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. Walter, at the Mitre and Crown, opposite Fetter-lane, Fleet-street.

MDCCCLVI.
and bequeath all my third Part, Share and Interest of and in the Family Pictures which were my late Mother's, unto my Sistars 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 wherefoever, or of what Nature, Kind or Quality soever (after Payment of my just Debts, Legacies and Funeral Expenses) 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 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 £ 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 forever 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 50l. 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
The Preface.

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 Preface.

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.

A 4  Lastly,
Lastly, it has been thought advisable, 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 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 these things.
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 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 ano­ ther,
and Revocations.
	her, 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
Law of Devises

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 Co. Lit. 76. 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 the
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 Ufe* 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 Ufe*, and so merged the Ufe, but the Land itself 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 stript'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 Conveyance.
Law of Devises

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 passes an Estate Tail, or for Life.

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

Fifthly, Of Terms for Years, and uncertain Interests.

Sixthly, Of Devises by Implication.

Seventhly,
and Revocations.

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. 6 Co. 16. b. give this Power to all Persons, except Infants, Ideots, Feme Coverts, and Persons of (b) non sana memoria; 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.

Yet since the Statute of Charitable Uses, 43 Eliz. c. 4. it has been held that a Devise to the Principals, Fellows and Scholars of Jesus College in Oxon S. P.
Law of Devises

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

Although a Wife, by reason of the Subject 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.

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.

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. 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.
and Revocations.

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 beftow the rest of the Profits upon the Re- paration of certain Highways. This Devise was held good against the Heir at Law, and the Parishioners had a Decree for the Profits.

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.

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
Law of Devises

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

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.

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.

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
and Revocations.

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 Cessuy que Trust in Tail is good, without any further Act to bar the Right in Tail. Ibid. 228.
Law of Devises

A. hath Issue B. and C. C. devise 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 devise 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. devise his peronal 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. devise 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 devise Lands (in Case he leaves no Son at the Time of his Death) to I. S. the Testator
and Revocations.

Teftator dies, leaving his Wife privement enjoint with a Son, this posthumous Son, is a Son living at the Time of the Teftator'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 Papift, but to a Protestant. Carteret and Carteret, 2 Will. Rep. 132.

A Papift cannot take a Freehold or Leafohold Estate by Will, because taking by Will, is taking by Purchafe, and by the express Words of the Stat. 11 & 12 W. 3. cap. 4. a Papift is defable to take by Purchafe; also Terms for Years are expressly mentioned in the Statute. Davers and Dewes, 3 Will. Rep. 46.

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

A. pofted, 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. pofted 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 Bollace and Newland. Vin. Abr. Tit. Devise; (1 7.) C. 4.
What Words pass a Fee in a Will.

Here we must observe, that the Intent of the Deviser 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 Deviser's Intention, that the Gift should continue beyond the Life of the Devisee.

So if A. devises his Lands to B. to give, fell or do what he pleases with them, these Words by the Intent of the Deviser, 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.

A Devise to a Man and his Successors carries a Fee, for by the Word Successors is intended Heirs, Quia hæres succedit patri.

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.

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 sufficient
Law of Devises

sufficient to convey a Fee; and the Reason of this Favour allowed in Testaments is, because the Testator is presumed inops conciliis at that Time; and though by the Feudal Constitution the Feoffors in all Conveyances 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.

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 its full Extent, and then it reaches the most remote Heirs.

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 commence
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.

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 praesenti; 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.

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, and

Moor Pl. 153.
Ro. Abr. 844.
Sid. 105.
Dyer 357.
Bendl. 300, 301.
6 Co. 16.
Colier's Cas.
Cro. Eliz. 378.
Cro. Jac. 527.
Pollexf. 554.
Cro. Car. 158.
Roll. Ab. 834.
Co. Lit. 9. b.
Cro. Eliz. 205.
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and consequently be a Loser, for where there is a Sum in Grosfs 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 10l. to his Executors, B. hath a Fee-simple; for the Quantity of the Sum in Grosfs is not material.

