THE

LAW

OF

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THE

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OF

USES and TRUSTS.

Of Uses.

A N USE is where the legal Estate of Lands is in a certain Person, and a Trust is also reposed in him, and all Persons claiming in Privity under him, concerning those Lands that some other Person shall take the Profits, and be so seized or possessed of that legal Estate, to make and execute Estates according to the Direction of the Person or Persons for whose Benefit the Trust was created.
Uses and Trusts.

By the Rules of Common Law, he for whose Use such Person was so seized, had neither *jus in Re*, nor *ad Rem*; for if he came upon the Land, he was a Trespasser; and the Reason was, because where Lands were given to one, to the Use of another, according to the Construction of the Common Law, which is merely upon the Words of a Contract, the Limitation of the Use was adjudged repugnant and void, because by that Law he can't be otherwise than a plenary Proprietor; and consequently he must have it to whom the Property was first limited by express Words; and by another Rule of Law no Possession could pass from one to another without solemn Livery; and tho' the Consideration was never so valuable, if that Ceremony was omitted, nothing was transferred.

But the Chancery, that examines the Conscience, with Regard to Men's Actions, considers with what Design Agreements are made; and 'tis contrary to natural Equity, that when any Man has taken Lands to keep for another, he should deceive him, and take the Profits himself; or that a Purchaser, when he has paid his Money, should not have a sufficient Conveyance in Law executed, and a specifick Performance
formance of the Thing contracted for, and take the Profits according to the Agreement.

The Original of Uses was from a Title under the Civil Law, which allows of an usufructuary Possession, distinct from the Substance of the Thing itself; and 'twas brought over to us from thence by the Clergy, who were Masters of the Civil Law, for when they were prohibited from taking any Thing in Mortmain, and after several Evasions by purchasing Lands of their own, Tenants suffering Recoveries, and purchasing Lands round the Church and making them Church-yards, by Bull from the Pope, at last this Way was invented of conveying Lands to others to their own Use; and this being properly Matter of Equity, it met with a very favourable Construction from the Judge of the Chancery Court, who was in those Days commonly a Clergyman; and the Clergy thought this a Statute contrary to natural Justice, and so could easily tolerate any Act in evading it. Thus this Way of Settlement begun; but it more generally prevailed among all Ranks and Conditions of Men, by Reason of the civil Commotions between the Houses of Lancaster and York, to secrete the
Uses and Trusts.

Possessions, and to preserve them to their Issue notwithstanding Attainders: And hence began the Limitation of Uses with Power of Revocation. And here is to be considered,

1st, What is the Nature of Uses at Common Law.
2dly, What Alterations are made by 27 H. 8.

First, At Common Law.

And here are to be considered eight Things.

1. Who may be seized to an Use.
2. What are the Properties of an Estate in an Use.
3. Who may raise an Use.
4. To whom it may be raised.
5. Where, and what Considerations are necessary for the raising an Use.
6. In what Manner Uses are declared.
7. The several Sorts of Uses.
8. The Inconveniences of Uses.

1 Who
Uses and Trusts.

1. Who may be seized to an Use.

To that two Things are necessary.

1. That the Person be capable of Confidence and Trust.

2. That he take it up under the Trust limited and appointed.

1. That the Person be capable of Confidence and Trust.

1. Bodies Politick are not capable of an Use or Trust, because they are Bodies framed at the Will of the King, and are no further capable than he wills them; and 'tis his Will that they should purchase for the common Benefit, and for the Ends of their Creation, and not that they should take any Thing in Trust for others; also being incorporate, the Chancery had no Process on the Persons to compel them to discharge their Trust.

2. Aliens, and Persons attainted, are not capable of an Use, for they can take for no Man's Benefit but the King's.

3. The King cannot be seized to an Use, because there is no means to

B 3

Footnote to Uses, 538. C. S. 13.
compel him to perform; for the Chancery has only a delegated Power from the King over the Consciences of his Subjects; and the King, who is the universal Judge of Property, ought to be perfectly indifferent, and not to take upon him the particular Defence of any Man's Estate, as a Trustee.

2. That he take it up under the Trust limited; which may be done two Ways.

1. By express Words.
2. By Implication.

1. By express Words; as if by the Words of the Deed a Man takes it to his own Use, or to the Use of another, there can be no Averment that he takes it as a Trustee in any other Manner; for there is such a Sanction given to all solemn Acts of contracting, that they cannot be construed directly contrary to their own Expressions; but that must be where the Deed is executed upon a valuable Consideration; otherwise 'tis looked upon as a fraudulent Conveyance against the Trusts, and has not the Sanction of a lawful Deed, which the Oaths of Men ought not to defeat.

2. By
Uses and Trusts.

2. *By Implication*; which is two-fold.

1. When one takes a Feoffment, having Notice of the several Uses and Trusts, there the Party is supposed to take it under those Uses and Trusts; for the Law will suppose a Man's Actions rather just than otherwise.

2. Where a Man takes it upon a valuable Consideration, there he is supposed to take it to his own Use, for otherwise he would not have given an Equivalent.

If a Feoffee to Uses makes a Feoffment in Fee by Deed, upon an equitable Consideration to J. S. and his Heirs, to the Use of his Heirs expressly, J. S. shall be seized to his own Use, tho' he had Notice of the former Trust; for where the Deed expresses the Use, an implied one cannot be averred.

A Feoffee to the Use of A. makes a Lease to B. reserving a Rent, tho' B. has Notice of the Use, he shall be seized to his own; for Words of Demise equally pass an Use as if there were express Words to transfer it.

