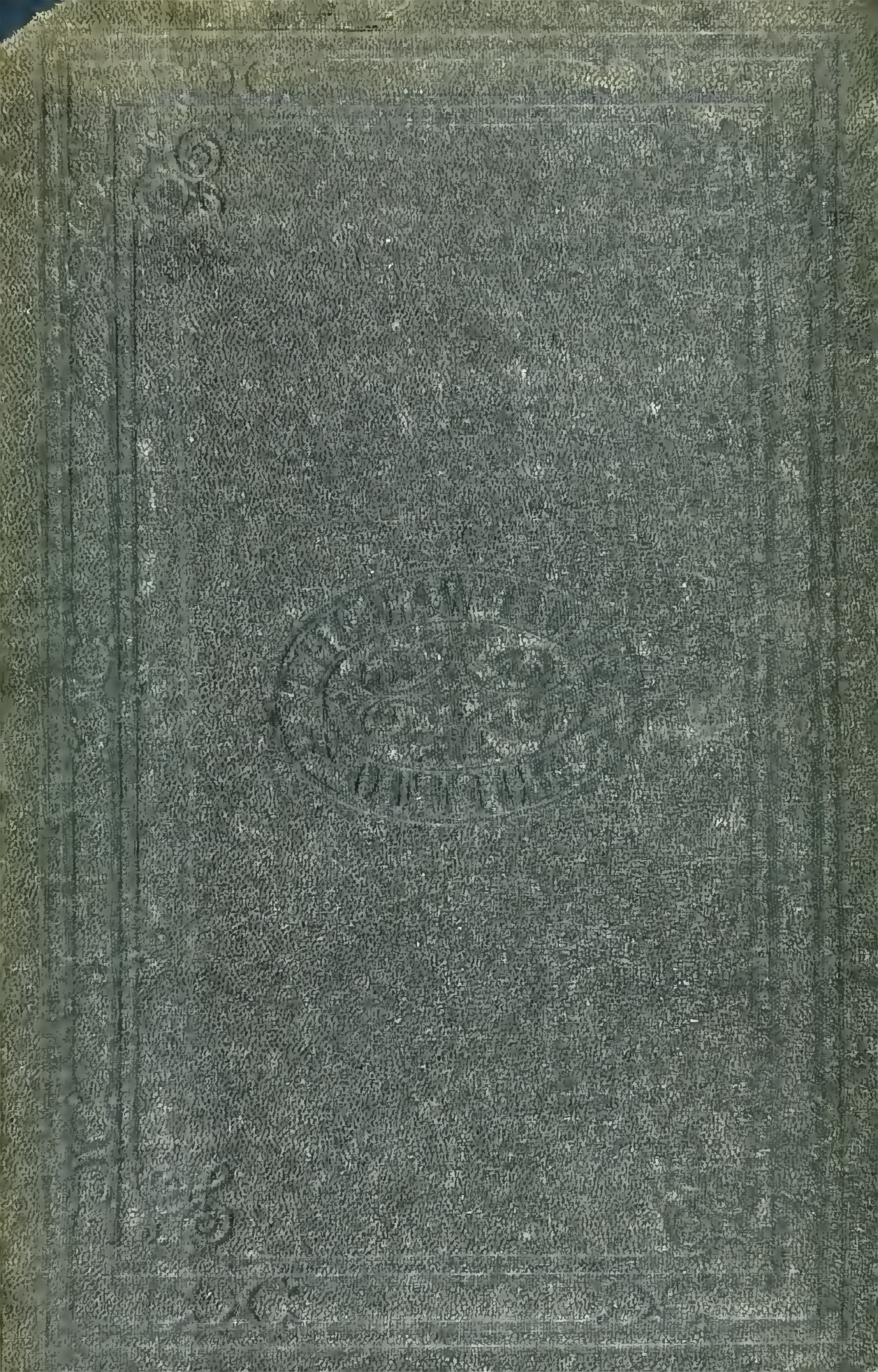

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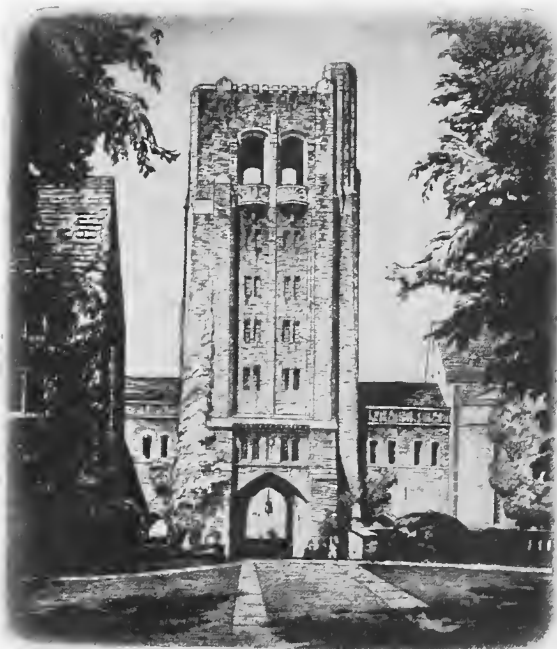

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LEGAL MAXIMS,

WITH

OBSERVATIONS AND CASES.

IN

TWO PARTS.

PART I.

ONE HUNDRED MAXIMS, WITH OBSERVATIONS AND CASES.

PART II.

EIGHT HUNDRED MAXIMS, WITH TRANSLATIONS.

BY

GEORGE FREDERICK WHARTON,

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THE AUTHOR'S PREFACE.

THE object of this work is to encourage in law students a study of the first principles of the law, without a knowledge of which all other is useless; and, with that object, its chief professed merit is, simplicity of arrangement.

The student must not suppose that, because the number of maxims specially considered and explained in the first part of the work amounts to 100 only, and the number of those in the second part to which translations are given, to 700 only, he must search elsewhere for other maxims to assist him in his legal studies. He may rest assured that the two parts of the work, small as it may appear, contain all those maxims or rules of law which are necessary to enable him to obtain a perfect knowledge of the first principles of the laws and constitution of this country, and by which alone he can obtain such knowledge. He may rest assured, also, that all others are but part and parcel of these, though their number be legion. Nor should it be omitted to be stated, that the student must not suppose that these maxims are mere obsolete Latin phrases, referring to bygone days, having no applicability to the law as now administered in this country; or that, being so applicable, they are so only as to some general principles too theoretical to be of service to a modern practitioner; but, let him be assured, that they are of every day use and application, and of absolute necessity in the consideration of each

minor branch of the two great divisions of the law, civil and criminal, and of the numberless subjects continually occurring in the ordinary transactions of daily life within the range of each such branch.

The student must also be pleased to bear in mind that this is not a book intended to be carelessly read, and then as carelessly laid aside; but, that it is intended that the whole of the 100 maxims and translations be committed to memory. This may be very easily done in the course of a few weeks, and when so done, with consideration and care, the student will find that the knowledge so acquired will be of incalculable benefit to him, not only now as a student, but in his after career as a lawyer. Maxims of law not being, as the law, constantly changing, but remaining the same always, as unerring principles of truth, in accordance with which, all laws now, and hereafter to be made, have been, and will be made, and being made, have been hitherto, and will still be interpreted.

With a view to assist the student in committing the 100 maxims to memory, the two tables of maxims and translations are given at the commencement.

A few cases are given at the foot of each of the 100 maxims to enable the student to pursue their further consideration, should he be so inclined.

Manchester, April, 1865.

TABLE OF MAXIMS IN THE FIRST PART.

LATIN.

1. Accessorium non ducit sed sequitur suum principale.
2. Actio personalis moritur cum personâ.
3. Actus curiæ neminem gravabit.
4. Actus Dei vel legis nemini facit injuriam.
5. Actus non facit reum, nisi mens sit rea.
6. Ad ea quæ frequentius accidunt jura adaptantur.
7. Ad questionem facti non respondent judices; ad quæstionem juris non respondent juratores.
8. Alienatio rei præfertur juri accrescendi.
9. Allegans contraria non est audiendus.
10. Ambiguitas verborum latens verificatione suppletur; nam quod ex facto oritur ambiguum verificatione facti tollitur.
11. Argumentum ab inconvenienti plurimum valet in lege.
12. Assignatus utitur jure auctoris.
13. Benignè faciendæ sunt interpretationes, propter simplicitatem laicorum, ut res magis valeat quam pereat; et verba intentioni, non è contra, debent inservire.
14. Boni judicis est ampliare jurisdictionem.
15. Caveat emptor; qui ignorare non debuit quod jus alienum emit.
16. Certum est quod certum reddi potest.
17. Cessante ratione legis, cessat ipsa lex.
18. Communis error facit jus.
19. Consensus non concubitus facit matrimonium: et consentire non possunt ante annos nubiles.
20. Consensus tollet errorem.
21. Contemporanea expositio est optima et fortissima in lege.
22. Cuicunque aliquis quid concedit concedere videtur et id sine quo res ipsa esse non potuit.
23. Cuilibet in suâ arte perito est credendum.
24. Cujus est solum ejus est usque ad cœlum; et ad inferos.
25. Cum duo inter se pugnantia reperiuntur in testamento ultimum ratum est.

26. Cursus curiæ est lex curiæ.
27. De fide et officio judicis non recipitur quæstio; sed de scientiâ, sive error sit juris aut facti.
28. De minimis non curat lex.
29. De non apparentibus, et non existentibus, eadem est ratio.
30. Dies Dominicus non est juridicus.
31. Domus sua quique est tutissimum refugium.
32. Ex antecedentibus et consequentibus fit optima interpretatio.
33. Ex dolo malo non oritur actio.
34. Executio juris non habet injuriam.
35. Ex nudo pacto non oritur actio.
36. Expressio unius personæ, vel rei, est exclusio alterius.
37. Falsa demonstratio non nocet.
38. Hæres legitimus est quem nuptiæ demonstrant.
39. Ignorantia facti excusat; ignorantia juris non excusat.
40. Impotentiæ excusat legem.
41. In æquali jure melior est conditio possidentis.
42. In fictione juris semper æquitas existit.
43. In jure non remota causa, sed proxima, spectatur.
44. Interest reipublicæ ut sit finis litium.
45. Jus accrescendi inter mercatores, pro beneficio commercii, locum non habet.
46. Leges posteriores priores contrarias abrogant.
47. Licet dispositio de interesse futuro sit inutilis tamen fieri potest declaratio præcedens quæ sortiatur effectum, interveniente novo actu.
48. Modus et conventio vincunt legem.
49. Necessitas inducit privilegium quoad jura privata.
50. Nemo debet bis vexari, si constat curiæ quod sit pro unâ et eâdem causa.
51. Nemo debet esse judex in propriâ causâ.
52. Nemo est hæres viventis.
53. Nemo patriam in qua natus est exuere nec ligeantiæ debitum ejurare possit.
54. Nemo tenetur seipsum accusare.
55. Nihil tam conveniens est naturali æquitati quam unumquodque dissolvi eo ligamine quo ligatum est.
56. Nimia subtilitas in jure reprobatur, et talis certitudo certitudinem confundit.
57. Non jus, sed seisina, facit stipitem.
58. Non potest adduci exceptio ejus rei cujus petitur dissolutio.
59. Noscitur à sociis.

60. Nova constitutio, futuris formam imponere debet, non præteritis.
61. Nullum tempus, aut locus, occurrit regi.
62. Nullus commodum capere potest de injuriâ suâ propriâ.
63. Omne majus continet in se minus.
64. Omnia præsumuntur contra spoliatorem.
65. Omnia præsumuntur ritè et solenniter esse acta.
66. Omnis innovatio plus novitate perturbat quam utilitate prodest.
67. Omnis ratihabitio retrotrahitur et mandato priori æquiparatur.
68. Optimus interpres rerum usus.
69. Persona conjuncta æquiparatur interesse proprio.
70. Quando jus domini regis et subditi concurrunt jus regis præferri debet.
71. Quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest.
72. Quando plus fit quam fieri debet videtur etiam illud fieri quod faciendum est.
73. Quicquid plantatur solo, solo cedit.
74. Quicquid solvitur, solvitur secundum modum solventis; quicquid recipitur, recipitur secundum modum recipientis.
75. Qui facit per alium facit per se.
76. Qui hæret litera hæret in cortice.
77. Qui jussu judicis aliquod fecerit non videtur dolo malo fecisse, quia parere necesse est.
78. Quilibet potest renunciare juri pro se introducto.
79. Qui prior est tempore potior est jure.
80. Qui sentit commodum, sentire debet et onus; et è contra.
81. Quod ab initio non valet, in tractu temporis non convalescit.
82. Quod remedio destituitur ipsâ re valit si culpa absit.
83. Quoties in verbis nulla est ambiguitas ibi nulla expositio contra verba expressa fienda est.
84. Res inter alios acta alteri nocere non debet.
85. Respondeat superior.
86. Rex non potest peccare.
87. Rex nunquam moritur.
88. Roy n'est lie per ascun statute si il ne soit expressement nosme.
89. Salus populi suprema lex.
90. Sic utere tuo ut alienum non lædas.
91. Summa ratio est, quæ pro religione facit.
92. Ubi eadem ratio ibi idem lex et de similibus idem est judicium.
93. Ubi jus ibi remedium.
94. Utile per inutile non vitiatur.
95. Verba chartarum fortius accipiuntur contra proferentem.

96. Verba generalia restringuntur ad habilitatem rei vel aptitudinem personæ.
97. Verba relata hoc maximè operantur per referentiam ut in eis in esse videntur.
98. Vigilantibus, et non dormientibus, jura subveniunt.
99. Volenti non fit injuria.
100. Voluntas reputabatur pro facto.

TABLE OF MAXIMS IN THE FIRST PART.

ENGLISH.

1. The accessory does not lead but follows its principal.
2. A personal right of action dies with the person.
3. An act of the court hurts no one.
4. The act of God or of law is prejudicial to no one.
5. The act itself does not constitute guilt unless done with a guilty intent.
6. The laws are adapted to those cases which most frequently occur.
7. To questions of fact judges do not answer: to questions of law the jury do not answer.
8. Alienation of property is favoured by the law rather than accumulation.
9. Contrary allegations are not to be heard.
10. Latent ambiguity of words may be supplied by evidence; for ambiguity arising upon the deed is removed by proof of the deed.
11. An argument from inconvenience avails much in law.
12. That which is assigned takes with it for its use the rights of the assignor.
13. Liberal constructions of written documents are to be made, because of the simplicity of the laity, and with a view to carry out the intention of the parties and uphold the document; and words ought to be made subservient, not contrary to the intention.
14. A good judge will, when necessary, extend the limits of his jurisdiction.
15. Let a purchaser beware; no one ought in ignorance to buy that which is the right of another.
16. That is certain which is able to be rendered certain.
17. The reason of the law ceasing, the law itself ceases.
18. Common error makes right.
19. Consent, and not concubinage, constitutes marriage; and they are not able to consent before marriageable years.
20. Consent takes away error.
21. A contemporaneous exposition is the best and strongest in law.
22. The grantor of anything to another grants that also without which the thing granted would be useless.

23. Whosoever is skilled in his profession is to be believed.
24. Whose is the land, his is also that which is above and below it.
25. Where two clauses in a will are repugnant one to the other, the last in order shall prevail.
26. The practice of the court is the law of the court.
27. Of the good faith and intention of a judge, a question cannot be entertained; but it is otherwise as to his knowledge or error, be it in law or in fact.
28. Of trifles the law does not concern itself.
29. Of things which do not appear and things which do not exist, the rule in legal proceedings is the same.
30. The Lord's day (Sunday) is not juridical, or a day for legal proceedings.
31. To every one, his house is his surest refuge; or, every man's house is his castle.
32. From that which goes before, and from that which follows, is derived the best interpretation.
33. From fraud a right of action does not arise.
34. The execution of the process of the law does no injury.
35. From a nude contract, *i.e.*, a contract without consideration, an action does not arise.
36. The express mention of one person or thing is the exclusion of another.
37. A false description does not vitiate a document.
38. The lawful heir is he whom wedlock shows so to be.
39. Ignorance of the fact excuses: ignorance of the law does not excuse.
40. Impotency excuses law.
41. In equal rights the condition of the possessor is the better.
42. In fiction of law equity always exists.
43. In law the proximate, and not the remote cause, is to be regarded.
44. It concerns the state that there be an end of lawsuits.
45. For the benefit of commerce, there is not any right of survivorship among merchants.
46. Later laws abrogate prior contrary laws.
47. Although the grant of a future interest is invalid, yet a precedent declaration may be made, which will take effect on the intervention of some new act.
48. Custom and agreement overrule law.
49. Necessity induces or gives a privilege as to private rights.
50. No man ought to be twice punished, if it be proved to the court that it be for one and the same cause.
51. No one should be judge in his own cause.
52. No one is heir of the living.

53. A man cannot abjure his native country, nor tho allogiance he owes his sovereign.
54. No one is bound to criminate himself.
55. Nothing is so agreeable to natural equity as that, by the like means by which anything is bound, it may be loosed.
56. Nice and subtle distinctions are not sanctioned by the law; for so, apparent certainty would be made to confound truo and legal certainty.
57. Not right, but seisin, makes the stock.
58. It is not permitted to adduce a plea of the matter in issue as a bar thereto.
59. The meaning of a word may be ascertained by reference to those associated with it.
60. A new law ought to impose form on what is to follow, not on the past.
61. No time runs against, or place affects, the king.
62. No one can take advantage of his own wrong.
63. The greater contains the less.
64. All things are presumed against a wrong doer.
65. All things are presumed to be correctly and solemnly done.
66. Every innovation disturbs more by its novelty than benefits by its utility.
67. Every ratification of an act already done has a retrospective effect, and is equal to a previous request to do it.
68. The best interpreter of things is usage.
69. A personal connection eqnals in law a man's own proper interest.
70. When the rights of the king and of the subject concur, those of the king are to be preferred.
71. When the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable.
72. When more is done than ought to be done, then that is considered to have been done which ought to have been done.
73. Whatever is affixed to the soil belongs to the soil.
74. Whatever is paid, is paid according to the intention or manner of the party paying: whatever is received, is received according to the intention or manner of the party receiving.
75. He who does anything by another, does it by himself.
76. He who sticks to the letter, sticks to the bark: or, he who considers the letter merely of an instrument cannot comprehend its meaning.
77. He who does anything by command of a judge will not be supposed to have acted from an improper motive; because it was necessary to obey.
78. Every man is able to renounce a right introduced for himsolf.

79. He who is first in time has the strongest claim in law.
80. He who enjoys the benefit ought also to bear the burden; and the contrary.
81. That which is bad from the beginning does not improve by length of time.
82. That which is without remedy avails of itself, if without fault.
83. When in the words there is no ambiguity, then no exposition contrary to the expressed words is to be made.
84. One person ought not to be injured by the acts of others to which he is a stranger.
85. Let the principal answer.
86. The king can do no wrong.
87. The king never dies.
88. The king is not bound by any statute if he be not expressly named therein.
89. The welfare of the people, or of the public, is supreme law.
90. So use your own property as not to injure your neighbour's.
91. The highest rule of conduct is that which is induced by religion.
92. Where there is the same reason, there is the same law.
93. Where there is a right there is a remedy.
94. That which is useful is not rendered useless by that which is useless.
95. The words of deeds are to be taken most strongly against him who uses them.
96. General words are restrained according to the nature of the thing or of the person.
97. Words to which reference is made in an instrument have the same effect and operation as if they were inserted in the instrument referring to them.
98. The vigilant, and not the sleepy, are assisted by the laws.
99. That to which a man consents cannot be considered an injury.
100. The will is to be taken for the deed.

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PART I.

ONE HUNDRED MAXIMS,

WITH

OBSERVATIONS AND CASES.

MAXIM I.

Accessorium non ducit, sed sequitur suum principale: (Co. Litt. 152).—The accessory does not lead, but follows its principal.

THIS maxim may be also translated, "The incident shall pass by the grant of the principal, but not the principal by the grant of the incident;" and may be illustrated, in both negative and affirmative, by the following examples:—Rent is incident to the reversion, and by a grant of the reversion the rent will pass, though by a grant of the rent the reversion will not pass. So, with a manor, the court baron will pass; with a mansion-house, all those things appurtenant, necessary for its enjoyment as such, will pass. But those things which are only appendant by continual enjoyment with others, as warrens, leets, waifs, estrays, and the like, will not so pass, without express words, or general words showing an intention; as "cum pertinentiis." And so it is in similar cases; as, covenants running with the land; the obligations resulting from contracts; the consequences resulting from causes allowed by law, and which are all referable to this maxim. A familiar instance of the application of the maxim is, where A. requires a chattel to be repaired, or made from material to be provided by himself, and employs B. to do the work, in this case the labour used in the repair or in the manufacture of the chattel is merged into it, and thus forms part of it, and belongs to A., and B. has only a claim for the labour bestowed upon it. It has also been held that where there is a sale of realty and personalty in one indivisible contract, as of a house and furniture, the property in the furniture will not pass until a conveyance of the house has been executed.

The principal object or thing is called *res principalis*, the accessory, *res accessoria*, and these terms apply equally to things corporeal as to things incorporeal, to rights incident to property

as to property itself; each principal having its incident, and each incident its principal. It follows also of course that where the principal ceases, or is destroyed, the accessory also ceases, or is destroyed: as where a less estate being created out of a greater and the greater is destroyed or determined, the destruction or determination of the greater estate draws with it the destruction or determination of the less. So in the case of a lessee or other person having a limited determinable estate, and granting an interest out of it, the determination of such his limited or determinable estate, whether by effluxion of time, breach of condition, or otherwise, will draw with it, so as to determine, the interest so granted out of it. All rights and privileges carry with them corresponding obligations, and the right or privilege ceasing the obligation ceases also, as the accessory on the destruction of the principal. There is, however, no obligation without a right, as there is no accessory without a principal. The law confers many privileges upon corporate bodies and individuals, in their public and private relation to society, but to all such privileges there are corresponding conditions annexed, which conditions follow the privileges as the accessory follows the principal.

An exception to this rule exists in the case of a surrender of a lease for the purpose of taking a renewal, in which case, the reversion of an under-lease, if there be one, being gone, the under-lease does not thereby become extinguished, but the lessee has all the same remedies against the under-lessee for rents, covenants, and duties, as if the original lease had been still kept on foot; and the rights of the original lessor are also preserved so far as the rents and covenants in the new lease exceed not those of the old.

Co. Litt. 132; Shepp. Touch. 89; Harding *v.* Pollock, 6 Bing. 63; Channell *v.* Robotham, Yelv. 68; Wood *v.* Bell, 6 Ell. & Bl. 361; Goode *v.* Burton 1 Exch. 189; Hollis *v.* Palmer, 2 Bing. N. C. 713; Florence *v.* Drayson, 1 C. B., N. S., 584; Florence *v.* Jennings, 2 *Ib.* 454; 4 Geo. 2, c. 28, s. 6; Lanyon *v.* Toogood, 13 M. & W. 29; Clarke *v.* Spence, 4 Ad. & El. 470; Carruthers *v.* Payne, 2 M. & P. 441.

MAXIM II.

Actio personalis moritur cum persona: (Noy Max. 14).— A personal right of action dies with the person.

THE personal right of action intended by this maxim is that right of action which a person has for some wrong done to his person, or, which one has against another for breach of contract to do some personal service, that is, service depending upon personal skill; and, strictly speaking, it is in tort only, and not in contract. Where, however, the right of action arises out of injury to the personal property of the person dying, the maxim does not apply, and his personal representatives may therefore sue in respect of such right of action; as, for breaches of contracts which are an injury to his personal estate; bond and other debts, and, indeed, all contracts not coming within the meaning of a personal right of action arising out of the breach of a personal contract as above defined. For instance, when a vendor omits to make out a good title within a time stipulated by the contract of sale, and the vendee dies, his executors may sue for damage incurred by loss of interest on the deposit money, and the expense of investigating the title. So the executor of a tenant for life may recover for the breach of a covenant to repair committed by the lessee of the testator in his lifetime.

Statutory provision has also been recently made for the recovery within a limited period after the death of the person whose property is injured, of compensation for injury to real property committed within a limited period before the death of such person, and also more recently, for compensation in case of death by the wrongful act, neglect, or default of another, where the act, neglect, or default is such as, if death had not ensued, the party dying would have been entitled to maintain an action for damages in respect thereof, and in which case also, as in that first-mentioned, the action must be brought within a limited time

after the death in respect of which the action is brought. A recent case shows that this maxim is not rendered inoperative by the Common Law Procedure Act 1852, by which Act, on the death of a plaintiff, his representatives may, by entering a suggestion, proceed with the action; but that, on the death of a plaintiff, during the progress of an action for personal injury, his representatives cannot proceed with the action; that Act only applying to those cases where, before the Act, the cause of action would have survived to the personal representative, and he could have commenced an action in his representative capacity. Formerly, where damage of a temporary nature, and accruing wholly in the lifetime of the testator, was done to real property, neither the heir nor personal representative could sue in respect of it: the heir, because it was personal estate, and the personal representative by reason of this maxim, but now this inconvenience is remedied by statute as before mentioned. So, also, executors could not sue in respect of any detention or conversion of the personal property of the testator in his lifetime, but that was remedied also by statute.

With the exception of the instance above mentioned resulting in the death of the party, the rule in strictness still applies, and no action can be maintained by the personal representatives of the deceased in respect of a strictly personal tortious right of action; as, for assault, false imprisonment, or other personal injury, libel, negligence, &c.

The right which a husband has to the choses in action of his wife, may properly be considered within this rule as being a personal right of action dying with him, and which, if not reduced into possession during coverture, survives to the wife.

Noy Max. 14; Orme *v.* Broughton, 10 Bing. 533; Ricketts *v.* Weaver, 12 M. & W. 718; Raymond *v.* Fitch, 2 C. M. & R. 588; Adam *v.* Bristol, 2 Ad. & El. 389; Flureau *v.* Thornhill, 2 W. Bl. 1078; 4 Edw. 3, c. 7; 25 Edw. 3, c. 5; 3 & 4 Will. 4, c. 42, s. 2; 9 & 10 Vict. c. 93, s. 1; C. L. P. A. 1852; Chamberlaine *v.* Drumgoole, 13 Ir. Com. L. Rep., 1 App.; Knight *v.* Quarles, 4 Moore, 541; Flinn *v.* Perkins, 32 L. J. 10, Q. B.

MAXIM III.

Actus curiæ neminem gravabit: (Jenk. Cent. 118.)—An act of the court injures no one.

WHERE this rule can be made to apply to any loss or injury to the party, through delay or otherwise on the part of the court, and it is in the power of the court to remedy the evil, it will be done; but there are many cases in which error and delay on the part of the court and its officers produce injury and loss to one or other of the parties which the court cannot, nor will not, compensate.

Where the time has gone by for entering up judgment through the delay of the court, judgment will be ordered to be entered up *nunc pro tunc,* that is, the proceeding in question may be taken now, instead of at the time when it would have been taken but for default of the court, for the convenience of the court, through press of business, taking time to deliberate on its judgment, death of the party, or other like cause; as where a defendant dies pending the argument on a point reserved on which judgment of nonsuit is afterwards given, his representatives are entitled, upon application to the court, to enter up the judgment of the term next after the trial, that they may get the costs of the nonsuit. But if it were by laches of the plaintiff, or those representing him, or by reason of any proceeding in the ordinary course of law, that judgment was not entered up, the court will not interfere under this rule. Judgment will in some extraordinary cases be allowed to be entered *nunc pro tunc* where the default is not that of the court; it is, however, only in very rare cases. And therefore, where, on a verdict for the plaintiff subject to a reference at the Spring Assizes, 1851, and an award in her favour in Trinity Term following, she having died on the 22nd of November, and her will being taken out of the proper office on the 3rd December,

to be proved to enable her executrix to sign judgment, but in consequence of a *caveat* entered by the defendant, probate was not obtained until the 6th May, 1852; the executrix having moved for leave to enter up judgment as of Michaelmas Term, 1851, it was refused, the delay not being attributable to any act of the court. though it was admitted by the court to be a hard case. Also, where a judge's order was made a stay of proceedings on a day named. on payment of debt and costs. the plaintiff having liberty to sign judgment if the costs were not paid. and the plaintiff having died before the day named. it was held that judgment could not be entered *nunc pro tunc*. Nor, even where the fault appeared to be that of the officer in the master's office. in delaying the judgment, it not appearing that the officer had refused to sign judgment. The principle governing the court in allowing judgment to be entered *nunc pro tunc*, is upon the assumption that the party was in a condition, at the time as of which it is proposed the judgment should be entered, to claim the decision of the court, the court not having jurisdiction otherwise to order judgment to be so entered. Amongst the cases where the error or delay is that of the court. and whereby loss and injury are occasioned to the parties, and in which, nevertheless, the court will not interfere to assist. are such as where, from want of proper arrangements as to time, causes are made remanets, or referred to arbitration, where some officer neglects his duty, where there is no appeal from the decision of the court or judge. and in many of those cases where the maxim, "omnia presumuntur ritè esse acta," is said, though improperly, to apply.

Jenk. Cont. 118; 2 Wms. Saund. 72; Miles *v.* Bough, 9 Q. B. 47; Lawrence *v.* Hodgson, 1 Y. & J. 368; Freeman *v.* Tranah, 12 C. B. 406; Toulmin *v.* Anderson, 1 Taunt. 384; Copley *v.* Day, 4 Taunt. 702; Green *v.* Cobden, 4 Scott, 486; Evans *v.* Rees, 12 A. & E. 167; Lanman *v.* Audley, 2 M. & W. 535; Jackson *v.* Carrington, 4 Exch. 41; Wilkins *v.* Canty, 1 Dowl. N. S. 855; Wilks *v.* Perks, 6 Sc. N. R. 42; Anon. 1 H. & C. 664.

MAXIM IV.

Actus Dei vel legis nemini facit injuriam: (5 Co. 87.)—The act of God, or of the law, is prejudicial to no one.

THE apportionment of rent in case of the death of the lessor, tenant for life, or in tail, before the rent becomes payable; as also, the death of a judgment-debtor taken in execution; the debt not being thereby discharged, though it would have been otherwise had the debtor been set at liberty by the judgment-creditor himself, may be given to illustrate the first part of this maxim.

Formerly, where any lessor or landlord having only an estate for life in the lands happened to die before or on the day on which any rent was reserved or made payable, such rent, or any part thereof, was not recoverable by the executors or administrators of such lessor or landlord, nor was the person in reversion entitled thereto, other than for the use and occupation thereof, from the death of the tenant for life, whereby the under-tenants avoided payment: but now, where any tenant for life shall die before or on the day on which any rent is reserved or made payable upon any demise or lease of any lands, tenements, or hereditaments which determined on the death of such tenant for life, his executors or administrators may recover from such under-tenant, if such under-tenant for life die on the day on which the same was payable, the whole; or, if before such day, a proportion of such rent, according to the time such tenant for life lived of the last year, or portion of a year, or other time in which the rent was growing due. But where the lease made by the tenant for life does not determine with his death, the rent is not apportioned; as where it is made by virtue of some power.

If a defendant in an action of debt die in execution, the plaintiff may have a new execution by *elegit*, or *fieri facias*; and that, because the plaintiff shall not be prejudiced, nor the defendant

benefited, by any act or wrong of the defendant, in non-payment of the debt when no default is in the plaintiff, he having followed the due and ordinary course of law; nor is the taking of the body a satisfaction of the debt, but merely a pledge for its satisfaction; as is signified by the words of the writ, *capias ad satisfaciendum*. The death of the defendant also is the act of God, which shall not turn to the prejudice of the plaintiff of his execution, which is the act of the law, and which does no wrong to any.

So, on the other hand, the case of a tenant whose house is destroyed by fire or tempest, though he is not discharged from his tenancy to the injury of his landlord, yet, he is not bound to rebuild the house, to the injury of himself. Unless indeed there be a covenant or agreement on his part to repair and keep the premises in repair, in which case, if there be no exception in case of fire, tempest, &c., he will have to rebuild if the premises are destroyed by fire or other casualty. He must, however, continue to pay the rent, if a lessee, to the end of his term; or, if a tenant from year to year, until he determine the tenancy by notice. Neither is the landlord bound to rebuild in case of fire, though he may have insured the premises, and received the money from the insurance office. Against all these inconveniences to the tenant, he must provide by special stipulation in the lease or agreement. This, and similar cases, will show the application of the second part of the maxim.

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11 Geo. 2, c. 19; 4 & 5 Will. 4, c. 22; 5 Co. 87; 10 Co. 139; Paget v. Gee, Amb. 198; Cage v. Acton, 1 Ld. Raym. 515; Cattley v. Arnold, 28 L. J. 352, Ch.; Calland v. Troward, 2 H. Bl. 324; Symons v. Symons, Madd. & G. 207; Nadin v. Battie, 5 East, 147; Vernon v. Vernon, 2 Bro. C. C. 659; Digby v. Atkinson, 4 Camp. 275; Bullock v. Dommitt, 6 T. R. 650; Parker v. Gibbons, 1 Q. B. 421; Weignall v. Waters, 6 T. R. 488; Leeds v. Cheetham, 1 Sim. 146; Loftt v. Dennis, 28 L. J. 168, Q. B.

MAXIM V.

Actus non facit reum nisi mens sit rea: (3 Inst. 107.)—The act itself does not constitute guilt unless done with a guilty intent.

THIS maxim has reference chiefly to criminal proceedings, and in such cases it is the rule that the act and intent must both concur to constitute a crime; yet, the law will sometimes imply the intent from the act, under the maxim, "Acta exteriora indicant interiora secreta." Those cases in which the law will imply the intent from the act are where an act is done in abuse of lawful authority; as where a man having by law authority, in the exercise of some public duty, to enter a railway station or other public building, and, being therein, commits a felony. it will be presumed that he entered the premises with a felonious intent. So, of a sheriff or other public officer acting in excess of his authority, he will, in respect of such excess, and upon the same principle, be deemed a trespasser *ab initio*. So, in cases where the act done is positively forbidden by express enactment to be done, the intention to do it will be implied.

The crime of murder furnishes at once an instance in illustration of both the maxims under consideration; for though, on the one hand, the act of killing does not of itself constitute the guilt, unless done with a guilty intent, yet a guilty intent will in such a case be presumed.

The question of malicious intent forms, also, an important feature in the actions of libel and slander. It is said, "the greater the truth the greater the libel;" meaning that the more true the matter published is, the more readily it will be believed, and in consequence, the more defamatory it will be; and that, therefore, the mere unauthorised publication of a truth reflecting upon a man's character is a libel—yet, the written or printed publication of the libellous matter is always attributed to a

malicious intent on the part of some person or other. There is a difference between libel and slander in this respect. Generally speaking, libel is a written or printed publication of defamatory matter; and the fact of writing or printing defamatory matter is of itself a sufficient indication of intention on the part of the writer or printer that it shall go to the world for as much as it is worth; and in that case the malicious intention in publishing must be taken to be equal in substance to the libel; and malicious intention in such case is not an essential ingredient to the support of the action. In slander, however, the words used are frequently the mere outbursts of a hasty temper, and though slanderous and actionable if spoken with a malicious intent, yet, without the malicious intent, in the absence of special damage, they are not actionable, unless indeed the words used would lead the bystanders to infer that the party slandered had been guilty of some criminal offence, *sed quære,* without special damage; in which case, as in that of libel, the intention must be implied.

In an action for libel against a railway company, it was held that the action would lie if malice in law might be inferred from the publication of the libellous matter. It has been also held that to convict of larceny there must be not only an intention to commit the offence, but a means also of carrying it into effect. Therefore, where a man put his hand into the pocket of another with intent to steal, it was held that he could not be convicted of an attempt to steal unless there appeared to have been something in the pocket which he might have stolen.

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3 Inst. 107; Reg. *v.* Woodrow, 15 M. & W. 404; Lee *v.* Simpson, 3 C. B. 871; Clift *v.* Schwabe, 3 C. B. 437; O'Brian *v.* Clement, 15 M. & W. 437; Barnett *v.* Allen, 31 L. T. 217; Reg. *v.* Collins, 10 L. T. (N.S.) 851; Hickinbotham *v.* Leech, 10 M. & W. 361; Lynch *v.* Knight, 5 L. T. (N.S.) 291; Reg. *v.* Hore, 3 F. & F. 315; Whitfield *v.* South-Eastern Railway Company, 31 L. T. 113; George *v.* Goddard, 2 F. & F. 689; Turnbull *v.* Bird, 2 F. & F. 508.

MAXIM VI.

Ad ea quæ frequentius accidunt jura adaptantur: (2 Inst. 137.)—The laws are adapted to those cases which most frequently occur.

THE meaning of this maxim is, that the laws are to be so construed as that they may be made to adapt themselves to those cases which, in the ordinary transactions of the world, most frequently occur, in preference to their being made to adapt themselves to any isolated or individual case. The phrase, "so far as the same is applicable," now so common in Acts of Parliament where forms of procedure are given, requires the aid of this maxim to explain its meaning; it is evidently directed to those cases which most frequently occur, and will not be permitted to be altered so as to suit every particular case, and in considering it the courts will so construe it.

In the construction of all public general Acts of Parliament, also, that meaning must be put upon them which is applicable to cases which most frequently occur, and not to any particular case; for an Act of Parliament is like the common law, which adapts itself to the general in exclusion of the particular good, and is construed with the aid of the common law. The Legislature will be presumed to have in their contemplation those cases which most frequently occur, and a statute will be so construed. So where in an Act of Parliament there is given the form of an indorsement to be put upon a writ of summons, which by construction of the statute was intended to apply to all cases alike, and, there being a blank in such indorsement, the Court ordered it to be filled up so as to be generally applicable. Private statutes, however, are not so construed; they are construed strictly, and confined to the particular object for which they were made appearing upon the face of them, as an ordinary deed *inter partes*. Thus, where a private Act of Parliament,

intituled "An Act to enable a certain Insurance Society to sue and be sued in the name of their Secretary," enacted that they might commence all actions and suits in his name as nominal plaintiff; it was held that that did not enable the secretary to petition on behalf of the society for a commission in bankruptcy against their debtor; the expression "to sue," generally speaking, meaning to bring actions, and was not applicable to a commission in bankruptcy, which would have been mentioned if intended.

Though this maxim may be strictly true as regards the laws of this country, if the meaning be that they are to be so construed as that they may be made to adapt themselves to such cases in preference to their being made to adapt themselves to any isolated or individual cases, and the reference be to public general statutes merely, and not to local or personal; yet the laws of this country are by no means perfect specimens of general adaptation. They seem rather to be made for each individual case as it arises; and, indeed, the moment a case occurs suggestive of legislative enactment, a law is made to meet it, whether it be at the will of a private person, a public body, or the public. Most of our public general statutes are, however, of general application, and are made to apply to those cases which are likely most frequently to occur; as statutes directed against crimes and misdemeanors.

Taking the maxim to mean that laws are to be construed so as to give them the widest general application, it applies to all those cases where the words used have both a particular and a general signification, when that construction having general application will be adopted, unless manifestly unreasonable and inconsistent.

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2 Inst. 137; 18 & 19 Vict. c. 67; Vaugh. R. 373; Wing. Max. 216, 716; Twiss *v.* Massey, 1 Atk. 67; *Ex parte* Freeman, 1 V. & B. 41; Guthrie *v.* Fish, 3 B. & C. 178; Williams *v.* Roberts, 7 Exch. 628; Miller *v.* Solomons, 7 Exch. 549; Robinson *v.* Cotterell, 11 Exch. 477; Hall *v.* Coates, 11 Exch. 481.

MAXIM VII.

Ad quæstionem facti non respondent judices—Ad quæstionem juris non respondent juratores: (Co. Litt. 295.)—To questions of fact judges do not answer—To questions of law the jury do not answer.

MATTERS of fact are tried by jurors, matters of law by the judges, and the duty of the jurors is to find the truth of the fact, and to leave the decision of the law to the judges.

If, in the trial of an issue, the issue to be tried be one of fact only, it is to be decided by the jury; if of law, by the judge. In the trial of an action at law, though the issue joined is one of fact for the jury to decide or to find; yet it is for the judge to determine the law, upon that finding, and this he either does at the trial; or, if a difficult point of law arise. leaves to be done by the court above upon a general verdict, subject to a special case, stating the facts for the consideration of the court.

In the trial of an action mixed questions of law and fact frequently arise; as upon a contract, either by parol or in writing, in which case the jury find the existence of the contract and the nature of it, and the judge determines the construction in law to be put upon such contract.

In some cases a jury may be said to exercise the office of both judge and jury; as, when they are directed as to the law by the judge, but, in giving their verdict, misapply it, whether from wilfulness or misapprehension.

Though the jury are judges of the facts upon which depend the main issue in question, yet they are not to determine all facts arising incidentally during the trial of a cause; as, for instance, on a question as to the admissibility of evidence, the consideration of the facts relating thereto, and the rejection and reception thereof, are matters altogether within the province of the judge. In practice, on a trial at Nisi Prius, after the evidence is closed,

the judge states to the jury, for their information and guidance, the question really in dispute between the parties, and directs their attention to the evidence; and when a question of law is mixed up with the facts, he states and explains to them the principles of law governing the case, and by which it must be decided; but he does not interfere further with what may be considered the province of the jury, and he only goes so far as has been stated, when he considers it necessary to prevent a failure of justice.

Recent legislation has made great inroads into this old maxim, by giving to judges of the county courts, and of the superior courts, power to decide matters of fact, as well as of law, without the intervention of a jury; in some cases with, and in others without, the consent of the parties. Courts of equity, as well as courts of law, have also now the power of determining matters of fact by means of a jury, without directing an issue to be tried by a court of law as formerly, the functions of the equity judge and jury being in such cases somewhat similar to those at law. Courts of equity, however, do not seem of a construction suitable to the adoption generally of trial by a jury; but only in those cases where a plain question of fact has to be determined: for, equity judges are themselves, in general, judges of the facts and of their application to the law, and of the application of the law to them on the evidence brought before them; and are well able legally and equitably to determine the facts upon the evidence, and to apply the law, as equitably administered by them, to the facts. But, out of deference to the old institution of trial by jury, a matter arising in pais must still be determined in pais.

Co. Litt. 125, 225, 226, 295; 8 Co. 308; 9 Co. 13; 10 Co. 92; 3 Bla. Com.; Elliott *v.* South Devon Railway Company, 2 Exch. 725; Bartlett *v.* Smith, 11 M. & W. 486; Panton *v.* Williams, 2 Q. B. 169; Doe *v.* Lewis, 1 Burr. 617; Gibson *v.* Overbury, 7 M. & W. 555; Fryer *v.* Coombes, 3 Q. B. 587; Davidson *v.* Stanley, 3 Sc. N. R. 49; Medley *v.* Smith, 6 Moore, 53; Baylis *v.* Lawrence, 11 A. & E. 920; Doe *v.* Crisp, 8 A. & E. 779; Heslop *v.* Chapman, 23 L. J. 52, Q. B.

MAXIM VIII.

Alienatio rei præfertur juri accrescendi: (Co. Litt. 185.)—Alienation is favoured by the law rather than accumulation.

RESTRICTION on alienation is a badge of feudalism, and was introduced into this country under William I. It was the ruling principle of his government that the King should be supreme lord of all land, and that all land should be holden of him in return for services to be rendered to him. This was at that time the nature of the tenure of land in Normandy. with which William I., as Duke of Normandy, and his followers. were well acquainted, and which they introduced here in order to give them that absolute territorial power and those military advantages which they had in their own country, and which, in fact, they did thereby obtain in this. The possession of the whole kingdom was that of the monarch as military chief, and the division of the land amongst his soldiers was the pay which they received for their personal services, they still holding the land under their monarch as chief. This order of government William so strictly carried out that he required all the landowners in the kingdom, as well those holding *in capite* (or immediately from him) as the under-tenants (or those holding under his nobles), to take an oath of fealty to him in respect of such lands, and which was done at Salisbury in 1086, upon the occasion of the compilation of what is called the "Doomsday Book," and towards the close of his reign. Alienation, strictly so called, under a tenure such as this was impossible; but *subinfeudations* or *subtenures* were permitted—the sub-tenant holding from the tenant *in capite*, who in his turn held from the Sovereign. From the time of the Conquest many statutes have been passed, beginning with Magna Charta, having a tendency to encourage alienation, until at length the law became what it now

is, and as represented by this maxim. So that, instead of there now being statutes restricting alienation, there are statutes preventing the restriction of alienation of real estate, and preventing the accumulation of personal estate; real estate being inalienable for a longer period than for a life or lives in being and twenty-one years afterwards, and the accumulation of personal estate being restricted to a life or lives in being, or twenty-one years.

The restrictions upon alienation under the feudal system applied as well to alienation by will as by deed or other act *inter vivos,* and continued so until so late a period as the reign of Henry VIII., by several Acts in whose reign the right of alienation of lands and other hereditaments, with some exceptions, was first granted; since which time, by various statutes, ending with the 1 Vict. c. 26, the alienation of all real and personal estate, including customary freeholds and copyholds, has become, and is now, excepting in cases of disability, without restriction.

The law merchant may be adduced as showing the desire in the present day to remove all restrictions upon alienation of personal estate by the facilities which are given thereby to the transfer of commercial property and the negotiation of mercantile securities. And so great is the desire to encourage the sale and transfer of land, that it is sought, by legislative enactment, to make such transfer as simple as is the transfer of Government stock—that is, by mere certificate. It is also proposed to make choses in action assignable at law, and to remove equitable restrictions to the assignment of reversionary interests.

Co. Litt. 1, 185, 376; 10 Co. 35; Thellusson *v.* Woodford, 11 Ves. jun. 112, 149; Cadell *v.* Palmer, 10 Bing. 140; 2 Bla. Com.; Williams' Real and Personal Property; 18 Edw. 1, stat. 1, c. 1; 32 Hen. 8, c. 36; 29 Car. 2, c. 3; 39 & 40 Geo. 3, c. 98; 3 & 4 Will. 4, c. 74; 7 Will. 4 & 1 Vict. c. 26; 8 & 9 Vict. c. 106; 20 & 21 Vict. c. 57; Spencer and others *v.* The Duke of Marlborough, 3 Bro. P. C. 232; Tullett *v.* Armstrong, 4 My. & Cr. 377; Fowler *v.* Fowler, 10 L. T. (N.S.) 682.

MAXIM IX.

Allegans contraria non est audiendus: (Jenk. Cent. 16.)— Contrary allegations are not to be heard.

A WITNESS will not be allowed to contradict himself, nor a party to contradict his own witness: a landlord distraining shall not be allowed to deny that a tenancy existed; nor shall a tenant dispute his landlord's title.

It is upon this principle that a notice to quit by either landlord or tenant cannot be waived but by some act by both parties, differing in this respect from a waiver of forfeiture of a lease or other interest in land by breach of covenant, which the lessor alone may do without the concurrence of the lessee. And so it is that the receipt by the lessor, after breach of covenant by the lessee, of rent accruing due after breach is a waiver of a forfeiture then known to him, notwithstanding that he may at the time protest against its being such waiver. So, if a landlord receive or distrain for rent accruing due after the expiration of notice to quit, it is a waiver of the notice; though a demand of rent without actual receipt is not necessarily so, but it is in such case a question of intention. It is in accordance with this principle, also, that in legal proceedings a party cannot take advantage of an irregularity of his opponent after having himself taken another step in the cause; that he is estopped from denying his own deed, or setting up another deed inconsistent with it; that he is estopped from denying the authority of his servants, agents and others, to do such acts as the law presumes such persons to have authority to do. The law presumes a man to intend the natural or ordinary consequences of his acts, and he will not be permitted to allege the contrary where the interests of a third party or the public are concerned; and this applies negatively as well as affirmatively; for, a man standing by

without objecting will be considered as consenting, and will not be allowed to allege to the contrary.

The action of trover furnishes a simple instance of the application of the maxim. A man cannot recover in trover and also in debt for goods and for the price for which they have been sold, for in suing for the price of the goods he consents to the conversion, and the count in trover fails; he cannot expect to have both the money and goods. So a verdict in trover is a bar to an action for money had and received brought for the value of the same goods. So a judgment in trespass in which the right of property is determined, is a bar in an action of trover for the same taking.

So the doctrine of estoppel furnishes many like instances. A recital in a deed is evidence against the party executing it of the matters therein recited, and is a bar to an action on the deed in respect of such recited matters, if pleaded. A recital in a bill of sale by the sheriff of the writ of execution and of the seizure and sale of the goods levied is evidence against him of those facts. An admission on the record in an action between the same parties is conclusive evidence against them, and need not be proved, and cannot be disproved. A misrepresentation by the plaintiff of the property or ownership in goods, whereby the defendant is deceived, precludes the plaintiff from denying such property or ownership in an action respecting the same goods—he being estopped by his wilful mis-statement from disputing a state of facts upon the faith of which another has been induced to act to his prejudice.

Jenk. Cent. 16; Com. Dig. Ev. (B 5); Com. Dig. Action (K 3); Shaw *v.* Picton, 4 B. & C. 729; Evans *v.* Oglevie, 2 Y. & J. 79; Wood *v.* Dwarris, 11 Exch. 501; Taylor *v.* Best, 14 C. B. 487; *Ex parte* Mitchell, De Gex B. C. 257; Blyth *v.* Dennett, 13 C. B. 178; Brewer *v.* Sparrow, 7 B. & C. 310; Woodward *v.* Larking, 3 Esp. 286; Carpenter *v.* Butler, 8 M. & W. 212; Hitchin *v.* Campbell, 2 W. Bl. 827; Croft *v.* Lumley, 6 H. L. Cas. 672; Charter *v.* Cordwent, 6 T. R. 219.

MAXIM X.

Ambiguitas verborum latens verificatione suppletur; nam quod ex facto oritur ambiguum verificatione facti tollitur: (Bac. Max. Reg. 23.)—Latent ambiguity of words may be supplied by evidence; for ambiguity arising upon the deed is removed by proof of the deed.

THIS rule applies to written instruments; and *ambiguitas latens* (latent, or hidden, ambiguity) is where the writing appears to be free from ambiguity, but by some extrinsic evidence or matter *dehors* the instrument is shown not to be so; and, inasmuch as the ambiguity arises by evidence *dehors* the instrument, so it may in the same manner be removed. The following are examples:—If A. devise to his son B., he having two sons of that name; or to I. E., the daughter of A., by the initial letters only. and A. have two daughters whose names will bear those initials, evidence will be admitted to show which of the two was intended. So where a testator gave and bequeathed to his son E. F. all that dwelling-house, &c., then in the occupation of his son I. during his natural life, and at his death to descend to his grandson H. F., the claimant, who was the son of testator's son E., and the defendant, who was the son of the testator's son I.; it was held that there was a latent ambiguity in the will as to which of the two grandsons the testator meant to devise the house, and that parol evidence was admissible to explain it. So where A. by his will left all his estate to F. M. F. and to his sister M. F., testator's granddaughter, share and share alike; the said M. F. then being in France with her uncle M.; and M. F. was not then living, nor had ever so lived, whilst her sister C. F. was living and had so lived with her uncle M.; it was held that extrinsic evidence was admissible to explain the ambiguity in the will, and that M. F. was entitled. In such and the like cases, where the language of the instrument is of itself plain, but where

it is rendered ambiguous by parol evidence, parol evidence will be admitted to explain and remove the ambiguity thus created.

Ambiguitas patens (patent, or open, ambiguity) is where the ambiguity is plainly perceptible upon the face of the document under consideration, and is not raised by extrinsic evidence, in which case parol evidence will not be admitted to explain such ambiguity; and the case usually given to illustrate this is—where a testator makes a devise, but omits to insert the name of the devisee; in such case the devise will fail, for parol or extrinsic evidence will not be admitted to explain such an ambiguity, as, in such case, to admit parol evidence to show who the testator meant to take as devisee would be to make a devise which the testator himself had not made. So, also, where the names of the devisees in a will of real property were all indicated only by single letters, it was held that a card kept by the testator separate from his will, containing "a key" to the letters, and showing the person meant by each, was inadmissible to show the parties intended to take, although the card was referred to by the testator in the will. But where the ambiguity is not so plainly perceptible, consisting rather of words ambiguously expressed, but capable of being explained, evidence will be admitted to remove the apparent ambiguity of words. Still, as it is not permitted to wander out of the instrument to remove a patent ambiguity, so the least departure from the principle of construction adopted in the instances just given leads to another rule, namely, that applicable to *ambiguitas latens*.

Bac. Max. Reg. 23; 5 Co. 68; Counden *v.* Clerke, Hob. 32; Jones *v.* Newman, 1 W. Bl. 60; Baylis *v.* Attorney-General, 2 Atk. 239; *Doe dem.* Gwillim *v.* Gwillim, 5 B. & Ad. 129; Shortredo *v.* Cheek, 1 Ad. & E. 57; Hunt *v.* Hort, 3 Bro. C. C. 311; Clayton *v.* Lord Nugent, 13 M. & W. 206; Colpoys *v.* Colpoys, 1 Jac. 463; Richardson *v.* Watson, 4 B. & Ad. 792; Thomas *v.* Benyon, 12 A. & E. 431; Flemming *v.* Flemming, 31 L. J. 419, Ex.; Lord Waterpark *v.* Fennell, 5 Ir. Law Rep. (N.S.) 120; *Re* Plunkett, 11 Ir. Ch. R. 361.

MAXIM XI.

Argumentum ab inconvenienti plurium valet in lege: (Co. Litt. 66.)—An argument from inconvenience avails much in law.

THIS rule applies particularly to those cases where the language of a deed or other document under consideration is ambiguous, when that construction of the language used which will lead to the least inconvenience will be adopted, as being the one most likely to be that which was intended. In legal proceedings, and the practice of the courts, also, as well as in the construction of Acts of Parliament and similar documents, the rule applies, and will be adopted where its application will not violate any positive fixed law. The argument *ab inconvenienti* is the argument most commonly used in our courts of law and equity; for, wherever the law is found to be defective or insufficient to meet a particular case, and which is of daily occurrence, the argument *ab inconvenienti* arises, and is permitted to prevail. By this means the inconvenience is removed, and a precedent is formed for future similar cases. This precedent is part of the common law, and remains so to be acted upon until disused or incorporated with the statute law. This could not be otherwise—*i.e.*, every inconvenience occurring in the law or in its administration must be removed either by precedent or statute; for, all laws being made to remedy inconveniences, and for no other purpose, the moment an inconvenience arises there arises also the necessity for its removal. And this is the meaning of the maxim, that an argument arising from inconvenience avails much in law—avails so much, in fact, that, in the absence of express law to the contrary, it is the law. The following may be given as a practical instance of the application of this maxim:—The rule in Bankruptcy is, that until a creditor

prove his debt he has no *locus standi* to oppose the bankrupt's discharge before the commissioner; and it is also said that if he have no *status* to oppose in the court below, he cannot be heard to oppose on appeal in the court above. Upon the same principle it was contended that a creditor having a *status*, but who did not oppose in the court below, could not be heard in the court above, the court above being appellate only; but it was ruled that any creditor who is entitled to oppose in the court below, though he do not there oppose, may, notwithstanding, appeal against the bankrupt's discharge; for were it otherwise, the greatest inconvenience would arise if 200 or 300 creditors must all appear before the commissioner in the court below and oppose the discharge in order to entitle them to appeal.

It is also said that nothing which is inconvenient is lawful: "Nihil quod inconveniem est licitum est." And, following that principle, it is that public policy requires that all things be done with a view to the public benefit and convenience. It will not, therefore, be permitted that any person should so act as to work a public inconvenience. For this reason it is that a contract having for its object the preventing a man carrying on a trade or business, or gaining a livelihood in any particular trade or business, for however short a time, is void as creating a public inconvenience; and all prohibitory contracts of that description, having a tendency to interfere with the public good, will be so construed. This restraint upon trade does not, however, apply to a partial, *i.e.*, local prohibition—as where a surgeon or attorney, by bond, is under a penalty not to exercise his profession in a particular district or town, but to a general prohibition only.

Co. Litt. 66, 97, 258; May *v.* Brown, 3 B. & C. 311-131; Fletcher *v.* Lord Sondes, 3 Bing. 501, Vaugh R. 37; Mirehouse *v.* Rennell, 1 Cl. & Fin. 527–546; Hinde *v.* Gray, 1 M. & Gr. 195; Turner *v.* Sheffield Railway Company, 10 M. & W. 434; Thompson *v.* Harvey, 1 Show. 2; Ward *v.* Byrne, 5 M. & W. 548; Pres. of Auchterarder *v.* Earl of Kinnoul, 6 Cl. & Fin. 646–671; *Re* Mark and Brooks, *ex parte* Burgess, 10 L. T. (N.S.) 634.

MAXIM XII.

Assignatus utitur jure auctoris: (Hal. Max. 14.)—That which is assigned takes with it for its use the rights of the assignor.

THE assignee of a chattel or other property or right assigned, has all the rights incident to such chattel, or property, or right, which the assignor had at the time of the assignment.

This maxim applies generally to all property, real and personal, and refers to assigns by act of the parties, as where the assignment is by deed; and to assigns by operation of law, as in the case of an executor. All rights of the assignor in the thing assigned must pass from him to the assignee by virtue of the assignment, for "Duo non possunt in solido unam rem possidere" —Two persons cannot possess one thing in its entirety.

An assignor may, of course, assign less than he possesses, as part of his estate, whether of freehold or leasehold, by grant with conditions, or by way of demise, or sub-demise; or of goods and chattels, the right of property apart from the property itself, as in the case of mortgage or pledge. But he cannot effectually assign more, or give to his assignee any greater right than he himself possesses at the time of the assignment, unless it be that he subsequently acquire the right which he did not then possess; as, where a lessor mortgages by assignment and then demises, the legal estate not being in him; on his subsequently acquiring the legal estate, the interest of the lessee therein will at once accrue. And in such case it is said, that if the lease be made in such form as to create between the lessor and lessee an estoppel to deny that the lessor had a reversion, the assignee of the lessor may thereby establish his title by estoppel. And, whenever an estate by estoppel becomes a vested interest by the lessor's subsequently acquiring the estate, the lessee and assignee have the same rights and liabilities as if the estate had been at the first

an interest in possession. Where, however, the deed does not operate as an estoppel, as where it appears that the lessor had only an equitable interest, the benefit and burden of the covenants do not pass to the assignee. Covenants running with the land may be given as a familiar instance of the application of this; as, where a lessor or lessee covenants to repair, this and other like covenants pass with the estate granted, during its continuance, into the hands of assignees, who will have the same rights respecting them as the lessor or lessee himself had. So the assignee takes the burden of all breaches of covenant by him during his holding, and his liability upon the covenants continues until by assignment he destroys the priority of estate existing between him and the lessor. A sub-lessee does not, however, take any liability in respect of the covenants in the original lease, there being no privity of estate between him and the original lessor.

The law favours commercial transactions, and for the sake of commerce it sometimes permits a man to assign to another a greater right than he himself possesses; as in sales in market overt; in the negociation of bills of exchange, bills of lading, &c., in which cases the *bonâ fide* purchaser or assignee for value, without notice of fraud or illegality, acquires a perfect title in the thing purchased or assigned, notwithstanding any imperfection in the title of the assignor.

It must be observed, also, that the thing assigned takes with it all the liabilities attached to it in the hands of the assignor at the time of assignment, as in the case of an assignment of a lease before mentioned, except in such cases as those just mentioned for the encouragement of commerce.

Hal. Max. 14; Co. Litt. 368; 11 Co. 52; 5 Co. 17; 2 Wms. Saund. 418; Gurney *v.* Behrend, 3 E. & B. 633; Bishop *v.* Curtis, 18 Q. B. 278; Lysaght *v.* Bryant, 9 C. B. 46; Harley *v.* King, 2 C. M. & R. 18; Webb *v.* Austin, 8 Scott N. R. 419; Paul *v.* Nurse, 8 B. & C. 486; White *v.* Crisp, 10 Exch. 312; Bryant *v.* Wardell, 2 Exch. 479; Fenn *v.* Bittleston, 7 Exch. 152; Sturgeon *v.* Wingfield, 15 M. & W. 224.

MAXIM XIII.

Benignæ faciendæ sunt interpretationes, propter simplicitatem laicorum, ut res magis valeat quam pereat; et verba intentioni, non è contra, debent inservire: (Co. Litt. 36.)—Liberal constructions of written documents are to be made, because of the simplicity of the laity, and with a view to carry out the intention of the parties and uphold the document; and words ought to be made subservient, not contrary, to the intention.

THE translation given of this maxim, taken generally, makes its meaning sufficiently obvious. It may be well, however, further to observe, that it applies to all written instruments of a private or public nature, and that the intention of the parties will in all cases be the rule of construction, where such construction will not contravene any positive rule of law.

