THE LAW OF DEVISES, REVOCATIONS, AND LAST WILLS.

To which is added,

Choice PRECEDENTS of WILLS.

By the late Lord Chief Baron GILBERT.

In the SAVOY:

Printed by HENRY LINTOT, Law-Printer to the King's moſt Excellent Majeſty; for T. Waller, at the *Mitre* and *Crown*, oppoſite *Fetter-lane*, *Fleet-ſtreet*.

M DCC LVI.

and bequeath all my third Part, Share and Intereſt of and in the Family Pictures which were my late Mother's, unto my Siſters and for their Lives, and the Life of the Survivor of them, and after the Death of the Survivor of them I give and bequeath my ſaid Part and Share of the ſaid Pictures unto the eldeſt Son of my late Siſter which ſhall be then living, and I deſire that he would never ſell or diſpoſe of any of them, but that they may always remain and continue in the Family; alſo all the Reſt and Reſidue of my Goods, Chattels and Eſtate whatſoever and whereſoever, or of what Nature, Kind or Quality ſoever (after Payment of my juſt Debts, Legacies and Funeral Expences) I give and bequeath the ſame and every Part thereof unto my ſaid Siſter whom I do hereby make, *&c.* ſole Executrix of this my laſt Will and Teſtament; and I do hereby revoke, *&c.* In Witneſs, *&c.*

THIS

THIS is the laſt Will and Teſtament of me *A. S.* of Widow. Firſt, I will and direct that all my juſt Debts and Funeral Expences be fully paid and ſatisfied; and ſubject thereto and to the Payment of the three ſeveral pecuniary Legacies of *l.* each, herein after bequeathed, I give, deviſe and bequeath all my Goods, Chattels, Plate, Jewels, Monies, Securities for Money, *South-Sea* Annuity Stock, Debts, and other perſonal Eſtate of what Nature or Kind ſoever and whereſoever, unto *A. B.* and *C. D.* of and to their Executors and Adminiſtrators, upon the Truſts and for the Purpoſes herein after mentioned (that is to ſay) In Truſt that they the ſaid *A. B.* and *C. D.* and the Survivor of them, and the Executors or Adminiſtrators of ſuch Survivor, do and ſhall, by and out of the Intereſt, Dividends and Produce of my ſaid Eſtate and Effects, pay and apply the Sum of 50*l.* a Year to and for the Maintenance and Education of my Daughter in ſuch manner as they ſhall think fit, until ſhe attains the Age of twenty-one Years, or ſhall be married; and upon her attaining that Age, or Day of Marriage, which ſhall firſt happen, to pay, aſſign and ſet over the ſaid Truſt Eſtate and Effects, and all Intereſt and Dividends due thereon, and Produce thereof, and all Securities whereon the ſame ſhall then be placed out or inveſted, to her my ſaid Daughter,

THE

PREFACE.

IT has been long ſince obſerved, by Perſons of eminent Parts and Learning, That *Prefatory Diſcourſes* (eſpecially in Syſtems of Science) do often pre-occupate, and ſometimes prejudice, or pervert the Reader's Judgment: And doubtleſs, whoever ſhall attentively peruſe the Introduction which the Author himſelf has prefixed to this *Treatiſe*, will readily and juſtly conclude, That an additional Preface thereto will prove but a Work of mere Supererogation, and be of little or no Uſe, either to illuſtrate the Author,

or direct the Reader. I ſhall therefore, in this Place, beg Leave to inſert only a few Words; and that firſt with Regard to the Author, and next to the *Work* itſelf.

Firſt, As to the former, it muſt be confeſſed by all who had any Knowledge of him, That he was every Way qualified for the Work he has here undertaken, (I may ſay perfected) as being not only a Gentleman of a generous and benevolent Diſpoſition, of exquiſite Parts and Learning, of indefatigable Induſtry and Application, for many Years a conſtant Attendant on the Courts at *Weſtminſter*, eſpecially thoſe whoſe Proceedings are according to Equity and good Conſcience, of which he was always an exact Obſerver, as well as a careful Collector, and a faithful Relator; and One, in whoſe Collections, Reports and Syſtems of Law, already publiſhed, appear an exquiſite Solidity of *Judgment*, as well as Utility of *Matter*, and Perſpicuity

ſpicuity of *Method.* In brief, His moſt eminent Endowments, both natural and acquired, deſervedly recommended him to the Royal Favour; which, from a due Regard to his Merits, ſoon advanced him to preſide in thoſe Courts where the Matters treated of in this Book are more particularly cogniſable.

Secondly, As to the Work itſelf, it will appear to every intelligent and attentive Reader, to be one of the moſt uſeful and neceſſary, as well as the moſt regular and exact, of its Kind, that has appeared in Publick within this or the laſt Century: For, *Firſt*, As to its *Utility*, it may be obſerved, That as no *Part* or *Branch* of the Law of *England* can give us more extended Ideas, or conduce more to our temporal Benefit, than the *Legal Methods* of transferring or diſpoſing Properties; ſo thoſe *Methods* being by our Author aptly and properly diſtributed into two Kinds, *i. e.* by *Alienation* in Life, or by *Deviſe* at

Death; the latter of theſe is here treated of with ſuch Exactneſs and Perſpicuity, as a Subject which, in Point of Utility or Intereſt, does or may concern *every Perſon* capable of giving or taking *Lands* by *Deviſe*, which in general includes *all Mankind*.

Next, As to the Method or Mould wherein the Treatiſe is caſt; It will, on Peruſal, be confeſſed by every intelligent Reader, to be formed according to the moſt exact *Logical* or *Analytical* Plan, and the whole Doctrine of *Deviſes of Lands*, &c. is herein accordingly diſtributed under *Nine Heads*; all which are particularly and methodically treated of at large in the ſubſequent Sections, wherein all the Caſes found in our Books or Reports, or which fell within our Author's own Obſervation, as neceſſary to illuſtrate or explain each reſpective Head, are introduced and applied.

And

And as to the Arguments of Lord Chief Juſtice *Holt*, in the Caſe of *Bunker* and *Cook*, and of Lord Chief Juſtice *Trevor*, in that of *Arthur* and *Bokenham*, the Reader may be aſſured, that the ſame were at firſt taken by our Author, as they were delivered in the reſpective Courts of *B. R.* and *C. B.* and afterwards by him added to this his Treatiſe of *Deviſes*; for that thoſe Arguments directly tended to illuſtrate and explain ſeveral Particulars therein treated, eſpecially thoſe two Points in *Sect.* 8 & 9. touching *Void Deviſes*, and *Revocations of Deviſes*: And the Editors hereof finding the ſame Arguments to have been here collected and penn'd in a more exact Manner than they have hitherto been publiſhed, cannot conceive it will be thought any Injury to the Publick, to give them here a Republication.

Laſtly, It has been thought adviſeable, and for the Reader's Eaſe and Benefit, to give him here an *Alphabetical Table* (by way of Double Entry) of the Names of ſuch Caſes and Authorities in Law or Equity, which are cited by our Author, and by him made Uſe of in the compoſing of this Work.

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THE

THE LAW OF Deviſes, Revocations, and Laſt Wills.

SINCE all were by Nature in a State of Equality, independant on one another, they muſt have had the ſame Right to all things neceſſary and convenient for the Support of Life; but when, by their Labour and Induſtry, they took any thing out of the common Stock, it thereby became their own, and no one could diſpoſſeſs them of it, without manifold Violence and Injuſtice; for they could not appropriate to themſelves the Fruits of the Earth without Labour, which ſurely no body would pretend any right to, in this natural State of Equality. Hence we may infer, that every Man had a full Property in thoſe

things he had appropriated by his own Induſtry; but becauſe all Men could not eaſily provide themſelves with all the Neceſſaries of Life, in as much as every Place did not bring forth all Things for Cloathing, Food, *&c.* Men were apt either violently to ſeize what their Neighbours poſſeſſed, or elſe fairly to agree on the mutual Exchange of the Productions of their ſeveral Soils; therefore it was judged reaſonable, to prevent the Diſorders of the Former, to eſtabliſh the Latter, by which Men were allowed to transfer any Share of their Fruits or Poſſeſſions, to procure to themſelves ſomething more ſerviceable, which they wanted. Now the Ways of transferring Property muſt be either by Alienation in the Life of the Poſſeſſor, or by Teſtament after his Death; that is, the Occupier having an abſolute Power over his own Acquiſitions may ſo entirely diſpoſe of them, that he ſhall not during his Life retain any manner of Right or Title to the Things which were before his own, or to the Uſe of them; or he may declare his Will, who ſhall ſucceed him in his Poſſeſſions after his Death, which till then is revocable; reſerving in the mean Time the Right of Occupancy, and enjoying the Profits of them. The former Power and Privilege ariſeth from the full Property; for ſince that enables a Man to diſpoſe of his own as he pleaſes, it ſeems the principal Part of that Ability, that he may, if the thinks convenient, transfer any Part to another,

ther, and ſo provide himſelf with ſomething more ſerviceable, or at leaſt engage a Friend by a Free Gift. The latter Method of tranſferring Property has not been ſo eaſily allowed; for it has been diſputed, whether Teſtaments owe their Original to a natural or poſitive Law. For ſince Things, over which the Property was firſt eſtabliſhed, are intended only for the Uſes of Men in this Life, they thought it ſufficient to that End, to allow the Occupier the Command of his Poſſeſſions during his Life, but that the Management of what belonged to the Dead ſhould be left to the Care of the Living.

But on the other Side, if we conſider that Men are obliged to take particular Care of their Children and others allied to them in Blood, and that it's not ſufficient in order to the Peace of Society, to introduce ſuch a Dominion of Things, as would turn only to the preſent Uſe, ſince this would create no leſs Trouble and Confuſion, than the primitive Community; it will appear neceſſary, that the Continuance of every Man's Property ſhould not depend on any fixed Period of Time, but be indefinite, and ſo paſs down, and be continued to others.

Beſides, the Privilege is a great Encouragement to Induſtry, which muſt have contributed much to the Peace and Quiet of a State of Nature. For Men were apt to extend their Right to the common Productions of the Earth too far, and in their Wants would eaſily perſuade themſelves that no

Appropriation would deprive them of it; therefore whatever could prevail on them to lay up the Fruits of the Earth, and to prevent that Violence and Rapine which the Want of them produces, muſt of Conſequence be highly reaſonable; and what could be a greater Motive to that End, than, after a full Enjoyment of them in this Life, a free Power to diſpoſe of them to thoſe, whoſe Intereſt and Happineſs ought to be our great Care and Concern? But however reaſonable this natural Notion may ſeem of transferring Property by Teſtament, it was not admitted into the Feudal Law; the Reaſons whereof will appear, if we examine into the Nature of the old Feuds and Tenures.

A Feud was at firſt no more than the Right which the Vaſſal had to take the Profits of his Lord's Lands, rendering unto him ſuch Feudal Duties and Services as belong to Military Tenure; ſo that the Tenant had only the Uſe of the Land, and the Property ſtill continued in the Lord. Thoſe Feuds the Tenants had at firſt but at the Will of the Lord, and afterwards they were continued to the Tenant during his Life; and while they were thus limited, 'tis no Wonder they were not ſuffered to diſpoſe of them by Teſtament, for that does not take Effect till after the Death of the Teſtator, at which time the Tenant's Intereſt in the Feud ceaſed, and his Eſtate was determined; and therefore he could not diſpoſe of that he had no Right to; nor will this Reſtriction ſeem unrea-

unreaſonable, when the Feud came to be Hereditary and Perpetual, if we make a further Enquiry into the Services and Duties, that every Feudal Tenant was obliged to pay his Lord.

Among many others, *Spelman* tells us, there were *Defence* for the Lord's Perſon, *Counſel* and *Advice*; for the Tenant was obliged every three Weeks to attend the Lord's Court, and direct him as the Cauſes required; and the Profit of *Ward*, *Marriage* and *Relief* as they fell. Theſe I take to have been the moſt beneficial, and of greateſt Conſequence to the Lord. And firſt, He muſt of neceſſity have been deprived of theſe, had this Diſpoſition of the Feud by Teſtaments been allowed; for by this Means a Stranger might be admitted into the Poſſeſſion of the Feud, who had neither Strength of Body or Mind to perform the Services; the Ability of the Latter being no leſs neceſſary to aſſiſt the Lord in his Courts, than the Vigour of the former was to defend and protect him in the Field.

Again, If we conſider the Nature of Ward, Marriage and Relief, we ſhall find the Lord by the ſame Means diſappointed of their Profits; for at the Death of the Tenant, his Heir was either within Age, and then the Profits of Ward and Marriage accrued to the Lord; or he was of full Age, and then that of Relief became due; for upon the Death of the Tenant, the Land lay empty and fell into the Lord's Hands, and *Co. Lit.* 76.

the taking it out of the Lord's Hands was called *Relevium*, which was in the Nature of a New Purchaſe; and it was thought very reaſonable, that the Lord ſhould have the Education of the Heir, that he might inſtruct him in the uſual Services of the Feud, it being no leſs the Intereſt of the Publick than the Lord, to have them duly performed; but had this way of transferring the Feud been admitted, it had been in the Power of every Tenant to deprive the Lord of theſe Benefits, by appointing a Stranger to ſucceed him.

Beſides, this way of Conveyance wanted that Solemnity, which the Feudiſts thought neceſſary to eſtabliſh in transferring Lands, that if at any Time a Diſpute ſhould ariſe, it might be the eaſier determined by the *Pares Comitatus*, who were Witneſſes to that notorious and publick manner of conveying by Livery; and for that reaſon I believe Copyhold Land was taken to be out of the Statute of 32 *H.* 8. For their Surrender, which is required as well in Deviſes as in other Alienations, anſwers the Notoriety of Livery and Seiſin, and conſequently out of the Reaſon of the Prohibition of the Feudal Law.

Thus the Law continued till the Invention of Uſes, which were firſt found out by the Clergy, to evade the Statutes of Mortmain; for when thoſe Acts prohibited them from making any further Purchaſes of Lands, they introduced the Diſtinction of the Civil Law, between

between the *Uſus fructus* and the Property; and as they generally ſat in Chancery, where theſe Uſes were ſolely cognizable, ſo they ſuffered them to be diſpoſed of by Will, as the *Uſus fructus* is by the Rules of the Civil Law; rightly judging, that Men are moſt liberal when they can enjoy their Poſſeſſions no longer, and therefore at their Death would chooſe to diſpoſe of them to thoſe, who only could promiſe them Happineſs in another World.

But amongſt the many Miſchiefs that followed this Contrivance of Uſes, our Feudal Lord was often deprived of his Services and Profits of his Feud; and though the Statute of *H.* 7. reſtored the Ward of *Ceſtuy que Uſe* his Heir with the Relief to the ſaid Lord, and many other Acts made Proviſion againſt the other Miſchiefs; yet they were ſtill continued, principally as the *Doctor & Student* obſerves, for the Sake of this Power of diſpoſing them by Will; but that was entirely taken away by the Statute of 27 *H.* 8. of Uſes, which transferred the Poſſeſſion of the Feoffees to *Ceſtuy que Uſe*, and ſo merged the Uſe, but the Land it ſelf could not longer be conveyed by Teſtament, but by Alienation in the Life of the Proprietor.

The People were not well pleaſed to find themſelves ſtrip'd of a Privilege they had ſo long enjoyed, but grew uneaſy under this Alteration and Reſtriction; and therefore the Parliament of 32 *H.* 8. was the eaſier prevailed on to eſtabliſh that manner of Convey-

ance by Will, ſince they found it might be done with ſmall Detriment to the Military Tenures, which were at that Time in their Declenſion.

I will omit to take Notice of the particular Clauſes in that Statute, and the 34 *H.* 8. which relates to thoſe Tenures, it being a Matter of Speculation and Curioſity rather than of Uſe, ſince they are aboliſhed; but ſhall confine myſelf to that general Clauſe which concerns Socage Lands, and impowers every Perſon having a ſole Eſtate in Fee-ſimple, or ſeiſed in Coparcenary, or in Common in any Lands, *&c.* in Poſſeſſion, Reverſion or Remainder, to Will or Deviſe them, or any Rent, Common or other Profit out of them, at his free Will and Pleaſure, to any Perſon, except Bodies Politic and Corporate. Now that we may the eaſier comprehend the ſeveral Points of Law which may be reduced to this Head of Deviſe, it will be neceſſary,

Firſt, To conſider who may deviſe Land, and to whom it may be deviſed, *&c.*

Secondly, What Words paſs a Fee in a Will.

Thirdly, What paſs an Eſtate Tail, or for Life.

Fourthly, Of Executory Deviſes, contingent Remainders, and croſs Remainders.

Fifthly, Of Terms for Years, and incertain Intereſts.

Sixthly, Of Deviſes by Implication.

Seventhly,

Seventhly, What Circumſtances are neceſſary by 32 *H.* 8. and 29 *Car.* 2.
Eighthly, Of Revocations.
Ninthly, Of void Deviſes.

Who may deviſe Land, and to whom it may be deviſed, &c.

THE (*a*) Statutes of 32 and 34 *H.* 8. give this Power to all Perſons, except Infants, Ideots, Feme Coverts, and Perſons of (*b*) *non ſanæ memoriæ*; and every Perſon may be a Deviſee within theſe Statutes, except Bodies Politic and Corporate; and theſe were excepted, becauſe they never anſwered the Feudal Services, and were reſtrained from purchaſing any Lands by Statute of Mortmain.

6 *Co.* 16. *b.* 1 *Rol. Abr.* 608.

(*a*) *A Conveyance by Will was a Privilege anciently allowed by the Civil Law only to Perſons* in Extremis, *who had not Time nor Aſſiſtance neceſſary to make a formal Alienation, and was chiefly intended for Military Men, who were always ſuppoſed to be under thoſe Circumſtances, and therefore the Ceremonies and Number of Witneſſes required of others were diſpenſed with as to Soldiers, though now the Rules for military Teſtaments are allowed in moſt Caſes; but as to Lands and Houſes, our Law gave no liberty of diſpoſing thereof by Will, except in certain Boroughs and Places where ſuch Cuſtom had obtained Time out of Mind.* Show. Caſ. in Parl' 147. *Sir* Edward Hungerford *v.* Noſworthy. (*b*) *It is not ſufficient that they be able to anſwer to familiar and uſual Queſtions.* Cro. Jac. 497. 6 Co. 23 a.

Yet, ſince the Statute of Charitable Uſes, it has been held that a Deviſe to the Principal, Fellows and Scholars of *Jeſus* College in *Oxon* S. P.

43 *Eliz. c.* 4. *Hob.* 136. *Flood's* Caſe. 1 *Lev.* 284.

Oxon and their Succeſſors, for Maintenance of a Scholar, is good, though ſuch Deviſe had been Mortmain by the Statute of Wills.

2 Vern. 104. Although a Wife, by reaſon of the Subjection ſhe is under to her Huſband, cannot make a Will, yet a Woman, whoſe Huſband is baniſhed for his Life by Act of Parliament, may make a Will and act in every Thing as a Feme Sole, as if the Huſband was dead.

Cro. Eliz. 27. *Cro. Car.* 219, 376, 597. — But it does not operate as a Will, neither ought it to be proved in the Spiritual Court. 1 *Mod.* 211, 212. A Huſband may bind himſelf by Covenant or Bond, to permit his Wife by Will to diſpoſe of Legacies, and this will be ſuch an Appointment as the Huſband will be bound to perform.

for the Property paſſes from him to her Legatee, and it is his Gift. *Per Cur'*, 1 *Mod.* 211. ——If the Huſband once aſſents, he cannot after diſſent, and where he is bound by Agreement to let her make a Will, his Conſent ſhall be implied until the Contrary appears. ——What will be ſufficient Evidence of an Aſſent, ſee 2 *Mod.* 172, 173. ——What religious Perſons were diſabled from making a Will, *vide Rol. Abr.* 608.

A Feme Covert cannot deviſe any of the Goods which ſhe hath as Executrix without the Huſband's Aſſent, or his Agreement after. 1 *Rol. Abr.* 608.

Of Things in Action, or of what ſhe hath by her Huſband's Conſent, ſhe may make a Will, and this is properly a Will in Law, and ought to be proved in the Spiritual Court. 1 *Mod.* 211, 212.

A Feme Covert Executrix may make a Will without her Huſband's Aſſent. *Vide Moor* 349.

340. 2 *And.* 92. 1 *Rol. Abr.* 608, 912. 1 *Mod.* 211, 212.

If a Man makes a Will in his Sickneſs by the over Importunity of his Wife, to the end he may be quiet, this ſhall be ſaid to be a Will made by Reſtraint, and ſhall not be good. *Style* 427.

If a Feme Covert makes and publiſhes her Will, and deviſes Lands by it, and her Huſband dies, the Deviſe is void, becauſe the Conſummation is founded upon the making and publiſhing, which are void Acts. *Plow.* 344.

A. deviſed a Houſe to *B.* for Life, and after to Truſtees to keep it in Repair, and beſtow the reſt of the Profits upon the Reparation of certain Highways. This Deviſe was held good againſt the Heir at Law, and the Pariſhioners had a Decree for the Profits, 1 *Lev.* 284. *Hob.* 136. *Collins's* Caſe.

A Wife may be a Deviſee, though not a Grantee to the Huſband; for as the Grant had been void, becauſe the Huſband and Wife are but one Perſon in Law; ſo the Deviſe is good, becauſe it does not take Effect till after the Death of the Huſband, and then they are no more one Perſon. *Co. Lit.* 112. 1 *Ro. Abr.* 610.

It has been much doubted whether a Deviſe to an Infant *in ventre ſa mere* be good, becauſe it is not in Being to take at the Time of the Death of the Deviſor. And ſince by the Deviſe they are to take immediately after the Death of the Deviſor, the Freehold *Dyer* 303. *b.* 304. *a.* *Moor* 637. 1 *Lev.* 135.

Freehold cannot be put in Abeyance by the Act of the Parties.

Bro. Deviſe 23. *Moor* 177. 1 *Lev.* 135. 1 *Ro. Abr.* 609. Others held that a Deviſe to an Infant *in ventre ſa mere* is good, though the Infant be not *in eſſe* at the Death of the Deviſor, and that the Freehold ſhall not be in Abeyance, but ſhall deſcend to the Heir at Law in the mean time.

1 *Sid.* 153. *Snow* v. *Tucker.* 1 *Lev.* 135. But all agree to this, that a Deviſe to an Infant when he ſhall be born, is a good Deviſe, and that the Freehold ſhall deſcend to the Heir at Law in the mean time.

Moor 637. *Church* v. *Wyat.* *Vide* 3 *Lev.* 408. 4 *Mod.* 259, 282. and *Stat.* 10 & 11 *W.* 3. *c* 16. *whereby Proviſion is made for preſerving a Remainder for the Benefit of poſthumous Children.* So it is out of doubt, that if Land be deviſed for Life, the Remainder to a poſthumous Child, that this is a good contingent Remainder, becauſe there is a Perſon in Being to take the particular Eſtate. And if the contingent Remainder veſts during the Continuance of the particular Eſtate, or *eo inſtanti* that it determines, it is good.

The Law is now clear, that a Deviſe to an Infant *en ventre ſa mere* is good enough, though he be born after the Teſtator's Death, and he ſhall take by Way of *executory* Deviſe when he is born. *Per North* C. J. *T.* 1677. *Anon.* in *C. B.* 1 *Freem. Rep.* 293. A Deviſe to an Infant *en ventre ſa mere* was formerly held void, for that the Infant not being born, there was no Perſon to take; but it is now held good, becauſe the Law ſhall intend that the Deviſor did intend it to

to him when he ſhould be born, ſo that it works in the Nature of an *executory* Deviſe, and where it appears that the Teſtator did not intend it to be executed preſently, there it ſhall wait. *Per North* C. J. *Hil.* 1677. In the Caſe of *Taylor* and *Bydall*, 2 *Freem. Rep.* 243, 244.

A Deviſe to an Alien, alſo a Deviſe to the Heir of an Alien, is void, becauſe an Alien according to the Policy of our Law, can have no Heir, either to inherit or take by Purchaſe. 1 *Lev.* 59. — But a Baſtard may be a Deviſee of Land, though a Monk cannot. *Dyer* 323.

A. deviſed a Term for Years to his Daughter and her Children, (ſhe then having three) and alſo to ſuch other Children as ſhe ſhould have, and the Children of thoſe Children, ſhe having other Children afterwards; held that the Daughter and her three Children took jointly each a fourth Part, and that the after-born Children took nothing, and that theſe were Words of Limitation and not of Purchaſe; and it is as much for the Wife's Part, and though it had been given to her and the Heirs of her Body. *M.* 1692. *Alcock* and *Ellen*, 2 *Freem. Rep.* 186.

Deviſe of Chattels for Life, with Remainder over, good, but if of ſmall Value, and the Caſe requires it, it may be otherwiſe. *Cooper* and *Williams*, *Prec' in Canc.* 71.

A Deviſe by *Ceſtuy que Truſt* in Tail is good, without any further Act to bar the Right in Tail. *Ibid.* 228.

A. hath Iſſue *B.* and *C. C.* deviſed to *B.* 1000 *l.* and *after to the Poſterity of* A. *for their Education*, at which Time *B.* was ſixty Years of Age, and *A.* dead; the Queſtion was, who ſhould have the 1000 *l.* after *B.'s* Death; and *per* Lord K. the *lineal* Heir, if there be any, ſhall take it under the Word *Poſterity*. But *B.* dying without Iſſue, and there being no *lineal* Heir of *A.* the *collateral* Heir ſhall take it, but thoſe of the half Blood ſhall not. *Vide* 2 *Abr. Eq.* 290. *C.* 7.

One deviſes the Surplus of his Eſtate to his Children and Grandchildren, a Grandchild *in ventre ſa mere* at the Teſtator's Death ſhall not take. *Secus* had it been to the Children and Grandchildren living at his Death. *Northey* and *Strange*, 1 *Will. Rep.* 342. *Vide Prec' in Chan'* 470. *Gilb. Rep. in Eq.*

I. S. deviſes his perſonal Eſtate to *A.* and *B.* and if either die without Children, then to the Survivor, this is good. *Hughes* and *Sayer*, 1 *Will. Rep.* 534.

A. deviſes 3000 *l. to all his natural Children of* B. *his Son by* C. the Baſtards born after the making of the Will ſhall not take; nor the Child *in ventre ſa mere. Metham* and *Duke of Devonſhire*, 1 *Will. Rep.* 530.

An *executory* Deviſe of an Eſtate of Inheritance to a Perſon unborn, when he ſhall attain the Age of twenty-one Years, is good, and no Danger of a Perpetuity. *Stephens* and *Stephens*, *Ca. in Eq. temp. Talbot* 228.

One deviſes Lands (in Caſe he leaves no Son at the Time of his Death) to *I. S.* the Teſtator

Teſtator dies, leaving his Wife *privement enſient* with a Son, this poſthumous Son, is a Son living at the Time of the Teſtator's Death, and *I. S.* not intitled. Sir *Robert Burdet* and *Hopegood*, 1 *Will. Rep.* 486.

Deviſe of Lands to Truſtees, in Truſt that if the eldeſt Son of *A.* turn Proteſtant, then to ſuch eldeſt Son, is a good Deviſe, as not being to a Papiſt, but to a Proteſtant. *Carteret* and *Carteret*, 2 *Will. Rep.* 132.

A Papiſt cannot take a Freehold or Leaſehold Eſtate by Will, becauſe taking by Will, is taking by *Purchaſe*, and by the expreſs Words of the Stat. 11 & 12 *W.* 3. *cap.* 4. a Papiſt is diſabled to take by *Purchaſe*; alſo Terms for Years are expreſly mentioned in the Statute. *Davers* and *Dewes*, 3 *Will. Rep.* 46.

Plaintiff claimed as contingent Deviſee of a Term for Years, on *A.* the Legatee's dying without Iſſue; and the Court was clearly of Opinion, that the Deviſe over was good, the dying without Iſſue being confined to a Life then in Being. *Opie* and *Godolphin*, *Prec' in Chan'* 549.

A. poſſeſſed of a Term deviſed it to *B.* and *C.* and if either of them died and leave no Iſſue of their reſpective Bodies, then to *D.* this held a good Limitation to *D.* if *B.* or *C.* left no Iſſue at their Death. *Forth* and *Clapman*, 1 *Will. Rep.* 664.

I. S. poſſeſſed of a Term, deviſed it to *B.* for Life, Remainder to his firſt, *&c.* Son in Tail ſucceſſively, Remainder to his

his Daughter, and if *B.* ſhould have neither Son nor Daughter, then to *C.* ——*B.* dies having never had a Son *or* Daughter, the Deviſe over to *C.* is good. *Stanley* and *Leigh*, 2 *Will. Rep.* 618.

Deviſe of a Term to *A.* for Life, Remainder to the Children *A.* ſhall leave at his Death, and if the Children of *A.* die without Iſſue, then to *B.* the Children of *A.* die without leaving any Iſſue living at the Time of their Death, this is a good Deviſe over to *B. Atkinſon* and *Hutchinſon*, 3 *Will. Rep.* 258.

A Deviſe to a Papiſt above the Age of eighteen is void; and if ſuch Deviſee convey to a Proteſtant Purchaſor for a valuable Conſideration, that Conveyance is void alſo. In *B. R. Fairclaim* on the Demiſe of *Borlace* and *Newland*. *Vin. Abr.* Tit. *Deviſe*, (I 7.) *C.* 4.

What Words paſs a Fee in a Will.

HERE we muſt obſerve, that the Intent of the Deviſor will ſupply the Want of thoſe Words which are neceſſary in Deeds to convey an Inheritance; as if a Man deviſe Lands to another *in perpetuum*, or *in Feodo ſimplici*, or to him and his Aſſigns for ever, or to him and his; in all theſe Caſes a Fee-ſimple paſſes by the Will; for it is evident by the Deviſor's Intention, that the Gift ſhould continue beyond the Life of the Deviſee. *Co. Lit.* 9. *b.* 1 *Bulſt.* 222. 223. *Bendl.* 11.

So if *A.* deviſes his Lands to *B.* to give, ſell or do what he pleaſes with them, theſe Words by the Intent of the Deviſor, convey a Fee to *B.* So a Deviſe to one *& ſanguini ſuo*, is a Fee, becauſe the Blood runs through the collateral as well as the lineal Line. *Bro. Deviſe* 39. 1 *Rol. Abr.* 834. *Moor Pl.* 162. *Bendl.* 11. *Co. Lit.* 9. *b.* 1 *Roll's Abr.* 835.

A Deviſe to a Man and his Succeſſors carries a Fee, for by the Word *Succeſſors* is intended Heirs, *Quia hæres ſuccedit patri.* *Cro. Jac.* 146. *Webb* v. *Hearing.*

If one deviſes in theſe Words, I releaſe all my Lands to *A.* and his Heirs, *A.* has a Fee-ſimple; for where the Intention of conveying appears, the Law diſpenſes with the Form in Wills. *Bendl.* 30.

If I appoint that *A.* ſhall have my Inheritance, if the Law allows it, or that *A.* ſhall be my Heir of my Lands, theſe Words are

Hob. 2, 75. ſufficient to convey a Fee; and the Reaſon of this Favour allowed in Teſtaments is, becauſe the Teſtator is preſumed *inops concilii* at that Time; and though by the Feudal Conſtitution the Feoffors in all Conveyances
1 *Roll's Abr.* 835. are obliged to the very Words of the firſt Donation made to them; yet by the Civil Law any Perſon might transfer his Property in any Form of Words that expreſſed his Intention of diſpoſing of it; and the manner of transferring Lands by Will being derived by the Civil Law, as all others were from the Feudal, there was a greater Latitude allowed of in the Forms of Expreſſion in this Kind of Diſpoſition than in any of the reſt.

1 *Roll's Abr.* 833, 836. If a Man deviſes Land to his Wife for Life, and after her Death to his three Daughters, equally to be divided, and if one dies before the other, then one to be the Heir to the other, equally to be divided; this laſt Clauſe gives a Fee to the Daughters, for the word *Heir* is *nomen operativum*, and chiefly in a Will ſhall be taken in it's full Extent, and then it reaches the moſt remote Heirs.

The word *Heir* is *nomen Collectivum* and in a Will contains Heirs and Heirs of the Heir, and gives a Fee. *Skin.* 563.

1 *Sid.* 148. *Collenſon* ver. *Wright.* 2 *Leon.* 11. *A.* deviſes his Land to his Son and Heir, and if he dies before his Age of twenty-one Years, and without Iſſue of his Body then living, the Remainder over; he ſurvives the twenty-one Years, and ſells the Lands. The Sale adjudged good, for he had a Fee-ſimple preſently, the Eſtate-Tail being to com-

mence on a ſubſequent Contingency, *viz.* If he die before the Age of twenty-one Years without Iſſue, and then the Remainder was to veſt.

If a Man deviſes *Black-acre* to his Son; *Item*, He gives *White-acre* to his ſaid Son and his Heirs; the Son hath but an Eſtate for Life in *Black-acre*, becauſe there are two diſtinct Deviſes; but if he had deviſed *Black-acre*, and alſo *White-acre* to his Son and his Heirs, the Son ſhould have had a Fee in both; for it is but one intire Deviſe, and the word *Heir* has relation to the whole Sentence. *Moor Pl.* 153. 1 *Ro. Abr.* 844. 1 *Sid.* 105.

A. deviſes the Fee of his Houſe to *B.* and after the Death of *B.* to *C.* his Heir apparent, the Deviſe to *B.* was ſufficient to carry the Fee *in præſenti*; yet becauſe there can be no Eſtate limited upon a Fee, and it appears from the Words of the Will, that *C.* ought to have an Eſtate for Life, therefore to anſwer the Intent of the Deviſor *B.* took an Eſtate for Life, the Remainder to *C.* in Fee; and by this Conſtruction they took both what the Deviſor ſeemed to have intended them. *Dyer* 357. *Bendl.* 300, 301.

A. deviſes Land to *B.* for Life, the Remainder to *C.* paying ſeveral Sums in Groſs; *C.* hath a Fee, though all the Sums of Money together do not amount to the annual Rent of the Land; for the Deviſe ſhall be intended for his Benefit; and if he had only an Eſtate for Life, he might die before he could receive the Legacies out of the Land, 6 *Co.* 16. *Collier's* Caſe *Cro. Eliz.* 378. *Cro. Jac.* 527. *Pollexf.* 554. *Cro. Car.* 158. 1 *Roll. Ab.* 834. *Co. Lit.* 9. *b.* *Cro. Eliz.* 205.

3 *Co.* 21. *a.* *But* 2 *Chancery Caſes ſeems contrary, fol.* 21.

and conſequently be a Loſer, for where there is a Sum in Groſs to be paid, there the Deviſee hath a Fee, though the Sum be not the Value of the Land; as if *A.* deviſe one hundred Acres to *B.* paying 10 *l.* to his Executors, *B.* hath a Fee-ſimple; for the Quantity of the Sum in Groſs is not material.

6 *Co.* 16. *a.* *Pollexf.* 556.

But if a Deviſe be to *B.* paying ſo much, or ſuch Sums out of the Profits of the Lands, there the Deviſee takes but an Eſtate for Life; for though he takes the Land charged, yet he is to pay no faſter than he receives, and ſo can be no Loſer.

6 *Co.* 16. *Cro. Car.* 158. 1 *Jones* 211, 212. 1 *Bulſtr.* 194, 195. *Cro. Car.* 416.

So if the Deviſe had been to *B.* paying an annual Sum to another, this had been but an Eſtate for Life; for he may pay this out of the yearly Profits without any Loſs to himſelf; nor does the Reſolution in *Webb* and *Hearing*'s Caſe impugn this; for there the Deviſe was to *R. W.* and *J. W.* and they to pay yearly to another 6 *l.* for ever; and then the Will went further, and ſays, if they or their Succeſſors deny the Payment of it, then the Legatee of the Rent to enter; which ſhews the Intention of the Deviſor, that their Eſtate ſhould not determine with their Death, ſince he meant that their Succeſſors ſhould pay the Rent, and therefore it's preſumed to deſign them the Land which is to bear the Burden of the Rent.

Bridg. 84.

Bendl. 15.

If I Deviſe my Land to *J. S.* in Conſideration that he will releaſe 100 *l.* which I owe him, to my Executors, the Deviſee has a Fee-

a Fee-ſimple upon his Releaſe of the Debt; for the Deviſe ſhall be intended for his Benefit, and an Eſtate for Life may be determined before he can receive 100 *l.* out of the Land.

If a Man deviſes 100 *l.* in Legacies, to be paid within a Year to ſeveral Perſons out of the Land, of the Value of 10 *l.* and then deviſes the Land to another, the Deviſee hath a Fee in the Land; for though the Deviſe be not to him paying 100 *l.* yet ſince he muſt take the Land ſubject to the Charge of the Legacies, he muſt have a Fee-ſimple to have any Benefit by the Deviſe. 2 *Lev.* 249. *Freak* v. *Lea.* *Pollexf.* 553. This Caſe ſaid to be otherwiſe adjudged, 2 *Jones* 113.

A Man had Iſſue three Daughters, *A. B.* and *C.* and deviſed his Land to his Wife, till his Heir came to twenty-one Years, paying to his Heir 10 *l. per Ann.* and to his Children 20 *l.* a-piece. This is a Deviſe of the Inheritance to the eldeſt Daughter, excluſive of the others, becauſe he has ſhewn that he meant his eldeſt Daughter to be his Heir, by calling her Heir in the ſingular Number; for the Will ſaid further, that if *A.* his Heir died without Heirs before twenty-one, then the Land to remain over. 2 *Lev.* 162. *Tilly* ver. *Collier.*

A Man deviſed his whole Eſtate to his Wife, paying Legacies and Debts, his Debts being 20 *l.* and perſonal Eſtate but 5 *l.* The Wife was adjudged to have a Fee-ſimple by the Words, *his whole Eſtate*; for that in common Acceptance is extended to Land; but beſides, ſince Deviſes are conſtrued as 1 *Ro. Abr.* 834. *Johnſon* ver. *Herman.* *Style* 281, 193. 1 *Mod.* 100. 2 *Lev.* 91. 2 *Chan. Caſes* 262.

they are really intended, for the Benefit of the Deviſee, ſhe muſt have a Fee-ſimple, becauſe ſhe is to pay a Sum in Groſs, which ſhe may not live to receive out of the Land, and then by ſuch Conſtruction be a Loſer, againſt the Intention of Deviſor.

1 *Ch. Caſes* 136, 187, 262.

So a Deviſe of all my Eſtate real and perſonal for Payment of Debts, is a Deviſe in Fee.

1 *Jones* 380. *Wilkinſon* ver. *Merryland.* *Cro. Car.* 447. 1 *Rol Abr.* 834. 1 *Mod.* 100. *Reports in Equity* 30. *Marchant* v. *Twiſden.*

But where a Man is ſeiſed of *Black-acre* in Fee by Mortgage, which was forfeited, and of *White-acre* as his own Inheritance, and deviſed *White-acre* to his Brother, and then deviſed all the Reſidue of his Goods, Leaſes, Mortgages, Eſtates, Debts, ready Money, and other Goods, whereof he was poſſeſſed, after Debts and Legacies paid, to his Wife, and made her Executrix and died; this was no Deviſe in Fee to the Wife of the mortgaged Lands; for the word *Eſtate* is coupled here with Chattels, which intended that he meant only Eſtates for Years, and the rather becauſe the Words, *whereof he was poſſeſſed*, ſhew that he intended only to give her Chattels and the Mortgage Money, and not the Inheritance of the Land.

Cro. Car. 129. *Chamberlain* ver. *Turton.* 1 *Jones* 195. *Dyer in Marg.* 357.

A. deviſed his Houſe or Tenement wherein *J. S.* dwelled, called the *White Swan* in *Old Street*, to *J. N.* for ever. This was good to convey the Fee-ſimple: And though *J. S.* had but a ſeparate Apartment in the Houſe, and the other Rooms were inhabited by ſeveral other Perſons, yet the whole Houſe paſſed, becauſe the Houſe in which he

he dwelt was deviſed, and which was called the *White Swan*; which Sign extending to the whole Houſe, ſheweth the Intent of the Deviſor.

A. ſeiſed of Land in Fee, ſettles Part of it on his Daughter for her Life, and by his Will deviſes the other Part of it to his Wife for one Year after his Death, and then deviſed all his Land not ſettled or deviſed, to *J. S.* to hold to him and his Heirs, after the Death of his Daughter, and a Year after his Death; though in this Caſe it appeared the Land had been all ſettled or deviſed, yet by the Deviſe of the Land the Reverſion paſſed, the Intention of the Deviſor being to paſs the Reſidue of his Eſtate in the Lands which were to veſt in *J. S.* as the Contingencies happen, *viz.* either by the Death of the Daughter, or the Expiration of a Year, and not obliged to wait till both happened, and ſo take all together. 1 *Lev.* 212. *Cook* ver. *Gerrard.*

* Deviſe to *A.* and *B.* and if either died, the other to be his Heir; *Quære*, whether this be an Eſtate in Fee or for Life only. In *C. B.* Vid. 1 *Freem. Rep.* 235.

* If a Deviſe is to *A.* and his Poſterity, it is only an Eſtate-tail, *per Ld. Keeper.* But his *Honour* thinking that ſuch a Deviſe would create a Fee, his *Lordſhip* ordered Precedents to be ſearched. *Attorney General* and *Bamfield*, 2 *Freem. Rep.* 268.

* *Inheritance* ſhall paſs without any other Circumſtances to manifeſt the Deviſor's In-

tent, merely by Deviſe *of his Eſtate*. *Per Holt* C. J. 6 *Mod.* 109.

* A Deviſe to a Man *in perpetuum* paſſes a Fee-ſimple. *Per Holt* C. J. 1 *Will. Rep.* 77.

* *A.* deviſes Lands to *B.* and after two or three Legacies to different Perſons, he gives 5 *l.* to *C.* and directs *B.* to pay it, but gives him two Years time to pay it. Adjudged to be a Fee. *Reeves* and *Gower*, 2 *Abr. Eq. P.* 300. *Ca.* 16.

* By a Deviſe of all the reſt of his Eſtate, ſubject to the Payment of his Debts, a Fee paſſes. *Cliffe et alii* and *Gibbons*, 2 *Ld. Raym.* 1325.

* A Deviſe of all his Eſtate whatſoever, comprehends all that a Man has, real or perſonal, and where there is a Surrender to the Uſe of his Will, a Copyhold Eſtate muſt fall under the ſame Conſtructions. *Scott* and *Alberry*, in *C. B. Comyns's Rep.* 337, 340.

* A Deviſe to *B.* and her Heirs, and if ſhe and *D.* die without Iſſue, Teſtator gives ſeveral Annuities charged upon the Premiſſes to charitable Uſes; reſolved that *B.* had an Eſtate in Fee. *Scrape* and *Rhodes* in *C. B. Ib.* 542.

* *A.* gave ſpecifick Legacies to his Daughters, and other Legacies to others, then he gave all the Reſidue of his Eſtate to *W. R. &c.* in Truſt to increaſe his Daughters Portions. *Ld. C.* decreed that this gave the Daughters a Fee. 2 *Mod. Caſ. in L. & Eq.* 92. *Anon.*

* Teſtator being ſeiſed in Fee deviſed his Land to Truſtees and their Heirs, in Truſt for

for *B.* and *C.* for their Lives, Remainder to the Children of *B.* and to the Children of *C.* by her then Huſband, in Truſt that they ſhould have the Profits thereof when they come of Age. The whole Court were of opinion that the Children took an Eſtate in Fee as Tenants in Common. *Bateman* and *Roach*, 2 *Mod. Ca. in L. & Eq.* 104, 6.

* *I. S.* 5th *Sept.* 1715. deviſed all his real and perſonal Eſtate to Truſtees and their Heirs, on Truſt that they ſhould convey the real Eſtate to his Godſon, *A.* for Life, *ſans Waſte*, Remainder to preſerve contingent Remainders, *&c.* Remainder to the firſt and every other Son of ſaid *A.* in Tail, with Power to make a Jointure not exceeding a Moiety of the real Eſtate, and directed that his perſonal Eſtate ſhould be laid out in Lands, and ſettled in the ſame Manner; and in Caſe *A.* ſhould die without Iſſue, then he willed that *B.* his Kinſwoman ſhould enjoy all the Rents of his Eſtate during her Life, and afterwards one fourth Part thereof ſhould be enjoyed by *C.* his Heirs and Aſſigns; another fourth Part by *D.* his Heirs and Aſſigns; one other fourth by *E.* her Heirs and Aſſigns, and the other fourth by *F.* her Heirs and Aſſigns; and directed that in caſe any of them the ſaid *C. D. E.* and *F.* ſhould be dead at the Time, when by Virtue of the ſaid Deviſe the ſaid Eſtate in manner aforeſaid would devolve upon them, that then the fourth Part, which the dead Perſon would have been intitled to, if living, ſhould be conveyed

conveyed to their reſpective Heirs. *D.* made his Will in 1719. and *M.* his Wife reſiduary Legatee, and on 16th *Feb.* 1720. after reciting the Contingent Intereſt that he had by the Will of *J. S.* he deviſed that whenever his 4th Part ſhould come to *G.* his Son and Heir, or to ſuch Perſon as ſhould be his Heir, that it ſhould ſtand charged with 12000 *l.* for his Wife *M.* and 3000 *l.* apiece to his three younger Children, and ſoon after died; *M.* his Widow married the Plaintiff in 1728. *A.* died without Iſſue, in 1729. *B.* died, and the Plaintiff and his Wife and three younger Children by *D.* her *former* Huſband brought their Bill againſt *G. D.*'s Heir at Law, and the Truſtees, to have the 12000 *l.* and 3000 *l.* raiſed out of *D.*'s 4th Part; and the Queſtion was, as the Eſtate never veſted in *D.* nor any Settlement made in his Life-time, whether he could charge it in the Hands of his Heir, or the Heir was a Purchaſer. *King* C. By the firſt Charge in the Will, a plain Fee-ſimple is deviſed to *D.* after the precedent Limitations, ſo that his Remainder was veſted, and that by the *latter* Clauſe in Caſe of his Death a Conveyance is directed to be made to his Heir, yet that cannot be taken to be a contingent Limitation that was to veſt originally in the Heir, but only a Direction to the Truſtees how to convey, in Caſe he who was to take the Benefit ſhould die before a Settlement made: So his *Lordſhip* thought the Eſtate well charged. *Thornton* and

and *Blackbourn & al'*, 2 *Abr. Eq.* Tit. *Deviſe*, *P.* 303. *Ca.* 25.

* One Deviſes his Freehold Eſtates to Truſtees and their Heirs, in Truſt to convey them to his Son for Life, Remainder to his 1ſt, *&c.* Son in Tail Male, Remainder to his four Daughters, to each one 4th in Fee; and in Caſe any of his four Daughters die without Iſſue, the Truſtees to convey ſuch 4th Part in Fee to the reſpective Heirs of the Daughter ſo dying; one of the Daughters died without Iſſue, her 4th in Equity belongs to her Brother as her Heir; for ſhe having a Deviſe of the 4th Part to her in Fee, the Words directing a Conveyance to be made in caſe of her Death to her Heir, are no more than what would have been otherwiſe implied, *& expreſſio eor' quæ tacite inſunt nihil operatur. Per Cur'.* *Blackburn* and *Edgley*, 1 *Will. Rep.* 606.

* *A.* after the Deviſe of ſeveral Parts of his real and perſonal Eſtate to ſeveral Perſons, deviſes the Intereſt and Produce of the Surplus of his real and perſonal Eſtate to his Grandchildren, until their Age of twenty-one; this will paſs the abſolute Right and Property of the real and perſonal Eſtate to the Grandchildren after that Age. *Newland* and *Shephard*, 2 *Will. Rep.* 194.

* One makes his Will and ſays, *as to ſuch Eſtate as God has bleſſed me with*, I deviſe in Manner following; after which he gives Part to *I. S.* and his Heirs, and deviſes the reſt of his Eſtate to his Wife in Fee; this paſſes the Eſtate

Eſtate of which the Teſtator was a Truſtee. *Marlow* and *Smith*, 2 *Will. Rep.* 198.

* One deviſes all his *Freehold* Houſes in *B.* and hath none but *Leaſehold* Houſes there; theſe will paſs. *Secus* in a *Grant*. *Day* and *Trig*, 1 *Will. Rep.* 286.

* *I. S.* hath no Lands in *A.* but hath Tithes there, and deviſes all his Lands in *A.* the Tithes, as iſſuing out of the Lands and Part of the Profits of it, ſhall paſs. *Aſhton* and *Aſhton*, 3 *Will. Rep.* 386.

* *A.* amongſt other Legacies gives a Legacy of 5 *l.* to *B.* his Brother and Heir, and then makes his beloved Wife ſole Heireſs and Executrix of all his Lands, Tenements, Goods and Chattels, *the ſame to ſell and diſpoſe of as ſhe ſhould think fit, to pay his Debts and Legacies*: This is a Gift to her of the Surplus in Fee, and there is no reſulting Truſt to the Heir. *Rogers* and *Rogers*, *Caſ. in Eq. temp. Ld. Talbot* 268.