If a Feoffee to an Use makes a Feoffment in Fee upon a valuable Consideration, with Notice, the second Feoffee shall be seized to the former Uses, for the Consideration imports a Seisin to his own
own Use, the Notice, a Seisin to the former Uses, and where the Act is capable of a double Interpretation, that must be taken which consists most with Equity.

If a Feoffment be made with Consideration, and without Notice, the Feoffee shall be seised to his own Use, for here the Act is capable of no other Construction.

If A. is enfeoffed to the Use of B. and A. enfeoffs C. without Consideration or Notice, 'tis still to the Use of B. for tho' when a Man aliens without Consideration, 'tis to the Use of the Feoffor, yet in this Case it cannot be to the Use of A. because he himself held it to the Use of B.

A. in Consideration of natural Affection, covenants to stand seised to the Use of himself for Life, the Remainder to his Daughter for Life, the Remainder over, A. reciting the Uses, grants the Reversion to F. and his Heirs expressly, but without Consideration, F. shall take it subject to the Uses, causa qua supra.

J. S. seised to the Use of A. in Tail, the Remainder to B. in Tail, Remainder to the right Heirs of A. J. S. and A. join in a Feoffment to three, two of which have Notice of the former Uses, and therein they limit new Uses, the new
new Uses shall stand; for A. has a Power to discontinue his own Estate in Tail, and the Remainder also; which is done by this Feoffment; and they cannot be re-continued by the Entry of J. S. who cannot enter contrary to his own Act. 3

But B. will have a Remedy against all the Confederates in the Breach of this Trust, viz. J. S. the Feoffees that had Notice, and out of the Estate of A.

If a Feoffee to an Use binds himself in a Statute, &c. and the Conusee takes out Execution, he shall have it to his own Use; for the Chancery will not relieve against the Act of Law, where the Property is vested upon valuable Consideration, and with no fraudulent Design.

A Feoffee of a Manor to the Use of J. S. releases to the Tenants, they shall not have it to the Use of J. S. for the Seigniory is drowned in the Tenancy which they had to their own Use, and there can be no Trust without an Estate in Being.

But by the modern Course of Chancery, if the legal Estate be merged, and the Owners of the Land have Notice of the Trust, the Land is invested with it, and they shall be enforced by a Decree in Chancery to set it up again, for the Land was at first bound, and atten-
attendant to answer the Trust; and where the Owners of the Land knew of this Trust, 'tis Iniquity in them to destroy it.

A Disseizor, Abator, or Intruder, cannot be seized to an Use, for they take it under no Trust, but defeat the Estate to which the Trust was subjoined, and the Chancery has no Power to try the Right of Inheritance between them, for the Right of that Title is triable only at Common Law; but if he, who has the Use, exhibits a Bill against the Feoffee to an Use, the Chancery will order him to try the Title with the Disseizor at Common Law.

If a Feoffment be made to one for Life, Remainder in Fee to the Use of J. S. and the Tenant for Life aliens in Fee, with Notice, the Alienee shall not stand seized to the first Uses; for the Tenant for Life has no Power to alien, and now the Feoffee is in of an Estate by Wrong, quite different from that to which the Trusts were annexed.

A Lord by Escheat shall not be seized to an Use, because he is in by a Title paramount, and seized of an Estate antecedent to that to which the Use is annexed. Lord of a Villain, a Lord that enters for Mortmain, or recovers by Cessavit, or a Tenant by the 

Curtesie
Uses and Trusts.

Curtesy cannot be seized to an Use, for they claim by the general Laws and Statutes of the Kingdom, which the Chancery has no Power to alter, and do not take as Substitutes under those private Contraets, to which Trusts are annexed, and so cannot be punished as corrupt Breakers of that Trust which they never undertook.

But a Tenant in Dower may be seized to an Use, for a Tenant in Dower claims by the Marriage Agreement, and a sufficient Provision is made for her by Law, which is a third Part of his Estate; and since a private Contract is the Original of her Title, she continues the Estate of her Husband as he purchased it, and under the same Trust and Agreements.

An Occupant may be seized to an Use, for an Occupant continues the Estate of Tenant for Life, as his Substitute, and so must take it as he had it.

Tenant in Tail cannot be seized to an Use, for the Land is by the Act of Parliament appropriated to Tenant in Tail and his Heirs; so that the Chancery, which is bound by the Act of Parliament, cannot turn it to any other Purpose.

Where
Where there is a Tenant for Life, the Remainder in Fee to the Use of another, and he in the Remainder enters and dispossesses the Tenant for Life, he takes the Estate as a Disseisor, and is not capable of taking any Estate after the Trust ended, for he cannot be remitted contrary to his own Act.

If a Man possessed of a Term in Trust, commits Treason, whereby the Term is forfeited to the King, the King is not subject to that Trust, for he is in the Post, and the Law disposing the Property of all Criminals to the Use of the King, he cannot take it under the Trust limited.

Where there is a Tenant for Life, the Remainder to A. to the Use of B. and the Tenant for Life makes a Feoffment in Fee, and A. releases to the Feoffee, the Use is gone for ever, causa supra.

If Mention be made of Persons in the Post, it seems, by the Opinion of the Lord Hale, they shall be liable to the Trust.

If a Man grants a Seigniory to A. to the Use of B. and the Tenancy Escheats, A. shall hold the Tenancy to the same Use; for a Seigniory supposes an old Property after the present Fee is determined, and since A. has taken
Uses and Trusts.

it up to the Use of B. when the Tenancy comes in, he shall have it to those Uses to which the Property was at first granted.

Where Feoffee to A.'s Use vouches and recovers Land in Value, he shall be seized to his first Use, for the Recompence must ensue the Loss, and Cestuy que Use lost his Use by the Recovery.