Where an instrument cannot be construed so as to carry out fully the intentions of the parties, it shall be made to operate so far as possible. Where two join in a grant of land, one having no interest or no capacity, the grant shall be construed to operate as that of the one having the interest or capacity; or, where one grants a larger estate than he possesses, the grant shall be construed so as to pass such estate as he has. So in deeds, contracts, wills, &c., where the parties omit to express themselves in technical language, the deficiency will be supplied by the context, and the intention upheld where, in doing so, no express rule of law established for the construction of such deeds, contracts, wills, &c., will be thereby violated. Where, however, technical language is used, even though improperly, effect must be given to it, according to the rule of giving effect to every part of a document, unless it leads to manifest absurdity. The construction to be put upon Acts of Parliament depends upon the intention of the Legislature, and each part of them is to be read and construed with reference to the whole, as is the case with the

ordinary acts of individuals. The construction of instruments between parties, wills, &c., depends upon the intention of the parties, and the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnancy or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words is to be modified so as to avoid that absurdity or inconsistency, but no further. There is, however, a limit put to the construction of written instruments, and that is, that words will not be added to, or struck out of, a document so as to alter in anywise the obvious meaning of it in any part, nor so as to make a fresh deed or document for the parties, but every part of the document, and every word in it, must be considered with reference to the whole, and that whole considered in a manner agreeable to reason and common sense, according to manifest intention, and with a view, if possible, to uphold the document. For, "Nihil tam conveniens est naturali æquitati, quam voluntatem domini voluntatis rem suam in alium transferre ratam habere"—Nothing is so consonant to natural equity as to regard the intention of the owner in transferring his property to another.

A single instance of the practical application of the maxim under consideration will suffice. Where a bill of sale appeared to have been executed on the 31st of December, 1860, and the date of the jurat of the affidavit which was filed with it being the 10th of January, 1860; the Court of Queen's Bench assumed that the date in the jurat arose from a mistake often made in dates at the commencement of the year, and in accordance with the principle of this maxim allowed the jurat to be amended.

Co. Litt. 36; 1 Co. 100; Shep. Touch. 86, 87, 166, 253; Gore *v.* Lloyd, 12 M. & W. 478; Chapman *v.* Towner, 6 M. & W. 100; Tarte *v.* Darby, 15 M. & W. 601; Biffin *v.* Yorke, 6 Scott N. R. 235; Arnold *v.* Ridge, 13 C. B. 763; East *v.* Twyford, 4 H. L. Cas. 556; Blamford *v.* Blamford, 3 Buls. 103; Hollingsworth *v.* White, 6 L. T. (N.S.) 604; Grey *v.* Pearson, 29 L. T. 67; Cheney *v.* Courtois, 7 L. T. (N.S.) 680; Broom *v.* Bachelor, 27 L. T. 22.

MAXIM XIV.

Boni judicis est ampliare jurisdictionem. (Chan. Prac. 329.) —A good judge will, when necessary, extend the limits of his jurisdiction.

THE word "jurisdictionem" should be, according to Lord Mansfield, "justitiam," and the meaning of the maxim in such case is, that to be a good judge is to amplify in his office the remedies the law gives, so as, in the most perfect manner, to do the most complete justice, not letting substantial justice be frittered away by nice and unmeaning technicalities, or himself to lay hold of such technicalities as a means of avoiding giving a decision according to very right, in broad and substantial justice. And this he has the power and opportunity to do in all those cases which, by the common law, the practice of his court, and by legislative enactment, are left to his discretion—meaning by discretion the exercise of a sound judgment upon the facts, or, as it is stated by Lord Mansfield to be: sound discretion guided by law, governed by rule, not humour; not arbitrary, vague, and fanciful, but legal and regular; according to the maxim, "Discretio est discerne per legem quid sit justum." But the maxim does not mean that a good judge will exceed the limits of his jurisdiction, or that he will do anything other than that which by the law and practice of his court he is authorised to do.

Recent legislation has greatly extended the jurisdiction of the judges of the superior courts of common law, by giving them power to amend at all times all defects and errors in any proceeding in civil causes, and whether there be anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not, and upon such terms as to them shall seem fit; and all such other amendments as may be necessary for determining, in the then existing suit, the real

question in controversy between the parties. And the proper exercise of the power thus given is an application of the maxim under consideration. With this maxim should be considered the following: "Bonus judex secundum æquum et bonum judicat, et æquitatem stricto juri præfert"—A good judge judges according to equity and right, and prefers equity to strict law; and which equity so considered is the construction which judges put upon the letter of the law in the decision of cases within the mischief, yet not within the letter, that there may be no failure of justice, inasmuch as it is impossible that the Legislature should foresee and set down in express terms every evil to be provided against.

The practice of courts of equity, and the principles governing the decisions of the judges of those courts, are apt instances of the amplification thereby of the remedies given by the law; and so is the manner in which justice is administered in those courts. The recent application of equitable to strict legal proceedings, as the permitting equitable pleas, &c., and the liberal manner in which that equitable jurisdiction is applied by the common law judges to strict legal proceedings, is another instance of the application of the maxim. So also are the equitable powers given to the judges of the county courts, and the free and independent manner in which they in equity administer the law, further instances. The maxim is also as well applied in preventing evil as in amplifying the remedies given; instances of which are the discountenancing petty and vexatious suits, the refusal of applications for unnecessary amendments of proceedings, adjournment of hearings, postponements of trials, references to arbitration, new trials, &c., all of which are fruitful sources of unnecessary and vexatious costs and litigation.

Chan. Prac. 329; Co. Litt. 24; Ld. Raym. 956; Rex v. Phillips, 1 Burr. 304; Moses v. Macfarlane, 2 Burr. 1012; 4 Burr. 2238; Russell v. Smyth, 9 M. & W. 818; Clement v. Weaver, 4 Scott N. R. 229; Copley v. Day, 4 Taunt. 702; Evans v. Rees, 12 Ad. & El. 167; Collins v. Aron, 4 Bing. N. C. 233; Taylor v. Shaw, 21 L. T. 58; Freeman v. Tranah, 12 C. B. 411; C. L. P. A. 1852.

MAXIM XV.

Caveat emptor; qui ignorare non debuit quod jus alienum emit: (Hob. 99.)—Let a purchaser beware; no one ought in ignorance to buy that which is the right of another.

THIS maxim may be shortly stated as "Caveat emptor"—Let the buyer beware; and applies to purchasers of all descriptions of property, whether of lands or goods, as well to title as to quantity and quality, and is generally applied, in the case of real estate and chattels real, in the following manner:—Where A. sells land to B. with a defective title, A. not knowing of the defect, in this case B., though evicted, has no remedy against A.; nor does it make any difference, though the defect were known to A., if it were a patent defect, and might by reasonable diligence have been also known to B., and this though A. had, in the course of the negociations for sale, made misrepresentations respecting the alleged defect.

If, however, the defect be a latent one, known to the vendor, but not disclosed to the purchaser, and which by proper diligence the purchaser could not possibly have discovered; in this case, *caveat emptor* does not apply, and the purchaser is not bound to the contract, either in law or in equity.

If the case be one of misdescription only, in the particulars of the property contracted to be sold, and does not go to the whole subject of the contract, this will be set right by a court of equity, and an equivalent will be ordered to be given by way of compensation.

The same rule applies to the purchase of specific chattels personal, and may be thus briefly stated: where the purchaser has an opportunity of judging of the quality of the goods purchased, he, in the absence of express warranty, takes them with all their defects. Where, however, he confides in the judgment

of the seller, as where he orders goods suitable for a particular purpose, the law implies a warranty that they will be suitable for that purpose; and this generally as to both title and quality. In all contracts for the sale of goods, if the seller warrants the things sold to be of a good and merchantable quality, and on delivery they are found to be of a different quality from that ordered by the purchaser, or if he discover some latent imperfections in them which were not visible to a man of ordinary circumspection at the time of purchasing, he may, on the immediate discovery of their not corresponding with the order, return them and rescind the contract. But unless the seller expressly warrants the goods sold to be sound and good, or that he knew them to be otherwise and has used some art to disguise the defect, the buyer cannot recover back the price. On the whole, it appears that the law requires the purchaser in all cases to use the utmost diligence in the investigation of the right and title to, and nature, estate and quality of, the thing to be purchased; and if he do not, then, in the absence of positive fraud on the part of the vendor, he (the purchaser) must take the thing purchased as he finds it, with all faults. It may be proper here to add that positive fraud vitiates all contracts, as well at law as in equity, and that money paid upon such a contract may be recovered back, and the contract rescinded or declared void, and which indeed it is of itself *ab initio*. It is a common judicial saying, that upon a sale "with all faults," it is not intended to be with all "frauds."

Hob. 99; 1 Campb. 193; Roll. Abr. 90; Noy Max. c. 42; Attwood *v.* Small, 6 Cl. & Fin. 232; Lowndes *v.* Lane, 2 Cox, 263; White *v.* Cuddon, 8 Cl. & Fin. 766; Duke of Beaufort *v.* Neeld and others, 12 Cl. & Fin. 248; Hart *v.* Windsor, 12 M. & W. 68; Brown *v.* Edgington, 2 Scott N. R. 504; Shrewsbury *v.* Blount and others, 2 Scott N. R. 588; Keele *v.* Wheeler, 7 M. & Gr. 663; Parkinson *v.* Lee, 2 East, 314; Gray *v.* Cox, 4 B. & C. 108; Jones *v.* Bright, 5 Bing. 533.

MAXIM XVI.

Certum est quod certum reddi potest: (9 Co. 47.)—That is certain which is able to be rendered certain.

THE following are instances of the application of this maxim. If a lease be made to J. S. for life, remainder to him who shall come first to St. Paul's on such a day; or to him whom J. S. shall name in three days; if, in these cases, any one comes to St. Paul's on that day, or be named by J. S. within the three days, and the particular estate so long continue, that is a good grant of the remainder under this rule; but otherwise, if the grant be to four of the parishioners of Dale, for this grant is absolutely void for uncertainty. So in a contract for the sale of lands or goods, where the particulars of the lands or goods contracted to be sold are not set out in the contract, but reference is made to another instrument in which they are so set out; as, where, on the sale of large quantities of machinery, stock in trade, &c., reference is made to an inventory thereof; or, where, on the sale of lands and buildings, reference is made to an advertisement in the newspapers or to particulars of sale by auction. Also on the conveyance or assignment of lands or goods, where the conveyance or assignment is by reference to a schedule or inventory, or to another deed containing the particulars of the lands or goods conveyed or assigned. Again, in the case of a will or codicil, where there is a reference to some testamentary paper not incorporated into the will or codicil; or, an Act of Parliament, where reference is made to a schedule in such Act, or to another Act of Parliament; or in the case of a patented invention where reference is made to the specification containing the particulars of the invention patented.

An uncertainty or incorrectness in the description of premises in the *habendum* of a deed, also, is made certain by reference to the parcels, and so in similar cases.

So where an estate or interest in lands is devised subject to be vested or divested upon condition, the estate becomes absolute or forfeited upon the performance or nonperformance of the condition. As, where the condition is that the devisee shall take the name of the devisor; or, that the widow of the devisor shall not marry; or, where the condition is that the estate shall be diverted and go into a different channel upon the happening of a particular event, as, upon failure of issue of one person then to another, and for a larger or smaller interest as the case may be, or any other such like contingency. A lease for lives, and a term to commence on the death of the survivor; the duration of a term capable of being determined or prolonged at the option of the lessor or lessee; a contract for the sale of growing crops or goods in bulk by weight or measure; are all instances of the application of the maxim. So, where an assignment was made to a company as such, without designating the persons forming the company by names, and it was contended that the property would not pass to the defendants, it was held that, it being capable of being ascertained who were the company, when so ascertained, the grant would take effect under this maxim.

In all the above cases the uncertainty is removed by production of the instrument referred to; by the happening of the contingency upon which the grant over is to take effect; or by evidence in explanation of the intention; the contract or covenant in the meantime being sufficiently certain to enable it to be acted upon.

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9 Co. 47; 2 Bla. Com.; Shepp. Touch. 236, 237, 250, 273; Co. Litt. 6, 45, 47, 96; *Doe dem.* Timmins *v.* Steele and another, 4 Q. B. 663; Park *v.* Harris, 1 Salk. 262; Wildman *v.* Glossop, 1 B. & Ald. 9; King *v.* Badeley, 3 Myl. & K. 417; Gladstone *v.* Neale, 13 East, 410; Cotterill *v.* Cuff, 4 Taunt. 285; Hewson *v.* Reed, 5 Mad. 451; Jeacock *v.* Falconer, 1 Bro. C. C. 295; *Doe dem.* Blake *v.* Luxton, 6 T. R. 289; Pilsworth *v.* Pyat, 2 T. Jones, 4; Maughan *v.* Sharpe, 10 L. T. (N.S.) 870.

MAXIM XVII.

Cessante ratione legis, cessat ipsa lex: (Co. Litt. 70.)—The reason of the law ceasing, the law itself ceases.

WHEN the law casts upon an individual, or body of persons, the burthen of particular duties, it clothes them also with the means of performing those duties, but so long only as they are in the performance of those duties have they the protection of the law; and the moment the reason of their being so protected ceases, the protection so afforded to them by the law also ceases. This may be familiarly instanced in the protection from all civil process given to a foreign ambassador whilst in the exercise of the duties of his office in this country; to members of Parliament during the sitting of Parliament; to all judges exercising their judicial functions; to barristers attending the courts of law and equity; to attorneys, solicitors, and other officers of the several courts of law and equity; and to sheriffs and others acting in the administration of the law, and in which they are by law authorised and required so to act: and the reason in these particular cases is, that such protection is necessary for the performance by them of their respective duties, but the moment they cease to be so acting the protection so afforded to them also ceases.

The maxim is applicable also as well to things as to persons. Things may be called property, and to all property there are rights and duties incident. Of all property, also, there is of necessity a proprietor, upon whom devolves as well the rights as the duties incident to the property, according to its particular nature and use, and for the due performance of which rights and duties he is responsible to the law so long as he continues to be such proprietor; but so soon as the property passes from him, the incidents connected therewith which the law attaches thereto also pass. So it is upon the destruction of the property, or the

diversion of it from a particular use. Upon its destruction the rights and duties attached to it are destroyed, and upon its diversion from one use to another such rights and duties are also diverted.

All lands in England were at one time held upon condition of the performance by the holder or feoffee of some military or other services, and those services were attached to the land, and followed it upon each successive change into the hands of each succeeding holder or feoffee, and continued subject to the same or other services according to the will of the feoffor or lord. Such grants being made originally by the king to his followers for warlike services, the necessity for such a mode of payment ceasing, the use of the land was allowed to be diverted, and the land itself to be granted out upon other conditions; still, however, subject to conditions, being those rights and duties which the law attaches to it, and which it can at any time attach to, or take away. A right of common, in the present day, is one which the law both gives and takes away; the common law gives the right of common to the owner of the adjoining land, and the law by legislative enactment takes it away, by diverting its purpose, and making what was before merely a right, a realty; there being no more any reason why such common lands should exist, but rather a reason to the contrary, the law interferes and alters their nature, by directing that what was before common to all, should be appropriated equally to each.

So in all cases of privilege granted by the law, and of Acts of Parliament become obsolete; for, when the reason for their institution ceases, they themselves also cease.

The maxim "Cessante causâ, cessat effectus," is to the same purpose.

Co. Litt. 70; Shepp. Touch. 287; Noy Max. 5; Plowd. 268; Whelpdale's Case, 5 Co. 119; 11 Co. 49; 13 Co. 38; Davis *v.* Powell and others, Willes, 46; Goody *v.* Duncombe, 1 Exch. 430; Bromfield *v.* Kirber, 11 Mod. 72; Jones *v.* Robin, 10 Q. B. 581; Prichard *v.* Powell and others, 10 Q. B. 589; Heath *v.* Elliott, 4 Bing. N. C. 388; Gullett *v.* Lopes, Bart., 13 East, 348; Richards *v.* Heather, 1 B. & Ald. 29-33; Wells *v.* Pearcey, 1 N. C. 556.

MAXIM XVIII.

Communis error facit jus: (4 Inst. 240.)—Common error makes law.

"COMMUNIS ERROR," or common error, is another name for "communis opinio," or common opinion, and this common opinion is expressed by Littleton, in French, thus: "Il est communement dit;" which in English is, *it is commonly said.* So, if we search a little the chronicle of human events, we discover the origin of fine names, and that the law of the wisdom of past ages is no other than barbarous common sense.

If we are to consider common error as common opinion, then, to that extent, it is law; for it cannot be said that common opinion is not law, nor, to come within the words of the maxim, can it be said that common error does not make law. Law is, in this respect, as a language; it is the common voice of the people, and that which is common to all must govern each. There is not any of the laws of this country which has not for its origin common opinion. The right of the possessor or occupier of land to hold it against the true owner, which under the Statutes of Limitation he may do, has for its origin the common error or common opinion that the occupier is the owner. So of a debt barred by the Statute of Limitations; before the passing of the statute it was considered reasonable to presume that the debt had been paid after the lapse of a certain period, whether it had been so paid or not. So of personal chattels which are said to pass by delivery; the possessor of them is presumed in law to be the owner, which presumption, however, is common opinion only, and may be common error notwithstanding.

Again, to say that common error is law, is merely to say that what is called universal opinion may be, and is frequently, universal error, though until the error is discovered it is law.

The following case given by Lord Coke will serve to illustrate

the maxim.[4] By stat. 34 Hen. 8, it was enacted that there should be holden sessions twice every year in every of twelve shires in Wales there mentioned, which sessions should be called "the King's great sessions of Wales." A fine was levied of lands in the county of Carmarthen, and the writ of covenant was "Coram justiciariis nostris magnæ Assizæ in Com. Carmarthen;" and because all judicial precedents had been in that form ever since the passing of the statute, it was adjudged good, for "Communis error facit jus."

The correctness of the proposition stated in the maxim is shown, also, by the yearly passing of indemnity Acts to relieve persons from the consequence of their having acted in error, and Acts to confirm proceedings taken by parties in ignorance of the law upon a commonly received notion; as, to confirm ministerial or judicial acts done in error contrary to, or not having the sanction of, law. Custom has at all times been the law-maker for the people, and custom is the consent of the people to a particular course of conduct, whether right or wrong; and the question whether right or wrong depends upon the religious and moral state of the particular community; and the custom, which is the law of that community, may be founded in truth or in error, according to such religious and moral state.

In considering this maxim, however, it must not be forgotten that a law having for its foundation common error, opinion, or custom, is good only so long as it is not opposed to any positive law to the contrary; and though it is capable of other qualifications, it is not considered necessary here to state them.

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4 Inst. 240; Shepp. Touch. 40; Noy Max. 37; Co. Litt. 186 *a*, 364 *b*; Hob. 147; Wing. Max. 758; Hotley *v.* Scott, Lofft's Rep. 316; Isherwood *v.* Oldknow, 3 M. & S. 382-396; Garland *v.* Carlisle, 2 Cr. & M. 95; New River Company *v.* Hertford L. C., 2 H. & N. 129; Hart *v.* Frame, 6 Cl. & Fin. 193; Rex *v.* Inhabitants of Eriswell, 3 T. R. 707; Stevenson *v.* Rowand, 2 Dow. & Clark, 104.

MAXIM XIX.

Consensus non concubitus facit matrimonium: (6 Co. 22.)—Consent not concubinage constitutes marriage; and, Consentire non possunt ante annos nubiles: (Ibid.)—They are not able to consent before marriageable years.

MARRIAGE, under this rule of the civil law, is a civil contract, such contract being the present consent to the present marriage, as differing from the present consent to the future marriage, of the parties; without which consent there can be no valid marriage, but with which consent the marriage is at once complete and indissoluble: and to give such consent the parties must be of proper age, as in the latter maxim, otherwise the marriage is void as to such one who is not of such proper age, at his or her election, on attaining such proper age. The marriageable age in this country is of males fourteen, and of females twelve years.

That consent should constitute marriage, is the rule adopted by the whole human race, civilised and uncivilised, and this consent can be controlled only by some infirmity of body or mind. Different countries have different usages with regard to the ceremonies to be performed at the celebration of marriage; but consent is everywhere, and only, absolutely necessary to constitute a natural and legitimate union.

With regard, however, to the rights of persons contracting marriage, and their offspring, to property, and the benefits of the laws of the nation of which they are members, those rights are governed by those laws; and those laws differ more or less in every nation. The law of England, though treating marriage as a civil contract, has at all times (until recently) required, in addition to such contract, the observance of certain religious ceremonies in the celebration of it, the principal of which was that the service should be performed by a clergyman of the

Church of England, and also that the relationship of the contracting parties should be limited within certain degrees of kindred. The prohibited degrees of kindred are those set out in the Book of Common Prayer, and the ceremonies to be observed in the celebration of marriage are those also there set out; and they do now form part of the civil or common law of the country, being such as are observed by the members of the Church of England.

The Legislature has, however, at all times been ready to interfere to relieve the consciences of the weak; and for this purpose many statutes have been passed whereby the ecclesiastical or religious part of the ceremony is rendered unnecessary, and the marriage is, for those persons, simply and truly a civil contract; subject as to both person and property, however, to the ordinary common and statute laws of the realm.

The law of marriage in Scotland differs materially from that in England. In Scotland the present consent, *per verba de præsenti*, serious, deliberate, and mutual, constitutes a valid and binding marriage. So does a future promise with a subsequent *copula* connected with that promise and taking place on the faith of it, *per verba de futuro subsequente copula;* both the promise and *copula* must, however, be in Scotland. And this *consensus* in Scotland may be proved either by evidence of the actual exchange of consent or by the aid of a presumption of law; as, where there is proof of an antecedent promise of marriage, followed by *copula* which can be referred to the promise, which is a *presumptio juris et de jure* that at the time of the *copula* there was matrimonial consent.

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6 Co. 22; 2 Bla. Com.; The Queen *v.* Millis, 10 Cl. & Fin. 534-907; Honyman's Case, 5 Wils. & S. 144; Dalrymple's Case, 2 Hag. 105; Brook *v.* Brook, 30 L. T. 183; Beamish *v.* Beamish, 6 Ir. Law Rep. 142; Inglis *v.* Robertson, 3 Craigie, S. & R. 53; 26 Geo. 2, c. 33; 4 Geo. 4, c. 76; 6 & 7 Will. 4, c. 85; Hoggan *v.* Craigie, McLean & Rob. 942; Thelwall *v.* Yelverton, 14 Ir. C. L. Rep. 188; Yelverton *v.* Longworth, 11 L. T. (N.S.) 118.

MAXIM XX.

Consensus tollit errorem: (Co. Litt. 126.)—Consent takes away error.

THE old cases given in illustration of this maxim are—where dower *ad ostium ecclesiæ*, or *ex assensu patris*, was made to a woman within the age of nine years; it being by consent of the parties, was good; so, where a *venire facias* was awarded to the coroner when it ought to have been to the sheriff; and, where the jury came out of a wrong place; yet these irregularities being by consent of the parties, and so entered of record, the trials had thereupon were held good. Whatever is pleaded and not denied, shall be taken as admitted, and the jury cannot find to the contrary; as, if the defendant in an action of covenant does not plead *non est factum*, the execution of so much of the deed as is on the record is admitted. Suffering judgment by default is an admission on the record of the cause of action; as, in an action against the acceptor of a bill of exchange, the defendant, by suffering judgment by default, admits a cause of action to the amount of the bill.

On the sale of lands and tenements, whenever any third person having any right or title to such lands or tenements when about to be sold, knowing of his own title and of the sale, neglects to give the purchaser notice thereof, he shall never after be permitted to set up such right to avoid the purchase; for it was an apparent fraud in him not to give notice of his title to the intended purchaser; and in such case infancy and coverture shall be no excuse. Again, where a judge acts in a matter not within his jurisdiction, the parties attending and consenting, or not objecting, are bound by his decision; as, where a judge made an interpleader order which he had not authority to make without consent, and there was no express consent, but the parties attended the hearing and making the order without objection, it was held,

that they by their conduct must be taken to have consented to abide by his decision.

The practice of the courts, both of law and equity, has also at all times been in accordance with this rule, as a convenient and proper mode of settling disputes. It is in the nature of a contract between the parties, and one which the courts will not willingly disturb, and indeed will not disturb, if injury or loss has been or is likely to be sustained by one or other of the parties in consequence of such consent; and with regard to which it may be said, "Modus et conventio vincunt legem." And indeed, where the agreement does not violate any positive rule of law, nothing can be more consonant with justice and natural equity than that all parties should be permitted, by acquiescence or positive agreement, to settle their disputes without being required to observe any particular form of procedure, and according to their own free will, and that, having so settled them, should be bound thereto.

Consent of the parties will cure error in proceedings for want of form or other irregularity, but it will not cure a nullity or an illegality. Consent is as much given in standing by without objection as in actual expressed assent. This rule should be cautiously observed, as in all proceedings, legal or otherwise, where consent or refusal is required, in the absence of positive refusal, consent will be implied; as, "Qui tacet consentire videtur ubi tractatur de ejus commodo"—He who is silent seems to consent where his advantage is under consideration; and, "Qui non improbat, approbat"—He who does not blame, approves.

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3 Inst. 27; Plowd. 48; Jenk. Cent. 32; 5 Co. 36, 40; Co. Litt. 37, 126, 294; Shepp. Touch. 35, 40; Savage *v.* Foster, 9 Mod. 38; Green *v.* Hearne, 3 T. R. 301; East India Company *v.* Glover, 1 Stra. 612; Martin *v.* Great Northern Railway Company, 16 C. B. 179; Fernival *v.* Stringer, 1 B. N. C. 68; Andrews *v.* Elliott, 6 E. & B. 338; Lawrence *v.* Willcock, 11 A. & E. 941; Harrison *v.* Wright, 13 M. & W. 816; Carne *v.* Steer, 5 H. & N. 628; Murish *v.* Murray, 13 M. & W. 56.

MAXIM XXI.

Contemporaneâ expositio est optima et fortissima in lege: (2 Inst. 11.)—A contemporaneous exposition is the best and strongest in law.

WHERE the language of a document, of whatever description, is doubtful, its meaning is best understood by reference to, and consideration of, the circumstances attending its original formation.

All deeds, wills, contracts, statutes, &c., are made to effect some particular object, existing and in view of the parties at the time they are made; and the circumstances attending their creation are, therefore, the best guides to their interpretation. Where, however, the language of the instrument is in itself clear and distinct, and capable of bearing a rational construction, no extrinsic circumstance of time, place, person, or thing will be permitted to be adduced in aid under this maxim; for that would be to make a contract, &c., for the parties which, it plainly appeared, they themselves had not made.

The mode of construing our Acts of Parliament is the best illustration of this maxim; and it is, according to Lord Coke, and as since adopted, as follows:—To consider what was the common law before the Act, what the mischief or defect to be remedied, and what the remedy Parliament had resolved to adopt to cure the mischief or defect. The true reason and remedy whereof being ascertained, such construction should be made as will suppress the mischief and advance the remedy; avoiding and suppressing subtle inventions and evasions, advanced *pro privato commodo,* and giving life and vigour to the remedy proposed *pro bono publico.* The preamble of a statute usually gives, or ought to give, this necessary information, and where it does so it forms part of the Act for the construction of it. To one unlearned in the law, it is absolutely necessary that he should

look to the preamble of a statute before he can understand the meaning of any part of it; to those learned in the law, though proper at all times to be done, yet it is not necessary where the language is plain and obvious. It must be borne in mind that where the language of a statute is plain and obvious, no extrinsic evidence must be sought for whereby to put a construction upon it, however much the words used may be supposed to differ from the intention of the Legislature. For instance, a judge, having been intrusted to prepare a Bill in Parliament, cannot, where the consideration of it comes before him judicially, refer to his intention at the time of framing the Bill; for his intention may not have been the subsequent intention of the Legislature, nor the construction they put upon the words used by him; nor, in this case, can even the intention of the Legislature be considered. But, if any plain defect appear upon a statute, it must be construed as it plainly appears, and any such defect must be remedied also by statute. Where, however, the language of the statute is doubtful, the intention of the Legislature is to be considered, and that construction adopted which those learned in the law did put upon it at the time it was made, or which those learned in the law shall afterwards put upon it by reference to the time when and circumstances under which it was made.

All documents between parties will bear the like rule of construction as Acts of Parliament. The precedents in the law and practice of our courts of law and equity, and their application to constantly recurring similar cases, form the best instances of the application of this maxim.

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2 Inst. 11, 136, 181; The Bank of England *v.* Anderson, 3 Bing. N. C. 666; Weld *v.* Hornby, 7 East, 195; Gorham *v.* Bishop of Exeter, 5 Exch. 630; Barbot *v.* Allen, 7 Exch. 609; Corporation of Newcastle *v.* Attorney-General and others, 12 Cl. & Fin. 402; Sharpley *v.* Overseers of Mablethorpe, 3 E. & B. 906; Jones *v.* Brown, 2 Exch. 329; Abley *v.* Dale, 11 C. B. 378; Arnold *v.* Ridge, 13 C. B. 763; Drummond *v.* Attorney-General, 2 H. L. Cas. 861; Reg. v. Sillem, 11 L. T. (N.S.) 223.

MAXIM XXII.

Cuicunque aliquis quid concedit concedere videtur et id sine quo res ipsa esse non potuit: (11 Co. 52.)—The grantor of anything to another, grants that also without which the thing granted would be useless.

WHERE a lessor excepts trees from a demise, and afterwards during the continuance of the lease wishes to sell them, the law gives to him and to the intended purchaser power, as incident to the exception, to enter and show the trees with a view to their sale; for without entry none could see them, and without sight none would buy them. So where a man seised of a house devised it to a woman in tail, upon condition that if the woman died without issue his executor might sell; in that case it was held that the executor might by law enter into the house to see if it were well repaired, in order to know at what value to sell the reversion. So the law gives power to him who ought to repair a bridge, and to him who has a drain or sewer within the land of another, to enter upon the land when necessary to repair them. So, again, if the owner of trees in a wood sell them, the purchaser may go with carts over the land of the owner to carry them.

In the grant of land or buildings, or a portion of a building—as an office, or apartments—a right of way to it or them is incident to the grant, as being directly necessary for the enjoyment of the thing granted. Also, if a man grant a piece of land in the middle of other land of his, he at the same time impliedly grants a way to it, and the grantee may cross the grantor's land for that purpose without being liable in trespass. So, also, the right to get and carry away mines and other minerals, water, &c., and to do all things necessary to their enjoyment, follow as incident to the grant or reservation of them.

Upon the same principle is the maxim relating to judicial

authority: "Quando aliquid mandatur, mandatur et omne per quod pervenitur ad illud"—When anything is commanded, everything by which the thing commanded can be accomplished is also commanded. For, a sentence of authority would be useless if there were not an executive power to carry the sentence into effect. The maxim is of universal application, and applies to all delegated authority; and there is, of course, no power upon earth which is not delegated, and thus it is that, in pursuance of the supreme will of the people, laws are made by Parliament for the government of the commonwealth, and that Parliament, judges, sheriffs, and other inferior officers are in their several degrees and offices clothed with all necessary authority to enable them to carry into effect that supreme will. The Queen by virtue of her authority calls together Parliament, who make laws and appoint officers to carry them into effect; but without such power to appoint such officers, and without such officers to carry the laws into effect, they would, when made, be useless. A practical case which may be given in illustration of the maxim is, where a sheriff, being resisted by force in the execution of a writ, calls to his aid the *posse comitatus*, or power of the county, in order to assist him in carrying the law into effect, and which by virtue of his writ he is authorised to do. The maxim, "Quando aliquid prohibetur, prohibetur omne per quod devenitur ad illud"—When anything is prohibited, everything relating to it is also prohibited, may also be referred to as illustrating conversely that cited in the text.

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11 Co. 52; 5 Co. 115; 2 Inst. 48, 148; Hob. 234; F. N. B. 183; Shepp. Touch. 89; Cholmondy *v.* Clinton, 2 B. & Ald. 625; Dand *v.* Kingscote, 6 M. & W. 174; Clarance Railway Company *v.* Great North of England Railway Company, 13 M. & W. 706; Finks *v.* Edwards, 11 Exch. 775; Robertson *v.* Gauntlett, 16 M. & W. 289; Evans *v.* Rees, 12 A. & E. 57; Hodgson *v.* Field, 7 East, 622; Hinchcliffe *v.* Earl of Kinnoul, 5 Bing. N. C. 1; Hill *v.* Grainge, Dyer, 130; Bayley *v.* Wilkins, 7 C. B. 886.

MAXIM XXIII.

**Cuilibet in suâ arte perito est credendum: (Co. Litt. 125.)—
Whosoever is skilled in his profession is to be believed.**

EVIDENCE of a fact relevant to the matter at issue between the parties, within the personal knowledge of a witness, is allowed to be given as of right; as, where the witness himself stated an account between the parties, paid a sum of money or delivered certain goods. But, the opinion of a witness upon a fact, or state of facts, is only received when it comes within the meaning of this maxim; as, the opinion of a surgeon, architect, &c., upon questions relating to surgery, architecture, &c. So, where in an action the question was whether or not an embankment erected to prevent the overflowing of the sea had caused the choking up of the harbour, the opinions of scientific men as to the effect of such an embankment upon the harbour were held to be admissible. So a physician, though he may not have seen the patient, may, after hearing the evidence of others at the trial, be called upon to speak to the nature of the disease described by them; as, whether or not the facts proved are symptoms of insanity; but this opinion must not go to the fact that the patient is insane, but merely that the symptoms detailed by the witnesses are those of insanity. The opinion of insurance brokers as to whether the communication of certain facts would have varied the terms of the insurance, has been admitted in actions on the policy; but not in matters of mere opinion only; as where, in an action on a policy the opinion of the broker that, had certain letters been disclosed at the time of underwriting the policy, it would not have been underwritten, was sought to be given as evidence, this was held to be mere opinion and not evidence. Where the question is whether or not a seal has been forged, seal engravers may be called to show the difference between the impressions made by the original seal and those

made by that supposed to be forged. So the opinion of a student of the law of a foreign country to prove that law, is inadmissible, as being opinion merely, he not being within this rule; though the opinion of a person versed in the laws of a foreign country is admissible. Evidence of handwriting lies between proof positive and scientific knowledge. Ancient M.S. documents may be proved by a witness expert in comparing writing by the same author; but handwriting generally, must be proved by some person who has either seen the person write, or who has such an acquaintance with his writing, through correspondence acted upon or admitted, as leaves no doubt upon his mind that the writing in question is that of the party by whom it is said to have been written.

This maxim may be properly associated with that of "Ad quæstionem facti non respondent judicis, ad quæstionem juris non respondent juratores"—To questions of fact judges, and to questions of law the jury, do not answer. The judges, jury, and witnesses have each their special prerogative, but they cannot exceed its limits. The judges apply the law to the facts; the jury judge the facts; but even they cannot give an opinicn without having facts whereon to found their judgment, the truth of which facts it is their special province to determine. The witnesses depose to the facts. Witnesses are, however, of two kinds—one deposing to the facts merely, and the other giving an opinion or judgment upon the facts for the information of the jury; and these latter are called "perita," who give their opinion according to their skill in their profession in matters of art and science.

Co. Litt. 125; Folkes *v.* Chadd, 3 Doug. 157; Campbell *v.* Richards, 5 B. & Ald. 840; Durrell *v.* Bederley, Holt N. P. C. 285; The Sussex Peerage Case, 11 C. & F. 85; Baron de Bode *v.* Reg., 8 Q. B. 208; M'Naughten's Case, 10 C. & F. 200; Chapman *v.* Walton, 10 Bing. 57; Bristowe *v.* Sequeville, 5 Exch. 275; Tracy Peerage Case, 10 C. & F. 154; Chaurand *v.* Angerstein, Peake Ca. 44; Berthon *v.* Loughman, 2 Stark. 258; Doe *v.* Luckermore, 5 A. & E. 730.

MAXIM XXIV.

Cujus est solum, ejus est usque ad cœlum; et ad inferos: (Co. Litt. 4.)—Whose is the land, his is also that which is above and below it.

BY a conveyance of land without exception or reservation to the grantor, all rights incident to the land above and below the surface of it go with it; and to erect anything upon or to project over it, or to disturb the soil, water, mines or minerals beneath it, is a trespass, and actionable, and that without alleging any special damage; and as well at the suit of the occupier as of the reversioner, supposing, as to the reversioner, that the injury is of a permanent nature. Land is *nomen gêneralissimum,* and includes the things above specified as passing by a conveyance of it; but in a conveyance of a messuage or the like, nothing will pass but what comes, with the utmost propriety, within the terms used.

It is under this rule, as to *ad cœlum,* that a man cannot of right build the roof of his house so as to project over that of his neighbour, whether or not the doing so will in this case cause any immediate special damage to the neighbouring premises; the damage in such case being the evident and certain result of the act done, as the falling of the rain-water from the overhanging building upon the adjoining premises, obstructing the air, preventing the building the house higher, &c. Nor can he even suffer the boughs of his trees to grow in such a manner as to overhang the land of his neighbour. Nor has he, of right, a right of light or way over the land of his neighbour; and such right can be acquired only by grant or user. It is also under the same rule, as to *ad inferos,* that taking away the natural support of the adjoining soil from a house or other structure; draining away the water from wells, pools, reservoirs, &c.; abstracting

minerals, and other acts of a like nature, are trespasses against the owner of the land, and actionable.

An exception to the former part of the maxim may be said to be, where the upper part of a building is granted away separately from the remainder or lower part, which is frequently done; and to the latter, where the minerals are reserved to the grantor; in both which cases, the owners of the minerals and of the upper part of the building have each an interest in the land to serve the necessary use and enjoyment of their respective tenements.

The principle of the maxim under consideration is confirmed by the general rule of common law relating to buildings, which prohibits the building of any edifice so as to be a common nuisance, or a nuisance, prejudice, or annoyance to any man in his house—"Ædificare in tuo proprio solo non licet, quod alteri noceat;" and is well shown in the case where one erects a cornice so as to project over, though not to touch the land of another; in which and similar cases an action for trespass by the owner of the land, having actual or constructive possession, may be maintained. It is said that even holding the hand over another man's land is a trespass; certainly, every act preventing the free use and enjoyment of the land is such, and actionable.

This maxim is in some measure connected with the maxim, "Sic utere tuo ut alienum non lœdas;" and no person will be permitted to use his land to the injury of his neighbour, but with this qualification—that a man having equal rights with his neighbour cannot be prevented making the best use he can of his land, though he may in doing so injure his neighbour.

Co. Litt. 4, 48; Shepp. Touch. 90; 2 & 3 Bla. Com.; 2 Roll. Abr. 565; 9 Co. 53, 54; 3 Inst. 201; Topham *v.* Dent, 6 Bing. 516; Simpson *v.* Savage, 1 C. B. (N.S.) 347; Brook *v.* Jenny, 2 Q. B. 265; Battishead *v.* Reed, 18 C. B. 715; Partridge *v.* Scott, 3 M. & W. 220; Whittaker and others *v.* Jackson, 11 L. T. (N.S.) 155; Humphries *v.* Brogden, 12 Q. B. 744; Ward *v.* Robins, 15 M. & W. 242; Hunt *v.* Peake, 29 L. J. 785, Ch.; Bononi *v.* Backhouse, 27 L. J. 387, Q. B.

MAXIM XXV.

Cum duo inter se pugnantia reperiuntur in testamento ultimum ratum est: (Co. Litt. 112.)—Where two clauses in a will are repugnant one to the other, the last in order shall prevail.

AS this maxim is a positive rule on a particular subject, it is considered of sufficient importance to be separately inserted amongst these maxims, otherwise it would have been referred to the maxim, "Benignæ faciendæ," &c. It must, however, be received with some caution, inasmuch as it is subject to the general rule of construction in wills, by which the intention of the testator must be the paramount consideration, and which intention must be gathered from the whole tenor of the will. To say thus much, however, is not to contradict the maxim, which only goes to show that, all things being equal, the last of two contradictory clauses shall be considered to be the testator's last will. And there is no doubt but that two apparently contradictory clauses will, if possible, be reconciled so as to carry out the intention of the testator, and so as not to reject either; such contradiction, or apparent contradiction, consisting most frequently in words only, and not in intention. But where there are two clauses manifestly repugnant to each other, as two devises of the same thing to two different persons, then the maxim holds good, but not without difference of opinion as to how the several devises should be made to operate:—First, as to whether or not the last devise is an absolute revocation of the first; second, as to whether or not both devises are void for their repugnancy; and, third, as to whether or not the devisees should take in moieties. The prevailing opinion, according to the old authorities, was, that both devises should operate, the devisees taking in moieties; and although, at the present day, if any such intention of the testator can be collected from the whole will, the same

rule will be followed, yet the principle of the maxim is in strictness carried out where it does not clash with the paramount rule of intention ; in deference to which, however, all considerations will be made to give way, and the clause repugnant to such intention, whether standing first or last, rejected ; according to the maxim, "Quod ultima voluntas testatoris perimplenda est secundum veram intentionem suam."

This rule, adopted in the construction of wills, is said to be the reverse of that adopted in the construction of deeds ; in respect to the construction of which latter, it is said, that the words first in order shall prevail. But, it may be observed, that with deeds as with wills, no construction will be put upon them under this rule contrary to the manifest intention of the parties, as it is said: "Voluntas donatoris in charta doni sui manifestè expressa observanda est ;" and that although a grant by deed be absolute in the commencement, it may be qualified by positive intention shown in a subsequent part of the deed.

The following instance will show the caution necessary to be observed in the application of this maxim. In a devise, before the Wills Act, to the testator's daughter M. for life ; remainder to M.'s first and other sons successively in tail ; remainder to the use of all and every the daughter and daughters of the body of M., as tenants in common, and in default of *such issue* to A. in fee : it was held, that the daughters of M. took estates for life only, and also, that the estates of the daughters could not be enlarged by a recital, in a codicil, that the testator had, by his will, given them estates tail.

Co. Litt. 112 ; Plowd. 541 ; Shepp. Touch. 113, 253, 434, 451 ; 2 Bla. Com. ; *Doe dem.* Murch *v.* Marchant, 7 Scott N. R. 644 ; Eno *v.* Tatham, 4 Giff. 181 ; Morrall *v.* Sutton, 1 Phill. 536 ; Shorratt *v.* Bentley, 2 M. & K. 157 ; Plonty *v.* West, 6 C. B. 201 ; Webb *v.* Bing, 28 L. T. 133 ; Earl of Portarlington *v.* Damer, 9 L. T. (N.S.) 565 ; *Re* Arnold, 9 L. T. (N.S.) 530 ; Patrick *v.* Yeatherd, 10 L. T. (N.S.) 92 ; Robertson *v.* Powell, 9 L. T. (N.S.) 543.

MAXIM XXVI.

Cursus curiæ est lex curiæ: (3 Buls. 53.)—The practice of the court is the law of the court.

THIS applies to courts of equity as well as of common law, inferior as well as superior, and even to the High Court of Parliament; but the practice of one court does not govern that of any other; and though the practice of each court in dealing with its own process is unlimited, yet it must only assist, and not interfere with, to pervert or nullify, positive statutory enactment and a due course of law. That the practice of the court should be the law of the court, and that there should be such practice of necessity, is in accordance with the maxim, "Quando aliquid mandatur, mandatur et omne per quod pervenitur ad illud." The law would be of no avail without the means of carrying it into effect, and courts of law would be chaos without rules for their government.

Not only must the court direct the thing to be done, but it must direct the manner of doing it consistently with the law. It must see that the law, according to the practice of the court, is properly carried into effect; and for that purpose it requires returns to be made and recorded by its officers of the due execution of all its process.

This power of the court over its process, to regulate the manner of its execution, is of necessity unlimited, for were it otherwise, the process would be abused according to the fancy, caprice, or malicious design of each suitor, officer, or other person interested, or choosing to be interested therein.

The course of procedure upon irregularities, nullities, amendments, and other informal proceedings are within this rule.

It will not be difficult for the reader to understand the importance of this maxim if he is himself in active practice in

the several courts of law and equity, for he will no doubt have found that the law as read in books is altogether a different thing from that practised in the courts; or, rather, it may be said, he will find that the adaptation of the law in practice to the several cases brought before the courts is very different from that which the mere reader of law books would thereby be led to conceive. To judge of the extent of the application of this maxim in the absence of practical experience, it is only necessary to look at Evans' or some other of the Law Digests, under the head of "Practice;" where will be found what may be called the numberless decisions of the several courts and judges upon the varied and often abstruse questions which arise in the application of the law, in its several branches, to the infinite variety of subjects which are being constantly brought before them; and which decisions are. in fact, law.

By some Acts of Parliament the court has power to make rules of practice, which when made become the law of the court, and of course the law of the land, as much so as the statute itself which directed them. The propriety of such delegated authority may be open to question. especially when, as it sometimes does, it goes beyond mere practice, even to permitting the changing of positive law. This delegated authority, even applied to Parliament, comes within the rule, "Delegatus non potest delegare." Public opinion, however, holds in so high esteem the probity of the judges of this country, that such acts of the Legislature are suffered without objection.

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3 Buls. 53; 11 Geo. 4 & Will. 4, c. 70, s. 11; C. L. P. A. 1852, s. 223; Cocker *v.* Tempest, 7 M. & W. 502; Scales *v.* Cheese, 12 M. & W. 687; Stammers *v.* Hughes, 18 C. B. 535; Gregory *v.* Duke of B., 2 H. L. C. 415; Mellish *v.* Richardson, 1 C. & F. 221; Ferrier *v.* Howden, 4 C. & F. 32; Finney *v.* Beesley, 17 Q. B. 86; Edwards *v.* Martin, 21 L. J. 88, Q. B.; Jacobs *v.* Layborn, 11 M. & W. 690; Wallworth *v.* Holt, 4 My. & Cr. 635; Kimberley *v.* Alleyne, 2 H. & C. 223.

MAXIM XXVII.

De fide et officio judicis non recipitur quæstio; sed de scientiâ, sive error sit juris aut facti: (Bac. Max. Reg. 17.) —Of the good faith and intention of a judge a question cannot be entertained; but it is otherwise as to his knowledge, or error, be it in law or in fact.

NO action will lie against a judge acting judicially for anything done within the scope of his jurisdiction; and this, whether he be a judge of a superior or of an inferior court; and, whether of record or not of record, ecclesiastical or civil. Judges are, however, amenable to the criminal laws, and liable to prosecution for corruption, neglect of duty, and other misconduct. The error of a judge, from want of knowledge of the law, the duties of his office, or through mistaking the facts of the case, will, however, be rectified, as in cases of misdirection, &c., by granting a new trial, or such other relief as the circumstances of the case may require. As, where the judge at the trial admit improper evidence, or reject evidence which ought to be admitted; or misdirect the jury, where such misdirection is likely to influence their verdict; or do not sufficiently direct the jury, as where he omit to give directions as to the mode of measuring the damages, or do not recapitulate the evidence where the trial has lasted many days; or where he leave a question of law to the jury which he should himself decide; in all which, and many other cases of a like nature, a new trial will be granted as of right.

And generally, as to the subject under consideration, it is stated —that the Legislature can of course do no wrong; that the superior courts of justice are not answerable, either as bodies or as individual members, for acts done within the limits of their jurisdiction; that even inferior courts, provided the law has clothed them with judicial functions, are not answerable for errors in judgment; and, where they may not act as judges, but

only have a discretion confided to them, they shall not answer for an erroneous exercise of that discretion, however plain the miscarriage may be, and however injurious its consequences. And this follows from the very nature of the thing; being implied in the nature of judicial authority, and in the nature of discretion where there is no such authority. But, where the law neither confers judicial power nor discretion, but requires certain things to be done, everybody is bound to obey, and, with the exception of the Legislature and its branches, everybody is liable for the consequences of disobedience, and this constitutes the distinction between a ministerial and a judicial office.

It should be observed, that in order to protect a judge in the performance of even a judicial act, it is necessary that he be so acting within the limits of his jurisdiction; and therefore it is that in all courts of record and not of record, superior and inferior, it is usual and necessary clearly to show, upon the face of the proceedings, the jurisdiction of the court or judge to act in the matter in question. This is particularly shown in proceedings by magistrates, as, for example, in convictions; the order must distinctly show upon the face of it all the facts necessary to constitute the offence and to give the justices authority to deal with it. It is indeed said that, however high the authority, where a statutory power is exercised, the person acting must take care to bring himself within the terms of the statute. And whether an order be made by the Lord Chancellor or a justice of the peace, the facts which gave him jurisdiction must be stated.

Bac. Max. Reg. 17; 12 Co. 24, 25; 2 Salk. 649; How *v.* Strode, 2 Wils. 269; Garnett *v.* Ferrand, 6 B. & C. 611; Barry *v.* Arnaud, 10 A. & E. 646; Ferguson v. Earl of Kinnoul, 9 C. & F. 251; Lord Trimlestown *v.* Kemmis, 9 C. & F. 749; Reg. *v.* Badger, 4 Q. B. 468; Dicas *v.* Lord Brougham, 6 C. & P. 249; Newbould *v.* Coltman, 6 Exch. 189; Smedley *v.* Hill, 2 W. Bl. 1105; Hadley *v.* Baxendale, 23 L. J. 179, Ex.; Christie *v.* Unwin, 11 A. & E. 379; Day *v.* King, 5 A. & E. 366; Reg. *v.* Johnson, 8 Q. B. 106.

MAXIM XXVIII.

De minimis non curat lex: (Cro. Eliz. 353.)—Of trifles the law does not concern itself.

THIS is shown in the refusal of the courts to grant new trials in trifling cases, or where the damages are small; in discountenancing, and even refusing to try, trifling actions; in amending proceedings for defect in form, or trifling irregularities; in putting a reasonable construction upon the law, and in discouraging litigation upon mere technicalities. Courts of equity will not, as a rule, entertain a suit where the amount of property in question is under 200*l.*, nor will they allow a bill to be filed where the matter in question does not exceed 10*l.* The superior courts of common law will not try an action of debt under 40*s.*; and in actions for damages merely, and not to try a right, they mark the light in which they view trifling suits by refusing costs to the successful party where the circumstances of the case require them so to do. Where the action is in damages the question of costs is regulated by various statutes, as for example:—By statute 43 Eliz. c. 6, it is enacted that where the debt or damage does not exceed 40*s.* the plaintiff shall not be entitled to more costs than damages; by statute 3 & 4 Vict. c. 24, that he shall not be entitled to any costs in trespass or case where 40*s.* only shall be recovered, unless the judge certify that the action was to try a right, or that the trespass or grievance was wilful and malicious; and by 23 & 24 Vict. c. 126, that where the plaintiff, in an action in the superior courts for an alleged wrong, recovers less than 5*l.*, he shall not recover *any costs* in case the judge certify that the action was not to try a right, or that the trespass or grievance in respect of which the action was brought was not wilful and malicious, and that the action was not fit to be brought, and so in like cases.

It was upon this principle that the County Courts were established to try trifling actions, first, to the extent of 40*s.*, next of 20*l.*, and now of 50*l.* And, as to costs, allowing to the successful party: under 40*s.*, nothing; under 20*l.*, next to nothing; and above 20*l.*, a mere trifle. So no appeal is allowed in those courts where, in debt and interpleader the amount claimed, in replevin the rent or damage, and in recovery of tenements the yearly rent or value, does not exceed 20*l.*

Where there is any miscarriage or damage by default of a judge, however, the courts are careful to interfere in the most trifling cases, and will grant new trials for the improper reception of the smallest particle of evidence, or for misdirection, in the most trifling cases, where the justice of the case requires it. But the court will not, as a general rule, grant a new trial in an action for tort on account of the smallness of the damages; and they have refused to grant it where, in an action against a surgeon for negligence, whereby the plaintiff lost his leg, the jury only gave nominal damages. So the court will not grant a new trial where the value of the matter in dispute, or the amount of damages to which the plaintiff would be entitled, is too inconsiderable to merit a second trial.

By the Stamp Acts, legacies under 20*l.* are exempt from duty; so, under the Savings Bank Acts, administration need not be taken out for sums less than 50*l.*; the interests of the revenue being in such trifling cases disregarded. The Court of Chancery, also, will pay out sums of money and shares of estates without administration where they do not amount to 20*l.*

Cro. Eliz. 353; 2 Bla. Com.; 9 & 10 Vict. c. 95; 13 & 14 Vict. c. 61; Kennard *v.* Jones, 4 T. R. 495; Wilson *v.* Rastall, 4 T. R. 753; Wellington *v.* Arters, 5 T. R. 64; Hayne *v.* Davey, 4 A. & E. 892; Boosey *v.* Purday, 4 Exch. 145; Branson *v.* Didsbury, 12 A. & E. 631; Manton *v.* Bales, 1 C. B. 444; Hawkins *v.* Alder, 18 C. B. 640; Marsh *v.* Bower, 2 W. Bl. 851; Rochdale C. C. *v.* King, 14 Q. B. 122; Reg. *v.* Betts, 16 Q. B. 1022; Hinnings *v.* Hinnings, 10 L. T. (N.S.) 294; Gibbs *v.* Turmaley, 1 C. B. 640; Jones *v.* Tatham, 8 Taunt. 634.

MAXIM XXIX.

De non apparentibus et non existentibus, eadem est ratio: (5 Co. 6.)—Of things which do not appear, and things which do not exist, the rule in legal proceedings is the same.

THIS rule is of special application to courts of law, both civil and criminal, which refuse to take cognisance of any matter not properly before them. As, in affidavits, pleadings, records, warrants, orders, &c., whatever does not appear upon the face of the document is deemed as not existing, and no presumption to the contrary will be entertained. This rule, in strict construction, however, has reference chiefly to criminal proceedings and other acts of a public nature; as, where a warrant for the apprehension of any person, or for his imprisonment, omits to state the cause, in which case, no cause appearing upon the warrant, the apprehension or detention is in such case unlawful. There are, notwithstanding, some cases which seem to contradict this rule; as, for example, evidence will be admitted to explain a latent ambiguity in a deed or other document between parties with a view to support it. So, where a deed is defective for want of consideration; as, where a deed operating under the Statute of Uses omits to recite a consideration, the parties interested in supporting it may show a sufficient pecuniary consideration not inconsistent with the deed. So in a guarantee, when the consideration was required to appear upon the face of the instrument, where the consideration was ambiguously expressed as implying either a past or future consideration, parol evidence was allowed to show that the consideration was future. There are also matters of which the courts will take judicial notice without proof, as public general statutes, the course of proceedings in Parliament, the privileges of the House of Commons, the seals of State, public proclamations, the *Gazette* as to acts of State, judgments *in rem*,

the jurisdiction of the several superior courts, the privileges of their officers, their records, and many others of a like nature.

Another rule having reference to the one under consideration, and particularly applicable to criminal cases, is "Quod non apparet non est, et non apparet judicialiter in isto casu ante judicium"—That which appears not, is not, and appears not in the case judicially before judgment. In accordance with which, it is stated that a man cannot be punished for a second offence before he be adjudged for the first; and that the second offence must be committed after judgment given for the first; nor for the third before he be adjudged for the second; and that the third must be committed after the judgment for the second; for "Multiplicata transgressione, crescat pœnæ inflictio."

It may be said that the maxim under consideration is contradictory of the rule, "Id certum est, quod certum reddi potest"—That is certain which can be made certain; but it is not so, for the application of this last rule prevents the necessity for the application of the one under consideration, by the production of the evidence necessary to establish the fact sought to be proved. Again, the rule "Id incertum est, quod certum reddi nullo modo potest"—That is uncertain which cannot be made certain, may be used in support of the principal maxim; for, that which is in itself uncertain cannot by itself be made certain; nor can that which is in fact uncertain by possibility be made certain; as, an event not within the control of human power.

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1 Co. 176; 4 Co. 66; 5 Co. 6; 9 Co. 47; Co. Litt. 45, 96; 2 Inst. 479; Tregany *v.* Fletcher, 1 Ld. Raym. 154; Ogle *v.* Norcliffe, 2 Ld. Raym. 869; Bishop of C., 1 T. R. 409; Jenk. Cent. 207; Dupay *v.* Shepherd, 12 Mod. 206; Van Omeron *v.* Dowick, 2 Camp. 43; Tancred *v.* Christy, 12 M. & W. 316; Edwards *v.* Jevons, 8 C. B. 436; Lake *v.* King, 1 Saund. 131; Stockdale *v.* Hansard, 9 A. & E. 1; Sims *v.* Marryatt, 17 Q. B. 281; 8 & 9 Vict. c. 113, s. 3; 13 & 14 Vict. c. 21, s. 7; 14 & 15 Vict. c. 99.

MAXIM XXX.

Dies Dominicus non est juridicus: (Co. Litt. 135.)—The Lord's day (Sunday) is not juridical, or a day for legal proceedings.

NONE of the courts of law or equity can sit upon this day; nor is the execution of any civil process, nor the performance of any works, save of necessity or charity, lawful. An exception to the rule, however, is, that bail may take their principal. So, also, the defendant may be retaken after an escape if it be negligent and without the consent or knowledge of the sheriff or officer. Arrests, also, in criminal cases, as for treason, felony, or breach of the peace, and all proceedings and acts necessary for the immediate protection and safety of the State, may be considered exceptions—indeed they are most of them so made by statute.

The days in reference to legal proceedings are distinguished by the terms "dies juridici" and "dies non juridici;" and "dies juridici" are those having especial reference to those days only whereupon judicial proceedings are had in the superior courts; therefore "dies juridici" are in term only, except at the assizes; and "dies non juridici" are those days which are not in term, including also the Lord's-day, and such other saint days as are within the term, which formerly were many, but of which now only few are observed as "dies non juridici," those which are observed as such being—in Easter Term, the days intervening the Thursday before and the Wednesday next after Easter-day, if they fall within the term as fixed by statute; and in the other terms, any Sundays falling within the several terms.

A legal process, as a writ of summons or of execution, bearing date or returnable on a Sunday is irregular and void; nor can such writ of summons or of execution be served or put into force upon a Sunday; nor will an attachment be granted for non-payment of money awarded to be paid on a Sunday; nor

can an attachment be executed, nor an affidavit sworn, nor rule *nisi* served on a Sunday.

All contracts made on a Sunday or to be performed on a Sunday are void as to parties and privies, but not as to an innocent party. In ordinary business matters, where anything is agreed to be done within a certain time, Sunday is to be counted; therefore, if a bill of exchange become due on a Sunday, it must be advised on the Saturday previously; or if a notice has to be served expiring on Sunday, it must be served on the Saturday preceding.

In computation of time in legal proceedings Sunday is ordinarily reckoned, unless it is the last day, when the following day is allowed to the party required to take the step. It is included in the time allowed for appeal, and in the eight days allowed for appearance on a writ specially indorsed in case of default. Many statutes have been passed to prevent Sunday labour, the chief of which is the 29 Car. 2, c. 7, which enacts that no tradesman, artificer, workman, labourer, or other person whomsoever, shall do or exercise any worldly labour, business, or work, or their ordinary callings on Sunday.

The passenger traffic on railways and in cabs, the keeping open of public-houses, and such like, are considered works of necessity, and they are permitted either by the common law or by statute, with certain restrictions. Some notices, also, are required by statute to be fixed on church doors on the Sunday.

It appears not to be a good defence to an attorney's bill that the business was done on a Sunday.

Co. Litt. 135; 2 Saund. 291; Anon. 6 Mod. 231; Noy's Max. 2; 2 Ld. Raym. 1028; 29 Car. 2, c. 7; Fennell *v.* Ridler, 8 D. & R. 204; Bloxome *v.* Williams, 3 B. & C. 232; Taylor *v.* Phillips, 3 East, 155; Rex *v.* Myers, 1 T. R. 265; Phillips *v.* Innes, 4 C. & F. 234; Rawlins *v.* Overseers of W. D., 2 C. B. 72; Featherstonhaugh *v.* Atkinson, Barnes, 373; Peate *v.* Dicken, 3 Dowl. 171; M'Ileham *v.* Smith, 8 T. R. 86; Wright *v.* Lewis, 9 Dowl. 183.

MAXIM XXXI.

Domus sua quique est tutissimum refugium: (5 Co. 91.)—To every one, his house is his surest refuge; or, every man's house is his castle.

UNDER this maxim a man's house is a refuge for him against a *fi. fa., ca. sa.,* or distress-warrant, as neither sheriff nor landlord can under such process justify breaking into his house to take him or his goods. His house is not, however, a defence for him in criminal proceedings; as, under a warrant at the suit of the Queen; and the sheriff may, in either civil or criminal proceedings, break into a house to retake after an escape; as also may a landlord after distress made and eviction, if the re-entry be made within a reasonable time. In all such cases of breaking-in, however, demand of admission must first be made, with notice of the cause for which admission is required; and this feature establishes the principle of this maxim.

