence for a Successor to support his Demands in Cafe of Tithes, &c. Per Bury Ch. B. and Baron Price in my Lord Arundel's Cafe, Wiltshire (E. R.) and per Cur. in Shobrook's Cafe.

4. Every Composition is an Evidence of the Right and Duty of Tithes for which the Composition is made, yet in the Bishop of Exeter's Cafe it was held that a general Composition may include a Modus as well as Tithe in Kind where the Modus's were for severer Matters, for some Years they may be more, in some Years less, and so may be compounded for; and though this Composition continues 40 Years yet the Modus shall continue. Hill. 6 Geo. in the Exchequer.

5. In Suit for Tithes the Defendant may prove that the Plaintiff got his Living by Simony, or did not read the Thirty nine Articles, &c. or is guilty of some Act or Omifion which makes his Benefit void, or he may prove a Leafe or Grant of the Tithes, or some Agreement of Composition, or a Modus Deemand, or that the Benefit is above 81. Value per Ann. and that the Plaintiff has accepted another Living without a Dispenfation, &c. L. E. 129. pl. 100. cites Law of Tithes, 424, 5.

(T. b. 118)
Evidence.

(T. b. 118) Trees.

1. It was ruled by Holt Ch. J. at Lent Aflizes at Winchester upon a Trial at Nili Prius 1697-8. 1. That if A plants a Tree upon the extreme Limits of his Land, and the Tree growing extends its Root into the Land of B. next adjoining. A. and B. are Tenants in common of this Tree. But if all the Root grows into the Land of A. though the Boughs overshadow the Land of B. yet the Branches follow the Root, and the Property of the whole is in A.

2. Two Tenants in common of a Tree, and one cuts the whole Tree; though the other cannot have an Aflion for the Tree, yet he may have an Aflion for the special Damage by this Cutting, as where one Tenant in common destroys the whole Flight of Pidgeons. Ld. Raym. Rep. 737, 738. Waterman v. Soper.

3. A. demised Ground to B. which was Pasture, except the Trees; B. put in his Cattle to feed, which barked the Trees, A. cannot have Trefpafs against B. Ruled by Holt Ch. J. upon a Point made and referred to him at the Aflizes at Bury in Lent 12 W. 3. upon hearing of Council several Times, though at first he was of a contrary Opinion. Ld. Raym. Rep. 739. Glenham v. Hanby.

(T. b. 119) Trover.

1. If A. takes Goods and then B. takes them from A. Trover lies either against A. or B. Sid. 438. pl. 3. Hill. 21 and 22 Car. 2. B. R. Wilbraham v. Snow.

2. In an Aflion of Trover and Conversion, and nothing proved but a tortuous taking of the Cattle by Way of Trefpafs, and driving them away, and it was ruled a good Ground for this present Aflion, and a Conversion shall be intended, otherwise when he comes to them by Trover, there an actual Conversion shall be proved. Clayt. 112. pl. 191. March 24 Car. 2. Beckwith v. Elley.


4. In Trover, though the Thing be redelivered, yet there is a Conversion; but the Redelivery may be given in Mitigation of Damages. 2 Lall. Regr. 384.

5. Upon an Aflion of Trover brought against one for converting a Gold Ring of the Plaintiff’s to his the Defendant Use, to which Not Guilty is pleaded, it will be good Evidence to prove the Conversion, that the Plaintiff demanded the Ring, and that the Defendant refused or denied to deliver it. Brown’s Anal. 14.

6. In Trover on Not Guilty pleaded, it appeared in Evidence, that the Defendant was Tenant by the Cursory of Lands in Ireland, and had cut down and sold the Trees from off the Estate, and that the Reversion belonged to the Plaintiff and two others in Coparcenary; and upon a Caff made for the Opinion of the Court, it was resolved in B. R. 7 Anne, That in Local Aflions, as in Trefpafs Quare clausum Fregit, the Plaintiff cannot prove a Trefpafs but where he lays it, nor lay it in any other Place than where it is. But it is otherwise in Aflions transitory, as Trover; Ergo in this Caff he may lay the Conversion here, and prove it to be in Ireland. L. E. 145. pl. 7.

(T. b. 120)
Evidence.