Where A. Feoffee to the Use of B. Bro. F. to grants a Rent to C. having Notice of Uses, 337.
the Use, the Rent shall be to the Use of B. for A. has the Freehold in him, and now at the Common Law may raise a Freehold out of it, but he has the Fee in Trust, and so in Conscience cannot raise a Freehold but under the same Trust; and since in that Case he gave Notice of the Trust, he has created the Rent under the Trust according to his Power; and so if A. makes a Feoffment to D. without Notice, and B. releases to D. after the Stat. of R. 3. and before the Stat. of H. 8. this did extinguish the Rent; for by that Stat. the Release of Cestuy que Use is an Act sufficient to convey the Freehold of the Rent, and so 'tis merged in the Land.

But if Feoffee to a Use grants to Bro. F. to J. S. a Way or Common for his Beasts, Uses, 338.

this
this, *ex natura rei*, cannot be but to the Use of the Grantee.

The Feoffee to an Use may grant the Office of a Steward, Bailiff, Receiver, &c. for he is the Instrument to convey the Profits to *Cestuy que Use*, and now it may be in his power to appoint all means in order thereunto; but this it seems must be by the Consent of *Cestuy que Use*; for this Appointment is wholly to convey the Profits to him.

But during the Minority of the Heir of *Cestuy que Use*, all Feoffees may grant such Offices without his Consent, for the Law supposes a tacit Consent when 'tis for the Benefit of the Infant.

But they cannot settle Fees to such Officer during Life, without the Consent of the Infant when he comes to his full Age, for that may be to his Prejudice.

A Feoffee to a Charitable Use makes a Feoffment upon valuable Consideration, and without Notice, the Purchaser shall not be seized to a charitable Use, nor any Persons claiming under him, tho' they have Notice; for he is expressly excepted by the Statute, and the Lands once discharged are never after chargeable.
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But if the Feoffee to a charitable Use makes a Feoffment to A. for a valuable Consideration, and without Notice, and A. enfeoffs B. for a valuable Consideration, without Notice, B. shall be seized to the charitable Use; for the Words of the Statute are, that the Commissioners shall come and order the Lands and Tenements to be employed according to the Party’s Intent, so that the Statute appropriates the Lands to the charitable Uses in the Hands of A. and B. his Substitute takes it under the Charge, and in setting forth the Title how he has obtain’d them, he must shew the original Purchase which was under the Charge.

If a Man gives Land to A. and a Rent out of it to charitable Uses, B. purchases the Land, with a good Consideration, and without Notice, he shall hold it charged; for first the Rent is not extinct by the Purchase, because appropriated by the Statute to the charitable Use, and so cannot be merged according to the Rules of Common Law while the Charity continues.

2. 'Tis not within the Exception of the Statute, for that extends only to the Purchasers of the legal Estate to which the Charity is annexed, and B. has purchased the legal Estate of the Land.
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Land and not of the Rent, for these are as distinct Rights in A. as if they had been in different Persons.

2. 'Tis to be considered what are the several Properties of an Estate in an Use.

1. If an Inheritance be purchased, 'tis descendible to Heirs at Law, and here 'tis to be considered,

1 What are the Descents of an Use in Possession.
2. What is the Descent of an Use in Reversion.

1. Of the Descent of an Use in Possession. If an Use be limited to a Man and his Heirs, the Court of Chancery will direct it to go to such Persons as the Common Law has appointed to represent him; for the Chancery cannot alter the common Import of Words, or set up Rules of Property opposite to the Rules of Law; for there is no legislative Power in the Chancery; and to abrogate and set aside Laws, is equal to the Power of making Laws.

1 Co. 121.
C.L. 14. 4
Rep. 22.

There is possessio fratris of an Use, for the Rules of Inheritance govern in Chan-
Uses and Trusts.

Chancery; now none can make himself Heir, but he that represents the person that was last in possession; for he that last possessed it had the entire Dominion and Property, which none else can have but by standing in his Place; and no Man can stand in his Place but one of the whole Blood.

If Lands descend on the Part of the Co.L. 13, Mother, and the Party makes a Feoffment in Fee, without Consideration, or reserving this Use to him and his Heirs, the Use shall descend to the Heirs of the Part of the Mother; for he that last possessed it had the entire Dominion and Property, which none else can have but by standing in his Place; and no Man can stand in his Place but one of the whole Blood.

If Lands descend on the Part of the Co.L. 13, Mother, and the Party makes a Feoffment in Fee, without Consideration, or reserving this Use to him and his Heirs, the Use shall descend to the Heirs of the Part of the Mother; for he that last possessed it had the entire Dominion and Property, which none else can have but by standing in his Place; and no Man can stand in his Place but one of the whole Blood.

If a Man for a valuable Consideration purchases Lands, or the Use of them, to himself, yet they shall descend to the Heirs on that Side.
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Ascend to his Heirs; for there wants not the Word *Heirs* to create an Inheritance in an Use; for 'tis Equity that a Person, who gave a Consideration for the Fee, should have it; and that is not setting up any other Rules of Property opposite to the Rules of Law, but mitigating and dispensing with the Rules of Law, in particular Cases, where they should happen to shelter Dishonesty and Oppression: But now since the Statute, no Inheritance can be raised without the Word *Heirs*, because now the Uses are transferred into Possession, and must be governed by the Rules of Possessions at Common Law, as to the Words that create new Estates.

The *Possessio fratris* of an Use follows the Analogy of Descents at Law; and so if a Man seiz'd in Fee of an Use, had Issue a Son and Daughter by one *Venter*, and a Son by another *Venter*, and devises it for Years, and dies, and the Son dies during the Term, the Daughter shall have it, and not the Son; otherwise it had been if he had devised it for Life.