Four points are to be considered with reference to the maxim:—First, that the house of every one is his castle as well for defence against injury as for his repose; so that if thieves come to a man's house to rob or murder him, and he or his servants kill any of them in defence of himself or his house, this is no felony, and he shall not be damnified thereby; and so may he assemble his friends and neighbours to protect his house against violence. Second, that where the Queen is a party to a suit or proceeding, the doors being shut and fastened, the sheriff may break open the doors, after having first made demand of admission and signified the cause of his coming, but not otherwise; for, until demand and refusal there would be no default in the owner of the house, for he might not know of the suit or proceeding, and it is to be presumed that had he known he would have obeyed it, and there is no law to prevent a man closing the doors of his own house. Also, if a sheriff break the

doors, or effect forcible entrance otherwise, when he might enter without, he is a trespasser. A demand in ejectment, however, after judgment recovered, is not necessary; for, by the judgment, the house is not that of the defendant, but of the plaintiff; and in such case the sheriff may break in and deliver possession to the plaintiff, the words of the writ being, "habere facias possessionem." Third, that in all cases where the door is open the sheriff may enter the house and do execution at the suit of any subject, either of the body or goods; and so may a landlord enter and distrain for rent; but otherwise where the door is not open: for were this not so, no man's house would be safe from false pretence at the instigation of any one, and for any purpose. Fourth, that a man's house is not a castle or privilege for any one but himself, his family, and his own proper goods, and will not protect any one who has fled to his house for protection, or whose goods are found there, from lawful execution or ordinary process of law; and that is so by common law and by statute.

There are, however, cases by statute where a man's house is not a protection against civil proeess. An instance of this is where a tenant clandestinely removes goods from the demised premises to avoid a distress for rent; the landlord being in such case authorised by statute to follow the goods within thirty days after their removal, and to seize them wherever they may be found, breaking into any dwelling-house or other place where they may be, or be reasonably supposed to be.

Semayne's Case, 5 Co. 91; Burdett *v.* Abbot, 14 East, 156; Delaney *v.* Fox, 1 C. B. 166; Ryan *v.* Shilcock, 7 Exch. 72; Smith *v.* Shirley, 3 C. B. 142; Loyd *v.* Sandilands, 8 Taunt. 250; Duke of B. *v.* Slowman, 8 C. B. 317; Curlewis *v.* Laurie, 12 Q. B. 640; Pugh *v.* Griffith, 7 A. & E. 827; Williams *v.* Roberts, 7 Exch. 618-630; Johnson *v.* Leigh, 6 Taunt. 246; Cooke *v.* Birt, 5 Taunt. 765; Cook *v.* Clark, 10 Bing. 21; Morrish *v.* Murray, 13 M. & W. 52; 8 Ann, c. 14; 11 Geo. 2, c. 19.

MAXIM XXXII.

Ex antecedentibus et consequentibus fit optima interpretatio: (2 Inst. 317.)—From that which goes before, and from that which follows, is derived the best interpretation.

THIS maxim applies to the construction to be put upon written instruments, as deeds, contracts, wills, statutes, &c., and may be considered as having a close connection with the maxim, "Benignæ faciendæ," &c.

Probably, the best illustration of the maxim will be the following:—Where one seised of a manor and of a tenement in fee simple, and possessed also of a lease for years in the town of "Dale," by deed granted to another the manor, tenement and all other the lands and tenements which he had in Dale; it was considered that the term of years would not pass, but only the lands in which the grantor had an estate of inheritance; the words used in the grant being, enfeoff, give, grant, &c., the manor and all the grantor's other lands and tenements; *habendum*, to the grantor and his heirs; there being an express covenant on the part of the grantor that he was seised in fee of all the said lands, and that he had an estate in fee in all the lands intended to be thereby granted, &c.: that the general words, "all his other lands," could not be intended to comprise the leasehold, because that was of a nature different from the lands before mentioned, and general words would not be enlarged, but would be considered with reference to the whole deed. Also, where the predecessor of a bishop had made a lease of his house and the site thereof, and of certain particular closes and demesnes by particular names, and of all other his lands and demesnes; upon which it was questioned whether an ancient park and copyhold land there should pass; it was held that neither of them did pass by those latter general words, for that neither the park nor the copyholds could be intended for demesnes, and that in such

cases a grant should not be construed by any violent construction; and therefore it was said that "ex præcedentibus et consequentibus optima fiat interpretatio," and that "benigne faciendæ sunt interpretationes." So, also, where one levies a fine of a manor to which an advowson is appendant; *cum pertinentiis*, the advowson will pass; but if the advowson were not specially named, or yet, *cum pertinentiis*, the advowson would not pass.

It is said to be a true rule of construction of written instruments, so to construe them that the sense and meaning of the parties may be collected, "ex antecedentibus et consequentibus," and so that every part of them may be brought into action, in order to collect from the whole one uniform and consistent sense, if that may be done. And so, in this view, recitals, though they form no necessary part of the deed, as such, yet aid in its construction; and an unqualified recital in a deed will be referred to to determine the extent to which a vendor is bound by the general words of his covenant, where the operative part is insufficient for that purpose. But where the operative part of a deed is express; as, for instance, where the description in the parcels of the premises to be conveyed is perfect and complete in itself, the subsequent general words will be limited thereto.

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2 Inst. 317; Plowd. Com. 106; Wing. Max. 167; Com. Dig. Advowson B.; Bac. Abr. Grants, 1, 4; Turpine *v.* Forrequer, 1 Bulst. 99; Win. 93; Shepp. Touch. 76, 86, 87, 253, n.; Barton *v.* Fitzgerald, 15 East, 530; *Doe dem.* Meyrick *v.* Meyrick, 2 Cr. & J. 223; Arundell *v.* Arundell, 1 My. & K. 316; Walsh *v.* Trevanion, 15 Q. B. 751; Foley *v.* Parry, 2 My. & K. 138; Morrall *v.* Sutton, 1 Phill. 536; R. *v.* Poor Law Com., 6 A. & E. 7; Hesse *v.* Stevenson, 3 B. & P. 574; Spencer *v.* Thompson, 6 Ir. Law Rep. 537.

MAXIM XXXIII.

Ex dolo malo non oritur actio: (Cowp. 341.)—From fraud a right of action does not arise.

AN action cannot be maintained by any of the parties or privies to it, upon an illegal, immoral, or fraudulent contract, whether by parol or by deed, nor in respect of any matter arising directly out of it; as, where the consideration for an agreement to pay money is a compromise of felony, or other obstruction or interference with the administration of public justice. In such cases the contracts are null and void, as being contrary to the policy of the law.

In reference to this maxim Lord Mansfield says: The objection that a contract is immoral or illegal, as between the plaintiff and defendant, sounds at all times ill in the mouth of the defendant. It is not for his sake, however, that the objection is ever allowed; but it is founded in general principles of policy which the defendant has the advantage of; contrary to the real justice, as between himself and the plaintiff; by accident, as it were. The principle of public policy is this:—"Ex dolo malo non oritur actio." No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiff's own statement or otherwise, the cause of action appears to arise *ex turpa causâ*, or the transgression of a positive law of this country, there the court says he has no right to be assisted. It is upon that ground the court goes; not for the sake of the defendant, but because they will not lend their aid to such a plaintiff. So, if the plaintiff and defendant were to change sides, the now plaintiff would then have the advantage; for where both are equally in fault, "potior est conditio defendentis."

In an action for the price of goods sold abroad for shipment into England, the import of which into England was prohibited,

and which the vendor at the time of sale knew, but in effecting which shipment he rendered no assistance; he was held entitled to recover. But, where the vendor of goods sold abroad, to be smuggled into this country, knowingly assists in the design to smuggle; as by packing them up in a particular way, or in any other manner aids in the illegal act; he will not be allowed to sue in this country upon a contract for the value of the goods.

A bond given as an indemnity against a note given by the obligee to induce the prosecutor in an indictment for perjury to withhold his evidence, is void *ab initio*.

The plaintiff in an action upon a bill of exchange given to him to compromise a felony cannot recover; nor yet can a plaintiff recover in an action for conspiracy by the defendant and another to obtain payment from him of a bill accepted by him in consideration that the defendant would abstain from prosecuting such third party for embezzlement. Nor, again, upon a contract to indemnify an officer of justice against refraining from doing his duty; as a sheriff or his officer, or other officer of justice, to permit a prisoner to escape, or to violate or neglect his duty in any manner; or to protect him from the consequences of his misconduct; or to indemnify one against doing any unlawful act, as to assault another. All contracts against public policy; as of bribery, champerty, stifling evidence, and other interference with the due administration of the law, are void.

The illegality of an instrument may either appear upon the face of it or be proved by extrinsic evidence. When it appears upon the face of it, it is at once fatal to an action upon it; otherwise, it will be presumed to be legal until the contrary is shown, as illegality is never to be presumed.

Cowp. 341; 1 Co. 234, 256, 633; 4 Burr. 2300; 2 Rose, 351; Plowd. 88; Biggs *v.* Lawrence, 3 T. R. 454; Petrie *v.* Hannay, 3 T. R. 422; Collins *v.* Blantern, 2 Wils. 341; Keir *v.* Leeman, 6 Q. B. 308; Bennett *v.* Clough, 1 B. & Ald. 463; Cundell *v.* Dawson, 4 C. B. 376; Murray *v.* Reeves, 8 B. & C. 425; Featherston *v.* Hutchinson, Cro. Eliz. 199; Paxton *v.* Popham, 9 East, 408; Earle *v.* Hopwood, 30 L. J. 217, C. P.

MAXIM XXXIV.

Executio juris non habet injuriam: (2 Inst. 482.)—The execution of the process of the law does no injury.

ALL courts of law will take care that the process of the court is not made use of for the purpose of oppression and injustice; though he is not to be considered oppressive and unjust who merely avails himself thereof to obtain his legal rights, however rigorous the remedy may seem to be; and all are alike entitled to use the means which the law has provided for enforcing their legitimate rights. It is not the use, but the abuse of the process of law which makes an injury, and the misuser of the process of the law is a question of damages merely between the parties.

This maxim is used by Lord Coke to confirm the position taken by him that: If a man be imprisoned by order of law, the plaintiff may take a feoffment of him, or a bond to satisfy his debt, and to release the defendant, notwithstanding that imprisonment; for the imprisonment was not by duress of imprisonment, because he was in prison by course of law; for it is not accounted in law duress of imprisonment unless the imprisonment, or the duress offered in prison, or out of prison, is tortious and unlawful; for "executio juris non habet injuriam."

In the execution of any *capias ad satisfaciendum,* or *fieri facias,* the sheriff or other officer having the execution of the writ must first produce and show his authority, and make demand of the amount claimed, before he can seize the body or levy the goods; and, if any irregularity or illegality occur in the execution of the process, the party guilty of such illegality or irregularity will be liable in damages therefor, and for the injury sustained by the defendant thereby. For, when it is said that the execution of the process of the law does no injury, it means the proper execution of it.

Where a sheriff, having a *fi. fa.* against the goods of A., levied the goods of B.; or, having a *ca. sa.* against C., takes D.; in both such cases, such illegal execution not being warranted by the law, he is liable in damages to the respective parties for the injury sustained by them thereby. For, whilst the law upholds the proper execution of its process, it will interfere to prevent its improper execution. So, an arrest on mesne process, under pretence that the defendant was about to leave the country, is an abuse of the process of the law, and renders the plaintiff liable to the defendant for the false imprisonment, and to the court for abuse of its process; as, where the facts are not truly stated in the affidavit, and the law has been put in motion without reasonable and probable cause, the party making the affidavit, or procuring the arrest, being guilty of falsehood in the affidavit, or of swearing to facts not within his knowledge.

So it is an abuse of the process of the law illegally to detain a man upon a *ca. sa.* executed upon a *dies non*, as a Sunday, until he can be taken upon a fresh *ca. sa.* on the Monday; or for the sheriff or gaoler having custody of a prisoner for debt to detain him, or interfere to prevent his discharge, after having an authority for such discharge from the plaintiff's attorney.

Knowingly to arrest a person privileged; as an attorney attending court, or an M.P. attending Parliament; is an abuse of the process of the court, which in the execution of it works an injury, as that of the attorney to his client, and that of the M.P. to the public; but it is not such an injury as to form the ground of an action for an illegal arrest.

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2 Inst. 482; Bract. l. 2, fol. 16 b; Britton, 19; Co. Litt. 259; 2 Roll. R. 301; D. 47, 10, 13, s. 1; 6 Co. 53; Hobart, 266; Petrie *v.* Lamont, 4 Sc. N. R. 339; Magnay *v.* Burt, 5 Q. B. 381; McGregor *v.* Barrett, 6 C. B. 262; Wade *v.* Simeon, 13 M. & W. 647; Ross *v.* Worman, 5 Exch. 359; Parmain *v.* Hooper, 7 Scott, 663; Heywood *v.* Collinge, 9 A. & E. 274; Grainger *v.* Hill, 4 Bing. N. C. 212; Gibbons *v.* Alison, 3 C. B. 185; Crozer *v.* Pilling, 4 B. & C. 26.

MAXIM XXXV.

Ex nudo pacto non oritur actio: (Pl. Com. 305.)—From a nude contract, i.e. a contract without consideration, an action does not arise.

THIS refers to a parol or simple contract, and whether by word of mouth or writing; but not to a contract under seal, which latter does not, in the absence of fraud or such like, require any consideration to support it. The consideration sufficient to support a simple contract is, briefly, some benefit to the defendant, or some detriment to the plaintiff, moving from the plaintiff. And this consideration need not of necessity be money, goods, or such like; but it may be a consideration proceeding from nature: as, if a man make a contract with another, that if he will take his daughter to wife he will give him 20*l.*; in this case, if he take her to wife he shall have an action for the 20*l.*; and this out of regard for nature.

A nude contract is stated to be: where a man promises another to give him a sum of money on such a day; to pay the debt of another; to take less than the full amount of his debt; or to give time for payment, and nothing is given as the consideration for such promises. These are called naked promises, and no action will lie for their breach, because nothing is given why they should be made. So, if a man promise another to keep for him safely to such a time certain goods, and afterwards refuse to take them; or to do for him some other service; there no action lies against the party promising for refusing; for, if there is no consideration for the promise, there is no obligation to perform it.

In all such promises to give a thing or to do a service, there must be a transfer of possession of the gift, or a performance of the service, to make the promise complete; otherwise they are

nuda pacta, and cannot be enforced at law. The transfer of property by gift must be by deed, or actual delivering of possession, or it is *nudum pactum.*

The performance of an act which the party promising is under legal obligation to perform is no consideration for a promise; as a promise of reward to a sheriff for executing a writ, or to a witness to give evidence at a trial.

On the other hand, any act done as the consideration for the promise, and which the party doing is under no legal obligation to perform, whereby the promisor has obtained some benefit or advantage, or whereby the party to whom the promise is made has sustained some loss or inconvenience, is sufficient to render the promise obligatory, and to sustain an action at law. As, where the defendant promised a reward to whoever would give information leading to the conviction of a thief, and the plaintiff, a police officer in the district where the offence was committed, gave that information, he was held entitled to recover. So, an alleged promise to marry was held a sufficient consideration in equity to entitle a plaintiff to a decree for a specific performance of a contract to pay an annuity. And where a person wanting to get rid of his liability upon some shares in a public company, and valueless, agreed without any consideration to transfer them to another, the contract was held to be binding. And so, also, there are some contracts which, though *nuda pacta* of themselves, are perfected and made obligatory by mutability of obligation, as the agreement by creditors to take a composition, or a mutual agreement to marry.

Plowd. Com. 305; Doc. & Stud. lib. 2, cap. 24; 1 Roll. R. 433; Cro. C. 194; Shepp. Touch. 224, 225; 5 Co. 117; Lampleigh *v.* Braithwaite, Hob. 105; Sharr *v.* Pitch, 19 L. J. 113, Ex.; Cooper *v.* Phillips, 1 C. M. & R. 649; Clay *v.* Willis, 1 B. & C. 364; Boothby *v.* Snowden, 3 Camp. 475; Cheadle *v.* Kenward, 3 De Gex & S. 27; England *v.* Davidson, 11 A. & E. 856; Lockhart *v.* Barnard, 15 L. J. 1, Ex.; Keenan *v.* Hadley, 10 L. T. (N.S.) 683.

MAXIM XXXVI.

Expressio unius personæ, vel rei, est exclusio alterius: (Co. Litt. 210.)—The express mention of one person, or thing, is the exclusion of another.

AN instance of the application of this rule is, where a particular custom is sought to be introduced into a written contract at the instance of one of the parties. This cannot be done where the contract contains express stipulations of a nature contrary to the custom. As, in the case of a lease containing stipulations which are in themselves inconsistent with the custom of the country; such custom is thereby excluded from the lease, and from taking effect upon it in any manner at variance with the express contract of the parties as stated in the lease. Again, that which is positively expressed shall not be controlled or negatived by that which is merely implied, as is also shown by the maxim, "Expressum facit cessare tacitum." As, where lands are given to two, they are joint tenants for life, but the *habendum* may otherwise limit the estate; as, if a lease be made to two, *habendum* to the one for life, the remainder to the other for life, this alters the general meaning of the premises. And if a lease be made to two, *habendum* to one, moiety to one, and another moiety to another, the *habendum* makes them tenants in common. And so one part of the deed explains the other, and there is in that case no repugnance.

The maxim under notice must not be considered as restricting the doctrine of implication; it merely restrains its application within the limits expressed in the maxim. But an express agreement between parties ousts every implication by law. A sum of money secured by mortgage in fee of real estate will by the ordinary rules of law go to a man's executors, and not to his heirs, unless a contrary intention be expressed by the deed; for the money, which is personal property, is not converted by its

being secured upon real estate, though an expression to the contrary would alter its devolution. So the legal estate in the fee in such mortgaged property would go to the heir-at-law of the mortgagor, unless a contrary intention appear by the deed. Upon the death of a mortgagor, his mortgaged freehold estate carries with it, whether by devise or descent, the burden of the mortgage, unless a contrary intention be expressed by the mortgagor by his will or otherwise. But this is not so as to leaseholds, for they are not within the statute, but are governed by the ordinary rules of law as to personal estate.

Where A. by his will left all his estate to F. M. F. and to his sister M. F., testator's granddaughter, share and share alike, the said M. F. then living in France with her uncle M.; and M. F. was not then living, nor had ever so lived; whilst her sister C. F. was living, and had so lived with the uncle M.; it was held that the name should control the description, and that M. F. was entitled. And this agrees with the rule, "Nihil facit error nominis cum de corpore constat"—An error in a name is not of much consequence where there is a pretty clear indication of the person intended.

A new statute abrogates an old one. The common law ceases when the statute law commences. An express and implied covenant upon the same subject cannot exist together. General words are governed by particular words, and the absence of particular words gives effect to general words. A verbal agreement or stipulation will not be allowed to be added to a contemporaneous written agreement.

Co. Litt. 183, 210; 4 Co. 80; Shepp. Touch. 114; 1 Ld. Raym. 14; Emenens *v.* Elderton, 4 H. L. Cas. 624; Merrill *v.* Frame, 4 Taunt. 329; Loyd *v.* Ingleby, 15 M. & W. 465; Clarke *v.* Roystone, 13 M. & W. 752; Standen *v.* Chrismas, 10 Q. B. 135; Tanner *v.* Smart, 6 B. & C. 609; Webb *v.* Plummer, 2 B. & A. 746; Earl of Hardwicke *v.* Lord Sandys, 12 M. & W. 761; Solomon *v.* Solomon, 10 L. T. (N.S.) 54; *Re* Plunkett, 11 Ir. Ch. R. 361; Drake *v.* Drake, 8 H. L. Cas. 172.

MAXIM XXXVII.

Falsa demonstratio non nocet: (6 T. R. 676.)—A false description does not vitiate a document.

THIS maxim, in its application, means, that an instrument, whether it be deed, contract, will, or otherwise, open to construction for an incorrect or false description of a person or thing, in name or quality, will have such a construction put upon it as will carry into effect the intention of the parties, so far as that can be done without interfering with the positive and plain meaning of the document, apart from the incorrect or false description. As, if there be a positive devise of Knowle Field, in the parish of A., to B., which, without more, would be sufficient to describe the land devised, but yet to which the testator adds some further description inconsistent with that already given; such superadded description will be rejected under this maxim, and not be allowed to vitiate the already perfect devise.

Also, where a man, being married to A., marries B., his first wife A. being still alive and living at his death; a devise by him to B. as his wife B., naming her, will be good, there being no person else to answer the description, and she being the person *named* and evidently intended; and so of illegitimate children called *children* by name. The same principle applies to the misnaming a devisee, or a thing devised, and in similar cases.

The maxim is also frequently applied in the construction of wills where the intention of the testator is rendered ambiguous by something done by him since the making of the will; as, where he bequeaths some particular stock and afterwards sells it; though he have not at the time of his death any stock to answer the particular description of that mentioned in the will, yet, the surrounding circumstances being considered, such an amount of stock of the particular description mentioned by him will be held

to pass rather than that the bequest should fail; and the words used to describe the stock bequeathed will be used to designate the particular stock the testator intended the legatee to take.

Also, in the construction of a deed, where one certainty is added to another certainty, or to a thing before uncertain; as, if I release all my lands in Dale which I have by descent on the part of my father, and I have lands in Dale on the part of my mother, but no lands by descent on the part of my father, the release is void, and the words of certainty added to the general words, "*all my lands*," have effect. But if the release had been of Whitmore, in Dale, which I have by descent on the part of my father, and it were not so, the release would be valid; for this thing was certainly enough expressed by the first words, and the last were of no effect.

Where, in a lease for lives renewable for ever, the name, Beauchamp Colclough the younger, son of Beauchamp Colclough, of Zion Hill, in the county of Carlow, Esq., now of the age of fifteen years and upwards, was inserted, no person answering that description; but there being a Beauchamp Urquhart Colclough, son of Beauchamp, who did not reside at Zion Hill; and also a Beauchamp, son of Henry, who did reside at Zion Hill; the maxim, "Veritas nominis tollit errorem demonstrationis," was held to apply, the name being substantially correct, and the false description was rejected; and Beauchamp Urquhart, son of Beauchamp, was held to be the life in the lease. So it is in similar cases; the maxim, "Falsa demonstratio non nocet," being of almost daily application.

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6 T. R. 676; Plowd. 191; Bac. Max. Reg. 13, 24; 1 Ld. Raym. 303; Shepp. Touch. 5; *Doe dem.* Hubbard *v.* Hubbard, 15 Q. B. 241; Nightingall *v.* Smith, 1 Exch. 886; Griffith *v.* Penson, 9 Jur. 385, Ex.; Llewellyn *v.* Earl of Jersey, 11 M. & W. 183; Harrison *v.* Hyde, 29 L. J. 24, 119, Ex.; Blundell *v.* Gladstone, 1 Phil. 279; Mellers *v.* Travers, 8 Bing. 244; D. and K. Railway Company *v.* Bradford, 7 Ir. Law Rep. 57, 624; Stanley *v.* Stanley, 7 L. T. (N.S.) 136; Gains *v.* Rouse, 5 C. B. 422; Colclough *v.* Smith, 10 L. T. (N.S.) 918; Meredith's Trust, 10 L. T. (N.S.) 565.

MAXIM XXXVIII.

Hæres legitimus est quem nuptiæ demonstrant: (Co. Litt. 7.) —The lawful heir is he whom wedlock shows so to be.

"HÆRES" is said to be he "qui ex justis nuptiis procreatus;" for, "hæres legitimus est quem nuptiæ demonstrant;" and is he to whom lands, tenements, and hereditaments by the act of God and right of blood descend; for "solus Deus hæredem facere potest, non homo."

Bastards, or "nullius filii"—born out of wedlock, or not within a competent time after its determination—cannot be heirs, the maxim in reference thereto being, "Qui ex damnato coitu nascuntur, inter liberos non computantur." Nor an alien born, though born in wedlock, unless the mother be a natural born subject, or until naturalised; nor one attaint of high or *petit* treason, or murder. A hermaphrodite may be heir, and take according to that sex which is most prevalent; but a monster not having human shape, cannot. A deformed person may be heir, so may idiots and lunatics.

The word "heir" is *nomen collectivum,* and extends to all heirs; and under heirs the heirs of heirs in *infinitum* are comprehended; and consanguinity, or kindred, which creates the heir, is defined to be, "Vinculum personarum ab eodem stipite descendentium," or the connexion or relation of persons descended from the same stock or common ancestor.

The valid marriage of the ancestor is, under this rule, necessary to constitute the heir. Marriage may be proved by reputation, and strict evidence of the regularity of the marriage need not in the first instance be given; and a marriage in a parish church, with the usual forms, by a person acting as minister, is of itself presumptive evidence of a regular and legal marriage. But where that *primâ facie* evidence is rebutted, and the parties are put to strict proof; as, where a title by descent is disputed, and is the

subject of inquiry, all the forms of the marriage ceremony are then necessary to be proved, and those differ even in the United Kingdom, according to whether or not the ceremony took place in England, Ireland, or Scotland. For instance, a person born in Scotland of parents not married till after the birth, though legitimate by the law of Scotland, cannot inherit the real estate in England of his father; nor can the father of a man born before marriage in Scotland of his parents succeed to real estate whereof the son had died seised in England. Again, though the strict forms of the marriage ceremony have been gone through, the marriage may be proved to be otherwise void, and the heir who was before apparent, by such proof be shown to be illegitimate. Where, however, the marriage is in all respects valid and indisputed, the heir is "quem nuptiæ demonstrant."

This rule is peculiarly applicable to the common law of England, by which no one can inherit any land who was not born after the lawful marriage according to the common law of England of the parents; and differs from the civil and canon law, which legitimises the children born out of wedlock by the after marriage of their parents, by the rule, "Pater est quem nuptiæ demonstrant." Aud this difference is thus expressed by Glanvil:—"Orta est quæstio, si quis antequam pater matrem suam desponsaverat fuerit genitus vel natus, utrum talis filius sit legitimus hæres, cum postea matrem suam desponsaverat: et quidem licet secundum canones et leges Romanas talis filius sit legitimus hæres; tamen secundum jus et consuetudinem regni nullo modo tanquam hæres inhæreditate sustinetur, vel hæreditatem de jure regni petere potest."

Co. Litt. 3, 7, 8; Mirr. c. 2, s. 15; Bract. l. 2, fol. 62 b; Nov. 89, c. 8; 2 Inst. 97; Glan. lib. 7, c. 15; Jacob Dic.; 53 Geo. 3, c. 145; 7 & 8 Vict. c. 66; 3 & 4 Will. 4, c. 106; *Re* Don's Est. 27 L. J. 98, Ch.; *Doe dem.* Birtwistle *v.* Vardill, 2 Cl. & Fin. 571; *Re* Dominigo Capedevieille, 11 L. T. (N.S.) 89; R. *v.* Sourton, 5 A. & E. 186; Reed *v.* Passer, Peake Cas. 233; 4 Geo. c. 76; Mainwaring's Case, 26 L. J. 10, M. C.

MAXIM XXXIX.

Ignorantia facti excusat: ignorantia juris non excusat: (1 Co. 177.)—Ignorance of the fact excuses: ignorance of the law does not excuse.

ACCORDING to this maxim, it is presumed that every one knows the law, though he is not presumed to know every fact. The presumption of knowledge of the law, however, admits of exceptions in doubtful cases. An infant of the age of discretion is punishable for crimes, though ignorant of the law; but infants under such age are excused by natural ignorance. Persons not of sane mind are excused for their ignorance of the law, for this ignorance they have by the hand of God.

An illiterate person, or one deaf, dumb, or blind, is excused from the consequences of his acts, unless it appear that he was capable of understanding what he was doing, and that he did so understand.

If a man buy a horse in market overt from one who had not property in it, he being ignorant of the fact, in that case his ignorance shall excuse him; but if he bought out of market overt, or with knowledge that the horse was not that of the seller, no property would pass by the sale.

In the House of Lords it has been held that, under peculiar circumstances, the time for enrolment of a decree, for the purpose of appeal, may be extended beyond the time usually allowed, namely, five years from its date; as, where the party is under some actual disability, or where he has been prevented by ignorance of the law, or some *vis major* or *casus fortuitus*. But this privilege will not be granted to a solicitor, or one supposed to know the law. So, also, where the plaintiff suffered the defendant to sell some of his property under an impression that it had passed to the defendant by a deed of assignment, which was, in fact, inoperative, it was held that he was not entitled to

recover the amount of the purchase-money as money received to his use.

The maxim holds good in equity as well as in law. It is best illustrated by the following general example, viz. :—In the absence of fraud or bad conscience, money paid with full knowledge of the facts, but through ignorance of the law, is not recoverable; whereas, money paid in ignorance of the facts, there being no laches on the part of the party paying it, is recoverable. The following may be given as an instance of money paid under a mistake of facts. Where money was paid on account of a debt, and a dispute occurring afterwards between the parties, a balance was struck, omitting to give credit for the sums so paid; and the plaintiff paid the whole balance; he was held entitled to recover back the sum paid on account as money paid by mistake and in the hurry of business. But where A. gave as security to his bankers all his interest in a supposed devise to him, subject to a charge payable out of it of a debt due from him to B., and the bankers afterwards voluntarily paid B., they were not permitted to recover the money back again from B. upon finding that the devise had been revoked.

Ignorance of a fact, as intended by this maxim, may be defined to be that state of mind in a man which upon reflection supposes a certain fact or state of things to exist which does not in truth so exist; and ignorance of the law, that wilful ignorance which neglects or refuses to be informed. For the law is not so unreasonable as to refuse to correct a mistake, or so unjust as to punish a man for natural inability.

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1 Co. 177; 5 Co. 83; Hales P. C. 42; Doct. & Stu. 1, 46, 309; 2 Co. 3; Harman *v.* Cane, 4 Vin. Abr. 387; Brisbane *v.* Dacres, 5 Taunt. 143; Barber *v.* Pott, 4 H. & N. 759; Sargent *v.* Gannon, 7 C. B. 752; Teede *v.* Johnson, 11 Exch. 840; Harratt *v.* Wise, 9 B. & C. 712; Kelly *v.* Solari, 9 M. & W. 54; Wilson *v.* Ray, 10 A. & E. 82; Milnes *v.* Duncan, 6 B. & C. 671; Aikin *v.* Short, 25 L. J. 321, Ex.; Emery *v.* Webster, 9 Exch. 242; Beavan *v.* Countess of Mornington, 2 L. T. (N.S.) 675.

MAXIM XL.

Impotentia excusat legem: (Co. Litt. 29.)—Impotency excuses law.

LORD COKE says, that where a man seised of an advowson, or rent in fee, has issue a daughter who is married and has issue, and dies seised; the wife, before the rent becomes due or the Church void dying, she has but a seisin in law, and yet the husband shall be tenant by the curtesy, because he could not possibly obtain any other seisin. But if a man die seised of lands in fee, which descend to his daughter, who marries, has issue, and dies before entry; the husband shall not be tenant by the curtesy, though she had a seisin in law, and this by reason of the non-entry in her lifetime.

All things directed by the law to be done are supposed possible of performance; but when the contrary is shown, performance will be excused, as in the case of a *mandamus* directed to some public, judicial, or ministerial officer or corporate body, commanding the performance of some public duty; in which case, when, by the return to the *mandamus*, compliance is shown to be impossible, performance will be excused. Nor will a *mandamus* be granted unless it clearly appears to the court that the party to whom it is directed has by law power to do what he is thereby commanded.

Impotency excuses the law where the impotency is a necessary and invincible disability to perform the mandatory part of the law or to forbear the prohibitory. Necessity is a good excuse in law; for, "Necessitas non habet legem."

This rule, however, does not apply to contracts between parties; for what a man does voluntarily and of his own free will, he will be bound thereby. Yet, a tort frequently arises out of a contract, and necessity is frequently an excuse for avoiding

a contract. Thus, if a man do a thing which he is compelled by force to do, he shall not suffer for it; as, where a man's goods have been taken from him by an act of trespass and subsequently sold, he may have an action for money had and received against the trespasser. So may the consignor of goods, where he is compelled to pay extortionate charges to a railway company to get possession of them. Or one who pays money wrongfully exacted by an attorney, on his own or his client's behalf, as the price of the liberation of deeds unjustly and illegally detained from him. Or where a sheriff obtains money under a threat to sell goods seized under a *fi. fa.* which he has no right to sell. Such is also the case of all payments and other acts made and done under duress.

This maxim applies in equity as well as at law. For a court of equity will not enforce specific performance of a contract against an infant; nor, for want of mutuality, by or on behalf of an infant; nor compel performance of a contract against a man which was entered into by him whilst in a state of intoxication; nor interpose to compel a man to do an act which he is not lawfully competent to do, as enforcing a contract against a vendor who has no title, or even where the title is defective.

Where involuntary ignorance is the cause of an act, it is said to be done *ex ignorantia;* as, if a man, *non sanæ memoriæ,* kill another, for he had no memory nor understanding; and this is to be seen in many places, as well in the Divine as in the human law.

The maxims, "Nemo tenetur ad impossibile," and "Lex non cogit ad impossibilia," are to the same purpose.

Exod. cc. 21, 22, 29; Numb. c. 35; Deut. c. 4; Matt. c. 12; Jenk. 7; 5 Co. 21; 8 Co. 91; Co. Litt. 29, 206, 258; Plowd. 18; Hob. 96; 2 Bla. Com.; Mills *v.* Auriol, 1 H. Bl. 433; Reg. *v.* Bishop of Ely, 1 W. Bl. 58; Pyrke *v.* Waddingham, 10 Hare, 1; Harnett *v.* Yielding, 2 Sch. & Lef. 554; Atkinson *v.* Ritchie, 13 East, 533; Flight *v.* Bolland, 4 Russ. 298; Parkin *v.* Bristol and Exeter Railway Company, 20 L. J. 442, Ex.; Rodgers *v.* Maw, 15 M. & W. 448; Valpey *v.* Manley, 1 C. B. 602; Close *v.* Phipps, 7 M. & Gr. 586.

MAXIM XLI.

In æquali jure melior est conditio possidentis: (Plow. 296.) —In equal rights the condition of the possessor is the better: or, where the rights of the parties are equal, the claim of the actual possessor shall prevail.

IT is a rule of law, that a plaintiff shall recover upon the strength of his own title, and not upon the weakness of his adversary's; possession, as a *primâ facie* right in the defendant, being sufficient to call for proof of an absolute right in the plaintiff. This maxim is adopted alike in equity as in law, and applies to real as well as personal property. It embraces the cases of fraudulent and illegal agreements, conveyances and transfers of property, and the rights of the parties thereunder and thereto, and as well where the parties are in *pari delicto* as in *æquali jure*, as is shown by the following maxims:—"Melior est conditio possidentis, et rei, quam actoris;" "In pari delicto, potior est conditio possidentis, et defendentis;" and "Rem domino, vel non domino, vendente duobus, in jure est potior traditione prior."

In reference to this maxim, Lord Coke says: If lands holden in socage; *i.e.*, a tenure on certain service or rent other than knight service, or freehold; be given to a man and the heirs of his body, and he dies, his heir under age, the next cousin on the part of the father, though he be the more worthy, shall not be preferred to the next cousin on the part of the mother, but such of them as first seised the heir shall have his custody. Also, if a man be seised of land holden in socage on the part of his father, and of other land holden in socage on the part of his mother, and dies, his issue being within age; the next of kin of either side who first seises the body of the heir shall have him; but the next of blood on the part of the father shall enter the lands on the part of the mother, and the next of kin

on the part of the mother shall enter the lands on the part of the father.

The following cases may be given in further illustration. Where a plaintiff in an action for negligence has contributed to the injury complained of, he cannot recover; as, where a man put a large sum of money, in some hay, into an old nail-bag, and delivered it to a common carrier, without notice of its contents, to carry to a banker; or carelessly packed up and sent, without notice of the value, valuable or fragile articles, which were in consequence lost or destroyed; the carrier in such cases was held not responsible, he not having been informed of the nature of the goods committed to his care, in order that he might take sufficient care of them. So, where a man signed several blank cheques and left them in the hands of his wife to be filled up when required, and she gave one of them to a clerk to fill up for 50*l.* 2*s.* 3*d.*, and the clerk filled it up in such a manner as that he could afterwards alter the amount to 350*l.* 2*s.* 3*d.*, which he, after it had been signed and whilst on his way to the bank, did, and absconded with the money; in such case the customer was held liable to bear the loss, it being caused by his own and his agent's negligence. For, in all such cases, "In pari delicto melior est conditio possidentis, et rei quam actoris." But contributory negligence on the part of the plaintiff will not prevent him recovering damages unless it be such that, but for that negligence, the injury would not have been sustained; nor, if the defendant might by care have avoided the consequences of the carelessness of the plaintiff.

Plowd. 296; 4 Inst. 180; Munt *v.* Stokes, 4 T. R. 564; Co. Litt. 88; Hob. 103, 109; Doct. & Stud. 9; Wing. Max. Reg. 98, pl. 2, 3; Young *v.* Grote, 12 Moore, 484; Tuff *v.* Warman, 26 L. J. 263, C. P.; Gibbon *v.* Paynton, 4 Burr. 2298; East India Co. *v.* Tritton, 3 B. & C. 289; Keele *v.* Wheeler, 8 Scott N. R. 333; Simpson *v.* Bloss, 7 Taunt. 246; Skaife *v.* Jackson, 3 B. & C. 421.

MAXIM XLII.

In fictione juris semper æquitas existit: (11 Co. 51.)—In fiction of law equity always exists.

THE following case will serve to illustrate this maxim :— Where one disseise another, and during the disseisin cuts down trees, and afterwards the disseisee re-enter ; he shall have an action of trespass, *vi et armis,* against the disseisor for the trees ; for after the regress of the disseisee, the law doth suppose the freehold to have been always in him. But if the disseisor make a feoffment to another in fee, and the disseisee afterwards re-enter, he shall not in that case have an action, *vi et armis,* against those who come in by title ; for the fiction of law that the freehold has always continued in the disseisee shall not have relation to make him who comes in by title a wrong doer *vi et armis ;* for, "In fictione juris semper æquitas existit."

Formerly, an action of debt could not be brought in the Queen's Bench, excepting on the supposition that the defendant was an officer of the court, or was in custody of the marshal of the court for a supposed trespass which he had committed, and which supposition the defendant was not permitted to dispute ; but, being so in custody, was liable to be sued in that court for all personal injuries. And the reason of this fiction of law was, to prevent circuity of action, and to give to the plaintiff a choice of courts in which to sue ; the action for debt being at that period confined to the Court of Common Pleas, as the only court then having original jurisdiction in such actions, the Queen's Bench being a court of appeal from that court.

The seisin of the conusee in a fine also was a *fictio juris*, being an invented form of conveyance merely ; so was a common recovery. Contracts made at sea, also, were feigned to have been made in London, in order to take the cognizance of all actions

and suits in respect thereof from the Admiralty courts and give it to the courts of common law at Westminster.

In fiction of law, "Rex non potest peccare," and "Rex nunquam moritur." In fiction of law, a man in possession of property is considered to be rightfully in possession until the contrary be shown; and a man is considered to be innocent of a crime laid to his charge until by a legally-constituted tribunal he be found guilty. So, also, a man being convicted of felony and adjudged a felon is civilly dead and incapable in the eyes of the law of making or enforcing any contract for his benefit. All his goods and chattels, also, thereby become forfeited to the Crown; but they do not become forfeited until conviction, and therefore an assignment by him thereof made after the commission day of the assizes, but before conviction, is valid, and will defeat the title of the Crown, notwithstanding that the whole assizes are by fiction of law considered as one day.

The law will not be satisfied with fiction where it may be otherwise satisfied, nor must fictions be further used than necessity requires. A fiction must not be contrary to law, nor must it be that which is merely imaginary. It must be possible of performance, and also equitable in its operation. It is a rule or form of law that supposes a thing to be which either is or is not. It is, nevertheless, founded in equity, and will not be permitted to work injustice. Its proper operation is to prevent mischief, or to remedy an inconvenience which might otherwise result from the general rule of law. Recent legislation has, however, in most instances supplanted legal fiction by positive statutory enactment, that which remains remaining solely from an implied necessity arising out of public convenience.

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3 Co. 36; 4 Co. 95; 10 Co. 42; 11 Co. 51; 12 Co. 2; 1 Lill. Abr. 610; 1 Inst. 261; 4 Inst. 71, 134; 2 Roll. Rep. 502; Hawk. P. C. 2, c. 49, s. 9; 3 Bla. Com.; Cowp. 177; 1 Lord Raym. 516; Whittaker *v.* Wisbey, 12 C. B. 44; Littleton *v.* Cross, 3 B. & C. 317; Morris *v.* Pugh, 3 Burr. 1243; Barnett *v.* Earl of G. 11 Exch. 19; Bullock *v.* Dodds, 2 B. & Ald. 276; Roberts *v.* Walker, 1 Russ. & M. 753.

MAXIM XLIII.

In jure non remota causa, sed proxima, spectatur: (Bac. Max. Reg. 1.)—In law the proximate, and not the remote, cause is to be regarded.

THIS maxim is of general application, excepting in cases of fraud, and refers to injury, damage, or loss sustained, and for which compensation in damages, or other equivalent, is sought, when the question arises as to whether or not the act complained of was the immediate cause of the injury or damage, or was too remote to render the defendant liable. As, in tort, for libel, or slander, where a third party seeks to take advantage of the words spoken, or the matter published, as having thereby sustained some injury or lost some expected gain; or in contract, where damages are sought for loss of some expected gain or advantage; as where two parties have made a contract, which one of them has broken, the damages which the other party ought to receive in respect of such breach should be such as may reasonably be expected to arise from such breach of contract itself, or such as may be supposed to have been in contemplation of both parties at the time they made the contract.

Thus, in an action by the manager of a theatre against the defendant for a libel on an opera singer who was under an engagement with the plaintiff to sing at his theatre, but who was deterred by reason of the libel, whereby the plaintiff lost the benefit of her services; the damage was held to be too remote to sustain an action by the plaintiff, the loss not arising directly from any act of the defendant, but from some fear of ill-treatment on the part of the person libelled. So, where slanderous words uttered by one are repeated by another, the original utterer is not responsible for the consequences of their repetition; as, where the slanderous words were addressed to A., and A. at a subsequent time and place, and without authority from the

defendant, repeated them to B., who in consequence refused to trust the plaintiff; it was held that the repetition of the words were the immediate cause of the damage, and not the original statement, and that the action was not maintainable. But in such case, if special damage accrue, the republication of the slander is actionable, and it is no justification merely to give up the name of the original utterer. But where the injury sustained is the natural and necessary consequence of the original act done, there the original mover in the injury is responsible for all the natural consequences of his act; as, where the defendant threw a lighted squib into a market-house during a fair, and the squib fell upon a stall, and the stall-keeper, to protect himself, threw the squib across the market-house, where it fell upon another stall, and was again thrown, and exploded near the plaintiff's eye and blinded him; it was held that the original thrower was responsible for the injury sustained by the plaintiff, all the injury having arisen from the first act of the defendant.

In an action of tort founded upon a contract, for breach of the contract, the measure of damages is the damage apparent at the time the contract is made, whether by inference or by special information to the contracting parties; and speculative damages arising from loss of contemplated profits cannot be recovered. But where plaintiff told the defendant that the Admiralty contracts were out for coals, and inquired if he had any tonnage to offer, which he having, chartered a ship of him, but the ship not being ready in time, the plaintiff engaged another; it was held that he was entitled to recover, as damages for breach of the charter, the extra expense incurred by him in so forwarding the coals.

Bac. Max. Reg. 1; Ashley *v.* Harrison, 1 Esp. 48; Redman *v.* Wilson, 14 M. & W. 476; Lumley *v.* Guy, 2 E. & B. 416; Powell *v.* Gudgeon, 5 M. & S. 431; Hadley *v.* Baxendale, 23 L. J. 179, Ex.; Ward *v.* Weeks, 7 Bing. 211; Vickers *v.* Wilcocks, 8 East, 3; Scott *v.* Shepherd, 3 Wils. 403; McPherson *v.* Daniels, 10 B. & C. 273; Portman *v.* Nichol, 31 L. T. 152; Prior *v.* Wilson, 1 L. T. (N.S.) 549.

MAXIM XLIV.

Interest reipublicæ ut sit finis litium: (Co. Litt. 303.)—It concerns the State that there be an end of lawsuits.

THIS maxim is well known, and constantly applied in practice. Within its meaning are the Statutes of Limitation and Set-off, the law of estoppels, &c.

The statutes for the limitation of actions form a principal feature in this maxim: for example, upon the principle of this maxim personal actions, as actions on the case, not slander, account, trespass, simple contract debt, detinue and replevin for goods or cattle, and trespass *quare clausum fregit*, must be brought within six years; trespass for assault, battery, wounding, or imprisonment, within four years; and case for words, within two years; saving disabilities. And in real actions to recover land or rent, within twenty years after the right of action accrued, saving disabilities; but limited to forty years notwithstanding disabilities. And as to advowsons, within one hundred years at the uttermost.

The rule as to limitation of actions at law holds good also in suits in equity, and courts of equity will, as nearly as can be, be guided in their decisions by the statutes limiting actions at law. Courts of equity will not, however, apply the Statutes of Limitation to cases of breaches of trust, nor where an account is sought from a trustee or agent, of monies intrusted to him. So no lapse of time will prevent a court of equity opening and looking into transactions and accounts between parties standing in the position of trustee and *cestui que trust*, where the transactions between them have not been closed owing to no fault of the *cestui que trust*. But it is otherwise where they have been closed and settled.

Where the defendant in a suit in Chancery had omitted to enrol the decree, and many years afterwards sought to enrol and to appeal; there having been a subsequent decree in another suit

by a judge of co-ordinate authority at variance with the decision so long acquiesced in; it was considered too late to admit of the time for enrolment being extended for such purpose, the time for appealing having been allowed to expire by the defendant on the assumption, as was reasonable to presume, that there was no ground for appealing. So, also, where, on a transfer of shares in a company and retirement of some of the shareholders by arrangement of the directors, it was, after a lapse of twelve years, sought to make one of such retiring shareholders a contributor; in such case it was held that the lapse of time was a bar, and that the arrangement so long acquiesced in could not be disturbed. In this case the M. R. referred to the maxim under consideration as being very important, and it was there applied by him to remedy an inconvenience caused by laches, and where the parties could not be put into the same position as formerly, though there was not any allegation of fraud. It has been held, also, in a case of gross fraud; being that of a trustee who had bought a reversion from his *cestui que trust* at an inadequate value; that seventeen years after the transaction and fourteen years after the death of the tenant for life, when the reversion fell in, the transaction could not be set aside solely on the ground of lapse of time. And, again, in a case between a solicitor and his client, the court considered that eighteen years was sufficient to prevent it from looking into the transaction. Though, in another case, a purchase from a client by a solicitor was successfully impeached, in a suit even against his executors, after a like period of eighteen years.

Co. Litt. 303; 11 Co. 69; Roberts *v.* Tunstall, 4 Hare, 257; Gregory *v.* Gregory, Coop. 201; Champion *v.* Rigby, 1 Russ. & M. 539; 21 Jac. 1, c. 16; 19 & 20 Vict. c. 97; 3 & 4 Will. 4, c. 27; Sheldon *v.* Weldman, Ch. C. 26; *Re* A. C. I. Co. *ex parte* Brotherhood, 7 L. T. (N.S.) 56, on app. *ib.* 142; Wedderburn *v.* Wedderburn, 2 Keen, 749; Bright *v.* Legerton, 30 L. J. 343, Ch.; Beavan *v.* Countess of M. 2 L. T. (N.S.) 677; Gresley *v.* Mosley, 5 Jur. (N.S.) 583.

MAXIM XLV.

Jus accrescendi inter mercatores, pro beneficio commercii, locum non habet: (Co. Litt. 182.)—For the benefit of commerce, there is not any right of survivorship among merchants.

RIGHT of survivorship is where two persons being jointly interested in property, one of them dies, in which case the share of the one dying accrues to the survivor.

In ordinary cases of joint contractors or joint tenants, all of them whilst living have a joint interest in, and right of action upon, the contract; but if one die, the right of action vests in the survivor, who alone can sue. So, if a bond be made to three persons to secure the payment of a sum of money to one of them, who afterwards dies, the survivors, though they have no interest in the money, are the only parties entitled to sue for it. So, if all of several joint contractors die, the right of action vests in the executors or administrators of the last survivor. And where a sum of money in the funds stands in the name of two, and one of them dies, the survivor takes the whole at law, subject, however, to any equities there may be attached to it. So, if land be conveyed or devised to two as joint tenants, the survivor shall have the whole. Such joint tenancy may, however, be determined at the will of any of the parties during their joint lives by conveyance or other disposition of the interest of one or more of them; for, to constitute a joint tenancy the accruing of the interest of the several joint tenants must be simultaneous, their titles being one and not several. The joint tenancy, however, cannot be severed by devise, for no devise can take effect living the devisor. The law is otherwise as to parceners; that is, where lands descend to females only; in which case, if they do not make partition, severally convey, or devise, which they may

do, whilst living, their respective interests will descend to their respective heirs.

There is no such right of survivorship, however, amongst merchants in mercantile transactions; and this is for the benefit of commerce; but the share of a deceased partner in the partnership goods, chattels, and debts goes to his personal representatives, and are distributable amongst them in the same manner as they would have been in case of dissolution of the partnership *inter vivos*. The right of action, or legal interest, however, in the debts and other choses of action of the partnership, survives to the surviving partner, who alone is entitled at common law to sue upon all contracts made with the partnership during its existence; only, however, for the joint benefit of himself and the representatives of his deceased partner, to whom he is accountable, in equity, for the share of the deceased partner. But the surviving partner has no *jus disponendi* of the partnership effects as against the personal representatives of the deceased partner, excepting for the purpose of paying partnership debts and liabilities. And this rule applies as well to real estate purchased by the partners for partnership purposes, with partnership assets, as to the ordinary personal chattels of the partnership, and which real estate is treated by a court of equity for the purpose of account and distribution amongst the personal representatives of the deceased partner as personal property, and so passes to them. It may be here observed that where the partnership business is carried on upon premises belonging to one of the partners, the others, upon dissolution of the partnership by his death or otherwise, have no right to continue in the occupation of the premises, unless under a special agreement for that purpose.

Co. Litt. 182, 243, 277, 280; 1 Inst. 164, 180, 188; 2 Brown. 99; Noy. Max. 79; 1 Burr. 115; Darby *v.* Darby, 3 Drew, 495; Buckley *v.* Barber, 20 L. J. 117, Ex.; Crossfield *v.* Such, 22 L. J. 325, Ex.; Fereday *v.* Whitewick, 1 Russ. & M. 49; Phillips *v.* Phillips, 1 My. & K. 663; Crawshay *v.* Maule, 1 Swanst. 521; Taylor *v.* Taylor, 3 De G. M. & G. 190; Rolls *v.* Yate, Yelv. 177; Benham *v.* Gray, 5 C. B. 141.

MAXIM XLVI.

Leges posteriores priores contrarias abrogant: (1 Co. 25.)—Later laws abrogate prior contrary ones.

THE laws of this country are made by Parliament; that is, by a body composed of Queen, Lords, and Commons; and what one Parliament can do another can, that is, make laws; and the abrogation of an existing law is no more than the making of a new law; and to deny to a Parliament the power to abrogate an existing law is to deny to it the power to make any law.

The power by which laws are made must be supreme, and, if supreme, there can be no limit to its authority. Subsequent laws, therefore, repeal prior laws inconsistent therewith, and that whether they be made by a Parliament composed of the same or of different persons; that is, the same or a subsequent Parliament, in the same or a subsequent session of Parliament.

The common law and customs of the kingdom are also subservient to Parliament, and are abrogated by its enactments. Statutes begin to operate on the day they receive the Royal assent, unless special provision be made in them to the contrary; and from that day all laws contrary thereto are considered as abrogated thereby.

The following maxim serves to illustrate this subject: "Perpetua lex est nullam legem humanam ac positivam perpetuam esse, et clausula quæ abrogationem excludit ab initio non valet"—It is an eternal law which says that no human positive law shall be perpetual, and a clause excluding abrogation is bad from the commencement.

Sir William Blackstone says, that where the common and statute law differ, the common law gives place to the statute; and an old statute gives place to a new one: and this upon a general principle of universal law, that "leges posteriores priores contrarias abrogant;" according to which it was laid down by a

law of the twelve tables at Rome, that "quod populus postremum jussit, id jus ratum esto:" but that that was to be understood only when the latter statute was couched in negative terms, or was so clearly repugnant as necessarily to imply a negative. As, if a former Act said that a juror upon such a trial should have twenty pounds a year, and a new statute enacted that he should have twenty marks; there the latter statute, though it did not express, yet necessarily implied, a negative, and virtually repealed the former. But, if both statutes were merely affirmative, and the substance of each of them such that both could well stand together, the latter would not repeal the former, but they should both be construed together. So, if by law an offence is made indictable at the quarter sessions, and a subsequent statute makes the same offence indictable at the assizes; here, the jurisdiction of the sessions is not taken away, but both have a concurrent jurisdiction; unless the new statute by express words makes the offence indictable at the assizes and not elsewhere.

It is also said that an Act of Parliament cannot be altered, amended, dispensed with, suspended, or repealed, but in the same form and by the same authority of Parliament as that by which it was created; for it requires the same strength to dissolve as to make this, as well as any other, legal obligation. And this is in accordance with the common rule of law which holds that, "Nihil tam conveniens est naturali æquitati quam unumquodque dissolvi eo ligamine quo ligatum est"—Nothing is so consonant to natural equity as that the same thing be dissolved by the same means as that by which it was created.

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2 Roll. Rep. 410; 1 Co. 25; 11 Co. 63; 1 Bla. Com. 92, 18 ed.; Jenk. Cent. 2; 2 Atk. 674; Bac. Max. Reg. 19; Reg. *v.* Mayor of London, 13 Q. B. 1; Paget *v.* Foley, 2 Bing. N. C. 679; Stuart *v.* Jones, 1 E. & B. 22; Hellawell *v.* Eastwood, 6 Exch. 295; Rix *v.* Borton, 12 A. & E. 470; Longton *v.* Hughes, 1 M. & S. 597; Dakins *v.* Seaman, 9 M. & W. 777; Mahoney *v.* Wright, 10 Ir. Com. Law Rep. 420; 33 Geo. 3, c. 13; 7 & 8 Geo. 4, c. 28; 13 & 14 Vict. c. 21; Reg. *v.* Sillem, 11 L. T. (N.S.) 233.

MAXIM XLVII.

Licet dispositio de interesse futuro sit inutilis tamen fieri potest declaratio præcedens quæ sortiatur effectum, interveniente novo actu: (Bac. Max. Reg. 14.)—Although the grant of a future interest is invalid, yet a precedent declaration may be made, which will take effect on the intervention of some new act.

TO pass a right to property by transfer, in goods and chattels, the goods and chattels intended to be transferred must be in existence, and their identity ascertained at the time of the proposed transfer. So, where a contract was made for the sale and purchase of an ascertained cargo of corn at a fixed price, the corn then being on board a vessel at sea on its way to Great Britain, and previously to the making of the contract the vessel had been driven by stress of weather into a foreign port, and, the corn becoming heated, had been sold by the shipmaster to prevent total destruction; it was held that the first-mentioned contract was void, as the vendor had nothing to sell at the time of making the contract, the cargo of corn not being then in existence on board the ship. And, again, where one by deed for valuable consideration assigned to another "all and singular his goods, household furniture, &c., then remaining and being, or which should at any time thereafter remain and be, in, upon, or about his dwelling-house," &c.; it was held that goods subsequently acquired by the assignor and brought into the house did not pass to the assignee under such deed. So in all cases where a man assigns goods and chattels not then in his possession, but the future acquirement of which he contemplates, without including in such assignment a sufficient authority, such as a power of attorney, to take possession of them, and without such taking possession, pursuant to the authority, before some other right, as that of an execution-creditor, intervenes; the assignment does not operate to pass any interest in such future-acquired goods

and chattels. But it is otherwise where there is such authority given, and such after-possession taken: for, though a man cannot pass the property in goods he has not, he can give a right to take possession of them when acquired. The following case illustrates the maxim:—Where by bill of sale a farmer assigned all his goods, chattels and effects, and, *inter alia,* growing crops, with a power to take possession of future-acquired property; it was held that, as to the future and after-acquired property referred to in the bill of sale, which by the deed the creditor was authorised to seize, but which remained in the possession of the debtor at the time of filing a petition in bankruptcy against him, the creditor could not avail himself of the security, because he had not seized them under his power. Had he seized them, however, and acquired actual possession, pursuant to the power given him by the bill of sale, before the filing of the petition, it would have been as much protected against the other creditors of the assignor as if he had actually been possessed of the property at the time of making the bill of sale.

A tenant's interest in future crops may, however, be passed with his interest in the land, and the crops thereby become the property of the assignee on their coming into existence. Such interest is called emblements; that is, the right to reap the fruits of seed sown, roots planted, and other artificial produce of the land; and ingress, egress, and regress to enter, cut, and carry away the same after the tenancy is determined: and this right of the tenant accrues to his grantee, assignee, or devisee, in like manner as it existed in him.

Bac. Max. Reg. 14; Co. Litt. 56; Shepp. Touch. 244; Latham *v.* Attwood, Cro. Car. 515; Com. Dig. Grants, D; Grantham *v.* Hawley, Hob. 132: Strickland *v.* Turner, 22 L. J. 115, Ex.; Price *v.* Groom, 2 Exch. 542; Lunn *v.* Thornton, 1 C. B. 379; Gale *v.* Burnell, 7 Q. B. 863; Congreve *v.* Evetts, 23 L. J. 273, Ex.; Baker *v.* Gray, 25 L. J. 161, C. P.; Petch *v.* Tutin, 15 M. & W. 110; Hastie *v.* Couturier, 9 Exch. 102; Barr *v.* Gibson, 3 M. & W. 390.

MAXIM XLVIII.

Modus et conventio vincunt legem: (2 Co. 73.)—Custom and agreement overrule law.

THIS maxim refers, of course, to those persons and things subject to the custom and the agreement; and, so far as they are individually concerned, the law relating to them is overruled by them; with this exception, that the custom be not unreasonable, and that the agreement be not in contravention of any law relating to third parties, or to the welfare of the public; as, for instance, a custom to take soil from the land of another without stint and without accounting for the profits, or, an agreement to compromise a felony, or to buy off opposition to a bankrupt obtaining his discharge under the bankrupt laws.

An instance showing the connection existing between custom and law, in the absence of any special agreement between the parties, is this:—It is a rule of law that in the case of houses or lands let from year to year, six months' notice to quit by either party, to expire at the time of entry, must be given: custom, however, in different counties and places, overrules this; and, as to the house, the tenant is entitled to retain possession to one time, and, as to the land, to another, according to the particular custom. A custom, to be of force as such, must be of general application, and largely prevalent in the district in which it is supposed to be applied, so that every person may be taken to be dealing with a full knowledge of it. Therefore, where an agreement to let lands was made determinable on six months' notice to quit on either side, and it was attempted to be shown that by the custom of the locality, and particularly in all leases and agreements with reference to the landlord's estate, it had always been the custom to give six *calendar* months' notice to quit before the expiration of the current year of the term, and that by such custom the six months' notice mentioned in the agreement meant

calendar months; it was held that the word "months" primarily meant *lunar months*, and though the custom of a district might be sufficient to vary that meaning, the custom of a small estate would not.

A custom must be reasonable and certain; and, therefore, a claim by custom or prescription to grant licenses to work stone quarries, *in alieno solo*, without stint or limitation, and without accounting for the profits, cannot be maintained. For this would be a profit *à prendre*, which cannot be claimed by custom in another's land; as, otherwise, a man's soil might thus be subject to grievous burdens in favour of successive multitudes of persons, as the inhabitants of a parish or other district, who could not release the right, and which would tend to the destruction of the inheritance and exclusion of the owner.

Where lands and buildings are leased without any express stipulation as to repairs, tillage, &c., a covenant will be implied on the part of the lessee that he will use the buildings in a proper tenant-like manner, and manage and cultivate the lands in a good husband-like manner, according to custom; but not that he will keep the buildings in repair, or do any act not required in an ordinary tenancy. Custom attaches itself to all contracts relating to lands within the limits of the custom, and is considered as incorporated therewith, unless expressly excluded therefrom. The following maxims are applicable to the exceptions above mentioned:—"Pacta privata jura publico derogare non possunt;" and "Pacta quæ contra leges constitutiones que vel contra bonos mores fiunt, nullum vim habere, indubitate juris est."