1. Copyhold for three Lives was granted to Baron and Feme and J. S. for their several Lives successively, and by the Copy it appeared that the Fine paid was the Money of the Baron and Feme. LD. C. Macclesfield decreed, that J. S. is in Equity to be intended but as a Trustee for the Baron and Feme and the Survivor of them, and that it being mentioned in the Copy that the Fine was paid by them is strong Evidence of its being so, which though the Court will not look upon as conclusive, yet any Evidence to contradict it ought to be very clear, and full in order to prevail. Wms. Rep. 781. Hill. 1721. Benger v. Drew.

[T. b. 121] Vexatious Prosecution.

1. Case was brought for maliciously Holding to special Bail without Cause; The Sheriff's Warrant to the Bailiff was paid in such Case to be good Evidence. 12 Mod. 273. Hill. 11 W. 3. Robins v. Robins. 120. pl. 6. S. C. —


1. On a Prohibition for Tythes Unity of Possession in the Time of the Abbot and the Time of the Dissolution was suspended, and proved it by the Testimony of one H and another who said they had seen a Deed of Appropriation of the Parsonage to the Abbot, for which they verily thought that there was an Unity of Possession at the Time of the Dissolution; and this was ruled no Proof, for it may be intended not to continue, and a Consultation was granted, but they said Hareley shall be allowed for a Proof. Cro. E. 228. pl. 17. Pauch. 33 Eliz. B. R. Stranhan v. Callington.


1. On Question whether an Office had been usually granted in Reversion, or the like by a Bishop which depends upon the Usage, the Evidence was, the Plaintiff shewed a Grant of 4 E. 5. to one Reverson accordingly, and confirmed it Eliz. and that 7 Eliz. the Reveresner surrendered and took a new Grant to him and another; Per Cur. this is a good Inducement to believe that the Office was anciently so granted in Reversion, but being Matter of Fact it was left to the Jury, and they found for the Plaintiff. Cro. C. 279. pl. 19. Mich. 3 Car. B. R. Young v. Stowell.

2. In an Indebitatus Assumpsit brought for the Profits of the Office of Chancellor to the Bishop of Landaff, which was granted to two to hold Conjunctim and Dividim, and to the Survivor of them according to ancient Custum, one of them died, and the Bishop constituted another Grant to against whom the Action was brought by the Survivor; It was held, that the Shewing that such or the like Grants were made since 1 Eliz. is Evidence, that such were also made before the Statute. 4 Mod. 16, 17. Pauch. 3 W. & M. in B. R. Jones v. Beau. 

U u u

[T. b. 124]
Evidence.


1. The Statute of Usury mentions three Things, viz. Loans, Bargains, and Chevance. An Information was brought upon the Statute for an Usurious Loan of Money, and the Informer gave Evidence an Usurious Contract upon a Bargain for Wares; this does not maintain the Information, but if the Information had been general upon an Usurious Agreement and given a Loan in Evidence, in such Case it had been good enough, because every Loan is an Agreement. Le. 95. pl. 125. Mich. 29 Eliz. in Scacc. Sir Wallatan Dixey's Cafe.

2. In the Case of one Dalton. Where in Debt upon an Obligation where the Statute of Usury was pleaded, it was said by Popham, if a Man lend 100 l. for a Year, to have 10 l. for the Use of it. If the Obligor pays the 10 l. twenty Days before it be due, that does not make the Obligation void, because it was not corrupt; but if upon making the Obligation it had been agreed, that the 10 l. should have been paid within the Time, that should have been Usury; because he had not the 100 l. for the whole Year, when the 10 l. was paid within the Year; And Verdict was given accordingly. Noy. 171. Anon.

3. In an Action of Debt upon a Bond, the Defendant after Oyer pleads the Statute or Usury, and that it was upon an Usurious Contract &c. upon Evidence it appeared, that the Wife of the Plaintiff used to lend Money to be paid by the Week, and that the lent to the Defendant 20 l. to be paid by 20 l. by the Week, &c. and 1 s. and 6 d. by the Week for Interest, and that the Defendant paid the Interest which amounted to 30s. when the Money was lent, and that the Wife exacted and received it; and upon this Evidence, Holt Ch. J. ruled it to be an Usurious Contract by the Husband sufficient to discharge and avoid the Obligation Civiliter, though not sufficient to charge the Husband Criminaliter; and it was found for the Defendant. Skin. 348. pl. 17. 5 W. & M. in B. R. Barnett and Tomkyns.