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.

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 Lose 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 6l. 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 Devissor, 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.

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

If a Man devises 100l. in Legacies, to be paid within a Year to several Persons out of the Land, of the Value of 10l. and then devises the Land to another, the Devisee hath a Fee in the Land; for though the Devise be not to him paying 100l. 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.

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 10l. per Ann. and to his Children 20l. 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.

A Man devised his whole Estate to his Wife, paying Legacies and Debts, his Debts being 20l. and personal Estate but 5l. 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 C 3 they
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.

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

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, Leafes, 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.

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 Devis 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.

* 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 Intent,
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 5l. 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 Construictions. 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 Premises to charitable Uses; resolved that B. had an Estate in Fee. Scrape and Rhodes in C. B. Ib. 542.

* A gave specific 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
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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

* 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 to 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, & expresso eo re quæ tacite infunt 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
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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.
* A. amongst other Legacies gives a Le-
gacy of 5l. to B. his Brother and Heir, 
and then makes his beloved Wife sole 
Heires and Executrix of all his Lands, Te-
ments, 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,) 50l. then 
after giving several Legacies says, and all the 
rest and residue of my Estate, Goods and Chat-
tels 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
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 Premises 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.

* 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 Wife,* 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 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 200l. 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.

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 Cafe, 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.

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.

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.

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.

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
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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 Deviser, which is always the Rule in Wills, there the Deviser 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 Deviser B. hath an Estate-Tail; for where the Deviser 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.

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.
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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.

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.

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 collective, 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.

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.

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 Descendants, 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.

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 second
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.

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 Gene-
ral, 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.

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 be-
fore the Issue of the eldest, especially when
he had, in the former Part of the Will, set-
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...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 Nomen collectivum, 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.

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.
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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.

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.

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.*
and Revocations.

* J. S. seised in Fee devised to J. B. for his Life only, without Impeachment of Wafe, and from and after his Deceafe, 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 Wafe, Remainder to J. S. his Grandchild for Life, without Impeachment of Wafe, 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 Abridg.
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Abridgment of the Law 61. 1 Abridgment Eq. 185. Case 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 Kemfley, 1 Freem. Rep. 293.

* Upon a special Verdict the Case was; R. G. feised 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
and Revocations.

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 be 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
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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
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 paying 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,
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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*.

* 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.


* 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

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and Revocations.


* 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 12l. 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 Prent' 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 200l. in Money at 12l. 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 Lessee 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 Purchasers. 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 Premises, 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.


* 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, 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.


* 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 crofs 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 10l. 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.

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,
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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 Leafe, as he that hath an Inheritance has over it, that he should be disabled from settling his Leafe, 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 Devifes 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 devis'd 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.

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 Lees found their Terms...
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 enjoy 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.

If a Termor devises his Term to A: for Cro. Jac. 108. 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.

If a Termor devises his Term to B: for Rol. Ab. 610. Life, and after to C. his Son, then to the eldest
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 executor 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.

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 executor 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.

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
and Revocations.

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 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 longer
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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 eldest; and in Hannifworth's Case, which is 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 Cafe 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 Cafe 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 Cafe 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 20l. 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.

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,
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.

_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._

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.

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 of
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of the two Survivors should take when the eldest died.

A. devised Lands to his Executors till his Son should come of Age; and when his Son should come of Age, then he should enjoy 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 Leese, 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.

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.

A having Issue five Sons, his Wife being ensent, 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.

A. being seised of two Messuages, and having a Son and two Daughters by three several Venterers, 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.
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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.
and Revocations.


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 except 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 praesenti*, 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. *Preq. in Chan’ 67.*

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and Revocations.

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.


