Nor is a ship in salt water from which a man fals and is drowned forefaited: Because Law Imputes such misfortunes happening at sea to the perils thereof rather than to the ship. Nor yet is a horse on which a man Riding over a River is drowned thro' the Violence of the Stream, forfaited, Because not that, but the waters caused his death. But nothing can be forefaited as a Deodand nor seized as such, till it be found by the Coroner's Inquest to have caused a man's death. Coke 3 Inst. 57, 58. [illegible] Stamf. Pl. c. 20. Pulton de pace 124 Hale Pl. Cr. 33, Hawkins P.C. lib. 1 Ch. 26.

Thus far how property Real and Personal may be transmitted by Progress to singular successors, by Voluntary deeds of Alienation, or by the Legal Diligence of Creditors, or may be Confiscated. But because it frequently happens, that the Author is not true and Absolute proprietor of what he so alienates, or what his Creditors affect, [illegible] but hath only a right in trust for the Behoof of some other, or hath qualified his own right by a back bond, or Personal Declaration. It is proper here to treat concerning trust.

Chap. 2.
Of Trust.

Trust in the Vulgar Acceptation, Comprehends all personal obligations for paying Delivering or performing any thing, where the Creditor follows the faith of his debtor. In which sense it is taken in the title of the Corpus Juris Civilis de Rebus Creditis. But trust properly so called, is the stating a thing or right for some End, in the person of one so far as that it can hardly be Recovered from him, unless he be faithfull and Answer the Confidence Reposed in him, by Restoring what is Comitted to him, or Disposing thereof as the Truster Desires.

A Trustee is understood in Law, to act for the behoof of his Constituent, in Relation to the subject of the trust. Thus one to whom Lands were Disponed in trust, having Componed and transacted the Disponer's debts, was obliged to allow him the Benefit of Eases got from the Creditors, and to Claim only what he truely paid; Albeit he was not Expressly intrusted to Compone and pay these debts 15 November 1667. Maxwel contra Maxwel. Inhibition used by an assigney (whose Assignation was affected with a Reserved faculty to the Cedent to alter) was found to accrue to a posterior assigney, after Reduction of the first assignation, if it was Reduced ex Capite fraudis, 23 July 1713 Duncan contra Miller. Because the Reserved power to alter, made the first assigny's right to be of the nature of a factory or trust for the Cedent. The Benefit arising from

a transaction made with a trustee, was found to accrue to the person for whose behoof the trust was granted 24 June 1712 Wright and Kinloch contra Wright. A person having Accepted a factory from another bearing power to manage the Rents of lands, and to submit transact Compone and agree all pleas and differences thereanent; without prejudice to the said factor of any Acquisition of the said lands made or to be made by him upon his own Industry pains and expence, before, during, or after the factory. It was found, that any rights of the said lands acquired by the factor conform to that Clause, viz. that his acceptance should not be prejudicial to his bygone or future Acquisitions, must be Effectual only as a security to him for the sums principal annualrents expenses and Interest thereof Disbursed by him in purchasing these rights during the factory; so that upon the Constituent's making payment thereof deducting the factor's Intromissions, he the factor should be obliged to Denude, and Communicate to him the benefit of the Eases; without prejudice to rights in the factor's person prior to the factory 16 June 1710 Murray contra Murray. The Receiver of a disposition for payment to the Disponer's Creditors, was not Impowered to prefer any to others who had done a more timely Diligence by Inhibition and Appryzing against the common debtor, but only to pay them [illegible] to their preferance: whose Diligence he ought and should have known by searching the Registers for Publication of Rights. Seeing the trustee could no more prefer the Trusters Creditors, than the Truster himself could do; Albeit no Diligence was served against the trustee to put him in mala fide. 24 July 1669 Crawford contra Anderson. And a purchaser of lands, who had obliged himself to pay a certain number of the seller's debts to the extent of the price of the lands Conform to a list given up to him; was found in mala fide to pass by one of these debts, and to apply the whole payment to the rest, albeit these other debts did Exhaust the price; and obliged to have paid all the Debts in the said list proportionably, tho no Diligence had been used for any of them 20 July 1714 Blair of that Ilk contra Grahame of Balgowan. For every Creditor in the list had Jus Quaesitum by the obligation aforesaid, tho granted to their Debtor without their knowledge. Bonds or personal rights taken by a trustee in his own name for the price of the truster's goods sold by him, are not Necessary to be Confirmed as in bonis of the Trustee, but belong to the Truster 9 June 1669 Street contra Hume and Burntfield. And the price of Victual sold by an Executor's Negotiorum Gestor, payable by Contract to the seller or his order, was found not to be in