4. Upon an Usurious Contract pleaded, the Proof lies all upon Defendant; for by his Plea he contended the Debt; Per Holt Ch. J. 12 Mod. 517. Pach. 13 W. 3. Anon.

(T. b. 125) Way.

1. In the Case of a Way, you must prove the Locus a quo & ad quem, and over what Land; Per Richardson Ch. J. Litt. R. 295. 5 Car. C. B.

2. In Trespasses the Evidence for the Defendant was, that he had a Barn, and purchased a Way over the Plaintiff's Land to that Barn, and afterwards he bought other Lands lying contiguous to that Barn on the one Side, and to a Haven on the other Side, and carried Carriages by that Way to the Barn, and through it over his own new purchased Land to the Haven. And by Hale Ch. B. if I purchase a general Way to such a Place, I may go from thence on my own Ground whether I please, tho' I purchase the Ground after the Way purchased. Trials per Pains, 7th Edit. 433. cites Summer Affile, Norfolk 1665. Heynworth v. Bird.

(T. b. 126) Will.


There can be no Proof of a Will in Writing but the Will it self. Cumb. 395. Per Holt Ch J. Pulefon v. Warburton. Mich. 8 W. 3. B. R. But where the Will is not of Lands so that the Spiritual Court has Jurisdiction of the Caufe, the Probate is an undeniable
Evidence.

3. If a Will contain Lands to the Value of 10000 l. yet the ecclesiastical Court may cite them to bring in the Original to be proved Per Telles, and this Court ought not to prohibit them; but if they will not alter Proof deliver back the Original, then this Court will intermeddle, and a Proof of the Will cannot be by Copy; for if the Original be burnt or lost, &c. a Copy of their Registry hath been often given in Evidence, but a Copy of a Copy cannot. Per Jeffries Ch. J. Skin. 174. pl. 3. Pasch. 26 Car. 2. B. R. Anon.

4. Will exemplified under the Great Seal is not Evidence to a Jury in Ejectment. Camb. 46. Pasch. 3 Jac. 2. B. R. Anon.

5. Two several Wills may be made of several particular Things, and one shall not revoke the other. Arg. agreed by both Sides. Show. 553. Mich. 4 Jac. 2. in Cafe of Hitchins v. Balfeet.

6. After Testator's Death one Sheet was found in one House and a second Sheet in another House, yet adjudged a good Will. Cited per Delben J. Camb. 174. Mich. 1 W. & M. in B. R. cites it as the E. of Efix's Cafe — Show. 69. S. C. and S. P.

7. At a Trial at Bar it was ruled per Holt Ch. J. that if there are three subscribing Witnesses, this is sufficient within the Statute of Frauds and Perjuries, though upon Trial one of them would not swear that he saw the Testator seal and publish his Will; for otherwise it would be in the Power of a third Person to defeat the Will of the deceased; and therefore if it be proved to be his Hand, and that he for it as a Witness to the Will, it is sufficient to satisfy the Statute. Skin. 413. pl. 9. Hill. 5 W. & M. in B. R. Sir Marmaduke Dayrell v. Glascock.

8. At a Trial in Ejectment, Summer-Affizes to Will. 3. 1698, at Canterbury in Kent, upon the Evidence it appeared, that a Will was made by William Horne in 1647 of the Lands in Question, which Will was lost; but mention was made of it in the Kalendar (which is the Index of the Registrar of the Spiritual Court) and also in the Seal Book. A Commission signed in April 1648 to examine the Executors upon their Oaths, &c. and that being returned, Probate was granted the 11th of May 1649, which Probate was produced in Evidence. And Holt Ch. J. allowed it to be good Proof of the Will, but he referred it for his further Consideration, and afterwards the Parties agreed. But Holt Ch. J. afterwards, as well in B. R. as at Nisi Prius, upon other Trials declared, that he held it to be good Evidence, and that he continued of his former Opinion; and he then said, that without Doubt the Registrar's Book is good Evidence to prove a Will. Ld. Raym. Rep. 731. St. Leger v. Adams.