7. S. being Tenant for Life, with Remainder to his Wife for Life, Remainder to his own right Heirs, 20 *Est.* 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 Daughter Elizabeth for ever, provided she has Heirs; but if my said Daughter dies before 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 devise 50 l. Annuity out of W. &c. to my **Bro-**
“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 Leffors 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 Annuities; 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 Curt*, 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 Devise for 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 executor 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
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 Lifetime 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 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. ii. Vin. Abr. Tit. Devise (L. 2.) Ca. 32. S. C. in toto; dem 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
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Charge of 50l. per Annum issuing out of White-acre to R. and his Heirs; Provision 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 Lifetime 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.

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and Revocations.

A Construction in favour of executory Devices 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 Device 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 Device. *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 Device of a personal Estate was held to be not a Possibility only, but an Interest vested and transmissible, *per Lord Talbot,* and affirmed in *Dom' Proc.* *Ibid.*
Of Terms for Years, and uncertain Interest.

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.

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.

A. devises his Lands to his Executors till his Son comes of Age; the Profits to be employed 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 Devisee 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.

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.

A. devises his Lands to B. and C. and the Survivor of them, until 800l. 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 cannot
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.

A Term was devis'd 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 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.

If a Term for 1000 Years be devis'd to A. the Remainder to B. and the Heirs of his Body, the whole Term is vested in A. and B.
and Revocations.

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 Jointenant is 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.
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. surrenders 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.

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

Vaugb. 261.
and Revocations.

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.

A. leaves 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

Vaugh. 262.
Cro. Car. 368.

Vaugh. 266.
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.

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.

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?

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 enjoy 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 Devifor can do that; but if the Devifor had laid, 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 Devifor'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. Cro. Eliz. 46.* Where a Devifee takes any Thing by an express Devife, he shall not have any other Thing devifed by the fame Will by an Implication, is destroyed by the Distinction of a necessary and a possible Implication; for the former Cafe proves that a necessary Implication will give an Eftate, though the Devifee took by an express Devife before, and a possible Implication is sufficient in no Cafe to convey an Eftate in Difinheriton 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 Devife to G. being Son and Heir, was void, and that the Daughters took no Eftate by that possible Implication; but their dying without Issue is only a Designation of the Time when the Nephew is to take.

A. devis’d 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 Devisee was only mistaken as to the Settlement of them in his Life-time.

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 enlarged 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. devise 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.

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.

A. having Issue a Son and two Daughters by several Venters, the Son died leaving two Daughters, and then A. devise one of his Messuages
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
sequent 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. Proc. in Chau. 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 entirely ceases. Lucas's Rep. 403.

Devise of Land to the Testator's second Son for his Life, he or his Heirs paying a G Rent
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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-Tai. 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.

N 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 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.
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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.

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

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.

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 Black-
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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 devised 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 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.

Pl. Com. 344. a.

Vent. 241.

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 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 Condition 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
and Revocations.

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.

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

G 4  Man
Man deviseth all his Lands, and afterwards purchases other Lands, and then new publisheth 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 feised 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.
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On 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.

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 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.
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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.

If a Man devises certain Land, and afterwards aliens it to a Stranger, and repurchases 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. \textit{Quaere.}

But if a Man devises all his Lands in \textit{D.} \textit{Moor} 404., and afterwards purchases more Lands in \textit{D.} \textit{Cro. Eliz.} 493., \textit{Ro. Abru.} 618. and \textit{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.

The Statute \textit{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 \textit{Authenticks}, 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.
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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.

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.

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,
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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.

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 expressly directs.

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.

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.
and Revocations.

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

A. makes his Will, signs it, and declare
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. Quare 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.
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
the Will was allowed to be revoked by these Words, though never put in Writing.

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.

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.

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

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.

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; yet
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.

If a Man devises Land to another, and after devises it to a Corporation, though this last Devise is void, because expressly 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.

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.

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.

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,
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. 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
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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 29 Car. 2. c. 3. has altered the Law in many of the before-mentioned 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, Tear- or Cancelling the same by the Testator, or in his Presence, and by his Consent.