* *A.* deviſed in the following Words, *As to all my Temporal Eſtate, I bequeath to my Nephew I.* (his Heir at Law,) 50 *l.* then after giving ſeveral Legacies ſays, *and all the reſt and reſidue of my Eſtate, Goods and Chattels whatſoever, I give and bequeath to my beloved Wife* M. *and whom I make my full and ſole Executrix*; this is a Deviſe of the Fee-ſimple Eſtate of the Teſtator. *Tanner* and *Morſe*, *Caſ. in Eq. temp. Ld. Talbot.* 284.

* A Teſtator's ſetting out in his Will to give and diſpoſe of his Worldly Eſtate, is a ſtrong Proof that he intends to diſpoſe of the

Inheri-

Inheritance of his Lands, when there are ſufficient Words in the following Part of the Will for that purpoſe, the Words *Eſtate at* ſuch a Place, or *in* ſuch a Place, may carry a Fee. *Caſ. in Eq. temp. Ld. Talbot* 157.

* *(a)* Deviſe to *A.* the Teſtator's Wife for Life, and then to be at her Diſpoſal, provided it be to any of his Children, gives an Eſtate for Life, with a Power to diſpoſe of the Fee; and where ſuch Deviſee with an after-taken Huſband, did by Leaſe and Releaſe, and Fine, convey the Premiſſes to a Truſtee and his Heirs, to the Uſe of the Wife for Life, without Impeachment of Waſte, Remainder to her Daughter by her 1ſt Huſband, and the Heirs of her Body, Remainder to the Son by the 1ſt Huſband, and his Heirs; this adjudged a good Execution of the Power. *Tomlinſon* and *Dighton*, 1 *Will. Rep.* 149. (a) *Salk.* 239.

* The Words [*I deviſe all my Temporal Eſtate,*] the ſame as [*I deviſe all my worldly Eſtate,*] and paſs a Fee; and this is the Plainer, where it is afterwards ſaid, all the *reſt* of my real Eſtate, the Word *reſt* being a Term of *relation*. *Tanner* and *Wiſe*, 3 *Will. Rep.* 295. —— *Note*; Where a Title depends upon the Words of a Will, this is as properly determinable in Equity as by a Judge and Jury at *Niſi prius*. *Ibid.* 296.

* *A.* has a Fee-ſimple in a Light-houſe, and a Term for Years in Land adjoining to it, he makes his Will, and thereby gives to his Son *H.* and his Aſſigns all his Eſtate, and

and Intereſt in the Light-houſe, Lands, Tenements and Appurtenances thereunto belonging, upon Truſt out of the Rents, *&c.* of the Term, during the Remainder thereof, to pay 200 *l. per Annum. H.* takes a Fee-ſimple in ſuch Part of the Premiſſes wherein the Teſtator had a Fee-ſimple, and a Term for ninety-nine Years in ſuch Part of the Premiſſes wherein the Teſtator only had ſuch a Term. *Villiers* and *Villiers*, *Barnard. Rep.* 307, 311.

* What Words in a Will give a Fee-ſimple, and what a Fee-tail, *vid. ibid.* 7, 9.

What Words paſs an Eſtate-tail, or for Life.

Bro. Tit. Deviſe 1. *Co. Lit.* 27. *a.* *Hob.* 33. 1 *Ventr.* 228, 229. 1 *Ro. Abr.* 835. *Co. Lit.* 9 *b.* *Co. Lit.* 25.

AND here the Rule will hold good, that the Intention of the Deviſor will ſupply the Want of thoſe Words which are neceſſary in Conveyances at Common Law; but a Deviſe cannot direct an Inheritance to deſcend againſt the Rules of Law. And if *A.* deviſes Land to *B.* and his Heirs Male, the Law *in Favorem voluntatis* ſupplies theſe Words, *of his Body*, and makes it an Eſtate-tail; ſo if Land be deviſed to one *& Semini ſuo*; but if in the firſt Caſe *B.* hath Iſſue a Daughter, who hath Iſſue a Son, he ſhall never

never inherit; for the Rule is, That whoever claims in Tail Male as Heir muſt convey his Deſcent wholly by Heirs Male.

Lands were deviſed to *A.* and his Wife, and after their Deceaſe to their Children, they having then a Son and Daughter; it was adjudged, in *Wild*'s Caſe, that *A.* and his Wife had but an Eſtate for Life, the Remainder to the Children for Life; for no greater Eſtate had paſſed at Common Law, and the Intent of the Deviſor muſt plainly appear, or they will never admit of a Conſtruction different from what they would allow in Conveyances executed in the Life of the Party; and for that Reaſon, if the Deviſe had been to *B.* and his Children or Iſſue, *B.* having Iſſue at the Time of the Deviſe, there it may take Effect according to the Rule of the Common Law, and there appears no Intent of the Deviſor to induce them to leave that, and therefore only an Eſtate for Life paſſes, and *B.* ſhall take as Jointenant with his Children during their Lives.

Moor 397. 6 *Co.* 16. *b.* *Wentw.* 229. *Swin.* 419, 420.

1 *Ventr.* 229. *Cro. Eliz.* 743. 6 *Co.* 17. *b.* *Rep. in Equity* 136. *Northey* v. *Burbage.*

But if *A.* had deviſed Land to *B.* and his Children or Iſſues, and *B.* had none at the Time of the Deviſe, then he takes an Eſtate-tail; for it is plain, by the Intent of the Deviſor, that the Children ſhall have the Land, and they cannot take as immediate Deviſees, for they were not *in eſſe*, nor by Way of Remainder, for the Deviſe was immediately to *B.* and his Children, and therefore

fore they ſhall be taken as Words of Limitation, *viz.* as Children of his Body.

1 *Cro.* 742. *Taylor* ver. *Sayer.* 1 *Vent.* 229. *Owen* 148, & 43. *Lit. Rep.* 347.

If Lands be deviſed to a Man, and after his Deceaſe to his Iſſue, having ſeveral Children, formerly held void for Uncertainty; for being Iſſue in the ſingular Number, but one can take; and he is not aſcertained; but by *Hale*, that they may all take, for Iſſue is *nomen collectivum*; therefore after Deceaſe, to Iſſue or Children, makes a Tail to Children not *in eſſe*, becauſe they take the Benefit from the Father.

Cro. Jac. 415, 416. *Cro. Eliz.* 525. *Cro. Jac.* 448. 1 *Bulſtr.* 193. *Cro. Car.* 41. *Vaughan* 270. 1 *Rol. Ab.* 836. 3 *Lev.* 70, 71. 2 *Lev.* 162.

A. deviſed Lands to *B.* his Son, and if *C.* his Daughter ſurvived *B.* and his Heirs, then ſhe ſhould have the Land. It was adjudged that *B.* had but an Eſtate-tail, for the Word *Heirs* muſt be intended the Heirs of his Body, for he could not die without collateral Heirs while his Siſter was alive; but if the Will had ſaid, that if *J. S.* a Stranger, ſurvives *B.* and his Heirs, then he ſhould have the Land; there *B.* had a Fee-ſimple, and then the intended Remainder over muſt be void, for it is to veſt on a Contingency of *B.*'s dying without Heirs, which is too diſtant to expect, and the whole Fee-ſimple being in *B.* there can be no preſent Intereſt to veſt in a Stranger.

Cro. Eliz. 498.

A. having Iſſue two Sons, deviſes *Black-acre* to the Eldeſt, and *White-acre* to the Youngeſt; and if either of them die, his Acre ſhould go to the Survivor; and further deviſed, having two Daughters, to each of them 10 *l.* It was adjudged the Son took

but

but an Eſtate for Life; for though the Conſideration generally gives a Fee, yet where there are expreſs Words to determine the Intent of the Deviſor, which is always the Rule in Wills, there the Deviſe ſhall be conſtrued accordingly; and here it is provided, that after the Death of either of them the Survivor ſhould have both Acres, which declared his Intent they ſhould have it but for Life, notwithſtanding the Limitation of the Payment.

If *A.* deviſes his Land to *B.* his Son, and if he hath Iſſue Male of his Body lawfully begotten, then the Iſſue to have it; and if he hath no Iſſue Male, then to others in Remainder: By this Deviſe *B.* hath an Eſtate-Tail; for where the Deviſor ſaith, if he hath no Iſſue of his Body, then it ſhall remain over, this is as much as if he had ſaid, if *B.* had died without Iſſue Male, which had been ſufficient to create an Eſtate-Tail in him. 9 *Co.* 128. 1 *Ventr.* 227. *Owen* 29. *Pollexf.* 487, 188.

B. having two Sons, *C.* and *D.* deviſed *Black-acre* to *C.* and his Heirs, and *White-acre* to *D.* and his Heirs; and farther willed, that the Survivor of them ſhould be Heir to the other, if either of them died without Iſſue; though the firſt Words are ſufficient to paſs an Eſtate in Fee, yet the ſubſequent Words correct them, and paſs only an Eſtate-Tail, and the Remainder in Fee was not contingent, but executed, each Son being Tenant in Tail of the Part to him deviſed with the Remainder to the other in Fee. *Cro. Jac.* 695. *Chadork* ver. *Cowley.* *Pollexf.* 487.

Co. Lit. 9. *b.* *Bro. Tit. Dev.* 33. 1 *Ro. Abr.* 834.

If a Man deviſed Lands to another, without more Words, this is but an Eſtate for Life; and if the Deviſe had gone farther, to him and his Aſſigns; theſe Words of themſelves had not enlarged his Eſtate; but if it had been to him and his Aſſigns for ever, it had been a Fee.

1 *Co.* 66. *b.* *Archer's* Caſe.

If Lands are deviſed to *A.* for Life, Remainder to his firſt Heir Male, and the Heirs Male of the Body of ſuch Heir Male, the Deviſee hath but an Eſtate for Life by the expreſs Words of the Will; and the Limitation of the Remainder to the Heir Male, and to the Heirs Male of ſuch Heir Male, is a good contingent Remainder in the Heir Male, becauſe it may veſt *eo inſtanti* that the particular Eſtate determines.

1 *Buſſ.* 219 to 223. *Whiting* ver. *Wilkins.* 1 *Ro. Abr.* 836.

But where a Man deviſed Lands to *A.* his Son for ever, and after his Deceaſe the Remainder to the Heir Male for ever, with other Remainders over; this is an Eſtate-Tail in *A.* for though the firſt Deviſe, being to him for ever, would give him a Fee-ſimple, yet the ſubſequent Words *to his Heir Male* ſhew what Sort of Inheritance the Deviſor intended him; and the Word *Heir*, being *Nomen collectivum*, is ſufficient, in a Will, to create an Inheritance; but in the former Caſe, the Remainder to the Heir Male could not be conſtrued to be Words of Limitation without deſtroying the expreſs Intent of the Deviſor, who had plainly given it to the Deviſee for his Life only. But in all other Caſes where the Anceſtor takes any Eſtate

Eſtate of Freehold or Limitation to the right Heirs or Heirs Male, or Heir Male, theſe Words in a Will are Words of Limitation.

If Lands be deviſed to *A.* and *B.* equally to be divided, they have but Eſtates for Life. And this can mean no more than that they ſhould ſeverally occupy the Land. 1 *Ro. Abr.* 834. *Cro. Eliz* 330. *Moor* 594. *Owen* 65.

A Man deviſed all his Fee Lands to his Wife for her Life, and after her Death to *A. B.* and *C.* his three Daughters, equally to be divided; and if any of them die before the other, then the others to be her Heirs, equally to be divided; and if they all die without Iſſue, then to others named in the Will. It was adjudged *per Cur'*, that the Daughters had an Eſtate-Tail. *Cro. Jac.* 448, 695. *King* ver. *Rumbell.* 1 *Ro. Abr.* 836. *Pollexf.* 487. *Hob.* 75. *Moor* 864.

So where the Deviſe was to a Man and his Heirs, and if he die without Iſſue, that then the Land ſhould go to *A.* and *B.* and the Survivor of them; adjudged an Eſtate-Tail in the firſt Deviſee; for in theſe Caſes, the Extent of the Word *Heirs* is confined to the Deſcendents, or Iſſue of the Body of the Deviſee, ſince otherwiſe the Limitation over cannot veſt according to the Intent of the Deviſor; for even in Wills they will not allow a Limitation of a Fee upon a Fee. *Noy* 64. *Dyer* 330. 1 *Ro. Abr.* 834.

A. ſeiſed in Fee of a Houſe and Land belonging to it, deviſes the Moiety of the Houſe to his Wife for her Life. *Item*, he gives the other Moiety of his Houſe to his ſecond Son. *Item*, he deviſes the ſaid Houſe and all the Land belonging to it to his 1 *Ro. Abr.* 835.

ſecond Son; yet the ſecond Son took but an Eſtate for Life; for the ſecond Deviſe to the Son had its Effect by conveying a Moiety of the Houſe and the Land, which he had not by the firſt Deviſe; and there are no Words in the Will to create a larger Eſtate.

1 *Ro. Abr.* 837. If a Man deviſes Land to his Wife for her Life, and afterwards to her Son; and if he dies without Iſſue, having no Son, that then *J. S.* ſhall have it; the Son, by this Deviſe, takes an Eſtate in Tail Male; for though the Deviſe to the Son, and if he dies without Iſſue, had been a good Tail General, yet when the Deviſor went farther, and ſaid, having no Son, he thereby explained what Iſſue he intended ſhould inherit the Land, and limited it to the Iſſue Male.

Cro. Car. 185. *Spalding's* Caſe. 1 *Ventr.* 230. 3 *Lev.* 434. *A.* having Iſſue *B.* and *C.* deviſed ſome of his Lands to *B.* his eldeſt Son and the Heirs of his Body, after the Death of his Wife; and if *B.* died, living his Wife, then to *C.* his Son, and deviſed other Lands to his other Son and the Heirs of his Body; and if he died without Iſſue, then to remain over; *B.* died in the Life of the Wife, leaving Iſſue; yet adjudged that *C.* could not enter into the Land while any Iſſue of *B.* remained; for the Words of the Deviſe, If *B.* died, living the Wife, did not abridge the Eſtate-Tail, which was given by the former Words, becauſe the Teſtator could not be ſuppoſed to prefer a younger Son before the Iſſue of the eldeſt, eſpecially when he had, in the former Part of the Will, ſettled

tled it on the Iſſue of the eldeſt, and made the ſame Proviſion of other Lands the ſame Way for the youngeſt Son.

A. deviſed to *B.* for Life; and if he died without Iſſue, then to remain to *C.* This is an Eſtate-Tail in *B.* for it is not to remain to *C.* till the Iſſue of *B.* be ſpent, and then they muſt have it as long as any of them are in Being to take. So it is of a Deviſe to *B.* for Life; the Remainder to the next Heir Male; and for Default of ſuch Heir Male, the Remainder over. This is a good Eſtate-Tail; for the Words *Heir* and *Iſſue* are *Nomina collectiva*, and carry the Land not only to the immediate Heir, or Iſſue, but to all that deſcend from the Deviſee.

If the Deviſe had been to *B.* and if he dies, not having a Son, this is adjudged an Eſtate-Tail, becauſe the Word *Son* is *Nomen collectivum.* 1 *Ventr.* 231.

A. ſeiſed of Lands deviſed them to his Wife, if ſhe did not marry; but if ſhe did marry, then his eldeſt Son, preſently after her Deceaſe, to enter and hold the Land to him and the Heirs Male of his Body, the Remainder to his other Son in Tail Male; the Wife did not marry, yet the Court reſolved, that the Lands were intailed by the Will, taking the Intent of the Deviſor to be, that the Intail ſhould be created in all Events, but that the eldeſt Son ſhould not enter till after the Deceaſe of the Wife, unleſs in Caſe of her Marriage, and then to enter preſently. 3 *Lev.* 125. *Luxford* ver. *Cheek.*

Bendl. 207. *A.* deviſes Land to *B.* and the Heirs of his Body, and further wills, that if *B.* die, the ſame Lands ſhall remain to another in Fee, yet *B.* took an Eſtate-Tail by the Will.

2 *Leon.* 129, 194. A Man had Iſſue *A. B.* and *C.* and having three Houſes, deviſed them all to his Wife, with Remainders of one Houſe to each Child and their Heirs, and if any of his ſaid Iſſue died without Iſſue of his Body, the Survivors to have *totam illam partem* between them equally to be divided. The laſt Words carry only an Eſtate for Life, in the Houſe of him that dies firſt, to the Survivors, for they imply no more than that the whole Part of him that dies firſt ſhall go to the Survivors, and there being no Eſtate limited, it can be no otherwiſe than for Life.

Hawkins's Caſe.

A. deviſed all his Lands to his Wife until his Son ſhould be of the Age of Twenty-four Years, and then to his Heir and his Heirs for ever: And when he comes to the Age of twenty-four Years, that ſhe ſhall have the third Part for her Life; and if he dies before the Age of Twenty-four Years, then ſhe to have it all for Life; and after her Deceaſe, if the Heir has no Iſſue, the Remainder to *B.* the Remainder to the right Heirs of the Deviſor. The Heir came to the Age of Twenty-four Years, but no Intail was created by the Will, for the Fee-ſimple deſcended to him, and the Limitations were to take Place if he died before the Age of Twenty-four; which he did not.

* *J. S.*

* *J. S.* ſeiſed in Fee deviſed to *J. B.* for his Life only, without Impeachment of Waſte, and from and after his Deceaſe, then to the Iſſue Male of his Body lawfully to be begotten, if God ſhall bleſs him with any, and to the Heirs Males of the Bodies of ſuch Iſſue lawfully begotten, and for Default of ſuch Iſſue, Remainder to *J. B.* and the Heirs Males of his Body; and for want of ſuch Iſſue, he limits two Remainders over in the ſame Words; adjudged that *J. B.* took only an Eſtate for Life, for the Eſtate was given to him for Life, and there was a Limitation afterwards to his Iſſue, which was a Deſcription of the Perſon who was to take the Eſtate-Tail. *Backhouſe* and *Wells*, 1 *Abr. Eq.* 184. 2 *New Abr. of the Law* 61. S. C. *in totidem verbis.*

* *A.* deviſed certain Lands to his eldeſt Son for Life, without Impeachment of Waſte, Remainder to *J. S.* his Grandchild for Life, without Impeachment of Waſte, with Power for him to Limit a Jointure of the ſame Land to any Woman he ſhould marry, for her Life; and after his Death he deviſed the Lands to the firſt Son of *J. S.* the Grandchild in Tail, and ſo to the 6th Son, and then deviſed that if *J. S.* the Grandchild, ſhould die without Iſſue Male, the Land ſhould remain to *J. B.* Held that *J. S.* took an Eſtate-Tail; for if there had been a 7th Son he could not have taken; and there it was neceſſary to create an Eſtate-Tail by Implication. *Langley* and *Baldwin*, 2 *New*

Abr. of the Law 61. 1 *Abr. Eq.* 185. *Ca.* 29. S. C. Certified to be an Eſtate-Tail by the Court of *C. P.* and Decreed accordingly in Chancery. *Ibid.*

* Deviſe to *A.* and the Heirs Male of his Body, *viz.* to the 1ſt Son of *A.* and the Heirs Male of his Body, and ſo to the 2d and other Sons of *A.* ſucceſſively; *A.* has only an Eſtate for Life. *Law* and *Davys*, *Fitz-Gibb.* 112.

* *J. S.* had Iſſue *A.* and *B.* and deviſes Lands to *A.* and *if he die without Heirs*, B. *his Brother* ſhall have it. *Per Cur'* this ſhall create an Eſtate-Tail in *A.* for that it is impoſſible for him to die without Heirs whilſt *B.* his Brother was alive; and ſo they ſaid it had been often ruled. *Allen* and *Spendlove*, 1 *Freem. Rep.* 74.

* *A.* deviſed to *B.* and *C.* Brothers, ſeveral Parcels of Land, and if either of them die, that the other ſhould be his Heir; *B.* dies, Queſtion whether *C.* ſhould have the Fee, or only an Eſtate for Life? The Court inclined to the latter; *Sed adjournatur*. *Gynes* and *Kemſley*, 1 *Freem. Rep.* 293.

* Upon a ſpecial Verdict the Caſe was; *R. G.* ſeiſed in Fee of Lands in *S.* by Will in Writing deviſes to *R.* Son of his late Brother, all his Lands commonly called *P.* and alſo all other his Lands, during his natural Life, and to his Heirs Male of his Body begotten, and for want of ſuch Iſſue, he the ſaid *R.* to have the ſaid Eſtate during his natural Life, and no longer; and then his

Will

Will was, that the aforeſaid Eſtate ſhould deſcend to *P.* his Nephew; *R.* ſuffers a Recovery to the Uſe of himſelf and his Heirs, and deviſes this Land to the Defendant in Fee, and dies without Iſſue Male; and it was adjudged to be an Eſtate-Tail in *R.* and ſo the Remainder barred by the Recovery, and not an Eſtate for Life, and ſo forfeited by the Recovery; for the Words, *and for want of ſuch Iſſue he the ſaid* R. *to have but an Eſtate during his natural Life*, is no more than the Law implies; for if Tenant in Tail has no Iſſue, it reſolves into an Eſtate for Life, and ſo it was adjudged; the Objection was, that it ſhould be conſtrued thus, I give the Land to *R.* during his Life, and no longer, in caſe he has no Iſſue Male of his Body, and ſo an Eſtate-Tail upon a Contingency, and he dying without Iſſue Male, it is now become an Eſtate for Life *ab initio*, but the Judgment was *ut ſupra*. *Fountain* and *Gooch*, adjudged, 2 *New Abr. of the Law* 59, 60.

* If Lands are deviſed to one generally, he takes but an Eſtate for Life, unleſs it appears plainly the Teſtator intended him a greater. *Vide Prec' in Chan'* 68.

* A Deviſe to *A. and his Heirs Male for ever*, is an Eſtate-Tail in *A.* Adjudged *per tot' Cur'* upon great Conſideration in *C. B. Baker* and *Well*, 1 *Ld. Raym.* 185.

* *A.* having Iſſue a Son and two Daughters, deviſed the Eſtate in Queſtion *to his Son and his Heirs*, Provided, *that if the Son ſhould die before he comes to twenty-one*, or *without Iſſue of his Body*, then *it ſhould go to the*

the Teſtator's two Daughters: A. dies, and the Son lives to twenty-one, and makes his Will, and deviſes the Eſtate to the Plaintiff; and the Court inclined that the *Son had but an Eſtate-Tail*, and ſo the Deviſe to the Daughters took effect, the Son being dead without Iſſue; for though it is deviſed to him and his Heirs, yet the latter Words, *if he die without Iſſue*, make it an Eſtate-Tail; for his Meaning ſeems to be plain, that if the Son had Iſſue, that Iſſue ſhould have it, if not, it ſhould go to the Daughters. In *B. R. Helier* and *Jennings*, 1 *Freem. Rep.* 509. *Vide* 1 *Ld. Raym.* 505. S. C.

* Deviſe of Lands to Huſband and Wife for their Lives, and after the Death of the Wife, then to their Children; upon the Death of the Wife the Huſband's Eſtate determines. 2 *Will. Rep.* 671.

* Deviſe to the Heirs Male of *J. S.* begotten, *J. S.* having a Son, and the Teſtator taking Notice that *J. S.* was then living, a ſufficient Deſcription of the Teſtator's Meaning, and ſuch Son ſhall take, though ſtrictly not the Heir of *J. S.* 1 *Will. Rep.* 229.

* In a Deviſe of Land to *A.* for Life, and if *A.* die without Iſſue, then to *B.* here is an expreſs Eſtate for Life to *A.* yet the ſubſequent Words will turn it into an Eſtate-Tail. ——— But when Lands are deviſed to *A.* for Life, Remainder to Truſtees, *&c.* Remainder to his firſt, *&c.* Son in Tail Male, *&c.* and if *A.* die without Iſſue, then, *&c.* this will not give an Eſtate-Tail to *A.* but the

Words *without Iſſue* will be intended without ſuch Iſſue. *Blackborn* and *Edgley*, 1 *Will.* 605.

* One deviſes a Third of all his Eſtate whatſoever to his Wife, and two Thirds of all his real and perſonal Eſtate to his Son *J. S.* and *his Heirs*; the Wife hath but an Eſtate for Life in the third Part of the real Eſtate, the Word *Eſtate* being intended to deſcribe the *Thing* only, and not the *Intereſt* in the *Thing*, and whenever the Teſtator intends to give a Fee, he adds the Word *Heirs* to the Word *Eſtate*. *Cheſter* and *Painter*, 2 *Will.* 335.

* "All my Eſtate to *A.* for Life, and to "*T. B.* after her Death, he taking my "Name, and if he refuſe, to *M. B.* and his "Heirs for ever." *His Honour* held, that *T. B.* took only an Eſtate for Life; but Ld. *Talbot* was of Opinion that he had a Fee, and varied the Decree at the Rolls. *Ibid.* 337. in a Note.

* Deviſe to my Son *A.* for Life, Remainder to his firſt, *&c.* in Tail Male, Remainder to his ſecond, third, fourth and fifth Sons ſucceſſively, without ſaying for what Eſtate, or any Words *tantamount*. *A.* has two Sons, the eldeſt of whom dies in his Life-time; the ſecond Son ſhall have an Eſtate-Tail, being the firſt at his Father's Death, (3 *Will. Rep.* 178.) for which was cited *Trafford* and *Aſhton*, (*a*) *Vern.* 660. (*a*) *Q. autem*, For the Reaſon of that Caſe ſeems rather againſt this Conſtruction, which is,

is, at leaſt better warranted by the Caſe of *Chadwick* and *Doleman* in the ſame Book, *p.* 528. *ibid.* in a Note.

* *A.* deviſes Lands to his Wife for Life, then to his Son *H.* for Life, then to his Son *G.* and his Heirs for ever; if he died without Heirs, then to his two Daughters *K.* and *L.* This is an Eſtate-Tail in *G.* *Caſ. in Eq. temp. Talbot* 1.

* One ſeiſed of ſome Lands in Fee, and being *Ceſtuy que Truſt* of other Lands, deviſes them to *A.* for Life, Remainder to his firſt and ſecond Son in Tail Male, (going no farther) and after *A.*'s Death without Iſſue Male, then to a Charity. *A.* is Tenant in Tail until Iſſue born, ſaving as to the Truſt Eſtate. *Attorney General* and *Sutton, in Dom' Proc'*, 1 *Will. Rep.* 754.

* Deviſe to *A.* for Life, and after his Deceaſe to the Heirs Male of the Body of *A.* and the Heirs Male of the Body of ſuch Heirs Male, ſeverally and ſucceſſively as they ſhall be in Priority of Birth, *&c.* Remainder over; whether this be a Tenancy in Tail, or for Life only? *Legate* and *Sewell*, 1 *Will. Rep.* 87. —— *Vide* 2 *Vern.* 551. S. C.—1 *Abr. Eq.* 394. *C.* 7.

* A Deviſe by a Father to a ſecond Son and his Heirs for ever, and for want of ſuch Heirs then to the right Heirs of the Teſtator, is an Eſtate-Tail; but had the Deviſe over been to a Stranger, the ſecond Son would have taken a Fee-ſimple, and conſequently the Deviſe over had been void. In

B. R. Nottingham and *Jennings*, 1 *Will. Rep.* 23. 1 *Ld. Raym.* 568. S. C. *Salk.* 233.

* *A.* made a Will as follows, *viz.* "*I* "*give to my eldeſt Heir Male and his Heirs* "*Males for ever, all my Lands in ſuch a* "*Place, and if there be a Female, ſhe to* "*have* 12*l. per Ann. as long as ſhe lives.*" Teſtator had two Sons, the eldeſt died in his Life-time, leaving a Daughter who was the Heir General, yet the youngeſt Son was adjudged to take the Lands. *Baker* and *Well*, *T.* 8 *W. Rot.* 1484. *C. B.*——*Vide* this Caſe cited in *Prec' in Chan'* 468.——This Caſe is reported in 1 *Ld. Raym.* 185. with a good deal of Variation, *viz.* "*I give to* D. *my* "*eldeſt Son all that*, &c. *to him and his* "*Heirs Males for ever*; *if a Female, my next* "*Heir ſhall allow and pay her* 200*l. in* "*Money at* 12*l. a Year, out of the Rents* "*and Profits, and he ſhall take all the reſt* "*to himſelf, I mean my next Heir and his* "*Heirs Male for ever.*" *D.* the Son dies, leaving Iſſue a Daughter the Leſſor of the Plaintiff, on whom the younger Son of the Teſtator had entered, *&c.* the Court after great Conſideration adjudged this Deviſe gave an Eſtate-Tail only to *D.* and that tho' in a Deed the Words would have paſſed a Fee, yet in a Will, as the Intention of the Teſtator appears, the Law will ſupply the Words *of the Body*, &c.

* One deviſes his Lands for Payment of his Debts, and then to *A.* for Life, with Power to make Leaſes, Remainder to the Heirs

Heirs Male of the Body of *A.* though this be but a Deviſe of a Truſt and executory, and expreſſed to be for Life of *A.* yet it is an Eſtate-Tail in *A.* and barrable by Fine and Recovery. *Secus* of Marriage Articles to ſettle an Eſtate on *A.* for Life, Remainder to the Heirs Male of his Body; this being an Agreement to do a future Act, and in which the Iſſue are particularly conſidered and looked upon as Purchaſors. *Bale* and *Coleman*, 1 *Will. Rep.* 142.

* Deviſe to *A.* the Teſtator's Wife for Life, and then to be at her Diſpoſal, provided it be to any of his Children, gives an Eſtate for Life, with a Power to diſpoſe of the Fee. *Tomlinſon* and *Dighton*, in *C. B.* 1 *Will. Rep.* 149.

* I deviſe all my Lands in *B.* to my eldeſt Son. *Item*, I give to my ſecond Son *C.* all my Lands in *D.* alſo to my Daughter I give 500 *l.* to be paid as ſoon as may be, out of the aforeſaid Eſtate and Premiſſes, and within three Years, if it be poſſible; the ſecond Son has but an Eſtate for Life, chargeable with the 500 *l.* *Redoubt* and *Redoubt*, *Vin. Abr.* Tit. *Deviſe*, (Q. a.) *C.* 18.

* Where there is no Deviſe antecedent, the firſt Son of the Wife cannot take by Way of Remainder. *Right* and *Hammond & al'*, in *B. R.* *Comyns's Rep.* 232.

* A Limitation to one to take and injoy the Profits of an Eſtate during his Life, and after his Deceaſe to the Heirs Male of his Body, would make an Eſtate-Tail where nothing

thing appears that explains the Teſtator's Intention to the contrary, otherwiſe not. In *C. B. White* and *Collins*, *ibid.* 289.

* A Deviſe that if *W.* the eldeſt Son of the Teſtator ſhould happen to die without Iſſue, that then, and not otherwiſe, after *W.*'s Death, he deviſed it over to his Son *R.* and his Heirs. Held that *W.* took an Eſtate-Tail by Implication. *C. B. Walter* and *Drew & al'*, *Comyns's Rep.* 327.

* *J. S.* deviſed Lands to *B.* for Life, and after his Deceaſe to the Heirs Males of the Body of the ſaid *B.* lawfully to be begotten, and his Heirs for ever; but if *B.* ſhould die without ſuch Heir Male, then he deviſed them over; this is an Eſtate-Tail in *B.* In *B. R. Goodright* and *Pullyn & al'*, 2 *Ld. Raym.* 1437.——*Vide* 2 *Vol. Abr. Eq.* 315.

* An Eſtate was deviſed to two Siſters and their Heirs, and that if they (who were the Teſtator's Daughters) ſhould die without Heirs, then the Teſtator gave his Eſtate to his Brother *T.* All the Court ſeemed to be of Opinion, that this was an Eſtate-Tail in the two Daughters, but adjourned. In *C. B. Anon.* 2 *Abr. Eq.* 315. *C.* 27.

* Deviſe to *A.* and his Heirs lawfully begotten, that is to ſay, to his firſt, ſecond, *&c.* Sons ſucceſſively, *&c.* gives *A.* but an Eſtate for Life. *Davis* and *Low*, 2 *Ld. Raym.* 1561. *Vide* 2 *Abr. Eq.* 316.

* I deviſe my Lands to *A.* for Life, and after his Deceaſe, Remainder to the Heirs Male of the Body of *A.* and to the Heirs Males

Males of ſuch Iſſue Male. The *C. J.* was of Opinion, that theſe Words conveyed an Eſtate-Tail to *A. Burnet* and *Coby*, 1 *Barnard. Rep. in B. R.* 367.

* If an Eſtate be given to a Man and his Heirs, and if he died without Iſſue Remainder over; theſe Words are explanatory of the Word *Heirs*, and make an Eſtate-Tail. In *C. B. Brice* and *Smith*, *Comyns's Rep.* 539.

* Teſtator deviſed Lands to *A.* for Life, Remainder to Truſtees to preſerve contingent Remainders during the Life of *A.* Remainder to the Heirs of the Body of *A.* this is an Eſtate-Tail. *Coulſon* and *Coulſon*, 2 *Vol. Abr. Eq.* 318. *C.* 34.

Of executory Deviſes, contingent Remainders, and croſs Remainders.

AN executory Deviſe is a future Intereſt which cannot veſt at the Death of the Teſtator, but depends on ſome Contingency, which muſt happen before it can veſt.

As if *A.* deviſes that after his Son paid 10 *l.* to his Executors he ſhould have his Term; this is a good Deviſe of the Term; or if the Deviſe had been to his Son after the Death of *B.* this had been good to veſt the Remainder of the Term in the Son, when the Contingency happened; and this is, in effect, the Judgment in *Manning*'s Caſe; where a Term of fifty Years was deviſed to *B.* after the Death of *C.* and *C.* ſhould have it during his Life; it was adjudged that this was a good Deviſe of as much of the Term as remained after the Death of *C.* 8 *Co.* 95. *b.*

The great Queſtion in theſe Caſes was, Whether the Diſpoſition of the Term to *C.* during his Life, was not ſuch a total Diſpoſition of it, that no Remainder could be limited over; and as theſe executory Remainders ſeem to deſtroy the former Rules, *viz.* That no Eſtate can be deviſed, but ſuch as can be made by Conveyance in the Life of the

Party, we will inquire how they came to be eſtabliſhed againſt them. It has been long allowed in Chancery to ſettle Terms in Truſt, with Remainders over, which were to ariſe upon Contingencies; for they thought it very ſevere, and againſt natural Juſtice, ſince a Man has as abſolute a Power over his Leaſe, as he that hath an Inheritance has over it, that he ſhould be diſabled from ſettling his Leaſe, as he might his Inheritance, to make Proviſion for his Family, and the Contingencies of it, which were in his View; but the Courts of Law, where the Deviſes as well as other Conveyances were examined, did not ſo readily admit of ſuch executory Remainders of Terms, becauſe it directly thwarted the Rules of Law; and for that Reaſon all the Judges, in the ſixth of *Edward* 6. delivered their Opinions, That if a Term for Years be deviſed to one, provided that if the Deviſee die, living *J. S.* then to go to *J. S.* that Remainder was abſolutely void, becauſe ſuch a Chattel Intereſt of a Term for Years is leſs than a Term for Life; and therefore the Law will endure no Limitation over.

Not. Arg. 9. *Dyer* 74. *a.*

But the Courts were not long governed by this Judgment; for though it might have been reaſonable before the Reign of *Hen.* 8. when Terms for Years were very ſhort, and leſs regarded than Freehold Eſtates, becauſe they were under the Power of the Freeholders; yet when the Leſſees found their Terms

Co. Lit. 46. *a.* *Dyer* 358. *b.* *Not. Arg.* 9, 10.

Terms ſecured to them by *Stat.* 21 *Hen.* 8. *cap.* 15. which impowered them to falſify all Recoveries had againſt the Tenant of the Freehold on feigned Titles, they began to ſwell their Terms beyond the Compaſs of a Life; and the Judges, in 19 *Eliz.* allowed of theſe executory Remainders of Terms by Deviſes, as they had before by Way of Truſt, that Men might diſpoſe and ſettle them, to anſwer the common Conveniencies of Life.

Then the Chancery, the better to fix them in it, allowed of Bills by the Remainder Man, to compel the Deviſee of the particular Eſtate to put in Security, that he in Remainder ſhould injoy it according to the Limitation; but when they perceived that this multiplied Chancery Suits, they reſolved, that there was no need of that Way, but that the Deviſee of the particular Eſtate ſhould not have Power to bar the Remainder Man; ſo that the Law has been long ſettled, that executory Deviſes are good, provided the Contingency is to happen within one Life or two which are in Being, for there can be no Tendency to a Perpetuity in that Caſe, becauſe we are ſure the Lives will wear out. 10 *Coke* 47. *a.* 52. *b.* 1 *Sid.* 451.

If a Termor deviſes his Term to *A.* for Life, the Remainder to another, though *A.* hath the whole Term in him during his Life, and ſo no Remainder can be limited over at Common Law, yet it is good by Way of executory Deviſe. *Cro. Jac.* 198. 1 *Rol. Ab.* 610. *Cro. Eliz.* 9.

If a Termor deviſes his Term to *B.* for Life, and after to *C.* his Son, then to the 1 *Rol. Ab.* 612.

eldeſt Iſſue Male of *C.* for Life, though *C.* hath no Iſſue Male at the Time of the Deviſe, nor at the Death of the Deviſor, yet if he hath Iſſue at the Time of his Death, it ſhall take the Remainder by Way of executory Deviſe; for though it be a Contingency upon a Contingency, yet being limited to fall out in a Life or two, which muſt wear out in a Life or two, it was adjudged good.

8 *Co.* 96. *b.* 1 *Rol. Ab.* 612. *A.* poſſeſſed of a Term, deviſes to his Wife for Life; and after her Death to his Children unpreferred. The Wife died, *B.* being the only Child unpreferred, ſhall have the Term; for an executory Deviſe may be made to a Perſon uncertain, for ſo *B.* was while the Wife lived, for ſhe might have been preferred in the Life of the Wife, and then ſhould take nothing.

Cro. Jac. 461. *Vide* 3 *Leon.* 22. *A.* poſſeſſed of a Term for Years, deviſed it to his Wife for Life, and then that *J.* his Son ſhould have the Occupation thereof as long as he had Iſſue; and if he died without Iſſue unmarried, in the ſame Manner to another Son, the Remainder over. This Remainder, upon the Death of the Sons unmarried, was adjudged good; for here the Limitation is, if he dies without Iſſue unmarried, then the Remainder over, which is upon the Matter if he dies within the Term unmarried; for he cannot have Iſſue unleſs he marries; and this is a Poſſibility which the Law will expect, becauſe it will happen in a Life; and there is no Difference between the Occupation and the Uſe of a Term, or the

8 *Co.* 95. *b.* 10 *Co.* 47. *b.*

the Profits of the Land and the Land itſelf, or the Leaſe or Farm; for a Deviſe of any of them will carry the whole Intereſt; and to this Purpoſe it was reſolved between *Parker* and *Plumer*, in *Cro. Eliz.* 190.

A. deviſes his Term to his Wife for her Life, and after her Deceaſe to *B.* his Son; and if *B.* died without Iſſue, then to *C.* It was adjudged, that this Deviſe to *C.* after the Death of *B.* without Iſſue, was void; for ſince it could not veſt while *B.* had Iſſue of his Body, the Deviſe is no more than to *B.* and the Heirs of his Body, which without doubt had been void; for though Men preſumed on the Judges, when they firſt allowed of Remainders of Terms after Eſtates for Lives, and endeavoured to bring Remainders upon Eſtates-Tail within the Reaſons of thoſe Reſolutions and Conceſſions; yet the Court would never endure thoſe Remainders, becauſe it is too foreign and diſtant to expect them after a Man's Death without Iſſue; and if they were allowed of, would make a direct Perpetuity, which is an undeniable Reaſon againſt any Settlement; for it is againſt the Nature of human Affairs ſo to ſettle an Eſtate in a Family, that upon Contingency or Revolution of Fortune the Owner ſhall have no Power over it; therefore the Deviſe in this Caſe to *B.* is an abſolute Diſpoſition of the Term to him; for *Iſſue* is not a Word of Limitation of Time, as *Coke* obſerves in *Leonard Love*'s Caſe, 10 *Co.* 87. *a.* ſo that *B.* and his Executors ſhall have it no

1 *Sid.* 450. *Cro. Car.* 167. 1 *Ro. Abr.* 610. 4 *Inſt.* 87. *Cro. Jac.* 461. *Not. Arg.* 10. 1 *Ro. Abr.* 611.

Not. Arg. 6.

1 *Sid.* 451. 1 *Ro. Abr.* 611.

1 *Ro. Abr.* 831. longer than he hath Iſſue of his Body; but the Term is totally in him, and at his Diſpoſal, and ſhall go to his Executors during the Continuance of it, and ſhall never, for Default of Iſſue of his Body, revert to the Executors of the Deviſor. *Vide* 1 *Sid.* 37. ſeems contrary.

Not. Arg. 9. If Tenant in Fee-ſimple deviſes Land to *A.* and his Heirs, and if he dies without Iſſue in the Life of *B.* then to *B.* and his Heirs; though this be a Limitation of a Fee upon a Fee, yet becauſe the Remainder to *B.* muſt veſt on a Contingency, which will fall in a Life, it has been held a good executory Remainder.

If *A.* deviſes Land to his Executors to be ſold, if the Heir fails of Payment at ſuch a Day, this is an executory Intereſt to them: So if the Deviſe of *Borough Engliſh* Lands had been to the eldeſt Son, paying ſuch a Sum to the younger Sons, and that in Default of Payment, that the Land ſhould go to them and their Heirs; though the Word *paying* in a Will amounts to a Condition, yet becauſe that muſt deſcend to the Deviſee or Heir, and no one elſe can take Advantage of his Default, they adjudged it an executory Deviſe in the younger Sons, which was to veſt upon the Default of Payment in the

3 *Co.* 21. *a.* eldeſt; and in *Hanniſworth*'s Caſe, which is
Cro. Eliz. 833. the ſame in Effect, they compared it to a Deviſe, that if the eldeſt Son did not pay all the Legacies, then the Land ſhould go to the Legatees; in which Caſe it had gone, without

without doubt, for Non-payment to them; and though *Vaughan* cites this Caſe as parallel to *Gardiner* and *Sheldon*, yet I conceive the Law will make a great Difference between them; for in the former Caſes the future Deviſe was to veſt in a Contingency of the Teſtator's Son and Daughters dying without Iſſue, which is very foreign and diſtant, and looks directly to a Perpetuity; for ſhould that future Intereſt be good, the Judgment in *Pell* and *Brown*'s Caſe would protect it from any Recovery or other Alienation of the Heir, which would perpetuate an Eſtate in a Family, which could not be docked; and I think there is a great Difference between *Pell* and *Brown*'s Caſe and this of *Gardiner*; for in the former the Deviſor having three Sons, *A. B.* and *C.* deviſed his Land to *B.* and his Heirs, paying 20*l.* and if *B.* died without Iſſue, living *A.* then to *A.* and his Heirs: In this Caſe they firſt adjudged it a Fee-ſimple in *B.* and yet a good executory Deviſe to *A.* in Fee; but this was to veſt on the ſingle Life of *A.* for if *B.* died without Iſſue, living *A.* or without Iſſue after the Death of *A.* then his future Intereſt was never to riſe.

Vaughan 271. *Cro. Jac.* 593. 1 *Ro. Abr.* 611. *Cro. Jac.* 591. *Vaughan* 272.

And in this Caſe it was adjudged, that the Recovery ſuffered by *B.* could not bar the executory Intereſt of *A.* for ſince all future Deviſes depend on the ſame Reaſon, to allow the particular Tenant to deſtroy one in any Caſe, would be in Effect to make all ſuch Deviſes void, or at leaſt uncertain,

1 *Lev.* 135. *Cro. Jac.* 593.

which would be very ſevere, becauſe directly againſt the Intention of the Teſtator, and of ill Conſequence to others: For then ſhould a Man deviſe that his Heir ſhould pay ſuch a Sum to his Executor, or ſuch Portions to his younger Children, or they to have the Land; it would be very unreaſonable to allow the Heir a Recovery, or any other Means to fruſtrate the pious Intention of the Father to provide for his younger Children, or for Payment of his Debts.

1 *Lev.* 11, 12. 1 *Sid.* 17, 48. *Plunket* v. *Holmes.* *Raym.* 28, 29.

A. has Iſſue *B.* and *C.* two Sons, and deviſes his Land to *B.* for Life, and if he dies without Iſſue living at the Time of his Death to *C.* and his Heirs; but if *B.* had Iſſue living at the Time of his Death, then to the right Heirs of *B.* for ever. This is a contingent Remainder, and no executory Deviſe to *C.* for *B.* took only an Eſtate for Life by the expreſs Words of the Will; and the Remainder to *C.* which was to veſt upon the Contingency of *B.*'s having no Iſſue at the Time of his Death, was not in Abeyance in the mean time; yet they would not allow the Reverſion to be ſo in him as to merge the Eſtate for Life, and conſequently to deſtroy the contingent Remainder.

1 *Lev.* 135, 136. *Raym.* 163.

Baron and Feme ſeiſed to them and the Heirs of the Huſband; the Huſband deviſes the Land to the Heirs of the Body of the Wife, if they attain to the Age of fourteen Years. The Wife having no Iſſue at the Time of the Deviſe, admitting a Deviſe to one not *in eſſe* to be good, then this is good by Way of executory Deviſe to veſt upon the

the Contingency of the Heir's being born and arriving at the Age of Fourteen.

A. hath Iſſue three Sons, and by Will deviſeth a Tenement to each of them; and further ſays, That when either of the ſaid Children ſhall die, the Houſes, Lands, and Goods whatſoever I have now given them, ſhall be equally divided between them that are living, without expreſſing any Eſtate to ſupport the contingent Remainder; and if contingent Remainders do not veſt during the Continuance of the particular Eſtate, or at the Inſtant it determines, they are deſtroyed; but whether the Survivors took by Way of executory Deviſe or Remainder executed, is not clear from the Books which report this Caſe; for *Levinz* ſays, That the Judgment was, that the Survivors took by Way of executory Deviſe; but *Pollexfen* ſays it ſhall go to the Survivors. 2 *Lev.* 202. *Pollexf.* 479. *Forteſcue* v. *Abbot.*

But either Way taken, it differs from the Caſe of *Wood* and *Ingerſole*; for there a Man having Land in three Vills deviſeth the Land of a Vill to each Son; and if any of his Sons die, that then the one of them to be Heir to the other. In this Caſe there were no Remainders, nor any other Eſtates given to the younger Sons but an Eſtate for Life in Poſſeſſion; but upon the Death of his eldeſt Son, his Heir took his Part by Deſcent; and the true Reaſon of the Judgment ſeems to be, becauſe the Words, If any of his Sons die, that then the one to be the Heir to the other, were void for the Uncertainty which 1 *Bulſtr.* 61. *Cro. Jac.* 260. *Pollexf.* 481, 482.

of

of the two Survivors ſhould take when the eldeſt died.

3 *Co.* 19, 20, &c. *Boraſton's* Caſe. *Pollexf.* 486. 3 *Co.* 21.

A. deviſed Lands to his Executors till his Son ſhould come of Age; and when his Son ſhould come of Age, then he ſhould injoy the Land for him and his Heirs. This is a Remainder executed in the Son, and no Contingency; for the Words *when* and *then*, in this Caſe, only denote the Time when the Remainder is to execute, and will no more make the Remainder contingent, than in the common Caſe where a Leaſe is made for Life, or for Years; and after the Deceaſe of the Leſſee, or Expiration of the Term, then to remain to another: Here though the Words be after the Term that it ſhall remain, yet it is a preſent and no contingent Remainder; for where Words refer to that which muſt needs happen, there ſhall be no Contingency.

Cro. Jac. 695. *Chadock* v. *Cowley.*

A Man having two Sons deviſed Parcel of his Lands to one of them and his Heirs, and the reſt to the other and his Heirs; and farther willed, that the Survivor ſhall be Heir to the other, if either dies without Iſſue. The Deviſees were Tenants in Tail, with Remainders in Fee executed of each other's Part.

Dyer 303. *b.* *Cro. Jac.* 656. 1 *Ventr.* 224. *Hob.* 33.

A. having Iſſue five Sons, his Wife being *enſient*, deviſes two Thirds of his Lands to his four younger Sons, and the Child *in ventre ſa mere*, if it were a Son, and their Heirs; and if they all die without Iſſue Male of their Bodies, or any of them, that the Lands ſhall revert to the right Heirs of the Devi-

Deviſor: By this Deviſe the younger Sons were Tenants in Tail in Poſſeſſion, with croſs Remainders to each other, and no Part ſhall revert to the Heirs of the Deviſor, till all the younger Sons be dead without Iſſue Male of their Bodies.