11. On a Trial at Bar the Question was, whether there was a Will or no Will? The Plaintiff produced a Deed indented made between two Parties the Man and his Son; And the Father did agree to give the Son so much, and the Son did agree to pay such and such Debts and Sums of Money; And there were some particular Expressions resembling the Form of a Will,
Evidence.

Will, as that he was sick of body, and did give all his Goods and Chattles, &c. But the Writing was both sealed and delivered as a Deed, and they gave Evidence that he intended it for his left Will, which the Court said was a good Proof of his Will. L. E. 93. pl. 18.

12. In the Case of Rice and Oatfield B. R. 11 & 12 Geo. 2. it was said, that where all three Witnesses to a Will denied their own Hands, that other Evidence were admitted to prove their Hands, and that they saw the Will executed, and the Witnesses sign their Hands, and held good, and Verdict thereupon. Pike v. Damarine, Qu.

13. A Bill to establish a Will for Land, and no Notice was taken of the third Witness whether dead or not, but if living he ought to have been examined also, Sed non allocatur, because this would have been good Evidence at Law, the other Witnesses proving that they saw the other Witness subscribe his Name as a Witness; it is common Practice at Law, and why not good in Equity. King Chanc. Mich. Vac. 1725.

[Ta 127] Witnesses interested.

1. The Law gives the Party tried his Election to prove a Person offered as Evidence, interested two Ways; viz. either by bringing other Evidence to prove it, or else by swearing the Person himself on a Vow dire. But though he may do either he cannot have Recourse to both. Per Parker Ch. J. 10 Mod. 193. Mich. 12 Ann. B. R. Q. v. Mufcot.

(U. b. 1) Evidence. Demurrer to it.

It seems it ought to be such a Matter that the Judge may take to be doubtful. Heath's Max. 95. cites S. C. —

1. **Matter in Law** shall not be given in Evidence to a Jury, but the other may demur upon it; For Lay Gents cannot discuss Matter in Law, as it seems there; but it is not expressly adjudged there. Br. General Issue, pl. 51. cites 9 H. 6. 33.

Br. General Issue, pl. 51. cites S. C. —

2. Upon a **Matter in Law** the other Party may demur in Law, for it belongs not to the Lay-Jury to judge thereof; but that, it seems, ought to be such a Matter that the Judge may take to be doubtful. Heath's Max. 95. cites 9 H. 6. 33.

Heath's Max. 83. cites S. C. — Otherwise if the Deed be Time out of Mind, for such a Deed, although it were the King's Patent, cannot be pleaded. Heath's Max. 83, cites 12 H. 4. 24.

3. Where the Issue is upon **Prescription**, if the Plaintiff give in Evidence a Deed within Time of Mind, the Defendant may demur upon the Evidence. Br. General Issue, pl. 55. cites 34 H. 6. 36.

4. In **Debt against an Executor** the Defendant did plead Plena Administration, and gave in Evidence a Redemption of a Pledge with his own Money, upon which the Plaintiff did demur, and by Affent of both Parties the Jury was discharged, Quod Nota. Heath's Max. 96 cites 6 H. 8. 2, Dyer.

5. And it seems Experience at this Day, that in Demurrer on Evidence the **Confess of both Parties** is requisite. Heath's Max. 96.

6. The Plaintiff in Annuity by **Prescription** shewed a Deed in Evidence within Time of Mind; and the Defendant prayed, that the Evidence
Evidence might be entered, and he would demur upon the same, and the
Plaintiff would not agree to it. Quod nota. But it the Court think the
Evidence good, the other Side may desire the Justices to Seal a Bill of
Exception, which in the Writ of Error he may alllege, and not in Ar-
36. and Tatam's Aetion upon the Cafe, 27 H. 8.

7. In Debt upon a Bond of 40 l. for the Payment of 20 l. at a Day and
Place certain. The Defendant pleaded that he had paid the said 20 l.
according to the Condition upon which the were at Ilfue; and at the Nisi
Priors the Defendant gave in Evidence that he had paid the Money to the
Plaintiff before the Day, and that the Plaintiff had accepted of it; all
which Matter the Jury found specially, and referred the fame to the
Justices. And it was laid by the whole Court, that the Payment be-
fore the Day was a sufficient Discharge of the Bond; but because the
Defendant had not pleaded the same specially, but generally, that he
had paid the Money according to the Condition, the Opinion was that
they must find against the Defendant, for that the special Matter would
not prove the Ilfue. And the Lord Dyer Ch. J. laid, that the Plain-
tiff's Counsel might have demurred upon the Evidence. Godb. 10.