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.
If a Man devises his Land in Fee, and after the making his Will, by Bargain and Sale makes a Tenant to the Præcie, 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 Leafe for twenty Years be bequeathed to J. S. and after the Testator makes a Leafe for fifteen Years, this is no Revocation; but if the Testator after his Will made takes a new Leafe for a longer Term, so as the former Leafe is surrendered in Fact, or in Law, this is a Revocation, or at least an Adnullation, for this is another Leafe, and not that which he had at the making of the Will.

If a Man feized 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 deviseed, mutatis mutandis, &c. M. S. Notes.

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

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 componens? 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 200l. to be repaid at three Years End, but within the three Years he fell sick, and declared he would not alter his
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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. devises his real and personal Estate to Trustees, their Heirs and Executors, in Trust to pay 15l. 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 300l. 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 15l. 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 Re­
turn 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 Sifter in Fee.
— After this he makes a Marriage Settle­
ment, and limits the Estate in strict Settle­
ment, though here the Remainder is limited
to his own right Heirs, yet the Settlement
shall be a Revocation of the whole Devise to
his Sifter. 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 after­
wards 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 subdivide out of the remaining Moiety. 2 *Will. Rep.* 333.
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 establishing a Settlement against the Reason and Policy of Common Law; in these Cases the Judges have thought fit to reject the Will.

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.
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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.

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.

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.

Thus where a Man, having Issue a Son and Daughter, devises 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.

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.

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.

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 disinhherits him, it were severe
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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.

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.

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
the eldest, is to make it an impertinent De-
vise, that being no more than *allum 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.

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,
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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.

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 Deviser was that J. S. should have the Use of the Land; and the Possession must necessarily follow it.

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.

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

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

\[3\text{Chanc. Cases} 35.\]
\[Cro. Jac. 590.\]
\[Cro. Eliz. 205.\]
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convenience or Danger of a Perpetuity, because \( \mathcal{S} \). S. is only tied up from Alienating but for Life, and his Heirs are at Liberty to dispose of it after the Death of \( \mathcal{J}. \ D. \).

And to this Purpose is the Case of Hind 3 Leon. 64. and Lyon, where a Man devis'd 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 \( \mathcal{J}. \) S. this was held a good future contingent Remainder to \( \mathcal{J}. \) 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.

Now as to the Disposition of Chattels by \( \text{1Ro. Abr. 610.} \) Will, we must distinguish between personal Chattels and Real; for if I devise a personal Chattel to \( \mathcal{J}. \) S. the Remainder of it to another, \( \mathcal{J}. \) 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; \textit{aliter} of an Uie: It was indeed formerly held that such Limitations of Remainders of
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 entire 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.

Therefore if a Term be devis’d 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 Companys 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.

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.
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.

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 heres viventis, and the Devise being immediate to the Heir, if he cannot take it at the Death of the Testator, he shall never take.
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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.

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.
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 bae 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 Lessee of the Plaintiff] 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 feised of any Land in the County of Kent, but afterwards by Deeds of Lease and Re-lease, dated the twentieth and twenty-first of March in the Year of our Lord 1700, Sir George Wheeler and others being feised 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 altogether; 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 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 to infanti 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 Raish 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.
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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 continues 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 Leafe, 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 Gollesborough 93. that comes up to this Matter; a Man makes his Will, having a College Leafe, or other Leafe, and devises this Leafe to J. S. after making which Will, he surrenders this Leafe, and renews the Leafe with the Dean and Chapter; suppose he then dies, the Question was whether the Devisee should have this Leafe; and it was held in that Case, that the Renewing of the Leafe was a Revocation of the Will, and that the Leafe 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 executor
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 Repudiation; for if there had been a Repudiation, 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 Devife 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 Chofe 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 dispossessed, 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 dispossessed, and he makes a Re-entry, such Re-entry purges the Dispossession, 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 Dispossession 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 Dispossession, and therefore is intitled to the mean 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 Lifetime,
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 devoted, 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
and Revocations.