As the Court of Chancery cannot alter the Descent of the Land, so it cannot alter the Law and Custom of a Place;

Crito. Eliz. 478.

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Place; for all immemorial Usages are Part of the Laws of the Land: And so if a Man makes a Feoffment in Fee of Lands in Gavel-Kind, or Burrough English, without a Consideration, to the Use of the Feoffor and his Heirs, this shall go to all the Sons, or to the youngest, according to the Custom.

If there is a Custom, that Lands shall go to the eldest Daughter only, and the Party makes a Feoffment in Fee to the Use of him and his Heirs, the Use shall go to the eldest Daughter.

2. Of Descents of a Reversion which are governed by these Rules.

First, Where a Man has an Estate in himself, and limits an Estate to his Right Heirs, he is seized of the whole Estate.

In the same Manner, where a Man has a Use in himself, and limits a Use to his own Right Heirs, the same Use is in him still. The Reason is, because Ancestor and Heir are Correlative; and so whoever represents me as to my Estate vested in him after my Death, I represent him during my Life as to that Estate; and consequently giving an Estate, already in me, to my Heir, is not departing with it; for 'tis a Dis-
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position in other Words to my self, and so all Things remain in statu quo.

But where I limit a Use, already in me, to my own Representatives, and add a Qualification to those Representatives; tho' this be not Departing with the Estate, because these are not Words to convey it out of my self, yet there is an Alteration of the Estate in my self, and the Use shall alter and descend to my Heirs that came under that particular Distinction and Qualification; because the Use has always been changed and modified according to the Intent of the Parties that have the Interest; and such a particular Estate shall be supposed in them, as may best answer the Intent, ut res valeat.

If a Man seized of Lands in Fee, makes a Gift in Tail, or a Lease for Life, Remainder to his own Right Heirs, they take by Descent, as in the old Reversion.

If A. seized of Lands in Fee, grants them by Fine, during his own Life, the Remainder to his own Right Heirs, the Reversion is in him, and he may grant it.

A Fine sur Conuissance de Droit que il et sa Feme ad de son done to the Husband, with a Remainder to the Conufor, for Life, Remainder to the Right

1 Vent. 278, 9.
1 Co. 47, 137, a.
Co.L. 22. b.
Hob. 27.
1 Mod. 96.
1 Ro. Ab. 827, 841.
627.
Dy. 156, 237, 362.
Right Heirs of the Husband, they are in the old Reversion, and the Wife surviving shall have it for Life.

If a Man makes a Feoffment without a valuable Consideration, to the Use of himself, for fifty Years, the Remainder to B. in Tail, the Remainder to his own Right Heirs; the Feoffor is in the old Reversion, and he may devise it; for a Feoffment without Consideration does not dispose of the Use thereof; the old Use is in him still.

But it hath been held that if the Feoffment were made upon a valuable Consideration, in as much as that is a Disposition of the Use, there is an Estate in the Feoffees to retain it till the Death of the Feoffors; and this is an Estate of Freehold, and affords a Tenant to the Precipe, and an Estate to support the contingent Remainder.

If a Man covenants to stand seized to the Use of his Heirs, begotten on a second Wife, that is an Estate in Tail, vested in the Ancestor.

2. Where a Man limits an Estate of Freehold to me for Life, with a Remainder to my Heirs, tho’ after never so many particular Estates, the Remainder is vested in me for three Reasons.
Uses and Trusts.

First, Because otherwise you construe the Grantmost in Favour of the Grantor, and let him in to the Reversion during the Contingency, to punish Waste and enter for the Forfeiture.

Secondly, Because the whole Advantage must be intended to me when I am first named to take the same Sort of Estate in the Conveyance, and the Benefit is not designed to any other particular Conveyance, but to all other Persons that bear the Character of my Representatives; so that the Limitation is for my Sake, and only intends to enlarge my Estate after the particular Estates are worn off, yet cannot be construed in the same Manner as where an Estate is limited to A. the Remainder to the Right Heirs of B. because there is nothing in the last Case to lead the Mind to such an Interpretation; for here is no Benefit originally designed to B. but to his Heir primarily; and so the Heir takes as a Purchaser.

But if the same Sort of Estate be not limited to the Ancestor as to the Heir, the Heir must take by Purchase; for it is plain the Donor designed him an original Benefit, quite different from what he designed the Ancestor.

Thirdly, Because when the particular Estates are worn off, they are as if they had
had never been; and so the Heir should claim by Descent, as in his better Title, and as of the Dying seized of his Ancestors.

Another Reason of this Law is, because it must be a contingent Remainder, or a Remainder vested; but it could not be a contingent Remainder; because of Necessity it must be in the Ancestor, and the Person that represents him, and so construed a Remainder vested.

If J. S. makes a Feoffment to the Use of A. for Life; the Remainder to B. in Tail, the Remainder to the Right Heirs of A: the Remainder is vested in A. and his Heirs claim by Descent;

But if J. S. makes a Feoffment to the Use of A. for a Term of Years; the Remainder to B. in Tail, the Remainder to the Right Heirs of A. the Remainder is not vested in A. but his Right Heirs take by Purchase.

If an Estate be limited to A: for Life, Remainder to the Heirs Males of the Body of A: and to the Heirs Males of such Heir Male, there is a Trust executed in A. because this is within the Rule; for here an Estate is limited to A. for Life, with a Remainder to his Heirs; and so the Word Heirs is not a Name of Purchase but Limitation.
But if an Estate be devised, or *per Hale*, be conveyed to A. for Life, the Remainder to his next Heir Male, and to the Heirs Males of the Body of such Heir Male; there is an Estate only for Life in A. and a contingent Remainder in his Heir, as a Purchaser, which vests *eo instanti* that the particular Estate determines; for tho' there be an Estate for Life in A. yet the Remainder is limited to his Heir only, in the singular Number; and Heir in the singular Number only, is a Word of Purchase, and not of Limitation.