8. If a Plaintiff in Evidence proves any Matter in Writing, or of Record,
or any Sentence in the Ecclesiastical Court, and the Defendant offers to de-
...
Evidence.

the Court will not proceed to deliver their Opinions touching the Matter in Law demurr'd upon, because it the Matter of Fact be not agreed, there can be no Judgment given in the Cause, which Way soever the Matter in Law fall out to be. L. P. R. 350.

14. Demurrer to Evidence need not be drawn up in Form immediately, but the Substantive must be reduced into Writing while the Thing is transequing, because it is to become a Record; Per Holt Ch. J. 1 Salik. 283, 289. in pl. 26. Pachf. 7 Ann. B. R. in Cafe of Wright v. Sharp.

15. Wherefore the Evidence does not warrant, prove and maintain the very same Thing that is in Issue, that Evidence is defective, and may be demurred upon. Trial per Pais, 7th Edit. 467. lays it down as a Rule.

16. On a Demurrer it is the settled Rule of the Court, that they cannot move for Injunction for this Reason; till the Demurrer is argued it is not certain that the Cause is in Court. Sel. Cafes in Can. in Ld. King's Time, Trin. 11 Geo. 1. in Cafe of the Duke of Chandois v. Talboe.

(W. b) Bills of Exceptions.

At Common Law before the making of this Act, a Man might have had a Writ of Error for an Error in Law, either in redictions judicis, in redictions executionis, or in processu, &c. And, this Error in Law must be apparent in the Record, &c. for the Writ of Error lays, Quia in Records & processu, &c. Error interventit manifestus, &c. Or for Error in fact, by alleging, Matter out of the Record, as Death of either Party, &c. before Judgment; Now the Act before this statute was, that when the Demandant or Plaintiff, or the Tenant or Defendant did offer to allege any Exception (as in those Days they did Or tenus at the Bar) praying the Justices to allow it, and the Justices overruling it as it was never entered of Record, this the Party could not assign for Error, because it neither appeared within the Record, nor was any Error in fact, but in Law; and so the Party grieved was without Remedy, for whole Relief this Statute was made. 2 infra. 426, 427.

This Act does extend as well to the Demandant or Plaintiff as to the Tenant or Defendant in all Actions real, personal and mixt; regularly it extends not to a Stranger to the Record, which is not to come in lieu of the Tenant, &c. For Example, if the Bailiff of a Franchise demand Consonance, and the Justices over rule the same he cannot pray the Justices to infal a Bill, because he is no Party to the Record; but yet one that offered to be received, and is denied, albeit he be none of the Parties to the Writ, yet because he is privy in Estait, and to be in Loco Tenentis, he shall have the Benefit of this Act, and so it is of the Vouchee, though he be no Party to the Writ, because he is in Loci Tenentis. 2 infra. 427.

Albeit the Letter of this Branch commend to extend to the Justices of C. B. only by Reason of these Words, Et si forte ad Querimoniam de facto justic: venire facias Dominus Rex recordum canon co (which is by Writ of Error into B. R.) yet that is put but for an Example, and this Act extends not only to all other Courts of Record (from upon Judgment given in them a Writ of Error lies in B. R.) but to the County-Court, the Hundred and Court Baron, for therein the Judges were more likely to err; and albeit, of Judgments given in them a Writ of Error lies not, but a Writ of false Judgement in the Court of C. B. yet the Cafe being in the same or greater Mitchief, the Purview of this Statute does extend to those interior Courts. 2 infra. 427.—Agreed that a Bill of Exceptions lies on a Trial in B. R. by Wellm. 2. cap. 31. 2 Show. 147. pl. 127. Mich. 32. Car. 2. B. R. in Cafe of the City of London v. the unfree Merchants.—Resolved per Car. that a Bill of Exceptions lies not in this Court upon a Trial at the Bar; for the Words are, that he shall have Remedy Coram Domino Regis which extends not to themselves to over-rule their own Judgments, and therefore extends only to Nifi Prius and inferior Courts; it is true that in the Cafe of Cefield b. Hill in this Court on a Trial at the Bar in a Canterbury Cafe upon a Mandamus, there was one sealed but at the Trial there were only two Judges present, viz. Rainford and Jones, but Jones doubted, although if they determined the Matter then they could not proceed, he therefore did submit to the Lord Ch. J. and afterwards it was so strongly doubted that they never proceeded to any Determination to this Day. 2 Show. 827, 238. pl. 236. Patch. 55. Car. 2. B. R. The King v. Smith.—

3. dock
Evidence.