Shepp. Touch. 162; 2 Co. 73; 7 Co. 23; C. 2, 3, 6; 1 Lev. 162; Holding *v.* Piggott, 7 Bing. 465; Brown *v.* Crump, 6 Taunt. 300; Webb *v.* Plummer, 2 B. & A. 746; Race *v.* Ward, 4 E. & B. 705; Martin *v.* Clue, 18 Q. B. 661; Morrison *v.* Chadwick, 7 C. B. 266; Clarke *v.* Roystone, 13 M. & W. 752; Harnett *v.* Maitland, 16 M. & W. 257; Womersley *v.* Dalby, 26 L. J. 219, Ex.; Attorney-General *v.* Mathias, 31 L. T. 367; Rogers *v.* Kingston-on-Hull D. C., 11 L. T. (N.S.) 42.

MAXIM XLIX.

Necessitas inducit privilegium quoad jura privata: (Bac. Max. 25.)—Necessity induces, or gives, a privilege as to private rights.

THE privileges given to one acting in the exercise of private rights are said to arise out of the necessity for self-preservation; for obedience; and the necessity resulting from the act of God. Of the necessity for self-preservation, justifiable homicide, or the killing of another in self-defence, or in defence of master or servant, parent or child, husband or wife, is an example; and this applies to property as well as to the person; as, to defend the person or property against thieves. Of the necessity for obedience, *i.e.*, obedience to the laws; as, where an officer of government, civil or military, in the execution of a lawful command, causes death: for example, where a sheriff's officer, in the execution of a civil process, as giving possession of lands or houses under a writ of *habere facias possessionem,* calls to his aid the *posse comitatus,* and in the affray death ensues. Of the necessity resulting from the act of God, may be mentioned that in which an idiot, lunatic, or person labouring under some mental or bodily impotency, is held not to be responsible for his acts.

"Necessitas non habet legem"—Necessity has no law, is another branch of the same maxim. This necessity as regards the mind of man, and his acts under influence of that mind, is, where a man is compelled to do what otherwise he would not consent to; where he is impelled to do what his conscience rejects. And, so considered, the law allows him certain privileges, and excuses him those acts which are done through unavoidable force and compulsion, which would otherwise be punishable as breaches of the law. But, this privilege is in strictness limited to breaches of the law as regards private rights:

for a man's private rights must be sacrificed to the public good. and this of necessity also; for public necessity is greater than private: "Necessitas publica major est quam privata."

The Christian burial of the poor is a necessity which cannot be denied them; so he in whose house a poor person dies is bound to bury the body decently: he cannot keep it unburied, or do anything to prevent its proper burial; nor can he cast it out, or expose it so as to offend the feelings or endanger the health of the living. And upon this principle a *mandamus* will be granted to the rector of a parish to compel him to bury a corpse; and so also will a *mandamus* go, for the like reason, to a gaoler to deliver up the body of a deceased debtor to his executors.

It was once a common notion that the body of a deceased debtor could be taken in execution for a debt owing by him at the time of his decease; and that notion was encouraged by the fact that a case had actually occurred, and existed in the law books, where a woman, fearing that the dead body of her son would be arrested for debt, promised, in consideration of forbearance, to pay, and she was held liable upon such promise. It has, however, since been stated in another case that such ruling was contrary to every principle of law and morality, and such an act was revolting to humanity and illegal, and that any promise extorted by fear of it could not be valid in law.

The necessity which exists amongst mankind that they should bury their dead out of their sight, alone gives the privilege of possession of the body to those to whom it naturally belongs; and it is only in very dark ages, and when reason is perverted by superstitious folly, that a contrary notion can possibly prevail.

Bac. Max. 25; 12 Co. 63; 1 Hale P. C. 54, 434; Co. Litt. 217; Jenk. Cent. 280; Noy. Max. 32; 4 Bla. Com.; R. *v.* Antrobus, 2 A. & E. 788; Gore *v.* Gibson, 13 M. & W. 623; Quick *v.* Coppleton, 1 Lev. 162; McNaughten's Case, 10 Cl. & Fin. 200; Rex *v.* Coleridge, 2 B. & Ald. 809; Reg. *v.* Stewart, 12 A. & E. 773; Reg. *v.* Fox, 2 Q. B. 246; Jones *v.* Ashburnham, 4 East, 459.

MAXIM L.

Nemo debet bis vexari, si constat curiæ quod sit pro unâ et eâdem causa: (5 Co. 61.)—No one ought to be twice punished, if it be proved to the court that it be for one and the same cause.

IN pursuance of this maxim a judgment, or *res judicata,* between the same parties is held to be final, and neither party can by a fresh action reopen the question so determined. Nor can they otherwise impeach the decision; excepting for manifest error upon the face of the proceedings, or for fraud, surprise, or some failure of justice in the trial of the action, and in respect of which a new trial will be granted. And a plea of judgment recovered in a court of concurrent jurisdiction directly upon a point is, as a plea or as evidence, conclusive upon the same matter between the same parties in any such action. So, also, a judgment between the same parties for the same cause of action is conclusive, although the form of action is different; as, a verdict in an action of trover is a bar in an action for money had and received brought for the value of the same goods. The main reason why such judgment is considered final, and cannot be reopened by another action, is that the cause of action is merged in the judgment, or, as it is called, *transit in rem judicatam;* and there, in fact, does not exist any cause of action, so far as the matter in dispute in the original action is concerned, in respect of which an action can be brought. Judgment in ejectment is, however, an apparent exception to this rule; for, though it may be admitted in evidence between the same parties in a subsequent action, for some purposes, for the same lands, it is not a bar to the action, nor can it be pleaded by way of estoppel.

Under this rule may be classed all applications for new trials and appeals, and which are, in fact, in the nature of fresh actions

for the same cause. And, therefore, the courts are careful not to grant new trials unless the justice of the case absolutely requires it. So a new trial for the improper admission of evidence has been refused where there appeared to be sufficient evidence to support the verdict given independently of the evidence so improperly admitted. Also where the action is trifling in amount, as for a sum not exceeding 20*l.*; or vexatious. In penal actions, where a verdict is found for the defendant a new trial is never granted; nor is a new trial often granted in ejectment where the verdict complained of has been found for the defendant; nor in replevin except upon very clear grounds. So, if the jury at a second trial find for the party against whom the former verdict was given, the court may be induced, under special circumstances, to grant a new trial; but the losing party is not in such case entitled to it as of right by any rule or practice of the court, and they have refused it where the second verdict was satisfactory. So a third trial is seldom granted after two concurring verdicts, and in such case the court has refused to grant it even though the judge before whom the second trial was tried was dissatisfied with the verdict.

To this maxim may be added that applicable to criminal cases: "Nemo debet bis puniri pro uno delicto"—No one shall be punished twice for one crime. The rule in such cases being, that a man being indicted for an offence and acquitted cannot be again indicted for the same offence, and, if so indicted, may plead *autrefois acquit*, even in case of a charge of murder.

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4 Co. 43; 5 Co. 61; Duchess of Kingston's Case, 20 How. St. Tr. 538; Slade's Case, 4 Co. 94; Doe *v.* Seaton, 2 C. M. & R. 728; Hitchin *v.* Campbell, 2 W. Bl. 827, 851; Horford *v.* Wilson, 1 Taunt. 12; Parker *v.* Ansell, 2 W. Bl. 963; *Doe dem.* Teynham *v.* Tyler, 6 Bing. 561; Alexander *v.* Clayton, 4 Burr. 2224; Swinnerton *v.* Marquis of S., 3 Taunt. 232; Brook *v.* Middleton, 10 East, 268; Sowell *v.* Champion, 2 N. & P. 627; Reg. *v.* Green, 28 L. T. 108.

MAXIM LI.

Nemo debet esse judex in propriâ causâ: (12 Co. 113.)—No one ought to be judge in his own cause.

THE rule in this maxim is inflexible, and as well the king as the commoner is subjected to it; and some few cases have arisen in which it has been so adjudged.

The manifest injustice of a man being judge in his own cause will not be denied, and that being so, it may be supposed that such a case is of rare occurrence, and, indeed, so it is; for it is only indirectly that such a case occurs; as, for instance, where a judge interested, as shareholder or otherwise, in some railway or other company or undertaking, having a suit before him, proceeds to hear the cause and adjudicate. To such a case, namely, that in which he has an interest merely, though he be not a party to the suit, the rule applies.

The maxim applies to all judges alike, whether superior or inferior. The following is an important and apt instance:—Where a company filed a bill against a landowner and obtained a decree in their favour, which was sought to be set aside on appeal before the Lord Chancellor, who was a shareholder in the company; that fact being unknown to the defendant; and the Lord Chancellor affirmed the decree: the House of Lords reversed the decree of the Lord Chancellor solely on the principle of this maxim. And it was there stated that it was of the greatest importance that the maxim, "No man shall be judge in his own cause," be observed; and that the rule was intended to apply not merely where he was a party, but where he had any interest. It was there also observed, that the House of Lords had again and again set aside proceedings of inferior tribunals because an individual who had an interest in the cause took part in the decision; and that that case against the Lord Chancellor would

be a good example and a lesson to all inferior tribunals in time to come, not only that in their decrees they are not to be influenced by their personal interest, but that they ought to avoid the appearance even of being influenced by such interest.

Again, where by a building contract it was stipulated that the work was to be done to the satisfaction of the defendant himself; it was held that his approval of the work done was not a condition precedent to payment, for that would make him judge in his own cause. So, also, a justice of the peace interested in a matter brought before him cannot hear it or adjudicate upon it, or take part with other justices in so doing; and objections on this ground are of daily occurrence. And where, upon an appeal by a water company against an assessment to a poor-rate, the presiding judge, the deputy recorder, reduced the rate and gave costs to the appellants, and it afterwards appeared that the deputy recorder was, at the time of the trial of the appeal, the registered shareholder of five shares in the company, though he was at the time under a contract to dispose of them, and, as he swore, believed he had no beneficial interest whatever in the company; it was held that he was, notwithstanding, an interested party, and incompetent to try the appeal.

The maxims, "Nemo potest esse simul actor et judex"—No one can be at the same time judge and party; "Aliquis non debet esse judex in propriâ causâ, quia non potest esse judex et pars"—No man ought to be judge in his own cause, because he cannot be judge and party, are further instances of the application of the same rule.

Co. Litt. 141; 4 Inst. 71; Hob. 85; 2 Stra. 1173; 2 Roll. Abr. 93; 12 Co. 63, 113, 114; Brooks *v.* Earl Rivers, Hardw. 503; Reg. *v.* Aberdare C. Co., 14 Q. B. 854; Worsley *v.* South D. R. C., 16 Q. B. 539; Reg. *v.* Cheltenham Com., 1 Q. B. 467; Reg. *v.* Justices of Suffolk, 18 Q. B. 416; Reg. *v.* Great Western R. C., 13 Q. B. 327; Dimes *v.* Grand Junction C. C., 3 H. L. Cas. 759; Dallman *v.* King, 4 New Cas. 106; Reg. *v.* Storks, 29 L. T. 107.

MAXIM LII.

Nemo est hæres viventis: (Co. Litt. 8.)—No one is heir of the living.

THE heir is one who takes lands of inheritance by descent; and descent in law is the transmission of the right and title to lands to the heir on the decease of the proprietor, by mere operation of law. The law of descent is therefore that law by which the inheritance of estates is regulated, and by which provision is made for the disposition and succession of lands, in the nature of freehold, in the case of the death of the proprietor without having himself made any previous designation of heirs. And such title by descent or operation of law is distinguished from a title by purchase, inasmuch as the latter may be said to be a title by devise from the ancestor or by grant from the purchaser.

There are two kinds of heirs in the meaning of the word as now under consideration—the one being heir apparent and the other heir presumptive. Heir apparent is he who will necessarily succeed to the real estate of his ancestor undisposed of at the time of his death, if he survives him; as, the eldest son of the ancestor or his issue. Heir presumptive is he who, if his ancestor should die immediately, would, under existing circumstances, be his heir; but whose right of inheritance may be defeated by some nearer heir coming into existence; as, a brother or nephew, whose presumptive succession may be destroyed by the birth of a child.

From what has been said, it will be seen, that a man cannot be heir to his ancestor; nor can he be both heir and ancestor at the same time. But the meaning of the maxim is more particularly with reference to the estate, namely, that no one can be entitled as heir to the estate of his ancestor during the life of the ancestor; for, were it otherwise, the ancestor would cease to be such, and the heir would take his place as ancestor.

According to the meaning intended to be conveyed by this maxim, therefore, it is said, that the heir, so long as the ancestor be living, has no estate, nor is he entitled to any during that period, excepting as presumptive and apparent heir; and the following cases are used to illustrate this:—If an estate be granted to John for life, and afterwards to the heirs of Richard, the inheritance is neither granted to John nor Richard, nor can it vest in the heirs of Richard till his death; for, according to this rule, during Richard's life he has no heir. Or, if an estate be limited to A. for life, remainder to the heirs of B.; if A. die before B., the remainder will be at an end; for, during B.'s life he has no heir.

There is no doubt, however, that the operation of this rule may be excluded by express words: as, where lands were devised to the heirs of J. S., then living; it was held that his eldest son should have them, though, in strictness, he was not his heir during his father's life, but heir apparent only; but this was by reason of the words "then living," which made it a description of the person. Again, where there is a devise to A. for life, remainder to the right heirs of B., now living, the remainder vests in the heir apparent of B.

In all cases of devise, the intention of the testator will of course be considered in the application of the rule; and he who is shown upon the face of the will to be intended to take, will take accordingly, whether he be in fact heir apparent only, or otherwise; and in cases of doubt the heir will be favoured.

Co. Litt. 8, 22; Prec. Chan. 57; Noy. Max. 185; 2 Bla. Com.; Jacob Dic. Heir; 1 Plowd. 170; Fearne, 359; Darbison *v.* Beaumont, 1 P. Wms. 229; Jesson *v.* Wright, 2 Bligh, 1; *Doe dem.* Winter *v.* Perratt, 7 Scott N. R. 1; Wright *v.* Atkyns, 17 Ves. 255; James *v.* Richardson, Raym. 330; *Doe dem.* Brooking *v.* White, 2 W. Bl. 1010; Egerton *v.* Earl Brownlow, 4 H. L. Cas. 103; Sladen *v.* Sladen, 7 L. T. (N.S.) 63; Hennessey *v.* Bray, 9 Jur. (N.S.) 1065; Parker *v.* Nickson, 8 L. T. (N.S.) 600.

MAXIM LIII.

Nemo patriam in qua natus est exuere nec ligeantiæ debitum ejurare possit: (Co. Litt. 129.)—A man cannot abjure his native country, nor the allegiance he owes his Sovereign.

UNDER the feudal system every owner of lands held them of some superior lord, from whom or from whose ancestors he had received them; and there was a mutual trust subsisting between them, that the lord should protect the vassal in the enjoyment of the lands, and that the vassal should be faithful to defend the lord against his enemies. This obligation was called fealty, and an oath of fealty, similar to our ancient oath of allegiance, was taken from the vassal to the lord; and from this has arisen what is now called allegiance. And it being a settled principle in this country that all lands are considered as being held of the sovereign as lord paramount, this allegiance which was once due and given to the lord as an acknowledgment for his protection of the vassal in the enjoyment of the land held of him, has been brought to signify that respect and obedience which is due from the subject to the sovereign in all engagements whatsoever necessary for the welfare of the country, though without reference to any actual territorial acquisition.

This allegiance, or *allegiantia,* or *ligamen fidei,* is the sworn allegiance or faith and obedience which every subject owes to his prince. It is said to be either perpetual, as when by birth or naturalisation; or temporary, by reason of residence within the dominions of the sovereign. To a subject born, it is inseparably incident on birth, and follows him whithersoever he goes. It gives to him, in his own country and amongst foreign nations, many privileges, both civil and criminal, in times of peace and war, which are denied to an *alienus,* or one born out of the allegiance of the sovereign, at the same time that it binds him to a strict observance of the laws of his country.

The rule of law is said to be universal, that the natural-born subject of one prince cannot, by any act of his own, or by any authority less than that of the ruling power of his own country, free himself from his natural allegiance. Nor does the swearing allegiance to a foreign power in any way prejudice the right of the prince to the allegiance due from a natural-born subject, who remains liable to his obligations as such, notwithstanding that by his connection with other powers he may have forfeited his natural rights. Allegiance is the duty the subject owes to the Government of the country in which he was born for the protection afforded to him and his property by that Government; and, for the like reason, it is due from foreigners also during their temporary sojourn in a foreign country. Every offence, also, affecting the sovereign in his royal person, crown, or dignity, is in some degree a breach of this allegiance; as, for instance, treason.

The sovereign is entitled to the allegiance of all his subjects, and those who accept any office or employment under the crown in this country, are required to take the oaths of allegiance.

The importance of the bond of allegiance or *ligamen*, which binds the subject to his native country, may be understood by observing, that wherever the subject goes he carries with him that allegiance; so that, were he to take possession by his power, or with the assistance of others, of some foreign territory, his possession would be that of the sovereign of his native country, and the territory would be that of his country also; and of this several instances are on record in the history of this and other nations.

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1 Inst. 2, 329; 2 Inst. 741; 7 Co. 1, 5; 1, 2, & 4 Bla. Com.; Co. Litt. 65, 129; Albretch *v.* Sussman, 2 Ves. & B. 323; Fitch *v.* Weber, 12 Jur. 76; Sutton *v.* Sutton, 1 Russ. & My. 663; Barrick *v.* Buda, 16 C. B. 493; Craw *v.* Ramsay, Vaugh. R. 279; Doe *v.* Jones, 5 T. R. 1; *Doe dem.* Thomas *v.* Acklam, 4 D. & R. 394; Rittson *v.* Stordy, 3 Smale & Giff. 230; *Doe dem.* Stansbury *v.* Arkwright, 5 Car. & P. 575; Barrow *v.* Wadkin, 27 L. J. 129, Ch.; *Doe dem.* Auchmuty *v.* Mulcaster, 5 B. & C. 771.

MAXIM LIV.

Nemo tenetur seipsum accusare: (Wing. Max. 486.)—No one is bound to criminate himself.

NO one can be compelled to criminate himself, that is, to accuse or confess himself guilty of any crime; but if he do so voluntarily, the confession is admissible; and this is illustrated by the common case of a magistrate being required to caution a prisoner, before taking from him any admission or confession of guilt he may feel desirous of making, that such confession or admission will be used in evidence against him. So, the answer of a prisoner, after his arrest, to a question asked by a police-constable, is inadmissible as evidence against him; for, the officer in such case has no authority to ask any question tending to criminate the prisoner. Also, where, on an indictment for forgery, it appeared that the prisoner, on the discovery of the forgery, being suspected, was asked to write his name for the purpose of comparison, and did so; it was held that his signature was not admissible on the part of the prosecution, to prove that the instrument forged was in his handwriting.

It has been for ages a principle of jurisprudence in this country, that no man shall be compelled to answer upon oath to a matter by which he may accuse himself of any crime; and, strictly speaking, the rule holds good at the present day. And experience has shown that if this rule did not exist, many persons would be found willing, for reward or favour, to accuse themselves of crimes of which they had never been guilty.

The old rule in this respect has, however, in modern times been somewhat relaxed, and a difference has been made between private crimes, or those arising out of commerce or the private relations of society, and public crimes, or those relating strictly to the general welfare of the state.

As the law stands, there is one branch of compulsory evidence

which is in its nature civil, and another criminal. Thus, a man may be compelled to make answer to a bill in Chancery, and his admissions made in such answer may be given in evidence against him ; so may also the evidence given by a witness on a trial in a civil suit. And as to criminal matters, a man may be compelled to make answers in the Bankruptcy and County Courts, which may render him liable to criminal proceedings.

By various statutes, a witness cannot refuse to answer a question relevant to the issue, on the ground only that the answer may subject him to a civil suit : nor, if he be objected to on the ground that the verdict would be admissible in evidence for, or against him ; but, in that case, the verdict shall not be admissible for, or against him.

So, in civil proceedings, husband and wife are competent and compellable to give evidence for and against each other ; but it is otherwise with them, as to criminal proceedings, or proceedings for adultery. Yet, where two prisoners were tried for a joint offence, and one pleaded guilty, and it was proposed to call the wife of the prisoner who had pleaded guilty, on the part of the prosecution, to give evidence against the other prisoner ; it was held that the evidence was admissible.

It may be stated broadly that no person can be compelled to give evidence subjecting him to criminal proceedings, excepting those of the quasi-criminal nature before alluded to.

Questions as to privileged communications may be considered to come within the meaning of this rule, so far as to their being in the nature of compulsory evidence.

Wing. Max. 486 ; Grant v. Jackson, Peake, 203 ; Robson v. Alexander, 1 Moore & P. 448 ; Millward v. Forbes, 4 Esp. 172 ; Collett v. Lord Keith, 4 Esp. 212 ; R. v. Merceron, 2 Stark. 366 ; 46 Geo. 3, c. 37 ; 6 & 7 Vict. c. 98 ; 9 & 10 Vict. c. 95 ; 14 & 15 Vict. c. 99 ; 16 & 17 Vict. c. 83 ; Reg. v. Bodkin, 9 Cox Crim. Cas. 403 ; *Ex parte* Tear, *re* Tear, 10 L. T. (N.S.) 878 ; Reg. v. Aldridge, 3 F. & F. 781 ; Reg. v. Thompson, 3 F. & F. 824 ; Reg. v. Mick, 3 F. & F. 822 ; Wentworth v. Lloyd, 10 L. T. (N.S.) 767.

MAXIM LV.

Nihil tam conveniens est naturali æquitati quam unumquodque dissolvi eo ligamine quo ligatum est: (2 Inst. 359.)—Nothing is so agreeable to natural equity as that, by the like means by which anything is bound, it may be loosed.

IT is said that there is no inheritance executory; as rents, annuities, conditions, warranties, covenants, and such like; but may, by a defeasance, made with the mutual consent of all those who were parties to the creation thereof, be annulled, discharged, and defeated. And so as to recognisances, obligations, and the like; yet so as in all such cases the defeasance be made *eodem modo*, as the obligation; viz., if the one be by deed, the other must be by deed also; for it is a rule that in all cases where anything executory is created by deed, it may, by consent of all persons parties to the creation of it, be by deed defeated and annulled.

In accordance with this rule, it is laid down that an obligation must be avoided by release; a record by record; a deed by deed; a parol promise by parol; an Act of Parliament by an Act of Parliament; every agreement or obligation being dissolved only by a like high agreement or obligation.

By the common law, a parol waiver is no discharge of a covenant: as, a covenant by A. not to carry on a particular business within a certain distance of the premises of D., cannot be discharged by a parol permission from D. to A., authorising him to carry on such business. And where by deed a lessee covenanted to yield up all erections and improvements upon the demised premises at the end of his term; it was held that to remove a greenhouse he had subsequently erected thereupon was a breach of the covenant, notwithstanding a parol permission from the lessor so to do, made prior to the erection of the building.

So, a covenant to build a house, or to perform other like engagements within a limited time, is not discharged by parol. It is upon this principle that oral evidence is inadmissible to add to, alter, or vary, a written contract, though not under seal; for, where there is no ambiguity in the words of a written contract, no exposition contrary to the written words will be received.

Before breach, the obligor of a bond for payment of a sum of money on a certain day, may discharge himself by showing payment on or before the day appointed, and acceptance in satisfaction by the plaintiff of a smaller for a larger sum, or of some other thing, as a horse or other goods, in whole or in part in lieu of money. After breach, anything paid in satisfaction is sufficient to be pleaded by way of accord and satisfaction in discharge of a contract, whether simple or special, or whether the remedy adopted be by action of covenant on deed, or action of assumpsit on parol agreement. The accord must, however, in all cases be executed—*i.e.*, there must be an acceptance and receipt by the party entitled or claiming to be entitled under the contract. Prevention of performance will also operate as a discharge of a covenant; as, if a man covenant to build a house upon the land of another, and the covenantee refuse to let the covenantor enter upon the land to build, in that case performance will be excused.

Formerly covenants under seal could not be discharged by parol before breach, whether executed or executory; but now, an executed parol contract made in discharge of a covenant may be pleaded in equitable defence to an action on the covenant.

The whole principle of the maxim is founded upon the question of consideration: a contract requiring a consideration to make it requiring also a consideration to break it.

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2 Inst. 359; Shepp. Touch. 396; 2 Roll. Rep. 39; Litt. s. 344; Co. Litt. 213; Pothier Obl. 785; 6 Co. 43, 44; Sellers *v.* Bickford, 1 Moore, 460; West *v.* Blakeway, 3 Sc. N. R. 199; Spence *v.* Healey, 8 Exch. 688; Cordwent *v.* Hunt, 8 Taunt. 596; Lord Petrie *v.* Stubbs, 25 L. T. 81; Gee *v.* Smart, 26 L. J. 305, Q. B.; Smith *v.* Ballams, 26 L. J. 232, Ex., Foster *v.* Dawbar, 6 Exch. 839; 17 & 18 Vict. c. 125.

MAXIM LVI.

Nimia subtilitas in jure reprobatur, et talis certitudo certitudinem confundit: (4 Co. 5.)—Nice and subtle distinctions are not sanctioned by the law; for so, apparent certainty would be made to confound true and legal certainty.

THIS maxim is chiefly applicable to pleadings, to avoid subtle distinctions and nice exceptions in which, the law has recently undergone so many changes; so that, with the known power of the judges to amend, subtleties in pleadings are now but little known. The maxim is not opposed to certainty in pleading, or to proper forms of pleading to induce certainty, but only to strained and captious pleadings tending to subvert the truth. Strained and captious constructions of deeds and other instruments are within the same rule. The maxim under consideration is so well known in modern practice, and so readily consorts with the notions of every reasonable man of the present day, that it will not be necessary to give more than one instance in illustration.

By the common law before the statute 27 Hen. 8, a freehold estate could not be barred by acceptance of any collateral recompense; but by that statute, where lands were given in jointure for an estate of freehold for the wife, it was a bar to her claim to dower out of all her husband's other freehold estates; and the following case of *nimia subtilitas* is given by Lord Coke as occurring under that state of the law:—A woman, on the death of her husband, wished to have both the lands given to her in jointure and also dower out of her husband's other lands. She therefore avoided an open entry into the lands in jointure, and brought her writ of dower to be endowed out of the whole of her husband's lands, including those in jointure, and, recovering, the sheriff, not knowing of the device, assigned her dower of the

whole. out of that part only of the lands which were not in jointure. The wife then openly entered the lands in jointure. but was holden out by the terre-tenant. The wife brought trespass against the terre-tenant. who pleaded the feoffment of the husband to him, and justified. The plaintiff replied the seisin of her ancestor prior to the seisin of the husband, and the gift in jointure to the husband and her. The defendant rejoined the jointure, and that after the death of the husband and before the trespass the wife brought her writ of dower and had execution *ut supra,* and averred that the said land, &c., was parcel of the land conveyed to her for her jointure and no part of the land assigned to her for dower; to which the plaintiff surrejoined the entry of the wife, after the death of her husband and before dower brought, upon the land in question, claiming it for her jointure. The defendant by surrebutter objected that the wife could not, against the record of the recovery in the writ of dower, be so admitted to say; upon which the plaintiff demurred. And it was argued for the plaintiff that bringing the writ of dower was no waiver of the estate of the wife, she having by entry agreed to the estate, and, being actually seised, could not afterwards waive and divest the same out of her by the writ of dower. To which it was answered that, admitted that the wife could not waive, yet she might bar her claim to the said estate, and so had estopped herself from claiming; for, by her writ of dower and judgment for a third of the whole, she had affirmed her title to dower, and so no estate. Therefore, she was estopped claiming any part of that whereof she demanded by her writ to be endowed; and so it was held.

4 Co. 5; Wing. Max. 19, 26; Co. Litt. 303; 5 Co. Eccl. l. 8; 8 Co. 112; 10 Co. 126; Hamond *v.* Dod, Cro. Car. 6; Harlow *v.* Wright, Cro. Car. 105; Bell *v.* Janson, 1 M. & S. 204; Le Bret *v.* Papillon, 4 East, 502; Galloway *v.* Jackson, 3 Scott N. R. 773; Jones *v.* Chune, 1 B. & P. 363; Fraser *v.* Welsh, 8 M. & W. 634; Evans *v.* Robins, 11 L. T. (N.S.) 211; Hinnings *v.* Hinnings, 10 L. T. (N.S.) 294.

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MAXIM LVII.

Non jus, sed seisina, facit stipitem: (Fleta 6, c. 14.)—Not right, but seisin, makes the stock.

SEISIN in the common law signifies possession, and to seise is to take possession of a thing; and *primier seisin* is the first possession. So there is a seisin in deed and a seisin in law. A seisin in deed is where an actual possession is taken; seisin in law is where lands descend and entry has not been made upon them. Seisin in law is a right to lands though the owner is by wrong disseised of them. This is as the law relating to lands was formerly understood in all strictness; so that under it no person could be an ancestor, so as that an inheritance of lands or tenements could be derived from him, unless he had actual seisin thereof, by himself or some one on his behalf holding under him, or unless there was some other equivalent to such actual seisin, according to the nature of the property, whether corporeal or incorporeal, land or rent; and which seisin made him the root from which all future inheritance by right of blood must be derived, distinguishing this actual seisin or entry from a mere right of entry: and this is what is meant by *seisina facit stipitem.*

This seisin, or notoriety of ownership by occupation of the land, was formerly required owing to the manner in which land was at that time passed from one person to another; that is, by delivery of possession and actual corporal entry; and until which actual corporal entry the heir or purchaser was not considered to have such a complete ownership as to transmit a title thereof to his heir, or to one purchasing from him. So no person, as the law then stood, could succeed to an inheritance by descent unless his ancestor had died seised thereof, nor was the title of the claimant by descent perfect until he had himself obtained actual corporal seisin, so as in like manner to become in his turn the

root or stock from which all future inheritance by right of blood could be derived. Since the statute 3 & 4 Will. 4, c. 106, however, such actual seisin is not required, except as to descents which took place previously to the 1st January, 1834; and the heir and ancestor are, under that statute, such as otherwise appears by law, and the descent is so traced.

By the statute referred to, the person who last acquired the land otherwise than by descent, or than by escheat, partition, or inclosure; by the effect of which the land should have become part of, or descendible in the same manner as, other land acquired by descent; is to be considered the purchaser: the person entitled by descent, he who has title to inherit by reason of consanguinity, as well where the heir shall be ancestor or collateral relative as where he shall be child or other issue: a descendant, he who can trace his descent through such ancestor; and the person having the actual right to land; whether or not he was in possession or in receipt of the rents and profits; is to be considered the person last entitled and the purchaser, and as such may transmit the ownership to another without the formality of entry by himself, his heir, or devisee, or any one claiming through him. And so the fiction of law which held an estate to be still in the ancestor which had long since descended to his heir, and an estate still to continue in a previous owner which had long since passed from him by sale; merely because the heir died without entry, and notwithstanding proof of heirship by descent; is abolished, and the more reasonable law substituted which allows the owner and heir to be such as they can be shown to be by purchase or descent.

Fleta, lib. 6, c. 14; 2 Bla. Com.; Noy Max. 9 ed. p. 72; 1 Inst. 31; 3 Co. 42; Co. Litt. 14, 15, 152; Jenks's Case, Cro. Car. 151; *Doe dem.* Andrew *v.* Hutton, 3 B. & P. 643; Tweedale *v.* Coventry, 1 Bro. Ch. C. 240; *Doe dem.* Parker *v.* Thomas, 4 Scott N. R. 468; *Doe dem.* Chillott *v.* White, 1 East, 33; 3 & 4 Will. 4, c. 106; *Doe dem.* Wallis *v.* Jackson, Cowp. 229; Smith *v.* Coffin, 2 H. Bl. 444; Kellow *v.* Rowden, 3 Mod. 253; Smith *v.* Parker, 2 Bl. 1230.

MAXIM LVIII.

Non potest adduci exceptio ejus rei cujus petitur dissolutio: (Bac. Max. 22.)—It is not permitted to adduce a plea of the matter in issue as a bar thereto.

ERROR to reverse a judgment may be given as an illustration of this maxim. In such case the defendant in error cannot plead the record in answer to the error alleged by the plaintiff, that, in fact, being the only question in dispute; and if he could, the plaintiff would be barred of all remedy. And so, it is said, that it would be impertinent and contrary to itself for the law to allow of a plea in bar of such matter as is to be defeated by the same suit; for if that were the case, a man could never arrive at the end and effect of his suit. Therefore, where a writ of false judgment was brought upon a judgment of nonsuit in one of the inferior courts, on the ground that the judge had nonsuited the plaintiff notwithstanding he had appeared when called and had refused to be nonsuited, insisting that the case should go to the jury, and had tendered a bill of exceptions; and it was contended on the part of the defendant that, as the bill of exceptions was appended to the nonsuit, the plaintiff must be taken not to have appeared, and therefore could not be heard to take that objection: the Court said that that was setting up as a defence the thing itself which was the subject of complaint, a course which was prohibited by the maxim, "Non potest adduci exceptio ejus rei cujus petitur dissolutio;" and so it was held: and also, that the direction of a judge nonsuiting the plaintiff against his will was the subject of a bill of exceptions, and fell within the principle upon which that remedy had been provided for errors in judgment at the trial; being all misdirections of the judge in the course of a trial, or, more generally, error in the foundation, proceeding, judgment, or execution of a suit.

Though a judgment binds the parties until it is reversed, yet

it cannot be alleged against a reversal of it; nor can it be reversed but by those who are parties to the record. Before error can be brought upon a judgment, the judgment must be had, and it must be final, and the judgment given in error is, that the judgment below stand or be amended.

It may be said that this is contrary to the maxim, "Interest reipublicæ ut sit finis litium"—It is to the interest of the state that there be an end of lawsuits; for, if so solemn an act as a judgment is not to be depended upon as an end to litigation, there would be no end to litigation: and so, also, may it be said that it must be contrary to the maxim, "Nemo debet bis vexari pro unâ et eadem causâ"—No one ought to be twice punished for the same fault. But error in judgment does not come within either of these rules; for it is a failure of justice, and must be remedied under the maxim, "De fide et officio judicis non recipitur quæstio: sed de scientiâ sive error sit juris aut facti."

A judgment directly in point is, however, conclusive upon the same matter between the same parties, and such judgment operates as an estoppel when pleaded to an action for the same cause; but this does not apply to a judgment in which there is a defect, and to remedy which defect error is brought, for such judgment cannot in such case be set up as a plea in bar of such writ or proceedings in error.

Bac. Max. 22; Co. Litt. 289; 3 Salk. 145; Jenk. Cent. 37; 2 Bac. Abr. Error A. 2; Samuel *v.* Judin, 6 East, 333; Masters *v.* Lewis, 1 Ld. Raym. 57; Bishop *v.* Elliott, 11 Exch. 113; Craig *v.* Levy, 1 Exch. 570; Strother *v.* Hutchinson and another, 4 Bing. N. C. 83; Cossar *v.* Reed, 17 Q. B. 540; Rex *v.* Westwood, 7 Bing. 83; Byrne *v.* Manning, 2 Dowl. (N.S.) 403; Duchess of Kingston's Case, How St. Tr. 538; 2 Smith L. C.; Freeman *v.* Cooke, 2 M. & W. 654.

MAXIM LIX.

Noscitur à sociis: (3 T. R. 87.)—The meaning of a word may be ascertained by reference to those associated with it.

THIS maxim applies to the construction to be put upon all written instruments.

It is one of the many maxims serving as guides in the interpretation of written instruments used by the judges of former times, to express tersely a reason for their opinions; and it is constantly acted upon by the judges in the present day in considering and determining the weight to be attached to general words with reference to particular words associated therewith, and also in considering and determining the meaning of ambiguous terms in the absence of apt words showing clearly the real intention of the parties. It is, however, subject to the general rule of interpretation of written instruments as to intention, and is used with particular reference to the bearing one word has to another, and to the connection existing between one word and another.

The following case will most readily make the maxim understood:—C. demised to E. for a term of ninety-seven years an unfinished messuage, with a covenant by E. to deliver up the same to C. at the end of the term, together with all locks, keys, bars, bolts, marble and other chimney-pieces, foot paces, slabs and other fixtures and articles in the nature of fixtures, which should at any time during the term be fixed or fastened to the premises. E. took possession, and completed the messuage as a tavern, and for that purpose put in certain suitable trade and tenant's fixtures. B. afterwards contracted with E. for an under-lease of the premises, and the goodwill, furniture, fixtures, &c.; in pursuance of which contract E. executed an under-lease to B. containing a covenant on the part of B. in the same words as the covenant by E. to C. in the original lease. In an action by E.

against B. for the value of the tenant's and trade fixtures, it was held, on error, upon the principle of this maxim, that the covenant above set forth did not restrain B. from disposing of either the tenant's or trade fixtures; but that the general words which followed the particular words ought to be limited to fixtures of the like kind, and not to be extended so as to include the trade or tenant's fixtures.

The rule of law in the construction of wills is, that the word "survivors" is to be confined to its literal signification of survivors at the period spoken of by the testator, in every case where it is possible so to be without violating the clear meaning of the rest of the will. But, where the gift over and subsequent part of the will referred to the "issue" of a deceased niece participating in an accruing share, the word "survivors" of nieces was construed "others." Again, where a foreigner bequeathed his residuary personal estate to the hospitals of Paris and "London," in other parts of his will showing that by the term "London" he did not mean the city of London properly so called; it was held that London, as used by the testator, must be held to comprise all the houses which stand in a continuous line of streets within the cities of London and Westminster and the borough of Southwark, together with the houses contiguous thereto. So, the word "vested," used in a gift over, must be construed as being intended to mean *vested in interest*, and not as meaning *vested in possession*, unless the rest of the will and the context require that it should receive the latter construction.

The maxim, "Ex antecedentibus et consequentibus fit optima interpretatio" may be appropriately considered with this.

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3 T. R. 87; King *v.* Melling, 1 Vent. 225; Evans *v.* Astley, 3 Burr. 1570; Bacon W. Bl. 4, p. 26; Hay *v.* Coventry, 3 T. R. 87; Clift *v.* Schwabe, 3 C. B. 437; Hardy *v.* Tingey, 5 Exch. 294; Bishop *v.* Elliott, 11 Exch. 113; Borrodaile *v.* Hunter, 5 M. & Gr. 639; Knight *v.* Selby, 3 Scott N. R. 409; Grey *v.* Friar, 4 H. L. Cas. 580, *et seq.; Re* Keap, 32 Beav. 122; Wallace *v.* Attorney-General, 10 L. T. (N.S.) 51; *Re* Arnold, 9 L. T. (N.S.) 530.

MAXIM LX.

Nova constitutio, futuris formam imponere debet, non præteritis: (2 Inst. 292.)—A new law ought to impose form on what is to follow, not on the past.

LAW is called a rule prescribed; which word prescribed has, in the sense in which it is here used, two significations: one, that the law is intended to provide for something thereby directed to be done, or not to be done; and the other, that such law should be written or printed, or otherwise publicly notified previously to its intended operation, in order that those persons who are thereby called upon or bound to obey may be properly informed of their duties and responsibilities, and so that they may, as it is their duty to be, thoroughly acquainted therewith. Were the laws otherwise promulgated, it would be unjust to say, "Ignorantia juris non excusat." Laws, therefore, which are not so made are made in contravention of this maxim, and are called *ex post facto*, or, retrospective laws.

The meaning of the maxim is, that laws ought not to be retrospective in their operation, nor to apply to past transactions; but should be made to take effect from the time of their being enacted, and apply to future transactions only; and this is the construction which is always put upon the statutes of the present day, in the absence of any manifest intention to the contrary expressed upon the face of the statute.

A simple application of this rule of law is, that an action or other legal proceeding commenced before the passing of an Act, in respect of a right of action accrued before the commencement of the Act, proceeds as before, notwithstanding that by the Act subsequently passed the right of action in similar cases be taken away, or that the proceedings in respect thereof be changed. Some cases would seem to show an exception to this rule; but there is in strictness no exception, the statutes under which those

apparently excepted cases were decided, strictly considered, bearing the retrospective construction put upon them in the particular cases.

Where the question to be considered was as to whether or not s. 14 of the 19 & 20 Vict. c. 97; which enacts that the payment of principal or interest by one of several joint-contractors, &c., shall not prevent the operation of the Statute of Limitations; was retrospective, the above maxim was considered and adopted by the court as one of obvious convenience and justice, and always to be adhered to in the construction of statutes; and the statute referred to in the matter then under consideration was held not to be retrospective, there not being either any express clause or any manifest intention upon the face of it that it should so be. For, though the statute had not contained any express retrospective clause, yet, had it contained such manifest retrospective intention, that intention would have prevailed under the ordinary rule for the construction of statutes.

It has been stated in another case that the exception to the general rule that a statute is not to have a retrospective operation, especially so as to affect a vested right, must depend upon the words of the statute or the special nature of each case. And, again, the rule that statutes ought not to be construed retrospectively, unless an intention in the Legislature that they should be so construed distinctly appears, has been held not to apply to statutes which only affect the procedure or practice of the courts.

The Roman law was, however, more strict than ours in this respect, for it did not in any case admit of a law being retrospective in its operation unless so expressly stated.

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2 Inst. 292; 1 Bla. Com.; Chappell *v.* Purday, 12 M. & W. 303; Moon *v.* Durden, 2 Exch. 22; Lallas *v.* Holmes, 4 T. R. 660; Gilmore *v.* Shuter, Jones Rep. 108; Towlor *v.* Chatterton, 6 Bing. 258; Jackson *v.* Woolley, 31 L. T. 342; Vansittart *v.* Taylor, 4 E. & B. 910; Whittaker *v.* Wisby, 12 C. B. 52; Pinkorn *v.* Souster, 8 Exch. 138; Edmonds *v.* Lawley, 6 M. & W. 285; The Ironsides, 31 L. T. 129; Wright *v.* Hale, 30 L. J. 40, Ex.

MAXIM LXI.

Nullum tempus, aut locus, occurrit regi: (2 Inst. 273.)—No time runs against, or place affects, the King.

BY a Council at Lateran, the Pope endeavoured to take from princes and lay patrons, the right of presentation to a benefice by lapse; saying, that the presentation was spiritual, whereas the common law of England says it is temporal, and it has been so declared by many Acts of Parliament; the law being, that it is the right of the diocesan to present after six months' lapse by the patron, if the patron do not in the meantime, though after the six months, present, in which case the diocesan ought to receive the clerk presented; and after default of the diocesan, then of the metropolitan; and in default of him, the Crown: but when the King's turn comes to present, *jure coronæ*, by lapse, the law is, "Nullum tempus occurrit regi ex consuetudine hactenus obtent' in Regno Angliæ"—No time runs against the King according to the custom of England; for the King being *supremus Dominus*, does not lose his right at all by lapse. And, upon the same principle, there can be no lapse when the original presentation is in the Crown. But the right acquired by the Crown by lapse is only to the next presentation; and if the Crown neglect to present, and the patron present, and his clerk die incumbent, the Crown loses the right to present which it had gained by lapse.

This maxim implies that there can be no laches on the part of the King, and that therefore no delay will bar his right; the law understanding, that the King is always busied about public affairs and for the public good, and has not time to assert his right within the time limited for that purpose to his subjects.

Several statutes have, however, from time to time made inroads, for the public welfare, into this royal prerogative. By

statute, the Crown is not to sue for lands, tenements, rents, &c., other than liberties and franchises, where the parties have been in possession sixty years before the commencement of the suit; nor to sue after sixty years for any lands, tenements, rents, &c., by reason of any such lands, &c., having been in charge to the Crown; nor, after adverse possession of lands for twenty years, save by information of intrusion.

To criminal prosecutions at common law, at the suit of the Crown, there is no limitation; but, by statute law, proceedings for many minor offences are required to be taken within a limited period.

The maxim under consideration does not apply to lands, &c., purchased by the Sovereign out of the privy purse.

As to the latter part of the maxim, that no place affects the King: it is said, in a recent case, to be a matter of universal law, that on the death of the last owner without heirs, his real property escheats to the Crown as supreme lord; and that there is nothing in the Hindoo law to prevent the application of this rule to the property of a deceased Brahmin. It has, however, also been held that, though it is a prerogative of the Crown to present to a benefice in England which becomes vacant by the promotion of the incumbent to a bishopric in England; yet, the Crown has no prerogative right to present to a benefice in England becoming vacant by the promotion of the incumbent to a colonial bishopric within the Queen's dominions which has been erected and constituted solely by the exercise of the prerogative of the Crown.

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2 Inst. 272; Cro. Car. 355; Finch, l. 82; 6 Co. 50; Co. Litt. 90; 3 Camp. 227; Hob. 347; Griffith *v.* Baldwin, 11 East, 488; Attorney-General *v.* Parsons, 2 M. & W. 23; *Doe dem.* Watt *v.* Morris, 2 Bing. N. C. 187; 21 Jac. 1, c. 2; 7 Will. 3, c. 3; 9 Geo. 3, c. 16; 32 Geo. 3, c. 58; 24 & 25 Vict. c. 62; Lambert *v.* Taylor, 4 B. & C. 151; Kerr Bla. 241; Masulipatam *v.* Narainapah, 3 L. T. (N.S.) 221; Reg. *v.* Eton College, 30 L. T. 186.

MAXIM LXII.

Nullus commodum capere potest de injuriâ suâ propriâ: (Co. Litt. 148.)—No one can take advantage of his own wrong.

THE maxim under consideration applies generally, and may be applied particularly to the case of contracts. Thus, where a man binds another to an impossible condition, or to the performance of some particular act, and at the same time does something whereby the performance of such act is prevented; as, where A. contracts with B. to build a house within a certain time, under a penalty, B. finding materials, and B., by delay in providing the materials, prevents the due completion of the house; he shall not in such case be allowed to succeed in an action for the penalty.

If the obligee of a bond have prevented the obligor from fulfilling the condition of the bond, he shall not take advantage of the nonperformance of the condition; for that would be enabling him to benefit by his own wrong. So, if the condition of a bond be to build or repair a house, and the obligee, or some one by his direction or at his instigation, prevent the obligor from coming upon the land to build or repair it; or if the obligee positively refuse to have the house built or repaired, and interrupt the building or repairing of it; performance of the condition will in such cases be excused, and the obligation thereby discharged.

So, on a building contract, which provides that the builder shall not be paid but upon the certificate of the architect employed by the owner; the owner in this case shall not have it in his power to delay payment by causing the certificate of the architect to be withheld, but the builder shall be entitled to recover upon other evidence of the work done in respect of which payment is sought.

And, in general, to all those cases of fraudulent representations

between debtor and creditor, where one creditor seeks to obtain an advantage to himself at the expense of the others, by fraudulent conveyance or transfer of the debtor's goods, &c., the maxim applies. Nor will a court of equity decree specific performance of a contract in favour of a man who has been guilty of unreasonable delay in fulfilling his part of the agreement, and who at length, when circumstances have changed in his favour, comes forward to enforce a stale demand. Nor where the party seeking relief has been guilty of fraud, misrepresentation, or deceit.

Again, where, upon a sale of real estate in fee by assignees of a bankrupt, the bankrupt and his wife were parties to the conveyance, which recited that they were so for the purpose thereinafter mentioned; the operative part stating that the deed was to be acknowledged by the wife under the Fines and Recoveries Act, and the deed was executed and acknowledged by the wife, but she was not a conveying party; the wife surviving the husband and claiming dower, it was held that the claim was barred.

Champerty is within the meaning of this maxim. As, where one agrees to furnish money to carry on a lawsuit with a view to profit, having no personal interest in the matter in dispute; he will not be entitled to recover the amount of his advances upon any security he may have taken for payment. For this reason it was that choses in action were not assignable at law.

To the same effect are the maxims following:—"Nul prendra avantage de son tort demesne;" "Nemo ex dolo suo proprio relevetur, aut auxilium capiat;" "Nemo ex suo delicto meliorem suam conditionem facere potest."

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2 Inst. 564, 713; Jenk. Cent. 4; D. 50, 17, 134; Plowd. 88; Co. Litt. 148, 265; 1 Roll. Abr. 453, Condition N.; Brown *v.* Mayor of London, 3 L. J. 225, C. P.; Harrington *v.* Long, 2 Myl. & K. 590; Heyward *v.* Bennett, 3 C. B. 423; Lloyd *v.* Collett, 4 Bro. C. C. 469; Jones *v.* Barclay, 2 Doug. 694; Cadman *v.* Horner, 18 Ves. 10; Malins *v.* Freeman, 2 Kee. 25; Holme *v.* Guppy, 3 M. & W. 389; Dent *v.* Clayton, 10 L. T. (N.S.) 865.

MAXIM LXIII.

Omne majus continet in se minus: (5 Co. 115.)—The greater contains the less.

IT is said that Henry III. sought to avoid Magna Charta, granted by his father King John, and afterwards confirmed by him, Henry III., in the ninth year of his reign, because, as he alleged, John granted it under duress, and that he himself was within age when he confirmed it, and, for which reason it was again confirmed in the twentieth year of his reign and twenty-ninth of his age; but that, nevertheless, in law, the confirmation in the ninth year of Henry III. was valid, notwithstanding his non-age. For the King, as King, cannot be said to be a minor: for, when the royal body politic of the King meets with the natural capacity in one person, the whole body shall have one quality of royal body politic, which is the greater and more worthy; and wherein is no minority; for, "Omne majus trahit ad se quod est minus;" and, "Omne majus dignum continet in se minus dignum."

Again, plaintiff and H. agreed in writing to run a match between two horses on a specified day, with a specified person as judge, and a specified person as starter. Plaintiff and H. had each deposited a stake in the hands of the defendant, the whole to be paid to the winner; and the agreement made the money to be given up on the decision of the judge. On the day fixed, plaintiff and H. were present, but the starter did not appear, and therefore H. refused to run. The judge overruled the objection, and H. still refusing and plaintiff's horse having been trotted over the course, the judge declared him the winner. Plaintiff demanded the stakes from defendant, who refused to hand them over. In an action to recover from defendant the whole of the stakes, it was held that as the race was not run upon the terms agreed upon, plaintiff

and H. were each entitled to recover back his share from defendant, as money had and received; and that as plaintiff had made a demand before action of the larger sum, that was a demand of the less.

If a man tender more money than he owes, it is a good tender under this rule, if the money be in specie, so that the creditor can take what is due to him. But, if a bank-note for more than is due be tendered, requiring change, it is otherwise. But in such case, if no objection be made on the ground of change, the tender will be good. If enough of money has been tendered, more being required, the tender is good even though made in banker's cheques or provincial bank notes.

The owner of the fee-simple in land, can grant out any less estate; a lessor for years a sub-lease, and so on. So a term of years becomes merged in the freehold by the lessee becoming entitled to the fee. Personalty is considered less worthy than realty and to arise out of it, and merge into it, but not realty out of or into personalty. A simple contract debt is less worthy than a specialty debt, and a specialty debt is less worthy than a judgment, into which it will merge upon judgment recovered in respect of it.

The accessory follows its principal, but the accessory cannot lead, nor can it exist without the principal; it is contained within it. A release of the principal is a release of the accessory. The incident passes by a grant of the principal, *et sic in similibus.*

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5 Co. 115; Noy. Max. 25; Jenk. Cent. 208; Co. Litt. 355; Johnstone *v.* Sutton, 1 T. R. 519; Douglas *v.* Patrick, 3 T. R. 683; Betterbee *v.* Davies, 3 Camp. 70; Blow *v.* Russell, 1 C. & P. 365; Rivers *v.* Griffith, 5 B. & Ald. 630; Harding *v.* Pollock, 6 Bing. 63; Polglass *v.* Oliver, 2 Cr. & J. 15; Jones *v.* Arthur, 8 Dowl. P. C. 442; Dean *v.* James, 4 B. & Ad. 546; Beavans *v.* Rees, 5 M. & W. 308; Cadman *v.* Lubbock, 5 D. & R. 289; Carr *v.* Martinson, 1 E. & E. 456.

MAXIM LXIV.

Omnia præsumuntur contra spoliatorem: (Branch. Max. 80.)—All things are presumed against a wrong-doer.

THE leading case upon this subject is Armory *v.* Delamirie, which arose out of a chimney sweep boy having found a jewel set in a socket, which he took to a goldsmith's to know its value. He gave it to the goldsmith's apprentice for that purpose, but the apprentice, under pretence of weighing it, took out the stone and offered the boy three half-pence for it, which the boy refused, insisting upon having the jewel back. The apprentice, however, gave him back the socket only, without the stone, and the boy brought an action against the master for conversion of the jewel. It was held that the boy was entitled to recover for the conversion, and the jewel not being produced, the jury were directed that, unless the defendant produced the jewel, they should presume the strongest against him, and make the value of the best jewel the measure of their damages.

When property has been wrongfully converted, if the value is doubtful, every presumption is raised against the wrong-doer. So, where a diamond necklace, worth 500*l.*, had been stolen, and a portion of the diamonds came into the defendant's possession shortly after the robbery, and the latter gave unsatisfactory accounts as to the mode in which he became possessed of them, and the owner sued and recovered a verdict for the full amount of the necklace; it was held that the jury were justified in finding that the whole necklace came into the hands of the defendant. In trover, the value of the goods converted is not limited to their value at the time of conversion, but the jury may give the value at any subsequent time according to the opportunity the plaintiff might have had of selling them to advantage had they not been so detained. So may a plaintiff

recover from a defendant not only the value of the goods wrongfully converted, but all such damages as he may have sustained from their wrongful seizure to the commencement of the suit.

Where a cable was sold with a warranty, and the plaintiff, relying upon the warranty, attached to it a new anchor, and the cable, not answering the warranty, broke, and it and the anchor were lost, the plaintiff was held entitled to recover the value of both cable and anchor. So where the defendant covenanted that if the plaintiff would surrender his lease in order that a new one might be granted to the defendant, he would sink a pit on the land in search of coal, and, in case a marketable vein of coal should be found, would pay the plaintiff 2,500*l.*, but the pit was never sunk; the plaintiff having sued defendant for breach of the covenant, and it being shown that marketable coal would probably have been found had the pit been sunk, it was held that the whole 2,500*l.* was recoverable.

This presumption is frequently applied to the law of evidence; as, where an apparently necessary witness is kept back, it will be presumed, that if produced, his evidence would be unfavourable to the party having the power to produce him. But this rule it is said should not be adopted in cases of privileged communications; as, where at the trial a party's solicitor was called as a witness, and it was objected that the communication proposed to be made was professional and privileged, and so the evidence was not received, the court or jury has no right to treat this as though the party had kept back a material witness and draw an unfavourable inference against the party; for the exclusion of such evidence was for the general benefit of the community.

Branch Max. 80; Armory v. Delamirie, 1 Smith L. C. 301, 5 ed.; Reid *v.* Fairbanks, 13 C. B. 729; Lockey *v.* Pye, 8 M. & W. 135; Marston *v.* Downes, 1 A. & E. 31; Greening *v.* Wilkinson, 1 C. & P. 626; Rundle *v.* Little, 6 Q. B. 178; Mortimer *v.* Cradock, 12 L. J. 166, C. P.; Lumney *v.* Wagner, 1 De G. M. & G. 604; Pell *v.* Shearman, 10 Exch. 767; Borradaile *v.* Brunton, 8 Taunt. 535; Wentworth *v.* Lloyd, 10 L. T. (N.S.) 767.

MAXIM LXV.

Omnia præsumuntur ritè et solenniter esse acta: (Co. Litt. 6.)
All things are presumed to be correctly and solemnly done.

THIS relates chiefly to acts of an official nature, as judgments, decrees, orders of court, and acts of any public officer, done by properly, or apparently properly, constituted authorities; which acts will be presumed to be rightly done, and the authorities rightly constituted, until the contrary be proved. The maxim also applies to all cases of waiver by acquiescence, lapse of time, &c., where consent and agreement will be presumed; and it is forcibly applied in settling ancient titles.

The following may be adduced as examples:—Where a lease contained a covenant on the part of the lessee that he would not without the consent of the lessor use the premises for any other purpose than a dwelling-house, which nevertheless he converted into a public-house and grocer's shop, the lessor, with full knowledge, receiving rent for twenty years afterwards; it was held that such user was evidence from which the jury might presume a licence. Also, where a bill of sale appeared to be executed on the 31st December, 1860, and the date of the jurat of the affidavit filed with it was the 10th January, 1860; the Court assumed the date in the jurat to be a mistake often made at the commencement of the year, and allowed the jurat to be amended. And where an affidavit was intituled in the Queen's Bench, and the person before whom it was sworn described himself as a commissioner for taking affidavits in the Exchequer of Pleas at Westminster; the Court presumed the commissioner to have authority to swear the affidavit until the contrary was shown.

A bill of exchange is, in the absence of proof to the contrary, presumed to be accepted within a reasonable time after its date, before its maturity, and to be issued at the time of its date.

The date of an instrument is *primâ facie* the date of its execution.

Where an agreement requiring a stamp is lost, and was without stamp when last seen, it will be taken that it was never stamped, and secondary evidence of its contents will not be received; but where a deed was left at the stamp distributor's in the country to be sent to London to be stamped, and the proper duty paid, but was never seen afterwards, it will be taken to have been properly stamped.

A decision of a properly constituted court upon a subject within its jurisdiction is *primâ facie* a right decision.

Where an order given in a matter decided by one of the superior courts not having jurisdiction therein without the consent of the parties, omitted to state that it was made by consent; it is immaterial, as it would be intended that the court had jurisdiction, nothing being intended out of the jurisdiction of a superior court but what appears expressly so to be.

All things done by the Houses of Parliament are presumed to be rightly done; and so as to the courts of law and equity, but the presumption is greater or less according to the superiority or inferiority of the court. But, as to the Houses of Parliament, whenever the contrary does not plainly appear, it is to be presumed that they act within their jurisdiction and agreeably to the usages of Parliament and the rules of law and justice.

It is a maxim of the law of England to give effect to everything which appears to have been established for a considerable course of time, and to presume that what has been done was done of right and not of wrong.

Co. Litt. 6, 232; 3 Hawk. P. C. 219; 3 Wils. 205; R. *v.* Paty, 2 Ld. Raym. 1108; Roberts *v.* Bethell, 12 C. B. 778; Gibson *v.* Doeg, 2 H. & N. 623; Powell *v.* Sonnell, 3 Bing. 381; Mayor of Beverley *v.* Attorney-General, 6 H. L. Cas. 333; Anderson *v.* Weston, 6 N. C. 296; Gossett *v.* Howard, 10 Q B. 457; Cheney *v.* Courtois, 13 C. B. (N.S.) 634; Arbon *v.* Fussell, 9 Jur. (N.S.) 753; Gibson *v.* Small, 4 H. L. Cas. 380; Harrison *v.* Wright, 13 M. & W. 816; Hollingsworth *v.* White, 6 L. T. (N.S.) 604.

MAXIM LXVI.

Omnis innovatio plus novitate perturbat quam utilitate prodest: (2 Bulst. 338.)—Every innovation disturbs more by its novelty than benefits by its utility.

THIS is the rule adopted by the Legislature in considering proposed new laws, and by the courts of law and equity in reference to adjudged cases; the rule being, that where the existing law or established precedents reasonably meet the evil to be remedied, or the case to be decided, neither the one nor the other ought to be disturbed. The Legislature do not, however, hold to the rule so strictly as the courts; the former being obliged to yield to pressure from without, and therefore many novelties contravening this maxim become law; the latter, not being generally subject to such influence, "delight with measured step, for safety and repose, strictly to tread the beaten path of precedent."

Where the nominee of a copyholder brought an action on the case against the lord of the manor for refusing to admit him upon a surrender to the use of the nominee for life; it was held that an action on the case would not lie, the nominee having no interest; the lord of the manor not being a ministerial officer, and there being no special custom of the manor to meet such a case; the lord of the manor being as a trustee, who cannot be sued at common law for refusing to act. And this maxim was used by the Court to show the inconvenience of permitting such innovations in the established practice of the courts.

In an action for slander, which is a transitory action, the plaintiff in his declaration laid the words spoken as in London; the defendant pleaded a concord for speaking words in all counties of England save London, and traversed the speaking the words in London. The plaintiff replied denying the concord, whereupon the defendant demurred, and judgment was given for the

plaintiff. And in that case the Court said, that if the concord should not be traversed, it would follow that, by a new and subtle invention of pleading, the ancient principle of law which allowed transitory actions to be tried in any county would be subverted; and, therefore, the Court allowed a traverse upon a traverse.