If an Estate be limited to a Man and his Heir, he has only an Estate for Life; for it cannot go in perpetual Succession, because no more Representatives than one only is expressed. The Heir cannot take by Way of Remainder, because it is limited by a Conjunction Copulative; and as Jointenant he cannot be, because *nemo est Hares viventis*.

But if a Man devises an Estate to a Man and his Heir, a Fee-simple passes, and Heir there is taken as *nomen collectivum*, to answer the Intent of the Party, which appears to be, that he intended to pass a Fee, as if it had been limited to the Devisee and his Heirs for ever.
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But if an Estate be devised to A. during the Life of B. in Trust for B. and after the Decease of B. to the Heirs Males of the Body of him the said B. now living; that is a Remainder vested in the Heirs of B. for Heir now living, in that Devise, must be taken as a Periphrasis of the Heir apparent, who is called Heir in Law, as may be observed by the Words 

quare filium & Heredem rapuit.

2. A Feme is not dowable of an Use, for the Privilege of Dower was only to Freeholders Wives; now an Use being no Freehold, is not within that Law, and the Chancery allows the Feoffees to be seized to no Body's Use, but those that are particularly named in the Trust.

And that being the Case, it became a Practise; so the Father and Friends of the Woman, procured the Husband to take an Estate from the Feoffees, or others seized to his own Use, for Life, and then to the Use of his Wife, for Life, before or after the Marriage; which was the Original of Jointures.

Nor can the Husband be Tenant by the Curtesie of an Use, causa qua supra.


a Dower
Usages and Trusts.

a Dower was annexed to it to alien the Lands.

Allen 16.

1. At Common Law, Cestuy que Use might alien the Use, because every one may dispose of the Rights that were in him; or he may prefer a Bill in Chancery to make the Tenant execute the Use in himself.

But at Common Law, if Cestuy que Use had entered and made a Feoffment in Fee of the Lands, this had not been good to pass the Estate to the Feoffee; because Cestuy que Use had not the Freehold in him, and so could not pass it to another; but by his Entry he was a Distreisor: Yea in this Case, if the Feoffees of Cestuy que Use had re-entered upon the Purchaser, the Feoffees would not have had the Lands to their own Use by the original Trust; and they would not have stood seised to the Use of Cestuy que Use, because he had transferred the Use to another.

If Cestuy que Use makes a Lease for Years, rendering Rent, the Reservation is void, unless it be by Deed; for the Rendering Rent to a Man is an Acknowledgment of the holding Lands from him; but here the Lands are not held of Cestuy que Use, but of the Feoffees who have the Reversion. But if the Reservation be by Deed, the Feoffees
fees are stopped by their own Act to deny the Tenure of Cestuy que Use.

If Cestuy que Use may make a Letter of Attorney to give Livery, Quare; or if the Act confines it to the Act of Cestuy que Use.

2. By the Statute of 1 R. 3. c. 1. a Power was annexed to a Use, that Cestuy que Use should alien the Lands.

The Reason of that Statute was, because Cestuy que Use in Possession often aliened the Lands, and then the Fees entered, which caused a great deal of Vexation and Chancery Suits; and so the Statute gave to Cestuy que Use an immediate Power of Alienation, without the Concurrence of the Fees.

First, Who are within the Statute.
Secondly, What Authority is given by it.

1. By the Statute Cestuy que Use has no Power of Alienation, when he has a naked Right to a Use; and not a Use in Esse; unless it be in order to confirm an Estate in Being; because the Intent of the Statute was only to give Cestuy que Use a greater Power, and to transfer his Estate, and not any other Remedy to regain and revest it; and unless he has the Use, he cannot pass the
the Use, much less the Possession to another: And so if A. seized of Lands to the Use of B. enfeoffs J. S. and dies without Issue, C. has no other Way of regaining the Use but by the Entry of the Feoffee; and he has no Power to alien by this Statute till the Use be re-vested.

But if the Feoffee to a Use in Fee be disseised, and Cestuy que Use releases to the Disseisor, this extinguishes the Use, and by the Statute bars the Entry of the Feoffee.

Where Feoffees to an Use are Disseissed, and after the Disseisor enfeoffs Cestuy que Use, who enfeoffs a Stranger; this is good, and shall bind the Feoffees; for the Feoffment is good to pass the Possession, and Right of the Use, which he had in him; and the Feoffees cannot enter to revive an Use, which the Party himself by his own Act has extinguished.

2. The Statute is to be understood of Cestuy que Use, that has an Use in Esse, in Opposition to him that has only a Reversion or Remainder of an Use.

If a Feoffment be made to the Use of A. for Life, Remainder to B. in Fee, A. may alien in Fee, because the Feoffees claim the whole Estate for the Use of A. during his Life, and he
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has the whole Advantage of it; and the Statute that gives the present Possessor of the Use a Power of Alienation, has provided an immediate Remedy for the Remainder Man.

But if the Tenant for Life of an Use aliens in Fee, and dies, the Feoffees may enter on the Alienee; for by the Words of the Statute, the Alienation is good against Cestuy que Use and his Heirs, and Persons claiming only to his Use: So when Feoffees claim to the Use of the Remainder Man, the Feoffment of Tenant for Life, according to the Authority given by the Statute, is no longer valid to bar the Feoffees of the Entry; for their Right is by the Common Law.