3. dabo alledge an Exception, praying that the Justices will allow it, which This extent
rally to all.

4. if he that alledged the Exception do write the same Exception, Here is an expres Com-
mandment given to the Justices; and yet if one refuse, and any of the other infest the Bill it suf-
ceth, but if they all refuse it is a Contempt in them all; for it lies not in the Power of the Justices
denied to perform the Purview of this Act to take Advantage of their own Wrong, and the
Party grieved may have a Writ grounded upon this Statute to the Justices commanding them to put
their Seals Juxta Formam Statuti, & hoc ubi Periculo quod incumbit multumen omnis. 2 Inf. 427.

5. and require that the Justices will put to their Seals for a Witness the

Albeit the

5. & require that the Justices will put to their Seals for a Witness the

Albeit some

6. S. 2. And if the King upon Complaint made of the Justices, cause the

Albeit some

7. S. 3. And if the Justice cannot deny his Seal they shall proceed to judge-

On the other

8. In Affise the Array was challenged, because the Plaintiff was Sher-

In an Affis, upon a Plea or Evidence not allowed by the

9. In Affise the Defendant said, that the Sheriff was beyond Sea, and had

In an Affis, upon a Plea or Evidence not allowed by the

Plea dilatory and peremptory, &c. and (as has been said) to Prayers to be received, Oyer of any
Plea dilatory and peremptory, &c. and (as has been said) to Prayers to be received, Oyer of any

Plea dilatory and peremptory, &c. and (as has been said) to Prayers to be received, Oyer of any

Plea dilatory and peremptory, &c. and (as has been said) to Prayers to be received, Oyer of any

Plea dilatory and peremptory, &c. and (as has been said) to Prayers to be received, Oyer of any
Evidence.

11. And Bill of Exceptions shall remain with the Party, therefore it is not of Record till the Justices have certified it, and acknowledged their Seal. Ibid.

12. If a Man pleads in any Action, and the Justices will not allow thereof, and the Party makes his Bill upon it, and prays that the Justices will seal this his Bill of Exceptions or Plea, and if they do not according as is contained in the Statute of Westm. 2 cap. 3. the Party grieveth shall have a Writ of Error, and may align Error upon that Bill sealed, and also In the Record or in one of them at his Pleasure. But this Bill ought to be sealed by the Justices before Judgment given by them, and not after.

F. N. B. 21 (N) cites 11 H. 4. 52. 65. 92.

13. In Cui in Vita, the Writ was alated inasmuch as the Demandant in the View did not make mention of whose Demise be claimed, where the Tenant had had the View twice before, and therefore the Tenant was ouit of the View, but it was agreed, that if he was grieved in this Case, that he might have Bill sealed of all this Matter to have thereof Writ of Error. Br. View, pl. 103. cites 10 H. 7. 8.

14. Where the Evidence is not good in Maintenance of an Issue, or where the Parties vary in the Law upon a Challenge or the like, by which the Party takes Bill of Exceptions sealed by the Justices by the Statute of Westm. 2 which wills that this shall be used in Writ of Error, and Scire Facias to contest or deny his Seal, but shall not allege it in Affid of Judgment Quod nota. Br. Repleader, pl. 1. cites 27 H. 8.

15. If there be a Thing given in Evidence which ought not, the Court above cannot remedy it, except it be returned with the Foista. Brownl. 207. Patich. 5 Jac. Hall v. White.
Evidence. 265

11. If one offers to demur upon Evidence, and is overruled, and after
it is judge
as a Trial
does errone-
ously over-
rule a
matter of-
fered in
Evidence, the regular way is to tender a Bill of Exceptions; yet if upon such a Matter the Party
will not suffer the Trial to go on against him it is good Cause of a new Trial; Per Cur. 7 Mod. 55.