But where a Man having three Sons, and ſeiſed of three Houſes, deviſed a Houſe to each Son and his Heirs, with this Proviſo, That if all his ſaid Children ſhall die without Iſſue of their Bodies lawfully begotten, that then all his ſaid Meſſuages ſhall remain and be to *J. S.* and his Heirs. In this Caſe there ſhall be no croſs Remainders to the Sons, but upon the Death of any one of them, his Part ſhall go immediately to *J. S.* who is not obliged to wait till they all die without Iſſue, and then to take it all together. *Cro. Jac. 655. Gibert* v. *Witley & al'.*

A. being ſeiſed of two Meſſuages, and having a Son and two Daughters by three ſeveral Venters, deviſed one Meſſuage to *B.* his Daughter in Fee, another to *C.* his Daughter in Fee; and if *C.* died before her Age of ſixteen Years, *B.* then living, then her Part to go to *B.* in Fee; and if *B.* died without Iſſue, living *C.* then *C.* to have her Part to her and her Heirs; and if both his ſaid Daughters died without Iſſue, then both of the Meſſuages ſhould go to his Son in Fee. *C.* died without Iſſue, and her Part went to the Son, and not to the ſurviving Daughter, becauſe the laſt Clauſe created no croſs Remainder. *Bendl.* 212. *Dyer* 330. *b. Vaughan* 267. *Clatches's* Caſe.

J. S.

J. S. having a Son and four Daughters, and being ſeiſed of Lands in Fee, and of a long Term, deviſes all his Eſtate in *D.* where the Freehold lies, and likewiſe in *S.* where the Term is, to his Son and his Heirs, and if he die without Iſſue unmarried, then to his four Daughters, and if he marries and dies without Iſſue then living, and having a Wife, then after the Death of ſuch Wife, likewiſe to his four Daughters. *Holt*, for the *Plaintiff* in the Writ of Error, made two Points: Firſt, whether hereby an Eſtate in Tail of the Freehold Lands paſſed to the Son, and the Remainder to the four Daughters, or whether the Eſtate to the Son was a Fee, and it came to the Daughters by way of executory Deviſe; and that it was a Fee to the Son, and good to the Daughters by way of executory Deviſe, he cited 2 *Cro.* 590. *Roll.* Tit. *Eſtate*, 835, 836. and this Point was yielded by the Counſel on the other Side. But to the 2d Point, if this Remainder of the Term was good to the four Daughters, he argued that it was, and cited *Dyer* 74, 358. *Com.* 590. 2 *Cro.* 460. and ſaid that the Reaſon of the Reſolution in *Child* and *Bayley*'s Caſe was, for the Repugnancy, for having firſt deviſed it to the Deviſee and his Aſſignees. This was oppoſed by the other ſide, and *Child* and *Bayley*'s Caſe relied on; as alſo *Roll.* Tit. *Deviſe*, 611. *Leventhorp* and *Aſhley*'s Caſe. Time was given for further Argument: *Holt* cited *Com.* 590. and *Lowe* and *Windham*'s Caſe, 22 *Car.* 2. reported in

Mod.

Mod. 50. *M.* 35 *Car.* 2. *B. R. Sommers* and *Gibbon*, *Skin. Rep.* 144.

An *executory* Deviſe need not veſt as a Remainder muſt, *eo inſtante* that the particular Eſtate determines; but that the Law would ſupport it without a particular Eſtate, and expect it ſhould take, *per Scroggs*, who cited the Caſe of *Snow* and *Cutler*, 19 *Car. B. R.* But *North* anſwered, that then there muſt be an apparent Intent of the Deviſor, that it ſhould not till a certain Time, notwithſtanding the particular Eſtate determines; and that he ſaid was the Caſe of *Snow* and *Cutler*, for there the Deviſe was to the Heir of *J. S.* when he comes to the Age of fourteen Years. *Hil.* 1677, *vide* 1 *Freem. Rep.* 244.

A Will ſhall never operate by way of *executory* Deviſe, if it may take Effect by way of Remainder, *i. e.* if there is a particular Eſtate ſufficient to ſupport it. *Carth.* 310.

Favourable Diſtinctions have been always admitted to ſupply the Meaning of Men in their laſt Wills; and therefore a Deviſe to *A.* till he be of Age, then to *B.* and his Heirs, this is an Eſtate for Years in *A.* with a Remainder in Fee to *B.* and if ſuch a Deviſe to *A.* who is alſo made Executor, or for Payment of Debts, it ſhall be for a certain Term of Years, *i. e.* for ſo long as according to Computation he might have attained that Age, had he lived. Contingent Remainders are at the Common Law, and ariſe upon Conveyances as well as Wills; one may limit an Eſtate to *A.* the Remainder to another, and ſo it may be

be by Deviſe, if the Intent of the Parties will have it ſo; but as at the Common Law all contingent Remainders ſhall not be good, ſo in Wills no ſuch Latitude is given, as if none could be bad; they are ſubject to the ſame Fate in Wills as in Conveyances. An executory Deviſe needs no particular Eſtate to ſupport it, for it ſhall deſcend to the Heir till the Contingency happen; it is not like a Remainder at the Common Law, which muſt veſt *eo inſtante* that the particular Eſtate determines; but the Learning of executory Deviſes ſtands upon the Reaſons of the old Law, wherein the Intent of the Deviſor is to be obſerved; for when it appears by the Will that he intends not the Deviſee to take but *in futuro*, and no Diſpoſition being made thereof in the mean time, it ſhall then deſcend to the Heir till the Contingency happens; but if the Intent be that he ſhall take *in præſenti*, and there is no Incapacity in him to do it, he ſhall not take *in futuro* by an executory Deviſe. *Per North* C. J. *Hil.* 29 & 30 *Car.* 2. *C. B.* 2 *Mod.* 291, 292.

In caſe of executory Deviſes there can be no Limitations over. 4 *Mod.* 259.

One deviſes all his Lands after the Death of his Executors to *A.* and his Heirs for ever; but if he dies leaving no Son, then to *B.* This is a good *executory* Deviſe to *B.* if *A.* dies without Iſſue, becauſe the Contingency muſt happen within the Compaſs of a Life, and ſo no Danger of a Perpetuity. *Prec' in Chan'* 67.

An

An executory Deviſe to ariſe within the Compaſs of a reaſonable Time is good; twenty, nay thirty Years have been thought a reaſonable Time; ſo in the Compaſs of a Life or Lives; for let the Lives be never ſo many there muſt be a Survivor, and ſo it is but a Length of that Life; but the Court were for not going one Step farther, becauſe theſe Limitations make the Eſtate unalienable, every executory Deviſe being a Perpetuity as far as it goes, *viz.* an Eſtate unalienable, though all Mankind join in the Conveyance. *Salk.* 229.

Deviſe to the *firſt* Iſſue Male of *A.* (*A.* having none at that time) is void. *Vide Ca. in B. R. temp. W.* 3. 278. *Salk.* 229.

J. S. being Tenant for Life, with Remainder to his Wife for Life, Remainder to his own right Heirs, 20 *Oct.* 1683, made his Will thus, *viz.* "*Item*, my Land at *W.* my "Wife *M.* is to enjoy for her Life, after "her Death it of Right goes to my Daugh- "ter *Elizabeth* for ever, provided ſhe has "Heirs; but if my ſaid Daughter dies be- "fore her Mother, or without Heirs, and "my ſaid Wife *M.* ſhall marry again, and "ſhould have Heirs Male, I bequeath all "my ſaid Right in *W. &c.* to her Heirs "Male by her ſecond Huſband, thinking I "can never ſufficiently reward her Love; "provided if my ſaid Wife ſhould marry "again, and fail of Heirs Males, and my "Daughter ſhould fail of Heirs, then I de- "viſe 50 *l.* Annuity out of *W. &c.* to my

" Brother *D. S.*" And deviſed ſeveral other Annuities charged on the Lands to ſeveral Perſons, who were his Heirs at Law, but he made no Deviſe of the Land to any one. The Wife married a ſecond Huſband, and had Iſſue Male, but died before *Elizabeth* the Daughter, who died without Heirs. In Ejectment, the Leſſors of the Plaintiff were Heirs at Law, and the Defendant was the Heir Male of the Wife by the ſecond Huſband. On the Trial a Caſe was made for the Opinion of the Court: Firſt Objection was, that the firſt Clauſe was a Deviſe to the Daughter in Fee, but yet that was afterwards controuled and qualified by ſubſequent Words, and it was intended to be to her and the Heirs of her Body only. *Per Cur'*, The Perſon to whom the Deviſe over is, *i. e.* Heirs Male of the Body of the Wife by the ſecond Huſband, he is a Stranger, and where the Deviſe over is to a Stranger, that will not alter the Conſtruction of the Will from what it would have been without it; ſo that it will continue a Deviſe to *E.* in Fee-ſimple; ſo is 2 *Cro.* 415. and it is Law now, and not to be drawn in Queſtion, though it was once diſputed. A Deviſe to a Stranger will not alter a poſitive Deviſe to a Perſon and his Heirs. ---But when this Deviſe is over of a Rent-Charge, or Annuities charged on Land to the Heir at Law, and ſhews what was meant by Heirs in the firſt Place, then it will be a Deviſe to *E.* and the Heirs of her Body, Remainder to the Heirs Male of the Body of the Wife,

Wife, with a Deviſe over to theſe Annuitants; and there is no Difference whether the Deviſe over be of the Lands, or of an Annuity charged on them, becauſe in the laſt Place he could never intend the Lands themſelves ſhould paſs to the Perſons to whom he had given the Annuities. Secondly, *per Cur'*, the firſt Clauſe is not a Deviſe to the Wife, or to *E.* for they were ſettled upon her for Life, and what is ſaid as to the Daughter, is only a Declaration of the Deviſor what the Eſtate and Condition of the Eſtate was, and how ſhe was to enjoy it; and he could not ſay of Right (we) was to enjoy them, if ſhe claimed under the Will: The Conſequence of this is, that the Lands deſcended to *E.* as Heir at Law, and the Deviſe to the Heirs Males of the Wife by a ſecond Huſband will be contingent; firſt, Whether *E.* ſhould die in the Life-time of the Wife, which muſt happen within the Compaſs of a Life; next Contingency, if the Wife ſhould marry, *&c.* and have Heirs of her Body by a ſecond Huſband.——But though, as in *Lloyd* and *Cary*'s Caſe, ſhe might have Heirs after his Death, and not within the Compaſs of a Life, yet ſo near as there could be no Inconvenience if it ſhould take effect *(as)* an executory Deviſe in ſuch a Caſe. But this is not ſo here; for if the Words are taken disjunctively, *if my Daughter dies in the Life-time of her Mother*, or *without Heirs*, the Contingency never happened, becauſe the Daughter ſurvived the Mother; ſo the Deviſe could never

take effect, but will be void.—If taken copulatively, and *(or)* taken for *(and)* here it will be hard to turn Words out of their natural Senſe and Import, unleſs there be a plain Intimation of the Intent of the Deviſor ſo to do. How doth the Deviſor intend it copulatively? What Occaſion is there for it? For if the Daughter ſurvived the Mother, he might intend it for her in Fee; why ſhould it be taken, if my Daughter dies without Heirs in the Life-time of *Eliz.* (*a*)? Thirdly, But if it were ſo, the Deviſe over cannot take effect, becauſe the Contingency never happened. Fourthly, But the Death of the Daughter without Heirs is too remote, and Deviſe over is void. The Deviſe of the Annuities is to take effect in the Nature of a Remainder; and if the firſt cannot take effect, all that comes after it cannot take place, it being not to take effect but as a Remainder, and then not at all: Next if the Wife ſhould marry again, and have a Son, and ſhould die without Heirs Males, this is all too remote, and ſo the Deviſe over is void, becauſe to commence upon a Contingency too remote; and if it cannot be good by way of executory Deviſe, then it muſt be by way of Remainder; and it cannot be good as a Remainder, becauſe there is no particular Eſtate to ſupport it to any one; for there was no particular Eſtate at all, what went before being only a Declaration of what did belong to the Daughter, and as this contingent Remainder had no particular Eſtate antecedent to it, it is void. - Not good

(*a*) *Eliz. in the original.*

as

as an executory Deviſe, becauſe the Contingency never happened, or if it did happen, it was too remote, and ſo void, and therefore the Heirs at Law have a good Title.—— Fifthly, If the Son of the Wife by the ſecond Huſband could take, he would take a Fee-ſimple, ſo that the Teſtator was miſtaken in the Law; for he thought he had deviſed to him but an Eſtate-Tail. Judgment for the Plaintiff, *E.* 7 *Geo.* 1. *B. R. Wright* and *Hammond*, 2 *Abr. Eq.* 338. *pl.* 11. *Vin. Abr.* Tit. *Deviſe* (L. 2.) *Ca.* 32. S. C. *in totidem verbis.*

A. ſeiſed in Fee has two Sons, *B.* and *C.* both unmarried, and deviſes his Lands to Truſtees for five hundred Years in Truſt to pay 50 *l. per Annum* to his eldeſt Son *B.* for Life, with Power of Diſtreſs, and on ſeveral other Truſts (ſome of which are remote) Remainder to the firſt and every other Son of *B.* in Tail, Remainder to *C.* the ſecond Son for Life, Remainder to his firſt, *&c.* Son in Tail, Remainder over. By the better Opinion this is a good executory Deviſe to the firſt Son of *B. T.* 1722. *Gore* and *Gore*, in *B. R.* 2 *Will.* 28.

A. deviſed a Term for Years to his Wife for Life, Remainder to his Son and Daughter; this is an executory Deviſe. 2 *Mod. Ca. in Law and Eq.* 101.

A. ſeiſed in Fee, and having three Sons, *G. E.* and *R.* deviſed *Black-acre* to *G.* his eldeſt Son and to his Heirs, and *White-acre* to *E.* his ſecond Son and his Heirs, and a Rent-

Charge of 50*l. per Annum* iſſuing out of *White-acre* to *R.* and his Heirs; Proviſo that if either of his Sons ſhould die without Iſſue, the other two living, ſo as his Eſtate in Lands ſhould come to the other two Sons, then the Rent ſhould ceaſe. *G.* died, leaving Iſſue the Defendant, and *R.* died *ſans* Iſſue; ſo that this Contingency could never happen, becauſe *G.* had Iſſue, and he being dead, and *R.* alſo without Iſſue, their Eſtates in Lands could never come to two, where *E.* alone was ſurviving; *ergo* the Rent-Charge muſt deſcend to Defendant as Heir at Law, being the Son of *G.* the eldeſt Son of the Teſtator, for this is an executory Deviſe to two on the Contingency of one dying in the Life-time of the other two, which Contingency muſt ariſe within the Compaſs of one Life, otherwiſe it is void; for it is plain that the Teſtator intended this Benefit of Survivorſhip during his Sons Lives only. Judgment for Defendant. 1 *Mod. Ca. in Law and Equity* 347.

Deviſe of a perſonal Eſtate to *A.* for Life, and afterwards for her Children, the yearly Intereſt and Produce to be for their Maintenance, until the Sons ſhould be twenty-one, and the Daughters eighteen, at which reſpective Ages their reſpective Portions to be paid them, and for want of ſuch Iſſue, then to *B. A.* dies without Iſſue, the Deviſe over to *B.* good, the Words [*for want of ſuch Iſſue*] being the ſame as [*for want of ſuch Children*]. 2 *Will. Rep.* 421.

A Con-

A Conſtruction in favour of executory Deviſes to ſupport the Intent of the Teſtator, will be made either in the Courts of Law or Equity, if it may be done conſiſtently with the Rules of Law. *Ca in Eq. temp. Talbot* 44.

An executory Deviſe of an Eſtate of Inheritance to a Grandſon unborn, when he ſhall attain the Age of twenty-one Years, is good, and there is no Danger of a Perpetuity. *Ca. in Eq. temp. Talbot* 228.

Teſtator deviſed to *A.* and his Heirs, and if he die before twenty-one, then to *B.* and his Heirs; *A.* died before twenty-one, but *B.* died before him, yet *B.*'s Heir may take under the executory Deviſe. *Vide* 2 *Abr. Eq.* 342. *C.* 21. cites *Vin. Abr.* Tit. *Deviſe* (L. 2.) *Ca.* 38.

In the Caſe of *King* and *Withers* (11 *July* 1735.) a contingent Deviſe of a perſonal Eſtate was held to be *not* a Poſſibility only, but an Intereſt veſted and tranſmiſſable, *per* Lord *Talbot*, and affirmed *in Dom' Proc'*. *Ibid.*

Of Terms for Years, and uncertain Intereſt.

8 *Co.* 96. *a.* *Cro. Eliz* 315. 1 *Ro. Abr.* 829. *Co. Lit.* 112. *b.* 236. *a.*

IF a Man deviſes his Land to his Executors for Payment of his Debts, and until they are paid the Remainder over, there is no Doubt but the Remainder is good; but the Queſtion was, What Eſtate the Executors had? For there being no particular Eſtate expreſſed, if they ſhould adjudge an Eſtate for Life, then their Eſtate might determine before they received ſufficient to anſwer the End of the Deviſe; for on their Death it could not go to their Executors; therefore it was adjudged an uncertain Intereſt, which ſhould go from Executors to Executors for Payment of Debts.

1 *Ro. Abr.* 831.

If a Man poſſeſſed of a Term for Years deviſes the Lands to another generally, the Deviſee ſhall have all the Term without any Limitation to determine upon his Death.

3 *Co.* 20. *b.* 1 *Chanc' Caſes* 113.

A. deviſes his Lands to his Executors till his Son comes of Age; the Profits to be imployed in the Performance of his Will; tho' the Son dies before he be of Age, yet the Intereſt of the Executors continues till he might have been of Age, if he had lived; for ſince the Intention of the Deviſor governs in Wills, it might deſtroy that, if the Executors Intereſt ceaſed on the Death of the Son; for it is reaſonable to believe that the Teſtator

Teſtator found on a Computation, that the Profits of the Land would in that Time anſwer his Debts, *&c.* ſo that this is a good Deviſe of the Term until the Son ſhould be Twenty-one, though he died before.

For this Reaſon it was adjudged between *Smith* and *Haveris*, that if a Man deviſed Land to his Wife until his Son was of Age, to provide his Children with Neceſſaries; that if the Wife died before the Son was of Age, yet her Intereſt did not determine by her Death, becauſe it was not Matter of mere Confidence; but, according to the Judgment in *Dyer*, it ſhall go to her Executors. *Cro. Eliz.* 252.

But if the Deviſe had been, that the Land ſhould deſcend to his Son, but that his Wife ſhould take the Profits thereof until the full Age of his Son, for his Education, here is nothing deviſed to the Wife but a mere Confidence that ſhe ſhall take the Profits for the Education of her Son; and by the Will ſhe is but in the Nature of a Guardian or Bailiff for the Benefit of the Infant, which determines by her Death, and her Adminiſtrator ſhall not meddle. 2 *Leon.* 221.

A. deviſes his Lands to *B.* and *C.* and the Survivor of them, until 800 *l.* be raiſed out of his Lands; it was adjudged, in *Corbet*'s Caſe, that *B.* and *C.* ſhould have the Land no longer than they might have received out of it the Profits; and if a Stranger enters after the Death of the Deviſor, they may have their Action for the Meſne Profits, but 4 *Co.* 82. *Cro. Eliz.* 800.

cannot hold the Land longer than the Sum might have been levied; for if that were allowed, they might make it an eternal Charge on the Heirs Eſtate; but if the Heir himſelf enters and diſturbs them, they may hold over, for the Heir ſhall have no Benefit of his own Wrong, or they may have their Action againſt him, at their Election.

2 *Sid.* 151. A Term was deviſed to *B.* and if he died within it, the Reſidue to go to *C.* after he attained his Age of Twenty-one Years, *B.* died, and then *C.* died before he came to that Age: By this Deviſe *B.* had the whole Term in him; for if a Termor deviſes his Houſe or his Term without more Words, the Deviſee has the whole Term, and the 1 *Ro. Ab.* 831. Reſidue of it was to go to *C.* on a precedent Contingency; which was when he came of Age, which never happened; and conſequently his Executors can never have it; and the Executors of the Deviſor have neither an Intereſt nor a Poſſibility of one, becauſe he made a total Diſpoſition of the Term; as if a Copyholder for Life, ſurrenders to the Uſe of *B.* for Life, who is admitted, and dies in the Life of *A.* *A.* ſhall have no Benefit by ſurviving him, becauſe the whole Intereſt was ſurrendered; therefore it was adjudged in the principal Caſe, that the Executors of *B.* ſhould have the Remainder of the Term.

3 *Lev.* 264, 265. *Duke* v. *Earl.* If a Term for 1000 Years be deviſed to *A.* the Remainder to *B.* and the Heirs of his Body, the whole Term is veſted in *A.* and *B.*

B. has only a Poſſibility, and no Intereſt veſts in him until the Death of *A.* becauſe by the ſtrict Rules of the Common Law an Eſtate of Freehold is greater than any Term for Years.

A Copyholder deviſed his Lands to *A.* and *B.* his two Sons, and to the Heirs of their two Bodies begotten, and wills that each of them ſhall enter at their ſeveral Ages of Twenty-one Years; and that his Executors ſhould take the Profits until they came to their ſeveral Ages of Twenty-one Years; the Executors may take the Profits until they are both of full Age; for the Will is no more, than that his Executors ſhall take the Profits of the Land until they accompliſh their ſeveral Ages of Twenty-one Years, and then they ſhall have the Land jointly.

1 *Bulſt.* 42. *Eyliff* v. *Chopley.* *Cro. Jac.* 259. *Yelvert.* 185. The Reaſon of this, becauſe the Entry of one Jointenant is the Entry of both.

Of

Of Deviſes by Implication.

Vaugh. 261. THE Law in conveying Eſtates did not regularly ſuffer any to paſs by Implication, becauſe it is a Manner of transferring no Way agreeable to the Plainneſs and Solemnity of the Law; as if *A.* ſurrender to the Uſe of *D.* and *B.* and the longeſt Liver, and for Want of Iſſue to *B.* the Remainder over to *C.* this being a Conveyance by Law, was but an Eſtate for Life to *B.* and no Eſtate-Tail by Implication; but as there has been great Favour and Latitude allowed in the Diſpoſition of Eſtates by Will, and in Conſtruction of them, the Judges to ſupport the Intent of the Deviſor, where it is very apparent, have admitted Eſtates by Implication, though to the Diſinheritance of the Heir at Law.

2 Leon. 260. *1 Ro. Abr.* 843. *13 H.* 7. 17. *b.* As if *A.* deviſes his Land to his Heir after the Death of his Wife, this is a good Deviſe to the Wife for her Life by Implication; for by the expreſs Words of the Will, the Heir is not to have it during her Life; and if the Wife has it not, none elſe can; for the Executors cannot meddle with it; but they doubted in *Horton*'s Caſe in *Cro. Jac.* if the Deviſe had been to a Stranger after the Death of the Wife, whether ſhe ſhould take any Eſtate; for that is but a Demonſtration when the Eſtate of a Stranger ſhall commence, and it ſhall go to the Heir in the mean time, who

Cro. Jac. 75. *Rep. in Eq.* 39. *Boutell* v. *Mohun & Tilden.* *Bro. Dev.* 52. *2 Sid.* 53. *Vaugh.* 265. *2 Lev.* 207. *Smartle* v. *Scholar.*

who ought not to be diſinherited without the apparent Intent of the Deviſor; and the Authority of *Brook* is directly againſt that Opinion; for, he ſays, if a Man wills that I ſhall have his Land after the Death of his Wife, that ſhe hath an Eſtate for Life by Implication; yet the later Authorities have ſettled that Point, and with great Reaſon have preſerved the Right of the Heir, unleſs the Implication neceſſarily excludes him, as it does in the principal Caſe.

But if a Man deviſes all his Paſture Lands in *D.* to his youngeſt Son; and alſo wills that all Bargains, Grants, *&c.* which he had from *C.* ſhould be to his youngeſt Son and the Heirs of his Body; here it was reſolved, that the youngeſt Son ſhould not have an Eſtate-Tail in the Paſture of *D.* by Implication; for the Words of a Will to diſinherit the Heir at Law, muſt be very plain, and have a clear and apparent Intent; and this at moſt could have been but a poſſible Implication, that the Deviſor might have intended his Son an Intail in the Paſture; which is not ſufficient to deſtroy the plain Title of Deſcent to the Heir at Law. *Vaugh.* 262. *Cro. Car.* 368.

A. leaſes upon Condition that the Leſſee ſhall not alien to any beſides his Children: The Leſſee deviſes the Term to *H.* his Son, after the Death of his Wife; it was adjudged that the Deviſe was no Breach of the Condition, for the Wife took no Eſtate by Implication, for there can be here but a poſſible Implication at moſt, and ſince the Intent of the *Cro. Jac.* 75. *Vaugh.* 266. 1 *Ro. Abr.* 844.

the Deviſor is the beſt Rule to conſtrue Wills by, it would be abſurd to ſay, that the Deviſor intended to convey ſuch an Eſtate which muſt forfeit his own; therefore the Executors ſhall have it while the Wife lives.

Rep. in Eq. 137. *Piggot* v. *Penrice.* A Man makes a Perſon Executor of all his Goods, Lands and Chattels, and leaves no Lands, but Lands of Inheritance; theſe Words will not paſs the Lands to the Executor, becauſe the Heir ſhall not be diſinherited without a neceſſary Implication in them, for they do not ſignify a Diſpoſition of thoſe Lands to the Executor.

Cro. Jac. 75. *Vaugh.* 361. *Quære*, If it had been deviſed to the Executors after the Death of the Wife, ſhould ſhe have an Eſtate for Life, or ſhould the Executors have it during her Life, to perform his Will, and after her Death as Legatees?

Moor pl. 24. *Vaugh.* 265. *A.* ſeiſed of a Manor, Part in Demeſnes, and Part in Services, deviſed all the Demeſnes to his Wife, expreſsly for Life, and all the Services for fifteen Years, and then deviſed the whole Manor to a Stranger after her Death; it was reſolved, That the laſt Deviſe ſhould not take effect till after her Death; and yet ſhe ſhould not have the Services for her Life by Implication, but that the Heir ſhould injoy the Services after the fifteen Years, while ſhe ſtill lived; for there appears no neceſſary Implication, that ſhe ſhould have the whole for her Life, with an Excluſion of the Heir, and a poſſible Implication is not ſufficient to exclude him;

him; for nothing but the apparent Intent of the Deviſor can do that; but if the Deviſor had ſaid, That after the Death of his Wife and the Stranger, the Heir ſhould have the Manor; there the Wife by neceſſary Implication ſhall have the whole Manor for her Life; for the Deviſor's Intent is plain, That the Heir is not to have the Manor while the Stranger and the Wife live, and the Stranger cannot take any Thing while ſhe lives.

From this it appears that the Rule, *viz.* Where a Deviſee takes any Thing by an expreſs Deviſe, he ſhall not have any other Thing deviſed by the ſame Will by an Implication, is deſtroyed by the Diſtinction of a neceſſary and a poſſible Implication; for the former Caſe proves that a neceſſary Implication will give an Eſtate, though the Deviſee took by an expreſs Deviſe before, and a poſſible Implication is ſufficient in no Caſe to convey an Eſtate in Diſinheriſon of the Heir, for that is the principal Point between *Gardiner* and *Sheldon* in *Vaughan*, where the Words of the Will appear to be, That in caſe my Son *G.* and *M.* and *K.* my Daughters, die without Iſſue of their Bodies, then my Lands to remain to my Nephew *W.* It was judged, that the Deviſe to *G.* being Son and Heir, was void, and that the Daughters took no Eſtate by that poſſible Implication; but their dying without Iſſue is only a Deſignation of the Time when the Nephew is to take. *Cro. Eliz.* 16.

A. deviſed to his Wife 600 *l.* to be paid to *J. S.* for the Payment of the Lands he purchaſed

purchaſed of him, and are already ſettled on her for her Jointure; the Lands were not ſettled on her; and adjudged they did not paſs by the Will by Implication; for there appears no Intent that ſhe ſhould have them by the Will, and conſequently they cannot paſs from the Heir at Law by Implication; ſo that the Deviſor was only miſtaken as to the Settlement of them in his Life-time.

1 *Ch. Ca.* 196, 197. *North.* v. *Crompton.*

A. deviſed all his Eſtate Real and Perſonal, for Payment of Debts and Legacies, and deviſed 100 *l.* to his Heir at Law. This was decreed a good Deviſe in Fee, but no implied Truſt aroſe to the Heir at Law for the Surplus; for by that Conſtruction the Deviſee would have no Benefit by the Deviſe; beſides the Legacy of 100 *l.* to the Heir at Law, is in this Caſe an Excluſion of the Heir from any further Benefit.

A. has Sons, *B.* and *C.* and deviſes Part of his Lands to *B.* in Tail, and the other Part to *C.* in Tail, and if any of his Sons died without Iſſue, that the whole Land ſhould remain to a Stranger in Fee; *C.* died, yet the Stranger could not enter into his Part, for the other Brother took it by Implication, the Words of the Will being, *That the whole Land ſhould remain to a Stranger*, which he cannot have while either of the Sons or any Iſſue of their Body be living.

Another Rule, relating to Deviſes by Implication is this, That where the Deviſee takes a particular Eſtate of Inheritance by expreſs Words in the Will, ſuch Eſtate ſhall

not

not be inlarged by Implication; for ſince Deviſes by Implication are allowed in favour to Wills, that is where the Intention of the Teſtator may be preſumed, the Judges will ſupport it, though it be not expreſſed in plain Words, yet there is no Room for ſuch Conſtruction where the Deviſee hath an Eſtate given him by expreſs Words in the Will; for that would be to over-rule the plain Meaning of the Teſtator againſt his own Words. And therefore if *A.* deviſes to *B.* for Life, the Remainder to *C.* and the Heirs Male of his Body; and if it ſhall happen that *C.* ſhall die without Heirs of his Body, then the Remainder to *D.* This is but an Eſtate in Tail Male to *C.* becauſe that Eſtate being given to him by expreſs Words, ought not to be over-ruled by Implication, that the Teſtator intended him a greater Eſtate by the Words, *If he chance to die without Heirs of his Body.*

Dyer 17, 12. *Bend. pl.* 114. *Moor* 113. 2 *Lev.* 226. 1 *Ventr.* 230.

A Deviſe to *A.* and his Heirs Male, and if he dies without Heirs of his Body, then to remain to *B.* in Fee. This too is but an Eſtate in Tail Male to *A.* for the Law ſupplies the Words *of his Body*; and ſince the Deviſor only gave it by expreſs Words to him and his Heirs Male, it would be againſt his plain Words to let in his Iſſue Female by Implication, on the other Words, *viz.* If he dies without Heir of his Body.

1 *Bulſt.* 63. *Dyer in Mar.* 171. *a.*

A. having Iſſue a Son and two Daughters by ſeveral Venters, the Son died leaving two Daughters, and then *A.* deviſes one of his Meſſuages

Bendl. 212. *Clatche's* Caſe. *Dyer* 330. *b.* *Vaugh.* 267.

Meſſuages to *B.* his own Daughter, and her Heirs for ever, and his other Meſſuage to *C.* his Daughter, and her Heirs for ever; and if *B.* died without Iſſue, living *C.* then *C.* ſhould have *B.*'s Part to her and her Heirs; and if *C.* die before the Age of ſixteen Years, then *B.* ſhould have her Part in Fee; and if both his ſaid Daughters ſhould die without Iſſue of their Bodies, then his Grand-daughters ſhould have the Meſſuages. *C.* died without Iſſue, having paſſed her Age of ſixteen Years. The Grand-daughters had Judgment for her Part; and the Words of the Will, *viz.* If his two Daughters died without Iſſue of their Bodies, did not create croſs Remainders of each other's Part by Implication, but only denoted the Time when the Heirs at Law ſhould have the Meſſuages. For, ſays the Book, No ſuch Implication will ſerve when there is an expreſs Gift and Limitation made to the Deviſees by the Teſtator himſelf.

A. had three Sons, *B. C.* and *D.* and deviſes Lands to *C.* and *D.* and if *C.* dies without Heirs, *D.* ſhall have his Part, and if *D.* dies without Heirs, *B.* ſhall have it. The Queſtion was, What Eſtate *D.* had in this Moiety? For it was agreed that *C.* had an Eſtate-Tail by Implication by Force of the Words ſubſequent to the Deviſe, *i. e.* and if *C.* die without, *&c.* *Nudigate* argued, That if the Teſtator had gone no farther, but only ſaid, I deviſe theſe Lands to *C.* and *D.* neither of them had had but an Eſtate for Life; and then, when the Teſtator by ſubſequent

quent Words inlarges the Eſtate of one of them, and retains it to the Part of one of them, (by ſaying *B.* ſhall have *it*) the Word *it* ſhall relate only to *C.*'s Part, that was before deviſed to *D.* if *C.* dies without Heirs. And the Court inclined to this Opinion, That *D.* had but an Eſtate for Life in his Moieties, becauſe Implications that carry Eſtates ought to be plain and ſtrong, and ſo gave Judgment *Niſi.* 1 *Freem. Rep.* 85.

Where an Eſtate is created by Implication, it muſt be a neceſſary Implication, as a Deviſe to the Heir after the Death of the Wife, the Wife takes an Eſtate for Life by Implication, becauſe it is plain his Intent was, that the Heir ſhould not have it till after her Death. *Per Ld. Keeper.* 2 *Freem.* 270.

An Implication in a Deviſe to diſinherit an Heir, muſt even at Law be a neceſſary Implication. *Prec' in Chan'* 484.

Where an Intail is granted by Implication, it is ever in Favour of an Heir at Law, to whom no Eſtate being given by the Will, ſo as to enable him to take by Purchaſe; and there being a Neceſſity, if he takes at all, of his taking by Deſcent; therefore to ſupport the Intention of the Teſtator, that the Heir ſhould take, the Law creates by Implication an Eſtate-Tail in the Anceſtor, to veſt it in the Iſſue by Deſcent.——But where there is a Proviſion how it ſhall go to the Iſſue, this Reaſon intirely ceaſes. *Lucas's Rep.* 403.

Deviſe of Land to the Teſtator's ſecond Son for his Life, he or his Heirs paying a

Rent thereout to the eldeſt Son for his Life, and after the Death of the ſecond Son *and his Wife*, Remainder to the firſt, *&c.* Son of the ſecond Son. The Wife of the ſecond Son had an Eſtate for Life by *Implication*, by the Opinion of Ld. C. *Parker*. *T.* 1718. *Willis* and *Lucas*, 1 *Will. Rep.* 472.——But this Point was referred to the Judges of *B. R. Ibid.* 476.

A Deviſe that if *William* the eldeſt Son of the Teſtator ſhould happen to die without Iſſue, that then and not otherwiſe, after *William*'s Death, he deviſed it over to his Son *Richard* and his Heirs; held that *William* took an Eſtate-Tail by *Implication*. *Comyns's Rep.* 372.

Deviſe of a perſonal Eſtate to a Daughter by a ſecond Wife, and if ſhe died before Twenty-one, or Marriage, and his Daughter by his firſt Wife ſhould have one or more Sons, then the Teſtator bequeathed his perſonal Eſtate to ſuch Son as ſhould firſt attain the Age of Twenty-one; but if no ſuch Son, then to *J. S.*——The Daughter by his ſecond Wife died under Twenty-one and unmarried.——The Daughter by the firſt Wife had a Son, during whoſe Infancy a Bill is brought to have the Produce of the perſonal Eſtate placed out and improved for his Benefit. The Court declared, That all the Intereſt, Income and Profits that had ariſen, or ſhould ariſe from the ſaid Eſtate, from the Death of the Teſtator's Daughter by his ſecond Wife, ought from Time to Time to be

be accumulated, added to, and go along with the Surplus; and that in caſe the Plaintiff died before Twenty-one, the Intereſt, Income and Surplus, muſt go and belong to ſuch Perſon and Perſons, as ſhould be intitled thereto, according to the Contingencies mentioned in the Teſtator's Will. 3 *Will. Rep.* 306. by Way of Note.

What Circumſtances are neceſſary by 32 *Hen.* 8. *and* 29 *Car.* 2. (*a*) &c.

IN the Circumſtances of a Will, the firſt that occurs is Writing, and this the Statute makes abſolutely neceſſary to be done in the Life of the Teſtator, the better I preſume, to prevent all Frauds and Diſputes which this Manner of Conveyance will be liable to; but here it will be neceſſary to diſtinguiſh between the Frauds that concern Lands in Military Tenure, and thoſe of Burgage-Tenure and Gavel-kind; the former Sort, for the Reaſons before noted, were not

(*a*) Although the Judges are favourable in their Conſtructions of Wills, that if poſſible, the Intention of the Teſtator may prevail; yet where the Teſtator makes the ſame Diſpoſition of his Eſtate as the Law would have done, had he been ſilent, or where his Diſpoſition is made in ſuch general Terms that his Intention is altogether doubtful and uncertain, and cannot be collected from the Words of the Will; or where the Teſtator is eſtabliſhing a Settlement againſt the Reaſon and Policy of the Law; in theſe Caſes the Judges have thought fit to reject the Will. 2 *New Abr. of the Law* 79.

deviſeable until the Statute 32 *Hen.* 8. and therefore the Circumſtances which it appoints in this new Diſpoſition of Land muſt be obſerved; but theſe are not requiſite in deviſing the latter; for the People of *Kent*, where the Cuſtom of Gavel-kind moſt prevails, happily ſecured their Land from any Innovation of the Conqueror; ſo that after the Conqueſt they ſtill continued Free, and not ſubject to the Feudal Duties, the Preſervation of which hindered the Diſpoſition of other Lands; therefore that People ſtill continued their old Power and Cuſtom to diſpoſe of their Lands according to the natural Notion of Property by Will, or Alienation; ſo that Lands of this Tenure are not ſubject to the Circumſtances required by that Statute, becauſe they were deviſeable before.

Co. Litt. 111. For the ſame Reaſons, Lands of Burgage-Tenure might after that Statute have been deviſeable by Will Nuncupative; for whoever had the Seigniory of theſe Lands, the Fee-ſimple ſeems generally to have been in the Corporation, which rather intended the Improvement of Trade than the Military Services; and as an Encouragement to that, the Inhabitants or Tenants of thoſe Boroughs were allowed to diſpoſe of thoſe Lands by Will, for Proviſions for younger Sons; the eldeſt being generally ſettled in his Father's Trade in his Life-time, and conſequently provided for.

Cro. Eliz. 100. *A.* declares to *B.* his Will was, That *C.* ſhould have his Lands; *B.* recited the Words, and

and aſked *A.* if that was his Will, who anſwered it was; *B.* wrote down the Words without the Appointment and Conſent of *A.* in his Life; and this was adjudged a void Deviſe within the Statute, becauſe it was done without the Conſent or Command of the Deviſor, but of the Party's own Head; but if *B.* had wrote the Will, and afterwards he had read it to *A.* who had agreed, this ſubſequent Aſſent had made it as valid as if it had been firſt wrote by his Appointment.

If a Man expreſſes in a Letter, that his Land after his Death ſhall go after ſuch a Manner; this has been adjudged a good Deviſe. *Mor. pl.* 314.

But, beſides this Circumſtance of Writing, which is called the Inception of the Will, there are others to be conſidered, *viz.* the Progreſſion or Publication of it, and Conſummation by the Death of the Teſtator; and we muſt carefully conſider his Ability and Intent at every one of theſe Times.

For if *A.* be ſeiſed of ten Acres in Fee, and deviſes all his Lands to *B.* and then purchaſes *Black-acre*; this ſhall not paſs by the Will, according to the Judgment in *Brett* and *Rigdon*'s Caſe, for the Statute only impowers Perſons having Lands to deviſe: But *A.* had not *Black-acre* at the making his Will, and therefore not within the Statute; beſides, ſince the Intent of the Deviſor is the beſt Rule in Wills, it will be very reaſonable to conclude, that he never deſigned to convey *3 Co.* 31. *a.* *Pl. Com.* 344. *b.*

Black-acre, ſince he had it not in his Power when he ſettled the Diſpoſition of his other Poſſeſſions. But if *A.* by his Will had de-
Pl. Com. 344. *a.* viſed the Manor of *Dale* or *Black-acre* particularly ſpecified, and afterwards purchaſed it; this Deviſe, they ſay, may carry the purchaſed Land, though the Deviſor had it not at the Time he made his Will, for there
Ventr. 241. appears to be his Intent to purchaſe it for that End; ſo if in the former Caſe he had publiſhed the Will after the Purchaſe, that would carry the Land, for that a Publication of a Will amounts in Law to a Making, and ſo is in the Nature of a new Will.

3 *Co.* 31. *b.* If a Man orders another to write his Will, and to give *Black-acre* to *J. S.* and his Heirs; and *White-acre* to *J. N.* and his Heirs; the Writer ſets down the Deviſe to *J. S.* but before the Deviſe to *J. N.* is written the Deviſor dies. Theſe being ſeveral and diſtinct Deviſes, *J. S.* may claim his, becauſe it was fully expreſſed and written according to the Intent of the Deviſor; but if the Writer had
Moor pl. ſet down a Deviſe in Fee, where the Deviſor only intended an Eſtate for Life; or if he had made an Eſtate upon Condition, where the Deviſor mentioned an abſolute Eſtate; theſe are void Deviſes, becauſe they are no Way correſpondent to the Intent of the Deviſor; but if, in this laſt Caſe, the Deviſor upon reading the Will had diſallowed of the Con-
Cro. Eliz. 100. 2 *Rol. Ab.* 617. dition as no Part of his Will, but that it ſhould ſtand good for the reſt; this had made the Eſtate abſolute, according to the firſt

firſt Intent of the Deviſor, though there had been no Alteration in the Will during his Life.

A. agrees with *B.* for the Purchaſe of Copyhold Lands, which were ſurrendered out of Court to the Uſe of *A.* but before Admittance *A* dies ſeiſed of other Copyhold Land, having made his Will ſubſequent to the Contract, and thereby deviſed all his Copyhold Land to *J. S.* And it was ruled in Chancery, that the Copyhold agreed for, paſſed by the Will; for after Agreement the Purchaſer might in Equity recover the Land, and oblige *B.* to execute a Conveyance; and until ſuch Conveyance executed, the Vendor ſtood ſeiſed in Truſt for the Purchaſer as he ſhould appoint; and therefore if after Articles agreed on for a Purchaſe, the Purchaſer deviſes the Lands, and dies before Conveyance executed, yet the Land paſſeth in Equity; for though according to ſtrict Notions of Law, the Deviſor hath not Lands within the Statute until a Conveyance be executed, and he thereby becomes ſeiſed of them; yet after the Articles of Purchaſe, the Purchaſer is only conſidered as Maſter of the Land, and therefore in Equity will be allowed to diſpoſe of it. 1 *Chan. Caſ.* 39.

What amounts to a new Publication, and the Effects thereof. A new Publication of a Will is in Effect making it a new Will; ſo that, after ſuch Publication, it has the Force and Operation of a Will juſt made at the Time of ſuch Publication. Therefore if a *Pollexf.* 548. 1 *Ventr.* 341. *Pl. Com.* 344. *a.* *Moor* 404. 1 *Ro. Abr.* 617. *Cro. Eliz.* 493.

Man deviſeth all his Lands, and afterwards purchaſes other Lands, and then new publiſhes his Will; this new Publication has made it a new Will, and conſequently by the Deviſe of all his Lands the new purchaſed Lands ſhall paſs; for there is no Neceſſity to make any Alteration in this Caſe in the Will, becauſe the Words are ſufficient upon the new Publication, to carry all the Lands he is ſeiſed of at the Time of the Publication.

But this muſt be underſtood with this Limitation, that the Words of the Will at the Time of the new Publication be proper to convey, and ſufficiently denote the Perſon of the Deviſee; for if there be any Change between the Time of the firſt making of the Will and the new Publication; in ſuch Caſe, the Publication will not alter the original Intention of the Deviſor, nor the Import of the Words of the Will, ſo as to make the Perſons named in the Will to take in a different Manner than was intended by the original Words of the Will; and therefore if a Man deviſes Land to *J. S.* and his Heirs, and *J. S.* dies in the Life of the Deviſor, a new Publication will not make the Heir of *J. S.* take by the Will; for though the Deviſe was to *J. S.* and his Heirs, and from thence it appears to be the Intention of the Deviſor, that his Heirs ſhould have the Land, yet becauſe they were named in the Will to take by Deſcent and Limitation of Eſtate, and not as a Deſignation of the Perſon

Pl. Com. 345. *a.* *Bretts* v. *Rigdon.* 1 *Ventr.* 341.

ſon that ſhould take immediately, the Deviſe was void, and the new Publication could not make it good; for the Publication makes no Alteration in the Will, and has no other Effect than this, That if the Words be proper to convey and deſcribe the Perſon to take, it makes that Will, though of never ſo long a Date, to be as perfectly new as if but then made.

Nor would it be any Alteration in the Caſe, if the Teſtator at the Time of the new Publication had taken Notice of the Death of *J. S.* and thereupon had ſaid that the Heir of *J. S.* ſhould be his Heir, and have all the Lands which *J. S.* ſhould have had, if he had ſurvived the Deviſor; for ſuch Words being never put into Writing (which the Law only takes Notice of) are of no Effect. *Pl. Com.* 345. *Bretts* v. *Rigdon.* *Cro. Eliz.* 422. *Moor* 353.

J. S. made his Will in Writing, and deviſed Lands to his Son *J. S.* and his Heirs. The Son died afterwards in the Life of the Teſtator, after whoſe Death *J. S.* made a Codicil, by which he gave Part of the Lands deviſed as aforeſaid, to a Stranger, and afterwards declared by Parol, that his Grandſon *J. S.* ſhould have the Land which his Son *J. S.* ſhould have had; yet neither the Publication nor the Parol Declaration would carry the Land to the Grandſon; for it is plain the Grandſon was not to take originally by the Will; and it is as plain that the new Publication makes no Alteration in it; and then the Parol Declaration being no Part of the Will, cannot change the Deviſe from *J. S.* 1 *Ventr.* 341. *Steed* v. *Berrier.* *Pollexf.* 346. 2 *Jones* 135. *Raym.* 408. 1 *Mod.* 267. 2 *Mod.* 313. 3 *Keb.* 845. 2 *Lev.* 243.

J. S. the Son to *J. S.* the Grandſon; for no Parol Declaration can carry Lands to one Perſon, when the Words of the Will plainly intend them to another; but when the Deviſor has two Sons named *John*, a Parol Averment will be allowed to prove which of them he meant; for ſuch Averment is conſiſtent with the Will, and whether the Elder or the Younger takes, it is ſtill *John* the Son that takes, according to the Letter of the Will.

Moor 429. 1 *Ro. Abr.* 618. *Poph.* 105.

If a Man deviſes certain Land, and afterwards aliens it to a Stranger, and re-purchaſes it, and then ſhews his Intention that the ſaid Will ſhall ſtand as his laſt Will; this is a new Publication, and the Land ſhall paſs as if it had never been aliened by the Deviſor; for the Publication made it a new Will, and the Words of themſelves were ſufficient to carry the Land without any Addition.

If a Man deviſes the Manor of *D.* to *J. S.* and then makes a Feoffment to a Stranger, but no Livery is made, and afterwards the Teſtator makes ſome other Alteration in his Will with his own Hand, as changing his Executors, and makes other Alterations in the Legacies given of his perſonal Eſtate; yet this ſeems to be no new Publication to paſs the Manor of *D.* for though the Feoffee by Omiſſion of Livery, was only Tenant at Will, ſo that the Deviſor had ſtill Power to convey; yet the Feoffment without Livery was a Revocation of the Will; and the making of a new Executor, and the giving Legacies

Legacies out of the perſonal Eſtate, having no Relation to the Land, was no new Publication to paſs the Land, which was revoked by the Feoffment. *Quære.*

But if a Man deviſes all his Lands in *D.* and afterwards purchaſes more Lands in *D.* and *J. S.* deſires to purchaſe from him the Lands which he bought laſt; but the Deviſor refuſes, and ſays, it ſhall go to the Executors, who were likewiſe the Deviſees; and afterwards he annexes a Codicil to his Will, by which he makes a further Diſpoſition of his perſonal Eſtate, and then dies; this is a ſufficient Re-publication of his Will to paſs the new purchaſed Lands, for the original Words of the Will were ſufficient to carry the new purchaſed Land; the Annexing the Codicil ſufficiently declared the Teſtator's Intention that it ſhould ſtand in its full Extent. *Moor* 404. *Cro. Eliz.* 493. 1 *Ro. Abr.* 618. *Berkford* v. *Parrucott.*

The Statute 32 *Hen.* 8. which firſt introduced this Diſpoſition of Land by Will, did not tie a Man down to the Ceremonies of the Civil Law, which in Civil Teſtaments required ſeven Witneſſes; but on that Statute, if it was written by the Deviſor himſelf, or by any other by his Direction, it was agreed a good Will within the Act. The Legiſlators in this might probably have followed the Reformation made in the ancient Civil Law by the *Authentieks*, by which a Father's Teſtament amongſt his Children was allowed to be good, if it was written either by his own Hand, or by any other by his Direction

or Command; but this Liberty was found inconvenient on this Account, that it frequently encouraged forged Wills, and Subornation of Witneſſes to prove them; which Miſchiefs to prevent, the Statute of Frauds and Perjuries has declared, that all Deviſes of Lands and Tenements ſhall be in Writing, and ſigned by the Party deviſing, or ſome other in his Preſence, and by his Direction, and ſubſcribed in his Preſence by three or four Witneſſes, or elſe ſhall be void.

29 Car. c. 3.

And that no ſuch Deviſe in Writing ſhall be revocable, otherwiſe than by Writing, or by Burning, Tearing or Cancelling the ſame by the Teſtator, or in his Preſence, or by his Conſent.