But if there be a Feoffment in Fee to the Use of A. for Life, the Remainder to B. in Fee; B. has no Power of Alienation by the Statute, during the Continuance of the Estate for Life, because the Possession is, as is said, to the Use of A. only, during his Life, and so the Remainder Man has nothing to do with the Possession; and if the Remainder Man would enter on the Feoffees and make a Feoffment, either the Use of Tenant for Life would be destroyed, or the Feoffees must re-enter and create a particular Estate to themselves,
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felves, without being subject to Dower; for by the Common Law, every particular Estate is derived out of the Fee Simple by the Agreement of the Parties in Interest; but here are no Parties to such Agreement, and the Statute has not altered the Law in this Case.

But if there be a Tenant for Life, Remainder in Fee, he in Remainder may make a Lease for Years, or grant a Rent-Charge to begin after the Death of Tenant for Life; for he cannot enter and take the Possession out of the Feoffee; but 'tis an Executory Contract on which the Statute operates after the Death of Tenant for Life.

Tenant for Life to the Use of A. and the Reversion is granted with Attornment to another, to the Use of B. for Life; the Reversion in Fee is granted to a third, to the Use of C. B. and C. may grant their Estates presently, because there is a Division of Estates, and each has a Tertenant of his own; so that the transferring one Estate does not dispossess another Tertenant, or make any particular Estate than what is created by the Parties.

1 Co.128. A Feoffment to the Use of A. T. Remainder to the Use of B. in Tail, Remainder to A. in Fee; A. makes a Feoffment
Uses and Trusts.

ment to the *Use* of himself, for Life, the Remainder to his eldest Son in Tail, and then the Statute of *H.* 8. is made, and the Father dies; the first Feoffees may re-enter, and revive the former *Use*; for *A.* could only make a Feoffment in Fee determinable upon his own Life; but as this Contract must be taken strongest against them, 'tis a Disposition and Alteration of the Remainder in Fee, according to the *Uses* limited.

2. *What Authority is given by the Statute.*

If a Lord or Grantee of a Rent, be Co. Lit. also *Cestuy que Use* of the Land, and *52.* makes a Feoffment in Fee according to this Statute, the Rent is extinct; but if the Tenant gives a Letter of Attorney to the Lord or Grantee of a Rent-Charge, and he makes a Feoffment accordingly, this does not extinguish the Rent; for in the first Case he passes also his own Interest and Estate in the Land; but in the last Case he himself passes nothing, for he is but substitute to another, and the Estate passes only from the Tertenant.
If Cesluy que Use makes a Feoffment in Fee upon Condition, and after enters for the Condition broken, he shall be seized of the Estate in the Land; for the whole Estate is divested out of the Feoffees by the Feoffment, and they cannot enter for the Condition broken, because no Parties to it.

This Statute does not give Cesluy que Use any Power to devise the Land; for there are no Words that alter the Law in that Point.

If Cesluy que Use in Tail, aliens the Land by Lease and Release, or Feoffment; this only binds the Feoffees during his Life, because he has no longer Power of Alienation; vid. the Stat. If this Cesluy que Use aliens by Fine, this is good, and bars the Entry of the Feoffees after his Death; for that would dispossess the Estate in Tail by the Stat. of 4 H. 7. and if he aliens by Recovery, it does not bind the Issue, because he is not Tenant to the Precipe; so that would be no Bar at Common Law, and this is not helped by any Statute: For tho' a Recovery here be expressly mentioned, and so binds the Party himself, yet the Right of the Estate in Tail is severed.

If Tenant in Tail of a Trust levy a Fine, or suffer a Recovery, this is an equi-
equitable Bar of the Estate, tho' the Trustee does not join in the Recovery to make a legal Tenant to the Præ-
cipe; for as the Fine and Recovery pass the Entail in a legal Estate at Common Law, so it passes the Entail of a Trust in the Court of Equity.

But if Tenant in Tail of a Trust makes a Mortgage, or acknowledges a Judgment or Statute, and then levies a Fine and settles a Jointure, the Jointress shall hold it subject to the Mortgage or Judgment, in the same Manner as if the Mortgagor or Conventor had been Tenant in Tail of the legal Estate, and after the Mortgage or Judgment had levied a Fine and made a Jointure; because the subsequent Declaration of the Use of the Fine is merely the Act of Tenant in Tail, and he cannot by any Act of his own make a subsequent Conveyance take Place of a precedent; and the rather because the Feme claims under that Fee which Tenant in Tail got by the Recovery or Fine; and that Fee was subject to all the Charges he had laid upon it.

If a Man recovers by an erroneous Judgment, and makes a Feoffment to his own Use, and upon a Writ of Error the Judgment is reversed, the Party D shall
shall enter without a *Scire facias* against the Feoffees; for this is within the Letter of the Statute.

If *Cestuy que USe* makes a Lease for Years, reserving a Rent, he shall have an Action of Debt upon the Contract; but he shall not *avow*, because the legal Estate of the Reversion is still in the Feoffees, since he has put the Estate out of them but for a Term; but the equitable Estate is in him, and he may dispose of it, and the Rent passes; but the Feoffees shall punish for *Waste* done by the Tenant, and enter for a *Forfeiture*, &c.

If *Cestuy que USe* makes a Lease for Years, reserving a Rent, this shall go to his Heirs; for since the Statute has given him Power to make Estates at Law, they are governed by the Rules of Common Law.

If *Cestuy que USe* makes a Lease for Years, reserving a Rent, with a Clause of Re-entry for Nonpayment of the Rent, and the Rent is behind, *Cestuy que USe* may enter; for he only can take Advantage of his own Condition. And since the Statute allows the Act of Re-entry by allowing him Power to make Leases, he shall for ever keep the Possession against the Feoffees.