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 seized.
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 tois Cur?*. This Judgment was affirmed upon a Writ of Error in the House of Lords 24 Feb. 1707.
TE 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 entirely 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 Construc-
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 expressly; 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 disposses 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 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 Telverton and Telverton: 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 Devisee 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.
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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 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
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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,
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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 Deviser had at the Time of making the Will, to remain unaltered, even to the Time of the Death, for that any, even 3 Lev. 108. 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.
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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.

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
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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 expressly 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 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
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...
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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 expressly 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 Consistance, 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
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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 dispossessed, 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. Rep. in Eq. 77. Greenhill v. Greenhill. 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.

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

J. S.
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J. S. seised in Fee devised Lands to his Granddaughter for Life, Remainder to his right Heirs Male for ever, and dies, leaving his Granddaughter 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
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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
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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 Hum-berstons, 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 Haflewood 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 pass'd 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
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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. Henage; 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.
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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 Granddaughter (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 Impediment of Waste, devised the same to Defendant, and if be 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.
and Revocations.

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 found 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

Devise of a peronal 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.
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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 550l. to his Daughter B. and *per Cowper* C. the subsequent Devise to B. makes it extreamly clear that the Testator meant 550l. 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 disoblged him, declares thus; I do hereby resolve not to give him any more than 20l. 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 80l. 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. M 2 His
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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.


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 expressly 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. bequeathes to her Grandchild B. some of her best Linen; this void for the Uncertainty;
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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 wherefoever, to me his said Wife, to be disposed of by me amongst my M 3 Children.
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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 devis'd 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
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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 £. to the and for which last-mentioned Sum of £. I have made a Deduction or Allowance to my said Son out of a Sum or Debt of £. 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 £. 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 £. 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-M 4 posed,
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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 1. and to my Daughter the Sum of 1. and to my Daughter the like Sum of 1. (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 1. a-piece) and to my Daughter 1. to my Son the Sum of 1. and to my Daughter 1. which 1. 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 Dispo-
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Dispositions 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 Premises 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

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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 intituled unto, as follows; (that is to say) To my eldest Son I give the Sum of l. and I do
and Revocations.

I do hereby forgive him the Sum of £. out of the principal Sum of £. which he owes me upon Bond; also I give to my Son the Sum of £. and in case he shall think himself obliged in Honour, or intend to pay to my Estate the said principal Sum of £. as he has declared, I do hereby forgive him the Sum of £. Part thereof; I give to my said Daughter £. and to my Daughter £. and to my said Daughter £. to my Son £. over and above what I have before given him; also I give to the Sum of £. 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 aforefaid the Sum of £. to be distributed amongst them at the Discretion of my Executors. Also I give to the said and of, &c. the Sum of £. upon Trust, to be placed out in the Purchase of new £.£. 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 Hus-
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...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...
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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 Granddaughters 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 Granddaughters 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 Granddaughters 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 Granddaughters; but if both of my said Granddaughters 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 £. and £. 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 Household 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 Persons 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 whereforever, not herein before otherwise effectually disposed of, after Payment of my Debts, Legacies, and Funeral Expenses, to my said Son

I do
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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.
_T HIS 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 Premises whereof I am seised in Fee, situate, lying and being 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, Leesees 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, Leesees or Undertenants; To have and to hold all and every the said last mentioned Messuages, Lands, Tenements, Hereditaments and Premises, 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 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 Leases, Undertakers 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 Undertakers 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
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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 Premises,
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, Parlia-
mentary or otherwise, to be issuing and
payable out of all and every the said last
mentioned Messuages and Tenements and
Premises, 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 An-
nunciation of the blessed Virgin Mary, and
Saint Michael the Archangel; the first Pay-
ment 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 Premises, to and with the
Payment of the said Annuity, yearly Rent
or
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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 distraint 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 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 Premises 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 Premises, 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 Premises, 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 N 3 and
and bequeath the Sum of £ 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 £ 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 £ 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 £ of like Money unto, &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
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other Person or Persons as he or they shall think fit, from Time to Time put and place out the said Sum of 1. 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 employ and improve the same 1. 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 1.) 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 expressly 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