Upon this Statute it has been ruled in Equity, that a Will of Lands atteſted by three Witneſſes, who ſubſcribed their Names at the Requeſt of the Teſtator, though at ſeveral Times, is a good Will, though the Witneſſes were never once preſent together.

2 Chan. Ca. 109.

J. S. made his Will, and wrote it with his own Hand, and begun it thus; *I* J. S. *make this my laſt Will and Teſtament*; but did not ſubſcribe his Name; yet this was adjudged a good Will, and ſufficient Signing by the Teſtator within the Statute to paſs Lands, it being ſubſcribed by three Witneſſes in the Preſence of the Teſtator; for his Name being written in the Will, it muſt be a ſufficient Signing within the Statute, ſince the Statute has not appropriated any particular Place in the Will, either Top, Bottom or Margin,

3 Lev. 1. Lemain v. Stanley.

Margin, for that Purpoſe; and therefore neceſſarily the Teſtator is at Liberty to put it where he pleaſes.

If the Deviſor only put his Seal to the Will without ſigning it, this ſeems to be a ſufficient Signing it within the Statute; becauſe Signing is no more than a Mark to diſtinguiſh a Man's Act, and Sealing is a ſufficient Mark to know it to be his Will. 3 *Lev.* 1. 1 *Show.* 69.

If a Man makes his Will, and ſigns it as the Statute directs, but the three Witneſſes ſubſcribe their Names to it in a Room adjoining to that where the Teſtator lay, but out of his Sight, ſo as he could not ſee them ſubſcribe their Names; this is no good Will within the Statute to paſs Lands, becauſe the Witneſſes did not ſubſcribe their Names in the Teſtator's Preſence, as the Statute expreſly directs. 1 *Show.* 89, 90. *Edleſtone* v. *Speaks.* *Carth.* 79, 81. 3 *Mod.* 260. S. C.

A. makes his Will, and two Witneſſes ſubſcribe their Names to it in his Preſence; afterwards he makes a Codicil, and by that confirms the Will in what is not altered, and makes a Diſpoſition different in ſome Particulars from the Will, and one of the Witneſſes to the Will ſubſcribes the Codicil with a third Perſon; yet this is no good Will within the Statute, becauſe not ſubſcribed by three Witneſſes, for the third Witneſs that ſubſcribed the Codicil is no Witneſs to the Will, nor can he prove it; and the three Witneſſes muſt ſo ſubſcribe, to be able to prove the Whole, which the third cannot do in this Caſe, becauſe he is not Witneſs to the Will. 1 *Show.* 68, 88. *Lee* v. *Libb.* *Carth.* 35.

Money

Money covenanted to be laid out in Land ſhall deſcend as Land; but he that is intitled to the Fee when purchaſed, may diſpoſe of this Money by a Will, though not atteſted by three Witneſſes. 2 *Will. Rep.* 171.

Truſt of Lands limited to *A.* and his Heirs and Aſſigns, or to ſuch as he or they ſhall appoint; *Ceſtui que Truſt* deviſes theſe Lands by a Will atteſted by two Witneſſes, the Will is void, and will not operate as an Appointment. *Ibid.* 258.

A Will made beyond Sea of Lands in *England*, muſt be atteſted by three Witneſſes. *Ibid.* 293.

A younger Brother beyond Sea having contracted to buy a real Eſtate of his Elder Brother, makes his Will, charging the Eſtate with great Legacies; but the Will was atteſted by only *two* Witneſſes; he dies without Iſſue, and makes his elder Brother, who is his Heir, Executor. The Heir may retain out of the Aſſets the Purchaſe-Money, though intitled to take the Land again as Heir. *Ibid.* 29.

Lands purchaſed after a Will were decreed to paſs purſuant to the Will. *Vide Gilb. Rep. in Eq.* 11. *Lucas's Rep.* 96.

Copyhold ſurrendered to the Uſe of a Will ſhall paſs by a Will atteſted by one or two Witneſſes only, it paſſing by the Surrender. 2 *Will. Rep.* 258.—But a Truſt or Equity of Redemption of Copyhold cannot paſs by ſuch Will. *Ibid.*

A Will

A Will or Writing revoking a former Will muſt be ſubſcribed by three Witneſſes, but this need not be in the Preſence of the Teſtator. 1 *Will.* 343. But in a Will deviſing Land the three Witneſſes muſt ſubſcribe in the Preſence of the Teſtator. *Ibid.*

Teſtatrix ſigned and publiſhed her Will before two Witneſſes, and next Day produced the Will to a third Witneſs, and declared it to be her Will, but did not ſay her Name at the Bottom was of her own Hand-writing, nor ſigned it over again; but the Cauſe was ordered to ſtand over. *Vide Barnardiſton's Rep. in Chan.* 455.

A Witneſs to prove a Will of Lands ought to prove that the Will was executed in his Preſence, and alſo in the Preſence of the other two Witneſſes, and that they all ſubſcribed in the Preſence of the Teſtator. 1 *Will.* 741.

Money agreed to be laid out and ſettled as Land may, if the Teſtator deſcribes it as perſonal Eſtate, paſs by a Will not atteſted by three Witneſſes. 3 *Will.* 221.

When a Teſtator owns his Hand before the three Witneſſes, who ſubſcribe in his Preſence, the Will is good, though all of them did not ſee Teſtator ſign the Will. *Ibid.* 254.

Republication of a Will of Lands muſt be before three Witneſſes. *M. S. Notes.*

Teſtator ſays, My Will in the Hands of *A.* ſhall ſtand; this amounts to a good Republication. 2 *Show.* 48.

New

New Publication of a Will is favoured in Equity; and ſlender Evidence will ſerve. *Vern.* 330.

A. makes his Will, ſigns it, and declares it in the Preſence of three Witneſſes, and then makes a Feoffment in Fee, or does other Act which amounts to a Revocation, and then new publiſhes his Will in the Preſence of one or two Witneſſes; this may be good. *Quære Skin.* 227.

A Republication will paſs Lands purchaſed after the Will made, and before Republication. 1 *Salk.* 238. But ſince the Statute this muſt be in Writing; *vide* 2 *Mod. Ca. in Law and Eq.* 78. and muſt have all neceſſary Incidents; *vide Gilb.* 229.—Since the Statute of Frauds the ſame Forms are neceſſary for the Republiſhing a Will, as to the firſt Making. 10 *Mod.* 98.

Making a Codicil of perſonal Eſtate, and annexing it to the Will, cannot amount to a Republication of the Will. 2 *Vern.* 722.

A Will revoked may be ſet on foot again; firſt, By a Codicil annexed thereunto; 2dly, By adding any thing to the Will, or making a new Executor; 3dly, By expreſs Speech or Word that it ſhould ſtand or be his Will. *Went. Office of an Exec.* 24.

Of Revocations.

WILLS and Teſtaments being the laſt Declaration of a Teſtator's Mind in the Diſpoſition of his Eſtate, it follows, that they are unſtable and ambulatory until the Death of the Teſtator; and ſince the laſt Declaration takes Place, and is admitted to be the Will of the Teſtator, it muſt neceſſarily be a Countermand and Revocation of all, or ſo much of the former Wills, as are inconſiſtent with, or contrary to, this laſt Declaration of the Teſtator's Mind. Now here we muſt enquire what Acts of the Teſtator will amount to a Countermand or Revocation of a Will; and this either before or ſince the Statute of Frauds and Perjuries.

Before the Statute of Frauds and Perjuries, a Will might have been revoked by Parol, though never reduced into Writing; becauſe Words deliberately ſpoken by the Teſtator, were looked upon to be as full a Declaration of his Mind, as if they were written by himſelf, or any other by his Direction; and therefore, where a Man revoked his Will by Parol in the Preſence of three Witneſſes, requiring them to take Notice of that his preſent Revocation; and further declared, that he would alter it when he came to *D.* but before he got thither he was murdered; yet

1 Roll's Abr. 614. Dyer 310. b. Cro. Jac. 497.

the Will was allowed to be revoked by theſe Words, though never put in Writing.

1 *Ro. Abr.* 615. *Cro. Jac.* 497. *Cranwell* v. *Sanders.* *Moor Pl.* 1222. 2 *Sid.* 75. *Marriet* v. *Sly.* *Godolph.* 456.

But Words in the future Senſe are not ſufficient to revoke a Will, as if the Teſtator ſays, that he has made his Will, but that it ſhall not ſtand, or he will alter his Will, theſe amount to no Revocation, for here is only a Declaration of what the Teſtator intends to do, but no Act done; and this is ſo far from being a Revocation, that without any further Act purſuant to thoſe Intentions, the Preſumption ſeems rather to be, that he has altered them, and conſequently the Will ought to ſtand as if he had never ſpoken ſuch Words.

1 *Ro. Abr.* 615.

So it is if a Man deviſes Land to *J. S.* and afterwards ſays he will make a Feoffment of it to another; this without any further Act is no Revocation, for the former Reaſon; nor would it alter the Caſe, if the Teſtator, after the making ſuch Will, had covenanted with another to make a Feoffment; for the Covenant is but a more ſolemn Declaration of his Mind, but a bare Declaration of a Man's Intentions to revoke a Will, will never be allowed a Countermand of a ſolemn Act; nor will a Court of Equity interpoſe in ſuch a Caſe, unleſs the Perſon lay under ſome Diſability or Impediment which hindered him from executing his Intentions,

1 *Ro. Abr.* 615. *Moor* 429. *Montague* v. *Jefferies.*

But if the Teſtator, purſuant to ſuch Covenant, had made a Charter of Feoffment with a Letter of Attorney to make Livery; but

but for want of the Execution thereof nothing paſſes by the Livery, yet this is a Revocation of the Will; for here is a preſent Intention of the Teſtator declared by a ſolemn Act, and it fails in ſome Circumſtances.

So if a Man deviſes Land to *J. S.* and afterwards bargains and ſells it to another; though this be not inrolled within ſix Months according to the Statute, and conſequently nothing can paſs to the Bargainee, yet this is a Revocation of the Will; becauſe here is a ſolemn Act done, which plainly ſhews the Intention of the Teſtator to countermand the Will. *1 Ro. Abr.* 615.

If a Man deviſes his Land, and then makes a Feoffment of the ſame Land, and afterwards re-purchaſes it, yet the Will ſtands revoked by the Feoffment, and the Re-purchaſe is no Declaration of the Teſtator's Mind to ſet it on foot again. *Dyer* 143. *b.* *1 Ro. Abr.* 616.

So if the Feoffment had been to the Uſe of himſelf in Fee, this had been a Revocation of the Will, though the Feoffment had only left him in his old Eſtate; for this is ſtill in the Nature of a new Purchaſe, becauſe by the Feoffment the whole Eſtate was out of him, and the Statute of 27 *Hen.* 8. returns to him the Poſſeſſion, which is by that Act to follow the Uſe.

A. makes his Will in Writing, and deviſes his Land to *J. S.* and afterwards makes a Feoffment to the Uſe of his laſt Will; this was adjudged a Countermand of his Will; *Moor* 789. *1 Ro. Abr.* 614, 617. *3 Ch. Ca.* 99.

yet the countermanded Will was allowed ſufficient to declare the Uſes of the Feoffment; for the Feoffment being the ſubſequent and laſt Conveyance, muſt take place, and ſo far revoked the Will, as that the Land cannot paſs thereby; but the Will ſtill continues good to direct the Uſes of the Feoffment, for the Teſtator ſtill ſuppoſes it for that Purpoſe in Being, becauſe he refers to it for that End.

1 Ro. Abr. 614. *2 Show.* 90, 544. If a Man deviſes Land to another, and after deviſes it to a Corporation, though this laſt Deviſe is void, becauſe expreſly forbid by the Stat. 32 *Hen.* 8. as Mortmain; yet it is a Revocation of the firſt Deviſe; for here is a plain Declaration of the Teſtator's Intent, that the firſt Deviſee ſhall not have the Land, though this laſt Diſpoſition cannot take Effect. *A.* by Will deviſed his Lands to *J. S.* and afterwards made another Will; but the Jury found he did not deviſe any Lands thereby; and this was allowed no Revocation of the former Will as to the Land deviſed; for ſince there is no Land deviſed in the ſecond Will, it may be conſiſtent with the firſt Will; and where the laſt Act of the Teſtator is not contrary to the former, and both may take Effect, there can be no Reaſon to conſtrue one to be a Countermand to the other.

Hard. 375, 376. *Seymour* v. *Northworthy.* *2 Show.* 537.

1 Ro. Abr. 617. *Cro. Jac.* 49. If a Man deviſes three Manors to *J. S.* and afterwards ſays, the Deviſee ſhall not have the Manor of *D.* which is one of the Manors; yet this is no Revocation of the Will

Will as to the other two Manors, it not appearing that the Teſtator changed his Will as to the other two Manors, and conſequently the Will as to theſe two muſt ſtand good.

If the Deviſe had been of the Manor of *D.* to *J. S.* and his Heirs, and after the making ſuch Will the Teſtator had made a Leaſe of that Manor for Years to another; this had been no Revocation of the Inheritance, but of the Land only for the Term; for there can be no Revocation further than it appears the Teſtator had altered his Mind; and the making of a Leaſe to another is no indication of his Intention to alter his former Diſpoſition but for the Term, becauſe the Diſpoſition by the Will, and the Creation of the Leaſe being made to different Perſons, may both take Effect and ſtand together.

Cro. Car. 23. *Hodgkinſon* v. *Wood.* 1 *Ch. Ca.* 193. *Barker* v. *Took & al'.* 1 *Ro. Abr.* 616. *Cro. Jac.* 49. *Godolph.* 455.

So if a Man deviſes Lands to *J. S.* and his Heirs, and afterwards by another Will deviſes the ſame Land to another for Life, paying an annual Rent to *J. S.* and his Heirs; this is only a Revocation *pro tanto*, for there muſt be an expreſs Revocation in Words to countermand the Will, or the ſubſequent Act muſt be inconſiſtent with and manifeſtly contrary to the former Will; but in theſe Caſes both are conſiſtent, for *J. S.* may have the Inheritance, and the other Deviſee an Eſtate for Life in the Lands.

Cro. Eliz. 721. *Coward* v. *Marſhall.* 1 *Ro. Abr.* 616.

But if the Deviſe had been to *J. S.* in Fee, and afterwards the Teſtator makes a Leaſe for Years to *J. S.* to commence after his Death, and delivers the Deed to a Stranger,

Cro. Jac. 49. *Coke* v. *Bullock.* *Godolph.* 455.

to the Uſe of *J. S.* but the Stranger did not deliver it to *J. S.* till after the Death of the Deviſor, and then he never agreed to it, but claimed by the Deviſe; yet this was a ſufficient Revocation, becauſe the Deviſe in Fee and Leaſe for Years being made to the ſame Perſon, and to commence at the ſame Time, cannot poſſibly ſubſiſt together; for if the Deviſe be ſtill good, the Term cannot continue, but muſt merge in the Inheritance, and where both are inconſiſtent, the laſt Act muſt neceſſarily countermand the former and take place; yet even in this Caſe, if the Leaſe had been made to the Deviſee to commence preſently, or at a Day to commence in the Life of the Teſtator, it might have determined in his Life-time, and ſo be conſiſtent with the Will.

Qu. *How it would have been in caſe of a long Term?*

4 *Co.* 60, 61. *Horſe* v. *Hemblings.* If a Feme Sole makes her Will, and deviſes her Land to *J. S.* and afterwards marries him, and then dies, yet *J. S.* takes nothing by the Will, becauſe the Marriage was a Revocation of it; for as the Law will not allow a Woman under a Coverture to make a Will, leſt ſhe ſhould be influenced by her Huſband in the Diſpoſition of her Eſtate, ſo for the ſame Reaſon Wills made by a Feme Sole are countermanded by her Marriage, leſt ſhe ſhould be influenced by her Huſband after the Coverture to revoke or let it ſtand, as it beſt anſwered his Intereſt; and if he found it was his Intereſt to keep it on foot, then

then it is preſumptive he would not ſuffer her to revoke it, which is contrary to the Nature of Wills, which are ambulatory till the Death of the Teſtator.

Now the Statute of Frauds and Perjuries has altered the Law in many of the beforementioned Circumſtances; for whereas it appears, that after the 32 *Hen.* 8. Deviſes of Land in Writing might have been countermanded by Parol, which was a great Encouragement to Perjury and Subornation of Witneſſes; this Statute enacts, that no ſuch Deviſe in Writing ſhall be revocable, otherwiſe than by Writing, or by Burning, Tearing or Cancelling the ſame by the Teſtator, or in his Preſence, and by his Conſent. 29 *Car.* 2. *c.* 3.

A. deviſed his Lands according to this Statute to *J. S.* and then publiſhed another Will in the Preſence of three Witneſſes as his laſt Will, revoking all former Wills; this laſt Will too gave the Land to *J. S.* but the Witneſſes ſubſcribed their Names thereto in a Room adjoining to that where the Teſtator was, ſo that he could not ſee them do it; and this laſt Will was a void Will within the Statute, becauſe the Witneſſes did not ſubſcribe their Names in Preſence of the Teſtator, as the Statute directs; nor was it a good Revocation in Writing, becauſe there was nothing in it inconſiſtent with the firſt Deviſe of the Land to *J. S.* or that any ways contradicted her former Intention of giving the Land to *J. S.* 2 *Show.* 89. *Idleſtone* v. *Speake.*

3 *Lev.* 108. *Diſter* v. *Diſter.*

If a Man deviſes his Land in Fee, and after the making his Will, by Bargain and Sale makes a Tenant to the *Præcipe*, and ſuffers a common Recovery to the Uſe of himſelf in Fee; this has been adjudged a Revocation of the Will, ſince the Statute of Frauds and Perjuries.

If a Leaſe for twenty Years be bequeathed to *J. S.* and after the Teſtator makes a Leaſe for fifteen Years, this is no Revocation; but if the Teſtator after his Will made takes a new Leaſe for a longer Term, ſo as the former Leaſe is ſurrendered in Fact, or in Law, this is a Revocation, or at leaſt an Adnullation, for this is another Leaſe, and not that which he had at the making of the Will. *Wentw. Office of Exec.* 22.

If a Man ſeiſed of Land in Fee, thereof infeoffs a Stranger unto the Intent to perform his Will, and afterwards the Feoffor makes his Will, and deviſes the ſame Lands to a Stranger in Fee; in this Caſe the Feoffor may alter his Will by a latter Will, becauſe that in this Caſe the Deviſee ſhall not have the Land, but by Force of the Will, and that cannot take Effect but after the Death of the Deviſor. The ſame Law is of Land, Tenements, Rent, Common, *&c.* deviſeable by Cuſtom uſed in ſome Places; and alſo the ſame Law is of other Chattels real and perſonal deviſed, *mutatis mutandis*, *&c. M. S. Notes.*

An Eſtate in Land was deviſed by Will in Writing, afterwards the Teſtator made a verbal

bal Will to revoke it; this is no Revocation. *Toth.* 286.

A Will was duly made and ſigned by the Teſtator, and a Revocation was wrote on the ſame Paper, but not ſigned by the Teſtator; this is not a Revocation within the Statute of Frauds. 3 *Lev.* 86.

A Revocation muſt be in Writing, operating as a Will, or by a Writing by which the Teſtator declares his Intention to revoke the firſt Will. 3 *Salk.* 396.

A ſubſequent Deviſe to a Perſon incapable of taking is a Revocation of a precedent Deviſe to a Perſon capable. 10 *Mod.* 233.

The Teſtator a little before his Death ſent for his Will out of his Scrutore, and in the Preſence of ſeveral Perſons cancelled it, and ſaid, I cancel my Will, and deſired them to bear Witneſs of it; and the next Day told his Phyſician he was hot in his Body, but eaſy at his Heart; and this was looked upon as a ſufficient Cancelling the other Duplicate that he had not by him. *Vide Comyns's Rep.* 453.

If one makes his Will, and afterwards becomes Lunatick, whether this Lunacy is a Revocation of a Will made while *compos mentis? Charlton* J. doubted, but the Reporter ſays, without Doubt Lunacy is *not* a Revocation. *Vern.* 106.

After a Deviſe in Fee the Teſtator mortgaged the ſame for 200 *l.* to be repaid at three Years End, but within the three Years he fell ſick, and declared he would not alter his

his ſaid Will; this is a Revocation. *Chan. Rep.* 153.

The Statute of Frauds has *not* taken away Revocations of laſt Wills by Acts in Law, as if the Teſtator ſhould afterwards make a Feoffment contrary to the Will, or any other Act inconſiſtent with it; but ſuch Revocations remain as they were before the making of this Statute. *Vide Carth.* 81.

Grant of Reverſion without Attornment is a Revocation, though the Land did not paſs by the Grant for want of Attornment. *Wentw. Office of Exec.* 22.

A Mortgage was made after a voluntary Settlement, with a Power of Revocation, and a Will in Confirmation of ſuch Settlement; the Mortgage is a Revocation *pro tanto* only. *Vern.* 97.

J. S. deviſed his Eſtate to four in Truſt, and afterwards by a Codicil revoked the Part of his Will, whereby he made two of the four Truſtees, and named two others in their Room; this is no Revocation of the other Diſpoſitions in his Will. 2 *Mod. Ca. in Law and Eq.* 68.

Tenant in Tail Male, Remainder to himſelf in Fee, deviſes his Lands to *J. S.* and after ſuffers a Recovery to the Uſe of himſelf in Fee, and dies without Iſſue Male; this is a Revocation of the Will. 3 *Will. Rep.* 163.

J. S. ſeiſed of a Leaſe for Lives, deviſes it, and afterwards renews; the Renewal is a Revocation of the Will. *Ibid.* 166.

A.

A. deviſes his real and perſonal Eſtate to Truſtees, their Heirs and Executors, in Truſt to pay 15*l. per Ann.* to Plaintiffs his two Siſters for their Lives, and after ſeveral Legacies the Surplus in Truſt for the Diſſenting Miniſters at *Reading*, &c. and gives 300*l.* Legacies to his Truſtees. Afterwards the Teſtator, by two Deeds of a ſubſequent Date, conveys all his real Eſtate, and makes a Gift of his perſonal Eſtate to the Uſe of the ſame Truſtees and their Heirs, *&c.* Proviſo both Deeds to be void, on his Tender of ten Shillings to them. There was alſo a Proviſo in the Will, that if the Siſters diſputed the Will, they ſhould forfeit their Annuities. Teſtator after he had executed the Deeds ſtill kept the ſame in his own Cuſtody: The Truſtees refuſe paying the Siſters their Annuities, who thereupon bring their Bill, inſiſting that the Deed had revoked the Will, and that there was a reſulting Truſt for them, as Heirs at Law; or at leaſt that they (the Siſters) were intitled to their 15*l. per Ann.* Annuities. — The Defendant inſiſted on the Plaintiffs having forfeited their Annuities; decreed that the Annuities ſhould be paid to the two Siſters the Plaintiffs, but the Surplus to go to the Diſſenting Miniſters. —— The Deeds being only intended by Way of Truſt, it was more reaſonable to eſtabliſh it on the Foot of the Will. 3 *Will.* 344.

A. and *B.* Tenants in Common in Fee, afterwards *A.* and *B.* made Partition by Deed and Fine, declaring the Uſe as to one Moiety of

of the Lands in Severalty to *A.* in Fee, and the other to *B.* in Fee. Ld. Chanc. *King* and the Judges of *B. R.* held that the Will of *A.* was not revoked by the Deed and Fine, but that his Share of the Lands paſſed by the ſaid Will. 3 *Will. Rep.* 169.

A. deviſes Land and levies a Fine, and the Caption and Deed of Uſes are before the Will, but the Writ of Covenant is returnable after the Will; this ſeems a Revocation, becauſe a Fine operates as ſuch from the Return of the Writ of Covenant, and not from the Caption. *Vide* 3 *Will. Rep.* 170. by Way of Note.

One ſeiſed of a Leaſe for Lives deviſes it, and afterwards renews; the Renewal is a Revocation of the Will. 3 *Will. Rep.* 166.

One makes Duplicates of his Will, and having one only in his Cuſtody, cancels it with Intention to deſtroy his Will; this is a good Revocation of the whole Will. 1 *Will. Rep.* 346.

A Man deviſes Lands to his Siſter in Fee. — After this he makes a Marriage Settlement, and limits the Eſtate in ſtrict Settlement, though here the Remainder is limited to his own right Heirs, yet the Settlement ſhall be a Revocation of the whole Deviſe to his Siſter. *Bernard.* 191.

One mortgages by Deed and Fine, this is only a Revocation *pro tanto.* 2 *Will. Rep.* 334.

Lands deviſed to one in Fee, and afterwards mortgaged to the ſame Perſon, is a Revo-

Revocation; but if mortgaged to a Stranger, it is only a Revocation *pro tanto*, or *quoad* the Mortgage. *Prec' in Chan'* 516.

A. hath two Daughters *B.* and *C.* and deviſes one Moiety of his real and perſonal Eſtate to *B.* and the other Moiety of both to *C.* and after in Conſideration of Marriage covenants to ſettle a Moiety of his real Eſtate on the Huſband of *B.* He ſhall have one Moiety by the Settlement, and the Wife the Moiety of the other Moiety by the Will. 2 *Will. Rep.* 332.

One deviſes to his Wife ſix Houſes, and the reſt of his real Eſtate to his two Daughters in Fee, but afterwards, on the Marriage of his eldeſt Daughter, he covenants to ſettle one Moiety on her and her Huſband; the Deviſe of the ſix Houſes ſhall be good, and ſubſiſt out of the remaining Moiety. 2 *Will. Rep.* 333.

Of void Deviſes.

THE laſt Thing to be treated of in this Place is, what the Law rejects as void Deviſes; for the Judges are very favourable in the Conſtruction of Wills, that if poſſible the Intention of the Teſtator may prevail; yet where the Teſtator makes the ſame Diſpoſition of his Eſtate as the Law would have done, had he been ſilent; or where his Diſpoſition is made in ſuch general Terms, that his Intention is altogether doubtful and uncertain, and cannot be collected from the Words of the Will; or Laſtly, where the Teſtator is eſtabliſhiug a Settlement againſt the Reaſon and Policy of Common Law; in theſe Caſes the Judges have thought fit to reject the Will.

1 Ro. Abr. 626. *Hob.* 30. *Plow. Com.* 545. *b.* *Godb.* 461.

The firſt Rule then to be obſerved is this, That where the Teſtator by his Will made no other Diſpoſition of his Eſtate than the Law itſelf would have done, were he ſilent; there ſuch a Will is uſeleſs, and ſhall be rejected; and therefore if a Deviſe be made to *J. S.* and his Heirs, who is Heir at Law to the Deviſor; this is a void Deviſe, and the Heir ſhall take by Deſcent as his better Title; for the Deſcent ſtrengthens his Title, by taking away the Entry of ſuch as may poſſibly have Right to the Eſtate; whereas if he claims by Deviſe, he is in by Purchaſe.

So

So if a Man deviſes Land to his Wife for Life, Remainder to *J. S.* who is Heir at Law in Fee, this is no good Deviſe to *J. S.* becauſe after the Determination of the particular Eſtate, the Reverſion would have gone, without further Diſpoſition, in the ſame Manner, to the Heir at Law, as is now limited by the Will. 2 *Leon.* 101. *Baſpool's* Caſe. 1 *Ro. Abr.* 626. *Preſton* v. *Holmes.* *Hob.* 30.

A. ſeiſed of Lands on the Part of his Mother, deviſes them to his Executors for ſixteen Years for Payment of his Debts, and afterwards deviſes them to his Heir at Law *ex parte materna*; this is a void Deviſe to the Heir at Law; for though it was argued to ſupport the Deviſe, that if it obtained, the Heir of the Part of the Father might in the End inherit, which he could never do, if the Deviſe be rejected; yet they adjudged the Deviſe to be void, becauſe there is no Alteration made in the Tenure of the Eſtate, nor is the Quality of the Eſtate any way altered; but whether the Deviſee takes either by Deſcent or by the Will, it is a Fee-ſimple, and it were but an *actum agere* to make him take by the Will. 3 *Lev.* 127, 406. *Hedger* v. *Row.* *Salk.* 241, 242. *Style* 148.

But where another Eſtate is created by the Will, than would deſcend to the Heir at Law, or where the Quality of the Eſtate is altered by the Deviſe; there the Diſpoſition of the Will ſhall prevail, though it be made to the Heir at Law. *Hob.* 29, 30. *Cowden* v. *Clarke.* *Moor* 860. *Godb.* 461. 1 *Ro. Abr.* 610.

Thus where a Man, having Iſſue a Son and Daughter, deviſed that his Lands ſhould deſcend to his Son, and if he died without Iſſue

Iſſue of his Body, then the Land to go over, *&c.* the Son by this Will took an Eſtate-Tail, though Heir at Law to the Deviſor, becauſe here is an Eſtate-Tail created by the Will; whereas a Fee-ſimple would have deſcended, and the Heir muſt claim under the Will, or the Remainder would be void.

3 Lev. 127, 128. So where a Man has Iſſue only two Daughters, and deviſes his Land to them and their Heirs, this is a Deviſe to the Heir at Law, and yet good, becauſe the Deviſe makes them Jointenants, in which the Survivorſhip takes Place; whereas had they taken by Deſcent, they had been Co-partners; and therefore the Will altering the Quality of the Eſtate, ought to prevail.

Hob. 33. *Perk.* 506. *A.* deviſes his Land to *B.* for Life, Remainder to *C.* in Tail, the Remainder to the next Heir Male of the Deviſor and the Heirs Male of his Body, and *B.* and *C.* died without Iſſue; the next Heir of the Deviſor was a Daughter, and ſhe was adjudged to have the Land by Way of Reverſion and Deſcent; and though ſhe have a Son afterwards, he ſhall not take the Land from her.

1 Lev. 130. *Bowman* v. *Milbank.* *Raym.* 97. *Secondly*, Deviſes are void and rejected, where the Words of the Will are ſo general and uncertain, that the Teſtator's Meaning cannot be collected from them; and therefore where a Man by Will gave all to his Mother, the general Words did carry no Lands to his Mother; for ſince the Heir at Law has a plain and uncontroverted Title, unleſs the Anceſtor diſinherits him, it were ſevere

ſevere and unreaſonable to ſet him aſide, unleſs ſuch Intention of the Teſtator is evident from the Will; for that were to ſet up and prefer a dark and at beſt but a doubtful Title to a clear and certain one.

So where there are two or more Deviſees in the Will, and the Words are ſo general and uncertain, that one may come under Deſcription as well as the other; there the Deviſe ſhall be rejected as too uncertain and void; and upon this the Caſe of *Wood* and *Ingerſole* ſeems chiefly to turn; for there a Man having Lands in three ſeveral Counties, deviſed the Lands of a County to each of his Sons, and that if one of his Sons ſhould die, that then the one of them ſhould be Heir unto the others; the eldeſt Son firſt died; and the Court adjudged his Part to deſcend to his Son, becauſe it did not appear from the Words of the Will, which of the two Survivors ſhould be his Heir; and therefore for the Uncertainty the Words were rejected. 1 *Bulſtr.* 61, 62, 63. *Pollexf.* 481, 482.

A. having Iſſue two Sons and two Daughters, deviſed his Land to his Wife for Life, and after her Death to his Iſſue; this was held a void Deviſe, becauſe it was uncertain what Iſſue he meant, whether one of his Sons or one of his Daughters; and all his Children could not take becauſe the Deviſe was to the Iſſue in the ſingular Number. *Cro. Eliz.* 742. *Taylor* v. *Sayer.* 1 *Ventr.* 229.

If a Man has Iſſue two Sons, and deviſes his Land to his Son, without ſpecifying which he means, this too is void for the Uncertainty; for to conſtrue it a Deviſe to 5 *Co.* 68. *b.*

the eldeſt, is to make it an impertinent Deviſe, that being no more than *actum agere*; and to conſtrue it a Deviſe to the younger Son, ſeems ſtill more unreaſonable, becauſe that is to diſinherit the Heir at Law, without any apparent Intention of the Teſtator to warrant it, and to ſet up a doubtful Title in Deſtruction of a clear one.

5 *Co.* 68. *b.* *Hob.* 32. So if a Man has Iſſue two Sons named *John*, and deviſes his Land to his Son *John*, this is a void Deviſe for the Uncertainty, unleſs one of them can prove that the Teſtator mentioned *John* his younger Son, or that the Teſtator believed that his eldeſt Son *John* being beyond Sea was dead; for theſe Circumſtances clear up the Intention of the Teſtator, and therefore ſuch Averment was admitted, becauſe it is conſiſtent with the Will, and the Conſtruction and Judgment thereon muſt ſtill be genuine, becauſe taken from the Words of the Will.

A Man had Iſſue a Son and a Daughter, the Daughter was married, and had Iſſue two Daughters, the Father deviſed that all his Lands ſhould deſcend to his Son, provided that if his Son died without Iſſue of his Body, then the Land to go to the right Heirs of his Name and Poſterity for ever; the Son died without Iſſue, and upon Ejectment between the Brother of the Deviſor and the Daughters, this was adjudged a void Deviſe, becauſe neither could claim under the Deſcription of the Will; not the Brother, becauſe, though he was of his Name,

Name, yet he was not his Heir; and though the Daughters were his Heirs, yet they were not of his Name, and ſo not within the Words of the Will, and conſequently the Limitation void for Uncertainty.

A. ſold Land to *B.* but, before Conveyance executed, *B.* ſold the ſame Land to *C* and then *A.* conveyed to *C.* and *C.* being thus ſeiſed deviſed the Land to his younger Son in theſe Words, *I bequeath to* R. *my Son, all the Land which I have purchaſed of* B. whereas in Strictneſs of Law he purchaſed from *A.* who conveyed to him; yet this was allowed to be a ſufficient Deſcription of the Land, and conſequently a good Deviſe of it, becauſe the Purchaſe was really made from *B.* the Money being paid to him. 2 *Leon.* 120. *Thorpe* v. *Thompſon.*

A. ſeiſed of Land in Fee, deviſes that *B.* and his Heirs ſhall ſtand ſeiſed of it to the Uſe of *J. S.* and his Heirs; though *B.* be not ſeiſed of the Lands, but a perfect Stranger to it; yet this amounts to a good Deviſe to *J. S.* becauſe it plainly appears, that the Intention of the Deviſor was that *J. S.* ſhould have the Uſe of the Land; and the Poſſeſſion muſt neceſſarily follow it. 1 *Rol. Ab.* 611.

If a Man deviſes to Twenty of the pooreſt of his Kindred, this is void for the Uncertainty whom the Court will adjudge the pooreſt. 1 *Ro. Abr.* 609.

Thirdly, Deviſes, as well as other Settlements, which tend to introduce Perpetuity, are void; for Wills, though favourably expounded, are yet to be conſtrued according

to the common Rules of the Courts of Law and Equity: Hence therefore it is, that a Deviſe to *J. S.* and his Heirs, the Remainder to *J. D.* and his Heirs, is void; for that the Law in no caſe will allow a Limitation of a Fee-ſimple upon a Fee-ſimple; becauſe by a Deviſe to *J. S.* and his Heirs, the Deviſor hath transferred the whole Eſtate to him, and then the Limitation over muſt be impertinent and void, when the Deviſor had before given the whole Eſtate; nor can his Deviſe be good by Way of future Intereſt or a Remainder to veſt upon a Contingency, becauſe no Man can ſay when the Heirs of *J. S.* will fail; and to allow the Remainder to *J. D.* to be good upon ſuch a diſtant Contingency, is to perpetuate the Eſtate in the Family of *J. S.* to preſerve a Remainder or Intereſt in *J. D.* which probably may never veſt.

3 *Chanc' Caſes* 35. *Cro. Jac.* 590. *Cro. Eliz.* 205.

But though the Law will not allow a preſent Remainder to be limited upon a Fee, yet a future contingent Eſtate may be limited upon a Fee, where the Contingency upon which it is to veſt, is to happen in a ſhort Time; and therefore if a Deviſe be made to *J. S.* and his Heirs, and if he die without Iſſue, living *J. D.* then to *J. D.* and his Heirs; there nothing veſts immediately in *J. D.* becauſe the whole Eſtate is transferred to *J. S.* yet the Limitation is good by Way of executory Intereſt or Deviſe; becauſe it is to veſt on a Contingency which is to happen on a Life in Being, therefore out of the Inconvenience

convenience or Danger of a Perpetuity, becauſe *J. S.* is only tied up from Alienating but for Life, and his Heirs are at Liberty to diſpoſe of it after the Death of *J. D.*

And to this Purpoſe is the Caſe of *Hind* and *Lyon*, where a Man deviſed his whole Manor to his Wife until his Son and Heir came to the Age of twenty-four Years, and at that Age gave his Wife one Part, and his Son the Reſidue; and if his Son do die before the Age of Twenty-four without Heir of his Body, that then the Land ſhould remain to *J. S.* this was held a good future contingent Remainder to *J. S.* upon the Fee-ſimple which deſcended to the Son; for the Lands were Aſſets in his Hands as coming by Deſcent from the Anceſtor, becauſe the Contingency on which it was to veſt was to happen in few Years, and be out of the Danger of a Perpetuity. 3 *Leon.* 64.

Now as to the Diſpoſition of Chattels by Will, we muſt diſtinguiſh between perſonal Chattels and Real; for if I deviſe a perſonal Chattel to *J. S.* the Remainder of it to another, *J. S.* has the whole Property, and may diſpoſe of it as he pleaſes; for ſuch Chattels will bear no Limitation over, becauſe being commonly moveable Things, they are ſubject to be broken, worn-out or loſt in the Compaſs of a Life; and therefore it were ridiculous to ſuffer ſuch a Limitation which the Nature of the Thing will not bear; *aliter* of an Uſe: It was indeed formerly held that ſuch Limitations of Remainders of 1 *Ro. Abr.* 610.

Terms were void, which before the Time of *Hen.* 8. was not ſo unreaſonable a Reſolution, as it may ſeem at this Day; for tho' Terms for Years could never be broken or loſt, as perſonal Chattels may be; yet before the 21ſt of *Hen.* 8. while they were under the Power of the Freeholder, they were very ſhort, becauſe it was not worth while to prolong them, while they were precarious and ſubject to the Will of the Reverſioner; and therefore according to the Nature of Things in thoſe Times, in the Notion of the Common Law, it might have been reaſonable enough that a Limitation of a Term for Years to a Man for his Life was an intire Diſpoſition of it, becauſe being formerly of a very ſhort Continuance, they generally were out and determined in a Life, and then there could be no Room for a Limitation over.

But this Doctrine did not long prevail, for after the Statute of 21 *Hen.* 8. Terms for Years began to ſwell beyond the Compaſs of a Life; and then the Chancery, as is already obſerved, interpoſed, to rectify the Rigour of the Common Law, and have ſettled ſuch Remainders of Terms to be good, where the Settlement does not tend to introduce Perpetuity.

3 *Chan. Caſ.* 34. Therefore if a Term be deviſed to *A.* and the Heirs Male of his Body, provided if *A.* dies without Iſſue in the Life of *B.* then the Term to go to another; this laſt Limitation is good, becauſe there is no Danger of a Perpetuity,

Perpetuity, for the Contingency on which it is to veſt is to happen within a Life in Being.

But if the Limitation had been to *A.* in Tail, the Remainder over to another, here the laſt Limitation had been void, becauſe the whole Property of the Term being in *A.* the Limitation over, which is to veſt on the Contingency of *A.*'s dying without Iſſue, is too diſtant to expect; whereas in the former Caſe the Limitation after the Intail to *A.* is good, by Way of future Intereſt or executory Deviſe, becauſe it is to veſt in the Compaſs of a Life, or not at all; and it does not look like a Perpetuity to oblige *A.* from alienating, becauſe the Eſtate will be free from the Clog when the Life is ſpent, and whoever is Proprietor afterwards, may diſpoſe of it at Pleaſure.

1 *Ro. Abr.* 611. 3 *Cha. Caſes* 36. 1 *Jones* 15.

A Term of ſeventy-ſix Years was deviſed to *A.* for Life, then to *B.* and his Aſſignees all the reſt of the Term; provided if *B.* dies without Iſſue then living, then to *C.* this Limitation to *C.* has been held void, though it may be juſtly doubted how far it is an Authority, ſince the Caſe of the Duke of *Norfolk*; for it may be obſerved, there was no Danger of a Perpetuity, becauſe the Limitation to *C.* to veſt if *B.* died without Iſſue then living, which ſurely could not be too diſtant to expect, when the Contingency muſt neceſſarily happen, or not at all, on the Determination of his Life.

1 *Jones* 15. *Child* v. *Bayly.* *Cro. Jac.* 459. 1 *Rol. Ab.* 412, 413. 3 *Cha. Caſes* 36, 50.

Vide Title Executory Deviſe. Litt. Sect. 287. Perk. Sect. 500.

If there be two Jointenants of Lands, and one of them deviſeth that which to him belongs, and dieth, this is no good Deviſe, and the Deviſee takes nothing, becauſe the Deviſe does not take Effect until after the Death of the Deviſor, and then the ſurviving Jointenant takes the whole by prior Title, *viz.* From the firſt Feoffment; but in this Caſe, if the Deviſor ſurvives the other Jointenant, the Deviſe is good for the whole, becauſe he being the ſurviving Jointenant, has the whole by Survivorſhip, and then the Words of the Will are ſufficient to carry the whole Eſtate beſides; though at the Time of making his Will he was not ſole Tenant of the Land, yet he was ſeiſed *per my & per tout*; and therefore it is impoſſible to fix on any particular Part which he meant to deviſe, becauſe he could not then call one Part of the Land more his own than another; and therefore the moſt genuine Conſtruction ſeems to give the Whole, ſince he was ſeiſed *per tout* of it at the Time of the Deviſe.

1 *Lev.* 59.

If a Man deviſes to the Heir of *J. S.* and his Heirs, *J. S.* being alive, his Heirs ſhall take nothing by the Deviſe, becauſe during the Life of *J. S.* he can have no Heir, *Quia non eſt hæres viventis*, and the Deviſe being immediate to the Heir, if he cannot take it at the Death of the Teſtator, he ſhall never take.

So

So, if the Deviſe had been to the Heir of an Alien, it had been void; becauſe an Alien, according to the Policy of our Law, can have no Heir, either to inherit, or to take by Purchaſe. 1 *Lev.* 59.

If a Man deviſe Land to *A.* for Life, the Remainder to *B.* in Fee, and *A.* dies in the Life of the Teſtator, yet the Remainder to *B.* is good; for though in Conveyances at Law there can be no Remainder without a particular Eſtate to ſupport it, yet here the Intention of the Teſtator being clear, that *B.* ſhould take after the Death of *A.* ſhall prevail, and *B.* may enter immediately after the Death of the Teſtator. *Perk. Sect.* 568. *Dyer* 122. *a.*

Bunker

Bunker v. *Cook in B. R.*

EJECTMENT brought for Lands in *Kent* on the Demiſe of *Bockenham*; and on Not guilty pleaded there is a ſpecial Verdict, wherein the Jury find that *William Bockenham*, Eſq; being Commander of her Majeſty's Ship the *Grafton*, on the third of *May* 1692. made his laſt Will and Teſtament in Writing, and they find it *in hæc verba*; he recites that he was then bound to Sea, and then goes on and ſays, *I do hereby give and bequeath unto my well beloved Wife* Frances Bockenham [*the Leſſor of the Plantiff*] *all ſuch Sum and Sums of Money, which now is or ſhall become due from his Majeſty, for my own and Servants Wages, and all ſuch Sums of Money, Lands, Tenements, Goods, Chattels, and Eſtate whatſoever, wherewith at the Time of my Deceaſe I ſhall be poſſeſſed of or inveſted with, or which ſhall belong to me*; *and I do appoint her my whole and ſole Executrix of this my laſt Will.*

They find that *William* the Teſtator, at the Time of making this Will, was not ſeiſed of any Land in the County of *Kent*, but afterwards by Deeds of Leaſe and Releaſe, dated the twentieth and twenty-firſt of *March* in the Year of our Lord 1700, Sir *George Wheeler* and others being ſeiſed in Fee of the Lands in the Declaration particularly named,

named, conveyed the ſame to the ſaid *William Bockenham* the Teſtator and his Heirs, by Virtue whereof he became ſeiſed.

They find the Lands are held in Socage, and are in the Nature of Gavel-kind, and deviſeable by the Cuſtom of *Kent*; and ſometime afterwards the ſaid *William Bockenham* dies, then the Deviſee enters, and the Heir at Law enters upon her; and ſo the Queſtion is between them, whether theſe Lands do paſs, and are diſpoſed of by Captain *William Bockenham* or not.

Chief Juſtice Holt, *giving the Opinion of the Court:*

We have conſidered of the Caſe all together; we are all of Opinion that the Will, as to theſe Lands, is a void Will, and that the Lands do not paſs thereby, but that Judgment ought to be for the Defendant, the Heir at Law.

We agree that the Words of the Will are full and comprehenſive to paſs all theſe Lands, had he been ſeiſed of them at the Time of making this Will; and we hold they cannot by Law paſs on this Account only, becauſe the Teſtator was not ſeiſed of theſe Lands in the Year 1692, at the Time of making the Will, tho' perhaps it might be his Intention and Deſign to have them paſs.

The Caſe is no more than this; a Man makes his Will, and deviſes all the Lands he ſhall have at the Time of his Death; and

after

after that he purchaſes Lands, and dies without Republication; we hold that it is a void Deviſe, for a Man cannot deviſe any Lands but what he has at the Time of making his Will.

There is no Act, between the Making of the Will and the Death of the Teſtator, neceſſary to be done to make this a perfect and compleat Will, no Writing, no Publication, no other Act whatſoever; it is ſubject to a Revocation indeed, during the Teſtator's Life, and is to take Effect only from the Time of his Death; but it is a Will, a Diſpoſition of the Eſtate bequeathed from the Time of making thereof.

Wherever there is a Diſability in the Teſtator at the Time of making the Will, tho' that Diſability be actually removed before his Death; yet the Will will be void, becauſe he had no Ability at that Time.

Suppoſe an Infant makes a Will, and deviſes Land during his Infancy; or a Feme Covert in the Life of her Huſband makes a Will, and diſpoſes of Land thereby; though the Coverture or Infancy be afterwards removed, and the Huſband die, or the Infant come of Age, yet if either of the Deviſors die without new Making or Publication of their Will, this is a void Will, becauſe of their original Diſability, though they ſhould live many Years after ſuch Diſability removed; yet removing theſe Diſabilities will not do, without a new Publication, or making a new Will.

Now

Now theſe are perſonal Diſabilities, but this is a real one; he had nothing to diſpoſe of, ſo here is a Removal of a real Diſability; and ſhall the Removal of that be more effectual for making it a good Will, than a Removal of a perſonal Diſability? No ſurely.

It is ſaid in *Forſe* and *Hembling*'s Caſe in 4 *Co.* that the making of the Will is not the Will, but only the Commencement of it; the Meaning of that is only that it doth not transfer the Intereſt and Property of the Thing deviſed; but ſtill it is his Diſpoſition until he revokes it; now what Commencement has this Will as to theſe Lands? It cannot have a Commencement from the Time of making the Will, becauſe the Teſtator had not the Eſtate at that Time; when then would you have this to be a Will? Muſt you ſtay until he has Purchaſed to make this a Will?

Now this Act of purchaſing theſe Lands, and this Act of diſpoſing of them, are two different Things, and are of different Natures; you muſt ſuppoſe that *eo inſtanti* that he purchaſes he makes his Will, which is abſurd and repugnant.

The Law of *England* is plain as to this Point by all Precedents, and the Law is the ſame of Lands deviſed by Cuſtom as well as by Statute. There is no Will that I can find in any Entry, but it is ſaid that the Teſtator is ſeiſed in Fee of ſuch and ſuch Lands, and that being ſo ſeiſed he made his Will ſuch

ſuch a Day, and did diſpoſe, deviſe and bequeath ſo and ſo; which plainly ſhews that it was abſolutely neceſſary that he ſhould be ſeiſed in Fee at the Time that he makes his Will; and of theſe there are Multitudes of Authorities; I ſhall name a few only, *Co. Entr.* 602, 664. and in *Raſtal* 274. there is a Precedent of a Will of Lands deviſeable by Cuſtom, that the Teſtator was ſeiſed in his Demeſne as of Fee. 24 *Hen.* 6. 6. *a.*

Though the Terms of pleadings do not make the Law, yet conſtant pleading of a Thing in ſuch a Manner, is a great Evidence of the Law; and this argues the Neceſſity of the Teſtator's being ſeiſed in Fee at the Time of making the Will: But it is objected, that Lands deviſeable by Cuſtom do differ from Lands at Common Law, becauſe they are deviſeable as Goods and Chattels, and appeal to the Cuſtom ſet forth in the Writ *Ex gravi querela*, in *Fitzherbert's Natura Brevium* 199. *b.* old Edition. Now it is ſaid that by this Cuſtom, it is lawful to deviſe Lands and Tenements as Chattels, though the Teſtator has not the Poſſeſſion of them at the Time of making the Will; and that a Man may diſpoſe of his Chattels and perſonal Eſtate, that he ſhall for the future acquire, any Time after making his Will to the Time of his Death, and therefore ſhall diſpoſe of the ſaid Cuſtomary Lands in the ſame Manner.