Lord Coke says in reference to this maxim: that the wisdom of the judges and sages of the law has always suppressed new and subtle inventions in derogation of the common law, nor will they change the law which always has been used; and that it is better to be turned to a fault than that the law should be changed or any innovation made. He calls it an excellent part of legal learning, that when any innovation or new invention starts up, to try it by the rules of common law; for that they are the true touchstones to sever the gold from the dross of novelties and new inventions.

The same principle has always governed our judges and sages in the law since Lord Coke's time to the present. They say, the duty of a judge is to expound, not to make law; to decide upon it as he finds it, not as he wishes it to be. That our common law system consists in applying to new combinations of circumstances those rules of law which are derived from legal principles and judicial precedents; and for the sake of attaining uniformity, consistency, and certainty, those rules must be applied, where they are not plainly unreasonably inconvenient, to all cases which arise. And, further, that, if there is a particular hardship from particular circumstances of a case, nothing can be more dangerous and mischievous than, upon those particular circumstances, to deviate from a general rule of law.

Foorde *v.* Hoskins, 2 Bulst. 338; Co. Litt. 282, 379; 4 Inst. 246; Pordage *v.* Cole, 1 Saund. 320; Miller *v.* Solomons, 7 Exch. 543; Bridges *v.* Chandos, 2 Ves. jun. 426; Doe *v.* Allen, 8 T. R. 504; Lozon *v.* Prise, 4 My. & Cr. 617; Mirehouse *v.* Rennell, 1 Cl. & Fin. 546; Grey *v.* Friar, 4 H. L. Cas. 565; Mayor of Beverley *v.* Attorney-General, 6 H. L. Cas. 332; Smith *v.* Doe, 7 Price, 509; Dawson *v.* Dyer, 5 B. & Ad. 584; Kembler *v.* Farren, 6 Bing. 141.

MAXIM LXVII.

Omnis ratihabitio retrotrahitur et mandato priori æquiparatur: (Co. Litt. 207.)—Every ratification of an act already done has a retrospective effect, and is equal to a previous request to do it.

AN instance of the application of this rule is where an agent acts in excess of his authority, his acts being subsequently acquiesced in by his principal. Also, where a man, not the agent of another, wrongfully does an act afterwards acquiesced in by the person to whom the wrong is done. In such case, the wrong-doer becomes the agent, in that matter, of the party to whom the wrong is done; as, where a man's property is wrongfully sold, the owner may either bring trover against the wrong-doer, or treat him as his agent, and adopt the sale.

This rule applies generally to all cases of contract, and to such torts as are capable of being adopted; as, where the relation of principal and agent can be considered as applicable, and where the act done is for the use or benefit, or in the name of the ratifying party. The ratification, moreover, is reciprocal, and may be adopted as well for as against the party ratifying, and this even in torts; as, where a trespass is committed without previous authority, subsequent ratification will enable the party on whose behalf the act was done to take advantage of it.

In all the ordinary relations of master and servant, principal and agent, there is an implied authority on the part of the servant and agent to do such acts as are necessarily within the scope of their employment; and the principal is in such cases bound thereby. Where, however, anything is done by them not within the scope of their employment, they require a previous authority or a subsequent ratification by their principal to make their acts binding upon him; but when such previous authority is given, the act done draws with it all such consequences upon

the principal as ordinarily arise upon an act done. Where the relationship of master and servant exists, and when such ratification is given, the principal is bound by it to the same extent as though done by his previous authority, and that whether it be for his advantage or detriment. If a stranger seal a deed by commandment precedent, or agreement subsequent, of him who is to seal it, before the delivery of it, it is as well as if the party to the deed sealed it himself. And, therefore, if another man seal a deed of mine, and I take it up afterwards and deliver it as my deed, this is a good agreement to and allowance of the sealing, and so a good deed. So, also, a deed may be delivered by the party himself who makes it, or by any other by his authority precedent or assent or agreement subsequent; and when it is delivered by another who has such good authority and pursues it, it is as good a deed as if it had been delivered by the party himself, but otherwise if he do not pursue his authority.

A servant, not having authority, having signed a bill of exchange in the name of his master, the master's subsequent promise to pay was held equal to a previous authority.

A subsequent recognition by the landlord of a bailiff's authority to distrain in his name is sufficient to answer a plea that the defendant was not the bailiff of the landlord. But where one distrains in his own name, as for rent due to himself, and without any authority from the landlord to distrain on his behalf, a subsequent ratification will not suffice. Nor is the receipt by the landlord of the proceeds of an illegal distress in his name, without knowledge of the facts, any ratification of the illegal acts of the bailiff.

Co. Litt. 207, 258; Shepp. Touch. 57; Show, 95; Fitzmaurice *v.* Bailey, 8 Ell. & Ell. 868; Pearce *v.* Rogers, 3 Esp. 214; Haseler *v.* Lemoyne, 28 L. J. 103, C. P.; Fenn *v.* Harrison, 4 T. R. 177; Trevillian *v.* Pine, 11 Mod. 112; Lewis *v.* Read, 13 M. & W. 834; Pyle *v.* Partridge, 15 M. & W. 20; Wilson *v.* Tummon, 6 Sc. N. R. 904; Whitehead *v.* Taylor, 10 A. & E. 213; Todd *v.* Robinson, R. & M. 217.

MAXIM LXVIII.

Optimus interpres rerum usus: (2 Inst. 282.)—The best interpreter of things is usage.

LORD COKE says that ancient charters, whether before the time of memory or not, ought to be construed as the law was taken when the charter was made, and according to ancient allowance: and, that when any claimed before the justices in eyre any franchises by ancient charter, though it had express words for the franchises claimed; or, if the words were general, and a continual possession pleaded of the franchises claimed; or, if the claim was by old and obscure words, and the party in pleading expounded them to the court, averring continual possession according to that exposition; the entry ever was, "Inquiratur super possessionem et usum," &c., agreeable to that old rule, "Optimus interpres rerum usus."

The custom of the country with respect to the right of the tenant or lessee to take away growing crops at the expiration of the term, and as to the mode of cultivation of the lands in lease, must be considered as impliedly annexed to the terms of a lease, unless expressly excluded; and this is in accordance with the maxim under consideration. By custom, in some districts the outgoing tenant is bound to leave upon the premises a certain quantity of clover and grass seeds, or fallow, or turnips, or hay and straw, or manure, or to consume all the hay and straw upon the premises, and many other such like conditions; all which will, in the construction of any contract of tenancy, be considered as forming part of it, unless expressly excluded; and parol evidence of the custom and usage is always admissible to ascertain the rights and liabilities of the parties to the contract. But parol evidence of custom and usage will not be admitted to nullify the express provisions of such contract. The same rule applies to mercantile contracts and usages.

This maxim may not inaptly be called a creature of circumstance, and the reason of it, a state of things acquiesced in rather than agreed to, the law of times of ignorance, and indifference; and though old customs still remain, and habit and practice, for convenience of people and encouragement of commercial enterprise, assume with us the name of custom; yet, written law is, in modern times, gradually assuming the ascendancy over, if not the total abrogation of, custom. Custom, however, whether particular or general, is law, and usage is evidence of custom. Common or general custom is the common law of the country, and particular custom the particular law of the place, person, or thing to which it applies.

There are, however, some limits to a custom. For example, it must be obligatory, reasonable, and certain. It must not be against the good of the public, nor the many, and in favour of a few, or one person. It must have existed, without interruption, from time immemorial. And, lastly, it cannot prevail against a public statute, or express contract *inter partes*.

The following maxims also are applicable to this:—"Consuetudo ex certâ causâ rationabili usitata privat communem legem" A custom proceeding from certain reasonable use supersedes the common law; but, "Consuetudo, licit sit magnæ auctoritatis, nunquam tamen præjudicat manifestæ veritati"—A custom, though allowed upon great authority, should never be permitted to prejudice manifest truth.

The maxim, "Modus et conventio vincunt legem," may also be considered in connection with this.

Co. Litt. 169; 2 Inst. 18, 282; 4 Inst. 75; 4 Co. 18; 8 Co. 117; Grant *v.* Maddox, 15 M. & W. 737; Gibson *v.* Minet, 1 H. Bl. 614; Wigglesworth *v.* Dallison, 1 Doug. 201; Mousley *v.* Ludlam, 21 L. J. 64, Q. B.; Smith *v.* Wilson, 3 B. & Ad. 728; Holding *v.* Piggott, 5 M. & P. 427; Clarke *v.* Roystone, 13 M. & W. 752; Hutton *v.* Warren, 1 M. & W. 475; Bartlett *v.* Pentland, 10 B. & C. 770; Morrison *v.* Chadwick, 7 C. B. 266; Lucas *v.* Bristow, 27 L. J. 364, Q. B.

MAXIM LXIX.

Persona conjuncta æquiparatur interesse proprio: (Bac. Max. 18.)—A personal connection equals, in law, a man's own proper interest.

THIS rule of personal connection or nearness of blood, applies in the following and similar cases:—Where the rights and liabilities of man and woman are changed by marriage; where a parent is permitted to defend his child against injury; where the parent, though an infant, is liable upon his contract for the nursing of his child; where an infant widow is liable upon her contract for the funeral expenses of her deceased husband; where relationship is a good consideration in a deed; where a wife cannot be compelled to give evidence for or against her husband, and *vice versâ*, in criminal cases and in questions of adultery, or, to disclose communications made to each other during marriage.

The following may serve for examples of the application of the rule in practice:—A husband is entitled to his wife's personal estate and chattels real, absolutely; and to her choses in action, conditionally upon his reducing them into possession during the coverture; and the rents and profits of her real estate during his life. He has the right of administration of the estate of a testator in case his wife is made executrix, as well as of the estate of an intestate where she is entitled as administratrix. The wife is unable to sue upon her choses of action without joining her husband. By the marriage, the husband and wife are one in law; and the wife cannot bind herself, or her husband, by deed, or by simple contract, except as the agent of the husband. On a corresponding principle of accretion, the husband takes upon himself the burden of his wife's debts and other liabilities at the time of marriage; the wife has the general management of her husband's domestic affairs, and is presumed to be his general agent in such matters, and to be clothed with sufficient authority

to bind the husband in contracts for all things necessary for the maintenance of herself and family, according to the husband's apparent position in society.

An *infant* widow has been held bound by her contract for the furnishing the funeral of her deceased husband, who had left no property; and this on the ground that the goods furnished were necessaries, that is, that the funeral was necessary, and for her benefit. And it was in that case stated, that the law permits an infant to make a valid contract of marriage, and that all necessaries furnished to those with whom he becomes one person by or through the contract of marriage are, in point of law, necessaries to the infant himself. Lord Bacon's illustration of this maxim was there applied: that if a man under age contract for nursing his lawful child, the contract is good, and shall not be avoided by infancy any more than if he had contracted for his own necessaries. Also, that decent burial is reasonably necessary for a man, and his property, if any, is reasonably liable to be appropriated to that purpose: that being so, the decent burial of his wife and children, who were *personæ conjuncta* with him, was a personal advantage and necessary, and he might make a binding contract; and so in like manner might the wife for the burial of the husband; and this upon the rights and liabilities arising out of the infant's previous contract of marriage.

The *moral* obligation, however, under which a father is to provide for his child imposes on him no *legal* liability to pay the debts incurred by the child; and he is not so liable, unless he has given the child authority to incur them, or has agreed to pay them, any more than a brother, uncle, or stranger.

Bac. Max. 18; Co. Litt. 6; Beadle *v.* Sherman, Cro. Eliz. 608; Volley *v.* Handcock, 7 Exch. 820; Chapple *v.* Cooper, 13 M. & W. 259; Mortimore *v.* Wright, 6 M. & W. 482; Pemberton *v.* Chapman, 7 Ell. & Bl. 210; Joens *v.* Butler, 7 Ell. & Bl. 159; De Wahl *v.* Braune, 25 L. J. 343, Ex.; Boggett *v.* Friar, 11 East, 301; Read *v.* Legard, 6 Exch. 636; 16 & 17 Vict. c. 83.

MAXIM LXX.

Quando jus domini regis et subditi concurrunt jus regis præferri debet: (9 Co. 129.)—When the rights of the King and of the subject concur, those of the King are to be preferred.

THIS prerogative is said to depend upon the principle that no laches can be imputed to the King, who is supposed by our law to be so engrossed by public business as not to be able to take care of every private matter relating to the revenue; and that the King is in reality to be understood as the nation at large, to whose interest that of any private individual ought to give way; and which prerogative, until restrained by recent statutes, extended to prevent the other creditors of the King's debtor or person indebted to the Crown, from suing him, and the King's debtor from making any will of his personal effects without the sanction of the Crown.

It has been held that after seizure and before sale under a writ of *fi. fa.*, whilst the defendant's goods were yet in the possession of the sheriff, the officers of customs having seized them under a warrant to levy a penalty incurred by the defendant for an offence against the revenue laws; the sheriff was justified in returning *nulla bona* to the writ of *fi. fa.* Also, that goods of a debtor already seized under a writ of *fi. fa.*, but not sold, may be taken under a writ of extent, in chief or in aid, tested after such seizure. The rule as to writs of execution being: as to ordinary persons, that the writ first delivered to the sheriff shall be first executed, without regard to the teste; but as between the King and a subject, the King's writ, though delivered last, shall be executed first, without regard to the teste; the property in the goods not being changed by the seizure, and the writs being concurring. Where, however, the property has been changed, and the right of the subject is complete before that of the King commences,

the rule does not apply; for there is in that case no point at which the two rights conflict; nor can there be a question as to which of the two claims ought to prevail when that of the subject has prevailed already. The property in goods seized by the sheriff under a *fi. fa.* are not changed, however, until sale, and the execution-debtor, upon tendering the amount for which the levy is made, with the sheriff's charges thereon, is entitled to a return of the goods. The right of the Crown is, however, upon the same principle of concurrence or privity, subject to any special property in the goods created by act of the party; as, where a factor holds goods upon which he has a lien for advances made before the teste of the writ, the Crown can only take the goods subject to that lien; and so of goods pledged. The difference in the cases being, that goods in possession of the sheriff—the rule applies to an assignee in bankruptcy also—are *in custodiâ legis,* for the benefit of the parties entitled; but those in the hands of the factor, or pawnee, are in the hands of the parties themselves: those *in custodiâ legis* being in a situation in which the right of the Crown and that of the subject may come in conflict, but those in possession of the parties not being in such a situation.

It may also be observed that in all cases of joint grants, devises, and gifts to the King and a subject, incapable of separation and division, the King shall take the whole; it being inconsistent with the dignity of a King to be joint owner of property with a subject.

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2 Inst. 713; 9 Co. 129; Co. Litt. 30; 2 & 3 Bla. Com.; 1 Burr. 36; Gilb. H. E. 110; Dyer, 67; Rex *v.* Lee, 6 Price, 369; Rex *v.* Cotton, Parker, 112; Reg. *v.* Edwards, 9 Exch. 32; Grove *v.* Aldridge, 9 Bing. 428; Giles *v.* Grover, 9 Bing. 128; Lambert *v.* Taylor, 4 B. & C. 151; Foster *v.* Jackson, Hob. 60; Attorney-General *v.* Parsons, 2 M. & W. 23; Hopkins *v.* Clarke, 11 L. T. (N.S.) 205.

MAXIM LXXI.

Quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest: (5 Co. 47.)—When the law gives anything to any one, it gives also all those things without which the thing itself would be unavailable.

WHERE by charter a select body in a corporation had power to make bye-laws for the good rule and government of the borough, letting its lands, and other matters and causes whatsoever concerning the borough; and by the charter it was also directed that the mayor, bailiffs, and burgesses should from time to time elect other burgesses; it was held that the general body of mayor, bailiffs, and burgesses might make a bye-law that the burgesses should be elected by the select body. In which case it was stated to be a legal incident to every corporation to have the power of making bye-laws, regulations, and ordinances relative to the purposes for which such corporation was instituted; and that when the Crown creates a corporation, it grants to it, by implication, all powers that are necessary for carrying into effect the objects for which it was created; upon the maxim, "Qui concedit aliquid concedere videtur et id, sine quo res ipsa esse non potest."

A person who is entitled to expose goods for sale in a public market has a right to occupy the soil with baskets necessary and proper for containing the goods; and that as against one to whom the owner of the fee simple of the soil has made a demise.

A railway company having authority of Parliament to construct a railway, are impliedly authorised to do all things necessary for the construction of the railway; as, where they had authority to construct a bridge across another railway, they had a right to place temporary scaffolding on the land of such other railway, if necessary for the construction of the bridge; and their workmen

could pass and repass upon such other railway in doing all things necessary for such construction; upon the principle that, "Ubi aliquid conceditur, conceditur etiam et sine quo res ipsa non esse potest."

The sheriff is authorised to raise the *posse comitatus*, or power of the county, to assist him, if necessary, in executing process. So all other officers of the law are provided with the means necessary to carry the law into effect.

The same rule applies also to individuals; as, "Qui concedit aliquid concedere videtur, et id sine quo concessio est irrita, sine quo res ipsa esse non potuit." As, where a man grants a piece of land, or a house, he impliedly grants that without which the land or the house would be useless, as a right of road, &c.; or of mines, a right of entry to dig for, get, and carry away the minerals.

It, must, however, be borne in mind that when the law gives anything, the right so acquired must in nowise be exceeded, and that more especially as to private rights; as, in a grant to a corporation or public company; for, anything done in excess of the right granted will be *ultra vires* and void. So where an Act of Parliament constituting a company specifies the nature and objects for which the company is constituted, as a railway company; and the company, notwithstanding, engage in some other undertaking not warranted by the Act; a court of equity will grant an injunction restraining the company from acting beyond the limits of the powers given by the Act, even at the instance of a single shareholder, and against the concurrence in the new undertaking of all the others.

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4 Co. 77; 5 Co. 47, 116; 10 Co. 30; 11 Co. 52; 2 P. Wms. 207; 2 Inst. 326; Comb. 316; 12 East, 22; Austin *v.* Whittred, Willes, 623; Mayor of Norwich *v.* Swann, 2 W. Bl. 1115; Mayor of Northampton *v.* Ward, 2 Str. 1238; R. *v.* Westwood, 7 Bing. 1; Clarence Railway Company *v.* Great North of England Railway Company, 13 M. & W. 706; Townsend *v.* Woodruff, 5 Exch. 506; Hare *v.* London and North-Western Railway Company, 30 L. J. 817, Ch.

MAXIM LXXII.

Quando plus fit quam fieri debet videtur etiam illud fieri quod faciendum est: (8 Co. 85.)—When more is done than ought to be done, then that is considered to have been done which ought to have been done.

TO allow the contrary of this maxim would be to permit a man to take advantage of his own wrong, as in the case of a termor for twenty years granting a lease for thirty; but in such a case, under this maxim, the lease would be good for the twenty years and void as to the excess; and so it is in the exercise of an authority given under a power, and in similar cases.

Where there is a custom that a man shall not devise his lands for a greater estate than for life; yet, if he devise in fee, the devise will be good as a devise for life. Where a grantor is entitled to certain shares only, in land, the grant, in construing it, will be confined to the words of the grant; and therefore, it is said, that if a person having three sixth parts, grant two sixth parts, those shares only will pass; but, on the other hand, if the grant import to pass more shares than the grantor has, it will be good to pass those he has. And so, if a person having one third part, grant all those his two third parts, the grant will pass his one third. So, where lands were devised to trustees upon trust to the use of W. B. B. and his first and other sons in strict settlement, remainder to F. B. and his first and other sons in strict settlement, with power to grant any lease of all or any part of the lands so limited, so as there be reserved the ancient and accustomed yearly rent, &c.; it was held that a lease by W. B. B. of part of the lands devised, in several parcels; in one of which parcels were included, together with lands anciently demised, two closes never before demised, at one entire rent; was void for the whole of the lands included in that parcel, as well the lands never before let as those anciently let; but, it seems, good as to the

other parcels which contained only lands anciently demised, and on each of which there was a several reservation of the ancient rent.

Where one leased lands of part of which he was seised in fee and part for life, with a power of leasing; but which was not well executed according to the power; at one entire rent; the lease was held good, after the death of the lessor, for the lands held in fee, though not for the others. If a lessor grant more than he has a right to do; as, an exclusive right to sport over the lands leased, he not having any such exclusive right; the lease will not be void, but an apportionment of the rent will be made in respect of such right. Where a man grants a rent charge out of more lands than he has, his heir shall not take advantage of the wrong to set aside the grant; but if the rent be reserved, it being reserved out of the whole land, in that case, there being an eviction as to part of the land by title paramount, the lessee cannot be charged with the whole rent, but it must be apportioned. But where a lessee by parol, of land, found, upon entry, eight acres in possession of a prior lessee by deed, and who kept possession until half a year's rent became due; the lessee by parol continuing in possession of the remainder, the prior lease extending in term beyond the latter; it was held that the latter was wholly void as to the eight acres, and the rent not apportionable; the inability of the lessee to take possession not arising from eviction by title paramount.

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5 Co. 4, 115; 8 Co. 85; Co. Litt. 148; 2 Inst. 107; Stevenson *v.* Lambard, 2 East, 575; Noy. Max. 25; 3 Prest. Abs. 35; Doe *v.* Meyler, 2 M. & S. 276; How *v.* Whitfield, 1 Ventr. 338; Ld. Raym. 267; 2 Roll. Abr. 262, pl. 15; Tomlinson *v.* Day, 2 B. & B. 680; Doe *v.* Williams, 11 Q. B. 688; Neale *v.* M'Kenzie, 1 M. & W. 747; Bartlett *v.* Rendle, 3 M. & S. 99; *Doe dem.* Williams *v.* Matthews, 5 B. & Ad. 298.

MAXIM LXXIII.

**Quicquid plantatur solo, solo cedit: (Went. Off. Ex. 58.)—
Whatever is affixed to the soil belongs to the soil.**

THIS maxim applies to all those cases where one builds, plants, sows, &c., upon the land of another; in which cases, *primâ facie*, and without any evidence of consent or agreement to the contrary, the buildings erected, trees planted, seed sown, &c., become at once the property of the owner of the land.

The application of the maxim in practice is generally conversely, on a question of fixtures. Formerly, if a tenant or occupier of a house, or land, annexed anything to the freehold, neither he nor his representatives could afterwards take it away; but now, the temporary owner or occupier of real property or his representatives has a right to remove certain articles, though annexed by him to the freehold, and those articles are called fixtures. That is, those articles which were originally personal chattels, and which, though they have been annexed to the freehold by a temporary occupier for a temporary purpose, are nevertheless removable at the will of the person who annexed them. The term fixture does not, however, include everything fixed and rendered immovable, but the object of the annexation must be looked at, and, if a chattel be fixed to a building for the more complete enjoyment and user of it as a chattel, and not as absolutely necessary for the user of the building itself as such, it is not a fixture at all, but a chattel still.

When the principle of this maxim was first adopted, fixtures as now understood were not known, and the maxim was then applicable to all things affixed to the freehold indiscriminately; now, however, it is in strictness applicable only to those particular things which do not come under the denomination of fixtures, inasmuch as those things which may of right be severed from the freehold cannot be said of right to form part of the freehold.

Fixtures are considered as divided into three kinds, landlord's, tenant's, and trade fixtures, and, as such, may, strictly speaking, be considered exceptions to the above general maxim, and as having particular rights annexed to them, which render the rule inapplicable; and the maxim may not improperly be said to apply to those cases only which do not come within the term fixtures as above used, but to those cases only in which the maxim applies absolutely. For, under the maxim, whatever is affixed to the soil belongs to the soil, becomes part of it, and is subject to the same rights as the soil itself, which is not the case with fixtures as above defined, which are, notwithstanding their being so fixed, subject to certain rights inconsistent with their forming part of the freehold, and of their being the absolute property of the owner of the fee.

Where the owner of the freehold affixes anything in the nature of a fixture to the soil, for the permanent use and enjoyment of the soil, that forms part of it, as though it had been originally built upon and incorporated with it; but it cannot be so said of fixtures which were attached to the freehold in a restricted sense for a particular purpose, and by some one not having any interest in the freehold.

The maxim, however, may be said to apply in its strict sense to all those cases where buildings are erected upon land, or fixtures affixed to buildings, by a man upon his own land or by one man upon the land of another. In which cases, in the absence of any express or implied agreement to the contrary, the buildings and fixtures belong to the owner of the soil.

Went. Off. Ex. 53; Co. Litt. 53; 1 Atk. 477; 3 Atk. 13; Penton *v.* Robart, 2 East, 88; 2 Smith L. C. 144, 4 ed.; Wiltshear *v.* Cottrell, 1 E. & B. 674; Lee *v.* Risdon, 7 Taunt. 191; Hallen *v.* Runder, 1 C. M. & R. 266; Woodf. L. & T. 8 ed. 493; Walmsley *v.* Milne, 7 C. B. (N.S.) 115; Elliott *v.* Bishop, 10 Exch. 507; Minshull *v.* Lloyd, 2 M. & W. 450; Lancaster *v.* Eve, 32 L. T. 278; Mather *v.* Frazer, 2 K. & J. 536.

MAXIM LXXIV.

Quicquid solvitur, solvitur secundum modum solventis; quicquid recipitur, recipitur secundum modum recipientis: (2 Vern. 606.)—Whatsoever is paid, is paid according to the intention or manner of the party paying; whatsoever is received, is received according to the intention or manner of the party receiving.

UPON payment of money, the debtor may direct in what manner the money must be appropriated, and the creditor cannot alter this appropriation without the consent of the debtor. And this appropriation by the debtor may be implied; as, where a particular debt of a precise sum being demanded, he pays it, though others be due at the same time. But in the absence of any appropriation by the debtor, the creditor may make such appropriation as may suit him; as, if A. owe B. two sums of money, one barred by the Statute of Limitations and the other not; or one in dispute and the other not; or one on covenant and the other on simple contract; if no appropriation be made by the debtor at the time of payment, the creditor can apply the money in discharge of the debt barred by the statute, or in dispute, or of the simple contract debt; but not in discharge of an unlawful debt, so as to enable him to sue for the lawful.

If, however, neither party make an appropriation, the law appropriates the payment to the oldest debt; or, in case of one part of the claim being barred by the Statute of Limitations, to the debts generally, as the circumstances of the case may seem to require. The debtor, moreover, is required to direct the appropriation at the time of payment, but the creditor may do it at any time afterwards, before the appropriation be questioned.

The general rule to be observed is, that priority of debt draws after it priority of payment, the oldest debt being entitled to be first satisfied. The rule applies only to legal obligations; and in

its strictness is not adopted in courts of equity; for, where no particular appropriation has been made by either party at the time of payment, a court of equity will be influenced in the appropriation by the consideration of which is the most onerous debt, in order to its discharge, in preference of one less onerous, or in respect of which the creditor has a remedy elsewhere or otherwise.

Where one of several partners dies; the partnership being in debt, and the survivors continue to deal with a particular creditor of the firm who joins the transactions of the old and new firm into one account; the payments made from time to time by the surviving partners will be applied to the old debt. In which case it is presumed that all the parties have consented to such appropriation.

So, where under a will; of which some of the partners of a bank were executors; the estate was made liable to a specified amount for the debt of a customer of the bank due at the death of the testatrix; the account was continued in the ordinary form of banking accounts charging the customer with the whole debt from time to time in the half-yearly balances; and at a later period one of the executors, also a partner in the bank, wrote a letter to the customer which amounted to a representation that the payments in, to his account, were appropriated to the later, unsecured, items of the debt. It was held that an appropriation of past payments could not be made by an executor so as to revive a lapsed liability of his estate, and that the latter had not a retrospective operation; and also, that the subsequent payments by the creditor, made on the faith of the representations in the letter, must be appropriated to the later items of debt.

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2 Vern. 606; Clayton's case, 1 Mer. 585; Goddart *v.* Cox, Str. 1194; Philpott *v.* Jones, 2 Ad. & Ell. 44; Plomer *v.* Long, 1 Stark. 154; Croft *v.* Lumley, 27 L. J. 334, Q. B.; Peters *v.* Anderson, 5 Taunt. 596; Mills *v.* Fowkes, 5 Bing. N. C. 461; Marryatts *v.* White, 2 Stark. 102; Newmarch *v.* Clay, 14 East, 244; Simson *v.* Ingham, 2 B. & C. 72; Merriman *v.* Ward, 1 J. & H. 371.

MAXIM LXXV.

Qui facit per alium facit per se: (Co. Litt. 258.)—He who does anything by another does it by himself; or, Qui per alium facit, per seipsum facere videtur: He who by another does anything is himself considered to have done it.

THIS maxim has reference to the law of principal and agent, and under it a principal is responsible for the acts of his agent; as, where B. employs A. to buy goods for him, B. is liable in an action for the amount; or to sell goods, A.'s receipt, though he subsequently misapply the money, will discharge the purchaser. Many nice distinctions arise in practice under this maxim, in applying it to the characters of principal and agent, and in considering the various rights and liabilities of principal and agent with reference to third parties; and also in applying the character of principal and agent to the relation of master and servant, husband and wife, parent and child, attorney and client, bankers, auctioneers, partners, &c.

If a servant do what his master ought to do, it is the same as though the master did it himself; and if a servant do any such thing without the consent of the master, yet, if the master subsequently ratify the act of the servant, it is sufficient: "Omnis enim ratihabitio ratrotrahitur, et mandato æquiparatur."

So the act of the agent is the act of the principal for everything done within the scope of his authority. The agent's receipt for money will charge his principal. His payment will discharge his principal. A tender to him of money or goods on sale, or a tender by him as agent for another, is good. So a tender of money to a clerk or servant having a general authority to receive money for his employers, is a good tender to the latter. A tender to an executor who has not then proved the will, if he afterwards prove, is a good tender to him as executor. And a

tender of a debt to an attorney authorised to receive it, or to any one in his office on a day named, on a demand by him by letter, is a good tender to the creditor.

The contract of an agent will bind his principal in purchase or sale: payment to an auctioneer is payment to the vendor. The delivery of goods to a carrier's servant, or agent collecting goods for carriage by the carrier, is a delivery to the carrier. One railway company is the agent to bind another in carrying over various lines of railway of passengers or goods in one entire contract; and so it has been frequently held.

The question in all cases of principal and agent, in which the plaintiff seeks to fix the defendant with liability upon a contract, express or implied, is stated to be, whether or not such contract was made by the defendant, by himself or his agent, with the plaintiff or his agent; and this is a question of fact for the jury upon the evidence. The plaintiff, on whom the burden of proof lies in all these cases, must, in order to recover, show that the defendant contracted expressly or impliedly; expressly, by making a contract with the plaintiff; impliedly, by giving an order to him under such circumstances as show that it was not to be gratuitously executed; and if the contract was not made by the defendant personally, then, that it was made by his agent properly authorised, and as his contract.

This maxim does not, however, apply to the acts of an agent of an agent; in which case the maxim, "Delegatus non potest delegare," applies.

Co. Litt. 258; 2 Inst. 597; 1 Stra. 228; Dawes *v.* Peck, 8 T. R. 330; Pickford *v.* Grand Junction Railway Company, 12 M. & W. 766; Bostock *v.* Hume, 8 Scott N. R. 590; Roynell *v.* Lewis, 8 Scott N. R. 830; Heald *v.* Kenworthy, 10 Exch. 739; Sykes *v.* Giles, 5 M. & W. 645; Parrott *v.* Anderson, 7 Exch. 93; Mackersy *v.* Ramsays, 9 Cl. & F. 818; Marsh *v.* Keating, 2 Cl. & F. 250; Moffatt *v.* Parsons, 5 Taunt. 308; Miles *v.* Bough, 3 Q. B. 845; Walsh *v.* Southwork, 6 Exch. 150; Dresser *v.* Norwood, 11 L. T. (N.S.) 111.

MAXIM LXXVI.

Qui hæret litera hæret in cortice: (Co. Litt. 289.)—He who sticks to the letter sticks to the bark; or, He who considers the letter merely of an instrument cannot comprehend its meaning.

ALL old law writers, and who are, in fact, the makers of law maxims, say, that reason is law, and that without reason there is no law; and, that that which is contrary to reason is contrary to law. So, the meaning of this maxim is, that to understand the letter of the law the reason of it must be known; and to judge of the letter only of a document without knowing the reason of it, is but to have a superficial knowledge of its meaning; and in all cases where it can, without infringing upon other more important rules, this rule will be applied.

The construction of deeds must be reasonable and agreeable to common understanding; and where the intention is clear, too much stress must not be laid upon the precise signification of the words: "Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba fienda est." Thus a lessee is not liable for a breach of covenant to repair committed before the execution of the lease by the lessor, though subsequently to the day from which the *habendum* states the term to commence. On the other hand, where by an agreement under seal for a lease of copyholds, to be granted so soon as a licence could be obtained from the lord of the manor, the defendant covenanted that he would from time to time, during the term to be granted as aforesaid, keep the premises in repair; and the defendant entered and occupied during the term agreed to be granted; he was held liable to repair according to the agreement, though no lease had been made to him, nor licence obtained from the lord. Again, in an action of trover, where the defendant sought to stay further proceedings upon bringing the specific goods into court, and upon payment of costs;

and where it was objected by the plaintiff that that could not be, inasmuch as the court did not keep a warehouse; the Court said that a warehouse had nothing to do with ordering the thing to be delivered to the plaintiff; that money paid into court was payment to the plaintiff, and that the reason and spirit of cases made the law, not the letter of particular precedents.

Under a deed of arrangement in bankruptcy, where a composition was to be paid in cash and in promissory notes, but some of the creditors had been paid all cash, and it was objected that such a departure from the terms of the deed rendered it inoperative against nonassenting creditors; it was held that such was not the case, and that payment in advance rendered payment in notes useless; and it was observed that, in the absence of fraud, a release by one of the creditors of his instalment would be a compliance with the terms of the composition; the contrary conclusion being absurd, the main object of the deed being payment of the creditors, and they being satisfied, the detail might be treated as immaterial.

The rule, "Mala grammatica non vitiat chartem," and others of a like nature, may with propriety be considered in connection with this maxim; in the application of which it was held, that, where a bill of sale was made by I. D. on the 29th June, wherein the maker was described as "gentleman," and who on the 3rd July commenced business as an agent, and continued so until after the 16th July, the day when the bill of sale was filed, the affidavit verifying the bill of sale bearing date the same day, the maker being therein described as "the said I. D. *is* a gentleman;" this variance did not vitiate the bill of sale.

Co. Litt. 147, 223, 289; 2 Saund. 157; Hob. 27; Shepp. Touch. 87; Burr. 1364; R. *v.* Hall, 1 B. & C. 123; Williams *v.* Crosling, 3 C. B. 962; Shaw *v.* Kay, 1 Exch. 412; Pistor *v.* Cator, 9 M. & W. 315; Pittman *v.* Sutton, 9 C. & P. 706; Burgess *v.* Boetefeur, 7 M. & G. 494; Naylor *v.* Mortimore, 10 L. T. (N.S.) 903; The London and W. L. and D. Co. *v.* Chace, 6 L. T. (N.S.) 781; Evans *v.* Robins, 11 L. T. (N.S.) 211.

MAXIM LXXVII.

Qui jussu judicis aliquod fecerit non videtur dolo malo fecisse, quia parere necesse est: (10 Co. 76.)—He who does anything by command of a judge will not be supposed to have acted from an improper motive; because, it was necessary to obey.

IT is under this rule that an officer is protected in the execution of any process issuing from a court or judge of competent jurisdiction. But it may be stated, that where the court or judge has not jurisdiction, or the matter adjudicated upon is not within such jurisdiction, in that case the officer is not so protected; excepting in the case of a constable, &c., lawfully acting under warrant of a justice of the peace, who is in such case protected by express statutory enactment.

The rule as to judges and judicial officers is, that they are not liable for injury caused by the due exercise of their judicial functions, even though done in error or mistake of judgment; but it is otherwise where they act beyond the limit of their authority. And so, also, ministerial officers acting under judicial authority are exempt from liability for the consequences.

If a ministerial officer of a court take upon himself the exercise of judicial functions, as to issue a judicial order, he is liable for all the consequences resulting from the carrying such order into effect; for the judicial authority cannot be delegated. But if such order is *primâ facie* issued with proper judicial authority, the mere ministerial officer who *bonâ fide* receives the warrant to execute, and does so execute it, is not responsible for what is done under it.

A sheriff is protected in the proper execution of all writs directed to him; but if he execute them in a manner not justified by the law, he will be liable in damages. For instance, if he has acted under a genuine writ issued from one of the superior

courts, he and his officers acting under him are protected by it, though it be irregular on the face of it; as a *capias* against a peeress, or, one void in form; as a *capias* not properly returnable. For, it is not their duty to examine the judicial act of the court, nor to exercise their judgment as to the validity of the process in point of law; but they are bound to execute it, and are therefore protected by it.

So where one was in prison upon a *ca. sa.* in an action for an assault and false imprisonment, and, petitioning the Court of Bankruptcy, was discharged by order of the commissioner; in an action against the keeper of the prison for an escape; it was held that, whether or not that was a debt from which the commissioner had power to discharge the prisoner, yet the defendant was protected, being bound to obey the order of the commissioner, who was acting judicially in a matter over which he had jurisdiction.

But it is otherwise where a ministerial officer acts in execution of an authority not *bonâ fide*, or under an order of a judge assumed, without jurisdiction. For, if the process under which a sheriff or his officers act in taking in execution the body or goods is forged or feigned, it is not the order of the court; it is a nullity, and they derive no protection from it. So, if a commissioner in bankruptcy wrongfully order the imprisonment of a debtor, he having no jurisdiction; the messenger executing the order will be assumed to know of such want of jurisdiction, and will be liable in an action for the false imprisonment. But a genuine writ, though irregular, is always a justification to the sheriff and his officers, who had no option but to obey.

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6 Co. 54; 10 Co. 76; Jones *v.* Williams, 8 M. & W. 356; Kiddell *v.* Pakeman, 2 C. M. & R. 33; Hooper *v.* Lane, 10 Q. B. 561; Ferguson *v.* Earl Kinnoul, 9 Cl. & F. 290; Doswell *v.* Impey, 1 B. & C. 169; Andrews *v.* Marris, 1 Q. B. 3; Watson *v.* Bodell, 14 M. & W. 57; Thomas *v.* Hudson, 16 M. & W. 885; Gossett *v.* Howard, 10 Q. B. 411; Prentice *v.* Harrison, 4 Q. B. 852; Jones *v.* Jones, 11 L. T. (N.S.) 172.

MAXIM LXXVIII.

Quilibet potest renunciare juri pro se introducto: (2 Inst. 183.)—Every one is able to renounce a right introduced for himself.

THIS maxim must be understood as applicable to the party himself having the right, and not to third parties; for no one will be permitted to renounce a right in which others are interested, to their prejudice; *ex. gr.*, the waiver of notice of dishonour of a bill by one indorser will not prejudice the right to notice of the subsequent indorsers. But he may renounce a right given to him alone, whether by act of law or of parties; as to waive his defence to a claim under plea of infancy, or the Statute of Limitations; or to give up any private rights or privileges he may have, either for the benefit of individuals or of the public; as by giving up his right to compel the specific performance of a contract, or to give the public a right of way over his lands. He may, however, in certain cases, refuse to take advantage of the right the law gives to him, even to the prejudice of others; as in the case of an executor, refusing to take advantage of the Statute of Limitations to the prejudice of the legatees.

If a promise to pay the debt of another be conditional, the promisor may waive the condition. But where, in an action on a guarantee by A. to pay B. the debt of C. on condition of a stay of proceedings by B., the guarantee to be void if satisfactory references were not given within a week by A. of his ability to pay the debt; it was held that, though B. might waive the stipulation as to satisfactory references, it being a condition inserted for his benefit, yet, he could not enforce the guarantee against A. until he had given him notice of the waiver.

Within this rule may be classed all cases of waiver of conditions precedent in contracts, times and modes of their performance, &c. Where the owner of a ship charters it to sail for a foreign port

on a certain day to bring back a cargo, the sailing of the vessel at the time appointed may be so far of the essence of the contract as that the charterer will not be bound to provide the cargo unless the vessel sail at the appointed time; but, though the vessel sail after the time, if the charterer ship the cargo, the time of the ship sailing is no longer of the essence of the contract, and he cannot refuse to pay the freight and fulfil his part of the agreement because the ship did not sail on the exact day specified. So, if a ship be chartered to be at a particular port, on a day certain, to take in a cargo, the charterer may not be bound by his agreement to ship a cargo and pay the freight if the ship be not ready at the place and time mentioned; but if after the time named the cargo is shipped, this is a waiver of the condition precedent to the payment of the freight.

If a notice to quit be directed to a tenant by the wrong Christian name, or other informality, and he neglect to repudiate it, he will be deemed to have waived the irregularity. So, if a landlord receives rent due subsequently to the expiration of the notice, this is a waiver of the notice and creation of a new tenancy. Acceptance of rent accruing due after a forfeiture is a waiver of the forfeiture, if the lessor at the time of receipt of the rent had notice of breach of the condition creating the forfeiture. A defendant in an action in a court not having jurisdiction appearing and submitting to the jurisdiction, cannot afterwards object to the verdict on the ground of want of jurisdiction.

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2 Inst. 183; Co. Litt. 223; 10 Co. 101; Shepp. Touch. 130; Goodright *v.* Cordwent, 6 T. R. 219; Blythe *v.* Dennett, 13 C. B. 178; Steele *v.* Harmer, 14 M. & W. 831; Hart *v.* Pendergast, 14 M. & W. 743; Doe *v.* Batten, Cowp. 243; Isherwood *v.* Oldknow, 3 M. & S. 392; Storer *v.* Gordon, 3 M. & S. 308; Fothergill *v.* Walton, 8 Taunt. 576; Morton *v.* Marshall, 8 L. T. (N.S.) 462; Stavers *v.* Curling, 3 Sc. 740; Denby *v.* Nicholl, 4 C. B. (N.S.) 376; Cotesworth *v.* Spokes, 30 L. J. 221, C. P.

MAXIM LXXIX.

Qui prior est tempore potior est jure: (Co. Litt. 14.)—He who is first in time has the strongest claim in law.

THIS maxim relates to property, and is used in determining the rights of parties thereto. Generally, it may be said to apply to the first occupant of land, or the first possessor of a chattel lost or abandoned; to the heir who takes by descent; the inventor of something new, &c. Its particular application in practice, however, is with respect to real property, between legal and equitable claims of several incumbrancers and purchasers, as to who has the prior right and consequently the better title.

The maxim is also well illustrated by all those cases in which one creditor, by using diligence, obtains a satisfaction of his claim in priority to another of equal right; a simple instance of which is, where two writs of *fi. fa.* are delivered to the sheriff, the one first delivered must be first satisfied.

The law is said to prefer a sure and constant right, though it be little, to a great estate by wrong, and defeasible; and therefore the first and more ancient is the more sure and worthy title: "Quod prius est verus est; et, quod prius est tempore potius est jure."

The law of descents, whereby the eldest amongst males of equal degrees of consanguinity, as being first in time and more worthy, are preferred to the younger, is regulated by this maxim. So is the law of escheat; as, where the owner of land dies intestate and without heir, such land vests either in the Crown or in the lord by escheat; and so as to undisposed of personal property, the intestate leaving no next-of-kin, which vests in the Crown. For, all estates being supposed to have been granted by the lord paramount, in the absence of title in any other claimant, the property vests in the lord paramount as in his first estate.

The equitable rule as to the priority of incumbrancers upon real or personal property may be properly referred to as illustrating the maxim under consideration. As, where there have been several assignments of a reversionary interest in the same stock, the one first in point of time and notice will be entitled to the fund. So where there are several mortgagees of one estate, and the legal estate outstanding, the first in point of time is to be preferred; but where one of them has the legal estate, he is preferred. Where, therefore, there are three mortgagees of one estate, the first having the legal estate, and the third in point of time pays off the first, and thereby acquires the legal estate; he obtains priority for both first and third mortgagees over the second; for, where the equities are equal the law will prevail.

A simple instance, of daily occurrence in similar cases, may be used in further illustration of this rule:—Plaintiff found on the floor of the defendant's shop a small parcel containing bank notes, which he handed to the defendant, requesting him to keep them with a view to finding the owner. The defendant accordingly advertised for the owner; but, none appearing, after a lapse of three years plaintiff demanded the notes back upon paying defendant the costs of advertisements and giving him an indemnity; and the defendant having refused: it was held that the plaintiff was entitled to have them handed over to him, and this notwithstanding they were found in defendant's shop. For, the finder of a chattel, though thereby he does not acquire the absolute ownership of the thing found, does, nevertheless, acquire a right thereto as against all but the owner.

Co. Litt. 14, 347; 2 Bla. Com.; Braco *v.* D. of Marlborough, 2 P. Wms. 491; Armory *v.* Delamirie, 1 Stra. 504; Willoughby *v.* Willoughby, 1 T. R. 763; Hutchinson *v.* Johnson, 1 T. R. 131; Drewe *v.* Janison, 11 A. & E. 529; Robson *v.* Attorney-General, 10 Cl. & F. 497; Bridges *v.* Hawksworth, 21 L. J. 75, Q. B.; Jeffreys *v.* Boosey, 4 H. L. Cas. 815; Hutton *v.* Cooper, 6 Exch. 159; Hernaman *v.* Bowker, 11 Exch. 760; Imray *v.* Magnay, 11 M. & W. 267; Shattock *v.* Carden, 6 Exch. 725; Hopkins *v.* Clarke, 11 L. T. (N.S.) 205.

MAXIM LXXX.

Qui sentit commodum, sentire debet et onus; et è contra: (1 Co. 99.)—He who enjoys the benefit ought also to bear the burden; and the contrary.

THE liability of a railway company to provide sufficient accommodation for passenger and goods traffic, and to indemnify against loss or damage by negligence, in return for the exclusive right of way and tolls thereupon: as, also, all other instances where rights are conferred upon individuals or bodies of persons as against the public; as, public companies having powers under Acts of Parliament, partners in trade, attorneys, surveyors, innkeepers, pawnbrokers, &c.: are within the meaning of this maxim. And also where the public are not directly concerned; as, in rights and liabilities arising out of the relation of lessor and lessee, landlord and tenant, husband and wife, master and servant, principal and agent, executor, devisee, &c.; in all which cases, to the privileges conferred by the law, the law attaches corresponding liability.

The converse of the position first stated, viz., that he who bears the burden has a right to the benefit, may be deduced from the instances already given, as well as from the general principle of the law, which holds that no burden is thereby imposed without a corresponding benefit.

Real property is a leading object in the consideration of this maxim, it being a common rule that all land, in passing from one owner to another, takes with it the burdens which the previous owners have thought fit to lay upon it, and the conditions to which it was, in passing from their hands, subject, whether or not they are implied covenants running with the land, or express, binding the covenantor and his assigns.

If an indenture be made between A. of the one part, and B. and C. of the other part, and therein a lease is made by A. to B. and C.

on certain conditions, and B. and C. are thereby bound to A. in 20*l.* to perform the conditions, and B. only and not C. executes the deed; yet, if C. accept the estate, he is bound by the covenants; and one of them cannot be sued without the other whilst both are living; for, "Qui sentit commodum sentire debet et onus; et transit terra cum onere."

The law of landlord and tenant, and of lessor and lessee, furnishes many instances of the application of this maxim. As, where one leased a house by indenture for years, the lessee covenanting for himself and his executors to repair at all times needful; the lessee having assigned it over to another, who suffered it to decay; it was held, in an action of covenant by the lessor against the assignee, that such action would lie, although the lessee had not covenanted for his assignee; because, that such covenant extending to the support of the thing demised, is *quodammodo appurtenant* to it, and goes with it; and because, the lessee having undertaken to repair, the rent was the less, which was to the benefit of the assignee; "et, qui sentit commodum, sentire debet et onus."

A devise or bequest, subject to the payment thereout of an annuity or certain sum, carries with it an obligation to make the payment, and the thing devised stands charged with the annuity or sum payable, and cannot be accepted otherwise; and where the devise is of a thing of less value than that with which it is charged, the devisee accepting the gift must discharge the burden.

Shepp. Touch. 178; 2 Inst. 489; 1 Co. 99; 5 Co. 24; 8 Co. 32; Co. Litt. 231; Tremeere *v.* Morrison, 1 Bing. N. C. 98; Messenger *v.* Andrews, 4 Russ. 478; Bullock *v.* Dommitt, 6 T. R. 650; 2 Wms. Saund. 422; Belfour *v.* Weston, 1 T. R. 310; Parker *v.* Gibbins, 1 Q. B. 421; Weigall *v.* Waters, 6 T. R. 488; R. *v.* Inhabitants of Kent, 13 East, 220; Digby *v.* Atkinson, 4 Camp. 275; Mayor of Lyme Regis *v.* Henley, 1 Bing. N. C. 222; Nichol *v.* Allen, 1 B. & S. 916.

MAXIM LXXXI.

Quod ab initio non valet, in tractu temporis non convalescit: (4 Co. 2.)—That which is bad from the beginning does not improve by length of time.

WHEN the consideration for a deed is illegal, no lapse of time can cure the defect. In nullities in pleadings also, and in transactions founded upon fraud, it may be stated generally that lapse of time will not avail to cure the defect. But there are cases under the Statutes of Limitations, where a defeasible title may become indefeasible by lapse of time, and to which this rule cannot be said strictly to apply.

Lapse of time, and the altered state of circumstances consequent upon it, and which are the natural result of the act done, will frequently make that legal which before was not so; and this sacrifice society often demands at the hands of the law.

If a man, seised of land in fee, make a lease for twenty-one years, rendering rent, to begin presently, and afterwards, the same day, he make a lease to another for the like term, the second lease is void. And if the first lessee surrender his term to the lessor, or commit any act of forfeiture of his lease, the second lessee shall not have his term; for the lessor at the time of making the second lease had nothing in him but the reversion. If a bishop make a lease for four lives, contrary to a statute which authorises a lease for three, and though one of them die in the lifetime of the bishop, so that there be then but three, and afterwards the bishop dies; yet the lease shall not bind his successor; for those things which have a bad beginning cannot be brought to a good end.

Where a lease is made for life, remainder to the corporation of B., there not being any such corporation; it is void, though such a corporation be subsequently created during the particular estate. So a remainder limited to A. the son of B., he having no such

son ; and afterwards a son is born to him during the particular estate whose name is A., yet it is void.

The will of a *feme covert,* not acting under a power ; or of an infant, is void. and is not rendered available on the determination of the coverture of the *feme*, or the attaining full age of the infant, without fresh execution. No interest, legal or equitable, passes to the holder of a forged bill of exchange as against the person whose name has been forged ; and this doctrine applies to all deeds and other instruments whatsoever, and into whosesoever hands they subsequently pass.

A verdict given in an action where no sufficient cause of action to support the verdict appears upon the record, may be set aside.

The maxim, "Quod non habet principium non habet finem"—That which has no beginning has no end, may be considered as connected with the one under consideration. To give the ordinary a right to present to a benefice by lapse, he must, in such cases as the following, give notice to the patron, or no lapse will accrue, viz. : resignation, deprivation, refusal to institute for default of learning, &c. ; voidance, under 1 & 2 Vict. c. 106. s. 58 ; trading, &c. : in the absence of such notice, he cannot take advantage by way of lapse. So, no lapse having accrued to the ordinary, none can accrue to the metropolitan, or to the Crown, who take in default of him, they being in no better position than the ordinary ; but each must suffer by his default : for, "Quod non habet principium non habet finem."

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4 Co. 2, 61 ; Noy. Max. p. 15 ; 2 Bl. Com.; 2 Inst. 632 ; Plow. 432 ; Swinb. 88 ; 2 P. Wms. 624 ; Doder. Eng. Law, 233 ; Dawson *v.* Prince, 30 L. T. 60 ; Pennington *v.* Tanniere, 12 Q. B. 998 ; Prole *v.* Wiggins, 3 Bing. N. C. 230 ; Wetherell *v.* Jones, 3 B. & Ad. 225 ; Wright *v.* Tallis, 1 C. B. 893 ; Davies dem. Lowndes, 8 Scott N. R. 567 ; Jackson *v.* Pesked, 1 M. & S. 234 ; Goodtitle *v.* Gibbs, 5 B. & C. 714 ; Bryan *v.* Banks, 4 B. & Ald. 401.

MAXIM LXXXII.

Quod remedio destituitur ipsâ re valit si culpa absit: (Bac. Max. Reg. 9.)—That which is without remedy avails of itself if without fault.

WHERE the law does not provide an express remedy for an injury, it works one impliedly, by operation of law.

It has been said, that if a man seised of a manor, part of which is in lease for life, and part for years, and he levy a fine to A. to the use of B. in tail, with divers remainders over, in that case B. shall avow for the rent, or have an action of waste without attornment; for that when the reversion is settled in any one in judgment of law and he hath not a possible mean to compel the tenant to attorn, and no laches or default is in him, there he shall avow and have an action of waste without attornment, for the rule is, "Quod remedio destituitur," &c. Attornments are now, however, rendered unnecessary by the 4 Anne, c. 16, which enacts that all grants and conveyances of manors, lands, rents, reversions, &c. shall be good without the attornment of the tenants; and an assignee of the reversion, whether by way of mortgage or otherwise, may sue for the rent or distrain without any attornment.

When a creditor is made executor, though he has lost his remedy by action for his debt upon the principle that a man cannot be at the same time plaintiff and defendant, he is nevertheless permitted to retain the amount due to him out of the moneys of his debtor, the testator, come to his hands; and that by operation of law, the law having vested all the estate of the testator in him, subject to the payment or retention of the testator's debts and legacies, of which the debt due to the executor is one. In debts of equal degree the executor is entitled to retain his own first, and this right of retention devolves to an executor of an executor. An executor *de son tort* is not allowed so to

retain his debt even if of a higher degree than others, and though the rightful executor had, after action, consented to the retainer. For, that would encourage creditors to strive who should first take possession of the goods of the deceased, and to take advantage of their own wrong. On the same principle is it that if a creditor make his debtor his executor, this will be a discharge in law of the debt; as, if the obligee of a bond make the obligor his executor, this amounts in law to a release of the debt; or, if the creditor appoint one of several joint, or one of several joint and several, debtors his executor; this is an extinguishment of the debt at law, and a release to them all. For a release to one of several obligors, jointly, or jointly and severally bound, discharges the others, and may be pleaded in bar. This rule, however, as between the debtor executor and the creditors of the testator, only applies where there are sufficient assets to pay the testator's debts. And there is a difference here between an executor and an administrator; in the first case the suspension of the debt being the voluntary act of the creditor, and the action being for ever gone, in the second the remedy being merely suspended by act of law.

One partner cannot sue his co-partner at law for his share of the partnership property generally, though he may sue his partners or any of them individually upon any separate claim he may have against them, or upon a stated balance of partnership accounts; or, having a right to relief for some breach of the partnership articles, he may by bill in equity dissolving the partnership, thereby obtain the relief he seeks.

Bac. Max. Reg. 9; 5 Co. 30; 6 Co. 68; 8 Co. 136; Com. Dig. Admor. (B. 5); 2 Roll. Abr. 412, title Release; Hob. 10; Shepp. Touch. 253, 256; 2 & 3 Bla. Com.; Plowd. 184; Salk. 303; 1 Saund. 333 (n.); 11 Vin. Abr. 263; 10 Mod. 496; Went. Off. Ex. cap. 2, p. 73; Curtis *v.* Vernon, 3 T. R. 587; 2 H. Bl. 18; Bac. Abr. Exors. (A.) 10; Lumley *v.* Hodgson, 11 East, 99; Freakley *v.* Fox, 9 B. & C. 130; Lloyd *v.* Davies, 2 Exch. 103.

MAXIM LXXXIII.

Quoties in verbis nulla est ambiguitas ibi nulla expositio contra verba expressa fienda est: (Co. Litt. 147.)—When in the words there is no ambiguity, then no exposition contrary to the expressed words is to be made.

IF an instrument be plain upon the face of it, and complete in meaning, no evidence will be admitted to give any other construction to it than that which is so plainly expressed, even though it be contended that the plain meaning so expressed upon the face of the instrument does not carry out the intention of the parties; for, "Maledicta expositio quæ corrumpit textum"—That exposition is bad which corrupts the text; and no construction shall be made contrary to the express words of the grant. If a man grant to another and his heirs a rent of 40*s*. out of his manor of Dale, and also grant that if the rent be behind the grantee shall distrain in the manor of Sale, the rent is only issuing out of the manor of Dale, and it is but a penalty that he shall distrain in the manor of Sale. But, both manors are charged, the one with a rent, and the other with a distress for the rent, the one issuing out of the land, and the other to be taken upon the land. So if I grant to one that he and his heirs, or the heirs of his body, shall distrain for a rent of 40*s*. within my manor of Sale; this, by construction of law, shall amount to a grant of a rent in fee-simple or fee-tail out of my manor of Sale; for if this did not amount to a grant of a rent, the grant would be of little effect, giving only a bare distress, and no rent; and so it has been often ruled that this amounts to a grant of rent by construction of law; "Ut res magis valeat quam pereat." And, that the right to distrain upon the manor of Sale in the case first given is a penalty only, is shown in that the law in such case needs not to make construction that this amounts to a grant for a rent, for there a rent is expressly granted to be issuing out of

the manor of Dale, and the parties have expressly limited out of what land the rent shall issue, and upon what land the distress shall be taken ; and the law will not make an exposition against the express words and intention of the parties when such intention stands with the rule of law, "Quoties in verbis, &c."

The rule as to patent ambiguity applies to the maxim under consideration ; as, where there appears to be an omission of words in a document, words will not be introduced to complete it, there being no ambiguity in the words used, and, such being the case, no exposition contrary to the words used will be made. The meaning of the parties, to be gathered from the words used, must be ascertained, and words must not be supplied to make up their supposed meaning. A contract, for instance, must be read according to what is written by the parties, for a written contract cannot be altered by parol, and evidence is not admissible to show that the parties meant something different from that stated in the contract itself. And in a will, if there be a blank for the devisee's name, parol evidence will not be admitted to show what person's name the testator intended to insert.

In all cases where a written instrument appears on the face of it to be complete, parol evidence will not be admitted to vary or contradict it ; the Court will look to the contract, and no construction will be made or allowed contrary to the express words.

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4 Co. 35 ; 7 Co. 23 ; Co. Litt. 147, 314 ; Wing. Max. 23, 24 ; 2 Saund. 167 ; 2 Mer. 343 ; Cheney's case, 5 Co. 68 ; Windham *v.* Windham, And. 60 ; Bishop of G. *v.* Wood, Winch, 47 ; 2 A. & R. 239 ; Nichol *v.* Godts, 10 Exch. 194 ; Tyrrell *v.* Lyford, 4 M. & S. 550 ; Hollier *v.* Eyre, 9 Cl. & F. 11 ; Hunt *v.* Hort, 3 Bro. C. C. 311 ; Gwillim *v.* Gwillim, 5 B. & Ad. 129 ; Clayton *v.* Lord Nugent, 13 M. & N. 200 ; Williams *v.* Jones, 5 B. & C. 108.

MAXIM LXXXIV.

Res inter alios acta alteri nocere non debet: (Co. Litt. 132.) —One person ought not to be injured by the acts of others to which he is a stranger.

EVERY fact not admitted, must be proved upon oath, either on the trial of the issue, or some other issue involving the same question between the same parties. Where other evidence is adduced, it is "Res inter alios acta," and this maxim applies; unless it be of that nature which necessity has at all times admitted; as, documents of a public nature, parish registers, &c.; or, as the statements and declarations of persons deceased, made in the ordinary course of their duty and calling, or against their interest, and which are admissible even against strangers; as, where the book of a deceased drayman is put in evidence to prove the delivery of beer, by an entry of the transaction in his handwriting; or, entries in the books of a deceased attorney marked as *paid*, to prove the date of the transactions to which they refer; or, an entry in the book of a midwife marked *paid*, to prove the date of birth of a child.

Amongst the facts taken as admitted, are all judgments and other proceedings *in rem, i.e.* of a public, judicial nature, as distinguished from proceedings *in personam*, or of a private nature.

A simple illustration of the maxim is that of a judgment recovered in one court, which may be successfully pleaded in bar in an action between the same parties for the same thing in another court of concurrent jurisdiction. But it is otherwise where the record of a conviction in a criminal suit is offered as evidence of the same fact coming into controversy in a civil suit, in which case it is inadmissible, the parties not being the same, the Crown being a party in the criminal suit though not in the civil.