12. The Statute of Wills, 27. cap. 31, which gives Bill of Exceptions Lev. 68,
does not extend to any Cafe where Prisoners are indicted at the Suit of the
And for the Statute intends to remedy the Overruling of Evidence — S. C.

13. Bills of Exceptions for the judges of B. R. in Ireland would be no direct
the Jury, that the Probate of a Will before the Archbishop
of Canterbury (the Teflator dying in his Province) was conclusive Evi-
dence, but only told the Jury that it was good Evidence, and so left it to the Jury; And per Cur. the Bill of Exceptions lies not, for though the Evidence be conclusive, yet the Jury may hazard an Assumps it if they will, and the proper Way had been for the Defendants to have demurred up-
on the Plaintiff's Evidence. Raym. 405. Mich. 32. Car. 2. B. R. Chichefi-
ter v. Phillips.

dence Letters of Administration of Goods under the Seal of the Primate of Ireland. The Title was
for a Leave for Years in Ireland claimed by the Leifor of the Plaintiff under the laid Administration,
and upon the firft Opening of the Cause, Judgment was affirmed.

14. A Bill of Exceptions will lie at a Trial as Bar as well as at the
Nifi Prius; For the Words of the Statute are "that the Justices shall
"sign it," which Words Justices being in the plural Number cannot be
well understood of any other Justices than those of the Courts at West-

15. Evidence was offered at the Affifes and refused, but no Bill of
Exceptions was then tendered, nor were the Exceptions reduced to
Writing; to that the Trial went on, and a Verdict was given for the
Plaintiff; Then next Term the Court was moved for a Bill of Exceptions;
Holt Ch. J. you should have insisted on your Exception at the Trial, if you acquiece you wave it, and shall not revert back to your Exception
after a Verdict against you, for perhaps if you had stood upon it, the
Party had other Evidence, and would not have put the Cause on this
Point; Indeed the Statute appoints no Time, but the Reason of the
Thing requires that the Exception should be reduced to Writing when
taken and disallowed, like a Special Verdict or Demurrer to Evidence,
and though it need not be drawn up in Form, the Substance must be
taken in Writing while the Thing is transacted, because it is become a
Record; and to the Motion was denied. Holt's Rep. 301. pl. 54. Patch.

Y y y (X. b)
Evidence.

(X b.) Issues out of Chancery.

1. SCIRE FACIAS upon a Recognizance in the Chancery brought in the Chancery, the Defendant pleaded Release, the Plaintiff denied it, and so to Issue, and the Record and all the Action and Process was sent into B. R. to be tried, and there the Plaintiff was nonsuit, and brought a new Scire Facias there, and well; For there was the Record after the sending it out of Chancery, contra, if the Chancery had sent only the Tenor of the Record; note the Diversity. And it is said elsewhere, that the Chancery shall make the Verire Facias, and award it the Sheriff returnable in B. R: Seil. Coram nobis ubicunque tunc furiosus in Anglia; For all is the King’s B. Jurisdiction, pl. 41 cites 24 E. 3. 45.


3. If upon Traverse of Office in Chancery they are at Issue, the Verire Facias shall issue from Chancery returnable in B. R. and therefore, the Chancery shall not award such alias; For they cannot record that the Sheriff did not send the Writ; For the Return is not to be in this Court, and therefore the Alias shall be in B. R. Br. Ven. Fac. pl. 29. cites 15 E. 4. 8.

4. Whether a Person, to whom another had got Administration, was dead or not? Chan. Caes, 50. P. 16 Car. 2. Scot v. Rayner.—N. Ch. R. 93. S. C.

5. Whether the primary Intention in selling Timber was to do Waste or not? Chan. Caes, 96. 19 Car. 2. Thomas v. Porter and the Bishop of Winchester.

6. Vendor covenanted against Incumbrances, and an Issue was directed whether the Purchaser had Notice of a L. for a Year. 3 Ch. R. 24. 20 Car. 2. Savage v. Whitebread.—So of a Rent-Charge N. Ch. Rep. 118. Harding v. Nelthorpe.

7. Land being charged with a Kent and no sufficient Dilertas being found, which being complained of by Bill, and the Plaintiff seeking to charge the Perdon, it was referred to a Trial at Law if there was any Fraud to hinder the Plaintiff of his Dilertas. Ch. Caes, 147. Mich. 21 Car 2. Davy v. Davy.