*Quære tamen.*
For the Reason why Lands were not originally devisable, was, because the Ceremony of Livery was required to the Transmutation of the Possession, which is not Necessary to the Disposal of an Use; for Livery is to give Notice against whom the Præcipe is to be brought, and the Præcipe is only of an Estate of Freehold.

If a Man makes a Feoffment in Fee to the Use of his last Will, the Feoffor has it to the Use of himself and his Heirs; for until a Man has actually disposed of the Use, the Use is in him only: It is so in this Case; and if he devises, the Parties must claim their Case Interest by the Devise.

But if a Man makes a Feoffment in Fee to the Use of such Person and Persons, and of such Estate and Estates as he shall appoint by his last Will; there by the Words of the Conveyance he has a qualified Fee, determinable upon the Limitation of other Estates; and the Feoffment mentions the future Estates that shall rise on his Denomination, which plainly conveys an Executory Fee to the Persons nominated; and 'tis only the Office of the Will to
nominate; for the Interest is transferred and disposed of by the Feoffment. But in the former Case there is in the Feoffment no Words of Disposition, &c. and there the Parties must claim by the Devise.

If a Copyholder surrenders to the Use of his last Will, the Land is still in the Copyholder, and he may dispose of it by an Act in his Life-Time; if he does not, by any Will, it shall go to his Heirs; if he makes a Will, it passes by the Surrender, and not by the Will; for the Property of the Copyhold is not altered by a private Act of the Tenant, but by an open and solemn Act in the Lord's Court; but at Common Law the Use of the Land may pass by a Devise, as is said; and the Freehold itself since the Statute.

If a Man suffers a Recovery to the Use of his Last Will, he may dispose of the Estate by a Conveyance de novo during his Life; but he cannot, during his Life, limit new Uses on the old Recovery, so as to be thereby bound from any Alteration; for the whole Interest of the Recovery was declared to be to the Use of his Will, which is changeable in its Nature.

A Man makes a Feoffment in Fee to the Use of his Last Will, and in
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the Deed he expresses the Use of the Will to be to himself for Life, and then to his Son in Tail, and afterwards makes a Lease for Years, and dies; this shall bind the Son; for it being expressly declared to the Use of his Will, it supposes a Power in him to change it.

Cestuy que Use devises, that his Feoffees may alien the Land to J. S. the Feoffees may enfeoff B. and B. may alien to J. S.

Cestuy que Use devises, that his Feoffees should alien the Land for Payment of his Debts, the Creditors may compel him in the Court of Chancery to do it.

If Cestuy que Use devises, that his Feoffees should alien the Land, this is in the Heir till Alienation.

5. 'Tis not extendable or Assets,

Because there is no Process at Law but upon Estates at Law; and Uses are meerly Creatures of Equity, on which the Common Law can award no Execution; and they are not Assets, because they go in the Course of Inheritance, and not to Executors.

But if a Term be limited to attend a Fee, this shall be Assets for the Payment of just Debts; for the Court of Chancery will not carry it out of its
due Course, where there is any Prejudice or Inconvenience.

But by the Stat. of R. 3. 'tis held extendable upon a Statute Staple or Merchant; for this is in the Nature of a Grant, or Lease for Years; and Grants of Leases are made good against Cestui que Use and the Feoffees, by the Statute.

But since the Statute of Frauds and Perjuries, they seem to be Assets in the Heir for the Payment of just Debts, the Heir being obliged to pay all just Debts out of a real Estate that descends from the Ancestor.

6. 'Tis not forfeitable.

1. Not for Felony; for in Case of Felony the Lands are cast on the Lord of whom they are holden, for Want of Heirs; but a Use is holden of no Body.

2. Not for Treason; for all Tenures are forfeited by the Breach of Fidelity and Duty owed to the Lord; for under that Condition the Tenants take their Estates, and consequently all Breaches of Allegiance forfeit the Estate to the King, since it originally came from him, consequently the Estate which is holden may be forfeited; but
but a *Use* is holden of no Body: But this is alter'd by the Statute.

If a Term be limited in Trust, and *Cestui que Trust* commits *Treason* or *Felony*, the Term is forfeited; for the personal Property goes with the Persons; when the Possession is forfeited, the Party is incapable of personal Property, and consequently the Right is in the Publick, and the King has the *Use* of the Term in this Case.

But if a Term be limited to attend *Hard.* the *Inheritance* in Trust, it is not for*.*

feited for *Felony*, because it does not vest in his Person and go to his Executors, but belongs to the *Inheritance*, like the Charters which are not forfeited.

3. **Who may declare or raise the Uses.**

4. Since the Chancery, as hath been said before, does not set up Rules of Property contrary to Rules of Law, those that have not a disposing Power by the Law, cannot raise a *Use*; and consequently a Husband and Wife cannot declare *Uses* upon a *Feoffment*, so as to bind the Wife.

But Baron and Feme may levy a *Mo.* 197.

*Fine* which will bind the Wife; for *Co.* 57. *A.*

here 198.
here the Law allows her a disposing Power, because she is privately examin'd, consequently the Chancery must allow them to declare what is the Design of that Fine; and therefore such Declaration by them both shall bind the Wife.

If the Husband only declares the Uses, this shall bind the Wife; for since she joins in the Fine, she must be presumed to concur in the Design of that Fine, unless the contrary appears by some manifest Sign of her Dissent.