In

In Anſwer to this, I deſire the Cuſtom, in that Writ ſet out, may be well conſidered; and it will appear plainly, that the Cuſtom is not general, that a Man ſo qualified may deviſe *Terras & Tenementa* as he may Goods and Chattels, but it is *Tenementa ſua*; they muſt be *ſua* before he can diſpoſe of them, they muſt be his Property before he can deviſe them: Now if they are not *ſua* at the Time of the Deviſe, then he is out of the Cuſtom, and the Will cannot be affected by it.

It is true, perſonal Eſtates and Chattels may by the Common Law be diſpoſed of, before he has purchaſed or had the Poſſeſſion of them; and there are many Caſes that make out this; but there is a great Difference between a real and perſonal Eſtate, for perſonal Eſtate and Chattels are tranſient and fleeting, and not at all fixed and permanent as Lands are.

Perhaps the greateſt Part of a Man's Eſtate is in Goods To-day, and he may have a Mind to turn them into Money To-morrow; this the Neceſſity of Dealing and Traffick in the World abſolutely requires. Now would it not be hard that a Man ſhould be obliged to make a Will every Day; which he muſt, if he could not diſpoſe of his Chattels, becauſe they have undergone ſome Alteration? This would be the greateſt Perplexity in the World: but on the other Hand, Land contiues the ſame every Day, and will do ſo to the End of the World; and as to real Eſtates, there

there is Time and Opportunity to make Settlements as he thinks fit; but as to perſonal Eſtate, that is under conſtant Variation, it is quite otherways in Reaſon.

Suppoſe the Caſe was of a Deviſe of a real Chattel, and a Man ſhould deviſe a Term for Years that he had not at the Time of the Deviſe, but had purchaſed ſome Time before his Death: I doubt whether this would be good, though this be not the Caſe, nor neceſſary I ſhould give my Opinion in it, yet I make a great Doubt of it. Suppoſe for the Purpoſe one takes a College Leaſe, ſubſequent to the making his Will; the Queſtion is whether this would be a good Deviſe; and I am inclined to think not. There is a Caſe of *Aſhby* and *Lever* in *Goldeſborough* 93. that comes up to this Matter; a Man makes his Will, having a College Leaſe, or other Leaſe, and deviſes this Leaſe to *J. S.* after making which Will, he ſurrenders this Leaſe, and renews the Leaſe with the Dean and Chapter; ſuppoſe he then dies, the Queſtion was whether the Deviſee ſhould have this Leaſe; and it was held in that Caſe, that the Renewing of the Leaſe was a Revocation of the Will, and that the Leaſe did not paſs. This ſeems to be a very ſtrong Caſe as to this Point, and the Reaſon is plain, becauſe the Eſtate was not in him at the Time of making the Will.

March 137. The Queſtion was there, whether a Term not aſſented to by an Executor, and which paſſed only as an executory

tory Deviſe, could paſs by the Will of the Deviſee; and there it was held, that it was only a Poſſibility, and that nothing paſſes by the Will; and indeed how could he diſpoſe of a Term that was not his but another Man's? It is hard to imagine ſuch a preposterous Thing; but I ſhall not give any poſitive Opinion herein, this not being our Caſe; the Executor muſt aſſent to a Legacy, elſe nothing paſſes; for nothing can paſs immediately where a Term is deviſed; but this is enough to ſhew the Difference between a real and perſonal Eſtate; one is permanent and laſting, and the other is mutable and fleeting.

To make a Will to take Effect from the Purchaſe of an Eſtate, is repugnant to the Nature of a Purchaſe, for a Will gives it to another and his Heirs; the Purchaſe gives it to himſelf and his Heirs; the Will gives it to his Wife, and the Purchaſe gives it to himſelf in Fee, ſo that here is a perfect Contradiction.

Now it is to be noted here is no Republication; for if there had been a Republication, that would have done, and made theſe Lands paſs; provided that all the Requiſites and Circumſtances neceſſary to the making of an original Will within the Statute of Frauds and Perjuries had been obſerved.

Suppoſe a Man deviſes all his Lands in Tail, and afterwards purchaſes other Lands, and dies before Re-publication, thoſe purchaſed Lands will not paſs; but if he republiſh the Will, in ſuch a Manner and with

ſuch Circumſtances, as are neceſſary to the compleat Execution of an original Will, the purchaſed Lands will paſs as by an original Will.

It is ſaid indeed in *Bret* and *Rigden*'s Caſe, that where a Man deviſes Land in certain, as the Manor of *D.* or *White-acre*, and the Deviſor has nothing in the Land at the making the Deviſe, but does afterwards purchaſe the ſame; the new purchaſed Lands ſhould paſs to the Deviſee, becauſe his Intent was manifeſt. If that were Law, it is full againſt me; but I think that Caſe is not Law; it is only a ſaying of Serjeant *Lovelace*; and the Caſe quoted in the Margin does not warrant any ſuch Thing. I thought indeed, before I looked narrowly into the Caſe, which is the 39 *Hen.* 6. 18. that it had been ſo; but there is nothing in that Book to warrant it, nor is there any Thing like it in either of the Abridgments, either in *Fitzherbert*, Title *Deviſe* 17, or in *Brook*, the ſame Title 15.

It is only a Note of two Judges Opinion. *Nota*, ſays the Book, in the *King's Bench*, *per Yelverton* and *Markham*. If a Man deviſes Land, and is diſſeiſed after that, and then dies; this Deviſe is void and cannot be made good; and the Reaſon is, becauſe the Diſſeiſin turns it to a Right, and it is only a Choſe in Action, and cannot be deviſed away; and therefore, ſays the Book, it was held a good Plea againſt the Deviſe, that the Deviſor did not die ſeiſed of thoſe Lands; but

but the Book goes on further, and ſays, ſuppoſe a Man is diſſeiſed, and then makes his Will, and deviſes the Lands, and afterwards re-enters into the Lands; it is made a Queſtion there, if it be a good Plea to ſay, that the Deviſor had nothing in the Lands at the Time of the Deviſe; this is the Caſe put, and the Caſe meant, upon which the preceding Opinion is grounded, and it ſeems by that Book, that if he do re-enter, the Land ſhall paſs; and I am of Opinion they will paſs if he do re-enter; and the Reaſon is, if a Man is diſſeiſed, and he makes a Re-entry, ſuch Re-entry purges the Diſſeiſin, and by relation to all Intents and Purpoſes he is in Poſſeſſion from the Beginning, and for that Reaſon he ſhall have an Action for the mean Profits between the Time of the Diſſeiſin and bringing the Action; and ſo is 38 *Hen.* 6. 27. 19 *Hen.* 6. 17. He may in ſuch Caſe be juſtly ſaid to be ſeiſed in Fee of ſuch Lands, and therefore may diſpoſe and deviſe the ſame away; becauſe the Entry reveſts the Eſtate, and he is now, in Conſideration of the Law, in Poſſeſſion from the Time of the Diſſeiſin, and therefore is intitled to the meſne Profits, as tho' he had been actually in the Poſſeſſion all the while; but that is not this Caſe, for here the Deviſor has neither *Jus in re* nor *Jus ad rem*, for the Land is here purchaſed eight Years after the making of the Will.

Suppoſe an Heir, that has nothing but a bare Expectation during his Father's Life-

time, ſhould make a Will, and deviſe all the Lands he ſhould have at the Time of his Death, would the Lands which came to him by Deſcent from his Father paſs by the Deviſe? No ſurely. But then ſuppoſe a Man makes a Will of Land in Reverſion, expectant on an Eſtate-Tail or an Eſtate for Life, and before his Death Tenant in Tail, or Tenant for Life, dies without Iſſue, theſe Lands will paſs, though he had but a Reverſion only at the Time of making the Will, becauſe he is ſeiſed at that Time as much as he can be, and it is a certain preſent Intereſt, though to commence *in futuro*, and all the Eſtate he could give he intended him.

There was a Caſe in my Lord *Bridgman*'s Time of *Davis* and ———, it is a Deviſe of Lands to two Perſons and their Heirs, and one of them dies during the Life of the Teſtator, and the Queſtion was, Whether the Survivor ſhould take the Whole or not; and it was held he ſhould; which plainly ſhews it was a Will and Diſpoſition from the Time of making it. Suppoſing *A.* has a Manor, and makes his Will and deviſes this Manor, and before the Death of the Teſtator a Tenancy eſcheats to the Lord of the Manor, and after that the Teſtator dies; the Queſtion is, whether the eſcheated Tenancy ſhall paſs, becauſe the Manor is deviſed, and that is Part of it; for this Tenancy is not deviſed as a diſtinct Thing, but as a Part of the Whole, which he could deviſe.

I look

I look upon it to be my Lord *Coke*'s Opinion in *Butler* and *Baker*'s Caſe, in the third Report, that a Deviſe is a Diſpoſition; and that Caſe was adjudged in the Exchequer Chamber by all the Judges in *England*, and that a Cuſtom to deviſe ought to be conſtrued the ſame as in Common Law.

Therefore for theſe Reaſons I hold the Judgment ought to be given for the Defendant.

I. In regard it is a Will at the Time of the Making.

II. In as much as the Teſtator had not Power to give what he had not.

III. The conſtant Manner of Pleading ſhews the Neceſſity of the Teſtator's being ſeiſed.

IV. A Deviſe of Lands is not comparable to a Deviſe of a perſonal Eſtate, becauſe a perſonal Eſtate is altering every Day.

V. Becauſe a Deviſe is repugnant to the Nature of a Purchaſe; a Purchaſe is to the Deviſor and his Heirs, and a Deviſe to another and his Heirs; and becauſe there is no Caſe nor Authority in Law to warrant any contrary Judgment.

Indeed I was very inclinable to make this a good Deviſe if I could, becauſe the Intent is very ſtrong, and that will weigh a great deal in a Will; but when I conſidered more of it, I could find no Opinion to favour it, but that of Serjeant *Lovelace*, which is not

to be ſupported; becauſe the Caſe reported is miſtaken. I do not give my Opinion ſo much on the Word *having*, but that at the Time of making the Will he had not the Land; and ſo agreed by *Dyer*, that a Man muſt be the Owner of the Land at that Time.

Powell. I would have made it good if I could; but it is inconvenient it ſhould be ſo; for when a Man is beyond Sea, or in foreign Parts, or in Priſon, and ſhould have made his Will in this Manner, he may have many Thouſands a Year deſcend to him from other Relations, that he may know nothing of at the Time of making the Will.

Holt. I would have made it good if I could.

Powys. } The Intent was plain.
Gould. }

So Judgment was given for the Defendant *per tot' Cur'*.

This Judgment was affirmed upon a Writ of Error in the Houſe of Lords 24 *Feb.* 1707.

Arthur

Arthur v. *Bockenham*, *C. B.*

The Lord Chief Juſtice Trevor *delivering the Opinion of the Court.*

THE Queſtion is, whether theſe Lands, that is, the Moiety named in the ſpecial Verdict, do well paſs in the Will to the Defendant *Frances Bockenham*, or no; for if they do not paſs, then this Moiety belongs to the Leſſor of the Plaintiff.

And we are unanimouſly of Opinion, that theſe Lands do not paſs to the Defendant by this Will.

The Queſtion, touching the Validity of this Will, doth depend on the Conſideration of two Matters.

Firſt, On Conſideration of the Statute of Wills, 32 *Hen.* 8. which was made to enable Perſons to deviſe Lands by their laſt Wills.

Secondly, On the Conſideration of the Cuſtom of Gavel-kind, which is particularly found in this Verdict.

Firſt, In the firſt Place I will conſider, whether the Statute doth enable any one to deviſe Land he is not Owner of, nor has any Intereſt in, at the Time when the Will is made, but doth purchaſe Lands in his Lifetime after the making of ſuch Will.

This depends on the Conſtruction of that Act, which ſays, that all and every Perſon and Perſons having Manors, Meſſuages, Lands

and Tenements, ſhall have full and free Liberty to diſpoſe and deviſe the ſame by his laſt Will and Teſtament: Whether the Word *having* doth make it neceſſary, that the Teſtator ſhould have the Poſſeſſion of, or an Intereſt in the Land at the Time of making his Will, or whether it be ſufficient that he have or purchaſe the Lands at any Time after the making his Will before his Death.

Now, in order to come at the Meaning of this Statute, I will ſuppoſe this Act lately made, and that there had been no Conſtruction made thereof, but that the Queſtion was intirely new and undetermined, that it were now *Res integra*, what then would be a reaſonable Conſtruction of theſe Words of the act; and in the next Place I will conſider what Conſtruction this act ought to receive, as it has been already expounded and determined, and from the Conſequences of ſuch Determination.

Now, as to what would be a reaſonable Conſtruction, ſuppoſing it were to be made *de novo*, and to be originally expounded, I am of Opinion it would be a very reaſonable Conſtruction, that this Act ſhould not enable any Perſon to deviſe Land he has not, nor is Owner of at the Time of making his Will, unleſs he re-publiſhes it, which is the ſame in Subſtance as new making it.

The general Rule in Expoſition of Acts of Parliament is, that in all doubtful Matters, *&c.* where the Expreſſion is in general Terms, they are to receive ſuch a Conſtruction

tion which may be agreeable to the Rules of the Common Law in Caſes of that Nature; for the Statutes are not preſumed to make any Alteration in the Common Law further or otherwiſe than the Act doth declare expreſly; therefore in all general Matters the Law preſumes the Act did not intend to make any Alteration; for if the Parliament had that Deſign, they would have expreſſed it in the Act.

Now how will the Common Law influence this Matter before us? firſt, it is plain by the Rules of the Common Law, that is, ſuch Rules as are to govern Conveyances and Diſpoſitions of Eſtates, the Law did never allow any Perſon, by any Conveyance at Common Law, to diſpoſe of the Lands he had not, or had no Right or Intereſt in, at the Time of making and executing ſuch Conveyance; and ſo is 1 *Inſt.* 265. it is there ſaid, if one releaſe all the Right he has, and all the Right he ſhould or could have for the future, though in expreſs Words, which ſufficiently ſhew the Intent of the Party, yet ſuch Releaſe is void as to any After-Right, and was never yet contradicted by any one.

However, there are ſome Exceptions to this Rule, as to Releaſes of future Rights, that is, that in ſome Caſes a Man may releaſe a future Right, though by the bare Releaſe it can never paſs; as the 1 *Inſt.* which I cited before. If there be a Father and Son, and the Son diſſeiſe the Father, and being in Poſſeſſion makes a Feoffment in Fee in the

the Life of his Father, though no Right or Eſtate is yet deſcended upon him from his Father; yet this Feoffment will bar him of this future poſſible Right, when it does deſcend and come to him; but this is grounded on a particular Reaſon, that is, becauſe he had more than a mere Right, for he had the Poſſeſſion of the Land, and therefore might make a legal Conveyance thereof; and the Law favours Extinguiſhment of Rights, ſo that the Right and the Poſſeſſion may go together; beſides a Feoffment is of a high Conſideration in the Law, becauſe executed by Livery, and cauſes a Tranſmutation of the Poſſeſſion, and therefore is carried to the Extinguiſhment of future Rights, in favour of him who has the Conveyance; for by this Feoffment he did not convey a bare Right only, but might by Law make a Feoffment thereof, and by Implication upon ſuch Feoffment and Livery, all future Rights of him that made it are extinguiſhable; for being in Poſſeſſion and conveying the Land itſelf, he conveys all Rights attending thereon, whether preſent or future; but yet this doth not bar his Heir at Law; for he may enter notwithſtanding, and as to him the Right is not extinguiſhable abſolutely, though at the ſame time the Feoffment is good againſt him that made it. This general Rule again admits of another Exception, and that is in the Caſe of a Releaſe with Warranty; where a Man makes a Feoffment with Warranty, that Warranty will bar a future Right, and that will

will go to the Heir and bar him too; but then that is grounded on a particular Reaſon, for the Warranty bars to avoid Circuity of Action; for if the Heir of him who made the Warranty ſhould recover the Land againſt his Father's Grantee, this Land when it deſcended to him, would be Aſſets in his Hands, and would be liable to the Warranty, ſo that it works an Extinguiſhment of his future Right by Rebutter.

There is no Caſe in all the Law, that by any legal Conveyance at Common Law a Man could convey Lands he had no Right to, nor in Poſſeſſion thereof at the time of ſuch Conveyance: In the firſt Caſe he had not the Poſſeſſion, nor any preſent Right; but if he had, by the Releaſe it would have been extinguiſhable to him that had the Poſſeſſion, becauſe he that had the Poſſeſſion, which the Law favours, ſhould not be diſturbed; but future Rights it was never extended to.

Yet the Law has allowed Releaſes of Rights, which are in the Nature of Poſſibilities; a Man may releaſe to him that has the Poſſeſſion a poſſible Right only, though it does not allow him to transfer or convey away to a Stranger ſuch Right; and that is the Reaſon the Law allows a Man to releaſe an executory Intereſt in a Term which he has deviſed to him, and is in the Nature only of a Poſſibility; but yet he cannot aſſign it away to a third Perſon, though he may, as I have ſaid before, releaſe this Right to the Poſſeſſor

of

of the Land by way of Extinguiſhment; ſo that the Rule of Conſtruction of Conveyances at Common Law will be the ſame Rule to expound this Statute; but to narrow this Queſtion a little more, I do agree that Deviſes of Land have not been ſubject to the ſtrict Rules of Conveyances at Common Law, becauſe the Law favours Diſpoſitions by Will, to make them agreeable to the Intent of the Teſtator; whereas Conveyances at Common Law ſtand on a different Foot. In the Caſe of Wills the Teſtator is *inops Conſilii*, and has no Opportunity of obſerving the Formalities of Law; and therefore Wills are not in all Caſes ſubject to the Rules of Conveyances at Common Law; but then all this is grounded upon the Suppoſition that the Teſtator has wherewithal to make Diſpoſition of.

Let us then conſider how the Law makes Conſtruction in what comes neareſt to Wills, and that is Conveyances of Land to Uſes, which the Statute of the 27 *Hen.* 8. hath executed into Poſſeſſion; the Rules of Conſtruction in theſe Caſes are the moſt proper Rules to be adapted to Wills.

Wills have been all along conſtrued according to the Intent, and ſo has the Law always ſupported thoſe Conveyances to Uſes, on the ſuppoſed Intention of the Party to ſupply little Defects as may be ſuppoſed to be in them.

Now, by Conveyances to Uſes at Common Law, could any Man convey an Uſe in Land

Land which he had not at the Time of making the Conveyance? Surely he could not; and that is plainly proved by the Caſe of *Yelverton* and *Yelverton:* There the Father covenanted to ſtand ſeiſed of Lands which he afterwards ſhould purchaſe, to the Uſe of himſelf for Life, and afterwards to his youngeſt Son and his Heirs, and afterwards he purchaſed Land and died; and the Queſtion was, whether the eldeſt or youngeſt Son ſhould take it; and it was there reſolved, that no Uſe could ariſe to the youngeſt Son, being of Land that he had not at the Time of making the Conveyance; and that is grounded upon very good Reaſons, becauſe he cannot raiſe a Uſe of Land which is not his own; for if a Man which has no Right to Land can raiſe a Uſe of that Land, then two at the ſame Time might raiſe Uſes; for it cannot be denied but that he that is Owner of the Land may diſpoſe of it, and raiſe what Uſes he pleaſes, and that he is the proper Perſon on a Sale to declare the Uſes. It is impoſſible the ſame Land ſhould be to the Purchaſer for Life, with Remainder to his youngeſt Son and his Heirs, and at the ſame Time be to him and his Heirs; theſe would be contradictory Uſes, being at one and the ſame Time, as being declared by different Perſons.

It is allowable indeed in the Law for a Man to covenant that he will purchaſe Lands by ſuch a Time, and to levy a Fine thereof, and that the ſame ſhall be and enure to ſuch and ſuch Uſes.

But

But then the Reaſon of that is, when the ſaid Lands are purchaſed, and a Fine levied, the Uſe ariſeth on the Fine, and not on the Deed made by him before he was Owner of the Land; and though he could not declare the Uſe before he had the Land, yet the Fine raiſes the Uſe, and the Deed made before is only an Evidence of his Intention that it ſhould be to ſuch Uſes, if no Uſes were declared at the Time of levying the Fine, for at that Time he might declare other Uſes; but no other Uſes being declared, that Deed ſerves for an Evidence of the Intention of the Party, no other Intention appearing.

To apply that to this Caſe; here is a Conveyance made, whereby Land is diſpoſed of which he had not at the Time of making the Will, and is a Diſpoſition to take effect *in futuro*, and ſo was that Caſe a Grant and Diſpoſition of Land when he ſhould purchaſe it; ſo this Will cannot be a preſent Diſpoſition of what he had not, but a Declaration how the Land ſhould go at his Death; but it is very plain that the making of the Will is the Foundation, and is an inchoate Diſpoſition; ſo that if the Deviſor has not the Land at the Time, it will not paſs.

There is yet a further Reaſon why Wills ſhould receive ſuch a Conſtruction as Conveyances by way of Uſe, and why they ſhould imitate ſuch Conveyances, becauſe it appears that the Act of Parliament of Wills was made to ſupply the Power of declaring Uſes

Uſes by Men's laſt Wills and Teſtaments, which they had before the 27th of *Hen.* 8. of Uſes; for though the Subjects, before the 32d of *Hen.* 8. of Wills, had not any Power to diſpoſe of their Lands by their laſt Wills, yet they had what was tantamount, which was a Power to declare Uſes; for before the 27 *Hen.* 8. which executes the Poſſeſſion to the Uſe, all the Lands were ſubject to the *Ceſtui que Uſe*, and he had a Power to declare the Uſe of Land; the Truſtees had the Poſſeſſion as he thought fit, either by Deed or Will, ſo that in effect he had a Power of deviſing by Will by declaring the Uſes the Truſtees ſhould ſtand ſeiſed to after his Death; but when the 27 *Hen.* 8. came and executed the Poſſeſſion to the Uſe, then the *Ceſtui que Uſe* had no ſuch Power of declaring the Uſe as before, becauſe then the Uſe and the Land were the ſame Thing, being united together; and that is the Reaſon why this Statute of Wills gave Men Power to diſpoſe of their Lands by Will, which was given in lieu of that Power which *Ceſtui que Uſe* had before of declaring the Uſes of the Land as he thought fit; and therefore there is a great deal of Reaſon a Will ſhould receive the ſame Conſtruction.

But it is objected, that a Will is not to be conſtrued according to Conveyances by Deed at Common Law, becauſe a Will is no preſent and immediate Diſpoſition of Land, and is not like a Deed that takes effect immediately by Delivery; for in ſuch Caſe a Man muſt

muſt have the Land at the Time, or elſe it is againſt the Nature of the Grant or immediate Gift to diſpoſe of what he has not; but a Will is another thing, it is only a future Diſpoſition in caſe the Man dies without any other Alienation; and is ambulatory, and not compleated or conſummated till his Death; and therefore Reaſon good he ſhould be able to diſpoſe of the Lands he ſhould have or purchaſe before his Death, becauſe it does not take effect till Death.

Now in Anſwer to this Objection, I ſhall diſtinguiſh to what Purpoſes a Will does not take effect till Death, and to what Purpoſes it does take effect from the Time of the making, and before the Party's Death; it is true, to many Purpoſes a Will takes no effect till the Teſtator's Death; but on the other Hand, to many other Purpoſes it takes effect from the Time of making the Will.

Indeed as to veſting an Intereſt in the Deviſee, the Law has Regard to the Death of the Party only; for no Intereſt can veſt in the Deviſee as long as the Teſtator lives, and a Will in its own Nature is not to paſs any thing but upon Suppoſition of the Teſtator's Death; for it is a Proviſion and Direction how his Lands and Eſtate ſhall go, when he can keep them no longer. Where a Man deviſes Lands to another, and the Deviſee happens to die before the Deviſor, this is a void Deviſe, and the Lands do not paſs; for if they ſhould, the Heirs of the Deviſee muſt take, contrary to the Intent of the Deviſor;

viſor; for by the Will he was intended to take by Deſcent, and if the Lands paſs, he muſt now take by Purchaſe. In this Regard alſo, a Man's Wife may take by his Will, though ſhe cannot take by any Conveyance at Common Law, for the Will not taking effect in Point of transferring an Intereſt till after the Huſband's Death, ſhe is in the Nature of a Stranger, and ſo the Land will well paſs to her; and in many other Caſes of this Nature which I could mention, if neceſſary, a Will takes no effect till the Death of the Teſtator.

But when you conſider another thing neceſſary to make a Will good, as a neceſſary Qualification in the Teſtator, which is the Power and Capacity of diſpoſing by his Will, there I take it the Law regards the Time of making the Will, and as to the Power of diſpoſing by Will, that conſiſts of ſeveral Particulars; as, *firſt*, To enable the Teſtator to diſpoſe by Will, or any other Way, the Law requires he ſhould have an Intereſt in the thing he is to diſpoſe of; and if he have no Intereſt in the thing to be diſpoſed of, how can he be ſaid in any Senſe to have a Power of diſpoſing?

Secondly, The Teſtator muſt not only have an Intereſt in the thing deviſed at the Time of making the Will, but muſt have a diſpoſing Mind too, he muſt have Ability and Capacity in Point of Diſcretion and Underſtanding, as a rational Man; and theſe two Qualifications are neceſſary to make up the

Power of diſpoſing; and this Power muſt be perfect and compleat at the Time of making the Will, and none of theſe Qualifications coming after, though before the Death of the Teſtator, will make this Power good, and the Will effectual in Law. Theſe are perſonal Qualifications, and muſt be had at the Time of diſpoſing, and will be too late to come after. Now, as to Qualifications in Point of Diſcretion, if a Man be *non compos*, and not in his right Senſes at the Time of making his Will, though he afterwards, never ſo long before his Death, becomes a Man of Underſtanding and ſound Judgment and Memory, yet the Will is a void Will, and will by no means be made good, becauſe he wanted the diſpoſing Power at the Time of the Diſpoſition, which was at the Time of making his Will; ſo the Law is the ſame of a Feme Covert. If a married Woman makes a Will, though ſhe become a Widow and unmarried before her Death, yet ſuch is a void Deviſe without Re-publication; for the Law here regards the Time of making only; ſo it is in the Caſe of an Infant, if he makes a Will, though he be of Age, nay, though he be ever ſo old when he dies, yet it is a void Deviſe, becauſe he had not Diſcretion, nor a diſpoſing Power at the Time of making; for it is that which the Law regards in theſe Caſes, and not the Time of the Death of the Teſtator.

Then as to the other Point, or neceſſary Qualification, which goes to the Power of

diſpoſing, which is his Ownerſhip of the Land, the Law requires that to be compleat at the Time of making the Will; conſider, as to this Point the Law is very ſtrict, that the Teſtator ſhould have a diſpoſing Power at the Time of making the Will; for it is ſo far from allowing a ſubſequent Power by Acquiſition after to make the Will good, that the Law requires a Continuance of the ſame Intereſt the Deviſor had at the Time of making the Will, to remain unaltered, even to the Time of the Death, for that any, even the leaſt Alteration of this Intereſt, is an actual Revocation of ſuch Will; as where there is a Tenant in Tail, and he makes his Will, and deviſes theſe Lands away: Now, though he hath an Inheritance in theſe Lands, and they are his own, and he could diſpoſe of the abſolute Inheritance in Fee-ſimple by Fine or Recovery, yet if at any Time after the making ſuch Will, at any Time before his Death, he ſuffers a Recovery to him and his Heirs, and ſo alters the Eſtate from a Tail to a Fee, this is alſo ſo far from making his Will good, that it is an actual Revocation of the Will; yet he was the Owner of the Land at the Time of making the Will, and is no more now, but only the Eſtate is altered, and he has now another ſort of Fee; nay, the Law is ſtill ſtricter; as where there is Tenant in Fee-ſimple, and he deviſes his Land to another, and after that, and ſome Time before his Death, he makes a Feoffment of theſe Lands to another for the Uſe

3 *Lev.* 108.

of himſelf and his Heirs; though this to ſome Purpoſe is no Alteration, for he is abſolute Owner of the Eſtate as before, yet this does not make the Will good, but is a Revocation thereof; and ſo it was adjudged in the Caſe of my Lord *Lincoln*, though ſo ſmall an Alteration.

Show. Parl. Caſes 154.

Now this ſhews that the Law requires that the Teſtator ſhould have a compleat Power of diſpoſing at the Time of making the Will, and that that Power and Intereſt he had at Time ſhould continue, and be the very ſame at the Time of his Death.

Now if the Law will not allow any the leaſt Alteration of Eſtate from that which he had at the Time of making the Will, but will rather work a Revocation and Deſtruction of the Will, I do not ſee how the Teſtator's purchaſing after can work here to make the Will good, when he had nothing at all, no Intereſt in or to the Land at the Time of making the Will; this is a far greater Alteration than from a Tail to a Fee, or from one ſort of Fee to another; for this is an Acquiſition of new Right, and a new Power; it is totally a new Intereſt purchaſed after making the Will, when he had neither Right or Intereſt at the Time of the Will, which can never have effect to make this Will good, ſo as to give the Power of diſpoſing of the Lands.

In a Will the Law requires the Deviſor to have this Power compleat and intire, both in regard of the Eſtate and Intereſt to be diſpoſed

poſed of, and in regard of the Teſtator's Underſtanding and Diſcretion, which are neceſſary to be had at the Time of making the Will; and though they happen afterwards, though never ſo long before his Death, yet they come too late; ſo that if this Act of Wills were now *de novo* to be conſtrued, it would receive this Conſtruction, That a Man having Lands, ſo as to give him a Power to deviſe them by Will by virtue of the ſaid Act, muſt be meant having at the Time of making his Will, and not at the Time of his Death only.

Secondly, But then in the ſecond Place, this being a Law made a long Time, and that has received many uniform Determinations agreeable to this Conſtruction, this ought to be of great Conſideration always, that the Law may be certain when there has been ſolemn Determinations after long Debates, and an Acquieſcence under them, and when accepted and received as a Rule of Property, though ſome ſhould be diſſatisfied in their private Judgments. Were the Matter to be newly reſolved, it is but reaſonable we ſhould acquieſce and determine the ſame Way to prevent greater Miſchiefs, which might ariſe from the Uncertainty of the Law; now there have been ſeveral ſolemn Reſolutions and Acquieſcences under them, that a Man cannot diſpoſe of Lands before he has them.

As to the Caſe of *Brett* and *Rigden*, I do not take that to be a Determination of this Point; that Caſe was no more than this: A

Man had Lands in a certain Pariſh or Place, and made his Will, and gave away all his Lands in that Pariſh, and afterwards, ſome Time before his Death, purchaſed other Lands in the ſame Pariſh; and the Queſtion was, whether theſe new purchaſed Lands ſhould paſs or not; and held they would not: But that Judgment was not grounded on this Queſtion, whether he could deviſe Lands he had not, but whether the Words of the Will in Point of Intention would extend further than to thoſe Lands he had at the Time of making the Will, there being in that Will no future Words, nor declared Intention of paſſing any Lands he ſhould purchaſe *in futuro*; that Judgment went rather upon the Suppoſition that the Intention of the Teſtator was ſatisfied in paſſing thoſe Lands the Teſtator had at the Time of making the Will; for there being no future Words in the Will, it might be the Intention of the Teſtator, that the Deviſee ſhould have the Land at the Time of making his Will, and the Heir at Law have the new purchaſed Lands by Deſcent.

But there are ſome Caſes in Point, as *Butler* and *Baker*'s Caſe in the third Part of my Lord *Coke*'s Reports, and *Leonard Lovies*'s Caſe in the tenth Report of my Lord *Coke*; they expreſly go on the Word *having* at the Time of making the Will, and this has been all along taken as the Rule; and all People ought to acquieſce therein, being ſo often and ſo ſolemnly in this Manner determined; and

and now I am come to the ſecond Point on which this depends, and that is the Cuſtom.

Whether, though it ſhould be allowed that by a Will a Man cannot diſpoſe of Land which he had not at the Time of making the Will, and which he purchaſed afterwards; yet whether ſuch Deviſe may not by ſuch Cuſtom be made a good Deviſe; and I am of Opinion it will not.

The Cuſtom found is no more than that Gavel-kind Land may be deviſed by Will in Writing; but there is no ſuch Cuſtom found, as that a Man may deviſe Gavel-kind Land that he has not, but only that Gavel-kind Land is deviſable.

If it be a reaſonable Conſtruction of the Act of Wills, that to enable a Man to deviſe he ſhould have the Land at the Time of making his Will, why ſhould not this Cuſtom be ſo expounded, ſince the Cuſtom is only to enable a Man to deviſe Land; if it be a reaſonable Conſtruction as to Socage Lands, why not as to Gavel-kind Lands? There is no more particular Reaſon in one Caſe than in the other, and the rather becauſe all Cuſtoms, which are againſt the Common Law of *England*, ought to be taken ſtrictly, nay very ſtrictly, even ſtricter than an Act of Parliament that alters the Common Law.

It is a general Rule, that Cuſtoms are not to be enlarged beyond the Uſage, becauſe it is the Uſage and Practice that makes the Law in ſuch Caſes, and not the Reaſon of

the Thing; for it cannot be ſaid that a Cuſtom is founded on Reaſon, though an unreaſonable Cuſtom is void; for no Reaſon, even the higheſt whatſoever, could make a Cuſtom or Law; it is no particular Reaſon that makes any Cuſtom or Law, but Uſage and Practice itſelf, without Regard had to any Reaſon of ſuch Uſage; and therefore you cannot enlarge ſuch Cuſtom by any Parity of Reaſon, ſince Reaſon hath no Part in the making of ſuch Cuſtom.

Now in Conſtruction of Acts of Parliament it is otherwiſe, and there is a greater Latitude allowed in them, and the Reaſon that induced the Law-makers to make ſuch Acts to take away the Common Law may be, and is uſually, urged in many Conſtructions of them; therefore in doubtful Caſes we may enlarge the Conſtructions of Acts of Parliament according to the Reaſon and Senſe of the Law-makers, expreſſed in other Parts of the Acts; or conſtrue them by conſidering the Frame and Deſign of the Whole; but it is not ſo in the Caſe of a Cuſtom, becauſe not founded on any particular Reaſon, for the Reaſon of the Common Law is againſt it; but the Law allows Uſage in particular Places to ſuperſede the Common Law, and is the local Law, which is never to be extended farther than the Uſage and Practice, which is the only thing that makes it Law.

Now there is nothing here found of a Uſage to deviſe Lands which a Man had not, or which he ſhould afterwards purchaſe; and

then

then we muſt enlarge this Cuſtom to deviſe Lands which the Deviſor had not at the Time of making his Will, which is beyond a reaſonable Conſtruction; for though it be lawful and cuſtomary to deviſe Lands a Man has, yet it does not follow by the ſame Reaſon, that a Man may deviſe the Lands he has not, for it is a different Conſideration, becauſe the Common Law enables a Man to diſpoſe of what he has; but there is not the ſame Parity of Reaſon to diſpoſe of what he has not, being a thing againſt Reaſon, that any Man ſhould have a Right to diſpoſe, when he had nothing to be diſpoſed of; therefore ought not to be carried in Parity of Reaſon further than in Cuſtom, which ought to be conſtrued more ſtrictly than it would be at Common Law.

But then it is further objected, that this Cuſtom is a general Power of diſpoſing, as far as a Man may, his Goods and Chattels at Common Law, which he may deviſe in Manner as is contended the Lands ought to go in this Caſe; for it is ſaid (ſay they) in *Fitzherbert's Natura Brevium*, that the Cuſtom of Gavel-kind is to deviſe Lands *tanquam Bona & Catalla*; but ſurely theſe Words do not prove that Gavel-kind Land by ſuch Cuſtom may be diſpoſed of to all Purpoſes, as Goods and Chattels; there is moſt certainly a great Difference between a Deviſe of Lands and a Deviſe of Goods and Chattels; for Goods and Chattels were always teſtamentary Things. If a Man makes his Will, the Law gives

gives all his Goods and Chattels and perſonal Eſtate to his Executor; by his being named Executor he has a Right to all the perſonal Eſtate; and if a Man made no Will, the Ordinary did diſpoſe of the Inteſtate's Eſtate till the Statute of granting Adminiſtration was made; ſo as to the perſonal Eſtate, the Law did appoint no Perſon who ſhould go in Succeſſion as to that, unleſs the Teſtator did diſpoſe of it; but as to the Land, the Law has appointed the Heir to repreſent the Anceſtor, and to ſucceed him in his Inheritance; therefore Lands ought not to go from the Heir to whom the Law has given them, otherwiſe than as expreſly deviſed from him to ſome other.

And though the Teſtator doth diſpoſe of his Goods and Chattels by his Will to the Legatees, yet they all paſs to the Executor, and he has them all in the Nature of a Truſtee, and he alone has a Title in Law to them, and nothing paſſes to a Legatee, nor can a Legatee take any thing to him deviſed until the Executor doth aſſent; ſo that this in effect amounts to no more than a Direction to the Executor how he ſhall diſpoſe of the teſtamentary Eſtate, when Debts and Funeral Expences are paid.

Teſtaments of Goods and Chattels are by the Civil Law of Eccleſiaſtical Conuſance, and ſubject to the Rules of the Spiritual Court, and to be governed by their Law; but as to Lands, nothing enables a Man to take but the Common Law, and the Heir is in

in by Deſcent, as being a Perſon appointed by the Common Law to ſucceed and repreſent his Anceſtor; and if Lands are deviſed away by Will from the Heir, they paſs immediately by the Will to the Deviſee; ſo that there is a mighty Difference between a Diſpoſition of Lands and of Goods and Chattels.

The Caſes cited at the Bar to ſupport the Deviſe were *Brook* 15. Title *Deviſe*; *Fitzherbert* 17. and *Statham's Abridgment* 11. the ſame Title; and theſe were preſſed as Authorities in Point.

All theſe Caſes were founded on the Year Book, 39 *Hen.* 6. I have looked into that Book, but that does not by any means warrant any ſuch Opinion; for the principal Caſe was no more than this; A Man deviſed Land, and was afterwards diſſeiſed, and then died; the Queſtion there was, whether it was a good Will, becauſe he did not die ſeiſed; and the Book ſays, But ſuppoſe a Man ſhould after making his Will purchaſe Lands; and there is no Reſolution to that, but only a Query; ſo that theſe Books are only Collections from, and Inferences upon, 39 *Hen.* 6. which warrants no ſuch thing, but rather the contrary; eſpecially if it be conſidered that Caſe muſt be on a Cuſtom to deviſe, becauſe long before the Statute of Wills. *Rep. in Eq.* 77. *Greenhill* v. *Greenhill.*

And therefore I think for theſe Reaſons the Plaintiff ought to have his Judgment.

J. S.

J. S. ſeiſed in Fee deviſed Lands to his Grandaughter for Life, Remainder to his right Heirs Male for ever, and dies, leaving his Grandaughter Heir at Law, and a deceaſed Brother's Son his next Heir Male; the Deviſe of the Remainder is void. *Dawes* and *Ferrers*, 2 *Will. Rep.* 1.

Deviſe of Lands to Truſtees, in Truſt, if the eldeſt Son of *A.* turn Proteſtant, then to ſuch eldeſt Son; this is a good Deviſe, as not being to a Papiſt, but a Proteſtant. *Carteret* and *Carteret*, *Ibid.* 132.

Deviſe to *A.* a Proteſtant for Life, Remainder to *B.* a Papiſt for Life, Remainder to *C.* a Proteſtant; *A.* dies, *B.* being a Papiſt is diſabled to take, and *C.* ſhall take preſently in the ſame Manner as if the Remainder had been limited to a Monk. *Carrick* and *Errington*, *Ibid.* 361, 362.

The Stat. of the 11 & 12 *W.* 3. *c.* 4. which diſables a Papiſt from purchaſing Lands, diſables him from taking by Purchaſe, and conſequently from taking by Deviſe. *Ibid.*

Deviſe of Lands to *A.* a Proteſtant for Life, Remainder to *B.* a Papiſt for Life, Remainder to Truſtees for the Life of *B.* in Truſt to let *B.* take the Profits, and to preſerve the contingent Remainders: The Truſt to let *B.* the Papiſt take the Profits is void; but the Truſt to preſerve the contingent Remainders is good. *Ibid.* 362.

Deviſe of 100 *l.* and 50 *l. per Annum* to *A.* and his Heirs, and if *A.* die without Heirs, then

then to a Charity; *A. dies without Iſſue, living the Teſtator*; the Will is void as to the Whole, and the Charity cannot take. *Attorney General* and *Gill*, 2 *Will. Rep.* 369.

A Papiſt conforming at eighteen is capable of taking by Deviſe made when under that Age. *Hill* and *Filkins*, *&c.* *Lucas's Rep.* 481, 536.

A Deviſe to one and the Heirs of his Body, and if he go about to alien, his Eſtate ſhall ceaſe, and the Lands go over to an Hoſpital; the Deviſe over void, as an Invention to create Perpetuities. *Company of Pewterers* and *Chriſt's Hoſpital*, 1 *Vern.* 161.

J. S. deviſed his Eſtate to the Drapers Company and their Succeſſors in Truſt, to convey the Premiſſes to his Godſon *Matthew Humberſton* for Life, and afterwards, upon the Death of the ſaid *Matthew*, to his firſt Son for Life; and ſo to the firſt Son of that firſt Son for Life, *&c.* and if no Iſſue Male of the firſt Son, then to the ſecond Son of ſaid *Matthew Humberſton* for Life, and ſo to his firſt Son, *&c.* and in Failure of ſuch Iſſue of ſaid *Matthew*, then to another *Matthew Humberſton* for Life, and to his firſt Son for Life, *&c.* with Remainders over to very many of the *Humberſtons* (as the Reporter thinks, about fifty) for their Lives ſucceſſively, and their reſpective Sons, *when born*, for their Lives, without giving any Eſtate in Tail to any of them, or making any Diſpoſition of the Fee. *Per* Ld. Chan. *Cowper*, Though an Attempt to make a Perpetuity for ſucceſſive Lives

Lives be vain, yet ſo far as it is conſiſtent with the Rules of Law, it ought to be complied with; and therefore his *Lordſhip* decreed, that *all* the Sons of the ſeveral *Humberſtons*, *already born*, ſhould take Eſtates for their Lives, but that the Limitation to the Sons unborn ſhould be in Tail. *Humberſton* and *Humberſton*, 1 *Will. Rep.* 332. 2 *Vern.* 737. S. C. *Prec. in Chan.* 455. S. C. *Gilb. Rep. in Eq.* 128. S. C.

If I deviſe all my Lands, Tenements and Hereditaments in *Dale*, and I have a Manor in *Dale*, ſuch Manor being an Hereditament in *Dale* will paſs; though perhaps it might be a Doubt, if a Man has Lands, and alſo a Manor in *Dale*, of which the Lands are not Parcel, whether by the Deviſe of all his Lands in *Dale* his Manor will paſs; *per* Ld. Chan. *Talbot* in the Caſe of *Haſlewood* and *Pope*, 3 *Will. Rep.* 322.

J. S. deviſes all his Freehold Houſes in *A.* and hath none but Leaſehold Houſes, theſe ſhall paſs; *ſecus* in a Grant. 1 *Will. Rep.* 286.

A. deviſed in the following Manner: I make my Niece Executrix of all my Goods, Lands and Chattels; the Teſtator had a real and perſonal Eſtate, but no Leaſes or Intereſts for Years in any Lands whatſoever; and the Queſtion was, whether any or what Eſtate paſſed in the Lands by this Deviſe; and Ld. Chan. was clear of Opinion, that the real Eſtate did not paſs by theſe Words, and that the Word *Lands* was not (as objected) uſeleſs, and

and to be rejected, for that in all Probability there might be Rents in Arrear of thoſe Lands which would paſs to the Niece by her being made Executrix. *Piggot* and *Penrice*, 1 *Vol. Abr. Eq.* 209. *Ca.* 13. *Prec. in Chan.* 471. S. C. *Gilb. Rep. in Eq.* 137. *Comyns* 250.

J. S. deviſes all his Lands in *A. B.* and *C.* and *elſewhere*; the Teſtator hath Lands in *A. B.* and *C.* and Lands of much greater Value in another County; the Lands in the other County ſhall paſs by the Word *elſewhere*. *Cheſter* and *Cheſter*, 3 *Will. Rep.* 61.

By the Word *Lands* an Advowſon will *not* paſs; by *Hereditaments* it may. *Savil* and *Savil*, *Forteſc. Rep.* 351.

Lands deviſed to *A.* and after in the ſame Will to *B.* they ſhall take it between them. *Contra*, Ld. *Coke*'s Opinion, that the latter Clauſe revoked the former.——*Obiter*. *Fane* and *Fane*, 1 *Vern.* 30.

J. S. deviſes 3000 *l.* to all the natural Children of his Son by Mrs. *Heneage*; the natural Children born *after* making the Will ſhall not take; nay the Child *in ventre ſa Mere* ſhall not take. *Metham* and *The Duke of Devon*, 1 *Will. Rep.* 529.

A Deviſe to Relations is to be confined to ſuch as would take by the Statute of Diſtributions; but their Shares as to the taking *per Capita* and *per Stirpes* may be different. *Thomas* and *Hole*, *Caſes in Eq. temp. Talbot* 251.

Deviſe

Deviſe to *A.* and his Iſſue, Remainder to *B.* and his Iſſue, Remainder to the Heirs of *A.*—*A.* dies without Iſſue in the Life of the Teſtator; *B.* dies in the Life of the Teſtator; but leaves Iſſue, who is alſo the Heir of *A.* This Iſſue ſhall not take an Eſtate-tail, as Iſſue of *B.* nor the Remainder in Fee, as Heir to *A.* *Goodright* and *Wright*, 1 *Will.* 397.

J. S. deviſes to his Wife for Life, Remainder to his Grandaughter (who was his Heir at Law) for Life, Remainder to his own Heirs Male; a Nephew, although he be next Heir Male, cannot take by virtue of the laſt Limitation, not having both Parts of the Deſcription meeting in him. *Dawes* and *Ferrars*, *Prec. in Chan.* 589.

J. S. deviſes the Surplus of his perſonal Eſtate to ſix Perſons, to each a ſixth Part; one of them dies in the Life-time of the Teſtator, this ſixth Part ſhall be taken as undiſpoſed of by the Will, and go to the Teſtator's next of Kin. *Page* and *Page*, 2 *Will. Rep.* 489.

If Lands be deviſed to *A.* and his Heirs, and *A.* dies before the Teſtator, the Heirs ſhall take nothing; for *Heirs* is a Word of Limitation, and not of Purchaſe: Agreed *per tot' Cur'*. 1 *Freem.* 293. *in C. B.*

A Termor of 1000 Years, without Impeachment of Waſte, deviſed the ſame to Defendant, and if *he die without Iſſue*, then to Plaintiff; and *per* Ld. K. this being a Deviſe *after dying without Iſſue generally*, is void. 2 *Vol. Abr. Eq.* 357. *Ca.* 3.

A per-

A perſonal Eſtate was deviſed to *J. S.* and in caſe ſhe ſhould die without Iſſue; then to *B.* the Deviſe over to *B.* is void. 2 *Freem. Rep.* 287. *Ca.* 357. *b.*

If a Man be *non compos*, and not in his right Senſes at the Time of making his Will, though he afterwards, never ſo long before his Death, becomes a Man of Underſtanding and ſound Judgment and Memory, yet the Will is void, becauſe he wanted the diſpoſing Power at the Time of Diſpoſition, which was the Time of making his Will.—So the Law is the ſame of a Feme Covert; for if a Feme Covert maketh a Will, though ſhe becomes a Widow and unmarried before her Death, yet ſuch is a void Deviſe without Re-publication, for the Law here regards the Time of making only.—So it is in the Caſe of an Infant; if he makes a Will, though he be of Age, nay though he be never ſo old when he dies, yet it is a void Deviſe, becauſe he had not Diſcretion, nor a diſpoſing Mind at the Time of making; *per Trevor* Ch. J. in the Caſe of *Archer* and *Bockingham*, *Rep. of Caſes temp.* Q. *Ann.* 157.

A Deviſe to *A.* with ſeveral Remainders, and a Remainder over to the Heirs Male of the Deviſor; the Deviſor had no Heirs Male of his Body at his Death; it is a void Limitation, and a collateral Male cannot take by this Deviſe.——In the King's Caſe a Grant to Heir Male is void, but in that of a common Perſon it is a Fee, and the Word *Male* is idle; but Heirs Male, *&c.* in a Will are

always intended of the Body, and implies an Eſtate-tail in *B. R. Ford* and *Oſſulſton*, *Ibid.* 189. 3 *Salk.* 336. S. C. a Deviſe of a Remainder *to his right Heirs Male* muſt be intended right Heirs Male of his Body, and *no collateral Heirs Male* ſhall take by ſuch a Limitation by way of Remainder.

Deviſe of a perſonal Eſtate to *B.* and his Iſſue, or to *B.* and if he die without Iſſue, Remainder over to *C.* is void, and the whole Intereſt veſted in *B. Gibbs* and *Barnardiſton*, *Gilb. Eq. Rep.* 79. *Prec. in Chan.* 323. S. C. & P.