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Laws and Statutes of this Realm shall disallow and prohibit the same Society or Congregations 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 £. 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 Household 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 . 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 expressly 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 afore-
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 Expenses, 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 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 Re-
presentative, 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 ei-
ther 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 other-
wise (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 Ufes 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 Control, 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 Premises 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 Discounts; and have now likewise sufficiently provided for my said Daughter
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 1. 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 Control, 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 1. Stock unto all and every, or such one or more of the Children or Grand-
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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 or 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 sq. 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 Dis-charges 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 there-of, 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 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 £ 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 Premises so to be purchased shall yearly and every Year be laid out and disposed of by the Churchwardens and Overseers for the time being.
being of the said Town of for the placing 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
and Revocations.

cafe the said Monument shall not from Time to Time be repaired and preserved in Manner aforesaid, then from and after Default of fuch 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 Interet of the said Churchwardens and Overseers for the time being in the fame Premiffes, fhall from thenceforth ceafe and be utterly void.

And whereas my Brother late of Merchant, deceafed, 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 fuch of my Children or other Relations, in fuch Sort and Manner, and in fuch Shares and at fuch Times, as I fhould think fit; now my Will is, and I do hereby direct that the faid Sum of l. fhall be distributed, divided and disposed of by my Executor herein after named, within fix Months after my Deceafe, to and amongst fuch of my Children, and in fuch Proportions and Manner, as herein after mentioned and expreffed, (that is to fay) To my faid Daughter the Sum of l. (Part thereof) to my faid Daughter the like Sum of l. (other Part thereof) to my faid Daughter the like Sum of l. (other Part thereof) and all the Residue of the fame l. to my Daughter Item; I give, devife and bequeath all and every my Manors, &c.
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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 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 Witnes, &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,
and Revocations.

ordain, constitute and appoint them the said C. D. and joint Executors of my said Will, as fully and effectually to all In- tents 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 (the being since deceased); and I do hereby ratify and confirm my said Will and all the Gifts, Devises, Be- queaths, Matters and Things therein con- tained, 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 wife 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 whereforever, 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 1. 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 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 Expense 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 1. 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 1. 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 1. of like lawful Money, and all my Wearing Apparel, in case she shall be living with me at the Time of my Decease, but not otherwise. Item, I give
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 nearest Relations of next of Kin, in the same Manner and Proportion as the same would pass and be distributable 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 the Name of God, Amen. I A. B. of, 
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I 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 thereof 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 Premises 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 here-in after 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 thereof shall be possessed of the last mentioned Premises 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 £, 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 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 empower my said Wife and her Assigns to distrain for the same upon any Part of the said Premises; 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
and Revocations.

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 Leases 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 Death 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
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, respect-ively 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 Granddaughter 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 Granddaughters 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 Granddaughters shall marry without such Consent as afore-
said, then the respective Legacy or Legacies of such of them to 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.

P 3 THIS
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 Writ-
ting, 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
aforefaid) be set down, mentioned and ex-
pressed to be by me given to them respec-
tively; also I give and bequeath unto F. A.
of in the County of Esq;
and H. B. of, &c. and to their Heirs and
Asigns, 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 £
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 Representa-
tives of such Survivor, shall and do pay, ap-
ply and dispose of the said Annuity or yearly
Rent-charge of £ unto my said Daughter,
or unto such Person or Persons, and for such Uses and Purposes, as the 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 Control, 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 1. 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 Premises 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 Control, 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 1. 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 Mansors, 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 surrendered 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 Benefic 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 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 Expenses, 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, Lees or Undertennants, 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, Lees or Undertennants (which said Copyhold Messuages, &c. I have duly surrendered to the Use of my Will) To have and to hold, all and every the said Messuages, Lands, Tenements, Hereditaments and
and Premises, 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 Appurtenances thereunto belonging, heretofore in the Tenure or Occupation of To have and to hold the said last mentioned Messuage or Tenement, and Premises, 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 Premises, 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 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 Premises, 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 $1. accordingly; and my will is, that in case the same Annuity, yearly Rent or Sum of $1. 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 Premises charged with the said Annuity as aforesaid, and disfrain 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 Premises respectively, To have and to hold the said last mentioned Messuages and Tenements, Hereditaments and Premises, 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 10s. 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 Provisiones 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, or touching the Premises 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 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
Law of Devises