The judgment of a court of concurrent jurisdiction directly upon a point, is conclusive upon the same matter between the

same parties. But, it is also a general principle, that a transaction between two parties in a judicial proceeding ought not to bind a third. Therefore, the depositions of witnesses in another cause in proof of a fact—the verdict of a jury finding a fact—and the judgment of the court on facts so found; although evidence against the parties and all claiming under them; are not in general to be used to the prejudice of strangers. This principle, governing judgments as between third parties, has been thus explained. That the judgment is conclusive or an estoppel, if pleaded, where there is an opportunity of pleading it; but that, where there is no such opportunity, then it is conclusive as evidence; but, if the party forbear to rely upon it as an estoppel when he may plead it, he is taken to waive the estoppel, and to leave the prior judgment as evidence only for the jury.

In order to bind a party, he must have sued or been sued in the same character in both suits; as, in an action by an executor on a bond, he will not be estopped by a judgment in an action brought by him as administrator on the same bond, but he may show the letters of administration repealed.

Of the exceptions to the above general rule may be mentioned, all judgments of a public nature; as, relating to customs, tolls, &c.'; which bind strangers as well as privies. Judgments *in rem* bind all mankind, and of this nature are judgments in proceedings in the courts of Admiralty, Spiritual, and Revenue courts.

The reason of the maxim seems to be, that it would be unjust to bind a person by proceedings taken behind his back, to which he was, in fact, no party, and to which he had not an opportunity of making a defence, and from which he could not appeal.

Co. Litt. 132; 5 Co. 32; 2 W. Bl. 977; Kinnersley *v.* Orpe, 2 Doug. 517; 1 Salk. 290; Duchess of Kingston's case, 2 Smith L. C. 642, 5 ed.; Freeman *v.* Cooke, 2 M. & W. 654; Outram *v.* Morewood, 3 East, 365; Litchfield *v.* Ready, 5 Exch. 939; Higham *v.* Ridgway, 10 East, 116; Doe *v.* Robson, 15 East, 34; Reid *v.* Jackson, 1 East, 357; Carnarvon *v.* Villebois, 13 M. & W. 313; The Evangeline, 2 L. T. (N.S.) 137; Whittaker *v.* Jackson, 11 L. T. (N.S.) 155.

MAXIM LXXXV.

Respondeat superior: (4 Inst. 114.)—Let the principal answer.

THE application of this rule arises chiefly out of the relation existing between the parties in the cases of principal and agent, and master and servant. An instance whereof, is where a servant commits a trespass by command of his master; the servant is, in such case, himself liable as directly committing the trespass, and the master as under this rule, "Respondeat superior." So in the case of negligence, as also in all tortious acts by a servant or other agent acting under the authority, express or implied, of his principal.

The rule applies also to cases of fraud on the part of the servant acting apparently within the scope of his authority, but it does not apply to wilfully tortious acts, as acts of purposed injury not falling within the scope of such authority. Nor does it apply to acts of negligence on the part of the servant not arising immediately out of the business in which he is engaged on behalf of his master; as where A. gratuitously permitted the use of his shed to B. for the purpose of the latter having a job of carpentering work done in it by his workman, and the workman whilst so employed accidentally dropped a match with which he had lighted his pipe, and thereby set fire to the shed; it was held that B. was not responsible for such damage, though the jury found that the fire was caused by the negligent act of B.'s workman. But it seems that it would have been otherwise if the workman in the course of his employment had been guilty of any negligence at all applicable to the employment in which he was engaged.

The master is liable, even though the servant in the performance of his duty is guilty of a deviation from the strict line of it, or a failure to perform it in the most strict and convenient manner; but, where the servant instead of doing what he is

employed to do, does something not warranted by his employment, the master cannot be said to do it by his servant, and so is not responsible for the negligence of the servant in doing it. If a master, in driving his carriage, from want of skill causes injury to a passer-by, he is responsible for the injury done through that want of skill; so, if instead of himself driving, he employs his servant to drive, the servant is but an instrument in his hands, and what the servant so does in furtherance of his master's will, is the act of the master according to the rules, "Qui facit per alium facit per se," and "Respondeat superior."

Public functionaries, as judges, magistrates, &c., are not liable for the illegal or wrongful acts of their inferior ministerial officers, provided they themselves act within the scope of their authority, but otherwise if not within the scope of such authority. Nor is any servant of the Crown liable in such case. Nor does the maxim apply to the Crown itself. A municipal corporation are, however, liable for the negligent acts of their servants; as where, in laying down gas pipes, a piece of metal being chipped out, it struck against the plaintiff's eye, whereby he lost his sight.

The principle of the rule, however, does not apply where the party sought to be charged does not stand in the character of employer to the party by whose negligent act the injury has been occasioned; as, if I agree with a builder to build me a house according to a certain plan, he would in such case be an independent contractor, and I should not be liable to strangers for any wrongful act done by him in the performance of his work.

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4 Inst. 114; 1 Bla. Com.; 3 Salk. 271; Stevens *v.* Midland Counties R. C. 10 Exch. 336; Mackensie *v.* McLeod, 10 Bing. 385; Scott *v.* Shepherd, 1 Smith L. C. 399, 5 ed.; Limpus *v.* Omnibus Co. 7 L. T. (N.S.) 64; Scott *v.* Mayor of Manchester, 2 H. & N. 204; Lumley *v.* Gye, 22 L. J. 478, Q. B.; Rapson *v.* Cubitt, 9 M. & W. 710; Upton *v.* Townend, 17 C. B. 71; Gordon *v.* Rolt, 8 Exch. 365; Coleman *v.* Riche, 16 C. B. 104; Lyons *v.* Martin, 8 Ad. & Ell. 512; Lamb *v.* Palk, 9 C. & P. 629; Williams *v.* Jones, 11 L. T. (N.S.) 108; Mitchell *v.* Crassweller, 13 C. B. 246.

MAXIM LXXXVI.

Rex non potest peccare: (2 Roll. R. 304.)—The King can do no wrong.

THIS maxim does not imply that the King cannot, as a man, do wrong, but that, in his kingly capacity, wrong is not to be imputed to him. As an individual, however, the King is protected from ordinary common law proceedings by a subject by suit or action for injury of a private nature not in respect to a claim to property.

The King, it is said, is not under the dominion of man, but of God and the law, and it is not to be presumed that he will do or sanction anything contrary to the law to which he is equally amenable with his subjects: but, if an evil act be done, though emanating from the King personally, it will be imputed to his ministers, and the King is in no way responsible for their acts, whether they be his immediate advisers or any one acting in authority under him or them.

Upon the principle of this maxim, the Crown cannot be prejudiced by the neglect or wrongful acts of its servants, nor by errors in grants, letters patent, &c., which will, as a matter of course, be amended. Where the Crown has been induced by fraud or misrepresentation to make a grant of any right or privilege whereby injury is done to another, the grant is void; for the Crown cannot dispense with anything in which the subject has an interest, nor make a grant contrary to law or in derogation of the vested interests of individuals. But this does not, of course, apply to any grant by Act of Parliament, for nothing can be admitted to invalidate such a grant; but it applies to a grant of Crown lands, of letters patent for inventions, and such like; as, where two patents have been granted for the same thing, the one last granted is void, and that, not for its want of novelty

alone, but because the patent has been improperly obtained, there not having been any consideration for the grant at the time it was made.

It follows of necessity, from the relative position of the parties, that no injury can be intentionally done by the Crown to the subject; but, if by any means a wrong be committed by the Crown or any of its officers acting upon proper authority, that injury will be redressed, not, however, by compulsory action as between subject and subject, but by suit in the nature of a petition of right; which is a statement of the grievance complained of, and praying redress, and upon which the King orders justice to be done. The petition is, however, a petition of right, that is, the prayer of it is grantable *ex debito justitiæ*, and not *ex mere gratiâ*, or of favour merely.

Recent legislation has materially altered the mode of proceeding upon a petition of right with a view to render it more simple. A petition of right may now be instituted in any of the superior courts of common law or equity at Westminster, and, being addressed to Her Majesty, as in a form given in the schedule to the Act, setting forth the facts entitling the suppliant to relief, is to be left with the Secretary of State for consideration of Her Majesty, who, if she think fit, will thereupon grant her fiat that right be done. The petition is then left with the Solicitor of the Treasury endorsed with a prayer for a plea or answer on behalf of Her Majesty, who will transmit it to the particular department to which the subject of it relates, when it is proceeded with in nearly the same manner as an ordinary suit.

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2 Roll. Rep. 304; 1 & 2 Bla. Com.; Hob. 154; 1 Ld. Raym. 49; Brunton *v.* Hawkes, 4 B. & Ald. 542; Howard *v.* Gossett, 10 Q. B. 386; Buron *v.* Denman, 2 Exch. 167; Stead *v.* Carey, 1 C. B. 516; Reg. *v.* Renton, 2 Exch. 216; Vis. Canterbury *v.* A.-G., 1 Phillips, 306; Cumming *v.* Forrester. 2 Jac. & W. 334; Reg. *v.* Eastern Archipelago Co., 2 E. & B. 856; Morgan *v.* Seaward, 2 M. & W. 544; Tobin *v.* The Queen, 14 C. B. (N.S.), 505; 23 & 24 Vict. 34.

MAXIM LXXXVII.

Rex nunquam moritur: (Branch. Max. 197, 5 ed.)—The King never dies.

IN Angliâ non est interregnum, is the meaning of this maxim. There is always a King of England, there is no interregnum or space of time between the death of one King and the being king of his successor.

The principle contained in this maxim of our constitution is founded upon motives of expediency, and to avoid dissension in troublesome times, the descent of the Crown being once fixed.

The law ascribes to the sovereign in his political capacity perpetuity. The King never dies. George or William may die, but the King does not. For, immediately upon the death, in his natural capacity; or, as it is technically termed, demise, of the reigning sovereign; his sovereign dignity vests by act of law, without any interregnum or interval, in his heir who is, *eo instanti*, to all intents and purposes, King. And which term demise, as applied to the death of the King, means only that, in consequence of the disunion of the King's natural body from his body politic, the kingdom is transferred or demised to his successor, and so the royal dignity remains perpetual.

In accordance with this maxim, if a grant of lands be made to the King without the words *heirs* or *successors*, a fee simple will pass; for that in judgment of law he never dies. And, as the King commences his reign from the day of the death of his ancestor, it has been held, that compassing his death before coronation, or even before proclamation of him, is a compassing the King's death, he being King presently, and the proclamation and coronation being only honourable ceremonies for the further notification thereof.

Notwithstanding the rule that the King never dies, it has been held, in effect, that the maxim "Actio personalis moritur cum

personâ" applies in the case of the death of the King, to a claim by a subject to recover compensation from the Crown for damage to the property of an individual, occasioned by negligence of the servants of the Crown in a preceding reign, and that a petition of right in such case will not lie; also, that the reigning sovereign is not liable to make compensation for damage to the property of an individual, occasioned by the negligence of the servants of the Crown in a preceding reign; nor *semble*, even where such damage has been done in his own reign; but this latter, under the maxim, "Rex non potest peccare."

It follows from the fact that the heir or successor of one King is King immediately upon the demise of his predecessor, that the King, as such, cannot be a minor; and the rules for the good government of a kingdom require that he who is to govern and manage the kingdom should not be considered a minor, and incapable of governing his own affairs; therefore, grants, leases, &c., made by him when under age, bind presently, and cannot be avoided by him, either during minority or when he afterwards comes of age.

The following maxims relating to the Crown, not before referred to, may be appropriately stated here. "Non potest Rex gratiam facere cum injuriâ et damno aliorum"—The King cannot confer a favour at the expense and to the injury of others. "Rex non debet esse sub homine, sed sub Deo et sub lege, quia lex facit regem"—The King ought not to be under the dominion of man, but under God and the law, because the law makes the King.

Branch. Max. 197, 5 ed.; 1 & 2 Bla. Com.; Plowd. 177, 212; 1 Roll. Abr. 728; Chit. Prec. Crown, 5; Raym. 90; Co. Litt. 9, 43; 4 Bac. Abr. tit. Prerogative, pp. 151–215; 5 Co. 27; 6 Co. 27; 7 Co. 12, 30; Hal. His. P. C. 101–103; Comyn Dig. Prerogative D. 78; Vin. Abr. tit. Prerogative; 3 Inst. 7; 4 Inst. 209, 210; Fost. Rep. 189; 6 Bac. Abr. 386; Rorke *v.* Dayrell, 4 T. R. 402; Vis. Canterbury *v.* Attorney-General 1 Phillips, 306.

MAXIM LXXXVIII.

Roy n'est lie per ascun statute si il ne soit expressement nosme: (Jenk. Cent. 307.)—The King is not bound by any statute if he be not expressly named therein.

THIS maxim must not be taken to extend to any Act giving relief against a wrong, nor to Acts passed for the public welfare by which the King is certainly bound, though not named therein. It extends, however, to any statute tending to divest the King of any of his royal prerogatives respecting which he will not be bound thereby without express words. It is, however, well understood that none of the King's prerogatives extend to do injury to anyone, being created expressly for the benefit of the people, and where they have a contrary tendency they must be considered as contrary to law.

One of the attributes of sovereignty is, that the King in his political capacity is absolute perfection, he can do no wrong, nor suffer wrong.

An Act of Parliament is the exercise of the highest authority that this kingdom acknowledges. It has power to bind every subject in the land, and the dominions belonging thereto; even the King himself if particularly named: but it is one of the attributes of sovereignty that the King is not bound by any statute unless therein specially named, and this, notwithstanding that it is also said to be a maxim of English law, that "Rex debet esse sub lege, quia lex facit regem."

The King, then, is not bound by any Act of Parliament unless he be named therein by special and particular words. It is said that the most general words that could be devised, as, "any person or persons, bodies politic or corporate, &c.," would not affect him in the least if they had any tendency to restrain or diminish any of his rights or interests. It is upon the like principle that a statute which treats of things or persons of an

inferior rank, cannot by any general words be extended to those of a superior; as a statute treating of "deans, prebendaries, parsons, vicars, *and others having spiritual promotion*," would not extend to bishops, though they have spiritual promotion; deans being the highest persons named, and bishops being still higher. For, as to the King, it would be most mischievous to the public welfare if in him the strength of the executive power were liable to be curtailed by constructions and implications of the subject, without the express consent of such executive. Yet, where an Act of Parliament is made expressly for the preservation of public rights, and the suppression of public wrongs, without interfering with the established right and prerogatives of the Crown, it is said to be binding as well upon the King as upon subject. And it is said also with reference to ecclesiastical matters, that the King, as well as the subject, is bound by statute having reference thereto, unless expressly exempted, and that in all such statutes relating to ecclesiastical matters, the King comes within the meaning of the words, person or persons, body politic or corporate, as being *persona mixta,* and body politic also.

The King may, however, take the benefit of any particular statute, although not expressly named.

The following modern instance is a practical illustration of the maxim. The County Courts Act takes away the power of a superior court to remove a plaint from the county court by writ of *certiorari* where the debt or damage shall not exceed 5*l*. It has been held that the statutory provision in such case did not take away the prerogative right of the Crown to remove into the Court of Exchequer a cause affecting the revenue.

Jenk. Cent. 307; Locke on Gov. p. 2; Comyn's Dig.; Bacon's Abr. tit. Prerogative; Finch Law, 255; 1 Bla. Com.; Bracton, l. 3, tr. 1, c. 9; 2 Co. 46; 7 Co. 32; 11 Co. 68, 71, 74; Duchy of Lancaster, Plowd. Com. 213; Lord Bercley's case, Plowd. Com. 234, 240; Att.-Gen. *v.* Radloff, 11 Exch. 94; 9 & 10 Vict. c. 95; Mountjoy *v.* Wood, 1 H. & N. 58; Rex *v.* Wright, 3 B. & Ad. 683; Rex *v.* Ward, 4 Ad. & Ell. 460.

MAXIM LXXXIX.

Salus populi est suprema lex: (13 Co. 139.)—The welfare of the people, or of the public, is supreme law.

IN all cases of necessity the interests of an individual must give way to the interests of the multitude, even though it extend to his life. This is shown in the experience of every nation and people upon the face of the earth. The principle governing this rule extends to private, as well as to public interests. And from the peasant to the sovereign, all are amenable to its illimitable sway.

If a public road be rendered impassable by floods or otherwise, the public have a right of way over the adjoining property. Or, if there be but one road to a place, and no other mode of going, that is a public road and a common highway of necessity, and the public are entitled to use it as such. Nor will an obstruction be permitted to be erected in a public highway, without the authority of Parliament, where it is a nuisance to the general public, though it may be advantageous to some portion of the public. If a man's house be on fire, both it and other property not on fire, may be pulled down to prevent the fire spreading to other more valuable property. So in time of war, any and every man's property may be taken for the defence or preservation of the kingdom generally. It is upon this principle that private individuals are bound to perform certain public duties when called upon, as to prevent a breach of the peace, serve as jurors, soldiers, sailors, &c. It is upon this principle, also, that public officers acting in the proper discharge of their duties are not liable for injury to private individuals.

The payment of taxes by burgesses and citizens for the support of a particular municipality, and by owners and occupiers of property generally to defray the expenses of the nation at large, are apt instances of the liability of individuals to contribute to

the support of the whole nation, and to sacrifice private interests to the public good. And when it is considered that the general taxes of this country are imposed by the people themselves through their representatives in Parliament, it is not difficult to understand how intimately connected individual is with the general welfare, nor how highly the principle of this maxim is esteemed in this country.

All persons who are called upon to make individual sacrifice for the public good know that they receive a corresponding benefit in the protection afforded to them in their person and property by the laws of the country, and in other privileges thereby accorded to them.

The most arbitrary demand made upon an individual in this country now-a-days is where, contrary to the rule, "Nemo cogitur rem suam vendere, etiam justo pretio," he is by Act of Parliament compelled, at the instance of a few speculating individuals, to give up his private property for some commercial undertaking, as to give up some cherished country residence for the purpose of a line of railway, or his business premises for some so called town improvement, professedly of course, but often questionably, for the public good. In these cases, however, the principle said to be adopted is, that private interest is not to be sacrificed to a greater extent than is necessary adequately to secure the public interests, and that private interests are duly considered in all such cases, not only by Parliament in the making of such laws, but also by the courts of law and equity in the construction of them.

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13 Co. 139; Jenk. Cent. 85, 223; 4 Inst. 275; Denn *v.* Diamond, 4 B. & C. 245; *Re* Laws, 1 Exch. 447; Chichester *v.* Lethbridge, Willes, 72; Gosling *v.* Veley, 12 Q. B. 407; Stracey *v.* Nelson, 12 M. & W. 540; Taylor *v.* Loft, 8 Exch. 278; Webb *v.* Manchester & L. Rway. Co. 4 My. & Cr. 116; Simpson *v.* Lord Howden, 1 Keen, 598; Reg. *v.* Train, 31 L. J. 169, M. C.; Hutchinson *v.* Manchester & R. R. C. 14 M. & W. 694.

MAXIM XC.

Sic utere tuo ut alienum non lædas: (9 Co. 59.)—So use your own property as not to injure your neighbour's.

THE principle of this maxim applies to the public, and to public rights, as well as to individuals and to individual rights. and in such a manner as that when any such right is violated whereby damage is sustained, a right of action arises.

The maxim may be briefly illustrated by the following, out of many similar instances, viz.: the obstruction of ancient lights; the stopping, by obstruction or diversion, on your own land, of a flow of water on to your neighbour's; the erection of public works, brick-kilns, &c., emitting large quantities of smoke, offensive smells, &c., near to a private dwelling-house; all cases of nuisance, negligence, &c.

In an action for building a pig-sty and keeping pigs in it, so near to the plaintiff's house as that the smell from them was offensive to the plaintiff and the inmates of his house, and a nuisance; it was held that the action was well maintainable for the injury done to the plaintiff's house by the erection of the sty and keeping pigs, whereby the air entering the plaintiff's house was infected and corrupted. And this was conceded upon the principle that houses are necessary for the habitation of man, and the chief object of a house is that it should be fit for habitation, and anything depriving it of that necessary quality is an injury to the house and actionable; as, infecting the air, stopping up wholesome air, shutting out the light, &c.

The maxim applies as well to a right, as to property; as, where injury is done to one by the negligent use by another of his property. Upon this principle, the lessee and occupier of refreshment-rooms at a railway station, and of a cellar underneath, who employed a coal dealer to put coals into the cellar, and who, in so doing, left open a trap door in the platform of the station,

over which passengers had to go on their way out, and through which the plaintiff, a passenger, fell and was injured, was held liable in damages for the injury sustained by such passenger; it being his obvious duty to use the trap door in such a manner as not necessarily to create such danger, but to use reasonable precautions to see that there was no injury to travellers using the platform.

Where one in exercise of his private rights over his own property, on a portion of his own land, does what interferes with his neighbour's right to the enjoyment of pure air, and causes injury to his neighbour's property, which might be avoided by the acts complained of being done on other part of his own property, a court of equity will interfere, by injunction, to prevent a continuation of such acts. As, where the defendant, having entered into a contract with Government for the supply of a large quantity of bricks, obtained a lease of a tract of land, and began brick-burning operations, by constructing a line of kilns or clamps at a distance of about 340 yards south of the plaintiff's mansion house, and thirty from the boundary fence; the court restrained the defendant, by injunction, from lighting or firing any kilns within a distance of 650 yards from the plaintiff's house.

The maxim, "Ædificare in tuo proprio solo non licet quod alteri noceat"—It is not lawful to build upon your own land to the injury of another, is also applicable here.

Aldred's case, 9 Co. 58 & 59; 3 Inst. 201; 3 Bla. Com; Corley *v.* Hill, 4 C. B. (N.S.) 536; Jeffries *v.* Williams, 5 Exch. 797; Humphries *v.* Brogden, 12 Q. B. 739; Bradbee *v.* Mayor of London, 5 Scott N. R. 120; Chasemore *v.* Richards, 2 H. & N. 168; Vaughan *v.* Menlove, 3 Bing. N. C. 468; Broadbent *v.* Imp. Gas Co. 34 L. T. 1; Egerton *v.* Earl Brownlow, 4 H. L. Cas. 195; Hole *v.* Barlow, 31 L. T. 134; Walter *v.* Selfe, 17 L. T. 103; Pickard *v.* Smith, 4 L. T. (N.S.) 470; Beardmore *v.* Tredwell, 7 L. T. (N.S.) 207.

MAXIM XCI.

Summa ratio est, quæ pro religione facit: (Co. Litt. 341.)—The highest rule of conduct is that which is induced by religion.

THIS is the golden rule of every nation. All perfect laws are founded upon religion. The laws of all nations are supposed to be so founded. No people will deny this. The only question is, what is religion? and to the difference of opinion upon this question, is owing the difference in the customs, habits, and laws of the universe. The laws of England are supposed to be, in every respect, consistent with the religion there established.

By reason of this rule, the law gives to the church many privileges in order to favour religion. So upon a question as to in whom is the fee simple of glebe lands holden to the parson and his successors, it is said not to be in the patron or ordinary, but in abeyance; being vested in the parson and his successors, which the patron and ordinary are not, and this, because the parson has *curam animarum,* and is bound to celebrate divine service, and to administer the sacraments, and, therefore, no act of the predecessor can take away the entry of the successor, and drive him to a real action whereby he shall become destitute of maintenance in the meantime.

It is also said that a parson, for the benefit of the church and of his successor, is in some cases esteemed in law to have a qualified estate in fee simple; but, to do anything to the prejudice of his successor, in many cases, as to commit waste, he is considered as having only an estate for life. For, though a parson may make the living better for his successor, he is, otherwise, as a minor, he cannot make it worse. "Ecclesia fungitur vice minoris; meliorem facere potest conditionem suam, deteriorem nequaquam;" and, "Ecclesia meliorari non deteriori potest."

If a parson make a lease for years not warranted by any statute, the lease is void as against his successor, and no act of his successor can make it good; but it binds the lessor, for no man shall take advantage of his own wrong. The King even, is bound by Acts of Parliament which restrain ecclesiastical persons from committing waste unless special provision be made for him therein, and this, it must be observed, is contrary to the rule of law, "Le Roy n'est lié per ascun statute si il ne soit expressement nosme." Many Acts of Parliament have been passed limiting the granting of leases of glebe land to short terms of years, and regulating the terms of the grants so as not to injure the successor, and with a view to maintain the efficiency of the church in matters spiritual, by providing for the temporal wants of its ministers. For, if this were not so, it is said the result would be dilapidations, decay of spiritual livings, and of hospitality, and utter impoverishing of the successors, and by consequence decay of religion and justice.

The law will never presume or admit anything against reason or religious duty, and, therefore, it may be that it is a principle to be regarded in the laws of this country, that, though the King is not bound by any statute unless expressly named where it affects his temporal prerogative, yet, that must not be understood with reference to matters solely for the maintenance of the religion of this country, in respect of which he will be as much bound as the subject, unless thereby expressly exempted.

Genesis, xxii. 18, xxvi. 28, xxxi. 44; Exod. xix. 5, xx. xxi. xxii. & xxiii.; Levit. xxvi.; Mal. iv. 4; Matt. xi. 13; Acts, xiii. 39, vii. 53; Co. Litt. 311, 341; Wing. Max. 3; 5 Co. 14; 11 Co. 70; 1 Bla. Com; Noy Max. 1; Viner's Abr. Glebe A.; Com. Dig. Waste A.; Att.-Gen. *v.* Cholmley, 2 Eden, 304; Duke of Marlborough v. St. John, 16 Jur. 310; Edgerley *v.* Price, Finch Rep. 18; Parry *v.* Jones, 1 C. B. (N.S.) 345; Rogers's Eccl. Law; 32 Hen. 8, c. 28; 1 Eliz. c. 19; 1 Jac. c. 3; 13 Eliz. c. 10; 14 Eliz. cc. 11, 14; 18 Eliz. c. 6; 43 Eliz. c. 29; 43 Geo. 3, c. 108; 55 Geo. 3, c. 147; 6 Will. 4, c. 20; 6 & 7 Will. 4, c. 64.

MAXIM XCII.

Ubi eadem ratio ibi idem lex; et de similibus idem est judicium: (Co. Litt. 191.)—Where there is the same reason, there is the same law; and of things similar, the judgment is similar.

FOR the first part of this maxim it may be said, that law is founded upon reason, and is the perfection thereof, and that what is contrary to reason is contrary to law; and for the second, that where no established precedent can be found exactly in point, whereupon to ground a decision, the case in question may be properly decided by reference to similar cases.

The law will not admit any presumption against reason; for the law is reason and equity; to do right to all and to keep men from wrong and mischief; and therefore the law will never make any construction against law, equity, and right. Wherever there is the like reason there is the like law, for, "Ratio est anima legis." And therefore, "Ratio potest allegare deficiente lege;" but it must be, "Ratio vera et legalis, et non apparens." So, "Argumentum à simili," is good in law; "sed, similitudo legalis est casuum diversorum inter se collatorum similis ratio, quod in uno similium valet, valebit in altero, dissimilium dissimilis est ratio."

"Nihil quod est contra rationem est licitum." For, reason is the life of the law, and the common law is nothing but reason, and this reason is that which has been gotten by long experience, and not each man's natural reason. So it is said that this legal reason is "summa ratio;" for, if all the reason that is in men's heads were united into one, yet could he not make such a law as is the law of England. Because, by many succeeding ages, it has been fined and refined by an infinite number of grave and learned men and by long experience grown to such perfection as to justify the old rule, "Neminem oportet esse sapientorem

legibus"—No man ought to be wiser than the law, which is the perfection of reason.

If a man have power to grant an estate in fee simple he has power to demise the same estate for a term of 1000 years, or any less estate than the fee, and that for the like reason that as he has power over the fee which is the greatest estate, he has power over any less estate.

All cases of construction and intention are governed by this rule; as, where the terms of a deed are difficult to be understood, they are construed by reference to other like cases. And, as where the words of a will are in themselves at variance, the intention of the testator is considered in order to reconcile them. So, also, one clause in an instrument is looked at to find out the construction to be put upon another clause in the same instrument, and a man's acts at one time are looked to as guides to an opinion to be formed of his acts at another.

The preamble of an Act of Parliament is looked to as a guide to the construction of the Act itself, and as containing the reason for the enactment, and so one act of the Legislature is looked to as a guide in the construction of another. One circumstance is considered to induce another like circumstance, and all reasonable consequences, and so in similar cases. All argument under this maxim may be said to be *à priori*, or from cause to effect; as, when murder is imputed to any one having a hatred to the deceased, and an interest in his death; in this case his guilt being admitted, his hatred and interest serve as a motive and to account for the commission of the crime.

Co. Litt. 10, 97, 191, 232; 5 Co. 119; 7 Co. 18; 11 Co. 27; Jones *v.* Barkley, 2 Doug. 694; Alderson *v.* Langdale, 3 B. & Ad. 660; Doe *v.* Sutton, 9 C. & P. 706; Leith *v.* Irvin, 1 My. & K. 289; Master *v.* Miller, 1 Smith's L. C. 5 ed. 776; Harden *v.* Clifton, 1 Q. B. 524; Mason *v.* Bradley, 11 M. & W. 593; Hayward *v.* Bennett, 3 C. & B. 423; Hutton *v.* Warren, 1 M. & W. 475; Lord Say and Sele's case, 10 Mod. 46; Coles *v.* Hume, 8 B. & C. 568; Smith *v.* Wilson, 3 B. & Ad. 728.

MAXIM XCIII.

Ubi jus ibi remedium: (Co. Litt. 197.)—Where there is a right there is a remedy.

THE principle of this maxim has been at all times recognised in this country.

Probably, in former times, it was more looked to as a guide than at present, inasmuch as the remedies provided by the law were not then so numerous, nor so well understood or applied in redressing grievances, and first principles had to be more regarded in the recognition of an evil, and the finding a suitable remedy.

At the present day, however, remedies seem to be in advance of rights, and the Legislature seems to anticipate defects by its numerous and comprehensive enactments; but still the maxim exists, and is ready, when necessary, to supply every defect and lend its aid to redress every wrong.

Though the remedy here alluded to may be said to apply to all possible abuse of right by wrong, by whomsoever and from whatever cause arising, it may, however, be more particularly said to apply to all those cases where the common or statute law gives a right, or prohibits a wrong; and generally, whether or not any actual damage has arisen from violation of the right.

It must be borne in mind, that the right alluded to is one in contemplation of law, and not what any one chooses to think or to call a right, and therefore, if A. have a house, built within twenty years, and B., in digging out the foundation for an adjoining house, cause injury to the house of A., A. has no remedy for the injury so done to his house; for, by law he had not acquired a right as against the owner of the adjoining land to prevent him so digging out such foundation; though probably A. might, in such case, think it hard that his house should be injured by no act of his own, and that therefore his right had been invaded, and that there ought to be some remedy for him in such a case.

As this maxim shows that there is no right without a remedy, so there are others which show that where there is such right, the law will provide the remedy; as, "Lex semper dabit remedium;" and also, that where the law gives anything it gives the means also of obtaining it: "L'ou le ley done chose, la ceo done remedie a vener a ceo." It has been said that redress for injuries is the right of every Englishman. The words of Magna Carta, spoken in the person of the King; who, in judgment of law, says Sir Ed. Coke, is always present in all his courts repeating them, are these, "Nulli vendemus, nulli negabimus, aut differimus rectum vel justitiam;" and therefore, every subject for injury done to him *in bonis, in terris, vel personâ,* by any other subject without exception, may take his remedy by course of law, and have justice and right for the injury done to him, freely without sale, fully without denial, and speedily without delay.

It is also said, that by possibility there might be a wrong decision in the House of Lords, which would be a wrong without a remedy, for from that tribunal there is no appeal. Our criminal law, in those cases which are without appeal, may also be considered as affording another instance of the apparent inapplication of the maxim. And so our County Courts in those cases in which there is no appeal from the decision of the judge, and in like cases in all other courts, as well superior as inferior. And so it is with all authorities and powers exercising an arbitrary or strict legal authority without reference to the particular circumstances of each case; but as the instances just given are not wrongs in contemplation of law, they probably cannot be said to contravene the maxim.

Co. Litt. 197; 2 Roll. R. 17; 1 Bla. Com.; Magna Carta, c. 29; 2 Inst. 55; Johnstone *v.* Sutton, 1 T. R. 512; Doe *v.* Bridges, 1 B. & A. 859; Ashby *v.* White, 2 Ld. Raym. 955; Braithwaite *v.* Skinner, 5 M. & W. 327; Price *v.* Belcher, 3 C. B. 58; Shepherd *v.* Hills, 11 Exch. 67; St. Pancras Vestry *v.* Batterbury, 26 L. J. 243, C. P.; Tilson *v.* Warwick Gas Co. 4 B. & C. 967; Cane *v.* Chapman, 5 Ad. & E. 659; Couch *v.* Steel, 3 Ell. & Bl. 414; Farrow *v.* Hague, 10 L. T. (N.S.) 534.

MAXIM XCIV.

Utile per inutile non vitiatur: (Dyer, 292.)—That which is useful is not rendered useless by that which is useless.

THIS rule is chiefly applicable to what is called surplusage, or the introduction of useless and unnecessary words in deeds, contracts, pleadings, &c., which words, under this rule, may be rejected, and will not be allowed to vitiate, or render useless, the instrument in which they are so introduced.

Deeds and other writings, good in part and bad in part, whether through defect in the consideration, the drawing of the instrument, or otherwise, come within this rule.

And so it is as to misnomer in grants. Though there be a mistake in the name of the grantee in the grant, the grant is nevertheless good. As, if a grant be to J. S., and Em. his wife, and her name is Emelin; or to Alfred Fitzjames, by the name of Etheldred Fitzjames; or a grant be to Robert Earl of Pembroke, where his name is Henry; or to George Bishop of Norwich, where his name is John; or where a grant be to a mayor and commonalty; or a dean and chapter, and the mayor or dean is not named by his proper name; or a grant to J. S., wife of W. S., where she is *sole*. So a grant to W. at Stile, by the name of W. at Goppe, is good notwithstanding the mistake. All these and such like grants are good under this maxim, and under the rule, "Nihil facit error nominis cum de corpore constat;" notwithstanding the error in the description. So a grant of lands in the parish of St. Andrew's, Holborn, in the possession of W. G.; the lands being in the parish of St. Sepulchre's, though in possession of W. G., is not good; but, if the grant had been of lands in the possession of W. G. in the parish of St. Andrew's, it would have been good by reason of the first description being certain, notwithstanding the false addition.

Surplusage in pleading does not vitiate the plea unless it is such as is contrary to the matter before pleaded, and then it is said to do so, because it cannot be known what answer to make to the plea.

To obviate uncertainty in pleadings, however, and pleadings framed to embarrass, it has recently enacted that, if any pleading be so framed as to prejudice, embarrass, or delay the fair trial of the action, the opposite party may apply to the court or a judge to strike out or amend such pleading, &c., and this is now of common practice.

In divisible contracts, where there are several considerations for separate and distinct contracts, one legal and the other illegal, the contract supported by the legal consideration may stand though the other may not. The invalidity of the consideration for the one does not necessarily imply the invalidity of the consideration for the other. And where there are separate and independent covenants in the same deed the same rule applies, and the invalidity of the one covenant does not necessarily invalidate the other. For, it is said, that when a good thing and a void thing are put together in the same grant, the law shall make such a construction as that the grant shall be good for that which is good, and void for that which is void, under this maxim, "Utile per inutile non vitiatur:" and also in accordance with the rules, "Benignè faciendæ sunt interpretationes, propter simplicitatem laicorum, ut res magis valeat quam pereat;" "Falsa demonstratio non nocet," and "De minimis non curat lex."

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6 Co. 65; Co. Litt. 3, 303; Dyer, 119, 292, 503; Shepp. Touch. 236; 2 Wils. 341; Best *v.* Jolly, 1 Sid. 38; C. L. P. A. 1852, s. 52; 1 Vin. Abr. 332; Doe *v.* Pitcher, 6 Taunt. 369; Janes *v.* Whitbread, 11 C. B. 412; Wigg *v.* Shuttleworth, 13 East, 87; Forsyth *v.* Bristowe, 22 L. J. 70, Exch.; Hancock *v.* Noyes, 23 L. J. 110, Exch.; Collins *v.* Blantern, 1 Smith L. C. 5 ed. 310; Price *v.* Green, 16 M. & W. 346; Hesse *v.* Stevenson, 3 B. & P. 565.

MAXIM XCV.

Verba chartarum fortius accipiuntur contra proferentem: (Co. Litt. 36.)—The words of deeds are to be taken most strongly against him who uses them.

THIS maxim is subject to the rule, that an instrument must be construed according to the intention of the parties, gathered from the whole instrument, and the maxim applies only where there is an ambiguity, requiring explanation, in the language of the instrument; and where the construction to be put upon the language will not work an injury to third parties.

It applies to deeds, contracts, pleadings, and other written instruments, private statutes, &c., and may be exemplified as follows:—A., being owner of the fee, grants to B. an estate for life, without saying for whose life; this shall be taken to be for the life of B., an estate for a man's own life being considered greater than an estate for the life of another.

Where A., being principal, contracts as agent, he will not be allowed to sue as principal without first divesting himself of the character of agent; for, where a man assigns to himself the character of agent to another, whom he names, he will not be permitted at pleasure to shift his position and to declare himself the principal and the other a mere man of straw. As, where a man makes a purchase, pays a deposit, and agrees to comply with the conditions of sale as agent for another, and in the mere character of agent; this agreement will be taken most strongly against him when he seeks to take the benefit of the contract for himself, as principal and not as agent; to show that he was really treating in the character which he assigned to himself at the time of purchase; so in all cases of contracts, in which the skill or solvency of the person named as principal may reasonably be considered as a material ingredient in the contract.

The governing principle under this maxim, in regard to contracts, as against the party making them, seems to be, that he who makes an instrument should take care so to express his own liability as not to bind himself beyond his intention, and that the party who receives an instrument shall have a construction put upon it in his favour, because the words of the instrument are not his but those of the other party. A distinction is suggested between an ordinary contract and a guarantee, the latter being, not a contract by the party for payment of his own debt, or on his own behalf, but for the debt and on behalf of a third person, and that in such case there is a duty on the party taking the guarantee to see that it is so expressed that the party giving it be not deceived.

The maxim must, however, be understood with this limitation, that no wrong be thereby done, for it is a rule, "Quod legis constructio, non facit injuriam." And therefore it is said, if tenant for life grants the land he so holds for life to another, without saying for what time, this must be taken for an estate for his own life, and not for that of the grantee, for otherwise there would be a forfeiture.

A distinction is also made between a deed poll and an indenture, the former being executed by the grantor alone, and the words used his only; the latter by both parties, and the words the words of both. And further, that this rule, being one of rigour, is never to be resorted to but when all other rules of exposition fail.

Co. Litt. 36, 112, 183, 264, 303; Noy Max. 48; Bac. Abr. Covenant; Finch Law, 6; Plowd. 134; 2 Bla. Com.; Bristowe *v.* Whitmore, 9 W. R. 621; Udell *v.* Atherton, 7 Jur. (N.S.) 779; Howard *v.* Gossett, 10 Q. B. 383; Mason *v.* Pritchard, 12 East, 227; Nicholson *v.* Paget, 1 C. & M. 68; Webb *v.* Plummer, 2 B. & Ald. 752; Bickerton *v.* Burrell, 5 M. & S. 383; Rayner *v.* Grote, 15 M. & W. 365; West London R. C. *v.* L. & N. W. R. C. 11 C. B. 309; Dann *v.* Spurrier, 3 B. & P. 390; Long *v.* Bowring, 10 L. T. (N.S.) 683.

MAXIM XCVI.

Verba generalia restringuntur ad habilitatem rei vel aptitudinem personæ: (Bac. Max. Reg. 10.)—General words are restrained according to the nature of the thing or of the person.

IN considering the meaning to be given to general words in an instrument. the general scope of the document, in person, thing and intent. is to be borne in mind, and the general words are to be restrained so as to give effect to the particular and positive language. meaning and intent of the instrument.

Where a railway company bound themselves to work their railway *efficiently* and indemnify the covenantees from any damage or forfeiture that would result from a failure so to work the line under the Act of Parliament constituting the company, it was held that they satisfied that obligation by working it in a reasonable manner and so as to indemnify, and that they were not bound to work passenger trains.

Where A. purchased an estate charged with an annuity to B., and as part of the bargain covenanted to pay the annuity and indemnify the vendor, a declaration on the covenant alleging for breach nonpayment of the annuity without adding that the vendor had been damnified was held sufficient, and it was there said that in construing the covenant the court were to look at the subject of the contract, and consider all the terms of the deed; that a positive covenant might sometimes be controlled or qualified by other clauses in the deed; but that when there is a positive general covenant, that covenant is not controlled by subsequent clauses unless the inference is irresistible that the parties did not intend to make a general covenant, and that it could not be inferred from the indemnity in that deed that it was the intent of the parties thereby to restrain or qualify the positive covenant to pay.

Where in a declaration on a policy of assurance whereby a ship was insured "at and from New York to Quebec, during her stay there, thence to the United Kingdom; the said ship being warranted to sail from Quebec on or before the 1st of November, 1853:" it was held that there was no limitation of time as to the voyage between New York and Quebec, but that as to the voyage from Quebec to the United Kingdom the underwriters were not responsible, unless the vessel sailed from Quebec on or before the 1st of November, 1853; and it was there stated that the words, "the ship being warranted to sail from Quebec on or before the 1st of November, 1853," could not be understood in their literal sense, because they would then amount to a warranty that the vessel should arrive at Quebec and sail thence on or before the 1st of November, 1863, so that the vessel being lost on the intermediate voyage from New York to Quebec the underwriters would be liable, which could not be the intention of the parties. Therefore, that construction must be rejected, and the natural construction seemed to be that it was a warranty to sail from Quebec on or before the 1st of November, 1853, if the vessel arrived there by that time.

A bond upon condition, is a forcible illustration of the maxim, the bond itself being absolute, controlled, however, by the condition. As, where a bond was given to an employer conditioned for the due accounting by a clerk, with a recital that he was engaged at a salary of 100*l.* a year: the salary being subsequently changed to a payment by commission; it was held that the recital controlled the condition, and that the obligor was discharged by the change of mode of remuneration.

Bac. Max. Reg. 10; Co. Litt. 42; 3 Inst. 76; Shepp. Touch. 88; Plowd. 160; 1 T. R. 703; 1 Cowp. 12, 299; Holland *v.* Lea, 9 Exch. 430; Borrodaile *v.* Hunter, 5 Scott, 431; Saward *v.* Anstey, 2 Bing. 519; Baines and others *v.* Holland, 10 Exch. 802; Hesse *v.* Stevenson, 3 B. & P. 565; North Western R. C. *v.* Whinray, 10 Exch. 77; Lyndon *v.* Stanbridge, 2 H. & N. 51; West London R. C. *v.* London & North Western R. C. 11 C. B. 328, 339, 356; Lord Arlington *v.* Merricke, 2 Saund. 411.

MAXIM XCVII.

Verba relata hoc maximè operantur per referentiam ut in eis in esse videntur: (Co. Litt. 359.)—Words to which reference is made in an instrument have the same effect and operation as if they were inserted in the instrument referring to them; or, as the same maxim is otherwise more succinctly expressed, Verba illata in esse videntur: Words referred to are considered as incorporated.

THIS rule applies as well to cases where a particular clause in an instrument refers to another clause in the same instrument; as, to parcels, schedules, plans, &c., as it does to cases where reference is made in the instrument to some deed, plan, schedule, index, will, &c., altogether disconnected from the instrument in which the reference thereto is made. The following examples will suffice to show the meaning of the maxim.

A deed referring to furniture, fixtures, machinery, &c., in a schedule, being a totally distinct document, or to trusts declared in another deed; a deed whereof one clause, for brevity, refers to another clause with a *mutatis mutandis;* and affidavits referring to a deed, or other document, are all within the rule.

Where a plea was verified by affidavit which referred to the plea, the plea being intituled in the cause, the affidavit was held sufficient, though not specially intituled in the cause. And in that case it was observed that the court generally requires the affidavit to be intituled in the cause, that it may be sufficiently certain in what cause it is, so as in case of need to admit an indictment for perjury; but that the affidavit in question referring to the plea as annexed, which plea was so intituled, it amounted to the same thing.

A covenant in an under-lease to perform all the covenants in the original lease, except to pay rent and insure, will, in effect, comprise a covenant, contained in the lease, to pay all rates and

taxes whatsoever, and may render the under-lessee liable to rates for extraordinary works of a permanent nature, as for drainage and such like, according to the terms of the covenant in the original lease.

A deed conveyed a piece of land forming part of a close, by reference to a schedule annexed. The schedule described the land in one column as, 153 b ; in a second column as, a small piece marked on the plan ; in a third column as being in the occupation of J. E. ; and in a fourth as, 34 perches. At the time of the contract a line was drawn upon the plan as the boundary line dividing the piece 153 b, from the rest of the close of which it formed part. The plan was drawn to a scale, but upon measurement of the land it was found to be incorrect, and, 153 b, contained within the line so drawn, less than 34 perches according to actual measurement on the plan, and 27 perches only according to actual measurement of the land : it was held that the statement that the piece of land conveyed contained 34 perches, was merely *falsa demonstratio*, the prior portion of the description being sufficient to convey it, and that the deed passed only the portion of land actually marked off on the plan as measured by the scale. And the case was determined by the application of the maxims, *verba illata in esse videntur*, and *falsa demonstratio ;* according to the former of which it was considered the same thing as if the map or plan referred to in the deed had been actually inserted therein, and according to the latter, that the 34 perches having no relation to the plan must be taken to mean 34 perches by admeasurement, and that definition being sufficiently certain, no subsequent erroneous addition would vitiate it.

Co. Litt. 359 ; 2 Bla. Com. ; Dyer *v.* Green, 1 Exch. 71 ; Reg. *v.* Waverton, 17 Q. B. 570 ; Roe v. Tranmar, Willes, 682 ; Brain *v.* Harris, 10 Exch. 926 ; Duke of B. *v.* Slowman, 8 C. B. 617 ; Taylor *v.* Bullen, 5 Exch. 779 ; Doughty *v.* Bowman, 11 Q. B. 454 ; Galway v. Baker, 5 Cl. & Fin. 157 ; Sweet *v.* Seager, 2 C. B. (N.S.) 119 ; Piggott *v.* Stratton, 29 L. J. 1, Ch. ; Prince *v.* Nicholson, 5 Taunt. 333 ; Llewellyn *v.* Earl of Jersey and another, 11 M. & W. 183

MAXIM XCVIII.

Vigilantibus et non dormientibus, jura subveniunt: (Wing. 692.)—The vigilant, and not the sleepy, are assisted by the laws.

IN all actions, suits, and other proceedings at law and in equity, the diligent and careful actor is favoured, to the prejudice of him who is careless and neglectful. And this applies as well to the limitation of suits for the recovery of property in the possession of others through the default of the rightful owner, as to the refusing aid to suitors in respect of losses sustained by them through their own neglect or carelessness.

All statutes, also, made for the limitation of actions, whether as respects real or personal property, persons, or things, are made in furtherance of the principle of this maxim; not so much, however, with a view to assisting the vigilant, as to discouraging those who sleep on their rights, by preventing their setting up stale demands, to the injury and annoyance of those who are apparently in the peaceable enjoyment of their rights.

As to the limitation of real actions with reference to this maxim, it is said that there is a time of limitation of action beyond which no man shall avail himself of the possession of himself or his ancestors, or take advantage of the wrongful possession of his adversary; for, if a man be negligent for a long and unreasonable time in the prosecution of what he considers to be his rights, the law refuses afterwards to lend him any assistance to recover the possession of that to which he considers himself otherwise entitled; both with a view to punish him for his neglect, and also because it is to be presumed that the possessor or supposed wrong-doer has in such a length of time procured a legal title, otherwise he would have been sooner sued.

In the purchase of goods great care is necessary on the part of the purchaser in ascertaining that the goods contracted for are

delivered according to the contract; and if not, then immediately to return them and rescind the contract. If the nature of the goods require it, the purchaser should take care that they are warranted perfect; for, unless the seller expressly warrant the articles sold, or knew of some defect and used art to disguise it, the purchaser cannot, in case of defect, recover back the price. Nor will a general warranty extend to guard against defects which are plain and obvious to a man's senses, or where the false representation is known to the purchaser. Therefore, if a man purchase an article with a visible defect, he has no remedy, although the vendor warranted it perfect. Nor does the law, on a sale of goods by sample, with a warranty that the bulk shall agree with the sample, raise an implied warranty that the commodity shall be merchantable; and so, though a fair price be given for the goods, yet, should they turn out not to be merchantable in consequence of a latent defect which existed at the time of the sale, but which was unknown to the seller, the purchaser has no remedy against him. So, if on a warranty on the sale of goods, that the bulk shall accord with the sample, and no stipulation be inserted in the sale note that the goods shall be equal to the sample; no parol evidence is admissible to make such verbal stipulation a part of the contract; unless it can be proved that the sample was fraudulently exhibited to deceive the purchaser, and that the vendor has declared upon a deceitful representation. And where goods are sold with all faults, the seller is not liable to an action in respect of latent defects which were known to him, but not disclosed at the time of sale; unless he used some artifice to conceal them from the buyer.

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2 Inst. 690; Wing. 692; 1 Salk. 210; Roll. Abr. 90; Noy Max. c. 42; 3 Bla. Com.; Adamson *v.* Jarvis, 4 Bing. 73; Pasley *v.* Freeman, 3 T. R. 58; 16 Jac. 1, c. 21; 21 Jac. 1, c. 16; 3 & 4 Will. 4, c. 42; 19 & 20 Vict. c. 97; Roswell *v.* Vaughan, Cro. Jac. 197; Baglehole *v.* Walters, 3 Campb. 154; Morley *v.* Attenborough, 3 Exch. 500; Bluett *v.* Osborn, 1 Stark. 384; Parkinson *v.* Lee, 2 East, 313; *Re* Desborough, 10 L. T. (N.S.) 916.

MAXIM XCIX.

Volenti non fit injuria: (Wing. Max. 482.)—That to which a man consents cannot be considered an injury.

THIS maxim applies principally to those cases where a man suffers an injury for which he has a claim for compensation, but which claim he is considered as waiving by acquiescing in, or not objecting to, the injury committed; as, when a man connives at or condones the adultery of his wife, he cannot in such case obtain damages from the seducer, nor sustain a petition for divorce. Or, where a man is a joint-contributor to the injury he has received; as, where it has resulted partly from his own, and partly from another's negligence. It applies also to voluntary payments, voluntary releases and relinquishment of rights, and indeed to all those acts which a man does, or consents to, whereby he receives some injury, or loses some benefit which he might, by the exercise of his own free will and discretion, have avoided.

A man cannot complain of an injury which he has received through his own want of prudence and foresight. He cannot recover damages for an injury which, but for his own negligence or wrongful act, would not have happened. Therefore, damages cannot be recovered against a railway company for injuries to persons trespassing upon the line of railway, even though there should have been negligence in the management of the train. Nor can a man recover damages for injuries sustained by him in committing a trespass; as by climbing up to get into a cart; or by tumbling into a hole in his neighbour's field. Nor for injuries sustained by him in running against an obstruction negligently placed in the road by the defendant, if he were riding at an improper rate, or was intoxicated, or could have avoided the injury by riding with ordinary and proper care.

But this contributory negligence will not disentitle a plaintiff to recover damages unless it were such that, but for that his negligence, the negligent act causing the injury would not have happened; nor, if the party complained of might, by the exercise of due care on his part, have avoided the consequences of the carelessness on the part of the plaintiff. Thus, where a man negligently left an ass in a public highway, tied together by the fore-feet, and the defendant carelessly drove over and killed it, in the daytime, the ass being unable to get out of the way: it was held that the misconduct of the plaintiff in leaving the ass in the highway was no answer to the action, the defendant being bound to go along the road with care; as, were it otherwise, a man might justify driving over goods left in the street; or over a man lying there asleep; or against a carriage going on what is commonly called the wrong side of the road. Where one has wrongfully taken possession of the property of another and converted it to his own use, the owner may either disaffirm the act and treat him as a wrongdoer, or he may affirm his act and treat him as his agent; but, if he have once affirmed his act as agent, he cannot afterwards treat him as a wrongdoer.

So it is as to any right of action or defence to an action which a man has, and which he chooses to relinquish; as a right of action for a debt for which a creditor chooses to accept a composition; a right of action by a tenant for an illegal distress; a right of action for trespass or other injury; a defence under the Statute of Limitations; a right of way, or an easement of air, light, or other like privilege, the benefit of all of which rights a man may if he will, waive or relinquish, though to his own injury.

Wing. Max. 482; Plowd. 501; Bize *v.* Dickinson, 1 T. R. 286; Davies *v.* Mann, 10 M. & W. 549; Singleton *v.* E. C. R. Co., 7 C. B. (N.S.) 287; Mayor of Colchester *v.* Brook, 7 Q. B. 376; Jordin *v.* Crump, 8 M. & W. 787; Lygo *v.* Newbold, 9 Exch. 306; Valpey *v.* Manley, 1 C. B. 602; Butterfield *v.* Forrester, 11 East, 60; Greenland *v.* Chaplin, 5 Exch. 248; Strick *v.* De Mattos, 10 L. T. (N.S.) 593; Brewer *v.* Sparrow, 7 B. & C. 310; Lythgoe *v.* Vernon, 29 L. J. 164, Exch.

MAXIM C.

Voluntas reputabatur pro facto: (3 Inst. 69.)—The will is to be taken for the deed.

THIS is the old maxim with respect to treasonable offences: "In criminalibus voluntas reputabitur pro facto"—In criminal offences the will shall be taken for the deed. To constitute which offence of treason, the intention alone is sufficient.

In treasonable offences, that is, the compassing or imagining the death of the Sovereign, the law is more strict than in offences concerning the death of a subject; and in such cases the rule is, "Voluntas reputabitur pro facto," and, "Scribere est agere." Between subject and subject, however, the intent must be more manifest, and must be accompanied by undeniable overt acts.

An assault with intent to rob without taking money or goods is not felony; though the contrary was once holden.

An expressed intention to commit murder, without any overt act, is not felony; though with an overt act, under this maxim, it would be. As, where a servant having stolen his master's goods, went to his bedside and attempted to cut his throat, and thinking he had done so, left him and fled: he was adjudged to be hanged. For this overt act was evidence of the intent; and, in crimes, the intent and not the consequence is to be regarded. "Voluntas in delictis, non exitus spectatur." As also, where one, knowing there to be a crowd of persons in the street adjoining where he was, threw a stone over the wall amongst them, thinking to frighten them, but without intent to kill, but whereby, nevertheless, one was killed; this was adjudged to be manslaughter only; for there was, in that case, no intent to murder.

The intent will be gathered from all the surrounding circumstances. As, where on a charge of murder, the deceased having

been found tied hand and foot, and with something forced into his throat. apparently to prevent outcry, but whereby he had been suffocated, and the state of the premises where he was found showing that a burglary had been committed; the evidence against the prisoner being a chain of circumstances tending to identify him as one of two persons engaged in the burglary, the other not having been apprehended; and the jury being satisfied that the prisoner had been engaged in the burglary, and was a party to the violence on the person of the deceased; they were directed to find him guilty of murder, and which they accordingly did. The question of intent runs through all acts of a criminal nature. Thus, where a man; being indicted for having feloniously broken and entered a shop with intent to commit a felony; was proved to have made a hole in the roof of the shop, with intent to enter and steal: he was held to have been properly convicted of misdemeanor for attempting to commit a felony.

So a man who supplies a noxious drug to a woman with the intent that the woman shall take it for the purpose of procuring a miscarriage, is guilty of a misdemeanor, though the woman herself did not intend to take nor did take the noxious drug.

An infant under the age of seven years, however, is not within the meaning of the maxim, not being considered as having the capacity to intend to commit the crime of felony. And a child under fourteen years, indicted for murder, must be proved to have been conscious of the nature of the act committed, in order to render it guilty of murder.

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3 Inst. 5, 57, 69; 2 Roll. R. 89; 24 & 25 Vict. c. 100; Marsh *v.* Loader, 14 C. B. (N.S.) 535; Reg. *v.* Bain, 8 Jur. (N.S.) 418, 5 L. T. (N.S.) 647; Reg. *v.* Horsey, 3 F. & F. 287; Reg. *v.* Vamplew, 3 F. & F. 520; Reg. *v.* Franz, 2 F. & F. 580; Reg. *v.* Hillman, 9 L. T. (N.S.) 518; Reg. *v.* Hore, 3 F. & F. 315; Kerkin *v.* Jenkins, 9 Cox C. C. 311, Q. B.; Reg. *v.* Moore, 3 L. T. (N.S.) 710; Reg. *v.* Holt, 3 L. T. (N.S.) 310.

PART II.

EIGHT HUNDRED MAXIMS

WITH

TRANSLATIONS.

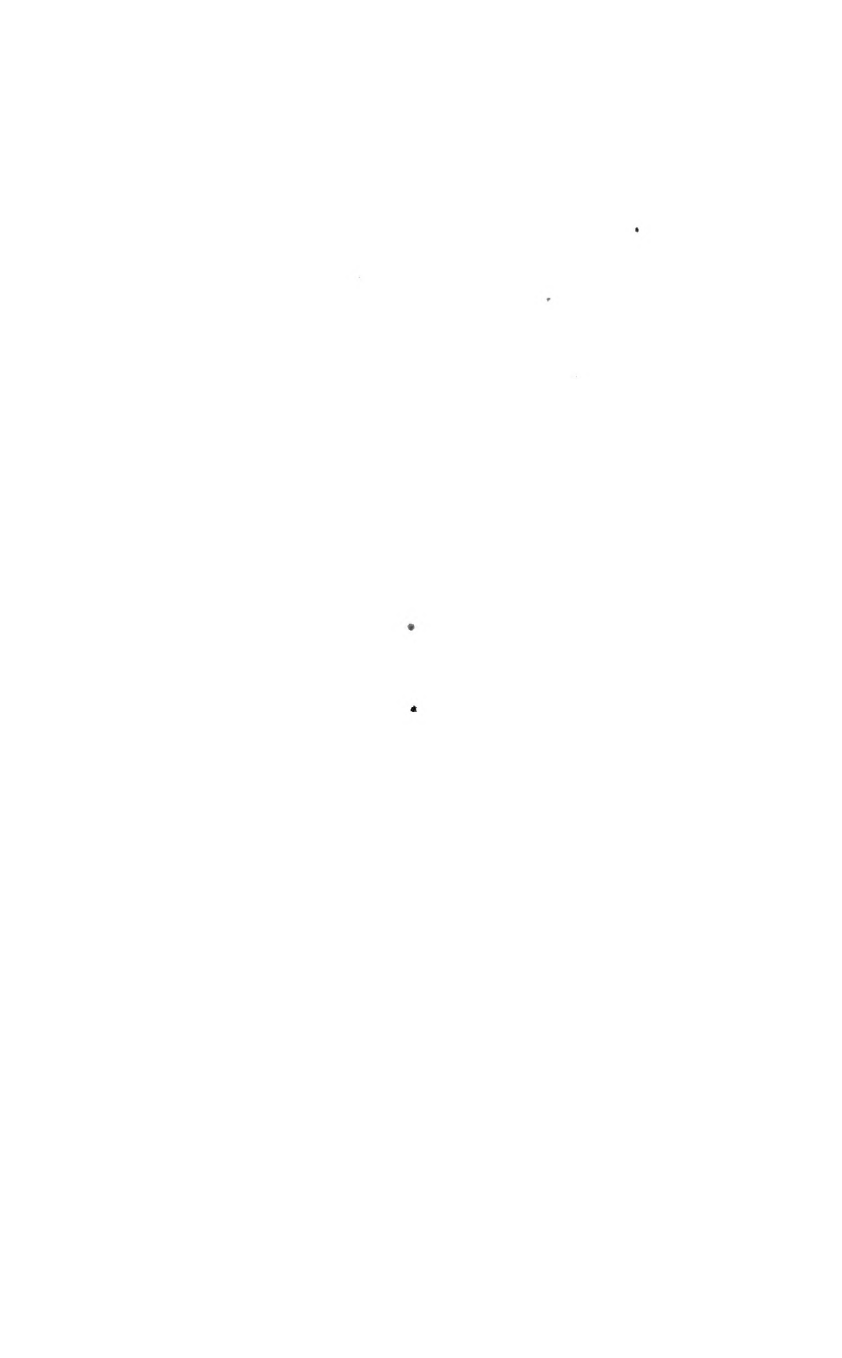

TABLE OF ALL USEFUL LEGAL MAXIMS

WITH

TRANSLATIONS.