In Ejectment and ſpecial Verdict. *J. S.* poſſeſſed of a long Term for Years in Lands, deviſed them to *A.* Sir *St. Andrew St. John*, and his two Brothers ſucceſſively, provided that neither of them ſhould take till after they are married; *Rowland* the third Brother dies, Sir *St. Andrew* dies, the ſecond Brother is Leſſor of the Plaintiff: The Queſtion upon the ſpecial Verdict was, whether this was a good Deviſe to Sir *St. Andrew St. John* and his Brothers? It was objected, that this was a void Deviſe for the Uncertainty who ſhould take, by reaſon of the Word *ſucceſſively:* Reſolved *per tot' Cur'*, that the Plaintiff ſhould have his Judgment, becauſe the Deviſe is not void for the Uncertainty. *Ungly* and *Peale*, 2 *Vol. Abr. Eq.* 358. *Ca.* 8. cites *Vin. Abr.* Tit. *Deviſe* (D) *Ca.* 19. *Vide Lucas's Rep.* 103. *Ongly* and *Pead*, S. C. 2 *Ld. Raym.* 1312. *Ongley* and *Peale*, S. C.

It

It has been ſaid, that if an Eſtate has been given to a Man and his Iſſue, it is void for the Uncertainty, becauſe it not appearing, whether *Male* or *Female*; but that has been held and determined ſince not to be Law; and yet it is well enough in a Deviſe; *per Cur'* in *B. R.* in the Caſe of *Shaw* and *Weigh*, *Gilb. Eq. Rep.* 28.

Teſtator deviſed 550 (omitting Pounds) to his Daughter *M.* and alſo deviſes 550 *l.* to his Daughter *B.* and *per Cowper* C. the ſubſequent Deviſe to *B.* makes it extreamly clear that the Teſtator meant 550 *l.* and it is as certain and good, as if the Word (Pounds) had been expreſſed. *Freeman* and *Freeman*, 2 *Vol. Abr. Eq.* 359. *Ca.* 11. cites *Vin. Abr.* Tit. *Deviſe* (D) *Ca.* 22.

The Father in his Will taking notice, that his Son *J.* had much diſobliged him, declares thus; I do hereby reſolve not to give him any more than 20 *l.* a Year for Life, to be paid him quarterly. *N. B.* This was a Baſtard Son, to whom the Father had by a former Will given 80 *l.* a Year; but in the ſecond Will he takes notice of his ill Behaviour at the Univerſity, and deviſes that Eſtate to his legitimate Son: *Per* his Honour, *J.* ſhall take nothing by this Will, the Words not amounting to a Deviſe. *Holder* and *Holder*, 2 *Vol. Abr. Eq.* 359. *Ca.* 12. cites *Vin. Abr.* Tit. *Deviſe* (D b) *Ca.* 8.

J. S. poſſeſſed of a Term deviſed it to *A.* and *B.* and if either of them died, and leave no Iſſue of their reſpective Bodies, then to *C.*

His Honour held that the Deviſe over was void. *Froth* and *Chapman*, 1 *Will. Rep.* 664. —Afterwards Ld. *Parker*, upon an Appeal, *reverſed* this Decree. *Ibid.*

Deviſe of Lands to *S.* and the Heirs of his Body; *S.* died in the Life-time of the Deviſor; this is in the Nature of a lapſed Legacy, and the Heir of *S.* ſhall take nothing. *Wynne* and *Wynne*, 2 *Vol. Abr. Eq.* 360. *Ca.* 16. cites *Vin. Abr.* Tit. *Deviſe* (W c) *Ca.* 18.

A. deviſed all that his Meſſuage or Tenement in *E.* to *F.* and his Heirs, and all the reſt of his Meſſuages, Lands, *&c.* in *E.* and elſewhere, to *J. L.* in Fee; *F.* the Deviſee died in the Life-time of the Teſtator, ſo that this became a lapſed Deviſe by his Death. In Ejectment the ſole Queſtion was, whether this latter Clauſe of the Will would carry over the lapſed Deviſe to *J. L.* the reſiduary Deviſee; or whether it ſhould deſcend to the Teſtator's Heir at Law? Held *per Cur'*, that the Deviſe of all the Reſt and Reſidue of my Meſſuages, Lands, *&c.* did not convey what was expreſly deviſed before; for the Teſtator's Intent appears to be to give his whole Eſtate to *F.* and his Heirs in that Meſſuage, and that at the Time of the Will made he had no Reſt and Reſidue in that Houſe, and the Deviſe to *F.* being void, the Houſe will go to the Heir at Law. *Wright* and *Hall*, in *C. B. Forteſc. Rep.* 182.

A. bequeaths to her Grandchild *B.* ſome of her beſt Linen; this void for the Uncer-

tainty; yet the Court recommended it to the Executor to give ſome of the beſt Linen to the Legatee. *Peck* and *Halſey*, 2 *Will. Rep.* 387.

Precedents of Wills.

THIS is the laſt Will and Teſtament of me *A. B.* of, *&c.* Widow and Relict of *C. D.* late of in the County aforeſaid, Gent. deceaſed. Whereas my ſaid late Huſband *C. D.* did by his laſt Will and Teſtament, bearing Date on or about the Day of deviſe to me and my Heirs all that his Manor, capital Meſſuage, Meſſuages, Mill, Cloſes, Lands, Tenements and Hereditaments, in in the ſaid County of with their and every of their Appurtenances, in Truſt, to be by me ſold, or otherwiſe diſpoſed of, to and amongſt all my Children by him on me begotten, in ſuch Shares and Proportions as to me ſhould ſeem meet; except ſuch of his ſaid Children who ſhould in his Life-time have received their reſpective Portions; and after ſeveral other Deviſes and Bequeſts my ſaid late Huſband by his ſaid Will deviſed all the Reſt and Reſidue of his perſonal Eſtate whatſoever and whereſoever, to me his ſaid Wife, to be diſpoſed of by me amongſt my

Children, at ſuch Time and in ſuch Shares and Proportions as I ſhould think fit. And whereas my ſaid late Huſband at his Death left Iſſue by me nine Children (and who are all of them ſtill living) that is to ſay, three Sons, *viz. George*, *John* and *Thomas*, and ſix Daughters, *viz. Jane*, now the Wife of of, *&c.* Gent. *M.* then and now the Wife of of, *&c.* Eſq; and *C.* ſince married to and now the Widow of late of, *&c.* deceaſed, and *K.* now the Wife of of, *&c.* Gent. and *Anne* and *Elizabeth*, not married. And whereas great Part of the ſaid Premiſſes ſo deviſed to me by my ſaid late Huſband as aforeſaid, had been before ſettled by him on me for my Life by way of Jointure; and whereas for want of a ſuitable Purchaſer, and for that I did not think fit to ſell or diſpoſe of my Jointure, I therefore have not ſold the ſaid real Eſtate, but I have in my Life-time advanced and paid to and for my Son and to and for each of my ſaid Daughters,

the Sum of *l.* a-piece, for or towards their reſpective Portions and Advancement; and I have alſo given to my ſaid Daughters,

the Sums of *l.* a-piece, *viz.* *l.* in Money out of my own Pocket, and the Sum of *l.* borrowed for them of my ſaid Daughter and for the Payment whereof I have given my own Bond (the ſaid *l.* a-piece being for or towards

towards their reſpective Portions and Advancement). And whereas my Son has by my Direction given his Bond to my ſaid Son conditioned for the Payment of the Sum of *l.* to the and for which laſt-mentioned Sum of *l.* I have made a Deduction or Allowance to my ſaid Son out of a Sum or Debt of *l.* that was then due or owing from my ſaid Son to me: And whereas my ſaid late Huſband did in his Life-time advance to or for each of my ſaid Sons and and my ſaid Daughter *l.* a-piece, for or towards their reſpective Portions; and I have likewiſe advanced and lent to my ſaid Son ſeveral Sums of Money to the Amount of *l.* or upwards, and I am like to be a very great Loſer thereby, my ſaid Son having failed in the World, and having a Commiſſion of Bankruptcy againſt him. Now therefore I do hereby give, deviſe and appoint all and ſingular the ſaid Manor, *&c.* in the County of aforeſaid to my Son and of, *&c.* Eſq; and their Heirs, upon Truſt that they or the Survivor of them do and ſhall, as ſoon as conveniently may be after my Deceaſe, ſell the ſame for the beſt Price that can or may be gotten for the ſame, and do and ſhall pay and apply the Monies ariſing by ſuch Sale (after a Deduction of the Coſts, Charges and Expences attending the Execution of the Truſt hereby in them re-

poſed, or relating thereto) in Manner following; (that is to ſay) In Truſt out of the Monies ariſing by the ſaid Sale to pay to my Daughter the Sum of *l.* and to my Daughter the Sum of *l.* and to my Daughter the like Sum of *l.* (my ſaid two Daughters and not having as yet had or received either from me or my ſaid late Huſband any Portions more than the ſaid Sums of *l.* a-piece) and to my Daughter *l.* to my Son the Sum of *l.* and to my Daughter *l.* which *l.* to my Daughter I direct to be paid into her own Hands, and that her Receipt alone for the ſame ſhall be a ſufficient Diſcharge to my ſaid Truſtees, notwithſtanding her Coverture. And I will that Intereſt after the Rate of *per Cent.* by the Year be allowed for the ſaid reſpective principal Sum out of the Rents and Profits of the ſaid Premiſſes ſo deviſed to be ſold as aforeſaid, from the Time of my Death until the ſaid Premiſſes ſhall be ſold, or the ſaid principal Sums ſhall be paid and ſatisfied; and all the Reſt and Reſidue of the Monies to ariſe by ſuch Sale I give, bequeath and appoint to my ſaid Son his Executors, Adminiſtrators and Aſſigns, for his and their own Uſe and Benefit: And I do hereby declare my Mind and Will to be, that if any of my ſaid Children, or any of the Huſbands of any of my Daughters, ſhall in any Manner controvert any of the Diſpoſitions

ſitions or Appointments herein before by me made as aforeſaid, or ſhall refuſe to ſtand to or abide by the ſame, or ſhall refuſe or neglect to do or execute any reaſonable or proper Act for confirming the ſame, or for Sale of the ſaid Eſtate or Premiſſes at
aforeſaid, for the Purpoſes aforeſaid, being thereunto requeſted, then ſuch of my ſaid Children who, or whoſe Huſbands ſhall controvert any of the Diſpoſitions or Appointments by me herein before made, or who ſhall refuſe to abide by the ſame, or ſhall refuſe or neglect to confirm the ſame upon Requeſt as aforeſaid, his, her and their reſpective Wives and Children ſhall be deprived of and loſe all Benefit and Advantage of whatever is herein before given or appointed to or in Truſt for them reſpectively, or for their reſpective Uſe or Benefit, and the ſame ſhall be divided amongſt my other Children who ſhall conſent and agree to this my Will, in Proportion to what is herein before appointed to ſuch of them reſpectively as aforeſaid; and in ſuch Caſe I do hereby give, deviſe and bequeath to ſuch of my ſaid Children who, or whoſe Huſbands ſhall controvert any of the Diſpoſitions or Appointments by me herein before made, or who ſhall refuſe to abide by the ſame, or ſhall refuſe or neglect to confirm the ſame upon Requeſt as aforeſaid, all that undivided Half an Acre of all that Piece or Parcel of Meadow or Paſture Land commonly called
lying and being at in the Pariſh
of

of aforeſaid, containing ten Acres, four, *&c.* or thereabouts, little more or leſs, the ſaid Half Acre hereby deviſed lying and being in the moſt northward Part of the ſaid Land, called and North on Land called and Weſt on Land called and being together with the Reſidue of the ſaid Land called now or late in the Occupation of To hold to ſuch of my ſaid Child or Children who, or whoſe Huſbands ſhall controvert this my Will, or refuſe or neglect to abide by and confirm the ſame as aforeſaid, his, her and their Heirs, as Tenants in Common, as and for their whole Share of Right and Intereſt in the ſaid whole Eſtate deviſed to be ſold as aforeſaid; and then I give, deviſe and appoint all the Reſidue of the ſaid Manor, Meſſuages, *&c.* in the Pariſh of aforeſaid to my ſaid Sons and and their Heirs, in Truſt, to be ſold as aforeſaid, and the Money to be applied for the Benefit of my other Children who ſhall conſent and agree to this my Will, in Proportion to what is herein before appointed to or for ſuch other Children reſpectively as aforeſaid, and in ſuch Manner and Form as the ſame is herein before appointed to or for them reſpectively as aforeſaid. I give and bequeath all and ſingular the Goods and Chattels, Debts, Effects and perſonal Eſtate whatſoever, which I die poſſeſſed of, intereſted in, or intitled unto, as follows; (that is to ſay) To my eldeſt Son I give the Sum of *l.* and

I do

I do hereby forgive him the Sum of *l.* out of the principal Sum of *l.* which he owes me upon Bond; alſo I give to my Son the Sum of *l.* and in caſe he ſhall think himſelf obliged in Honour, or intend to pay to my Eſtate the ſaid principal Sum of *l.* as he has declared, I do hereby forgive him the Sum of *l.* Part thereof; I give to my ſaid Daughter *l.* and to my Daughter *l.* and to my ſaid Daughter *l.* to my Son *l.* over and above what I have before given him; alſo I give to the Sum of *l.* in Conſideration of the Charge and Trouble he will have in the Execution of the Truſts of this my Will in him repoſed. To the Poor of the Pariſh of aforeſaid the Sum of *l.* to be diſtributed amongſt them at the Diſcretion of my Executors. Alſo I give to the ſaid and of, *&c.* the Sum of *l.* upon Truſt, to be placed out in the Purchaſe of new *S. S.* Annuities, or other good Government or other Securities, in their Names, and the Intereſt and Dividends thereof from Time to Time to be paid to my Daughter or her Order in Writing during her Life, for her ſole and ſeparate Uſe, excluſive of her Huſband; and I will and direct that her Receipt or Order in Writing for the ſame under her Hand, from Time to Time ſhall be a ſufficient Diſcharge for the ſame, notwithſtanding her Coverture; but if my ſaid Daughter ſhall ſurvive her Huſband

band then from and after his Deceaſe I give the ſaid *l.* and the Stocks or Securities in which the ſame ſhall be inveſted, to my ſaid Daughter for her own Uſe and Benefit, and to be at her own Diſpoſal; and I direct the ſame to be paid, aſſigned or transferred to her accordingly; but in caſe my ſaid Daughter ſhall happen to die in the Life-time of her ſaid Huſband, then and in ſuch Caſe I do give and bequeath the ſaid *l.* or the Stocks or Securities in which the ſame ſhall be inveſted, from and after the Deceaſe of my ſaid Daughter unto if he ſhall be then living, and when he ſhall attain his Age of twenty-one Years, and until his attaining that Age or Death, which ſhall firſt happen, the Dividends, Intereſt and Profits thereof, to be applied for his Maintenance and Education: But if my ſaid Daughter ſhall die in the Life-time of her ſaid Huſband, and the ſaid ſhall be dead at the Time of her Deceaſe, or ſhall die afterwards before his attaining his Age of twenty-one Years, then and in ſuch Caſe, from and after the Death of my ſaid Daughter and of the ſaid which ſhall laſt happen, I give and bequeath the ſaid *l.* and the Stocks or Securities in which the ſame ſhall be inveſted, unto ſuch Child or Children of my ſaid Daughter as ſhall ſurvive my ſaid Daughter and the ſaid and ſhall attain the Age or Ages of ſixteen Years reſpectively; and in caſe

caſe of no ſuch ſurviving Child or Children, or who ſhall live to attain that Age, then I give and bequeath the ſaid *l.* or the Stocks or Securities in which the ſame ſhall be inveſted, and the Dividends, Intereſt and Profit thereof, from and after the Deceaſe of the Survivor of them my ſaid Daughter the ſaid and of ſuch ſurviving Child or Children, if any, dying before the Age of ſixteen Years, unto ſuch Child and Children of my ſaid Son as ſhall be then living, equally to be divided between them, if more than one, Share or Shares alike. Alſo I give to my Grandaughters and Children of my Daughter the Sum of *l.* a-piece, to be paid them reſpectively at their reſpective Ages of twenty-one Years, or Days of Marriage, which ſhall firſt happen; and in the mean time I direct that the ſaid two Sums of *l.* be placed out at Intereſt in the Purchaſe of new *S. S.* Annuities, in the Names of my Executors, and that the Dividends and Produce thereof to be applied from Time to Time for my ſaid Grandaughters Maintenance and Education (as my ſaid Executors ſhall think fit) until their reſpective Ages of twenty-one Years, or Marriage, which ſhall firſt happen; and if either of my ſaid two Grandaughters ſhall die before ſuch Age in the Life-time of my ſaid Daughter then I give the Share of ſuch of them as ſhall ſo die, equally to be divided between the

the Survivor of them and my ſaid Daughter but if my ſaid Daughter ſhall be then dead, then I give the Whole to the Survivor of my ſaid Grandaughters; but if both of my ſaid Grandaughters ſhall happen to die before attaining the Age of twenty-one Years, or Marriage, then I give and bequeath the Whole of the ſaid ſeveral Sums of *l.* and *l.* and the Stocks or Securities in which the ſame ſhall be inveſted, unto my ſaid Daughter in Caſe ſhe ſhall be then living, for her own Uſe and Benefit. Alſo my Will is, that my Plate, Watch, Jewels, Books and Houſhold Goods, ſhall be diſtributed and diſpoſed of according to ſuch Directions as I ſhall leave in a Paper written with my own Hand, and incloſed in, or annexed to this my Will; alſo I appoint and direct that all my wearing Apparel (except what may be otherwiſe diſpoſed of by me in the ſaid Paper Writing) be delivered over to my Daughter for her ſole and ſeparate Uſe. And I do hereby declare my Mind and Will to be, that if any of my Children, or any of the Huſbands of any of my Daughters, or any other Perſon or Perſons intitled to any Legacy or Legacies by this my Will, or to any Intereſt therein, or in the Premiſſes, ſhall in any Manner controvert any of the Gifts, Deviſes, Diſpoſitions or Appointments herein by me made, or ſhall refuſe to ſtand or abide by the ſame, or ſhall refuſe or neglect to do or execute

execute any reaſonable or proper Act for confirming, eſtabliſhing or carrying into Execution the ſame, being thereunto requeſted, then that ſuch Perſon or Peſons who, or whoſe Huſbands controvert any of the Gifts, Deviſes, Diſpoſitions or Appointments by me herein before made, or who ſhall refuſe to abide by the ſame, or ſhall refuſe or neglect to confirm the ſame, upon Requeſt as aforeſaid, his, her and their reſpective Wives and Children ſhall be deprived of, and loſe all Benefit and Advantage (ſave and except only as to his, her or their reſpective Shares of and in the ſaid half an Acre of Land by me deviſed and appointed as aforeſaid) of whatever is in or by this my Will, or any Part thereof, given or appointed to, or in Truſt for them reſpectively, or for their reſpective Uſe or Benefit; and the ſame (except as aforeſaid) ſhall be divided amongſt my other Children who ſhall conſent and agree to this my Will, in Proportion to what is herein before appointed to ſuch of them reſpectively as aforeſaid. *Item*, I deſire to be buried in the Pariſh Church of as near the Remains of my late Huſband as conveniently can be; alſo I give, deviſe and bequeath all the Reſt, Reſidue and Remainder of all my Eſtate and Effects, Real or Perſonal, whatſoever and whereſoever, not herein before otherwiſe effectually diſpoſed of, after Payment of my Debts, Legacies, and Funeral Expences, to my ſaid Son

I do

I do hereby make, ordain, conſtitute and appoint
Executors of this my laſt Will and Teſtament, hereby revoking all former Wills by me at any Time heretofore made, and do declare this to be my laſt Will and Teſtament. In Witneſs whereof I the ſaid
the Teſtatrix, have to this my laſt Will and Teſtament, contained in this and the
preceding Skins of Parchment, ſet my Hand and Seal (to wit) my Hand to the Bottom of each of the ſaid Skins, and my Hand and Seal to this laſt Skin, and my Seal at the Foil of the Top of the ſaid Skins, where all the Skins are fixed together, this
Day of 1755.

The Writing contained in this and the preceding Skins was ſigned and ſealed by the above named
and by her publiſhed and declared as and for her laſt Will and Teſtament, in the Preſence of us who have hereto ſubſcrib'd our Names in her Preſence, and in the Preſence of each other.

THIS

THIS is the laſt Will and Teſtament of me *A. B.* of, *&c.* Firſt, I will that all ſuch Debts as I ſhall juſtly owe at the Time of my Deceaſe, and my Funeral Charges and Expences, be in the firſt Place paid by my Executors herein afternamed. *Item*, I give, deviſe and bequeath unto *C. D.* of, *&c.* all and every my Meſſuages, Lands, Tenements and Hereditaments, and Premiſſes whereof I am ſeiſed in Fee, ſituate, lying and being in in the County of and now or late in the ſeveral Tenures or Occupations of and or one of them, their, or one of their Aſſigns, Leſſees or Undertenants; To have and to hold all and every the ſaid Meſſuages, *&c.* unto and to the Uſe of the ſaid *C. D.* and his Heirs for ever. *Item*, I give, deviſe and bequeath unto of in the County of all my Copyhold Meſſuages, Lands, Tenements and Hereditaments, (and which I have lately ſurrendered to the Uſe of my Will) ſituate, lying and being in the ſaid County, and which now are or late were in the ſeveral Tenures or Occupations of and or one of them, their or one of their Aſſigns, Leſſees or Undertenants; To have and to hold all and every the ſaid laſt mentioned Meſſuages, Lands, Tenements, Hereditaments and Premiſſes, with their and every of their Appurtenances, unto and to the Uſe of the ſaid

and the Heirs of his Body lawfully to be begotten; and for Default of ſuch Heirs, then to the right Heirs of me the ſaid *A. B.* for ever. *Item*, I give, deviſe and bequeath unto of in the County of Eſq; all thoſe my Meſſuages or Tenements with their and every of their Appurtenances, now in the ſeveral Tenures or Occupations of and or their ſeveral Leſſees, Undertenants or Aſſigns, ſituate, ſtanding and being in the Pariſh of in the County of and all that my other Meſſuage or Tenement with the Appurtenances, ſituate, ſtanding and being in the ſaid Pariſh of and near or adjoining to the ſaid two laſt mentioned Meſſuages or Tenements, and now called, or commonly known by the Name or Sign of the and heretofore in the Tenure or Occupation of his Undertenants or Aſſigns, but is now untenanted; and all that little Building, Meſſuage or Tenement heretofore in the Tenure or Occupation of ſituate, ſtanding and being in the Yard or Backſide, and heretofore belonging to, or lett with the ſaid laſt herein before deviſed Meſſuage, and alſo all other my Meſſuages or Tenements, Ground and Hereditaments in aforeſaid with their Appurtenances; To have and to hold all and every the ſaid laſt mentioned Meſſuages or Tenements and Premiſſes, with their Appurtenances (ſubject nevertheleſs to, and charged and chargeable with the Annuity, yearly Rent or Sum of

of *l.* herein after-mentioned) unto him the ſaid and his Aſſigns, for and during the Term of his natural Life; and from and immediately after his Deceaſe I give, deviſe and bequeath all and every the ſame Meſſuages or Tenements and Premiſſes, with their and every of their Appurtenances (ſubject to and charged and chargeable with the Annuity herein after-mentioned) unto and to the Uſe of in the County of and the Heirs of his Body lawfully begotten, or to begotten; and for Default of ſuch Heirs, then to my own right Heirs for ever; and I do hereby give, deviſe and bequeath unto Wife of and her Aſſigns, for and during the Term of her natural Life, one Annuity or clear yearly Rent or Sum of *l.* of lawful Money of *Great Britain*, free of Taxes and all other Deductions, Parliamentary or otherwiſe, to be iſſuing and payable out of all and every the ſaid laſt mentioned Meſſuages and Tenements and Premiſſes, and to be paid and payable by equal Half-yearly Payments, at the two moſt uſual Feaſts or Days of Payment in the Year, that is to ſay, the Feaſt of the Annunciation of the bleſſed Virgin *Mary*, and Saint *Michael* the Archangel; the firſt Payment thereof to be on ſuch of the ſame Feaſts as ſhall firſt and next happen after my Deceaſe; and I do hereby charge and ſubject all and every the ſame Meſſuages or Tenements and Premiſſes, to and with the Payment of the ſaid Annuity, yearly Rent

or Sum of *l.* accordingly. And my Will is, that in Caſe the ſaid Annuity, yearly Rent or Sum of *l.* or any Part thereof, ſhall be behind or unpaid by the Space of twenty-eight Days next over or after either of the aforeſaid Feaſts whereon the ſame is herein before directed to be paid as aforeſaid, that then and ſo often it ſhall and may be lawful for the ſaid (the Annuitant) and her Aſſigns, to enter upon all and every or any Part of the ſaid Premiſſes charged with the ſaid Annuity as aforeſaid, and diſtrain for the ſame, or for ſo much thereof as ſhall be ſo in Arrear, and all Coſts and Charges occaſioned by Non-payment thereof. *Item*, I give, deviſe and bequeath unto of in the County of all that my Meſſuage or Tenement (being part Freehold and part Leaſehold) with the Appurtenances, ſituate, ſtanding and being in in the Pariſh of and now or late in the Poſſeſſion or Occupation of his Undertenants or Aſſigns; and alſo all that my Freehold Piece or Parcel of Ground lying and being in or near an open Field, commonly called or known by the Name of the *Town Field*, in the Pariſh of and now or late in Leaſe to and all thoſe Meſſuages, Tenements, Erections and Buildings thereupon, or upon any Part thereof now erected and built, and erecting and building, with their and every of their reſpective Appurtenances; To have and to hold the ſaid Meſſuages or Tenements,

nements, and Piece or Parcel of Ground and Premiſſes laſt above before deviſed, with their and every of their reſpective Appurtenances, unto the ſaid and her Aſſigns, for and during the Term of her natural Life, (ſhe and they keeping the ſame in good Repair) and from and immediately after her Deceaſe, I give, deviſe and bequeath the ſame Meſſuages or Tenements, Pieces or Parcels of Ground and Premiſſes, with their and every of their reſpective Appurtenances, unto the ſaid and the Heirs of his Body lawfully to be begotten; and for Default of ſuch Heirs, then to my own right Heirs for ever. *Item*, I give, deviſe and bequeath unto the ſaid all that my Meſſuage or Tenement, with Appurtenances in which I hold by or under a Leaſe from and his Wife (both deceaſed) or one of them; and all my Eſtate, Right, Title, Term and Intereſt of and in the ſame Premiſſes, with the Appurtenances; To have and to hold unto the ſaid his Executors, Adminiſtrators and Aſſigns, to and for his and their own Uſe and Benefit. *Item*, I give and bequeath unto of &c. the Sum of *l.* of lawful Money of *Great Britain*, to be paid within three Calendar Months next after my Deceaſe. *Item*, I give and bequeath unto *l.* for to buy him Mourning. (Here the Teſtator gave ſeveral other Legacies). All the ſaid laſt-mentioned Legacies I will and direct to be paid within one Calendar Month next after my Deceaſe. *Item*, I give

and bequeath the Sum of *l.* of like Money unto the Managers of the Preſbyterian Fund in to be diſpoſed of as they ſhall think fit, and the Receipt of the Treaſurer for the ſame Fund for the Time being to be a ſufficient Diſcharge to my Executors for the ſame; and I give and bequeath the Sum of *l.* of like Money unto the Managers and Truſtees of the Charity School in for the Uſe and Benefit of the ſaid Charity School, and I will that the Receipt of two or three ſuch Managers or Truſtees ſhall be a ſufficient Diſcharge to my Executors for the ſame. *Item*, I give and bequeath the Sum of *l.* of like Money to and for the Benefit of the poor Members of the Society or Congregation of Proteſtant Diſſenters in (whereof my late Father was Miniſter or Paſtor) to be diſtributed in ſuch Manner and Proportions, and to ſuch Objects, as my Executors herein after named, or the Survivor of them, ſhall think fit. *Item*, I give and bequeath the Sum of *l.* of like Money unto of, *&c.* and of, *&c.* their Executors and Adminiſtrators, upon the ſeveral Truſts, and to and for the ſeveral Purpoſes herein after mentioned and directed of and concerning the ſame, (that is to ſay) upon Truſt that the ſaid and (the Truſtees) and the Survivor of them, his Executors or Adminiſtrators, ſhall and do in his or their own Names, or in the Names of him or themſelves, and of ſuch other

other Perſon or Perſons as he or they ſhall think fit, from Time to Time put and place out the ſaid Sum of *l.* upon ſome publick or private Security or Securities at Intereſt, or lay out and inveſt the ſame in the Purchaſe of Stock in ſome of the publick Funds, or of *South Sea* Annuities, or otherwiſe imploy and improve the ſame *l.* in ſuch a Manner as they my ſaid Truſtees, or the Survivor of them, ſhall in his or their Diſcretion or Diſcretions think fit, and ſhall and do pay, apply and diſpoſe of the clear yearly Dividends, Intereſt and Produce thereof, as the ſame ſhall from Time to Time ariſe and be received (over and above what ſhall be ſufficient to anſwer and pay the Coſts and Charges attending of the Execution of the Truſts by me hereby directed concerning the ſame *l.*) unto and for the Uſe and Benefit of the Miniſter or Paſtor for the Time being, of the ſaid Society or Congregation of Proteſtant Diſſenters in for ſo long Time as the ſaid Society or Congregation ſhall ſubſiſt as a religious Society of Proteſtant Diſſenters, and continue to meet and aſſemble together for the Worſhip of God in their preſent Place of religious Worſhip, or elſewhere in aforeſaid, or the Neighbourhood thereof. Provided nevertheleſs, and my Will and Mind is, and I do hereby expreſly will, declare and direct, that in Caſe at any Time hereafter the ſaid Society or Congregation ſhall be diſſolved and broke up, or that the

Laws and Statutes of this Realm ſhall diſallow and prohibit the ſame Society or Congregation from meeting together for religious Worſhip, as Proteſtant Diſſenters are now by Law tolerated to do, then and in either of the ſaid Caſes, and when and as ſoon as the ſame or either of them ſhall happen, the ſaid Sum of *l.* and all the Intereſt and Produce from thenceforth to ariſe and be received, ſhall ſink and fall-back into the Reſiduum of my perſonal Eſtate by me herein after given and bequeathed, and ſhall be, go and remain to and for the Uſe and Benefit of ſuch Perſon or Perſons, who for the Time being ſhould or would have been intitled unto ſuch Reſiduum by Virtue of, and under this my Will. *Item*, I give and bequeath all my Rings whatſoever, and ſuch Pieces of my Plate as are marked with my own Name and Arms, and my Houſhold Goods and Furniture, and my Wearing Apparel, unto the ſaid and all my Study of Books, and all other my Plate (not herein before bequeathed) and all my ready Money and Securities for Money, Arrears of Rent, Debts to be owing, and all my Stocks in any of the publick Companies or Funds, and all other my Goods, Chattels and perſonal Eſtate whatſoever (not herein before by me otherwiſe bequeathed or diſpoſed of). I alſo give and bequeath unto of, *&c.* to and for his own Uſe and Benefit; and I do hereby make, ordain, conſtitute and appoint and Executors of this my laſt Will and

and Teſtament; and I give and bequeath unto the ſaid the Sum of *l.* for his Care and Trouble as one of my Executors and Truſtees. *Item*, I do hereby authoriſe, impower and direct my ſaid Executors, and the Survivor of them, his Executors and Adminiſtrators in the mean time, from and after my Deceaſe, until the ſaid ſhall attain his Age of Twenty-one Years, to manage and improve the Eſtate and Fortune of him the ſaid by me hereby given him for his Uſe and Benefit, and to leaſe all or any Part of his Freehold, Copyhold or Leaſehold Eſtates, and to lend and place out upon Security or Securities at Intereſt, or to lay out in the publick Companies or Funds, or otherwiſe improve according to his or their Diſcretion or Diſcretions, all or any Part of the Monies belonging or ariſing from the ſaid Eſtates and Fortune of the ſaid and to pay unto and account with him the ſaid for all ſuch Rents, Intereſts, Produce and Improvements, as ſhall ariſe from or be made of, and produced by the ſaid Eſtates, Monies and Fortune hereby given, deviſed and bequeathed to him, when he ſhall attain his Age of Twenty-one Years. And my Will is, and I do hereby expreſly declare, that my ſaid Executors and Truſtees, or either of them, their or either of their Executors or Adminiſtrators, ſhall not be charged or chargeable with or accountable for more of the aforeſaid

ſaid Monies and Eſtates, than he or they ſhall actually receive, or ſhall come to his or their reſpective Hands by Virtue of this my Will, nor with or for any Loſs which ſhall happen of the ſaid Monies and Eſtate hereby by me given to the ſaid or of the aforeſaid Sum of *l.* or in any Part thereof, ſo as ſuch Loſs happen without their wilful Default and Neglect; nor the one of them for the other of them, or for the Acts, Deeds, Receipts, Defaults or Diſburſements the one of the other; and alſo that it ſhall and may be lawful for them my ſaid Executors, and each of them, their and each of their Executors and Adminiſtrators, in the firſt Place, by and out of the ſaid Premiſſes hereby deviſed to the ſaid reſpectively to deduct and reimburſe him and themſelves reſpectively, all ſuch Loſs, Coſts, Charges and Expences, as he or they, or any of them, ſhall ſuſtain, expend, or be put unto, for or by Reaſon of the Performance of this my Will, or the Truſts hereby in them repoſed, or the Management and Execution thereof reſpectively, or any other Thing in any wiſe relating thereunto; and laſtly, I do hereby revoke, *&c.* In Witneſs, *&c.*

THIS

THIS is the laſt Will and Teſtament of me *A. B.* of
of which Will I have cauſed two Parts to be written, both of the ſame Tenor, Words and Form as this. Firſt, I deſire that my Body may be interred in the moſt private Manner, at the Diſcretion of my Executor herein after named; and whereas my Daughter
Wife of had only *l.* at her Marriage; but I have lately paid and given to the ſaid the further Sum of *l.* and have alſo covenanted and agreed to give or leave to them the ſaid
and his Wife, or the Survivor of them, or their Children or Iſſue, or other Repreſentative, either in my Life-time, or in and by my laſt Will and Teſtament, at the Time of my Deceaſe, the further Sum of *l.* which they the ſaid and his Wife, have covenanted and agreed to accept in full for the Advancement and Preferment of her the ſaid
out of all ſuch Part and Share as they or either of them can or may, or could or might claim or pretend to, of, in, or out of all or any Part of my perſonal Eſtate, by virtue of the Cuſtom of the City of *London*, or otherwiſe (except ſuch Part thereof as I ſhould or might freely and voluntarily give or leave to them or either of them by my laſt Will and Teſtament, or otherwiſe): Now therefore I do hereby give and bequeath the Sum of *l.* of lawful Money of *Great Britain*,
to

to be paid by my Executor herein after named within three Calendar Months next after my Deceaſe unto the ſaid and his Wife, or the Survivor of them, or to ſuch other Perſon or Perſons, as for the Time being ſhall be intitled to receive the ſame, according to the true Intent and Meaning of my ſaid Covenant and Agreement in that Behalf entered into by me, and in full Satisfaction and Diſcharge of and for the ſame Covenant and Agreement. *Item*, I give and bequeath unto ſuch Perſons whoſe Names ſhall at the Time of my Deceaſe be found expreſſed or contained in any Liſt, Note or other Writing written or ſigned by me, the ſeveral and reſpective Sum and Sums of Money which ſhall be therein ſet down, mentioned or expreſſed to be by me given to them reſpectively. *Item*, I give and bequeath unto my Nephew of, *&c.* in the County of and Mr. Brother of the ſaid and to their Heirs and Aſſigns, for and during the natural Life of my ſaid Daughter an Annuity or yearly Rent-charge of *l.* of like Money, to be yearly and every Year iſſuing and payable out of all my Manors, Meſſuages, *&c.* in the County of upon Truſt nevertheleſs, that the ſaid and ſhall and do pay, apply and diſpoſe of the ſaid Annuity or yearly Rent-charge of *l.* unto ſuch Perſon and Perſons, and for ſuch Uſes and Purpoſes as ſhe the ſaid ſhall from Time to Time, notwithſtanding her

her Coverture, by any Note or Notes in Writing under her Hand direct or appoint, to the Intent that the ſame may not be at the Diſpoſal of, or ſubject or liable to the Controul, Debts, Forfeitures or Engagements of her preſent or any after-taken Huſband, but only at her own ſole and ſeparate Diſpoſal, and for her own ſole and ſeparate Uſe and Benefit. (The like to two other Daughters. And then the Teſtator goes on, and ſays) And it is my Will and Deſire that the aforeſaid Annuity ſhall be paid to my ſaid Daughter by two equal half-yearly Payments, on the two moſt uſual Feaſts or Days of Payment in the Year (that is to ſay) the Feaſts of St. *Michael* the Archangel and the Annunciation of the bleſſed Virgin *Mary* in every Year; the firſt of the ſaid half-yearly Payments to begin and be made on ſuch of the ſaid Feaſts as ſhall firſt happen next after my Deceaſe: And my further Will is, that it ſhall and may be lawful to and for my ſaid Truſtees, their Heirs and Aſſigns, from Time to Time, in caſe of Non-payment of the ſaid Annuities, or any of them, or any Part of them, to raiſe the ſame by Diſtreſs upon all or any Part of the Premiſſes charged therewith, together with the Coſts and Charges of ſuch Diſtreſs. And whereas I have already ſufficiently provided for my ſaid Daughters and at the Time of their reſpective Marriages with their now Huſbands, and for which I have all their Diſcharges; and have now likewiſe ſufficiently provided for my ſaid Daughter

in

in Manner aforeſaid; yet nevertheleſs, as a further Proviſion for my ſaid three Daughters, for their ſeparate Uſe (over and above the ſeveral Annuities herein before given for their Benefit, for their reſpective Lives as aforeſaid) I do hereby give and bequeath unto the ſaid and their Executors and Adminiſtrators *l.* Capital Stock in the United *Eaſt-India* Company, upon the Truſts herein after-mentioned concerning the ſame (that is to ſay) As to one full third Part thereof, upon Truſt, that they my ſaid Truſtees, their Executors or Adminiſtrators, ſhall and do pay, apply and diſpoſe of the yearly Dividends, Intereſt and Produce thereof, as the ſame ſhall from Time to Time (during the natural Life of my ſaid Daughter) ariſe or be received, unto the proper Hands of her my ſaid Daughter or otherwiſe to permit and ſuffer her my ſaid Daughter to receive the ſame to and for her own ſole and ſeparate Uſe and Benefit, to the Intent that the ſame may not be at the Diſpoſal of, or ſubject or liable to the Controul, Debts or Engagements of her preſent or any after-taken Huſband, but only at her own ſole and ſeparate Diſpoſal, and upon further Truſt that they my ſaid Truſtees, their Executors or Adminiſtrators, ſhall and do, from and after the Deceaſe of my ſaid Daughter transfer and diſpoſe of the ſaid third Part of the ſaid *l.* Stock unto all and every, or ſuch one or more of the Children or Grand-

Grandchildren of her the ſaid which ſhall be then living, in ſuch Parts, Shares and Proportions, Manner and Form, as ſhe notwithſtanding her Coverture, or whether ſhe ſhall be ſole or married, by her laſt Will and Teſtament in Writing, or any Writing purporting to be her laſt Will and Teſtament, to be by her ſigned, ſealed and publiſhed in the Preſence of three or more credible Witneſſes, ſhall direct, limit, give or appoint the ſame; and in Default thereof, then unto and amongſt all and every the Children of her the ſaid which ſhall be living at the Time of her Deceaſe, equally to be divided between them (if more than one) Share and Share alike, and the Child or Children of ſuch of them as ſhall be then dead, in Manner aforeſaid, and ſuch Child or Children to have his, her or their Father's or Mother's Share only. Provided always nevertheleſs, that in caſe my ſaid Daughter ſhall have no ſuch Children or Grandchildren living at the Time of her Deceaſe, then my ſaid Truſtees, their Executors or Adminiſtrators, ſhall aſſign and transfer the ſaid third Part of the ſaid *l.* Stock unto his Executors and Adminiſtrators, to and for his and their own Uſe and Benefit; and as to one other third Part of the ſaid *l.* Capital Stock, upon Truſt, that they my ſaid Truſtees, their Executors or Adminiſtrators, ſhall and do pay, apply and diſpoſe of the yearly Dividends, Intereſt and Produce thereof, as the ſame ſhall from Time

Time to Time (during the Life of my ſaid Daughter (another Daughter) ariſe or be received, unto the proper Hands of her the ſaid or otherwiſe, *&c.* (as before). And as to the remaining third Part of the ſaid *l.* Stock, upon Truſt, *&c.* (for another Daughter's Benefit, as before). And my Will is, that the reſpective Receipts of my ſaid ſeveral Daughters alone, under their reſpective Hands, as well for their ſaid ſeveral and reſpective Annuities or Rent-charges, as for their ſeveral Parts and Shares of the yearly Dividends, Intereſt and Produce of the ſaid *Eaſt-India* Stock, ſhall from Time to Time, notwithſtanding their reſpective Covertures, be good and ſufficient Diſcharges to the Perſon or Perſons paying the ſame Annuities and Dividends, Intereſt or Produce, for ſo much thereof for which ſuch Receipts ſhall reſpectively be given. Provided always, and my Will is, that my ſaid three Daughters and their reſpective Huſbands ſhall (in caſe my Executor requires it) give him, within two Calendar Months next after my Deceaſe, a further and ſufficient Releaſe and Diſcharge from all their reſpective further Claims and Demands whatſoever out of my ſaid Eſtate, by virtue of the ſaid Cuſtom of the ſaid City of *London*, or otherwiſe; and in caſe of their Neglect or Refuſal ſo to do, then all and every of the Gifts, Deviſes, Annuities, Legacies and Appointments by this my Will made or given to or for the Benefit of them, or ſuch of them ſo neglecting

neglecting or refuſing, ſhall ceaſe and be void, for the Benefit of my Executor, his Executors and Adminiſtrators. And in caſe the ſaid *Eaſt-India* Stock, or any Part thereof, ſhall be redeemed or paid off, then my Will is, that my ſaid Truſtees, their Executors or Adminiſtrators, ſhall and do lay out the Monies to be received for and in lieu of the Stock ſo redeemed or paid off, in ſuch Stocks, Funds, or other publick or private Securities, as my ſaid three Daughters ſhall reſpectively agree to; and that the Monies ſo received and laid out ſhall be ſubject to the ſame Truſts, and for the ſame or the like Intents and Purpoſes as are herein before declared, of and concerning my ſaid Daughters their reſpective Shares of and in the ſaid *l.* *Eaſt-India* Stock. *Item*, I do hereby direct and appoint, that my Executor do with all convenient Speed after my Deceaſe, out of my perſonal Eſtate, lay out the Sum of *l.* in the Purchaſe of Freehold Lands or Hereditaments of Inheritance in Fee-ſimple in *England*, and convey and ſettle, or procure the ſame to be conveyed and ſettled, unto and upon the Churchwardens and Overſeers of the Pariſh of in the Town of in the County of for the time being, and their Succeſſors for ever, upon the Truſts, and for the Purpoſes herein after-mentioned (that is to ſay) upon Truſt, that the yearly Rents and Profits of the Premiſſes ſo to be purchaſed ſhall yearly and every Year be laid out and diſpoſed of by the Churchwardens and Overſeers for the time

being of the ſaid Town of for the placing out one or more poor Boy or poor Boys born or to be born in the ſaid Town, and Pariſh of aforeſaid to be an Apprentice or Apprentices to ſome Handicraft Trade, or a Mariner or Mariners, and that the Children of ſuch Perſons of the ſaid Town and Pariſh, who have been very induſtrious in their Callings or Way of Living, for the Support and Maintenance of their Families, and have not been in the Poor's Rate, ſhall have the Preference to all others. Provided nevertheleſs, that in caſe the Monument erected in the Pariſh Church of aforeſaid by my Brothers and myſelf, to perpetuate (as much as in us lay) the Memory of our dear Parents, ſhall at any Time want repairing, or the gilt Letters upon the ſame ſhall be defaced, and become not legible, then and ſo often as the ſame ſhall happen, it is my Will, that ſo much Money be from Time to Time taken out of the Rents and Profits of the Lands and Hereditaments ſo to be purchaſed, as ſhall be ſufficient to repair the ſaid Monument, and make the ſaid gilt Letters thereon legible, and from Time to Time to maintain and preſerve the ſame in ſuch Condition; and in ſuch Years wherein ſuch Repairs ſhall be made, only the Overplus of the ſaid Rents (above what ſhall be ſufficient for ſuch Repairs) ſhall be employed towards placing out ſuch poor Boy or poor Boys in Manner aforeſaid. Provided alſo, and upon this Condition nevertheleſs, that in caſe

caſe the ſaid Monument ſhall not from Time to Time be repaired and preſerved in Manner aforeſaid, then from and after Default of ſuch Reparation and Preſervation, the Lands and Hereditaments to be purchaſed as aforeſaid ſhall veſt in, and remain and come to my own right Heirs, and the Eſtate and Intereſt of the ſaid Churchwardens and Overſeers for the time being in the ſame Premiſſes, ſhall from thenceforth ceaſe and be utterly void. And whereas my Brother late of Merchant, deceaſed, did (among other things) by his Will give to me the Sum of *l.* to be by me given away, diſtributed, divided and diſpoſed of amongſt ſuch of my Children or other Relations, in ſuch Sort and Manner, and in ſuch Shares and at ſuch Times, as I ſhould think fit; now my Will is, and I do hereby direct that the ſaid Sum of *l.* ſhall be diſtributed, divided and diſpoſed of by my Executor herein after named, within ſix Months after my Deceaſe, to and amongſt ſuch of my Children, and in ſuch Proportions and Manner, as herein after mentioned and expreſſed, (that is to ſay) To my ſaid Daughter the Sum of *l.* (Part thereof) to my ſaid Daughter the like Sum of *l.* (other Part thereof) to my ſaid Daughter the like Sum of *l.* (other Part thereof) and all the Reſidue of the ſame *l.* to my Daughter *Item*, I give, deviſe and bequeath all and every my Manors, *&c.*

in the County of or elſewhere within the Realm of *England*, as well Freehold, as Copyhold and Leaſehold for Lives, with their and every of their Appurtenances, unto and to the Uſe and Behoof of my Son his Heirs and Aſſigns for ever, ſubject nevertheleſs as to my ſaid Eſtate in the ſaid County of to the aforeſaid Annuities or yearly Rent-charges by me herein before given thereout, or charged thereon, in Truſt, and for the Benefit of my Daughters, for their reſpective Lives as aforeſaid, or ſuch of them as ſhall be ſubſiſting. [*Makes reſiduary Legatee*, &c.] In Witneſs, *&c.*

WHEREAS I *A. B.* of, *&c.* have made my laſt Will and Teſtament in Writing, bearing Date the in the Year of our Lord 1755, and have thereby ordained, conſtituted and appointed *A. B.* of, *&c.* and *C. D.* of, *&c.* Executors of my ſaid Will; now I do by this my Writing (which I declare to be a Codicil to my ſaid Will, and direct to be taken as a Part thereof) will and direct that the ſaid *A. B.* ſhall not be an Executor of my ſaid Will, but that in his Room and Stead of ſhall be one of the Executors of my ſaid Will jointly and together with the ſaid *C. D.* and I do hereby accordingly make, ordain,

ordain, conſtitute and appoint them the ſaid *C. D.* and joint Executors of my ſaid Will, as fully and effectually to all Intents and Purpoſes, and in all Reſpects, as if they only and no other Perſon or Perſons had been by me originally in my ſaid Will conſtituted and appointed Executors thereof. I hereby revoke and make void the Legacy of *l.* in and by my ſaid Will given to my late Servant (ſhe being ſince deceaſed); and I do hereby ratify and confirm my ſaid Will and all the Gifts, Deviſes, Bequeaths, Matters and Things therein contained, and not hereby altered and revoked. In Witneſs whereof I the ſaid *A. B.* the Teſtator, have hereunto ſet my Hand and Seal this Day of *January* in the Year of the Reign of King *George* the Second, and in the Year of our Lord 1755.