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 referred 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
and Revocations.

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 Releafe granted, releaft or conveyed, with their and every of their Appurtenances, be and enure, and I do hereby give and devise the fame in Manner following, that is to say, To the Ufe 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 Waffe; and from and after the Determination of that Estate by Forfeiture, or otherwise in his Life-time, then to the Ufe of the said T. B. I. L. and E. R. and their Heirs, during the natural Life of the said H. B. in Truft to preserve the contingent Remainders herein after limited, from being defeated and deftroyed, and for that Purpofe to make Entries or bring Actions, as the Cafe 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 fame Premiffes to his own Ufe; and from and after the Deceafe of the said H. B. to the Ufe of M. the Wife of the said H. B. for the Term of her natural Life, without Impeachment of or for any Manner of Waffe; 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 issueing; 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 the 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 Death to and for the said M. his Wife, in Case she shall survive him, by Indenture to make any Lease or Leases of the Premises, for any Term or Number of Years, not exceeding twenty-one Years from the Making thereof, to 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
and Revocations.

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.

Q 4 A Pre-
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 be 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, 1. per Ann. for my Son B.'s Maintenance until he be put to a Grammar School 1. per Ann. and when he is placed at a Grammar School 1. 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.
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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 £ 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 1. 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 Premises, 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 Granddaughter 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 Granddaughter 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 Premises, 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 £: to be raised and paid as aforesaid, I do hereby give and bequeath unto my said Granddaughter 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 £: 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 the aforefaid, (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 the aforefaid, (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 aforefaid) unto and his Heirs for ever.

I give to A. B. and C. D. Sons of my Brother T. B. the Sum of £1 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
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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 unfold 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 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 Money 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 Premises, 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 Premises, to the first Son of the Body of my said Son W. lawfully issuing

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fuing (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 Premises, 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
and Revocations.

Sum of 1000l. 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 1000l. 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 1000l. 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 R 2. E. F.
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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
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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 levy-ing and raising, by or by the Way or Means of making any one or more Leaf or Leaves, 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 1000l. 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 1000l. 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 Free-hold 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 wife 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 Leafe or Leaves, 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 Leafe or Leaves 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
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the said Manor of, &c. and other the Pre-
misses, 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 re-
spective Ages of sixteen Years, the Sum of
100 l. per Annum of like lawful Money; and
from thenceforth until they shall have respec-
tively attained their respective Ages of eigh-
teen 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 Mo-
ney; the same to be paid to every of them
respectively from time to time by my Exe-
cutors herein after named, out of my real
and personal Estate, by equal quarterly Pay-
ments 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 Pay-
ment 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-

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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, fell 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 T. 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 where-as 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,
and Revocations.

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 thenceforth
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 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 for 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 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 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

and Revocations.
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. Gentle-
man, 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, situ-
ate, 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 Arch-
angel 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, Messu-
ages, Lands, Tenements, Hereditaments and
Premises chargeable therewith, or any or
either of them, or any Part or Parts thereof,
and Revocations.

to enter and distress, and such distresses and
distresses to detain, keep and dispose of as
he shall think fit, until he shall be fully sa-
tisfied 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 gi-
gen 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 execu-
tion 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 per-
sions, unto my said grandson A. B. his exe-
cutors or administrators.