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1. Absoluta sententia expositore non indiget: (2 Inst. 533.)—An absolute sentence requires no exposition.
2. Abundans cautela non nocet: (11 Co. 6.)— Abundant caution does no injury.
3. Accessorium non ducit, sed sequitur suum principale: (Finch Law, 128.)—The accessory does not lead, but follows its principal: (Maxim 1.)
4. Accessorius sequitur naturum sui principalis: (3 Inst. 139.)—An accessory follows the nature of its principal.
5. Accusare nemo se debet, nisi coram Deo: (Hawke, 222.)—No one is compelled to accuse himself, except before God.
6. Accusator post rationabile tempus non est audiendus, nisi se bene de omissione excusaverit: (Moor. 817.)—An accuser is not to be heard after a reasonable time unless he can account satisfactorily for the delay.
7. A communi observantiâ non est recedendum et minimè mutandæ sunt quæ certam interpretationem habent: (Wing. Max. 756.)—Common observance is not to be departed from, and things which have a certain meaning are to be changed as little as possible.
8. Acta exteriora indicant interiora secreta. (8 Co. 146.)—External actions show internal secrets.
9. Actio personalis moritur cum personâ: (Noy. Max. 20.)—A personal right of action dies with the person: (Maxim 2.)
10. Actio non datur non damnificato: (Jenk. Cent. 69.)—An action is not given to him who is not injured.

11. Actionum genera maxime sunt servanda: (Lofft's Rep. 460.) —The correct form of action should be followed.

12. Actori incumbit onus probandi: (Hob. 103.)—The weight of proof lies on a plaintiff.

13. Actus curiæ neminem gravabit: (Jenk. Cent. 118.)—An act of the court hurts no one: (MAXIM 3.)

14. Actus Dei vel legis nemini facit injuriam: (5 Co. 87.)—The act of God or of law is prejudicial to no one: (MAXIM 4.)

15. Actus inceptus cujus perfectio pendet voluntate partium recovari potest; si autem pendet ex voluntate tertiæ personæ vel ex contingenti, revocari non potest: (Bac. Max. Reg. 20.)—An act already begun, the completion of which depends on the will of the parties, may be recalled; but, if it depend on the consent of a third person, or on a contingency, it cannot.

16. Actus judiciarius coram non judice irritus habetur de ministeriali autem à quocunque provenit ratum esto: (Lofft's Rep. 458.)—A judicial act done in excess of authority is not binding; otherwise as to a ministerial act.

17. Actus non facit reum, nisi mens sit rea: (3 Inst. 107.)—The act itself does not constitute guilt unless done with a guilty intent: (MAXIM 5.)

18. Ad ea quæ frequentius accidunt jura adaptantur: (2 Inst. 137.)—The laws are adapted to those cases which most frequently occur: (MAXIM 6.)

19. Adjournamentum est ad diem dicere seu diem dare: (4 Inst. 27.)—An adjournment is to appoint a day or to give a day.

20. Ad officium justiciariorum spectat, uní cuique coram eis placitanti justitiam exhibere: (2 Inst. 451.)—It is the duty of justices to administer justice to every one seeking it from them.

21. Ad proximum antecedens fiat relatio, nisi impediatur sententiâ: (Jenk. Cent. 180.)—The antecedent has relation to that which next follows unless thereby the meaning of the sentence is destroyed.

22. Ad quæstionem facti non respondent judices; ad quæstionem juris non respondent juratores: (Co. Litt. 295.)—To questions of fact judges do not answer: To questions of law the jury do not answer: (MAXIM 7.)

23. Ædificare in tuo proprio solo non licet quod alteri noceat: (3 Inst. 201.)—It is not permitted to build upon one's own land so as it may be injurious to another.

24. Ædificatum solo, solo cedit: (Co. Litt. 4 *a.*)—That which is built upon the land goes with the land.

25. Æquitas est perfecta quædam ratio quæ jus scriptum interpretatur et emendat; nulla scriptura comprehensa, sed sola ratione consistens: (Co. Litt. 24.)—Equity is a sort of perfect reason which interprets and amends written law; comprehended in no code, but consistent with reason alone.

26. Æquitas est quasi equalitas: (Co. Litt. 24.)—Equity is as it were equality.

27. Æquitas sequitur legem: (Gilb. 136.)—Equity follows law.

28. Affinitas dicitur, cùm duæ cognationes, inter se divisæ, per nuptias copulantur, et altera ad alterius fines accidit: (Co. Litt. 157.)—It is called affinity, when two families, divided from one another, are united by marriage, and one of them approaches the confines of another.

29. Agentes et consentientes, pari pœnâ plectentur: (5 Co. 80.)—Parties both acting and consenting, are liable to the same punishment.

30. Alienatio rei prefertur juri accrescendi: (Co. Litt. 185 *a.*)—Alienation of property is favoured by the law rather than accumulation: (MAXIM 8.)

31. Allegans contraria non est audiendus: (Jenk. Cent. 16.)—Contrary allegations are not to be heard: (MAXIM 9.)

32. Allegans suam turpitudinem non est audiendus: (4 Inst. 279.)—A person alleging his own infamy is not to be heard.

33. Alternatica petitio non est audienda: (5 Co. 40.)—An alternative petition is not to be heard.

34. Ambiguitas verborum latens, verificatione suppletur, nam quod ex facto oritur ambiguum verificatione facti tollitur: (Bac. Max. Reg. 23.)—Latent ambiguity of words may be supplied by evidence; for ambiguity arising upon the deed is removed by proof of the deed: (MAXIM 10.)

35. Angliæ jura in omni casu libertati dant favorem: (Fortesc. c. 42.)—The laws of England in every case of liberty are favourable.

36. Arbitrium est judicium: (Jenk. Cent. 137.)—An award is a judgment.

37. Arbor dum crescit; lignum cum crescere nescit: (2 Bul. 82.)—A tree is so called whilst growing, but wood when it ceases to grow.

38. Argumentum ab impossibili plurimum valet in lege: (Co. Litt. 92.)—An argument deduced from an impossibility greatly avails in law.

39. Argumentum ab authoritate fortissimum est in lege: (Co. Litt. 254.)—An argument from authority is most powerful in law.

40. Argumentum ab inconvenienti plurimum valet in lege: (Co. Litt. 66.)—An argument from inconvenience avails much in law: (Maxim 11.)

41. Argumentum à marjori ad minus negativè non valet; valet è converso: (Jenk. Cent. 281.)—An argument from the greater to the less is of no force negatively, affirmatively it is.

42. Argumentum à simili valet in lege: (Co. Litt. 191.)—An argument from a like case avails in law.

43. Arma in armatos sumere jura sinunt: (2 Jus. 574.)—The laws permit to take arms against armed persons.

44. Assignatus utitur jure auctoris: (Hal. Max. 14.)—That which is assigned takes with it for its use the rights of the assignor: (Maxim 12.)

45. A verbis legis non est recedendum: (5 Co. 118.)—From the words of the law there is not any departure.

46. Benedicta est expositio quando res redimitur à destructione: (4 Co. 25.)—Blessed is the exposition by which anything is saved from destruction.

47. Benignè faciendæ sunt interpretationes, propter simplicitatem laicorum, ut res magis valeat quam pereat; et verba intentioni, non è contra, debent inservire: (Co. Litt. 36.)—Liberal constructions of written documents are to be made, because of the simplicity of the laity, and with a view to carry out the intention of the parties and uphold the document; and words ought to be made subservient, not contrary, to the intention: (Maxim 13.)

48. Benignior sententia in verbis generalibus seu dubiis est præferenda: (4 Co. 13.)—The most favourable construction is to be placed on general or doubtful expressions.

49. Boni judicis est ampliare jurisdictionem: (Chan. Prac. 329.) —A good judge will, when necessary, extend the limits of his jurisdiction: (MAXIM 14.)

50. Boni judicis est judicium sine dilatione mandare executioni: (Co. Litt. 289 *b*.)—It is the duty of a good judge to order judgment to be executed without delay.

51. Boni judicis est lites dirimere: (4 Co. 15.)—It is the duty of a good judge to prevent litigation.

52. Bonus judex secundum æquum et bonum judicat, et æquitatem stricto juri præfert: (Co. Litt. 24.)—A good judge decides according to justice and right, and prefers equity to strict law.

53. Breve judiciale non cadit pro defectu formæ: (Jenk. Cent. 43.)—A judicial writ fails not through defect of form.

54. CARCER ad homines custodiendos, non ad puniendos, dari debet: (Co. Litt. 260.)—A prison should be assigned to the custody, not the punishment of persons.

55. Casus fortuitus non est sperandus; et nemo tenetur divinare: (4 Co. 66.)—A fortuitous event is not to be foreseen; and no person is understood to divine.

56. Catalla reputantur inter minima in lege: (Jenk. Cent. 28.)—Chattels are considered in law among the minor things.

57. Causæ dotis, vitæ, libertatis, fisci, sunt inter favorabilia in lege: (Jenk. Cent. 284.)—Causes of dower, life, liberty, revenue, are among the favourable things in law.

58. Causa ecclesiæ publicis causis æquiparatur; et summa est ratio quæ pro religione facit: (Co. Litt. 341.)—The cause of the church is equal to public causes; and for the best of reasons, it is the cause of religion.

59. Caveat emptor; qui ignorare non debuit quod jus alienum emit: (Hob. 99.)—Let a purchaser beware; no one ought in ignorance to buy that which is the right of another: (MAXIM 15.)

60. Certum est quod certum reddi potest: (9 Co. 47.)—That is certain which is able to be rendered certain: (MAXIM 16.)

61. Cessante causâ, cessat effectus: (Co. Litt. 70.)—When the cause ceases, the effect ceases.

62. Cessante ratione legis, cessat ipsa lex: (Co. Litt. 70.)—The reason of the law ceasing, the law itself ceases: (MAXIM 17.)

63. Cessante statu primitivo, cessat derivatibus: (8 Co. 34.)—The original estate ceasing the derivative ceases.

64. Chartarum super fidem, mortuis testibus, ad patriam de necessitudine, recurrendum est: (Co. Litt. 36.) — The witnesses being dead, it must be referred, as to the truth of charters, out of necessity, to the country, *i.e.*, a jury.

65. Charters sont appellé "muniments" à "muniendo" quia muniunt et defendunt hæreditatem: (4 Co. 153.)—Charters are called "muniments" from "muniendo," because they fortify and defend the inheritance.

66. Chirographum apud debitorem repertum præsumitur solutum: (Halk. 20.)—A deed or bond found with the debtor is presumed to be paid.

67. Circuitus est evitandus; et boni judicis est lites dirimere, ne lis ex lite oritur: (5 Co. 31.)—Circuity is to be avoided; and it is the duty of a good judge to determine litigations, lest one lawsuit arise out of another.

68. Clausula generalis non refertur ad expressa: (8 Co. 154.)—A general clause does not refer to things expressed.

69. Clausula quæ abrogationem excludit ab initio non valet: (Bac. Max. Reg. 19.)—A clause which excludes abrogation avails not from the beginning.

70. Clausulæ inconsuetæ semper inducunt suspicionem: (3 Co. 81.)—Unusual clauses always excite suspicion.

71. Clerici non ponentur in officiis: (Co. Litt. 96.)—The clergy cannot be compelled to serve temporal offices.

72. Cogitationis pœnam nemo meretur: (2 Inst. Jur. Civ. 658.)—No man deserves punishment for a thought.

73. Cohæredes unâ personâ censentur, propter unitatem juris quod habent: (Co. Litt. 163.)—Co-heirs are deemed as one person on account of the unity of law which they possess.

74. Commercium jure gentium commune esse debet, et non in monopolium et privatum paucorum quæstum convertendum: (3 Inst. 56.)—Commerce, by the law of nations, ought to be common, and not converted to monopoly and the private gain of a few.

75. Communis error facit jus: (4 Inst. 240.)—Common error makes right: (MAXIM 18.)

76. Compromissarii sunt judices: (Jenk. Cent. 128.)—Arbitrators are judges.

77. Conditio beneficialis quæ statum construit, benignè, secundum verborum intentionem est interpretanda; odiosa, autem, quæ statum destruit, strictè, secundum verborum proprietatem, accipiunda: (8 Co. 90.)—A beneficial condition, which creates an estate, ought to be construed favourably, according to the intention of the words; but a condition which destroys an estate is odious, and ought to be construed according to the letter of the words.

78. Conditio præcedens adimpleri debet priusquam sequatur effectus: (Co. Litt. 201 *a.*)—A condition precedent must be fulfilled before the effect can follow.

79. Confessio, facta in judicio, omni probatione major est: (Jenk. Cent. 102.)—A confession made in judicial proceedings is of greater force than all proof.

80. Confessus in judicio pro judicato habetur, et quodammodo suâ sententiâ damnatur: (11 Co. 30.)—A person confessing a judgment is deemed as adjudged, and, in a manner, is condemned by his own sentence.

81. Confirmare est id quod firmum facere prius infirmum fuit: (Co. Litt. 295 *b.*)—To confirm is to make firm that which was before infirm.

82. Confirmare nemo potest priusquam jus ei acciderit: (10 Co. 48.)—No person can confirm a right before the right shall come to him.

83. Confirmatio est nulla ubi donum præcedens est invalidum: (Co. Litt. 295 *b.*)—There is no confirmation where the preceding gift is invalid.

84. Consensus non concubitus facit matrimonium; et consentire non possunt ante annos nubiles: (6 Co. 22.)—Consent, and

not concubinage, constitutes marriage; and they are not able to consent before marriageable years: (MAXIM 19.)

85. Consensus tollit errorem: (Co. Litt. 126.)—Consent takes away error: (MAXIM 20.)

86. Consentientes et agentes pari pœnâ plectentur: (5 Co. 80.) —Those consenting and those perpetrating are embraced in the same punishment.

87. Constructio legis non facit injuriam: (Co. Litt. 183 *a*.)—The construction of law does not work any injury.

88. Consuetudo debet esse certa; nam incerta pro nulla habentur: (Dav. 33.)—A custom should be certain, for uncertain things are held as nothing.

89. Consuetudo est optimus interpres legum: (2 Inst. 18.)—Custom is the best expounder of the laws.

90. Consuetudo et communis assuetudo vincit legem non scriptam, si sit specialis; et interpretatur legem scriptam, si lex sit generalis: (Jenk. Cent. 273.)—Custom and common usage overcome the unwritten law, if it be special; and interpret the written law if it be general.

91. Consuetudo ex certâ causâ rationabili usitata privat communem legem: (Litt. § 169.)—A custom grounded on a certain reasonable cause, supersedes the common law.

92. Consuetudo, licet sit magnæ auctoritatis nunquam tamen præjudicat manifestæ veritati: (4 Co. 18.)—A custom, though it be of great authority, should never, however, be prejudicial to manifest truth.

93. Consuetudo manerii et loci observanda est: (4 Co. 21.)—The custom of a manor and place is to be observed.

94. Consuetudo regni Angliæ est lex Angliæ: (Jenk. Cent. 119.) —The custom of England is the law of England.

95. Consuetudo semel reprobata non potest amplius induci: (Dav. 33.)—Custom once disallowed cannot be again alleged.

96. Contemporanea expositio est optima et fortissima in lege: (2 Inst. 11.)—A contemporaneous exposition is the best and strongest in law: (MAXIM 21.)

97. Contractus est quasi actus contrà actum: (2 Co. 15.)—A contract is, act against act.

98. Contrectatio rei alienæ, animo furandi, est furtum: (Jenk. Cent. 132.)—The touching of property not one's own, with an intention to steal, is theft.

99. Conventio privatorum non potest publico juri derogare: (Wing. 746.)—A convention of private persons cannot effect public right.

100. Copulatio verborum indicat acceptationem in eodem sensu: (Bac. iv. 26.)—The coupling of words shows that they are to be taken in the same sense.

101. Corpus humanum non recipit æstimationem: (Hob. 59.)—A human body is not susceptible of appraisement.

102. Crescente malitiâ crescere debet et pœna: (2 Inst. 479.)—Vice increasing, punishment ought also to increase.

103. Crimen læsæ majestatis omnia alia crimina excedit quoad pœnam: (3 Inst. 210.)—The crime of treason exceeds all other crimes as to its punishment.

104. Cui licet quod majus non debet quod minus est non licere: (4 Co. 23.)—He who has authority to do the more important act shall not be debarred from doing that of less importance.

105. Cuicunque aliquis quid concedit concedere videtur et id sine quo res ipsa esse non potuit: (11 Co. 52.)—The grantor of anything to another grants that also without which the thing granted would be useless: (MAXIM 22.)

106. Cuilibet in suâ arte perito est credendum: (Co. Litt. 125.)—Whosoever is skilled in his profession is to be believed: (MAXIM 23.)

107. Cujus est dare ejus est disponere: (Wing. Max. 53.)—Whose is to give, his is to dispose.

108. Cujus est solum ejus est usque ad cœlum; et ad inferos: (Co. Litt. 4.)—Whose is the land his is also that which is above and below it: (MAXIM 24.)

109. Cum duo inter se pugnantia reperiuntur in testamento ultimum ratum est: (Co. Litt. 112.)—Where two clauses in a will are repugnant one to the other, the last in order shall prevail: (MAXIM 25.)

110. Curia Parliamenti suis propriis legibus substitit: (4 Inst. 50.)—The Court of Parliament is governed by its own peculiar laws.

111. Cursus curiæ est lex curiæ: (3 Buls. 53.)—The practice of the Court is the law of the Court: (MAXIM 26.)

112. Custos statum hæredis in custodiâ existentis meliorem, non deteriorem, facere potest: (7 Co. 7.)—A guardian can make the estate of an existing heir under his guardianship better, but not worse.

113. DEBILE fundamentum fallit opus: (Noy Max. 20.)—A weak foundation destroys the superstructure.

114. Debitum et contractus sunt nullius loci: (7 Co. 3.)—Debt and contract are of no place.

115. Debitor non præsumiter donare: (Jur. Civ.)—A debtor is not presumed to give.

116. De fide et officio judicis non recipitur quæstio; sed de scientiâ, sive error sit juris aut facti: (Bac. Max. Reg. 17.)—Of the good faith and intention of a judge, a question cannot be entertained: but it is otherwise as to his knowledge or error, be it in law or in fact: (MAXIM 27.)

117. Delegata potestas non potest delegari: (2 Inst. 597.)—A delegated power cannot be delegated.

118. Delegatus non potest delegare: (*Ibid.*)—A delegate cannot delegate.

119. Deliberandum est diu quod statuendum est semel: (12 Co. 74.)—That which is to be resolved once for all, should be long deliberated upon.

120. De minimis non curat lex: (Cro. Eliz. 353.)—Of trifles the law does not concern itself: (MAXIM 28.)

121. De morte hominis nulla est cunctatio longa: (Co. Litt. 134.)—Concerning the death of a man no delay is long.

122. De non apparentibus, et non existentibus, eadem est ratio: (5 Co. 6.)—Of things which do not appear and things which do not exist, the rule in legal proceedings is the same: (MAXIM 29.)

123. Derivativa potestas non potest esse major primitivâ: (Noy Wing. 66.)—The power derived cannot be greater than that from which it is derived.

124. Designatio justiciariorum est à rege; jurisdictio vero ordinaria à lege: (4 Inst. 74.)—The appointment of justices is by the King; but ordinary jurisdiction is by the law.

125. Designatio unius est exclusio alterius, et expressum facit cessare tacitum: (Co. Litt. 210 *a.*)—The appointment of one is the exclusion of another, and that which is expressed makes that understood to cease.

126. De similibus idem est judicium: (7 Co. 18.)—Concerning similars the judgment is the same.

127. Deus solus hæredem facere potest non homo: (Co. Litt. 7.) —God alone, and not man, can make an heir.

128. Dies Dominicus non est juridicus: (Co. Litt. 135.)—The Lord's day (Sunday) is not juridical, or a day for legal proceedings: (MAXIM 30.)

129. Discretio est discernere per legem quid sit justum: (10 Co. 140.)—Discretion is to know through law what is just.

130. Distinguenda sunt tempora; distingue tempora, et concordabis legis: (1 Co. 24.)—Times are to be distinguished; distinguish times, and you will make the laws agree.

131. Dolus et fraus una in parte sanari debent: (Noy Max. 45.) —Deceit and fraud should always be remedied.

132. Domus sua cuique est tutissimum refugium: (5 Co. 91.)— To every one his house is his surest refuge; or, every man's house is his castle: (MAXIM 31.)

133. Dona clandestina sunt semper suspiciosa: (3 Co. 81.)— Clandestine gifts are always suspicious.

134. Donatio perficitur possessione accipientis: (Jenk. Cent. 109.) —A gift is perfected by the possession thereof by the donee.

135. Donationum alia perfecta, alia incepta et non perfecta; ut si donatio lecta fuit et concessa, ac traditio nondum fuerit subsecuta: (Co. Litt. 56.)—Some gifts are perfect, others incipient or not perfect; as if a gift were read and agreed to, but delivery had not then followed.

136. Donatur nunquam desinit possidere antequam donatarius incipiat possidere: (Dyer, 281.)—He who gives never ceases to possess before that the receiver begins to possess.

137. Dormiunt aliquando leges, nunquam moriuntur: (2 Inst. 161.)—The laws sometimes sleep, never die.

138. Doti lex favet; præmium pudoris est, ideò parcatur: (Co. Litt. 31.)—The law favours dower; it is the reward of chastity, therefore is to be preserved.

139. Droit ne done pluis que soit demandé: (2 Inst. 286.)—The law gives no more than is demanded.

140. Duo non possunt in solido unam rem possidere: (Co. Litt. 368.)—Two persons cannot possess one thing in entirety.

141. Duo sunt instrumenta ad omnes res aut confirmandas aut impugnandas—ratio et auctoritas: (8 Co. 16.)—There are two instruments either to confirm or impugn all things—reason and authority.

142. Ecclesia non moritur: (2 Inst. 3.)—The Church does not die.

143. En eschange il covient que les estates soient égales: (Co. Litt. 50.)—In an exchange it is necessary that the estates be equal.

144. Eodem modo quo quid constituitur, eodem modo destruitur: (6 Co. 53.)—In the same way in which anything is constituted, it may be destroyed.

145. Episcopus alterius mandato quam regis non tenetur obtemperare: (Co. Litt. 134.)—A bishop need not obey any mandate save the king's.

146. Error fucatus nudâ veritate in multis est probabilior; et sæpenumero rationibus vincit veritatem error: (2 Co. 73.)—Painted error appears in many things more probable than naked truth; and very frequently conquers truth by reasoning.

147. Error qui non resistitur, approbatur: (Doct. and Stud. c. 70.)—An error which is not resisted, is approved.

148. Errores ad sua principia referre, est refellere: (3 Inst. 15.)—To refer errors to their principles, is to refute them.

149. Eventus est qui ex causâ sequitur; et dicitur eventus quia ex causis evenit: (9 Co. 81.)—An event is that which follows from the cause; and is called an event, because it arises from causes.

150. Eventus varios res nova semper habet: (Co. Litt. 379.)—A new matter always induces various events.

151. Ex antecedentibus et consequentibus fit optima interpretatio : (2 Inst. 317.)—From that which goes before, and from that which follows, is derived the best interpretation : (MAXIM 32.)

152. Exceptio ejus rei cujus petitur dissolutio nulla est : (Jenk. Cent. 37.)—There is no exception of that thing of which the dissolution is sought.

153. Exceptio nulla est versus actionem quæ exceptionem perimit : (Jenk. Cent. 106.)—There is no exception against an action which entirely destroys an exception.

154. Exceptio probat regulam de rebus non exceptis : (11 Co. 41.)—An exception proves the rule concerning things not excepted.

155. Exceptio semper ultima ponenda est : (9 Co. 53.)—An exception is always to be put last.

156. Excessivum in jure reprobatur. Excessus in re qualibet jure reprobatur communi : (Co. 44.)—Excess in law is reprehended. Excess in anything is reprehended at common law.

157. Excusat aut extenuat delictum in capitalibus quod non operatur idem in civilibus : (Bac. Max. Reg. 15.)—A wrong, in capital cases, is excused or palliated. which would not be so treated in civil cases.

158. Ex diuturnitate temporis omnia præsumuntur esse solennitur acta : (Jenk. Cent. 185.)—From lapse of time, all things are presumed to have been done properly.

159. Ex dolo malo non oritur actio : (Cowp. 341.)—From fraud a right of action does not arise : (MAXIM 33.)

160. Executio est finis et fructus legis : (Co. Litt. 289 *b.*)—Execution is the end and fruit of the law.

161. Executio juris non habet injuriam : (2 Inst. 482.)—The execution of the process of the law does no injury : (MAXIM 34.)

162. Executio est executio juris secundum judicium : (3 Inst. 212.)—Execution is the execution of the law according to the judgment.

163. Exempla illustrant, non restrinqunt, legem : (Co. Litt. 240.) —Examples illustrate, not restrain, the law.

164. Ex facto jus oritur: (2 Inst. 49.)—The law arises from the deed.

165. Ex nudo pacto non oritur actio: (Plow. Com. 305.)—From a nude contract, *i.e.*, a contract without consideration, an action does not arise: (MAXIM 35.)

166. Ex procedentibus et consequentibus optima fiet interpretatio: (1 Rol. Rep. 375.)—The best interpretation is made from that which precedes and follows.

167. Expressa non prosunt quæ non expressa proderunt: (4 Co. 73.)—Things expressed do no good, which, not expressed, do no harm.

168. Expressio eorum quæ tacitè insunt, nihil operatur: (Co. Litt. 210.)—The expressing of those things which are implied, operates nothing.

169. Expressio unius personæ vel rei, est exclusio alterius: (Co. Litt. 210.)—The express mention of one person or thing is the exclusion of another: (MAXIM 36.)

170. Expressum facit cessare tacitum: (Co. Litt. 183.)—What is expressed makes what is silent to cease.

171. Extortio est crimen quando quis colore officii extorquet quod non est debitum, vel supra debitum, vel ante tempus quod est debitum. (10 Co. 102.)—Extortion is a crime, when, by colour of offence, any person extorts that which is not due, or above due, or before the time when it is due.

172. Extra legem positus est civiliter mortuus: (Co. Litt. 130 *a.*)—An outlaw is civilly dead.

173. Extraneus est subditus qui extra terram, *i.e.*, potestatem regis, natus est: (7 Co. 16.)—A foreigner is one who is born out of the territory, that is, the government, of the king.

174. Ex turpi causâ non oritur actio: (Cowp. 343.)—An action does not arise from a base cause.

175. FACTA tenet multa quæ fieri prohibentur: (12 Co. 125.)—Deeds contain many things which are prohibited to be done.

176. Factum à judice quod ad ejus officium non spectat, non ratum est: (10 Co. 76.)—An action of a judge, which relates not to his office, is of no force.

177. Facultas probationum non est augustanda: (4 Inst. 279.)—The faculty of proofs is not to be narrowed.

178. Falsa demonstratio non nocet: (6 T. R. 676.)—A false description does not vitiate a document: (MAXIM 37.)

179. Falsa orthographia, sive falsa grammatica non vitiat concessionem: (9 Co. 48.)—False spelling or false grammar does not vitiate a grant.

180. Fatetur facinus qui judicium fugit: (3 Inst. 14.)—He who flees judgment confesses his guilt.

181. Favorabiliores sunt executiones aliis processibus quibuscunque: (Co. Litt. 289.)—Executions are more preferred than all other processes whatever.

182. Felonia implicatur in quâlibet proditione: (3 Inst. 15.)—Felony is implied in every treason.

183. Felonia, ex vi termini, significat quodlibet capitale crimen felleo animo perpetratum: (Co. Litt. 391.)—Felony, by force of the term, signifies some capital crime perpetrated with a malignant mind.

184. Feodum est quod quis tenet ex quâcunque causâ, sive sit tenementum sive redditus: (Co. Litt. 1.)—A fee is that which any one holds, from whatever cause, whether it be a tenement or a rent.

185. Feodum simplex quia feodum idem est quod hæreditas, et simplex idem est quod legitimum vel purum, et sic feodum simplex idem est quod hæreditas legitima vel hæreditas pura: (Litt. § 1.)—A fee simple, so called because fee is the same as inheritance, and simple is the same as legitimate or pure; and thus fee simple is the same as a legitimate or pure inheritance.

186. Feodum talliatum, *i.e.*, hæreditas in quandam certitudinem limitata: (Litt. § 13.)—Fee tail, that is, an inheritance within a certain limit.

187. Festinatio justitiæ est noverca infortunii: (Hob. 97.)—Hasty justice is the stepmother of misfortune.

188. Fiat justitia, ruat cœlum: (Dyer, 385.)—Let right be done, though the heavens fall.

189. Fictio cedit veritati: fictio juris non est ubi veritas: (11 Co. 51.)—Fiction yields to truth: where there is truth, fiction of law does not exist.

190. Filiatio non potest probari: (Co. Litt. 126.)—Affiliation cannot be proved.

191. Finis rei attendendus est: (3 Inst. 51.)—The end of a thing is to be attended to.

192. Finis finem litibus imponit: (3 Co. 78.)—The end puts an end to litigations.

193. Finis unius diei est principium alterius: (2 Buls. 305.)—The end of one day is the beginning of another.

194. Firmior et potentior est operatio legis quàm dispositio hominis: (Co. Litt. 102.)—The operation of the law is firmer and more powerful than the will of man.

195. Flumina et portus publica sunt, ideoque jus piscandi omnibus commune est.—Navigable rivers and ports are public; therefore, the right of fishing there, is common to all.

196. Fœlix qui potuit rerum cognoscere causas: (Co. Litt. 231.)—Happy is he who can apprehend the causes of things.

197. Fœminæ non sunt capaces de publicis officiis: (Jenk. Cent. 237.)—Women are not qualified for public offices.

198. Forma legalis forma essentialis: (10 Co. 100.)—Legal form is an essential form.

199. Forma non observata infertur adnullatio actus: (12 Co. 7.)—Form not being observed, a nullity of the act is inferred.

200. Fortior est custodia legis quam hominis: (2 Rol. Rep. 325.)—The custody of the law is stronger than that of man.

201. Fortior et æquior est dispositio legis quam hominis: (Co. Litt. 234.)—The will of the law is stronger and more equal than that of man.

202. Fraus est celare fraudem: (1 Vern. 270.)—It is fraud to conceal fraud.

203. Fraus est odiosa et non præsumenda. (Cro. Car. 550.)—Fraud is hateful and not to be presumed.

204. Fraus et jus nunquam cohabitant: (Wing. 680.)—Fraud and justice never dwell together.

205. Frustrà probatur quod probatum non relevat: (Halk. Max. 50.)—It is useless to prove that which, being proved, would not avail.

206. Furiosus stipulare non potest, nec aliquid negotium agere, qui non intelligit quid agit: (4 Co. 126.)—A madman, who knows not what he does, cannot make a bargain, nor transact any business.

207. Furtum est contrectatio rei alienæ fraudulenta, cum animo furandi, invito illo domino cujus res illa fuerat: (3 Inst. 107.)—A theft is the fraudulent handling of another's property with an intention of stealing, the proprietor, whose property it was, not willing it.

208. Furtum non est ubi initium habet detentionis per dominum rei: (3 Inst. 107.)—It is not theft where the commencement of the detention arises through the will of the owner of the thing detained.

209. Generale dictum generaliter est interpretandum: generalia verba sunt generalitur intelligenda: (3 Inst. 76.)—A general saying is to be interpreted generally: general words are to be understood generally.

210. Generale nihil certi implicat: (2 Co. 33.)—A general expression implies nothing certain.

211. Generale tantum valet in generalibus quantum singulare in singulis: (11 Co. 59.)—What is general prevails as much amongst things general as what is particular amongst things particular.

212. Generalis clausula non porrigitur ad ea quæ antea specialiter sunt comprehensa: (8 Co. 154.)—A general clause does not extend to those things which are before specially provided for.

213. Hæreditas, alia corporalis, alia incorporalis: corporalis est, quæ tangi potest et videri; incorporalis quæ tangi non potest nec videri: (Co. Litt. 9.)—Inheritance, some corporeal, others incorporeal: corporeal is that which can be touched and seen; incorporeal, that which can neither be touched nor seen.

214. Hæreditas est successio universum jus quod defunctus habuerat: (Co. Litt. 237.)—Inheritance is the succession to every right which was possessed by the late possessor.

215. Hæreditus, n'est pas tant solement entendue lou home ad terres ou tenements per discent d'enheritage, mes auxi chescun fee simple ou tail que home ad per son purchase

puit estre dit enheritance, pur ceo que ses heirs luy purront enheriter: (Co. Litt. 26.)—Inheritance is not to be understood as comprehending only all the lands and tenements of inheritance which a man has by descent; but also every fee simple or fee tail which he has by purchase is also called inheritance, because his heirs can inherit it from him.

216. Hæredum appellatione veniunt hæredes hæredum in infinitum: (Co. Litt. 9.)—By the title of heirs come the heirs of heirs *in infinitum*.

217. Hæres est aut jure proprietatis, aut jure representionis: (3 Co. 40.)—An heir is by right of property, or by right of representation.

218. Hæres est eadem persona cum antecessore, pars antecessoris: (Co. Litt. 22.)—The heir is the same person with his ancestor,—a part of his ancestor.

219. Hæres est nomen collectiorum: (1 Vent. 215.)—Heir is a collective name.

220. Hæres est nomen juris, filius est nomen naturæ: (Bacon Max. Reg. 11.)—Heir is a name of law, son is a name of nature.

221. Hæres legitimus est quem nuptiæ demonstrant: (Co. Litt. 7.) —The lawful heir is he whom wedlock shows so to be: (Maxim 38.)

222. Hæres minor uno et viginti annis non respondebit, nisi in casu dotis: (Moor, 348.)—An heir minor, under twenty-one years of age, is not answerable, except in case of dower.

223. Home ne serra puny pur suer des briefes en court le roy, soit il a droit ou a tort: (2 Inst. 228.)—A man shall not be punished for suing out writs in the king's court, whether he has a right or a wrong.

224. Homicidium vel hominis cædium, est hominis occisio ab homine facta: (3 Inst. 54.)—Homicide or slaughter of a man, is the killing of a man by a man.

225. Homo potest esse habilis et inhabilis diversis temporibus: (5 Co. 98.)—A man may be capable and incapable at divers times.

226. Hostes sunt qui nobis vel quibus nos bellum decernimus; cæteri proditores vel prædones sunt: (7 Co. 24.)—Enemies are those with whom we are at war; all others are thieves or pirates.

227. Ibi semper debet fieri triatio, ubi juratores meliorem possunt habere notitiam: (7 Co. 1.)—A trial should always be had where the jury can get the best information.

228. Id certum est quod certum reddi potest; sed id magis certum est quod de semet ipso est certum: (9 Co. 47.)—That is certain which can be made certain, but that is most certain which is certain on the face of it.

229. Idem agens et patiens esse non potest: (Jenk. Cent. 40.)—The same person cannot be both the agent and the patient.

230. Idem est facere et non prohibere cum possis; et qui non prohibet cum prohibere possit in culpâ est: (3 Inst. 158.)—To commit and not prohibit, when in your power, is the same thing; and he who does not, when he can prohibit, is in fault.

231. Idem est nihil dicere et insufficienter dicere: (2 Inst. 178.)—It is the same thing to say nothing and not to say sufficient.

232. Idem est none esse et non apparere: (Jenk. Cent. 207.)—It is the same not to be as not to appear.

233. Idem semper antecedenti proximo refertur: (Co. Litt. 20.)—The same is always referred to its next antecedent.

234. Id perfectum est quod ex omnibus suis partibus constat; et nihil perfectum est dum aliquid restat agendum: (9 Co. 9.)—That is perfect which is complete in all its parts; and nothing is perfect whilst anything remains to be done.

235. Id quod est magis remotum, non trahit ad se quod est magis junctum sed è contrario in omni casu: (Co. Litt. 164.)—That which is more remote does not draw to itself that which is nearer, but on the contrary in every case.

236. Ignorantia eorum quæ quis scire tenetur non excusat: (Hale Pl. Cr. 42.)—Ignorance of those things which everyone is bound to know, excuses not.

237. Ignorantia facti excusat; ignorantia juris non excusat: (1 Co. 177.)—Ignorance of the fact excuses; ignorance of the law does not excuse: (Maxim 39.)

238. Ignorantia judicis est calamitas innocentis: (2 Inst. 591.) —The ignorance of a judge is the misfortune of the innocent.

239. Illud quod alias licitum non est necessitas facit licitum; et necessitas inducit privilegium quod jure privatur: (10 Co. 61.)—That which is otherwise not permitted, necessity permits; and necessity makes a privilege which supersedes law.

240. Impotentia excusat legem: (Co. Litt. 29.) — Impotency excuses law: (MAXIM 40.)

241. Improbi rumores dissipati sunt rebellionis prodromi: (2 Inst. 226.)—Wicked rumours spread abroad are the forerunners of rebellion.

242. Impunitas semper ad deteriora invitat: (5 Co. 69.)—Impunity always invites to greater crimes.

243. In æquali jure melior est conditio possidentis: (Plow. 296.) —In equal rights the condition of the possessor is the better: or, where the rights of the parties are equal, the claim of the actual possessor shall prevail: (MAXIM 41.)

244. In altâ proditione nullus potest esse accessorius sed principalis solummodo: (3 Inst. 138.)—In high treason there is no accessory, but principal alone.

245. In Angliâ non est interregnum: (Jenk. Cent. 205.)—In England there is no interregnum.

246. In atrociorribus delictis punitur affectus licet non sequatur effectus: (2 Rol. Rep. 89.)—In more atrocious crimes the intent is punished, though an effect does not follow.

247. In casu extremæ necessitatis omnia sunt communia: (H. P. C. 54.)—In cases of extreme necessity, everything is in common.

248. Incerta pro nullis habentur: (Dav. 33.)—Things uncertain are reckoned as nothing.

249. Incerta quantitas vitiat actum: (1 Rol. Rep. 465.)—An uncertain quantity vitiates the act.

250. Incivile est nisi tota sententia inspecta de aliquâ parte judicare: (Hob. 171.)—It is unlawful to judge of any part unless the whole sentence is examined.

251. Inclusio unius est exclusio alterius: (Co. Litt. 210.)—The inclusion of one is the exclusion of another.

252. In consimili casu, consimile debet esse remedium: (Hard. 65.)—In similar cases the remedy should be similar.

253. In consuetudinibus non diuturnitas temporis sed soliditas rationis est consideranda: (Co. Litt. 141.)—In customs, not the length of time but the strength of the reason should be considered.

254. In contractis tacitè insunt quæ sunt moris et consuetudinis. —In contracts, those things which are of manner and custom are considered as incorporated.

255. In contractibus, benigna; in testamentis, benignior; in restitutionibus, benignissima interpretatio facienda est: (Co. Litt. 112.)—In contracts, the interpretation is to be liberal; in wills, more liberal; in restitutions, most liberal.

256. In criminalibus probationes debent esse luce clariores: (3 Inst. 210.)—In criminal cases the proofs ought to be clearer than light.

257. In criminalibus voluntas reputabitur pro facto: (3 Inst. 106.)—In criminal acts the will is taken for the deed.

258. Indefinitum equipollet universali: (1 Vent. 368.)—The indefinite equals the universal.

259. Indefinitum supplet locum universalis: (4 Co. 77.)—The indefinite supplies the place of the universal.

260. In disjunctivis sufficit alteram partem esse veram: (Wing. 13.)—In disjunctives it suffices if either part be true.

261. In fictione juris semper æquitas existit: (11 Co. 51.)—In fiction of law equity always exists: (Maxim 42.)

262. Infinitum in jurè reprobatur: (9 Co. 45.)—Infinity in law is reprehensible.

263. In judicio non creditur nisi juratis: (Cro. Car. 64.)—In judgment there is no credit, save to things sworn.

264. In jure non remota causa, sed proxima spectatur: (Bac. Max. Reg. 1.)—In law the proximate, and not the remote, cause is to be regarded: (Maxim 43.)

265. Injuria illata judici, seu locum tenenti regis, videtur ipsi regi illata, maximè si fiat in exercentem officii: (3 Inst. 1.)—

An injury offered to a judge, or person representing the king, is considered as offered to the king himself, especially if it be done in the exercise of his office.

266. Injuria non præsumitur: (Co. Litt. 232.)—Injury is not to be presumed.

267. In novo casu, novum remedium apponendum est: (2 Inst. 3.)—A new remedy is to be applied to a new case.

268. In odium spoliatoris omnia præsumuntur: (1 Vern. 19.)—All things are presumed in odium of a despoiler.

269. In omni re nascitur res quæ ipsam rem exterminat: (2 Inst. 15.)—In everything is born that which destroys the thing itself.

270. In pari delicto, potior est conditia possidentis: (4 T. R. 564.)—In equal fault, the condition of the possessor is the best.

271. In præparatoriis ad judicium favetur actori: (2 Inst. 57.)—In things preceding judgment the plaintiff is favoured.

272. In presentia majoris cessat potentia minoris: (Jenk. Cent. 214.)—In the presence of the major, the power of the minor ceases.

273. In quo quis delinquit, in eo de jure est puniendus: (Co. Litt. 233.)—In that which anyone offends, in that according to law is he to be punished.

274. In rebus quæ sunt favorabilia animæ, quamvis sunt damnosa rebus, fiat aliquando extensio statuti: (10 Co. 101.)—In things that are favourable to the spirit, though injurious to the things, an extension of a statute should sometimes be made.

275. In re dubiâ magis inficiatio quam affirmatio intelligenda: (Godb. 37.)—In a doubtful case the negative is rather to be understood than the affirmative.

276. In republicâ maximè conservanda sunt jura belli: (2 Inst. 58.)—The laws of war are especially to be preserved in the state.

277. In restitutionem, non in pœnam hæres succedit: (2 Inst. 198.)—The heir succeeds to the restitution, not to the penalty.

278. Instans est finis unius temporis et principium alterius: (Co. Litt. 185.)—An instant is the end of one time, and the beginning of another.

279. Intentio inservire debet legibus, non leges intentioni: (Co. Litt. 314.)—Intention ought to be subservient to the laws; not the laws to intention.

280. Interest reipublicæ quod homines conserventur: (12 Co. 62.) —It concerns the state that men be preserved.

281. Interest reipublicæ res judicatas non rescindi: (2 Inst. 359.) —It concerns the state that judgments be not rescinded.

282. Interest reipublicæ suprema hominum testamenta rata haberi: (Co. Litt. 236.)—It concerns the state that men's last wills be confirmed.

283. Interest reipublicæ ut quilibet re suâ bene utatur: (6 Co. 37.)—It is to the advantage of the state that every one uses his property properly.

284. Interest reipublicæ ut sit finis litium: (Co. Litt. 303.)—It concerns the state that there be an end of lawsuits: (MAXIM 44.)

285. Interpretare et concordare leges legibus est optimus interpretandi modus: (8 Co. 169.)—To interpret and to reconcile the laws to laws, is the best mode of interpretation.

286. Interpretatio fienda est ut res magis valeat quam pereat: (Jenk. Cent. 198.)—That interpretation is to be made, that the thing may rather stand than fall.

287. Interpretatio talis in ambiguis semper fienda, est, ut evitetur inconveniens et absurdum: (4 Inst. 328.)—In ambiguous things such an interpretation is to be made, that what is inconvenient and absurd is to be avoided.

288. Interruptio multiplex non tollit prescriptionem semel obtentam: (2 Inst. 654.)—Frequent interruption does not take away a prescription once acquired.

289. In traditionibus scriptorum, non quod dictum est sed quod gestum est inspicitur: (9 Co. 137.)—In the delivery of deeds, not what is said but what is done is regarded.

290. Inveniens libellum famosum et non corrumpens punitur: (Moor. 813.)—He who finds a notorious libel, and does not destroy it, is punished.

291. In verbis non verba sed res et ratio quærenda est: (Jenk. Cent. 132.)—In words, not the words but the thing and the meaning are to be inquired after.

292. JUDEX æquitatem semper spectare debet: (Jenk. Cent. 45.) —A judge ought always to regard equity.

293. Judex bonus nihil ex arbitrio suo faciat, nec propositione domesticæ voluntatis, sed juxta leges et jura pronunciet: (7 Co. 27.)—A good judge does nothing from his own judgment, or from a dictate of private will; but he will pronounce according to law and justice.

294. Judex est lex loquens: (7 Co. 4.)—A judge is the law speaking.

295. Judex habere debet duos sales: salem sapientiæ, ne sit insipidus, et salem conscientiæ, ne sit diabolus: (3 Inst. 147.)—A judge should have two salts: the salt of wisdom, lest he be insipid; and the salt of conscience, lest he be devilish.

296. Judex non potest esse testis in propriâ causâ: (4 Inst. 279.) —A judge cannot be a witness in his own cause.

297. Judex non potest injuriam sibi datam punire: (12 Co. 113.) —A judge cannot punish an injury done to himself.

298. Judex non reddit plus quam quod petens ipse requirit: (2 Inst. 286.)—A judge does not give more than that which he seeking, requires.

299. Judices non tenentur exprimere causam sententiæ suæ: (Jenk. Cent. 75.)—Judges are not bound to explain the reason of their sentence.

300. Judici officium suum excedenti non paretur: (Jenk. Cent. 139.)—To a judge exceeding his office there is no obedience.

301. Judicia in deliberationibus crebro maturescunt, in accelerato processu nunquam: (3 Inst. 210.)—Judgments become frequently matured by deliberations, never by hurried process.

302. Judicia sunt tanquam juris dicta, et pro veritate accipiuntur: (2 Inst. 537.)—Judgments are as it were the dicta of the law, and are received as truth.

303. Judiciis posterioribus fides est adhibenda: (13 Co. 14.)—Credit is to be given to the latest decisions.

304. Judicis est judicare secundum allegata et probata: (Dyer, 12.)—It is the duty of a judge to decide according to facts alleged and proved.

305. Judicis officium est opus diei in die suo perficere: (2 Inst. 256.)—It is the duty of a judge to finish the work of each day within that day.

306. Judicis officium est ut res ita tempora rerum quærere, quæsito tempore tutus eris: (Co. Litt. 171.)—It is the duty of a judge to inquire as well into the time of things as into things themselves; by inquiring into the time, you will be safe.

307. Judicium a non suo judice datum nullius est momenti: (10 Co. 76.)—A judgment given by an improper judge is of no importance.

308. Judicium non debet esse illusorium; suum effectum habere debet: (2 Inst. 341.)—A judgment ought not to be illusory; it ought to have its consequence.

309. Judicium redditur in invitum, in præsumptione legis: (Co. Litt. 248.)—Judgment in presumption of law, is given contrary to inclination.

310. Judicium semper pro veritate accipitur: (2 Inst. 380.)—Judgment is always taken for truth.

311. Jura ecclesiastica limita sunt infra limites separatos: (3 Buls. 53.)—Ecclesiastical laws are limited within separate bounds.

312. Jura eodem modo destruuntur quo constituuntur: (2 Dwarr. Stat. 672.)—Laws are abrogated by the same means by which they were made.

313. Jura naturæ sunt immutabilia: (Jacob. 63.)—The laws of nature are unchangeable.

314. Jura publica anteferenda privatis: (Co. Litt. 130.)—Public rights are to be preferred to private.

315. Jura publica ex privato promiscue decidi non debent: (Co. Litt. 181 *b*.)—Public rights ought not to be promiscuously decided out of a private transaction.

316. Jura regis specialia non conceduntur per generalia verba: (Jenk. Cent. 103.)—The special rights of the king are not affected by general words.

317. Juramentum est indivisibile, et non est admittendum in parte verum et in parte falsum: (4 Inst. 279.)—An oath is indivisible, and is not to be received as partly true and partly false.

318. Jurato creditur in judicio: (3 Inst. 79.)—In judgment credit is given to the swearer.

319. Juratores debent esse vicini, sufficientes, et minus suspecti: (Jenk. Cent. 141.)—Jurors ought to be neighbours, of sufficient estate, and free from suspicion.

320. Jurare est Deum in testem vocare, et est actus divini cultus: (3 Inst. 165.)—To swear is to call God to witness, and is an act of religion.

321. Juratores sunt judices facti: (Jenk. Cent. 61.)—Juries are the judges of fact.

322. Juri non est consonum quod aliquis accessorius in curiâ regis convincatur antequam aliquis de facto fuerit attinctus: (2 Inst. 183.)—It is not consonant to justice that any accessory should be convicted in the king's court, before some one has been attainted of the fact.

323. Juris effectus in executione consistit: (Co. Litt. 289.)—The effect of law consists in execution.

324. Jus accrescendi inter mercatores, pro beneficio commercii locum non habet: (Co. Litt. 182.)—For the benefit of commerce, there is not any right of survivorship among merchants: (Maxim 45.)

325. Jus accrescendi præfertur oneribus: (Co. Litt. 185.)—The right of survivorship is preferred to incumbrances.

326. Jus accrescendi præfertur ultimæ voluntati: (Co. Litt. 185.)—The right of survivorship is preferred to the last will.

327. Jus descendit, et non terra: (Co. Litt. 345.)—The right descends and not the land.

328. Jus est norma recti; et quicquid est contra normam recti est injuria: (3 Buls. 313.)—Law is a rule of right; and whatever is contrary to the rule of right is a wrong.

329. Jus ex injuriâ non oritur: (4 Bing. 639.)—A right does not arise out of a wrong.

330. Jusjurandi forma verbis differt, re convenit; hunc enim sensum habere debet, ut Deus invocetur: (Grotius, l. 2, c. 13, § 10.)—The form of taking an oath, though it differs in words, agrees in meaning; for it ought to have this sense, that the Deity be invoked.

331. Jusjurandum inter alios factum nec nocere nec prodesse debet: (4 Inst. 279.)—An oath made by others in another proceeding ought neither to hurt nor profit.

332. Jus naturale est quod apud omnes homines eandem habet potentiam: (7 Co. 12.)—Natural right is that which has the same force among all men.

333. Jus non habenti tute non paretur: (Hob. 146.)—It is not safe to obey him who has no right.

334. Jus publicum et privatum quod ex naturalibus præceptis aut gentium, aut civilibus est collectum, et quod in jure scripto. Jus appelatur id in lege Angliæ rectum esse dicitur: (Co. Litt. 158.)—Public and private law is that which is collected from natural principles, either of nations or in states, and what is in written law. That is called "jus" which by the law of England is said to be right.

335. Jus respicit æquitatem: (Co. Litt. 24.)—Law regards equity.

336. Justitia debet esse libera, quia nihil iniquius venali justitia; plena, quia justitia non debet claudicare; et celeris, quia dilatio est quædam negatio: (2 Inst. 56.)—Justice ought to be unbought, because nothing is more hateful than venal justice; free, for justice ought not to be shut out; and quick, for delay is a certain denial.

337. Justitia est duplex; viz., severè puniens et verè præveniens: (3 Inst. Epil.)—Justice is double; punishing with severity, preventing with lenity.

338. Justitia firmatur solium: (3 Inst. 140.)—Justice strengthens the throne.

339. Justitia nemini neganda est: (Jenk. Cent. 178.)—Justice is to be denied to none.

340. Justitia non est neganda, non differenda: (Jenk. Cent. 93.) —Justice is neither to be denied nor delayed.

341. Justitia non novit patrem nec matrem, solam veritatem spectat justitia: (1 Buls. 199.)—Justice knows neither father nor mother; but regards truth alone.

342. Justum non est aliquem autenatum mortuum facere bastardum qui pro totâ vitâ suâ pro legitimo habetur: (8 Co. 101.)—It is not just to make a man who all his life has been accounted legitimate, a bastard after his death.

343. LEGATUS, regis vice fungitur à quo destinatur et honorandus est sicut ille cujus vicem gerit: (12 Co. 17.)—An ambassador fills the place of the king by whom he is sent, and is to be honoured as he is whose place he fills.

344. Leges Angliæ sunt tripartitæ: jus commune, consuetudines, ac decreta comitiorum.—The laws of England are threefold: common law, customs, and decrees of Parliament.

345. Leges posteriores priores contrarias abrogant: (1 Co. 25.)—Later laws abrogate prior contrary laws: (MAXIM 46.)

346. Legibus sumptis desinentibus, lege naturæ utendum est: (2 Rol. Rep. 98.)—Laws imposed by the state, failing, we must act by the law of nature.

347. Legis constructio non facit injuriam: (Co. Litt. 183.)—The construction of the law does no injury.

348. Legislatorum est viva vox, rebus et non verbis, legem imponere: (10 Co. 101.)—The voice of legislators is a living voice to impose law on things and not on words.

349. Legitimè imperanti parere necesse est: (Jenk. Cent. 120.) —It is necessary to obey one legitimately commanding.

350. Le ley de Dieu et le ley de terre sont tout un, et l'un et l'autre preferre et savour le common et publique bien del terre: (Keilw. 191.)—The law of God and the law of the land are all one, and both preserve and favour the common and public good of the land.

351. Le ley est le plus haut enheritance que le roy ad, car per le ley il mesme et touts ses sujets sont rules, et si le ley ne fuit, nul roy ne nul enheritance serra: (1 J. H. 6, 63.)—The law is the highest inheritance that the king possesses, for by the law both he and all his subjects are ruled; and

if there were no law, there would be neither king nor inheritance.

352. Le ley voit plus tost suffer un mischiefe que un inconvenience: (Litt. § 231.)—The law would rather suffer a mischief than an inconvenience.

353. Lex aliquando sequitur æquitatem: (3 Wils. 119.)—Law sometimes follows equity.

354. Lex Angliæ est lex misericordiæ: (2 Inst. 315.)—The law of England is a law of mercy.

355. Lex Angliæ nunquam matris sed semper patris conditionem imitari partum judicat: (Co. Litt. 123.)—The law of England rules that the offspring shall always follow the condition of the father; never that of the mother.

356. Lex Angliæ nunquam sine Parliamento mutare non potest: (2 Inst. 218.)—The law of England cannot be changed but by Parliament.

357. Lex citius tolerare vult privatum damnum quam publicum malum: (Co. Litt. 132.)—The law should more readily tolerate a private loss than a public evil.

358. Lex deficere non potest in justitiâ exhibendâ: (Co. Litt. 197.)—The law cannot be defective in dispensing justice.

359. Lex dilationes semper exhorret: (2 Inst. 240.)—The law always abhors delays.

360. Lex est dictamen rationis: (Jenk. Cent. 117.)—Law is the dictate of reason.

361. Lex est exercitûs judicum tutissimus ductor: (2 Inst. 526.)—The law is the safest leader of the army of judges.

362. Lex est ratio summa, quæ jubet quæ sunt utilia et necessaria, et contraria prohibet: (Co. Litt. 319.)—Law is the highest reason, which commands those things which are useful and necessary, and forbids what is contrary thereto.

363. Lex est sanctio sancta, jubens honesta, et prohibens contraria: (2 Inst. 587.)—Law is a sacred sanction, commanding what is proper, and forbidding what is not.

364. Lex est tutissima cassis, sub clypeo legis nemo decipitur: (2 Inst. 56.)—Law is the safest helmet; under the shield of the law none are deceived.

365. Lex fingit ubi subsistit æquitas: (11 Co. 90.)—The law feigns where equity subsists.

366. Lex intendit vicinum vicini facta scire: (Co. Litt. 78.)—The law presumes one neighbour to know the actions of another.

367. Lex necessitatis est lex temporis, *i.e.*, instantis: (Hob. 159.)—The law of necessity is the law of time, that is, present.

368. Lex neminem cogit ad vana seu inutilia peragenda: (5 Co. 21.)—The law does not require any one to do vain or useless things.

369. Lex non a rege est violanda: (Jenk. Cent. 7.)—The law is not to be violated by the king.

370. Lex non curat de minimis: (Hob. 88.)—The law cares not about trifles.

371. Lex non cogit ad impossibilia: (Hob. 96.)—The law requires not impossibilities.

372. Lex non deficit in justitiâ exhibendâ: (Jenk. Cent. 31.)—The law is not defective in developing justice.

373. Lex non favet delicatorum votis: (9 Co. 58.)—The law favours not the wishes of the dainty.

374. Lex non intendit aliquid impossibile: (12 Co. 89.)—The law intends not anything impossible.

375. Lex non patitur fractiones et divisiones statutorum: (1 Co. 87.)—The law suffers no fractions and divisions of statutes.

376. Lex non requirit verificari quod apparet curiæ: (9 Co. 54.)—The law does not require that which is apparent to the court to be verified.

377. Lex plus laudatur quando ratione probata: (Litt. Epil.)—The law is the more praised when it is consonant to reason.

378. Lex prospicit non respicit: (Jenk. Cent. 284.)—The law looks forward, not backward.

379. Lex punit mendacium: (Jenk. Cent. 15.)—The law punishes a lie.

380. Lex rejicit superflua, pugnantia, incongrua: (Jenk. Cent. 133.)—The law rejects superfluous, contradictory, and incongruous things.

381. Lex reprobat moram: (Jenk. Cent. 35.)—The law dislikes delay.

382. Lex scripta si cesset id custodiri oportet quod moribus et consuetudine inductum est, et si qua in re hoc defecerit tunc id quod proximum et consequens ei est: (7 Co. 19.)—If the written law be silent, that which is drawn from manners and custom ought to be observed; and if in that anything is defective, then that which is next and analagous to it.

383. Lex semper dabit remedium: (Jacob, 69.)—The law will always give a remedy.

384. Lex semper intendit quod convenit rationi: (Co. Litt. 78.)—The law always intends what is agreeable to reason.

385. Lex spectat naturæ ordinem: (Co. Litt. 197.)—The law regards the order of nature.

386. Lex succurrit ignoranti: (Jenk. Cent. 15.)—The law assists the ignorant.

387. Lex uno ore omnes alloquitur: (2 Inst. 184.)—The law speaks to all with the same mouth.

388. Liberata pecunia non liberat offerentem: (Co. Litt. 207.)—Money being restored does not set free the party offering.

389. Libertas est naturalis facultas ejus quid cuique facere libet, nisi quod de jure aut vi prohibetur: (Co. Litt. 116.)—Liberty is that rational faculty which permits every one to do anything but that which is restrained by law or force.

390. Libertas est res inestimabilis: (Jenk. Cent. 52.)—Liberty is an inestimable thing.

391. Libertates regales ad coronam spectantes ex concessione regum a coranam exierunt: (2 Inst. 496.)—Royal prerogatives relating to the crown, depart from the crown by the consent of the kings.

392. Libertinum ingratum leges civiles in pristinum servitutem redigant; sed leges Angliæ semel manumissum semper liberum judicant: (Co. Litt. 137.)—The civil laws reduce an ungrateful freedman to his original slavery, but the laws of England regard a man once manumitted as ever after free.

393. Licit dispositio de interesse futuro sit inutilis, tamen fieri potest declaratio præcedens quæ sortiatur effectum, interveniente novo actu: (Bac. Max. Reg. 14.)—Although the grant of a future interest is invalid, yet a precedent declaration may be made, which will take effect on the intervention of some new act: (MAXIM 47.)

394. Ligeantia est quasi legis essentia; est vinculum fidei: (Co. Litt. 129.)—Allegiance is, as it were, the essence of law; it is the chain of faith.

395. Ligeantia naturalis, nullis claustris coercetur, nullis metis refrænatur, nullis finibus premitur: (7 Co. 10.)—Natural allegiance is restrained by no barriers, reined by no bounds, compressed by no limits.

396. Linea recta semper præfertur transversali: (Co. Litt. 10.)—The right line is always preferred to the collateral.

397. Litis nomen, omnem actionem significat, sive in rem, sive in personam sit: (Co. Litt. 292.)—A lawsuit signifies every action, whether it be for the thing or against the person.

398. Locus pro solutione reditûs aut pecuniæ secundum conditionem dimissionis aut obligationis est strictè observandus: (4 Co. 73.)—A place, according to the condition of a lease or bond, for the payment of rent or money, is to be strictly observed.

399. Longa possessio est pacis jus: (Co. Litt. 6.)—Long possession is the law of peace.

400. Longa possessio parit jus possidendi et tollit actionem vero domino: (Co. Litt. 110.)—Long possession produces the right of possession, and takes away an action from the true owner.

401. Longum tempus et longus usus qui excedit memoriam hominum, sufficit pro jure: (Co. Litt. 115.)—Long time and long use, which exceeds the memory of man, suffices in law.

402. Lou le ley done chose, la ceo done remedie a vener a ceo: (2 Rol. R. 17.)—Where the law gives a right, it gives a remedy to recover.

403. MAGISTER rerum usus; magistra rerum experientia: (Co. Litt. 229.)—Use is the master of things; experience the mistress of things.