8. After a Decree had been enrolled 31 Years, a Trial was directed on this Issue, whether a Defendant was dead before the Decree which was enrolled 31 Years before? 3 Ch. R. 49. 22 Car. 2. Yeavely v. Yeavely.


10. Whether a Bond was discharged in Tisnator’s Lifetime, or how much Money was paid therein? Finch. R. 33. Mich. 25 Car. 2. Braithwait v. Davis.


13. A Trial at Law is directed for the Plaintiff to try his Right to a Reversion of Lands, after the Death of the Defendant Waswright, so the Plaintiff desires he may try the same when he shall think fit; but the Defendant intils, that the Plaintiff ought to be confined to a convenient Time, which was pray’d might be the Rule in this Case, and that the Defendant might not be kept in suspense, and to wait on the Plaintiff’s Convenience, when he shall think fit to try the same. This Court
Evidence.

Court ordered it to be tried in Easter Term next, or the Issue to be taken Pro confesso. 2 Chan. Rep. 124, 125, 29 Car. 2, fo. 102. Oliver v. Leman and al.


15. If a Will be re-published or not? 2 Ch. R. 30 Car. 2. Cotton v. Cotton.


17. If the Lord of a Manor had the Grant of a free Warren, and if he had then, if there was sufficient Common left for the Tenants? Vern. 22. Mich. 1681. How v. the Tenants of Bromf.

18. Campo, or New Campo was directed Forty Years after the Death of Tefator, of which Eighteen were in the Intancy of the Heir, Vern. 195. Mich. 1683. Lytford v. Coward.

19. Will, or no Will after Forty Years, of which Eighteen were in the Intancy of the Heir? 2 Ch. Cales, 159. Mich. 35 Car. 2. Lytford v. Coward.—Vern. 195. S C.

20. Whether J. S. who had committed a Forfeiture for Trefon in the Irih Rebellion, and J. S. who was Celfui que Trief of Lands was the fame Perfon? Vern. 439. Hill. 1686. Kildare (Earl of) v. Eulace.


22. Agreement for many Load of Coals at so much per Load; Plaintiff suggested, that Defendant had made his Wagons of a larger Size to defraud him. Issue directed as to over Size of the Wagons. 2 Vern. R. 462. Mich. 1704. Brandlin v. Owen.


24. An Issue was directed in a Matter where Plaintiff had a proper Action at Law, and the Plaintiff under no Impediment in Respect of bring such Action. 2 Vern. R. 503. Tr. 1705. Gilbert v. Emerton; Per Wright K— But an Issue refused to be directed for the same Reason, in the Cafe of Peers v. Bellamy, cited in the Cafe above 2 Vern. R. 504.

25. Issue at Law directed on a Rehearing of Exceptions taken to a Decree made by Commissioners of Charitable Uses, after that Decree had been twice confirmed, 2 Vern. R. 507, pl. 436. Trin. 1705. Corpus Christi College v. Naunton Parifh in Glouceterfhire.

26. An Issue was directed, Whether J. S. did execute Marriage Articles in the very Words of the Counter-Part produced; It was objected, that the Issue was too narrow, and that it ought to be, Whether he executed any, and what Articles? Decree was reversed. But there was another Point; Ideo Quere MSS. Tab. Tit. Issue. cites 28th Feb. 1707. Kelley v. Bellaw.

27. It is improper to direct an Issue, Whether there be a Trust or No, especially where it appears by Implication from the Nature of the Cafe, MS. Tab. tit. Issue. cites 8 March 1724. Eyre v. Burk.


29. Bill brought to have a Trial at Law for the Bounds of a Manor. Mr. Taibor informed the Court, that in the Cafe of the Bishop of Durham, which was parallel to this, it was ordered, that each Side should give a Note to the other of what each claimed as their Bounds; and if the Jury find Bounds different from the Note given from either Side, that those different Boundaries should be indorsed on the Petites; And so it was
Evidence.

was ordered here; only it being a Trial at Bar it was to be indorsed on the Habeas Corpus (same Order made Nov. 4, 1726, between Hughes and Grames) Sel. Cases in Chan. in Ld. King's Time, 60, 61. Mich. 12 Geo 1. Lethulier v. Cattlemain.