THIS is the laſt Will and Teſtament of me *A. B.* Wife of *C. D.* of, *&c.* Eſq; Whereas in and by a certain Indenture of three Parts bearing Date on or about the Day of and made or mentioned to be made between the ſaid *C. D.* of the firſt Part, me the ſaid *A. B.* by my then Name of of the ſecond Part, and *E. F.* of, *&c.* Merchant, and *G. H.* of, *&c.* of the third Part, and made previous to, and in order to my Marriage with the ſaid *C. D.* my now Huſband, divers Leaſehold Meſſuages, *&c.* Bank Stock and *Eaſt-India* Bonds of me the ſaid *A. B.* are thereby aſſigned and transferred unto the ſaid *E. F.* and *G. H.* their Executors, Adminiſtrators and Aſſigns, in Manner therein expreſſed, in Truſt nevertheleſs, for the ſole and ſeparate Uſe and Benefit of me the ſaid *A. B.* and with full and abſolute Power for me from Time to Time, notwithſtanding my Coverture, and whether I ſhould be ſole or married, by any Writing or Writings under my Hand and Seal, atteſted by two or more credible Witneſſes, or by my laſt Will and Teſtament in Writing, or any Writing or Writings purporting to be my laſt Will and Teſtament, to be by me ſigned, ſealed, and publiſhed and declared in the Preſence of the like Number of Witneſſes, to diſpoſe of the ſaid Leaſehold Meſſuages, *&c.* Bank Stock and *Eaſt-India* Bonds, or any Part thereof, to ſuch Perſon or Perſons, and in ſuch Proportions and Manner as I ſhould think fit, as in and by

by the ſaid Indenture, Relation being thereunto had, will more fully appear. Now in Teſtimony of the ſincere Love and Affection which I have and juſtly bear towards the ſaid *C. D.* my moſt dear and indulgent Huſband, and by virtue of the Power and Powers, Authority and Authorities, to me reſerved and given in and by the ſaid in Part recited Indenture, and of all other Power and Powers, Authority and Authorities, any wiſe enabling me thereunto, I the ſaid *A. B.* do by this my laſt Will and Teſtament, or Writing purporting to be my laſt Will and Teſtament, to be duly ſigned, ſealed, publiſhed and declared in the Preſence of the Perſons whoſe Names are hereunder written, as Witneſſes thereto, give, deviſe, bequeath, direct, limit and appoint all and every the ſaid Leaſehold Meſſuages or Tenements, Bank Stock, *Eaſt-India* Bonds, and all other my Meſſuages, *&c.* Stocks, Bonds, Goods, Chattels, Monies and Eſtate whatſoever and whereſoever, and of what Nature or Kind ſoever, whereunto I am intitled at Law or in Equity, or whereof I have any Power to diſpoſe, and all my Eſtate and Intereſt therein, unto my ſaid Huſband, the ſaid *C. D.* (whom I think is moſt deſerving thereof) his Heirs, Executors, Adminiſtrators and Aſſigns reſpectively, to and for his and their own Uſe and Benefit abſolutely; and I do hereby direct my ſaid Truſtees in the ſaid recited Indenture mentioned, to convey, aſſign and transfer over the ſame and every Part thereof to him and them accordingly;

ingly; yet nevertheleſs my Mind and Will is, and I do hereby deſire and requeſt my ſaid Huſband to give (out of what I have herein before bequeathed to him) unto his Daughter by his former Wife (in caſe he ſhall think fit, and in his Judgment ſhe ſhall prove deſerving of the ſame) the Sum of *l.* of lawful Money of *Great Britain*, to be paid to her at ſuch Time or Times, and in ſuch Manner or Proportions, and under ſuch Reſtrictions in all Reſpects, as he ſhall direct, and think may be moſt for her Benefit. And I do hereby conſtitute and appoint my ſaid Huſband *C. D.* ſole Executor of this my laſt Will and Teſtament; and I earneſtly deſire of him that I may be buried where he himſelf intends to be buried, and that he would give proper Directions in his Will for that Purpoſe, in caſe he ſhould ſurvive me; and laſtly, I do hereby revoke, *&c.* In Witneſs, *&c.*

Signed, *&c.*

THIS

THIS is the laſt Will and Teſtament of me *A. B.* of, *&c.* Firſt, I deſire to be decently and privately buried in the Church or Church-yard belonging to the Pariſh in which I ſhall happen to die, without any Funeral Pomp, and with as little Expence as may be; and I give and bequeath unto the Poor which receive Alms of that Pariſh in which I ſhall happen to die, the Sum of *l.* to be diſtributed in ſuch Proportions and Manner as my Executrix herein after named ſhall think fit; alſo I give and bequeath unto ſuch of my Children of my late Siſter as ſhall be living at the Time of my Deceaſe, the Sum of *l.* of lawful Money of *Great Britain*, to be equally divided between them Share and Share alike, and to be paid to them at their reſpective Ages of twenty-one Years, or Days of Marriage, which ſhall firſt happen, and in caſe any of them ſhall happen to die before the Age of twenty-one Years, or Marriage, then I give and bequeath the Share or Shares of her or them ſo dying to the Survivors of them, to be equally divided between them, payable as aforeſaid; but if only one of my ſaid Siſter's Children ſhall live to attain the Age of twenty-one Years, or be married, then to ſuch Survivor. Alſo I give to my Servant the Sum of *l.* of like lawful Money, and all my Wearing Apparel, in caſe ſhe ſhall be living with me at the Time of my Deaceaſe, but not otherwiſe. *Item*, I give

and

ter, for her own ſole Uſe and Benefit abſolutely for ever: but in caſe my ſaid Daughter ſhall happen to die before ſhe attains the Age of twenty-one Years, and unmarried, then I give 200 *l.* Part of the ſaid Truſt Eſtate, to ten poor Widows of Clergymen of the Church of *England*, who are of good Life and Converſation, and proper Objects of Charity, to be equally divided amongſt them, Share and Share alike, at the Diſcretion of my ſaid Truſtees, or the Survivor of them; and all the Reſt and Reſidue of my ſaid Eſtate and Effects I will and direct ſhall go to and be enjoyed by my nearer Relations of next of Kin, in the ſame Manner and Proportion as the ſame would paſs and be diſtributible by the Statute for Diſtribution of Inteſtates Eſtates. Alſo I give and bequeath to *E. T.* Wife of of the ſum of *l.* and to the ſaid *T. D.* and *R. B.* the like Sum of *l.* a-piece: and I do hereby conſtitute and appoint the ſaid *A. B.* and *C. D.* Executors of this my laſt Will and Teſtament, hereby revoking, *&c.* In Witneſs whereof, *&c.*

IN

IN the Name of God, *Amen.* I *A. B.* of, &c. do make my laſt Will and Teſtament in Writing, as follows: Firſt, I will and direct that all my juſt Debts be fully paid and ſatisfied; and in caſe my perſonal Eſtate ſhall not be ſufficient for that Purpoſe, I do hereby ſubject my real Eſtate to the Payment thereof. And whereas I have by ſeveral Grants and Conveyances ſettled and aſſured to and upon my Son for the Term of his natural Life, all thoſe my Manors or Lordſhips of and in the County of with the Rights, Members and Appurtenances thereunto reſpectively belonging, and alſo the Advowſons, Donations or Right of Preſentation of, in, and to the ſeveral Rectories or Pariſh Churches of and within the ſaid reſpective Manors; and alſo all thoſe Fee-farm Rents iſſuing and payable out of the Manors of and in the ſaid county; now I do hereby ratify and confirm the ſaid ſeveral Grants and Conveyances, and the Premiſſes thereby granted and conveyed, unto my ſaid Son for his Life, and from and after the Determination of that Eſtate, I give and deviſe all and ſingular the ſaid Manors, &c. unto and their Heirs, during the Life of my ſaid Son, upon Truſt, to preſerve the contingent Remainders thereof hereinafter limited; and from and after his Deceaſe I give and deviſe the ſame Manors, &c. unto

unto the ſaid Truſtees and their Heirs, until my Grandſon the eldeſt Son of my ſaid Son ſhall attain his Age of twenty-one Years or die, which ſhall firſt happen. In Truſt, nevertheleſs, for my ſaid Grandſon and his Aſſigns, for the Term of his natural Life; and from and after the Determination of that Eſtate, unto the ſaid Truſtees and their Heirs during the Life of my ſaid Grandſon, upon Truſt, to preſerve the contingent Remainders thereof herein after limited; and from and after his Deceaſe, unto his firſt and every other Son and Sons ſeverally and ſucceſſively in Tail Male, according to Priority of Birth, and for Default of Iſſue Male of my ſaid Grandſon I give and deviſe the ſame unto all and every other the Son and Sons of my ſaid Son lawfully begotten, or to be begotten, ſeverally and ſucceſſively in Tail Male, according to Priority of Birth, and for Default of ſuch Iſſue unto all and every the Daughter and Daughters of my ſaid Son lawfully begotten, or to be begotten, and the Heirs of the Body and Bodies of ſuch Daughter and Daughters reſpectively, as Tenants in Common and not as Jointenants, and for Default of ſuch Iſſue to my own right Heirs for ever. I give and deviſe unto my ſaid Truſtees, and the Survivors and Survivor of them, and the Executors, Adminiſtrators and Aſſigns of ſuch Survivor, my Leaſe from the Crown of certain Lands, *&c.* in in the County of for all ſuch Eſtate, Term of Years therein, as I am, ſhall

ſhall or may be intitled unto under the Crown, upon Truſt, to permit and ſuffer my Son his Executors, Adminiſtrators and Aſſigns, to receive and take the Rents, Iſſues and Profits thereof, until my ſaid Grandſon ſhall attain his Age of twenty-one Years or die, which ſhall firſt happen; and in caſe my ſaid Grandſon ſhall attain that Age, then and from thenceforth my Will is, that the ſaid Truſtees, and the Survivors and Survivor of them, and the Executors, Adminiſtrators and Aſſigns of ſuch Survivor, ſhall be poſſeſſed thereof in Truſt for my ſaid Grandſon for ſo many Years of the Term and Terms therein as he ſhall live, and from and after his Deceaſe, in Truſt, as to the Reſidue thereof, for ſuch Perſon as ſhall be the Heir Male of his Body, but in caſe there ſhall be no ſuch Heir, then in Truſt for the ſame Purpoſes as the reſiduary Part of my perſonal Eſtate is herein after appointed: Provided that every Perſon who by virtue hereof ſhall be poſſeſſed of the laſt mentioned Premiſſes or any Part thereof, or be intitled to the Benefit of the ſaid Truſt thereof, ſhall have Power when ſo poſſeſſed, in Conjunction with the ſaid Truſtees, or the Survivors or Survivor of them, or the Executors, Adminiſtrators or Aſſigns of ſuch Survivor, to demiſe the ſame or any Part thereof for any Number of Years then to come therein, without taking any Fine, or any thing in lieu of a Fine, ſo as the beſt Rent that can be had for the ſame be reſerved thereupon; and whereas there is one or more ſhort Term or Terms of Years

Years which may intervene before the Commencement of my ſaid Leaſe from the Crown, my Will is, that the ſame Term or Terms of Years be purchaſed by my ſaid Truſtees, or the Survivor or Survivors of them, or by the Executors, Adminiſtrators or Aſſigns of ſuch Survivor, by and out of my perſonal Eſtate, and that the ſame Term or Terms when purchaſed, ſhall be enjoyed by the ſame Perſon and Perſons reſpectively, and for the ſame Purpoſes and with the ſame Powers, as the ſaid Leaſe from the Crown are given, limited or appointed: Provided always, and I do hereby will and declare, that my ſaid Manors, *&c.* herein before given to or in Truſt for my ſaid Son, for his Life as aforeſaid, ſhall be charged and chargeable in his Hands, and in the Hands of any other Perſon or Perſons, with an Annuity or yearly Sum of *l.* which I do hereby give and bequeath unto my Wife for her Life free and clear of all Taxes and Deductions whatſoever, to be iſſuing out of the ſaid Manors, *&c.* and payable half yearly at and the firſt Payment to be made on ſuch of the ſaid Feaſt Days which ſhall happen next after my Deceaſe; and in Default of Payment of the ſaid Annuity or any Part thereof, I do hereby impower my ſaid Wife and her Aſſigns to diſtrain for the ſame upon any Part of the ſaid Premiſſes; but in caſe my ſaid Wife ſhall not within twelve Months next after my Death, execute and deliver to my ſaid Truſtees, ſome or one of them, a good and ſufficient Releaſe

of

of all her Right and Title of Dower of, into or out of my Eſtate, then and from thenceforth the ſaid Annuity ſhall ceaſe, determine and be utterly void. And whereas I am poſſeſſed of certain Hereditaments at in the County of held by one or more Leaſe or Leaſes for Years, I do hereby give and deviſe the ſame unto for ſo many Years thereof as he ſhall live, and from and after his Deceaſe unto ſuch Perſons as ſhall be the Heir Male of his Body, for the Remainder of ſuch Term or Terms of Years as ſhall be then to come therein; and if there ſhall be no ſuch Heir, I give the ſame unto my ſaid Truſtees and the Survivors and Survivor of them, and the Executors and Aſſigns of ſuch Survivor, in Truſt for the ſame Purpoſes as the Reſidue of my perſonal Eſtate is herein after appointed; and I do hereby will and direct that all the Reſidue of my perſonal Eſtate, after Payment of my Debts, Legacies and Funeral Expences, ſhall by my ſaid Truſtees or the Survivors or Survivor of them, the Executors or Aſſigns of ſuch Survivor, be laid out and inveſted in Lands of Inheritance, and ſettled in like manner, as near as may be, to the ſame Uſes as the ſaid Manors, *&c.* are herein before limited; but ſubject nevertheleſs to the ſaid Annuity of to my Wife, and ſuch other Annuities, Payments and Charges, as ſhall be appointed or charged thereupon, by this my Will, or any Codicil or Codicils to be added hereunto; and my Will alſo further is, that it

ſhall and may be lawful to and for all and every Tenant and Tenants for Life, of all and every or any of the ſaid Manors, Lands, Tenements and Hereditaments, when in Poſſeſſion, by Deed or Deeds to grant or demiſe from Time to Time, ſuch Part or Parts of the ſame, whereof they ſhall be ſo reſpectively poſſeſſed, as have been uſually granted or leaſed for one, two or three Life or Lives, or for any Number of Years determinable upon one, two or three Life or Lives, ſo as ſuch Leaſe or Leaſes in Poſſeſſion or Reverſion exceed not three Lives at the moſt, and ſo as the ancient and accuſtomed or uſual Rent or Rents, and other Services, or more, be reſerved thereupon; and alſo to leaſe, all, every, or any Part, of the ſaid Manors, *&c.* to any Perſon or Perſons for any Term or Terms of Years not exceeding Twenty-one Years, in Poſſeſſion and not in Reverſion or by Way of future Intereſt, ſo as upon every ſuch Leaſe or Leaſes there be reſerved during the Continuance thereof to the Perſon or Perſons to whom the next and immediate Reverſion or Remainder of the Premiſſes ſhall for the Time being belong, the beſt and moſt improved yearly Rent or Rents that can be had for the ſame, without any Fine, or any Thing in lieu of a Fine, and ſo as none of the ſaid Leaſes be made without Impeachment of Waſte, and ſo as in every ſuch Leaſe there be contained a Clauſe of Re-entry for Non-payment of Rent; and my Will alſo further is, that it

ſhall

ſhall and may be lawful to and for any ſuch Tenant or Tenants for Life reſpectively, being in Poſſeſſion, by any Deed or Deeds duly executed in the preſence of two or more credible Witneſſes, to limit and appoint either before or after Marriage, any Part or Parts of the ſaid Manors, *&c.* whereof he or they ſhall be reſpectively poſſeſſed, unto or to the Uſe of any Wife or Wives which he or they ſhall marry, for her or their Life or Lives reſpectively, for or in Part of her or their Jointure or Jointures, ſo as ſuch Part or Parts ſo to be limited and appointed, reſpectively exceed not 100*l.* a Year, for or in reſpect of 1000*l.* Portion, or the Value thereof, to be received by ſuch Tenant or Tenants for Life reſpectively, (to wit) 1000*l.* for 100*l.* a Year, and no more may be ſettled in Jointure, and ſo in Proportion for any greater or leſſer Portion or Fortune, and ſo as no ſuch Jointure be made diſpuniſhable of Waſte. Alſo I give and bequeath unto my Grandaughter upon the Day of her Marriage, the ſum of *l.* ſo as ſhe marries with the Conſent of her Parents or Guardians, and of my ſaid Truſtees or the Survivors or Survivor of them, if any of them ſhall be then living; And to my Grandaughters and reſpectively, upon their reſpective Marriages, the Sum of *l.* apiece, ſo as they reſpectively marry with the like Conſent; but my Will is, and I do hereby declare, that if any of my ſaid Grandaughters ſhall marry without ſuch Conſent as afore-

ſaid, then the reſpective Legacy or Legacies of ſuch of them ſo marrying without ſuch Conſent ſhall not be paid, but be diſpoſed of by my ſaid Truſtees, or the Survivors or Survivor of them, for the ſame Purpoſes as the Reſidue of my perſonal Eſtate is herein before appointed; and I do appoint all my Legacies to be paid out of my perſonal Eſtate in caſe it ſhall be ſufficient for that Purpoſe, and in Default thereof then out of my real Eſtate; and Laſtly, I do hereby conſtitute and appoint

Executors of this my Will; and I do revoke all other Wills by me heretofore made. In Witneſs, *&c.*

A general Form of a Codicil to a Will where only ſome few additional Legacies are given.

WHEREAS I *A. B.* of, *&c.* have made and duly executed my laſt Will and Teſtament in Writing, bearing Date, *&c.* now I do hereby declare this preſent Writing to be as a Codicil to my ſaid Will, and direct the ſame to be annexed thereto, and taken as Part thereof; and I do hereby give and bequeath, *&c.* In Witneſs whereof I the ſaid *A. B.* have to this Codicil ſet my Hand and Seal the Day of

Another

Another general Form of a Codicil to a Will where ſeveral Legacies are revoked.

WHEREAS I *A. B.* of, *&c.* have by my laſt Will and Teſtament in Writing duly executed, bearing Date, *&c.* given and bequeathed to *&c.* now I the ſaid *A. B.* being minded to alter my ſaid Will in reſpect to the ſaid Legacies, do therefore make this preſent Writing, which I will and direct to be annexed as a Codicil to my ſaid Will, and taken as Part thereof; and I do hereby revoke the ſaid Legacies by my ſaid Will given to and I do give to each of them the ſaid and the Sum of *l.* only, and I give unto, *&c.* and I do ratify and confirm my ſaid Will in every Thing except where the ſame is hereby revoked and altered as aforeſaid. In Witneſs, *&c.*

THIS is the laſt Will and Teſtament of me of I deſire that my Body may be interred in the Pariſh Church of in the County of in a private Manner, at the Diſcretion of my Executors herein after named. I give and bequeath unto ſuch Perſon or Perſons, whoſe Name or Names ſhall at the Time of my Deceaſe, be found contained in any Liſt or Liſts, Note or Notes, or other Writing, written or ſigned by me, the ſeveral and reſpective Sum and Sums of Money which ſhall in ſuch Liſt or Liſts, Note or Notes, or other Writing (written or ſigned as aforeſaid) be ſet down, mentioned and expreſſed to be by me given to them reſpectively; alſo I give and bequeath unto *F. A.* of in the County of Eſq; and *H. B.* of, *&c.* and to their Heirs and Aſſigns, for and during the natural Life of my Daughter *M.* now the Wife of of in the County of an Annuity or yearly Rent-charge of *l.* of lawful Money of *Great Britain*, to be yearly and every Year iſſuing and payable out of all my Manors, Meſſuages, Lands, Tenements and Hereditaments, in the ſaid County of upon Truſt nevertheleſs that they my ſaid Truſtees or the Survivor of them, or the proper Repreſentative or Repreſentatives of ſuch Survivor, ſhall and do pay, apply and diſpoſe of the ſaid Annuity or yearly Rent-charge of *l.* unto my ſaid Daughter,

of

or unto ſuch Perſon or Perſons, and for ſuch Uſes and Purpoſes, as ſhe my ſaid Daughter ſhall from Time to Time (notwithſtanding her Coverture) by any Note or Notes in Writing under her Hand direct or appoint, to the Intent that the ſame may not be at the Diſpoſal of, or ſubject or liable to the Controul, Debts, Forfeitures, Engagements or other Acts of her preſent or any after-taken Huſband, but only at her own ſole and ſeparate Diſpoſal, and for her own ſole and ſeparate Uſe and Benefit. And it is my Will and Deſire, that the aforeſaid Annuity or yearly Rent-charge of *l.* ſhall be paid to my ſaid Daughter by two equal half yearly Payments, (that is to ſay) on the Feaſt Day of St. *Michael* the *Archangel*, and on the Feaſt Day of the *Annunciation of the bleſſed Virgin Mary* in every Year, for and during the natural Life of my ſaid Daughter; the firſt of the ſaid Half-yearly Payments to begin and to be made on ſuch of the ſaid Feaſts as ſhall firſt happen next after my Deceaſe; and my Will further is, that it ſhall and may be lawful to and for my ſaid Truſtees and the Survivor of them, or the proper Repreſentative or Repreſentatives of ſuch Survivor, from Time to Time, in caſe of Non-payment of the ſaid Annuity or any Part thereof, to raiſe the ſame by Diſtreſs upon all or any Part of the Premiſſes herein before charged therewith, together with the neceſſary Coſts and Charges attending ſuch Diſtreſs; (the Daughter's Receipt alone to be a good Diſcharge, *&c.*) and as a further Proviſion for

my ſaid Daughter, for her ſeparate Uſe (over and above the Annuity or Rent-charge herein before given for her Benefit, for and during the Term of her natural Life as aforeſaid) I do hereby give and bequeath unto my ſaid Truſtees their Executors and Adminiſtrators *l.* capital Stock now in the united *Eaſt-India* Company, upon the Truſts herein after mentioned and expreſſed, of and concerning the ſame (that is to ſay) upon Truſt that they my ſaid Truſtees, their Executors or Adminiſtrators ſhall and do pay, apply and diſpoſe of the yearly Dividends, Intereſt and Produce of the ſaid *l.* capital Stock, as the ſame ſhall from Time to Time (during the natural Life of my ſaid Daughter) ariſe or be received, unto the proper Hands of her my ſaid Daughter, or otherwiſe to permit and ſuffer her my ſaid Daughter to receive the ſame, to and for her ſole Uſe and Benefit, to the Intent that the ſame may not be at the Diſpoſal of, or ſubject or liable to the Controul, Debts, Acts or Engagements of her preſent or any after taken Huſband, but only at her own ſole and ſeparate Diſpoſal; and upon further Truſt, that they my ſaid Truſtees, their Executors or Adminiſtrators, ſhall and do from and immediately after the Deceaſe of my ſaid Daughter, tranſfer and diſpoſe of the ſaid *l.* capital Stock, unto and for ſuch Uſes, Intents and Purpoſes, and in ſuch Manner and Form as ſhe my ſaid Daughter (notwithſtanding her Coverture) or whether ſhe ſhall be ſole or married,

married, by her laſt Will and Teſtament in Writing, or any Writing purporting to be her laſt Will and Teſtament, and to be by her ſigned, ſealed and publiſhed in the Preſence of three or more credible Witneſſes, ſhall direct, limit, give or appoint the ſame; and in Default of ſuch Direction, Limitation, Gift or Appointment, then I will and direct that the ſaid *l.* Capital Stock or ſuch Part thereof, touching which my ſaid Daughter ſhall have made no Diſpoſition as aforeſaid, ſhall be aſſigned and transferred by my ſaid Truſtees or the Survivor of them, his Executors or Adminiſtrators, unto of, *&c.* his Executors and Adminiſtrators, to and for his and their own Uſe and Benefit; and my will is, that the Receipt of my ſaid Daughter alone under her Hand, for the Dividends, Intereſt and Produce of the ſaid *Eaſt-India* Stock, ſhall from Time to Time, notwithſtanding her Coverture, be good and ſufficient Diſcharges to the Perſon or Perſons paying the ſame Annuities and Dividends, Intereſt or Produce, for ſo much thereof for which ſuch Receipt ſhall be given; and my will is, that in caſe the ſaid *Eaſt-India* Stock, or any Part thereof, ſhall be redeemed or paid off, that then my ſaid Truſtees, their Executors or Adminiſtrators, ſhall and do lay out the Monies to be received for and in lieu of the ſaid Stock ſo redeemed or paid off, in ſuch Stocks, Funds, or other publick or private Securities as my ſaid Daughter ſhall agree to; and that the Monies

Monies ſo received and laid out ſhall be ſubject to the ſame Truſts, and for the ſame or the like Intents and Purpoſes as are herein before declared of and concerning the ſame. And whereas my Brother late of deceaſed, did (among other Things) by his laſt Will and Teſtament in Writing, give to me the Sum of *l.* to be by me given away, diſtributed, divided and diſpoſed of to and amongſt ſuch Perſons, and in ſuch Sort, Manner and Shares, and at ſuch Times as I ſhall think fit; now my will is, and I do hereby direct that the ſaid Sum of *l.* ſhall be diſtributed, divided and diſpoſed of by my Executors herein after-named, within ſix Months after my Deceaſe, to and amongſt the ſeveral Perſons, and in ſuch Proportions and Manner as are herein after mentioned and expreſſed, of and concerning the ſame, (that is to ſay) to of in the County of the Sum of *l.* (Part thereof) to of in the County of the like Sum of *l.* (other Part thereof) and to of in the ſaid County of the like Sum of *l.* (other Part thereof) and all the Reſidue of the ſame *l.* to be retained by my Executor herein after named, and to be converted and diſpoſed of to his own Uſe. *Item*, I give, deviſe and bequeath all and every my Manors, Meſſuages, Lands, Tenements and Hereditaments whatſoever, in the ſeveral Counties of and every or any

any of them, or elſewhere within the Realm of *England*, as well Freehold, as Copyhold (I having duly ſurrendred the Copyhold to the Uſe of my Will) and Leaſehold for Lives, with their and every of their Appurtenances, unto and to the Uſe and Behoof of of in the County of his Heirs and Aſſigns for ever, (ſubject nevertheleſs, as to my ſaid Eſtate in the ſaid County of to the aforeſaid Annuity or yearly Rent-charge by me herein before given thereout or charged thereon, in Truſt and for the Benefit of my ſaid Daughter, for her Life as aforeſaid. As to, for and concerning all the Reſt and Reſidue of my perſonal Eſtate whatſoever and whereſoever, and of what Nature, Kind or Quality ſoever the ſame may be, and not herein before given and diſpoſed of (after Payment of my Debts, Legacies and Funeral Expences) I give and bequeath the ſame and every Part thereof, unto the ſaid his Executors, Adminiſtrators and Aſſigns, to and for his and their own Uſe and Benefit abſolutely; and I do hereby conſtitute and appoint the ſaid ſole Executor of this my laſt Will and Teſtament, hereby revoking all other Wills by me made. In Witneſs, *&c.*

THIS

THIS is the laſt Will and Teſtament of me of the Pariſh of in the County of Firſt, I will that all ſuch Debts as I ſhall juſtly owe at the Time of my Deceaſe, together with my Funeral Charges and Expences, be in the firſt Place paid by my Executors herein after named; and as to my Eſtate both Real and Perſonal, I diſpoſe thereof as follows, that is to ſay, I give and deviſe unto of in the County of Eſquire, all thoſe my Freehold Meſſuages, Lands, Tenements and Hereditaments, ſituate, lying or being in or near and or either of them, in the Counties of and or either of them, and now or late in the ſeveral Tenures or Occupations of, *&c.* or one of them, their or one of their Aſſigns, Leſſees or Undertenants, and all thoſe my Copyhold Meſſuages, Lands, Tenements and Hereditaments, ſituate, lying or being in or near and every or any of them, in the ſaid Counties of and or either of them, and which now are or late were in ſeveral Tenures, Poſſeſſions or Occupations of the ſaid and or any of them, their or any of their Aſſigns, Leſſees or Undertenants (which ſaid Copyhold Meſſuages, *&c.* I have duly ſurrendred to the Uſe of my Will) To have and to hold, all and every the ſaid Meſſuages, Lands, Tenements, Hereditaments and

and Premiſſes, with their and every of their Appurtenances, unto and to the Uſe of the ſaid and the Heirs of his Body, lawfully to be begotten; and for want of ſuch Heirs, to my own right Heirs for ever. Alſo I give and deviſe unto all that my Meſſuage or Tenement with the Apurtenances thereunto belonging, heretofore in the Tenure or Occupation of To have and to hold the ſaid laſt mentioned Meſſuage or Tenement, and Premiſſes, with the Appurtenances, (ſubject and charged and chargeable with the Annuity, yearly Rent or Sum of *l.* herein after mentioned) unto him the ſaid and his Aſſigns, for and during the Term of his natural Life; and from and immediately after his Deceaſe, I give and deviſe the ſame Meſſuage, *&c.* and Premiſſes, with the Appurtenances (ſubject to, and charged and chargeable with the ſame Annuity, yearly Rent or Sum of *l.*) unto and for the Uſe of the ſaid and the Heirs of his Body lawfully to be begotten; and for Default of ſuch Heirs, then to my own right Heirs for ever. And I do hereby give and deviſe unto Wife of of in the County of and her Aſſigns, for and during the Term of her natural Life, an Annuity, or clear yearly Rent or Sum of *l.* of lawful Money of *Great Britain*, free of all Taxes and other Deductions, to be iſſuing and payable out of the ſaid laſt mentioned Meſſuage and Tenement, *&c.* and Premiſſes, and

and to be paid and payable by equal half-yearly Payments, at the two moſt uſual Feaſt Days of Payment in the Year, (that is to ſay) the Feaſt of the Annunciation of the bleſſed *Virgin Mary*, and St. *Michael* the Archangel; the firſt Payment thereof to be made on ſuch of the ſaid Feaſt Days as ſhall happen next after my Deceaſe; and I do hereby charge and ſubject the ſaid Meſſuages or Tenements, &c. with and to Payment of the ſaid Annuity, yearly Rent or Sum of *l.* accordingly; and my will is, that in caſe the ſame Annuity, yearly Rent or Sum of *l.* or any Part thereof, ſhall be behind or unpaid by the Space of next over or after either of the aforeſaid Feaſt Days, whereon the ſame is herein before directed and appointed to be paid as aforeſaid, that then and ſo often it ſhall and may be lawful for the ſaid and her Aſſigns, to enter into, and upon all and every, or any Part of the ſaid Premiſſes charged with the ſaid Annuity as aforeſaid, and diſtrain for the ſame, or for ſo much thereof as ſhall be ſo in Arrear, and all Coſts and Charges occaſioned by Non-payment thereof. Alſo I give, deviſe and bequeath unto of in the ſaid County of all thoſe my two Meſſuages or Tenements, with the Appurtenances, in (now in the ſeveral Tenures, &c.) which I hold by Virtue of a Leaſe from of (ſince deceaſed) and all my Eſtate, Right, Title, Term of Years, and Intereſt of

of and in the ſame Premiſſes reſpectively, To have and to hold the ſaid laſt mentioned Meſſuages and Tenements, Hereditaments and Premiſſes, with their and every of their Appurtenances, unto the ſaid his Executors, Adminiſtrators and Aſſigns, to and for his and their own Uſe and Benefit abſolutely. [And then the Teſtator proceeds to give ſeveral pecuniary Legacies, and to appoint a reſiduary Legatee and Executors, and ſo concludes.] In Witneſs, *&c.*

A Codicil to a Will.

A CODICIL to be added to, and to be taken as Part of the laſt Will and Teſtament of me *M. B.* of *N.* and *W.* in the County of *L.* Whereas by Indenture of Leaſe and Releaſe, bearing Date reſpectively the firſt ſix Days of *June* in the Year of our Lord 1721, and made or mentioned to be made between *M. M. B.* of *N.* and *W.* by the Name of *M. B. W.* of the one Part, and *M. K.* of *A.* in the County of *Cornwall*, Eſquire, and *T. R.* of the *Middle Temple*, Eſquire, of the other Part, I the ſaid *M. B.* of *N.* and *W.* for the ſettling the Manors, Lands, Tenements and Hereditaments therein mentioned, and in Conſideration of 10*s.* of lawful Money, did bargain, ſell, alien, releaſe and confirm unto the ſaid *M. K.* and *T. R.*

T. R. the Manors, Advowſons, Meſſuages, Lands, Tenements and Hereditaments therein contained, and amongſt others, all that the Manor or reputed Manor of *L.* with the Rights, Members and Appurtenances thereof, in the County of *B.* and the Meſſuages, Lands, Tenements and Hereditaments of me the ſaid *M. B.* of *N.* and *W.* in *L.* aforeſaid, and *F.* or either of them, in the ſaid County of *B.* to hold to the ſaid *M. K.* and *T. R.* their Heirs and Aſſigns for ever, to and for the Uſes, Intents and Purpoſes, and ſubject to the Powers, Limitations and Proviſoes therein after expreſſed and contained of and concerning the ſame, in which ſaid Indenture of Releaſe is contained a Proviſo, that it ſhould and might be lawful to and for me the ſaid *M. B.* of *N.* and *W.* from Time to Time, at any Time or Times, during my Life, until I ſhould attain the Age of eighty Years, by any Deed or Writing, laſt Will or Teſtament executed by me in the Preſence of two or more credible Witneſſes, to revoke or alter all or any of the Uſes or Truſts thereby limited or appointed, or to limit any other or new Eſtate, Uſes, Truſts or Diſpoſitions, of or touching the Premiſſes or any Part thereof: And whereas by Indenture, bearing Date the fourteenth Day of *October* in the Year of our Lord 1737, and made or mentioned to be made between me the ſaid *M. B.* of *N.* and *W.* of the one Part, and *T. B.* of *S.* in the County of *E.* Eſquire, *J. L.* of the Pariſh of St. *J.* within the Liberty of the City of *W.*

in

in the County of *M.* Eſq; and *E. R.* of the Pariſh of St. in the ſaid County of *M.* Eſq; of the other Part, reciting the ſaid herein before recited Indenture, and alſo reciting two ſeveral other Indentures made ſubſequent thereto, whereby the Uſes of and concerning the ſaid Premiſſes, in and by the ſaid firſt-mentioned Indenture limited and declared, were altered and revoked of and concerning the ſaid Premiſſes, but ſubject to a like Proviſo for altering and revoking the ſame, and appointing new Uſes as in the ſaid firſt recited Indenture contained; I the ſaid *M. B.* of *N.* and *W.* in purſuance of the ſaid Power to me reſerved, and being then under the Age of eighty Years, did revoke the Uſes in and by the ſaid ſeveral recited Indentures declared of and concerning the ſaid Premiſſes, and did limit, appoint and declare the ſame Premiſſes to and for the Uſes and Truſts, and under the Proviſoes therein after expreſſed concerning the ſame; in which Indenture is alſo contained a Proviſo, that it ſhould and might be lawful to and for me the ſaid *M. B.* of *N.* and *W.* from Time to Time, and at all Times thereafter, during my Life, by any Deed or Deeds to be by me executed in the Preſence of two or more credible Witneſſes, or by my laſt Will in Writing, or Codicil thereto, to be by me ſigned in the Preſence of three or more credible Witneſſes, to revoke or alter all or any of the Uſes, Eſtates and Truſts therein before limited or declared of or in all or any

of the Premiſſes, and to limit any new or other Eſtates, Uſes, Truſts or Diſpoſitions of or touching the ſame ſo revoked or any Part thereof: And whereas I have made and publiſhed a Will in Writing, bearing Date the ſame 14th Day of *October* 1737; now I the ſaid *M. B.* of *N.* and *W.* in Purſuance and by Virtue of the ſaid Power to me reſerved in and by the ſaid laſt recited Indenture of the 14th of *October* in the Year 1737, and all and every other Power and Powers and Authorities to me given or reſerved in this Behalf, do by this my Codicil revoke, annul and make void all and every the Uſes, Truſts, Eſtates, Limitations and Appointments in and by the ſaid ſeveral recited Indentures, or any of them limited, created or declared of and concerning all that the ſaid Manor or reputed Manor of *L.* with the Rights, Members and Appurtenances thereof, in the ſaid County of *B.* and all the ſaid Meſſuages, Lands, Tenements and Hereditaments of the ſaid *M. B.* of *N.* and *W.* in *L.* and *F.* aforeſaid or either of them, in the ſaid County of *B.* in and by the ſaid firſt recited Indenture of Releaſe, granted, releaſed or conveyed, with their and every of their Appurtenances; and I the ſaid *M. B.* of *N.* and *W.* in Purſuance of and by Virtue of all and every the Power, *&c.* aforeſaid do direct, limit, appoint and declare, that the ſaid firſt recited Indenture of Releaſe, and the Grant and Conveyance thereby made as to all that the ſaid Manor or reputed Manor of *L.* with

the Rights, Members and Appurtenances thereof, in the ſaid County of *B.* and all the ſaid Meſſuages, Lands, Tenements and Hereditaments of the ſaid *M. B.* of *N.* and *W.* in *L.* and *F.* aforeſaid, or either of them, in the ſaid County of *B.* in and by the ſaid firſt recited Indenture of Releaſe granted, releaſed or conveyed, with their and every of their Appurtenances, be and enure, and I do hereby give and deviſe the ſame in Manner following, that is to ſay, To the Uſe of the Honourable *H. B.* Eſq; commonly called Lord *H. B.* Brother of his Grace the Duke of St. *A.* for the Term of his natural Life, without Impeachment of or for any Manner of Waſte; and from and after the Determination of that Eſtate by Forfeiture, or otherwiſe in his Life-time, then to the Uſe of the ſaid *T. B. I. L.* and *E. R.* and their Heirs, during the natural Life of the ſaid *H. B.* in Truſt to preſerve the contingent Remainders herein after limited, from being defeated and deſtroyed, and for that Purpoſe to make Entries or bring Actions, as the Caſe ſhall require; but nevertheleſs to permit and ſuffer the ſaid *H. B.* during his natural Life to receive and take the Rents and Profits of the ſame Premiſſes to his own Uſe; and from and after the Deceaſe of the ſaid *H. B.* to the Uſe of *M.* the Wife of the ſaid *H. B.* for the Term of her natural Life, without Impeachment of or for any Manner of Waſte; and from and after the Determination of that Eſtate by

Forfeiture or otherwiſe, during her Life, to the Uſe of the ſaid *T. B. I. L.* and *E. R.* and their Heirs, during the natural Life of the ſaid *M.* in Truſt to preſerve the contingent Remainders herein after limited, from being defeated and deſtroyed, and for that Purpoſe to make Entries or bring Actions, as the Caſe ſhall require; but nevertheleſs to permit and ſuffer the ſaid *M.* during her Life, to receive and take the Rents, Iſſues and Profits of the ſame Premiſſes to her own Uſe; and from and after the Deceaſe of the ſaid *M.* to the Uſe of the firſt Son of the Body of the ſaid *M.* by the ſaid *H. B.* begotten or to be begotten, and the Heirs Male of the Body of ſuch firſt Son lawfully iſſuing; and for Default of ſuch Iſſue, to the Uſe of the ſecond, third, fourth, fifth, ſixth, ſeventh, eighth, ninth, tenth, and all and every other ſon and Sons of the Body of the ſaid *M.* by the ſaid *H. B.* begotten or to be begotten, ſeverally and ſucceſſively, one after another, as they ſhall be in Seniority or Age and Priority of Birth, and the Heirs Male of their reſpective Bodies lawfully iſſuing; the elder of ſuch Sons and the Heirs Male of his Body, being always preferred and to take before the younger of ſuch Sons and the Heirs Male of his and their Body and Bodies; and for Default of ſuch Iſſue Male, to the Uſe of all and every the Daughter or Daughters of the Body of the ſaid *M.* by the ſaid *H. B.* begotten or to be begotten, as Tenants in Common, and not

not as Jointenants, and the Heirs of their ſeveral and reſpective Bodies lawfully iſſuing; and failing Iſſue of any of the ſaid Daughters, to the Uſe of all and every other ſuch Daughter or Daughters as Tenants in Common, and not as Jointenants, and the Heirs of the reſpective Body or Bodies of ſuch other Daughter or Daughters lawfully iſſuing; and for Default of ſuch Iſſue, to the Uſe of ſuch Perſon or Perſons, and for ſuch Eſtate or Eſtates, and in ſuch Proportions, and in ſuch Manner as ſhe the ſaid *M.* whether covert or ſole, ſhall by any Deed or Writing, by her ſealed and delivered in the Preſence of three or more credible Witneſſes, or by her laſt Will in Writing, or any Writing purporting to be her laſt Will, and by her ſigned and publiſhed in the Preſence of a like number of Witneſſes, limit and appoint; and in Default of ſuch Appointment, then to the Uſe of the right Heirs of the ſaid *M. B.* for ever: Provided always, and my Will and Meaning is, that it ſhall and may be lawful to and for the ſaid *H. B.* and after his Deceaſe to and for the ſaid *M.* his Wife, in Caſe ſhe ſhall ſurvive him, by Indenture to make any Leaſe or Leaſes of the Premiſſes, for any Term or Number of Years, not exceeding twenty-one Years from the Making thereof, ſo as upon every ſuch Leaſe or Leaſes there be reſerved and made payable, during the Continuance of the ſaid reſpective Terms thereby granted, the greateſt improved yearly Rent that can or may be

reaſonably had for the ſame, to be incident to and go along with the Remainder or Reverſion expectant on ſuch Leaſes reſpectively, and ſo as ſuch Leaſes be not by any expreſs Words therein contained, freed from Impeachment of Waſte; and ſo alſo as there be contained in every ſuch Leaſe or Leaſes a Power of Re-entry, in Caſe the Rent or Rents thereupon to be reſpectively reſerved, or any Part thereof, ſhall be behind or unpaid by the Space of twenty-one Days next after any the Times of Payment therein to be reſpectively limited; and ſo as the reſpective Leſſee or Leſſees therein named, do execute a Counterpart of ſuch Leaſe or Leaſes reſpectively: And I do hereby ratify and confirm all and every the Uſes, Truſts, Eſtates, Limitations and Appointments in and by the ſaid recited Indenture of the 14th of *October* 1737, limited, appointed or declared of or concerning all and every or any of the Manors, Meſſuages, Lands, Tenements and Hereditaments therein compriſed, except and other than the ſaid Manor of *L.* with its Appurtenances, and the Lands, Tenements and Hereditaments aforeſaid, in *L.* and *F.* aforeſaid, or either of them, in the County of *B.* and I do alſo hereby declare, that my ſaid Will in Writing, bearing Date the 14th Day of *October* 1737, and this Codicil which I will ſhall be added to and deemed Part thereof, do contain my laſt Will and Teſtament. In Witneſs whereof I have to this Codicil, and to a Duplicate thereof, both of the

the ſame Tenor and Effect, each contained in two Skins of Parchment, ſet my Hand and Seal this Day of, *&c.*

Signed, ſealed and publiſhed by the ſaid *M. B.* of *N.* and *W.* as and for a Codicil to be added to, and be Part of, her laſt Will and Teſtament, in the Preſence of us who have ſubſcribed our Names in her Preſence.

A Nuncupative Will.

T. B. his Will by Word of Mouth, made and declared by him about the Day of in the Preſence of us who have hereunto ſubſcribed our Names as Witneſſes hereto. My Will is that, *&c.* (*the very Words*)

J. G.
R. S.
F. G.

A Preamble to a Will, the Teſtator being about to go to Sea.

IN the Name of God, *Amen.* I *C. D.* of Mariner, being in good Health of Body, and of ſound Mind and Memory, and being forthwith to depart this Kingdom on a Voyage to in the Kingdom of and well knowing the Danger of the Seas, and the Uncertainty of this tranſitory Life, do make this my laſt Will and Teſtament as follows, that is to ſay, *(and then he proceeds to give ſeveral Legacies,* &c.*)*

Here follow the Forms of ſeveral Bequeſts in a Will.

And for the better Education of my Children *A. B.* and *C.* now Infants of very tender Years, that is to ſay, the ſaid *A.* of the Age of or thereabouts, the ſaid *B. &c.* I do give and diſpoſe of the Tuition and Cuſtody of them, and every of them, unto *M.* my Wife, until ſuch Time as they and either of them reſpectively continue unmarried, and under the Age of twenty-one Years, and my Wife remain my Widow; but if my Wife die or marry, during the ſingle Life and Nonage of any of my ſaid Children, then I give the Cuſtody and Tuition of ſuch of my Children ſo being unmarried, and under the Age of twenty-one Years, at the Marriage or Death of my Wife, which ſhall

ſhall firſt happen unto Alſo I do allow for my Son *A.*'s Maintenance at School for ſo many Years as he ſhall remain there, *l. per Ann.* for my Son *B.*'s Maintenance until he be put to a Grammar School *l. per Ann.* and when he is placed at a Grammar School *l. per Ann.* and when my Wife or other Truſtees ſhall think fit to remove my Son *A.* from School, I deſire he may be placed, *&c.*

I give and bequeath the Houſe I now live in, and the Appurtenances thereto belonging, which I hold by Leaſe from *W. S.* Eſq; ſituate, *&c.* to my Son *C. B.* to hold to him during his natural Life; and after his Deceaſe, I give the ſame to my Daughter *E. B.* during the Remainder of my Eſtate and Intereſt therein;

I give and bequeath unto my Kinſman *C. D.* and my loving Friend *E. F.* and *G.* of all that my Leaſehold Eſtate which I lately purchaſed of *T. B.* Gentleman, ſituate for a Term of Years yet to come, determinable together with the Indenture of Leaſe, whereby I hold the ſame, to have and to hold to them the ſaid *C. D. E. F.* and *G. H.* their Executors, Adminiſtrators and Aſſigns, from and immediately after my Deceaſe, for and during the Reſidue and Remainder of the Term then to come and unexpired, granted to me by the ſaid Indenture of Leaſe, upon this ſpecial Truſt and Confidence in them repoſed, and to the Intent and Purpoſe, that they the ſaid

C. D.

C. D. &c. and the Survivors and Survivor of them, and the Executors and Adminiſtrators of ſuch Survivor, do and ſhall permit and ſuffer her my ſaid Wife *E. B.* To have, hold and enjoy all ſuch my ſaid Leaſehold Eſtate to them given as aforeſaid, and to receive and take to her own Uſe and Behoof, the Rents, Iſſues and Profits thereof, from and immediately after my Deceaſe, for and during ſo much of the ſaid Term as ſhall run out and expire in the Life-time of her my ſaid Wife; and after her Deceaſe, upon this further Truſt and Confidence, and to the Intent and Purpoſe, that they the ſaid *C. D. &c.* and the Survivors and Survivor of them, and the Executors and Adminiſtrators of ſuch Survivor, do and ſhall, out of the Rents, Iſſues and Profits ariſing out of my ſaid Leaſehold Eſtate, well and truly pay, or cauſe to be paid, unto my ſaid Daughter *D. B.* her Executors, Adminiſtrators and Aſſigns, for and during ſo much of the ſaid Term to me therein granted as aforeſaid, as ſhall run out and expire in the Life-time of her my ſaid Daughter, the yearly Sum or Annuity of *l.* to be paid, *&c.* by even and equal Portions; the firſt Payment thereof to be made at, *&c.* which ſhall firſt and next happen after the Deceaſe of my ſaid Wife; and upon this further Truſt and Confidence, and to the Intent and Purpoſe, that they the ſaid *C. D. &c.* and the Survivor, *&c.* and the Executors, *&c.* do and ſhall permit and ſuffer my ſaid Son *T. B.* to have,

have, hold and enjoy all ſuch my Leaſehold Eſtate, charged with the ſaid Annuity of *l. per Ann.* to my ſaid Daughter, and to receive and take the Overplus of the Rents, Iſſue and Profits thereof to his own proper Uſe and Behoof, from and immediately after my ſaid Wife's Deceaſe, for and during all the Reſt, Reſidue and Remainder of the Term to me therein granted, which ſhall be then to come and unexpired.

I do hereby give, deviſe and bequeath all thoſe my Copyhold Meſſuages, Lands, Tenements and Hereditaments in and every of them, with the Rents, Iſſues and Profits thereof, (the ſame being already ſurrendered to the the Uſe of my Will) unto my ſaid Daughter *A. B.* from and immediately after my Deceaſe, for and during her natural Life; and after her Deceaſe, then I give and deviſe the ſame to my Son *C. D.* of, *&c.* and the Heirs of his Body lawfully to be begotten; and for Default of ſuch Iſſue, then to the Heirs on the Body of my ſaid Daughter *A. B.* lawfully begotten; and for Default of ſuch Iſſue, then to *E. F.* Son of of, *&c.* and to his Heirs for ever.