404. Major hæreditas venit unicuique nostrum à jure et legibus quam à parentibus: (2 Inst. 56.)—A greater inheritance comes to every one of us from right and the laws than from parents.

405. Majus continet minus: (Jenk. Cent. 208.)—The greater contains the less.

406. Majus dignum, trahit ad se minus dignum: (1 Inst. 43.)—The more worthy draws with it the less worthy.

407. Majus est delictum seipsum òccidere quam alium: (3 Inst. 54.)—It is a greater crime to kill one's self than another.

408. Mala grammatica non vitiat chartum. Sed in expositione instrumentorum mala grammatica quoad fieri possit evitanda est: (6 Co. 39.)—Bad grammar does not vitiate a charter. But in the exposition of instruments, bad grammar, so far as it can be done, is to be avoided.

409. Maledicta expositio quæ corrumpit textum: (4 Co. 35.)—It is a bad exposition which corrupts the text.

410. Maleficia non debent remanere impunita; et impunitas continuum affectum tribuit delinquenti: (4 Co. 45.)—Evil deeds ought not to remain unpunished; and impunity affords continual excitement to the delinquent.

411. Maleficia propositis distinguuntur: (Jenk. Cent. 290.)—Evil deeds are distinguished from evil purposes.

412. Malitia supplet ætatem: (Dyer, 104 *b*.)—Malice supplies age.

413. Malum non præsumitur: (4 Co. 72.)—Evil is not presumed.

414. Malus usus est abolendus, quia in consuetudinibus, non diuturnitas temporis, sed soliditas rationis est consideranda: (Co. Litt. 141.)—An evil custom is to be abolished, because, in customs, not length of time, but solidity of reason is to be considered.

415. Mandatarius terminos sibi positos transgredi non potest: (Jenk. Cent. 53.)—A mandatory cannot exceed the bounds placed upon himself.

416. Manerium dicitur à manendo, secundum excellentiam, sedes magna, fixa et stabilis: (Co. Litt. 58.)—A manor is called from "manendo," a seat, according to its excellence, great, fixed, and firm.

417. Manus mortua, quia possessio est immortalis, manus pro possessione et mortua pro immortali : (Co. Litt. 2.)—Mortmain (dead hand) because it is an immortal possession; "manus" stands for possession, and "mortua" for immortal.

418. Matrimonium subsequens legitimos facit quoad sacerdotium non quoad successionem propter consuetudinem regni quæ se habet in contrarium : (Co. Litt. 345.)—A subsequent marriage makes the children legitimate so far as relates to the priesthood, not as to the succession, on account of the custom of the kingdom, which is contrary thereto.

419. Maturiora sunt vota mulierum quam virorum : (6 Co. 71.) —The promises of women are prompter than those of men.

420. Maxime ita dicta quia maxima est ejus dignitas et certissima auctoritas, atque quod maximè omnibus probetur : (Co. Litt. 11.)—A maxim is so called because its dignity is chiefest, and its authority the most certain, and because universally approved by all.

421. Maximus erroris populus magister: (Bac. Max.) — The people is the greatest master of error.

422. Melior est justitia verè præveniens, quam severè puniens : (3 Inst. Epil.)—Justice truly preventing is better than severely punishing.

423. Melior est conditio possidentis et rei quam actoris : (4 Inst. 180.)—The condition of the possessor is the best; and that of the defendant than that of the plaintiff.

424. Melior est conditio possidentis, ubi neuter jus habet : (Jenk. Cent. 118.)—The condition of the possessor is the better, where neither of the two have a right.

425. Meliorem conditionem ecclesiæ suæ facere potest prælatus deteriorem nequaquam : (Co. Litt. 101.)—A bishop can make the condition of his own church better, by no means worse.

426. Meliorem conditionem suam facere potest minor, deteriorem nequaquam : (Co. Litt. 337.)—A minor can make his own condition better, but by no means worse.

427. Mens testatoris in testamentis spectanda est : (Jenk. Cent. 277.)—The testator's intention is to be regarded in wills.

428. Mentiri est contra mentem ire : (3 Buls. 260.)—To lie is to go against the mind.

429. Meritò beneficium legis amittit, qui legem ipsam subvertere intendit: (2 Inst. 53.)—He justly loses the benefit of law who purposes to overturn the law itself.

430. Minatur innocentibus, qui parcit nocentibus: (4 Co. 45.)—He threatens the innocent who spares the guilty.

431. Minima pœna corporalis est major qualibet pecuniariâ: (2 Inst. 220.)—The smallest bodily punishment is greater than any pecuniary one.

432. Minimè mutanda sunt quæ certam habent interpretationem: (Co. Litt. 365.)—Things which have a certain interpretation are to be altered as little as possible.

433. Minor ante tempus agere non potest in casu proprietatis nec etiam convenire; differetur usque ætatem; sed non cadit breve: (2 Inst. 291.)—A minor before majority cannot act in a case of property, not even to agree; it should be deferred until majority; but a writ does not fail.

434. Minor jurare non potest: (Co. Litt. 172.)—A minor cannot swear.

435. Minor minorem custodire non debet; alios enim præsumitur male regere qui seipsum regere nescit: (Co. Litt. 88.)—A minor cannot be guardian to a minor, for he is presumed to direct others badly who knows not how to direct himself.

436. Minor, qui infra ætatem 12 annorum fuerit, utlagari non potest, nec extra legem poni, quia ante talem ætatem, non est sub lege aliqua: (Co. Litt. 128.)—A minor who is under twelve years of age, cannot be outlawed, nor placed without the law, because, before such age, he is not under any law.

437. Misera est servitus, ubi jus est vagum aut incertum: (4 Inst. 246.)—Obedience is miserable, where the law is vague and uncertain.

438. Modus et conventio vincunt legem: (2 Co. 73.)—Custom and agreement overrule law: (Maxim 48.)

439. Modus legem dat donationi: (Plow. Com. 251.)—Agreement gives law to the gift.

440. Monetandi jus comprehenditur in regalibus quæ nunquam à regio sceptro abdicantur: (Dav. 18.)—The right of coining

money is comprehended amongst those rights of royalty which are never separated from the kingly sceptre.

441. Monumenta quæ nos recorda vocamus sunt veritatis et vetustatis vestigia: (Co. Litt. 118.)—Monuments which we call records, are the vestiges of truth and antiquity.

442. Mors dicitur ultimum supplicium: (3 Inst. 212.)—Death is denominated the extreme penalty.

443. Mors omnia solvit: (Jenk. Cent. 160.)—Death dissolves all things.

444. Mulieres ad probationem status hominis admitti non debent: (Co. Litt. 6.)—Women ought not to be admitted to proof of the estate of a man.

445. Multa conceduntur per obliquum, quæ non conceduntur de directo: (6 Co. 47.)—Many things are obliquely conceded which are not conceded directly.

446. Multa in jure communi contra rationem disputandi, pro communi utilitate introducta sunt: (Co. Litt. 70.)—Many things contrary to the rule of argument are introduced into the common law for common utility.

447. Multa multo exercitatione facilius quam regulis percipies: (4 Inst. 50.)—You will perceive many things more easily by practice than by rules.

448. Multitudinem decem facunt: (Co. Litt. 247.)—Ten make a multitude.

449. Multitudo errantium non parit errori patrocinium: (11 Co. 75.)—The multitude of those who err gives no excuse to error.

450. Multitudo imperitorum perdit curiam: (2 Inst. 219.)—A multitude of ignorant persons destroys a court.

451. Natura appetit perfectum; ita et lex: (Hob. 144.)—Nature desires perfection; so does law.

452. Natura non facit saltum; ita nec lex: (Co. Litt. 238.)—Nature takes no leap; neither does law.

453. Natura non facit vacuum, nec lex supervacuum: (Co. Litt. 79.)—Nature makes no vacuum; law no supervacuum.

454. Naturæ vis maxima: (Noy Max. 26.)—The highest force is that of nature.

455. Necessitas est lex temporis et loci: (Hale P. C. 54.)—Necessity is the law of time and place.

456. Necessitas excusat aut extenuat delictum in capitalibus, quod non operatur idem in civilibus: (Bacon Max. Reg. 25.)—Necessity excuses or extenuates delinquency in capital, which would not operate the same in civil cases.

457. Necessitas facit licitum quod alias non est licitum: (10 Co. 61.)—Necessity makes that lawful which otherwise is not lawful.

458. Necessitas inducit privilegium quoad jura privata: (Bac. Max. 25.)—Necessity induces, or gives, a privilege as to private rights: (MAXIM 49.)

459. Necessitas non habet legem: (Plowd. 18.)—Necessity has no law.

460. Necessitas publica major est quam privata: (Noy Max. 34.)—Public necessity is greater than private.

461. Necessitas, quod cogit, defendit: (Hale P. C. 54.)—Necessity defends what it compels.

462. Necessitas vincit legem; legum vincula irridet: (Hob. 144.)—Necessity overcomes law; it breaks the chains of law.

463. Nec tempus nec locus occurrit regi: (Jenk. Cent. 190.)—Neither time nor place affects the king.

464. Nec veniam, effuso sanguine, casus habet: (3 Inst 57.)—Where blood is spilled the case is unpardonable.

465. Nec veniam, læso numine, casus habet: (Jenk. Cent. 167.)—Where the Divinity is insulted, the case is unpardonable.

466. Negatio conclusionis est error in lege: (Wing. 268.)—The negative of a conclusion is error in law.

467. Negatio destuit negationem, et ambæ faciunt affirmativum: (Co. Litt. 146.)—A negative destroys a negative, and both make an affirmative.

468. Negligentia semper habet infortuniam comitem: (Co. Litt. 246.)—Neglect always has misfortune for a companion.

469. Neminem oportet esse sapientiorem legibus: (Co. Litt. 97.)—Nobody needs be wiser than the laws.

470. Nemo admittendus est inhabilitare seipsum: (Jenk. Cent. 40.)—Nobody is to be admitted to incapacitate himself.

471. Nemo cogitur rem suam vendere, etiam justo pretio : (4 Inst. 275.)—No one is obliged to sell his own property, even for the full value.

472. Nemo contra factum suum venire potest: (2 Inst. 66.)—No one can come against his own deed.

473. Nemo dat qui non habet : (Jenk. Cent. 250.)—No one gives who possesses not.

474. Nemo debet bis punire pro uno delicto : et Deus, non agit bis in ipsum : (4 Co. 43.)—No one should be punished twice for one fault ; and God punishes not twice against Himself.

475. Nemo debet bis vexari, si constat curiæ quod sit pro unâ et eâdem causâ : (5 Co. 61.)—No man ought to be twice punished, if it be proved to the court that it be for one and the same cause : (MAXIM 50.)

476. Nemo debet ex alienâ jacturâ lucrari : (Jenk. Cent. 4.)—No person ought to gain by another person's loss.

477. Nemo debet esse judex in propriâ causâ : (12 Co. 113.)—No one should be judge in his own cause : (MAXIM 51.)

478. Nemo est hæres viventis : (Co. Litt. 8.)—No one is heir of the living : (MAXIM 52.)

479. Nemo ex alterius detrimento fieri debet locupletari : (Jenk. Cent. 4.)—No man ought to be made rich out of another's injury.

480. Nemo ex dolo suo proprio relevetur, aut auxilium capiat : (Jur. Civ.)—No one is relieved or gains an advantage from his own proper deceit.

481. Nemo inauditus nec summonitus condemnari debet, si non sit contumax : (Jenk. Cent. 8.)—No man should be condemned unheard and unsummoned, unless for contumacy.

482. Nemo militans Deo implicetur secularibus negotiis : (Co. Litt. 70.)—No man warring for God should be troubled with secular business.

483. Nemo nascitur artifex : (Co. Litt. 97.)—No one is born an artificer.

484. Nemo patriam in quâ natus est exuere nec ligeantiæ debitum ejurare possit : (Co. Litt. 129.)—A man cannot abjure his native country, nor the allegiance he owes his sovereign ; (MAXIM 53.)

485. Nemo potest contra recordum verificare per patriam: (2 Inst. 380.)—No one can verify by jury against a record.

486 Nemo potest esse tenens et dominus: (Gilb. Ten. 142.)—No man can be tenant and lord.

487. Nemo potest facere per alium, quod per se non potest: (Jenk. 237.)—No one can do through another what he cannot do himself.

488. Nemo potest plus juris ad alium transferre quam ipse habet: (Co. Litt. 309.)—No one can transfer a greater right to another than he himself has.

489. Nemo præsumitur alienam posteritatem suæ prætulisse: (Wing. 285.)—No one is presumed to have preferred another's posterity to his own.

490. Nemo præsumitur esse immemor suæ æternæ salutis, et maxime in articulo mortis: (6 Co. 76.)—No one is presumed to be forgetful of his own eternal welfare, and more particularly in the act of death.

491. Nemo prohibetur pluribus defensionibus uti: (Co. Litt. 304.)—No one is restrained from using several defences.

492. Nemo punitur pro alieno delicto: (Wing. 336.)—No one is punished for the crime of another.

493. Nemo punitur sine injuriâ, facto, seu defalto: (2 Inst. 287.)—No one is punished unless for some injury, deed, or default.

494. Nemo tenetur ad impossibile: (Jenk. Cent. 7.)—No one is bound to an impossibility.

495. Nemo teneter armare adversarum contra se: (Wing. 665.)—No one is bound to arm his adversary against himself.

496. Nemo tenetur divinare: (4 Co. 28.)—No one is bound to foretell.

497. Nemo tenetur seipsum accusare: (Wing. Max. 486.)—No one is bound to criminate himself: (Maxim 54.)

498. Nihil dat qui non habet: (Jur. Civ.)—He gives nothing who has nothing.

499. Nihil facit error nominis cum de corpore constat: (11 Co. 21.)—An error of name is nothing when there is certainty as to the person.

500. Nihil infra regnum subditos magis conservat in tranquilitate et concordiâ quam debita legum administratio: (2 Inst. 158.)—Nothing more preserves in tranquility and concord those subjected to the Government than a due administration of the laws.

501. Nihil in lege intolerabilius est, eandem rem diverso jure censeri: (4 Co. 93.)—Nothing in law is more intolerable than to rule a similar case by a diverse law.

502. Nihil quod est contra rationem est licitum: (Co. Litt. 97.)—Nothing is permitted which is contrary to reason.

503. Nihil quod inconveniens est licitum est: (Co. Litt. 97.)—Nothing which is inconvenient is lawful.

504. Nihil tam conveniens est naturali æquitati, quam unumquodque dissolvi eo ligamine quo ligatum est: (2 Inst. 359.)—Nothing is so agreeable to natural equity as that, by the like means by which anything is bound, it may be loosed: (Maxim 55.)

505. Nihil tam conveniens est naturali æquitati, quam voluntatem domini rem suam in alium transferre, ratam habere: (1 Co. 100.)—Nothing is so consonant to natural equity as to regard the intention of the owner in transferring his own property to another.

506. Nihil tam proprium est imperii quam legibus vivere: (2 Inst. 63.)—Nothing is so proper for the empire than to live according to the laws.

507. Nihil habet forum ex scenâ: (Bac. Max.)—The court has nothing to do with what is not before it.

508. Nimia subtilitas in jure reprobatur, et talis certitudo certitudinem confundit: (4 Co. 5.)—Nice and subtle distinctions are not sanctioned by the law; for so, apparent certainty would be made to confound true and legal certainty: (Maxim 56.)

509. Nimium altercando veritas amittitur: (Hob. 344.)—By too much altercation truth is lost.

510. Nobiliores et benigniores presumptiones in dubiis sunt præferendæ: (Reg. Jur. Civ.)—In cases of doubt, the more generous and more benign presumptions are to be preferred.

511. Nobilitas est duplex, superior et inferior: (2 Inst. 583.)—There are two sorts of nobility, the higher and the lower.

512. Nomen dicitur à noscendo, quia notitiam facit: (6 Co. 65.)—A name is called from the word "to know," because it makes recognition.

513. Nomina sunt mutabilia, res autem immobiles: (6 Co. 66.)—Names are mutable, but things immutable.

514. Non alio modo puniatur aliquis, quam secundum quod se habet condemnatio: (3 Inst. 217.)—A person may not be punished differently than according to what the sentence enjoins.

515. Non decipitur qui scit se decipi: (5 Co. 60.)—He is not deceived who knows himself to be deceived.

516. Non definitur in jure quid sit conatus: (6 Co. 42.)—What an attempt is, is not defined in law.

517. Non differunt quæ concordant re, tametsi non in verbis iisdem: (Jenk. Cent. 70.)—Those things that agree in substance, though not in the same words, do not differ.

518. Non effecit affectus nisi sequatur effectus. Sed in atrocioribus delictis punitur affectus, licet non sequatur effectus: (2 Rol. Rep. 89.)—The intention fulfils nothing unless an effect follow. But in the deeper delinquencies the intention is punished, although an effect do not follow.

519. Non est arctius vinculum inter homines quam jusjurandum: (Jenk. Cent. 126.)—There is no tighter link than an oath, among mankind.

520. Non est disputandum contra principia negantem: (Co. Litt. 343.)—We cannot dispute against a man denying principles.

521. Non est justum aliquem antenatum post mortem facere bastardum qui toto tempore vitæ suæ pro legitimo habebatur: (Co. Litt. 244.)—It is not just to make an elder born a bastard after his death, who during his lifetime was accounted legitimate.

522. Non est recedendum a communi observantiâ: (2 Co. 74.)—There is no departing from common observance.

523. Non est regula quin fallit: (Plow. Com. 162.)—There is no rule but what may fail.

524. Non facias malum ut inde veniat bonum: (11 Co. 74.)—You are not to do evil that good may thence arise.

525. Non in legendo sed in intelligendo leges consistunt: (8 Co. 167.)—The laws consist not in being read, but in being understood.

526. Non jus, sed seisina, facit stipitem: (Fleta, 6, c. 14.)—Not right, but seisin, makes the stock: (Maxim 57.)

527. Non observata forma infertur adnullatio actus: (5 Co. Eccl. l. 98.)—When form is not observed, a failure of the action ensues.

528. Non pertinet ad judicem secularem cognoscere de iis quæ sunt merè spiritualia annexa: (2 Inst. 488.)—It belongs not to the secular judge to take cognisance of things which are merely spiritual.

529. Non potest adduci exceptio ejus rei cujus petitur dissolutio: (Bac. Max. 22.)—It is not permitted to adduce a plea of the matter in issue as a bar thereto: (Maxim 58.)

530. Non refert an quis assensum suum præfert verbis, an rebus ipsis et factis: (10 Co. 52.)—It matters not whether a man gives his assent by his words, or by his acts and deeds.

531. Non refert quid notum sit judici, si notum non sit in formâ judicii: (3 Buls. 115.)—It matters not what is known to the judge, if it be not known judicially.

532. Non refert verbis an factis fit revocatio: (Cro. Car. 49.)—It matters not whether a revocation is made by words or by deeds.

533. Non valet confirmatio, nisi ille, qui confirmat, sit in possessione rei vel juris unde fieri debet confirmatio; et eodem modo, nisi ille cui confirmatio fit, sit in possessione: (Co. Litt. 295.)—Confirmation is not valid unless he who confirms is either in possession of the thing itself or of the right of which confirmation is to be made, and, in like manner, unless he to whom confirmation is made is in possession.

534. Noscitur à sociis: (3 T. R. 87.)—The meaning of a word may be ascertained by reference to those associated with it; (Maxim 59.)

535. Nova constitutio, futuris formam imponere debet, non præteritis: (2 Inst. 292.)—A new law ought to impose form on what is to follow, not on the past: (MAXIM 60.)

536. Novitas non tam utilitate prodest quam novitate perturbat: (Jenk. Cent. 167.)—Novelty benefits not so much by its utility as it disturbs by its novelty.

537. Novum judicium non dat novum jus, sed declarat antiquum; quia judicium est juris dictum et per judicium jus est novitur revelatum quod diu fuit velatum: (10 Co. 42.)—A new adjudication does not make a new law, but declares the old; because adjudication is the dictum of law, and by adjudication the law is newly revealed which was previously hidden.

538. Nudum pactum est ubi nulla subest causa præter conventionem; sed ubi subest causa, fit obligatio, et parit actionem: (Plow. 309.)—A naked contract is where there is no consideration to support the agreement; but where there is a consideration, an obligation exists, and produces an action.

539. Nulla curia quæ recordum non habet potest imponere finem, neque aliquem mandare carceri; quia ista spectant tantummodo ad curias de recordo: (8 Co. 60.)—No court which has not a record can impose a fine, or commit any person to prison; because those powers belong only to courts of record.

540. Nulla impossibilia aut inhonesta sunt præsumenda; vera autem et honesta et possibilia: (Co. Litt. 78.)—Impossibilities or dishonesty are not to be presumed; but honesty, and truth, and possibility.

541. Nul prendra advantage de son tort demesne: (2 Inst. 713.)—No one can take advantage of his own wrong.

542. Nullius hominis auctoritas apud nos valere debet, ut meliora non sequeremur si quis attulerit: (Co. Litt. 383.)—The authority of no man ought to prevail with us, so that we should not adopt better things, if another bring them.

543. Nullum crimen majus est inobedientiâ: (Jenk. Cent. 77.)—No crime is greater than disobedience.

544. Nullum exemplum est idem omnibus: (Co. Litt. 212.)—No example is the same to all.

545. Nullum iniquum est præsumendum in jure: (7 Co. 71.)—No iniquity is to be presumed in law.

546. Nullum simile est idem, quatuor pedibus currit: (Co. Litt. 3.)—No simile is the same, and runs on four feet.

547. Nullum tempus aut locus occurrit regi: (2 Inst. 273.)—No time runs against, or place affects, the king: (MAXIM 61.)

548. Nullus alius quam rex possit episcopo demandare inquisitionem faciendam: (Co. Litt. 134.)—No other than the king can command the bishop to make an inquisition.

549. Nullus commodum capere potest de injuriâ suâ propriâ: (Co. Litt. 148.)—No one can take advantage of his own wrong: (MAXIM 62.)

550. Nullus dicitur accessorius post feloniam, sed ille qui novit principalem feloniam fecisse et illum receptavit et comfortavit: (3 Inst. 138.)—No one is called an accessory after the fact but he who knew the principal to have committed a felony, and received and comforted him.

551. Nullus dicitur felo principalis nisi actor, aut qui præsens est abettans aut auxilians ad feloniam faciendam: (3 Inst. 138.)—No one shall be called a principal felon except the party actually committing the felony, or the party present aiding and abetting in its commission.

552. Nullus recedat e curiâ cancellariâ sine remedio: (4 H. 7, 4.)—Let no one depart from the Court of Chancery without a remedy.

553. Nunquam res humanæ prosperè succedunt ubi negliguntur divinæ: (Co. Litt. 95.)—Human things never prosper where divine things are neglected.

554. Nuptias non concubitas sed consensus facit: (Co. Litt. 33.)—Not cohabitation but consent makes marriage.

555. OBTEMPERANDUM est consuetudini rationabili tanquam legi: (4 Co. 38.)—A reasonable custom is to be obeyed like law.

556. Occultatio thesauri inventi fradulosa: (3 Inst. 133.)—The concealment of discovered treasure is fraudulent.

557. Officia magistratus non debent esse venalia: (Co. Litt. 234.)—The offices of magistrates ought not to be sold.

558. Officit conatus si effectus sequatur: (Jenk. Cent. 55.)—The attempt becomes of consequence if the effect follows.

559. Omne crimen ebrietas et incendit et detegit: (Co. Litt. 247.) —Drunkenness both lights up and produces every crime.

560. Omne majus continet in se minus: (5 Co. 115.)—The greater contains the less: (MAXIM 63.)

561. Omne sacramentum debet esse de certâ scientiâ: (4 Inst. 279.)—Every oath ought to be of certain knowledge.

562. Omnes sorores sunt quasi unus hæres de unâ hæreditate: (Co. Litt. 67.)—All sisters are as it were one heir to one inheritance.

563. Omnes subditi sunt regis servi: (Jenk. Cent. 126.)—All subjects are the king's servants.

564. Omne testamentum morte consummatum est: (3 Co. 29.)—Every will is completed by death.

565. Omnia delicta in aperto leviora sunt: (8 Co. 127.)—All crimes done openly are lighter.

566. Omnia præsumuntur contra spoliatorem: (Branch. Max. 80.)—All things are presumed against a wrong doer: (MAXIM 64.)

567. Omnia præsumuntur legitimè facta donec probetur in contrarium: (Co. Litt. 232.)—All things are presumed legitimately done, until the contrary be proved.

568. Omnia præsumuntur ritè et solemniter esse acta: (Co. Litt. 6.) —All things are presumed to be correctly and solemnly done: (MAXIM 65.)

569. Omnia quæ sunt uxoris sunt ipsius viri; non habet uxor protestatem sui, sed vir: (Co. Litt. 112.)—All things which belong to the wife belong to the husband; the wife has no power of her own, the husband has it all.

570. Omnis actio est loquela: (Co. Litt. 292.)—Every action is a complaint.

571. Omnis conclusio boni et veri judicii sequitur ex bonis et veris præmissis et dictis juratorum: (Co. Litt. 226.)—Every conclusion of a good and true judgment arises from good and true premises, and sayings of juries.

572. Omnis innovatio plus novitate perturbat quam utilitate prodest: (2 Buls. 338.)—Every innovation disturbs more by its novelty than benefits by its utility: (MAXIM 66.)

573. Omnis interpretatio si fieri potest ita fienda est in instrumentis, ut omnes contrarietates amoveantur: (Jenk. Cent. 96.)—Every interpretation, if it can be done, is to be so made in instruments as that all contradictions may be removed.

574. Omnis nova constitutio futuris temporibus formam imponere debet, non præteritis: (2 Inst. 95.)—Every new institution should give a form to future times, not to past.

575. Omnis privatio præsupponit habitum: (Co. Litt. 339.)—Every privation presupposes former enjoyment.

576. Omnis querela et omnis actio injuriarum limitata est infra certa tempora: (Co. Litt. 114.)—Every plaint and every action for injuries are limited within certain times.

577. Omnis ratihabitio retrotrahitur et mandato priori æquiparatur: (Co. Litt. 207.)—Every ratification of an act already done has a retrospective effect, and is equal to a previous request to do it: (Maxim 67.)

578. Omnium rerum quarum usus est, potest esse abusus, virtute solo excepta: (Dav. 79.)—There may be an abuse of everything of which there is an use, virtue alone excepted.

579. Oportet quod certa res deducatur in judicium: (Jenk. Cent. 84.)—A thing certain must be brought to judgment.

580. Optima est lex quæ minimum relinquit arbitrio judicis; optimus judex qui minimum sibi: (Bac. Aphor. 46.)—That system of law is best which confides as little as possible to the discretion of a judge; that judge the best who trusts as little as possible his own judgment.

581. Optima statuti interpretatrix est (omnibus particulis ejusdem inspectis) ipsum statutum: (8 Co. 117.)—The best interpreter of a statute is (all the separate parts being considered) the statute itself.

582. Optima legum interpres est consuetudo: (Plow. Com. 336.)—Custom is the best interpreter of the law.

583. Optimus interpres rerum usus: (2 Inst. 282.)—The best interpreter of things is usage: (Maxim 68.)

584. Optimus interpretandi modus est sic leges interpretare ut leges legibus concordant: (8 Co. 169.)—The best mode of interpretation is so to interpret that the laws may accord with the laws.

585. Origo rei inspici debet: (1 Co. 99.)—The origin of a thing ought to be inquired into.

586. Pacta privata juri publico derogare non possunt: (7 Co. 23.) —Private compacts cannot derogate from public right.

587. Parens est nomen generale ad omne genus cognationis: (Co. Litt. 80.)—Parent is a name general to every kind of relationship.

588. Paribus sententiis reus absolvitur: (4 Inst. 64.)—Where opinions are equal, a defendant is acquitted.

589. Par in parem imperium non habet: (Jenk. Cent. 174.)—An equal has no power over an equal.

590. Parochia est locus quo degit populus alicujus ecclesiæ: (5 Co. 67.)—A parish is a place in which the population of a certain church resides.

591. Partem aliquam rectè intelligere nemo potest, antequam totum, iterum atque iterum perlegerit: (3 Co. 59.)—No one can rightly understand any part until he has read the whole again and again.

592. Participes plures sunt quasi unum corpus, in eo quod unum jus habent, et oportet quod corpus sit integrum et quod in nullâ parte sit defectus: (Co. Litt. 164.)—Many partners are as one body, inasmuch as they have one right, and it is necessary that the body be perfect, and that there be defect in no part.

593. Participes, quasi partis capaces, sive partem capientes, quia res inter eas est communis, ratione plurium personarum: (Co. Litt. 146.)—Partners are as it were "partis capaces," or "partem capientes," because the thing is common to them, by reason of their being many persons.

594. Partus sequitur ventrem: (2 Bl. Com.)—The offspring follows the dam.

595. Parum est latum esse sententiam nisi mandetur executioni: (Co. Litt. 289.)—It is not enough that sentence be given unless it be carried to execution.

596. Parum proficit scire quid fieri debet si non cognoscas quomodo sit facturum: (2 Inst. 503.)—It avails little to know what ought to be done if you do not know how it is to be done.

597. Pater est quem nuptæ demonstrant: (Co. Litt. 123.)—He is the father whom the nuptials indicate.

598. Patria laboribus et expensis non debet fatigari: (Jenk. Cent. 6.)—A jury ought not to be fatigued by labours and expenses.

599. Peccata contra naturam sunt gravissima. (3 Inst. 20.)—Crimes against nature are the most heinous.

600. Peccatum peccato addit qui culpæ quam facit patrocinium defensionis adjungit: (5 Co. 49.)—He adds one offence to another who, when he commits an offence, joins the protection of a defence.

601. Pecunia dicitur à pecus, omnes enim veterum divitiæ in animalibus consistebant: (Co. Litt. 207.)—Money (pecunia) is so called from cattle (pecus), because the wealth of our ancestors consisted in cattle.

602. Pendente lite nihil innovetur: (Co. Litt. 344.)—During a litigation nothing new should be introduced.

603. Periculum rei venditæ, nondum traditæ, est emptoris.—The risk of a thing sold, and not yet delivered, is the purchaser's.

604. Perpetua lex est, nullam legem humanam ac positivam perpetuam esse, et clausula quæ abrogationem excludit, ab initio non valet: (Bac. Max. Reg. 19.)—It is an everlasting law, that no positive and human law shall be perpetual, and a clause which excludes abrogation is not good from its commencement.

605. Persona conjuncta æquiparatur interesse proprio: (Bac. Max. 18.)—A personal connection equals, in law, a man's own proper interest: (Maxim 69.)

606. Plures cohæredes sunt quasi unum corpus, propter unitatem juris quod habent: (Co. Litt. 163.)—Several coheirs are, as it were, one body, by reason of the unity of right which they possess.

607. Plures participes sunt quasi unum corpus, in eo quod unum jus habent: (Co. Litt. 164.)—Several partners are as one body, in that they have one right.

608. Plus valet unus oculatus testis quam auriti decem: (4 Inst. 279.)—One eye witness is better than ten ear witnesses.

609. Plus valet vulgaris consuetudo quam regalis concessio: (Co. Cop. § 31.)—Common custom is better than royal grant.

610. Pœnâ ex delicto defuncti, hæres teneri non debet : (2 Inst. 198.)—The heir ought not to be bound in a penalty for the crime of the defunct.

611. Politiæ legibus non leges politiis adaptandæ : (Hob. 154.)—Politics are to be adapted to the laws, and not the laws to politics.

612. Polygamia est plurium simul vivorum uxorumve connubium : (3 Inst. 88.)—Polygamy is the marriage of many husbands or wives at one time.

613. Possessio est quasi pedis positio : (3 Co. 42.)—Possession is, as it were, the position of the foot.

614. Præscriptio est titulus ex usu et tempore substantiam capiens ab auctoritate legis : (Co. Litt. 113.)—Prescription is a title by authority of law, deriving its force from use and time.

615. Præsentia corporis tollit errorem nominis : et veritas nominis tollit errorem demonstrationis : (Bac. Max. Reg. 25.)—The presence of the body cures error in the name : the truth of the name cures error of description.

616. Præsumptio violenta valet in lege : (Jenk. Cent. 56.)—Strong presumption avails in law.

617. Praxis judicum est interpres legum : (Hob. 96.)—The practice of the judges is the interpreter of the laws.

618. Primo excutienda est verbi vis, ne sermonis vitio obstructur oratio, sive lex sine argumentis : (Co. Litt. 68.)—The force of a word is to be especially examined, lest by the fault of the words the sentence is destroyed, or the law be without argument.

619. Principiorum non est ratio : (2 Buls. 239.)—Of principles there is no rule.

620. Privatum commodum publico cedit : (Jenk. Cent. 223.)—Private good yields to public.

621. Privatum incommodum publico bono pensatur : (Jenk. Cent. 85.)—Private loss is compensated by public good.

622. Privilegium non valet contra rempublicam : (Bac. Max. 25.)—A privilege avails not against public good.

623. Protectio trahit subjectionem, et subjectio protectionem: (Co. Litt. 65.)—Protection begets subjection, subjection protection.

624. QUÆ ad unum finem loquuta sunt, non debent ad alium detorqueri: (4 Co. 14.)—Those things which are spoken to one end, ought not to be perverted to another.

625. Quæ communi legi derogant strictè interpretantur: (Jenk. Cent. 221.)—Things derogating from the common law are to be strictly interpreted.

626. Quæ contra rationem juris introducta sunt, non debent trahi, in consequentiam: (12 Co. 75.)—Things introduced contrary to the reason of law, ought not to be drawn into a precedent.

627. Quælibet concessio fortissimè contra donatorem interpretanda est: (Co. Litt. 183.)—Every grant is to be most strongly taken against the grantor.

628. Quæ mala sunt inchoata in principio vix bono peragantur exitu: (4 Co. 2.)—Things bad in the commencement seldom achieve a good end.

629. Quæ non valeant singula, juncta juvant: (3 Buls. 132.)—Things which do not avail separate avail joined.

630. Quam longum debet esse rationabile tempus, non definitur in lege, sed pendet ex discretione justiciariorum: (Co. Litt. 56.)—How long reasonable time ought to be, is not defined by law, but depends upon the discretion of the judges.

631. Quando aliquid mandatur, mandatur et omne per quod pervenitur ad illud: (5 Co. 116.)—When anything is commanded, everything by which it can be accomplished is also commanded.

632. Quando aliquid prohibetur ex directo prohibetur et per obliquum: (Co. Litt. 223.)—When anything is prohibited directly, it is also prohibited indirectly.

633. Quando aliquid prohibetur, prohibetur omne per quod devenitur ad illud: (2 Inst. 48.)—When anything is prohibited, everything relating to it is prohibited.

634. Quando duo jura in uno concurrunt, æquum est ac si esset in duobus: (Plow. Com. 168.)—When two rights concur in one person it is the same as if they were in two.

635. Quando jus domini regis et subditi concurrunt jus regis præferri debet: (9 Co. 129.)—When the rights of the king and of the subject concur, those of the king are to be preferred: (MAXIM 70.)

636. Quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest: (5 Co. 47.)—When the law gives anything to any one, it gives also all those things without which the thing itself would be unavailable: (MAXIM 71.)

637. Quando mulier nobilis nupserit ignobili desinit esse nobilem nisi nobilitas natua fuit: (4 Co. 118.)—When a noble woman marries a man not noble, she ceases to be noble, unless her nobility was born with her.

638. Quando plus fit quam fieri debet videtur etiam illud fieri quod faciendum est: (8 Co. 85.)—When more is done than ought to be done, then that is considered to have been done which ought to have been done: (MAXIM 72.)

639. Quando verba statuti sunt specialia, ratio autem generalis, generaliter statutum est intelligendum: (10 Co. 101.)—When the words of a statute are special, but the reason general, the statute is to be understood generally.

640. Qui accusat integræ famæ sit et non criminosus: (3 Inst. 26.)—Let him who accuses be of clear fame, and not criminal.

641. Qui aliquid statuerit parte inaudita altera, æquum licet dixerit, haud æquum facerit: (6 Co. 52.)—He who decides anything, one party being unheard, though he decide rightly, does wrong.

642. Qui concedit aliquid concedere videtur et id sine quo concessio est irrita, sine quo res ipsa esse non potuit: (11 Co. 52.)—He who concedes anything is considered as conceding that without which his concession would be idle, without which the thing itself could not exist.

643. Quicquid plantatur solo, solo cedit: (Went. Off. of Exec. 58.)—Whatever is affixed to the soil belongs to the soil: (MAXIM 73.)

644. Quicquid solvitur, solvitur secundum modum solventis: quicquid recipitur, recipitur secundum modum recipientis: (2 Vern. 606.)—Whatever is paid, is paid according to the

intention or manner of the party paying: whatever is received, is received according to the intention or manner of the party receiving: (MAXIM 74.)

645. Quid sit jus et in quo consistit injuria, legis est definire: (Co. Litt. 158.)—What right is, and in what consists injury, is the business of the law to declare.

646. Qui facit per alium facit per se: (Co. Litt. 258.)—He who does anything by another does it by himself: (MAXIM 75.)

647. Qui hæret litera hæret in cortice: (Co. Litt. 289.)—He who sticks to the letter sticks to the bark: or, he who considers the letter merely, of an instrument cannot comprehend its meaning: (MAXIM 76.)

648. Qui in utero est, pro jam nato habetur, quoties de ejus commodo quæritur: (2 Bla. Com.)—He who is in the womb is now held as born, as often as it is questioned concerning his benefit.

649. Qui jussu judicis aliquod fecerit non videtur dolo malo fecisse quia parere necesse est: (10 Co. 76.)—He who does anything by command of a judge will not be supposed to have acted from an improper motive; because it was necessary to obey: (MAXIM 77.)

650. Quilibet potest renunciare juri pro se introducto: (2 Inst. 183.)—Every man is able to renounce a right introduced for himself: (MAXIM 78.)

651. Qui non cadunt in constantem virum vani timores sunt æstimandi: (7 Co. 27.)—Those fears are to be esteemed vain which do not affect a firm man.

652. Qui non habet in ære, luat in corpore; ne quis peccetur impunè: (2 Inst. 173.)—What a man cannot pay with his purse, he must suffer in person, lest any one should offend with impunity.

653. Qui non habet potestatem alienandi habet necessitatem retinendi: (Hob. 336.)—He who has no power of alienation must retain.

654. Qui non obstat quod obstare potest facere videtur: (2 Inst. 146.)—He who does not prevent what he can prevent, seems to do the thing.

655. Qui non improbat, approbat: (3 Inst. 27.)—He who does not blame, approves.

656. Qui peccat ebrius, luat sobrius: (Cary's Rep. 133.)—Let him who sins when drunk, be punished when sober.

657. Qui per alium facit, per seipsum facere videtur: (Co. Litt. 258.)—He who by another does anything, is himself considered to have done it.

658. Qui per fraudem agit, frustrà agit: (2 Rol. Rep. 17.)—What a man does fraudulently, he does in vain.

659. Qui prior est tempore potior est jure: (Co. Litt. 14.)—He who is first in time has the strongest claim in law: (MAXIM 79.)

660. Qui sentit commodum sentire debet et onus; et è contra: (1 Co. 99.)—He who enjoys the benefit ought also to bear the burden; and the contrary: (MAXIM 80.)

661. Qui tacet consentire videtur: (Jenk. Cent. 32.)—He who is silent appears to consent.

662. Qui tacet consentire videtur ubi tractatur, de ejus commodo: (9 Mod. 38.)—He who is silent is considered as consenting, when it is debated concerning his convenience.

663. Quod ab initio non valet, in tractu temporis non convalescit: (4 Co. 2.)—That which is bad from the beginning does not improve by length of time: (MAXIM 81.)

664. Quod constat curiæ opere testium non indiget: (2 Inst. 662.)—What appears to the court, needs not the help of witnesses.

665. Quodcunque aliquis ab tutelam corporis sui fecerit, jure id fecisse videtur: (2 Inst. 590.)—Whatever anyone does in defence of his person, that he is considered to have done legally.

666. Quod dubitas, ne feceris: (P. C. 300.)—Where you doubt do nothing.

667. Quod est ex necessitate nunquam introducitur, nisi quando necessarium: (2 Rol. Rep. 512.)—What is introduced of necessity, is never introduced except when necessary.

668. Quod est inconveniens, aut contra rationem non permissum est in lege: (Co. Litt. 178.)—What is inconvenient, or contrary to reason, is not permitted in law.

69. Quod in minori valet valebit in majori; et quod in majori non valet nec valebit in minori: (Co. Litt. 260.)—What avails in the minor will avail in the major; and what does not avail in the major will not avail in the minor.

670. Quod necessariè intelligitur id non deest: (1 Buls. 71.)—What is necessarily understood is not wanting.

671. Quod necessitas cogit, defendit: (H. H. P. C. 54.)—What necessity forces, it justifies.

672. Quod non apparet non est; et non apparet judicialiter ante judicium: (2 Inst. 479.)—That which appears not is not, and appears not judicially before judgment.

673. Quod non habet principium non habet finem: (Co. Litt. 345.)—That which has no beginning has no end.

674. Quod non legitur non creditur: (4 Inst. 304.)—What is not read is not believed.

675. Quod nostrum est, sine facto sive defectu nostro, amitti seu in alium transferri non potest: (8 Co. 92.)—That which is ours cannot be lost or transferred tó another without our own act, or our own fault.

676. Quod nullius est, est domini regis: (Fleta, 1, 3.)—That which is the property of nobody, belongs to our lord the king.

677. Quod per me non possum, nec per alium: (4 Co. 24.)—What I cannot do in person, I cannot do by proxy.

678. Quod prius est verius est; et quod prius est tempore potius est jure: (Co. Litt. 347.)—What is first is true, and what is first in time is better in law.

679. Quod remedio destuitur ipsâ re valit si culpa absit: (Bac. Max. Reg. 9.)—That which is without remedy avails of itself if without fault: (MAXIM 82.)

680. Quod semel placuit in electione, amplius displicere non potest: (Co. Litt. 146.)—Where choice is once made it cannot be disapproved any longer.

681. Quod vanum et inutile est, lex non requirit: (Co. Litt. 319.)—The law requires not what is vain and useless.

682. Quo ligatur, eo dissolvitur: (2 Rol. Rep. 21.)—By the same power by which a man is bound, by that he is loosed.

683. Quomodo quid constituitur eodem modo dissolvitur: (Jenk. Cent. 74.)—In the same manner by which anything is constituted, by that it is dissolved.

684. Quoties in verbis nulla est ambiguitas ibi nulla expositio contra verba expressa fienda est: (Co. Litt. 147.)—When in the words there is no ambiguity, then no exposition contrary to the expressed words is to be made: (MAXIM 83.)

685. RATIO est legis anima, mutata legis ratione mutatur et lex: (7 Co. 7.)—Reason is the soul of law; the reason of law being changed, the law is also changed.

686. Ratio legis est anima legis: (Jenk. Cent. 45.)—The reason of law is the soul of law.

687. Regnum non est divisibile: (Co. Litt. 165.)—The kingdom is not divisible.

688. Relativorum, cognito uno, cognoscitur et alterum: (Cro. Jac. 539.)—Of things relating to each other, one being known, the other is also known.

689. Reppellitur à sacramento infamis: (Co. Litt. 158.)—The oath of an infamous person is not to be received.

690. Reprobata pecunia liberat solventem: (9 Co. 79.)—Money refused frees the debtor.

691. Rerum ordo confunditur, si unicuique jurisdictio non servetur: (4 Inst. Proem.)—The order of things is confounded if every one keeps not within his jurisdiction.

692. Rerum progressus ostendunt multa, quæ in initio præcaveri seu prævideri non possunt: (6 Co. 40.)—The progresses of time show many things which at the beginning could not be guarded against or foreseen.

693. Rerum suarum quilibet est moderator et arbiter: (Co. Litt. 223.)—Every one is the moderator and arbiter of his own affairs.

694. Rescriptum principis contra jus non valet: (Reg. Civ. Jur.) —The prince's rescript avails not against right.

695. Resignatio est juris proprii spontanea refutatio: (Godb. 284.) —Resignation is a spontaneous relinquishment of one's own right.

696. Res inter alios acta alteri nocere non debet: (Co. Litt. 132.) —One person ought not to be injured by the acts of others to which he is a stranger: (MAXIM 84.)

697. Res judicata pro veritate accipitur: (Co. Litt. 103.)—A thing adjudicated is received as true.

698. Res per pecuniam æstimatur et non pecunia per res: (9 Co. 76.)—The value of a thing is estimated according to its worth in money; but the value of money is not estimated by reference to the thing.

699. Respiciendum est judicanti, ne quid aut durius aut remissius constituatur quam causa deposcit; nec enim aut severitatis aut clementiæ gloria affectanda est: (3 Inst. 220.)—It is a matter of import to one adjudicating that nothing either more lenient or more severe than the cause itself warrants should be done, and that the glory neither of severity nor clemency should be affected.

700. Respondeat superior: (4 Inst. 114.)—Let the principal answer: (MAXIM 85.)

701. Reus læsæ majestatis punitur, ut pereat unus ne pereant omnes: (4 Co. 124.)—A traitor is punished that one and not all may perish.

702. Reversio terræ est tanquam terra revertens in possessione donatori sive hæredibus suis post donum finitum: (Co. Litt. 142.)—A reversion of land is as it were the return of the land to the possession of the donor or his heirs after the termination of the estate granted.

703. Re, verbis, scripto, consensu, traditione, junctura vestes sumere pacta solent: (Plow. Com. 161.)—Compacts are accustomed to be clothed by the thing itself, by words, by writing, by consent, by delivery.

704. Rex est caput et salus reipublicæ: (4 Co. 124.)—The king is the head and guardian of the commonwealth.

705. Rex est legalis et politicus: (Lane, 27.)—The king is both legal and politic.

706. Rex est major singulis, minor universis: (Bract. lib. 1, c. 8.) —The king is greater than any single person: less than all.

707. Rex non debet judicare sed secundum legem: (Jenk. Cent. 9.)—The king ought to govern only according to law.

708. Rex non potest peccare : (2 Rol. Rep. 204.)—The king can do no wrong : (MAXIM 86.)

709. Rex nunquam moritur : (Branch. Max. 5th ed. 197.)—The king never dies : (MAXIM 87.)

710. Rex quod injustum est facere non potest : (Jenk. Cent. 9.)—The king cannot do what is unjust.

711. Rex semper præsumitur attendere ardua regni pro bono publico omnium : (4 Co. 56.)—The king is always presumed to attend to the business of the realm, for the public good of all.

712. Roy n'est lie per ascun statute si il ne soit expressement nosme : (Jenk. Cent. 307.)—The king is not bound by any statute if he be not expressly named therein : (MAXIM 88.)

713. SACRAMENTUM habet in se tres comites, veritatem, justitiam et judicium : veritas habenda est in jurato, justitia et judicium in judice : (3 Inst. 160.)—An oath has in it three component parts, truth, justice, and judgment : truth is requisite in the party swearing, justice and judgment in the judge administering the oath.

714. Sacramentum si fatuum fuerit, licet falsum, tamen non committit perjurium : (2 Inst. 167.)—A foolish oath, though false, does not make perjury.

715. Sacrilegus omnium prædonum cupiditatem et scelera superat : (4 Co. 106.)—Sacrilege transcends the cupidity and wickedness of all other thefts.

716. Salus populi est suprema lex : (13 Co. 139.)—The welfare of the people, or of the public, is supreme law : (MAXIM 89.)

717. Scientia utrimque par pares contrahentes facit : (3 Bur. 1910.)—Equal knowledge on both sides makes the contracting parties equal.

718. Scribere est agere : (2 Rol. Rep. 89.)—To write is to act.

719. Scriptæ obligationes scriptis tolluntur, et nudi consensus obligatio, contrario consensu dissolvitur : (Jur. Civ.)—Written obligations are superseded by writings, and an obligation of naked assent is dissolved by naked assent.

720. Seisina facit stipitem: (Wright Ten. 185.)—The seisin makes the heir.

721. Semper præsumitur pro legitimatione puerorum; et filiatio non potest probari: (Co. Litt. 126.)—It is always to be presumed that children are legitimate; and filiation cannot be proved.

722. Sententia interlocutaria revocari potest, definitiva non potest: (Bac. Max.)—An interlocutory sentence may be recalled, but not a final.

723. Sententia non fertur de rebus non liquidis; et oportet quod certa res deducatur in judicium: (Jenk. Cent. 7.)—Sentence is not given on things not liquidated; and something certain ought to be brought to judgment.

724. Servitia personalia sequuntur personam: (2 Inst. 374.)—Personal services follow the person.

725. Sic utere tuo ut alienum non lædas: (9 Co. 59.)—So use your own property as not to injure your neighbour's: (Maxim 90.)

726. Sicut natura nil facit per saltum, ita nec lex: (Co. Litt. 238.)—In the same way as nature does nothing by a leap, so neither does the law.

727. Silentium in senatu est vitium: (12 Co. 94.)—Silence in the senate is a fault.

728. Silent leges inter arma: (4 Inst. 70.)—The laws are silent amidst arms.

729. Simonia est voluntas sive desiderium emendi vel vendendi spiritualia vel spiritualibus adhærentia. Contractus ex turpi causâ et contra bonos mores: (Hob. 167.)—Simony is the will or desire of buying or selling spiritualities, or things pertaining thereto. It is a contract founded on a bad cause, and against morality.

730. Simonia est vox ecclesiastica, à "Simone," illo "Mago," deducta qui donum Spiritus Sancti pecunia emi putavit: (3 Inst. 153.)—Simony is an ecclesiastical word, derived from that Simon Majus who thought to buy the gift of the Holy Ghost with money.

731. Simplex obligatio non obligat.—A simple commendation of goods, &c., by a vendor, binds not.

732. Si quis unum percusserit, cum alium percutere vellet, in feloniâ tenetur: (3 Inst. 51.)—If a man kill one, meaning to kill another, he is held guilty of felony.

733. Si suggestio non sit vera, literæ patentes vacuæ sunt: (10 Co. 113.)—If the suggestion be not true, the letters patent are void.

734. Solo cedit, quicquid solo plantatur: (Went. Off. Ex. 57.)—What is planted in the soil belongs to the soil.

735. Sommonitiones aut citationes nullæ liceant fieri infra palatium regis: (3 Inst. 141.)—No summonses or citations are permitted to be served within the king's palace.

736. Sponsalia dicuntur futurarum nuptiarum conventio et repromissio: (Co. Litt. 34.)—A betrothing is the agreement and promise of a future marriage.

737. Sponte virum fugiens mulier et adultera facta, dote suâ careat, nisi sponsi sponte retracta: (Co. Litt. 37.)—A woman leaving her husband of her own accord, and committing adultery, loses her dower, unless her husband take her back of his own accord.

738. Statutum affirmativum non derogat communi legi: (Jenk. Cent. 24.)—An affirmative statute does not take from the common law.

739. Sublato fundamento cadit opus: (Jenk. Cent. 106.)—Remove the foundation, the superstructure falls.

740. Subsequens matrimonium tollit peccatum præcedens: (Reg. Jur. Civ.)—A subsequent marriage removes the previous criminality.

741. Succurritur minori: facilis est lapsus juventutis: (Jenk. Cent. 47.)—A minor is to be assisted: a mistake of youth is easy.

742. Summa ratio est, quæ pro religione facit: (Co. Litt. 341.)—The highest rule of conduct is that which is induced by religion: (MAXIM 91.)

743. Super fidem chartarum, mortuis testibus, erit ad patriam de necessitate recurrendum: (Co. Litt. 6.)—The truth of charters is necessarily to be referred to a jury, when the witnesses are dead.

744. Superflua non nocent: (Jenk. Cent. 184.)—Superfluities hurt not.

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745. Talis non est eadem; nam nullum simile est idem: (4 Co. 18.)—What is like is not the same; for nothing similar is the same.

746. Tantum bona valent, quantum vendi possunt: (3 Inst. 305.) —Things are worth what they will sell for.

747. Tenor est pactio contra communem feudi naturam ac rationem in contractu interposita: (Wright Ten. 21.)—Tenure is a compact contrary to the common nature of the fee, put into a contract.

748. Terminus annorum certus debet esse et determinatus: (Co. Litt. 45.)—A term of years ought to be certain and determinate.

749. Terminus et feodum non possunt constare simul in unâ eâdemque personâ: (Plow. Com. 29.)—The term and the fee cannot both be in one and the same person at the same time.

750. Terra transit cum onere: (Co. Litt. 231.)—Land passes with its incumbrance.

751. Testamenta, cum duo inter se pugnantia reperiuntur, ultimum ratum est: sic est, cum duo inter se pugnantia reperiuntur in eodem testamento: (Co. Litt. 112.)—When two conflicting wills are found, the last prevails: so it is when two conflicting clauses occur in the same will.

752. Testamenta latissimam interpretationem habere debent: (Jenk. Cent. 81.)—Wills ought to have the broadest interpretation.

753. Testibus deponentibus in pari numero dignioribus est credendum: (4 Inst. 279.) — Where the number of witnesses is equal on both sides, the more worthy are to be believed.

754. Testis lupanaris sufficit ad factum in lupanari: (Moor, 817.) —A strumpet is a sufficient witness to a fact committed in a brothel.

755. Testis oculatus unus plus valet quam auriti decem: (4 Inst. 279.)—One eye witness is worth more than ten ear witnesses.

756. Testmoignes ne poent testifie le negative, mes l'affirmative: (4 Inst. 279.)—Witnesses cannot prove a negative, but an affirmative.

757. Thesaurus competit domino regi, et non domino libertatis, nisi sit per verba specialia: (Fitz. Corone, 281.)—A treasure belongs to the king, and not to the lord of a liberty, unless it be through special words.

758. Thesaurus inventus est vetus dispositio pecuniæ, &c., cujus non extat modo memoria, adeo ut jam dominum non habeat: (3 Inst. 132.)—Treasure-trove is an ancient hiding of money, of which no recollection exists, so that it now has no owner.

759. Thesaurus non competit regi, nisi quando nemo scit qui abscondit thesaurum: (3 Inst. 132.)—Treasure does not belong to the king, unless no one knows who hid it.

760. Triatio ibi semper debet fieri, ubi juratores meliorem possunt habere notitiam: (7 Co. 1.)—Trial ought to be had always there where the jury can have the best knowledge.

761. Turpis est pars quæ non convenit cum suo toto: (Plow. 161.)—That part is bad which accords not with its whole.

762. Tuta est custodia quæ sibimet creditur: (Hob. 340.)—That guardianship is secure which trusts to itself alone.

763. Tutius semper est errare acquitando quam in puniendo, ex parte misericordiæ quam ex parte justitiæ: (H. H. P. C. 290.)—It is always safer to err in acquitting than in punishing: on the side of mercy, than of strict justice.

764. Ubi cessat remedium ordinarium ubi decurritur ad extraordinarium: (4 Co. 93.)—Where a common remedy ceases, there recourse must be had to an extraordinary one.

765. Ubi eadem ratio ibi idem lex, et de similibus idem est judicium: (Co. Litt. 191.)—Where there is the same reason, there is the same law; and of things similar, the judgment is similar: (Maxim 92.)

766. Ubi jus ibi remedium: (Co. Litt. 197.)—Where there is a right, there is a remedy: (Maxim 93.)

767. Ubi lex aliquem cogit ostendere causam necesse est quod causa sit justa et legitima: (2 Inst. 269.)—Where the law compels a man to show cause, it is incumbent that the cause be just and legal.

768. Ubi lex non distinguit, nec nos distinguere debemus: (7 Co. 5.)—Where the law distinguishes not, we ought not to distinguish.

769. Ubi non est principalis non potest esse accessorius: (4 Co. 43.)—Where there is no principal, there cannot be an accessory.

770. Ultima voluntas testatoris est perimplenda secundum veram intentionem suam: (Co. Litt. 322.)—The last will of a testator is to be fulfilled according to his true intention.

771. Utile per inutile non vitiatur: (Dyer, 292.)—That which is useful is not rendered useless by that which is useless: (Maxim 94.)

772. Utlagatus est quasi extra legem positus: caput gerit lupinum: (7 Co. 14.)—An outlaw is, as it were, put out of the protection of the law: he carries the head of a wolf.

773. Ut pœna ad paucos, metus ad omnes perveniat: (4 Inst. 6.)—Though few are punished, the fear of punishment affects all.

774. Ut res magis valeat quàm pereat: (Noy Max. 50.)—It is better for a thing to have effect than to be made void.

775. Verba æquivoca ac in dubio sensu posita intelliguntur digniori et potentiori sensu: (6 Co. 20.)—Words equivocal, and placed in a doubtful sense, are to be taken in their more worthy and effective sense.

776. Verba aliquid operari debent; debent intelligi ut aliquid operentur: (8 Co. 94.)—Words ought to operate some effect; they ought to be interpreted in such a way as to operate some effect.

777. Verba chartarum fortius accipiuntur contra proferentem: (Co. Litt. 36.)—The words of deeds are to be taken most strongly against him who uses them: (Maxim 95.)

778. Verba generalia generaliter sunt intelligenda: (3 Inst. 76.)—General words are to be generally understood.

779. Verba generalia restringuntur ad habilitatem rei vel aptitudinem personæ: (Bac. Max. Reg. 10.)—General words are restrained according to the nature of the thing or of the person: (Maxim 96.)

780. Verba intentioni, non è contra, debent inservire: (8 Co. 94.)—Words ought to be made subservient to the intent, not contrary to it.

781. Verba illata in esse videntur: (Co. Litt. 359.)—Words referred to are to be considered as incorporated.

782. Verba posteriora propter certitudinem addita, ad priora quæ certitudine indigent, sunt referenda: (Wing.)—Subsequent words, added for the purpose of certainty, are to be referred to preceding words which need certainty.

783. Verba relata hoc maximè operantur per referentiam ut in eis in esse videntur: (Co. Litt. 359.)—Words to which reference is made in an instrument have the same effect and operation as if they were inserted in the instrument referring to them: (MAXIM 97.)

784. Veredictum, quasi dictum veritatis: ut judicium quasi juris dictum: (Co. Litt. 226.)—The verdict is, as it were, the dictum of truth: as the judgment is the dictum of law.

785. Veritas, à quocunque dicitur, à Deo est: (4 Inst. 153.)—Truth, by whomsoever pronounced, is from God.

786. Veritas nihil veretur nisi abscondi: (9 Co. 20.)—Truth fears nothing but concealment.

787. Veritas nimium altercando amittitur: (Hob. 334.)—By too much altercation truth is lost.

788. Vigilantibus, et non dormientibus, jura subveniunt: (Wing. 692.)—The vigilant, and not the sleepy, are assisted by the laws: (MAXIM 98.)

789. Violenta præsumptio aliquando est plena probatio: (Co. Litt. 6.)—Violent presumption is sometimes full proof.

790. Viperina est expositio quæ corrodit viscera textus: (11 Co. 34.—It is a bad exposition which corrupts the text.

791. Vir et uxor censentur in lege una persona: (Jenk. Cent. 27.)—Husband and wife are considered one person in law.

792. Vitium clerici noscere non debet: (Jenk. Cent. 23.)—An error of a clerk ought not to hurt.

793. Vix ulla lex fieri potest quæ omnibus commoda sit, sed si majori parti prospiciat utilis est: (Plow. 369.)—Scarcely any law can be made which is applicable to all things; but it is useful if it regard the greater part.

794. Volenti non fit injuria: (Wing. Max. 482.)—That to which a man consents cannot be considered an injury: (MAXIM 99.)

795. Voluntas donatoris in charta doni sui maifestè expressa observetur: (Co. Litt. 21.)—The will of the donor manifestly expressed in his deed of gift, is to be observed.

796. Voluntas in delictis non exitus spectatur : (2 Inst. 57.)—In crimes, the will, and not the result, is looked to.

797. Voluntas reputabatur pro facto : (3 Inst. 69.)—The will is to be taken for the deed : (MAXIM 100.)

798. Voluntas testatoris est ambulatoria usque ad extremum vitæ exitum : (4 Co. 61.)—The will of a testator is ambulatory until death.

799. Voluntas testatoris habet interpretationem latam et benignam : (Jenk. Cent. 260.)—The intention of a testator has a broad and benignant interpretation.

800. Vulgaris opinio est duplex, viz., orta inter graves et discretos, quæ multum veritatis habet, et opinio orta inter leves et vulgares homines, absque specie veritatis : (4 Co. 107.)—Common opinion is double, viz., that proceeding from grave and discreet men, which has much truth in it, and that proceeding from foolish and vulgar men, without any sort of truth in it.

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