Also
Law of Devises, &c.

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

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.

A.B.

C. D.
E. F.
G. H.
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The Intent of the Devisor (if apparent) will supply the Want of proper Words in a Devise, 17, 30

But a Devise cannot direct an Inheritance to descend contra the Rules of Law, 30

A Devise to one in perpetuum, or to one and his Heirs for ever, or to one in Feodo simplici, or to him and his, or to one & Sanguini suo, will carry a Fee, 17

So a Devise to A. and his Successors, 17

These Words, “I release all my Lands to A. and his Heirs,” will pass a Fee, 17

So if “I appoint that A. shall have my Inheritance, if the Law allows it,” or “that A. shall be my Heir of my Lands,” a Fee passes to A. 17

A Devise 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, 18

A Devise to his Son and Heir, and if he dies before twenty-one, and without Issue of his Body then living, the Remainder over, the Son survives twenty-one Years; this is a Fee-simple in the Son, 18
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A. devises Black-acre to his Son; item, he gives White-acre to his said Son and his Heirs; Black-acre is for Life, White-acre in Fee. Page 19

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 10l. in gros 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 6l. 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 100l. which A. owes B. to A.'s Executors, B. takes a Fee upon his Release of the 100l. 20

So if A. devises 100l. in Legacies, payable out of Lands of 10l. 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 10l. per Annum, and to his (other) Children 20l. a-piece; this is a Devise in Fee to the eldest Daughter only.

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

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

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,

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.

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 devises 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
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Year after his the Teftator'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 Teftator'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, Teftator gave several Annuities, charged upon the Premises, 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. seifed in Fee devised his Lands to Trustees and their Heirs, in Trust for B. and C. for
The TABLE.

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

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 Waft, 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 S.'s Will,
The Table.

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 for M. his Wife, and £3000 a-piece to his three younger 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,

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,

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,

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

J. S. had no Lands in A. but Tithes, and devises all his Lands in A. the Tithes pafs.

A. (int' al”) gives 5l. to B. his Brother and Heir, and makes his Wife sole Heirefs and Executrix of all his Lands, Tenements, Goods and Chattels, the same to fell 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.

As to all my temporal Estate, I bequeath to my Nephew J. (Testator's Heir at Law) 50l. 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 Ex-ecutrix; this is a Devise of the Fee-simpe Estate.

The Word Estate at or in such a Place may carry a Fee.

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.

The Words [I devise all my temporal Estate] the same as [I devise all my worldly Estate] and pafs a Fee.

A. has a Fee-simpe 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-
The TABLE.

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

What Words in a Will give a Fee-simple, and what a Fee-tail. Vide Barnard’s Rep. in Eq. 7, 9.

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,

And so if the Devise be to one & Semini suo; contra, if B. has Issue a Son, who has Issue a Daughter,

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,

A Devise to B. and his Children or Issue, B. then having Issue, this makes B. only Joint-tenant for Life with his Children,

But if B. had had no Children at the Time of the Devise, he had taken an Estate-tail,

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,

A. devised Land to B. his Son, and if his Daughter C. survived B. and his Heirs, she...
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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/.
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

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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 devisèd 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.

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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 Ḇ. Ḅ: for his Life only, without Impeachment of Wafte, and after his Death 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; Ḇ. Ḅ. takes only an Estate for Life, and why, 39

A. devised Lands to his eldest Son for Life, without Impeachment of Wafte, Remainder to Ḇ. Ṣ. for Life, without Impeachment of Wafte, 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 Ḇ. Ṣ. in Tail, and so to the fifth Son, and then devised that if the said Ḇ. Ṣ. should die without Issue Male, the Land should remain to Ḇ. Ḅ.— Ḇ. Ṣ. 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

Ḇ. Ṣ. 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
The TABLE.

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,

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 Plain-tiff: Quære if the Son has only an Estate-Tail, and so the Devise to the Daughters to take Effect, 41

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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.

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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.

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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.

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