I give and deviſe all thoſe my Freehold Lands, Tenements and Hereditaments whereof I am ſeiſed in Fee-ſimple, ſituate, lying and being in with the Rents, Iſſues and Profits of all and ſingular the ſaid Premiſſes unto *C. D.* and *E. F.* of To have and to hold the ſaid Lands, Tenements, Hereditaments and Premiſſes to them the ſaid

ſaid *C. D.* and *E. F.* their Executors, Adminiſtrators and Aſſigns, from and immediately after my Deceaſe, for and during and unto the full End and Term of ninety-nine Years from thence next enſuing, and fully to be compleat and ended, without Impeachment of Waſte: In Truſt nevertheleſs, and to the Intent and Purpoſe, that the ſaid *C. D.* and *E. F.* their Executors, Adminiſtrators and Aſſigns, do and ſhall out of the Rents, Iſſues and Profits thereof, or thereby ariſing, or by any Aſſignment of the ſaid Term, or by Grant, Mortgage or Sale of the ſaid Premiſſes, or any Parcel thereof, raiſe and levy the clear Sum of *l.* and the ſame being ſo raiſed as aforeſaid, to pay or ſecure to be paid unto my Grandaughter *G. B.* when and as ſoon as ſhe ſhall attain to the Age of twenty-one Years, or be married (which ſhall firſt happen) or if it ſhall happen that my ſaid Grandaughter *G. B.* ſhall depart this Life before ſhe ſhall have attained the Age of twenty-one Years, or be married; then upon this further Truſt, and to the Intent and Purpoſe, that they the ſaid *C. D.* and *E. F.* their Executors, Adminiſtrators and Aſſigns, do and ſhall out of the Rents, Iſſues and Profits, or by Grant, Mortgage or Sale of the ſaid Premiſſes, or any Part thereof, or by Aſſignment of the ſaid Term, raiſe the Sum of *l.* clear as aforeſaid, and the ſame to pay, or ſecure to be paid unto the Child (be the ſame Son or Daughter) which ſhall hereafter be lawfully iſſuing on the Body

of

of my Daughter; and which ſhall live to attain the ſaid Age of twenty-one Years, or marry, which ſhall firſt happen, if a Daughter; if a Son, then on attaining the ſaid Age of twenty-one Years only, which ſaid Sum of *l.* ſo to be raiſed and paid as aforeſaid, I do hereby give and bequeath unto my ſaid Grandaughter *E. E.* and in Caſe of her Deceaſe, to ſuch next Child ſo hereafter to be iſſuing on the Body of my ſaid Daughter who ſhall attain the ſaid Age of twenty-one Years, or be married as aforeſaid; and from and immediately after, and as ſoon as the ſaid *C. D.* and *E. F.* or their Heirs, ſhall have raiſed the ſaid Sum of *l.* clear from all Payments and Deductions, out of my ſaid Freehold Lands, Tenements and Hereditaments, as herein before is appointed, or in Caſe of the Death of the ſaid *E. B.* or other Child reſpectively, before the reſpective Times of Payment aforeſaid, then my Will is, and I do hereby give and deviſe all and ſingular the Premiſſes aforeſaid, and the Reverſion and Reverſions, Remainder and Remainders of all and ſingular thoſe my Freehold Lands, Tenements and Hereditaments aforeſaid, with the Rents, Iſſues and Profits thereof, and of every Part and Parcel thereof, unto my ſaid Daughter *D. B.* to have and to hold to her my ſaid Daughter *D. B.* from henceforth, for and during the Term of her natural Life; and from and immediately after the Deceaſe of the ſaid *D. B.* then I do hereby give and deviſe

deviſe the ſaid Premiſſes, and the Reverſion and Reverſions, Remainder and Remainders of all and ſingular thoſe my ſaid Freehold Lands and Premiſſes, with the Rents, Iſſues and Profits thereof, and of every Part thereof, to my Grandſon *T. B.* Son of my ſaid Daughter *D. B.* and to the Heirs of his Body lawfully to be begotten, and for Want or Default of ſuch Iſſue, then I do hereby give and deviſe all and ſingular thoſe my ſaid Freehold Lands, Tenements and Hereditaments in aforeſaid, (being Part of the Freehold Lands, Tenements and Hereditaments above mentioned) with the Rents, Iſſues and Profits thereof, unto and his Heirs for ever; and alſo all and ſingular thoſe my Lands, Tenements and Hereditaments in aforeſaid, (being the Reſidue and Remainder of my Freehold Lands, Tenements and Hereditaments above mentioned) with the Rents, Iſſues and Profits thereof (for Default of ſuch Iſſues as aforeſaid) unto and his Heirs for ever. I give to *A. B.* and *C. D.* Sons of my Brother *T. B.* the Sum of *l.* apiece, to be paid or ſecured to them reſpectively, by my ſaid Brother *L. B.* as ſoon as they ſhall reſpectively attain the Age of twenty-one Years, and not otherwiſe; and my Will is, and I hereby order, that in Caſe my Brother *L. B.* ſhall from Time to Time, as the ſame ſhall become due, pay unto my ſaid Nephews, *A. B.* and *C. D.* or give to them reſpectively, ſuch Security within after my

my Deceaſe, as they or their Father ſhall approve for the Payment to them of the ſaid *l.* apiece reſpectively; then and in ſuch Caſe, and not otherwiſe, I hereby give, deviſe and bequeath unto my ſaid Brother *L. B.* all that Meſſuage or Tenement, *&c.* now in Hand, called by the Name of, *&c.* late in the Tenure of, *&c.* being Part of my Manor, *&c.* and alſo the Reverſion and Inheritance of all thoſe ſeveral Tenements, and all Lordſhips, Rents and Heriots to each of them belonging, now in the ſeveral Poſſeſſions of with the Royalty of the Lordſhip of my ſaid Manor of with its Rights, Members and Appurtenances, to hold to my ſaid Brother *L. B.* and his Heirs and Aſſigns for ever.

And whereas by the Death of my Uncle *T. B.* ſeveral Plantations and Houſes, Farms and Negro Servants, Lands, Tenements and Hereditaments in the Iſland of *Jamaica*, deſcended to my Father *T. B.* late of deceaſed; and by Virtue of a Diſpoſition by him made thereof, and a Partition of the ſaid Premiſſes, one fifth Part of the ſaid Plantations is legally come to and veſted in me; now I do hereby give, deviſe and bequeath all ſuch my ſaid fifth Part or Share of and in the ſaid Plantations and Premiſſes aforeſaid (if the ſame ſhall remain unſold at the Time of my Deceaſe) together with the Increaſe and Profits ariſing therefrom, unto my ſaid Brother *L. B.* his Heirs, Executors, Adminiſtrators and Aſſigns for ever.

I give

I give and deviſe unto *R. S.* and *E. B.* of and their Heirs, the Reverſion in Fee of all my Freehold and Copyhold Lands and Tenements, expectant upon the Death of ſituate, *&c.* and alſo all other my Freehold and Copyhold Lands and Tenements in in Poſſeſſion, or wherein I have any Right of Equity of Redemption, to hold the ſame unto the ſaid *R. S.* and *E. B.* and his Heirs for ever, upon Truſt and Confidence, nevertheleſs, that immediately after my Deceaſe, they the ſaid *R. S.* and *E. B.* ſhall vend, ſell and diſpoſe of the ſaid Reverſion of my Freehold and Copyhold Lands, Tenements and Hereditaments, expectant upon the Death of and alſo immediately after my Deceaſe, ſell and diſpoſe of all other my Freehold and Copyhold Lands and Tenements in Poſſeſſion, Reverſion, or wherein the Right of Equity of Redemption is in me the ſaid *P. A.* as aforeſaid, to the beſt Benefit and Advantage, and for the moſt Profit they may or can, and out of the Monies ariſing by the Sale of the ſaid Lands, Tenements and Hereditaments by me before deviſed, they the ſaid *R. S.* and *E. B.* ſhall well and truly pay, or cauſe to be paid unto my loving Wife *E. A.* the Sum of *l.* of, *&c.* and the Overplus of the ſaid Money, ariſing by the Sale of the ſaid Lands, to be paid to my Children Share and Share alike; and alſo all other my Meſſuages, Lands, Tenements and Hereditaments whatſoever, ſituate, lying and being in *C.*

or

or elſewhere in the ſaid County of *D.* to my Executors herein after named, until my Son *W.* ſhall attain his Age of twenty-one Years; and if he ſhall happen to die before he attain ſuch Age, then and in ſuch Caſe until *T.* my ſecond Son ſhall attain his Age of twenty-one Years; and if he ſhall happen to die before his Age, until *R.* my third Son ſhall attain his Age of twenty-one Years; and if he ſhall happen to die before ſuch Age, until *D.* my fourth Son ſhall attain ſuch Age of twenty-one Years; and if he ſhall happen to die before ſuch Age, then I deviſe the ſame to my own right Heirs for ever. *Item*, my Will and Meaning farther is, that if my ſaid Son *W.* ſhall have attained the ſaid Age of twenty-one Years at the Time of my Death, or if he hath not then attained the ſaid Age, then ſo ſoon after as he ſhall attain the ſaid Age, I do give and deviſe the ſaid and all and every other the Premiſſes, with their and every of their Appurtenances, to *E. F.* and *G. H.* and their Heirs, for and during the Life of my ſaid Son *W.* to the Intent to ſupport the contingent Remainders in this my Will after limited, ſo that the ſame may not be deſtroyed; but in Truſt, nevertheleſs, to permit and ſuffer him my ſaid Son *W.* to receive the Rents and Profits thereof to and for his own Uſe, during his natural Life; and for and after his Deceaſe, then I deviſe the ſaid Meſſuages, Lands, Tenements, Hereditaments and Premiſſes, to the firſt Son of the Body of my ſaid Son *W.* lawfully iſ-

ſuing (whether then born or unborn) and to the Heirs Male of the Body of ſuch firſt Son lawfully iſſuing; and for Default of ſuch Iſſue, then likewiſe to the ſecond, third and every other Son of my ſaid Son *W.* ſucceſſively, and in Remainder the one after the other, as they ſhall be in Seniority of Age and Priority of Birth; and the ſeveral and reſpective Heirs Males of the Body and Bodies of every ſuch ſecond, third and other Son or Sons (the eldeſt of ſuch Sons and Heirs Male of his Body being always preferred and to take before any of the younger Sons and the Heirs Male of his Body). And in caſe of all ſuch Iſſue Male failing, and that my ſaid Son *W.* ſhall have a Daughter or Daughters at his Death (born or unborn) my Will is, and I do hereby deviſe the ſaid Manor, Advowſon, Meſſuages, Lands, Tenements and Hereditaments, to the ſaid *E. F.* and *G. H.* and their Executors and Aſſigns, for and during the Term of ninety-nine Years thence next enſuing, without Impeachment of or for any Manner of Waſte, and with full and free Liberty of and for doing and ſuffering of any Waſte; In Truſt for the levying or raiſing by, or by the Way or Means of making any one or more Leaſe or Leaſes, Mortgage or Mortgages, Sale or Sales, or other Diſpoſals of all, every or any of the Premiſſes, or any Part or Parts thereof, or of the Rents, Iſſues or Profits thereof, or of any Part or Parts thereof, or by all or any ſuch Way, Ways or Means whatſoever, of the Sum

Sum of 1000 *l.* of lawful Money of *Great Britain*, for ſuch Daughter or Daughters, to be equally divided between them (if more than one) payable to her or them reſpectively at her or their reſpective Age or Ages of twenty-one Years, or Marriage or Marriages, whether ſhall firſt happen, for her or their reſpective Portions; and if any ſuch Daughter or Daughters ſhall happen to die (being more than one) before ſuch her or their reſpective Age or Ages, Marriage or Marriages, then and in ſuch Caſe the Survivor or Survivors of them ſhall have her Share or Shares thereof ſo dying; and if all of them ſhall happen to die before ſuch her or their reſpective Age or Ages, Marriage or Marriages, then and in ſuch Caſe ſuch 1000 *l.* or any Part thereof, ſhall not be raiſed (if not raiſed before) but if raiſed, ſhall go and be paid and payable unto him, to whom the Freehold of and in the Premiſſes ſhall then, as herein is after mentioned, be in Truſt for; and in caſe my ſecond Son *W.* ſhall leave no Son or Daughter at the Time of his Death (born or unborn) of his Body, or if he ſhall have left a Daughter or Daughters, and the ſaid 1000 *l.* ſhall in any Ways as aforeſaid be raiſed, paid and ſatisfied, then and in ſuch Caſe my Will and Meaning is, the ſaid Term of ninety-nine Years ſhall, as to all other Intents and Purpoſes, be void and of no Effect. And then I do give and deviſe the ſaid and all and every other the Premiſſes, with their and every of their Appurtenances, to the ſaid

E. F. and *G. H.* and their Heirs, for and during the Life of my ſaid Son *T.* if he ſhall then have attained the Age of twenty-one Years, to the Intent to ſupport the contingent Remainders in this my Will after limited, ſo that the ſame be not deſtroyed; but in Truſt, nevertheleſs, to permit and ſuffer him my ſaid Son *T.* to receive the Rents, Iſſues and Profits thereof to and for his own Uſe, during his natural Life; and from and after his Deceaſe, then I deviſe the ſaid Manor, *&c.* to the firſt Son of the Body of my ſaid Son *T.* lawfully iſſuing, whether then born or unborn, and to the Heirs Male of the Body of ſuch firſt Son lawfully iſſuing; and for Default of ſuch Iſſue, then likewiſe to the ſecond, third and every other Son of my ſaid Son *T.* ſucceſſively, and in Remainder the one after the other, as they ſhall be in Seniority of Age and Priority of Birth, and the ſeveral and reſpective Heirs Male of the Body and Bodies of every ſuch ſecond, third and every other Son and Sons (the eldeſt of ſuch Son and Sons, and the Heirs Male of his Body, being always preferred and to take before any of the younger Sons and the Heirs Male of his Body). And in caſe of all ſuch Iſſue Male failing, and that my ſaid Son *T.* ſhall leave a Daughter or Daughters at his Death (born or unborn) my Will is, and I do hereby deviſe the ſaid Manor, *&c.* to the ſaid *E. F.* and *G. H.* and their Executors and Aſſigns, for and during the Term of ninety-nine Years thence next enſuing, without Impeachment of

or for any Manner of Waſte, and with full and free Liberty of and for doing and ſuffering of any Waſte; In Truſt for the levying and raiſing, by or by the Way or Means of making any one or more Leaſe or Leaſes, Mortgage or Mortgages, Sale or Sales, or other Diſpoſal of all, every or any of the ſaid Premiſſes, or any Part or Parts thereof, or of the Rents, Iſſues or Profits thereof, or of any Part or Parts thereof, or by all or any ſuch Way, Ways or Means whatſoever, of the Sum of 1000*l.* of lawful Money of *Great Britain*, for ſuch Daughter or Daughters, to be equally divided between them (if more than one) payable to her or them reſpectively at her or their reſpective Age or Ages of twenty-one Years, or Marriage or Marriages, whether ſhall firſt happen, for her or their reſpective Portion or Portions; and if any ſuch Daughter or Daughters ſhall happen to die (being more than one) before ſuch her or their reſpective Time or Times for being paid, then and in ſuch Caſe the Survivor or Survivors of them ſhall have all her or their Share or Shares thereof ſo dying; and if all of them ſhall happen to die before ſuch her or their reſpective Age or Ages, Marriage or Marriages, then and in ſuch Caſe ſuch 1000*l.* or any Part thereof, ſhall not be raiſed (if not raiſed before) but if raiſed, ſhall go and be paid and payable to him to whom the Freehold of and in the Premiſſes ſhall then, as herein is after mentioned, be in Truſt for; and in caſe my ſaid Son *T.* ſhall leave no Son

or Daughter at the Time of his Death (born or unborn of his Body) or if he ſhall have left a Daughter or Daughters, and the ſaid 1000 *l.* ſhall in any wiſe as aforeſaid be raiſed, paid or ſatisfied, then and in ſuch Caſe my Will and Meaning is, that the ſaid Term of ninety-nine Years ſhall, as to all other Intents and Purpoſes, be void and of none Effect: Provided alſo, and my Will and Meaning is, that it ſhall and may be lawful to and for every ſuch of my ſaid Sons, to whom the Truſt of the Freehold of the ſaid Premiſſes ſhall come (whilſt in his actual Poſſeſſion) by any Writing or Writings indented, to be by him ſubſcribed and ſealed in the Preſence of two or more credible Witneſſes, to deviſe or leaſe all or any Part of the ſaid Manor, *&c.* to any Perſon or Perſons for any Term or Number of Years not exceeding twenty-one Years, to commence in Poſſeſſion, and not in Reverſion, reſerving upon every ſuch Leaſe or Leaſes, during the Continuance of them reſpectively, the beſt improved yearly Rent that can be got for the ſame (after the Improvement made thereof) without any Fine, or any thing to bate the Rent, and ſo as ſuch Leaſe or Leaſes be not made diſpuniſhable of or for Waſte.

And my Will and Meaning further is, that every or any ſuch of my ſaid Sons as ſhall be in the actual Enjoyment of the ſaid Manor of, *&c.* aforeſaid, ſhall and may aſſure, limit and appoint, by any Deed in Writing under his Hand and Seal, ſuch Part or Parcel of the

the ſaid Manor of, &c. and other the Premiſſes, as he ſhall think fit, unto or for a jointure for a wife for and during her natural Life. *Item*, I give and bequeath to ſuch and every of my five young Sons *R. W. T. C.* and *J.* ſeverally, until they reſpectively ſhall attain their reſpective Ages of nine Years, the Sum of 60 *l. per Annum* of lawful Money of *Great Britain*, and from thenceforth until they ſhall have reſpectively attained their reſpective Ages of ſixteen Years, the Sum of 100 *l. per Annum* of like lawful Money; and from thenceforth until they ſhall have reſpectively attained their reſpective Ages of eighteen Years, the Sum of 150 *l. per Annum* of like lawful Money; and from thenceforth until they ſhall reſpectively have attained their reſpective Ages of twenty-one Years, the Sum of 200 *l. per Annum* of like lawful Money; the ſame to be paid to every of them reſpectively from time to time by my Executors herein after named, out of my real and perſonal Eſtate, by equal quarterly Payments on the four moſt uſual Feaſt-days, commonly called *Lady-day*, *Midſummer-day*, *Michaelmas-day* and *Chriſtmas-day*, in and for the reſpective Times being; the firſt Payment thereof to commence and be made at and upon ſuch of the ſaid Feaſt-days as ſhall happen next after my Deceaſe. *Item*, I give and deviſe to *F.* my Wife, *W. B. T. C.* and *H. L.* and to their Heirs, all that Manor of *R.* or by whatſoever Name the ſame is called, with its Rights, Members and Appurtenan-

ces; and alſo all other my Meſſuages, Lands, Tenements and Hereditaments whatſoever, with the Appurtenances, in the County of *E.* upon Truſt and Confidence, and to the Intent and Purpoſe, that they the Survivor or Survivors of them, or the Heirs of ſuch Survivor, do and ſhall with all convenient Speed, after my Son *W.* ſhall attain the Age of twenty-one Years, ſell to ſuch Perſon or Perſons as they my ſaid Truſtees, or the Survivor or Survivors of them, or the Heirs of ſuch Survivor, ſhall think fit; and all my ſaid Manor of *R.* in the ſaid County of *E.* and alſo all other my Meſſuages, Lands, Tenements and Hereditaments whatſoever in the ſaid County of *E.* or any of them, or any Part or Parts thereof, with their Appurtenances, and as ſoon after as conveniently they can lay out and diſpoſe of the Money thereby ariſing, in and about the purchaſing of one or more Annuity or Annuities, Rent or Rents, or other yearly Profits, for my ſaid four youngeſt Sons *W. T. C.* and *J.* or ſuch of them as ſhall be then living, in equal Proportion (if more than one) for their reſpective Life or Lives, and in the mean while to allow him or them the Rents, Iſſues and other Profits (if any) as well of ſuch Manor, Meſſuages, Lands, Tenements and Hereditaments, as alſo of ſuch Money; and whereas I have in the Name of *G. P.* and *M. G.* both of *L.* (which ſaid *M. G.* is not dead) and alſo in the Name of *R. H.* of *L.* obtained a Grant under the Great Seal of *England*,

land, after the Death, Surrender or Forfeiture of *J. S.* of the Office of Surveyor of the Petty Cuſtoms and Subſidies in the Port of *L.* with all the Fee and Profits to the ſame belonging, for and during the natural Lives of my Sons *R.* and *W.* and the Life of the longer Liver of them, or to ſuch like Effect, as by ſuch Grant, Relation being thereunto had, may more fully appear: And whereas I have granted unto *K. T.* out of the ſaid office, when it ſhall happen to come to me, the yearly Sum of 100 *l. per Ann.* to be paid to her the ſaid *K. T.* out of the Profits of the ſaid Office, when it ſhall happen to fall according to my ſaid Grant made thereof to her; and alſo I give and deviſe all the Truſts, Benefits and other Profits ariſing of and from the ſame, to my ſaid four younger Sons *W. T. C.* and *T.* or to ſuch of them as ſhall be living at my Deceaſe or Commencement of the ſaid Grant, for all the Term, Eſtate and Intereſt that I and my ſaid Truſtees have and ought to have therein, equally between them; and in caſe any one or more of my ſaid four youngeſt Sons ſhall happen to die during the Continuance of ſuch Term or Eſtate in the ſaid Office, that then the whole Profits ariſing by or from ſuch Office ſhall equally go to and be divided amongſt the Survivors of my ſaid four youngeſt Sons; and in caſe three of my ſaid four youngeſt Sons ſhall die during the Continuance of the ſaid Term and Intereſt, then I will and deviſe that the Survivor of them ſhall thence-

forth

forth have and enjoy the whole Profits thereof to his own Uſe. And whereas I am intereſted in a long Term of Years yet to come, of and in ſeveral annual Payments, payable out of the Revenue of Exciſe, amounting in the whole to 300 *l. per Annum*, or thereabouts; and whereas by and by means of a certain Indenture tripartite, bearing Date on or about the Day of laſt paſt before the Date hereof, and made or mentioned to be made between *J. T.* of, *&c.* in the County of *M.* of the firſt Part, myſelf and *F.* my Wife of the ſecond Part, and *E. B.* of, *&c.* in the County of *G.* is ſettled for (amongſt other Things) ſuch of my younger Sons *R. W. T. C.* and *J.* as ſhall attain his or their reſpective Age or Ages of twenty-one Years, as by the ſaid Indenture, Relation being thereunto had, may appear; my Will and Meaning is, that the ſaid 300 *l. per Annum* ſhall be paid in equal Portions to ſuch of my ſaid younger Sons *R. W. T. C.* and *J.* as ſhall have attained the Age of twenty-one Years, and ſhall not enjoy the ſaid Eſtate of *F.* and elſewhere in the ſaid County of *G.* but if none of my ſaid younger Sons ſhall enjoy the ſaid Eſtate of *F.* and elſewhere in the ſaid County of *G.* and ſhall not have attained that Age, then ſuch Son under that Age ſhall not have his Share and Proportions thereof until he hath attained that Age; and that when ſuch of my ſaid younger Sons ſhall have attained the ſaid Age of twenty-one Years, and ſhall not enjoy the ſaid Eſtate, and all other my ſaid younger Sons

Sons who ſhall attain the ſaid Age of twenty-one Years, and ſhall not enjoy the ſaid Eſtate, ſhall, upon his attaining the ſaid Age of twenty-one Years, have his proportionable Share of the ſaid 300 *l. per Annum*; and alſo that when any of my ſaid younger Sons ſhall die under the ſaid Age, or ſhall enjoy the ſaid Eſtate, then my Will and Meaning is, that his Part ſo dying or enjoying the ſaid Eſtate, ſhall go to and be equally divided amongſt the Survivors of my ſaid younger Sons, who ſhall have attained the ſaid Age of twenty-one Years, and ſhall not enjoy the ſaid Eſtate, or if not then at that Age, then when each of them reſpectively ſhall attain the ſaid Age; the ſame to be paid to him or them in equal Proportion. And my Will and Meaning is, that after the Death of the Survivor of my younger Sons, I do give and bequeath the ſaid annual Payment of 312 *l.* for all the Term and Terms, Time and Times therein to come, to ſuch Perſon who ſhall be then my Heir at Law. *Item*, I give and bequeath to my Daughter *M.* 600 *l.* to be paid her by my Executors herein after named, at her Day of Marriage; and I do hereby will, order and direct my ſaid Executors in the mean time to allow and pay her yearly for her Maintenance and Education, until ſhe ſhall attain the Age of ten Years, 40 *l.* of lawful Money of *Great Britain*, and from thenceforth until, *&c.* the ſame and ſuch other yearly Sums aforeſaid (payable to her) to be paid at ſuch four moſt uſual Feaſt-

days

days aforeſaid in the Year, called, *&c.* by equal Portions, in and for the reſpective Times being, whereof the firſt Payment to begin and be made upon the firſt of the ſaid Quarter-days which ſhall happen after my Deceaſe.

Item, I give and deviſe to *F. B.* Gentleman, for his Life, one Annuity or yearly Rent of 50 *l. per Annum*, to be iſſuing and payable as well out of my Manor of *A.* in the Pariſh of *B.* in the County of *C.* as alſo out of the Eſtate which I lately purchaſed of *R. P.* and his Mother, or one of them, ſituate, lying and being in the Pariſh of *R. S.* and *W.* ſome or one of them, in the County of *C.* or out of either of them, or any Part or Parts of them, or either of them, the ſame to be paid by two half-yearly Payments; the firſt of the ſaid Payments to begin at which of the Feaſt-days of St. *Michael* the Archangel and the Annunciation of the bleſſed Virgin *Mary*, ſhall happen next after my Deceaſe; and that when and as often as the ſame, or any Part thereof, ſhall be behind and unpaid for the Space of twenty Days next after any of the ſaid Feaſt-days on which the ſame ought as aforeſaid to be paid (being lawfully demanded) that then and ſo often, and at any Time or Times then after, it ſhall and may be lawful to and for the ſaid *F. B.* into or upon the ſaid Manor, Meſſuages, Lands, Tenements, Hereditaments and Premiſſes chargeable therewith, or any or either of them, or any Part or Parts thereof,

to

to enter and diſtrain, and ſuch Diſtreſs and Diſtreſſes to detain, keep and diſpoſe of as he ſhall think fit, until he ſhall be fully ſatisfied and paid all ſuch Arrearages, with the Coſts and Charges in and about the making, keeping and diſpoſing thereof.

And further, in caſe the Huſbands of my ſaid Daughters, or either of them, or any Perſon or Perſons to whom any Legacy or Benefit out of, from or by reaſon of this my Will, ſhall commence any Suit or Suits in any Court of Law or Equity, or other Court whatſoever, or by any Ways or Means ſue or diſturb, or cauſe to be ſued or diſturbed, my Executors or Truſtees herein named, or any other Perſon or Perſons whatſoever to whom any thing is by me given in this my Will, from the receiving, quiet enjoying, and poſſeſſing of what is by me herein given as aforeſaid, and in ſuch Manner as is therein mentioned; then my Will and Meaning is, that all and every the Legacies herein by me given to the Wife and Child and Children of ſuch Huſband, either or any of them, and alſo to any other Perſon or Perſons whatſoever, or any of their Truſtees, who ſhall ſo ſue and diſturb my ſaid Executors in the due Execution of this my Will, ſhall ceaſe, determine and be utterly void; and that then and from thenceforth I do give and bequeath all and every the Legacy and Legacies which I had in this my Will given to ſuch Perſon or Perſons, or in Truſt for ſuch Perſon or Perſons, unto my ſaid Grandſon *A. B.* his Executors or Adminiſtrators.

Alſo

Alſo I will and ordain, that the Executor of this my laſt Will and Teſtament, or his Executors or Adminiſtrators, for and towards the Performance of my ſaid Teſtament, ſhall with all convenient Speed after my Deceaſe bargain, ſell and alien in Fee-ſimple all thoſe Lands, *&c.* for the doing, executing and perfect finiſhing whereof, I do by theſe Preſents give, grant, will and transfer to my ſaid Executor, and to his Executors and Adminiſtrators, full Power and Authority to grant, alien, bargain, ſell, convey and aſſure all, *&c.* to any Perſon or Perſons, and their Heirs for ever in Fee-ſimple, by all and every ſuch lawful Ways and Means in the Law, as to my ſaid Executor, or to his Executors or Adminiſtrators, *&c.* or to his or their Counſel learned in the Law ſhall ſeem fit or neceſſary.

And all the Reſt, Reſidue and Remainder of my Goods and Effects whatſoever I give, deviſe and bequeath the ſame unto and I hereby nominate and appoint Executors of this my laſt Will and Teſtament; hereby revoking all former Will and Wills by me heretofore made. In Witneſs whereof I have hereunto ſet my Hand and Seal this Day of

A. B.

Signed, ſealed, publiſhed and declared by the above named as and for his laſt Will and Teſtament, in the Preſence of us who have hereunto ſubſcribed our Names as Witneſſes thereto, in the Preſence of the ſaid Teſtator, and in the Preſence of each other.

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But if the Teſtator had deviſed White-acre and alſo Black-acre to his Son and his Heirs, the Son would have had a Fee in both, and why, 19

A. deviſes the Fee of his Houſe to *B.* and after *B.*'s Death to *C.* his Heir apparent; *B.* has an Eſtate for Life, Remainder to *C.* in Fee, 19

If *A.* deviſes 100 Acres to *B.* paying 10*l.* in groſs to his Executor, *B.* has a Fee, 19

But if *A.* deviſes to *B.* paying ſo much or ſuch Sums out of the Profits of the Lands deviſed; here *B.* takes but an Eſtate for Life, 20

So by a Deviſe to *B.* paying an annual Sum to another, *B.* takes but an Eſtate for Life, becauſe payable out of the Profits, 20

Yet a Deviſe to *B.* and *C.* and they to pay yearly 6*l.* to *D.* for ever, and if they or their Succeſſors ſhould deny Payment, then *D.* to enter; this gives a Fee to *B.* and *C.* 20

If *A.* deviſes his Lands to *B.* in Conſideration he will releaſe 100*l.* which *A.* owes *B.* to *A.*'s Executors, *B.* takes a Fee upon his Releaſe of the 100*l.* 20

So if *A.* deviſes 100*l.* in Legacies, payable out of Lands of 10*l.* *per Annum* Value, and then deviſes the Lands to another, the Deviſee hath a Fee in the Land, 21

A. has three Daughters, *A. B.* and *C.* and deviſes his Lands to his Wife till his Heir comes to twenty-one, paying to his Heir 10 *l. per Annum*, and to his (other) Children 20 *l.* a-piece; this is a Deviſe in Fee to the eldeſt Daughter only, *Page* 21

A. deviſes his whole Eſtate to his Wife, paying Debts, *&c.* the Wife takes a Fee by the Words *his whole Eſtate*, 21

A Deviſe of all my Eſtate real and perſonal for Payment of Debts, is a Deviſe in Fee, 22

But where *A.* is ſeiſed of Black-acre in Fee by a Mortgage forfeited, and of White-acre as his own Inheritance, and deviſes White-acre to his Brother, and then deviſes all the Reſidue of his Goods, Leaſes, Mortgages, Eſtates, Debts, ready Money and other Goods whereof he was poſſeſſed, after Debts and Legacies paid, to his Wife, and makes her Executrix; this is no Deviſe to the Wife in Fee of the mortgaged Lands, and for why, 22

A. deviſes his Houſe wherein *J. S.* dwelt to *B.* for ever; this gives *B.* a Fee, though *J. S.* was only a Lodger or Inmate therein, 22

A. ſeiſed of Land in Fee, ſettles Part of it on his Daughter for Life, and by Will deviſes the other Part of it to his Wife for one Year after his Death, and then deviſed all his Land not ſettled or deviſed, to *J. S.* to hold to him and his Heirs after the Death of the Teſtator's Daughter, and a Year

Year after his the Teſtator's Death; this is a contingent Remainder in Fee to *J. S.* either on the Daughter's Death, or on the Expiration of the Year, *Page* 23

Deviſe to *A.* and *B.* and if either died, the other to be his Heir; *quære* whether this be an Eſtate in Fee or for Life only, 23

A Deviſe to *A.* and his Poſterity, is only an Eſtate-tail; *ſed quære*, 23

An Inheritance will paſs by a Deviſe of *his* (the Teſtator's) Eſtate, 23

A Deviſe *in perpetuum* paſſes a Fee-ſimple, 24

A. deviſes Lands to *B.* and gives 5 *l.* to *C.* and directs *B.* to pay it, but gives him two Years Time; *B.* takes a Fee, 24

By a Deviſe of all the reſt of his Eſtate ſubject to the Payment of Debts, a Fee paſſes, 24

A Deviſe of all his Eſtate comprehends real and perſonal; and where there is a Surrender to the Uſe of a Will, a Copyhold muſt fall under the ſame Conſtruction, 24

A Deviſe to *B.* and her Heirs, and if ſhe and *D.* die without Iſſue, Teſtator gave ſeveral Annuities, charged upon the Premiſſes, to charitable Uſes; reſolved that *B.* had an Eſtate in Fee, 24

A. gave ſpecifick Legacies to his Daughters, and other Legacies to others, then he gave all the Reſidue of his Eſtate to *W. R.* in Truſt to increaſe his Daughters Portions; the Daughters have a Fee, 24

A. ſeiſed in Fee deviſed his Lands to Truſtees and their Heirs, in Truſt for *B.* and *C.*

for their Lives, Remainder to the Children of *B.* and to the Children of *C.* by her then Huſband, in Truſt that they ſhould have the Profits thereof when they come of Age; the Children take a Fee as Tenants in Common, *Page* 24

J. S. 5 *Sept.* 1715, deviſed all his real and perſonal Eſtate, in Truſt that the Truſtees ſhould convey the real Eſtate to *A.* for Life *ſans* Waſte, Remainder to preſerve, *&c.* Remainder to the firſt and every other Son of ſaid *A.* in Tail, with Power to make a Jointure not exceeding a Moiety of the real Eſtate, and directed that his perſonal Eſtate ſhould be laid out in Lands, and ſettled in the ſame Manner; and in caſe *A.* ſhould die without Iſſue, then he willed that *B.* ſhould enjoy all the Rents of his ſaid Eſtate during her Life, and afterwards one fourth Part thereof ſhould be enjoyed by *C.* his Heirs and Aſſigns, another fourth Part by *D.* his Heirs and Aſſigns, one other fourth Part by *E.* her Heirs and Aſſigns, and the other fourth Part by *F.* her Heirs and Aſſigns; and directed that in caſe any of them the ſaid *C. D. E.* and *F.* ſhould be dead at the Time, when by virtue of the ſaid Deviſe the ſaid Eſtate in manner aforeſaid would devolve upon them, that then the fourth Part which the dead Perſon would have been intitled to, if living, ſhould be conveyed to their reſpective Heirs.—*D.* makes his Will, and reciting the contingent Intereſt that he had by *J. S.*'s Will,

Will, he deviſes that whenever his fourth Part ſhould come to *G.* his Son and Heir, or to ſuch Perſon as ſhould be his Heir, that it ſhould ſtand charged with 12,000 *l.* for *M.* his Wife, and 3000 *l.* a-piece to his three yoünger Children; this is a good Charge on the Eſtate, *Page* 25

A. deviſes his freehold Eſtates in Truſt for the Truſtees to convey them to his Son for Life, Remainder to his firſt, *&c.* Son in Tail Male, Remainder to his four Daughters, to each a fourth Part in Fee; and if any of them die without Iſſue, the Truſtees to convey ſuch fourth Part in Fee to the reſpective Heirs of ſuch Daughter ſo dying; one Daughter died without Iſſue, her Fourth belongs to her Brother as her Heir, 27

A. deviſes the Intereſt and Produce of the Surplus of his real and perſonal Eſtate to his Grandchildren, until their Age of twenty-one; this paſſes the Property of the Eſtates to the Grandchildren after that Age, 27

A. in his Will ſays, "As to ſuch Eſtate as God has bleſſed me with, I deviſe in manner following;" and then gives Part to *J. S.* and his Heirs, and the reſt to his Wife in Fee; this paſſes the Eſtate of which *A.* was a Truſtee, 27

A. deviſes all his freehold Houſes in *B.* and had not but leaſehold there; theſe will paſs, *Secus* in a Grant, 28

J. S. had no Lands in *A.* but Tithes, and deviſes all his Lands in *A.* the Tithes paſs, *Page* 28

A. (*int' al'*) gives 5 *l.* to *B.* his Brother and Heir, and makes his Wife ſole Heireſs and Executrix of all his Lands, Tenements, Goods and Chattels, the ſame to ſell and diſpoſe of as ſhe ſhould think fit, to pay his Debts and Legacies; this is a Gift to her of the Surplus in Fee, 28

As to all my temporal Eſtate, I bequeath to my Nephew *J.* (Teſtator's Heir at Law) 50 *l.* then after giving ſeveral Legacies ſays, And all the Reſt and Reſidue of my Eſtate, Goods and Chattels whatſoever, I give and bequeath to my beloved Wife *M.* and whom I make my full and whole Executrix; this is a Deviſe of the Fee-ſimple Eſtate, 28

The Word *Eſtate at* or *in* ſuch a Place may carry a Fee, 28

Deviſe to *A.* the Teſtator's Wife for Life, and then to be at her Diſpoſal, provided it be to any of her Children, gives an Eſtate for Life, with a Power to diſpoſe of the Fee, 29

The Words [I deviſe all my temporal Eſtate] the ſame as [I deviſe all my worldly Eſtate] and paſs a Fee, 29

A. has a Fee-ſimple in a Light-houſe, and a Term for Years in Land adjoining to it; *A.* makes his Will and gives to his Son *H.* and *his Aſſigns* all his Eſtate and Intereſt in the Light-houſe, Lands, Tenements and Appur-

Appurtenances thereunto belonging, upon Truſt out of the Rents, *&c.* of the Term during the Remainder thereof, to pay 200*l.* *per Annum*; *H.* takes a Fee-ſimple in the Fee-ſimple Lands, and a Term for ninety-nine Years in the leaſehold Premiſſes, *Page* 29

What Words in a Will give a Fee-ſimple, and what a Fee-tail. *Vide Barnard's Rep. in Eq.* 7, 9. 30

If *A.* deviſes Land to *B.* and his Heirs Male, the Law *in favorem Voluntatis* ſupplies the Words *of his Body*, and makes it an Eſtate-Tail, 30

And ſo if the Deviſe be to one *& Semini ſuo*; *contra*, if *B.* has Iſſue a Son, who has Iſſue a Daughter, 30

Lands were deviſed to *A.* and his Wife, and after their Deceaſe to their Children, they then having a Son and a Daughter; *A.* and his Wife take but an Eſtate for Life, Remainder to the Children for Life, 31

A Deviſe to *B.* and his Children or Iſſue, *B. then* having Iſſue; this makes *B.* only Joint-tenant for Life with his Children, 31

But if *B.* had had no Children at the Time of the Deviſe, he had taken an Eſtate-tail, 31

Lands deviſed to *B.* and after his Deceaſe to his Iſſue; the Remainder was formerly held to be void; but by *Hale*, Iſſue is *Nomen collectivum*, and all Iſſues not *in Eſſe* take in Tail, and why, 32

A. deviſed Land to *B.* his Son, and if his Daughter *C.* ſurvived *B.* and his Heirs, ſhe to

to have the Land; *B.* had but an Eſtate-tail; for the Word *Heirs* muſt be intended *Heirs of his Body*, *Page* 32

But if the Will had ſaid, that if *I. S.* a Stranger, ſurvives *B.* and his Heirs, then he ſhould have the Land; there *B.* had had a Fee-ſimple, and the intended Remainder over would be void, and why, 32

A. having two Sons, deviſes Black-acre to the eldeſt, and White-acre to the youngeſt, and if either of them die, his Acre to go to the Survivor; and having two Daughters, deviſed to each of them 10 *l.* the Sons had but an Eſtate for Lives, and why, 32

B. having two Sons, *C.* and *D.* deviſed Black-acre to *C.* and his Heirs, and White-acre to *D.* and his Heirs; and further willed, that the Survivor of them ſhould be Heir to the other dying *without Iſſue:* Though the firſt Words would paſs a Fee, yet the ſubſequent Words correct them, and paſs only an Eſtate-tail, and the Remainder in Fee was not contingent, but executed, each Son being Tenant in Tail of his own Part, with a Remainder to the other in Fee, 33

A. deviſes Land to *B.* his Son, and if he has Iſſue Male of his Body lawfully begotten, then the Iſſue to have it; and if he has no Iſſue Male, then to others in Remainder; this gives *B.* an Eſtate-tail, and why, 33

A Deviſe of Lands to *B.* without more Words, gives but an Eſtate for Life; and ſo if it be to *B.* and his Aſſigns, *Page* 34
But to one and his Aſſigns for ever gives a Fee, 34
Lands deviſed to *A* for Life, Remainder to his firſt Heir Male, and the Heirs Male of the Body of ſuch Heir Male, the Deviſee hath but an Eſtate for Life, 34
Deviſe to his Son for ever, gives a Fee, 34
But if with a Remainder to the Son's Heirs Male, it is a Tail, 34
Deviſe to *A.* and *B.* equally to be divided, they have but Eſtates for Life, 35
But a *Remainder* ſo limited is an Eſtate-tail, 34—*Quære* if only for Life, *vide* 38
A Deviſe of Lands to *A.* and his Heirs, and if he dies without Iſſue, the Lands to go over to *B.* and *C.* and the Survivor of them; this is an Eſtate-tail in *A.* 35
A Limitation to *B.* and the Heirs of his Body, after the Death of his Wife, and if *B.* dies, living the Wife, then to *C.* The former Words veſt a Tail in *B.* and are not abridged by the latter, 36
A Deviſe to *B.* for Life, and if he die without Iſſue, the Remainder to *C.* This is an Eſtate-tail in *B.* 37
A Deviſe to *B.* for Life, the Remainder to the next Heir Male, and for Default of ſuch Heir Male, the Remainder over; this is a good Eſtate-tail, 37
A Deviſe to *B.* and if he dies, not having a Son; this an Eſtate-tail, and why, 37

A Remainder

A Remainder that the Heir ſhall enter, and hold to him and the Heirs of his Body, is an Eſtate-tail, *Page* 37

But a Remainder to the Heir, and his Heirs Male, is no Tail, becauſe a Fee deſcends, 38

A Deviſe to *J. B.* for his Life only, without Impeachment of Waſte, and after his Deceaſe to the Iſſue Male of his Body lawfully to be begotten, and the Heirs Males of the Bodies of ſuch Iſſue, and for Default of ſuch Iſſue, Remainder over; *J. B.* takes only an Eſtate for Life, and why, 39

A. deviſed Lands to his eldeſt Son for Life, without Impeachment of Waſte, Remainder to *J. S.* for Life, without Impeachment of Waſte, with Power for him to limit a Jointure of the ſame Land to any Woman he ſhould marry, for her Life; and after his Death he deviſed the Lands to the firſt Son of ſaid *J. S.* in Tail, and ſo to the ſixth Son, and then deviſed that if the ſaid *J. S.* ſhould die without Iſſue Male, the Land ſhould remain to *J. B.*—*J. S.* took an Eſtate-tail, 39

Deviſe to *A.* and the Heirs Male of his Body, *viz.* to the firſt Son of *A.* and the Heirs Male of his Body, and ſo to *A.*'s ſecond and other Sons ſucceſſively; *A.* has only an Eſtate for Life, 40

J. S. had Iſſue *A.* and *B.* and deviſes Lands to *A.* and if he die without Heirs, *B.* ſhall have it; *A.* has an Eſtate-tail, 40

A. deviſes Lands to *B.* and *C.* and if either of them die, that the other ſhould be his Heir; *B.* dies; *quære* if *C.* ſhall have a Fee or an Eſtate for Life, *Page* 40

A. ſeiſed of Lands in *S.* deviſes to *B.* all his Lands commonly called *P.* and alſo all other his Lands, during his natural Life, and to his Heirs Male of his Body begotten, and for want of ſuch Iſſue ſaid *B.* to have the Eſtate during his natural Life, and no longer; and then his Will was, that the ſaid Eſtate ſhould deſcend to *C.* *B.* ſuffers a Recovery to the Uſe of himſelf and his Heirs, and deviſes this Land to *D.* in Fee, and dies without Iſſue Male; adjudged to be an Eſtate-Tail in *B.* and not an Eſtate for Life, and why, 40

A Deviſe to one generally is but an Eſtate for Life, unleſs it plainly appears the Teſtator intended the Deviſee to take a greater, 41

A Deviſe to *A.* and his Heirs Male for ever, is an Eſtate-Tail; adjudged upon great Conſideration, 41

A. having Iſſue a Son and two Daughters, deviſed an Eſtate to his Son and his Heirs, provided that if the Son ſhould die before he come to twenty-one, or without Iſſue of his Body, then it ſhould go to the Teſtator's two Daughters; *A.* dies, and the Son lives to twenty-one, and makes his Will, and deviſes the Eſtate to the Plaintiff: *Quære* if the Son has only an Eſtate-Tail, and ſo the Deviſe to the Daughters to take Effect, 41

Deviſe of Lands to Huſband and Wife for their Lives, and after the Wife's Death, then to their Children; upon the Wife's Death the Huſband's Eſtate determines, *Page* 42

Deviſe to the Heirs Male of *J. S.* begotten, *J. S.* having a Son, and the Teſtator taking notice that *J. S.* was then living, a ſufficient Deſcription of the Teſtator's Meaning, and ſuch Son ſhall take, though ſtrictly not the Heir of *J. S.* 42

Deviſe to *A.* for Life, and if *A.* die without Iſſue, then to *B.* though here is an expreſs Eſtate for Life to *A.* yet the ſubſequent Words turn it into an Eſtate-Tail, 42

But a Deviſe to *A.* for Life, Remainder to Truſtees, *&c.* Remainder to his firſt, *&c.* Son in Tail Male, *&c.* and if *A.* die without Iſſue, then, *&c.* This does not give an Intail to *A.* 42

One deviſes a Third of all his Eſtate whatſoever to his Wife, and two Thirds of all his real and perſonal Eſtate to his Son *J. S.* and his Heirs; the Wife hath but an Eſtate in the third Part of the real Eſtate, and why, 43

All my Eſtate to *A.* for Life, and to *T. B.* after her Death, he taking my Name, and if he refuſe, to *M. B.* and his Heirs for ever; *T. B.* takes a Fee, 43

Deviſe to my Son *A.* for Life, Remainder to his firſt, *&c.* in Tail Male, Remainder to his ſecond, *&c.* Son ſucceſſively, *without ſaying for what Eſtate*, or any Words *tantamount*. 43

A. has two Sons, the Eldeſt of whom dies in his Life-time, the ſecond Son ſhall have an Eſtate-Tail, being the firſt at his Father's Death, *Page* 43

A. deviſed Lands to the Wife for Life, then to his Son *H.* for Life, then to his Son *G.* and his Heirs for ever; if he died without Heirs, then to his two Daughters *K.* and *L.* This is an Eſtate-Tail in *G.* 44

A. ſeiſed of ſome Lands in Fee, and being *Ceſtui que Truſt* of other Lands, deviſes them to *B.* for Life, Remainder to his firſt and ſecond Son in Tail Male, going no farther; and after *B.*'s Death without Iſſue Male, then to a Charity. *A.* is Tenant in Tail until Iſſue born, ſaving as to the Truſt Eſtate, 44

Deviſe to *A.* for Life, and after his Deceaſe to the Heirs Male of the Body of *A.* and the Heirs Male of the Body of ſuch Heirs Male, ſeverally and ſucceſſively, as they ſhall be in Priority of Birth, *&c.* Remainder over: *Quære*, whether this be a Tenancy in Tail, or for Life only? 44

A. deviſed Lands to his ſecond Son and his Heirs for ever, and for want of ſuch Heirs, then to *A.*'s right Heirs: This is an Eſtate Tail, 44

But had the Deviſe been over to a Stranger, the ſecond Son would have taken a Fee-ſimple, 44

A. gave to his eldeſt Heir Male and his Heirs Males for ever, all his Lands in ſuch a Place; and if there be a Female, ſhe to have

have 12 *l. per Annum* as long as ſhe lives; Teſtator had two Sons, the eldeſt died in his Life-time, leaving a Daughter, who was the Heir general; yet the youngeſt Son was adjudged to take the Lands, *Page* 45

A. deviſes Lands for Payment of his Debts, and then to *B.* for Life, with Power to make Leaſes, Remainder to the Heirs Male of the Body of *B.* *B.* has an Eſtate-Tail, 45

A Deviſe to *B.* the Teſtator's Wife for Life, and then to be at her Diſpoſal, provided it be to any of his Children, gives an Eſtate for Life with a Power to diſpoſe of the Fee, 46

I deviſe all my Lands in *B.* to my eldeſt Son. *Item*, I give to my ſecond Son *C.* all my Lands in *D.* Alſo to my Daughter I give 500 *l.* to be paid as ſoon as may be out of the ſaid Eſtate and Premiſſes, and within three Years, if it be poſſible: The ſecond Son has but an Eſtate for Life charged with the 500 *l.* 46

Where there is no Deviſe antecedent, the firſt Son of the Wife cannot take by way of Remainder, 46

A Limitation to one to take and enjoy the Profits of an Eſtate during his Life, and after his Deceaſe to the Heirs Male of his Body, will make an Eſtate-Tail, and why, 46

A Deviſe that if *W.* the eldeſt Son of the Teſtator, ſhould happen to die without Iſ-ſue,

ſue, that then and not otherwiſe, after *W.*'s Death he deviſed it over to his Son *R.* and his Heirs; *W.* takes an Eſtate-tail by Implication, *Page* 47

J. S. deviſed Lands to *B.* for Life, and after his Deceaſe to the Heirs Males of the Body of the ſaid *B.* lawfully to be begotten, and his Heirs for ever; but if ſaid *B.* ſhould die without ſuch Heir Male, then he deviſed them over; this is an Eſtate-tail in *B.* 47

An Eſtate was deviſed to two Siſters and their Heirs, and that if they ſhould die without Heirs, then the Teſtator gave his Eſtate to his Brother *F.* *Quære* if the Daughters take an Eſtate-tail, 47

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I deviſe my Lands to *A.* for Life, and after his Deceaſe, Remainder to the Heirs Males of the Body of *A.* and to the Heirs Males of ſuch Iſſue; *A.* takes an Eſtate-tail, 47

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