But if the Husband declares the Uses of the Fine one Way by Deed, and the Wife another by Deed, this binds the Husband during the Coverture, but not the Wife afterwards; for the Husband cannot declare the Uses without Concurrence of the Wife, because he has no Estate; and she cannot be presumed to concur where the contrary appears by her Deed; and she cannot declare the Uses alone, because during Marriage she is not sui juris; and without the Husband she has no disposing Power: And if there be no Use declar'd upon this Fine, it is to the Use of the Wife; for where there is no other Intent of a Fine declared, it is supposed to be design'd as a farther Security to
Uses and Trusts.

to the present Possessor; and, the Use is still in the Wife, since in this Case she has not departed with it.

If Husband and Wife sell the Lands for Money, and levy a Fine, the Uses may be averred without any Deed from the Wife, to prove her Assent.

If Baron and Feme levy a Fine, and there be an Indenture in the Name of the Husband and Wife, declaring the Uses, which is brought to the Wife to seal, and she refuses, the Uses do not bind the Wife; for she cannot be presumed to concur after such a Refusal.

If Baron and Feme, within Age, levy a Fine, this shall bind her; for tho' an Infant ought not to levy a Fine, yet when done it is valid, because there is no Averment against Records; and if the Law allowed it to be valid, it is reasonable the Parties should have Power to declare the Intent of it.

Baron and Feme levy a Fine of the Land of the Wife, and both seal an Indenture; and in Consideration of Money, limit the Use to the Confeé, and there is a Clause of Re-entry upon Payment of the Principal and 10 per Cent. which is more than the lawful Interest, whereby it becomes an Usurious Contract, because the Parties enjoyed...
Uses and Trusts.

joyed the Profits of the Land; besides, if the Husband afterwards, and before the Fine be engrossed, rectifies it; and explains their Intention by another Deed, wherein the Conussee covenants, that the Baron and Feme should take the Profits in the mean Time, altho' the Wife does not agree to the second Deed, it shall bind her; for the first Deed declares the Intent of the Fine, and passes the Uses, and the last Deed only declares the Intent of the first to rectify the Matter of the Usury.

2 Co. 58.a. A Man of non sane Memory may declare the Use of a Fine levied, causa qua supra.

2 Co. 58.a. 2. Every Man may declare and dispose of the Use according to the Estate and Interest he has in the Land; and therefore if two Jointenants levy a Fine, and declare the Uses severally, each Man disposes of his own Moiety; but if they declare no Uses, they are seised as before.

Ibid. If Tenant for Life, and he in Remainder in Fee join in a Fine, without declaring any Uses, they are seised as they were before.

Ibid. A seised of certain Lands, and B. a Stranger join in a Fine, it shall be to the Use of A. for since there is no
Uses and Trusts.

Consideration to part with the Land, the Use is still in him.

So if A. seized in Fee of certain Lands, and B. a Stranger joins in a Common Recovery, without declaring any Uses, the Use shall arise to him that had the Interest in the Land, and not to the Stranger.

4. To whom a Use may be raised.

1. Not to Aliens.

An Alien could not compel the Fee-Feoffees to execute a Use; for 'tis contrary to the Policy of the Law that an Alien should plead, or be impleaded, touching Lands, in any Court of the Kingdom.

The King shall have the Use of an Alien upon his Purchase; for the Advantage a Man receives from his Duty can extend no farther than the Obligation of that Duty reaches, but the Allegiance of an Alien is temporary, therefore so is his Property; and since he is incapable of Perpetualness of Subjection, he cannot be protected in any Estate that is of perpetual Continuance; and the Inconvenience is the same if this be a Freehold at Law, or a Trust.

But
But in this Case the King shall not seize the Land of an Alien, unless it be executed in him by a Decree in Chancery; for there was no Right in the Cestuy que Use to seize the Lands without a Decree, and the King has only the Rights of the Cestuy que Use. Q.

Secondly, Tho' the King cannot have Feoffees to his Use, because he cannot take but by Matter of Record; yet he may take it when the Use is found of Record, where an Office is found of the whole Matter.

Thirdly, A Monk cannot have a Use, because he has vowed perpetual Poverty, and therefore cannot have Property; but he may be an Executor, because possessed to another's Use.

Fourthly, The Limitation of a Use to the Poor of the Parish of Dale, is good, tho' no Corporation; for tho' they are capable of no Property at Common Law, in the Thing trusted, because the Rules of pleading require Persons claiming to bring themselves under the Gift; and no indefinite Multitude, without publick Allowance, can take by a general Name, yet they are capable of a Trust; for here the Complainants do not derive to themselves any Right or Title to the Estate, but shew
Uses and Trusts.

show that it has been abused and mis- 
employed by the Owners, contrary to 
Conscience.

Fifthly, Where and what Considera- 
tion is necessary to the raising of 
an Use.

It being, (as is said) the Use of the 
Country to deliver Lands to be safely 
kept, the mere Alteration of the Pos- 
session does not in Equity give a 
Right, but it shall be to the Use 
of the Donor, unless in two Cases.

1. Where the Use is expressed.
2. Where there is a valuable Considera-
deration.

1. Where the Use is expressed on the 
Transmutation of the Possession; for 
since there is no Property without a 
Power of Disposal, the Chancery, with- 
out opposing the Rules of Law, can- 
not set aside a Disposition, or presume 
that it is delivered in Trust for a Man's 
sell, against his own express Words; 
and therefore here no Consideration is 
necessary to the raising such an Use.

If a Man levies a Fine to the Use of A. a Stranger, this is good without any Consideration.

So
So if a Man levies a Fine, and in Consideration of Blood, and the Marriage of his Bastard-Daughter, covenants that the Conussee shall be seized to the Use of the Daughter; this is good.

In a Fine for Grant & Render the Consideration is expressed to be pro finali concordia; and when a Consideration is expressed, no Consideration can be averred but what stands with the express Consideration.

The same Law is on a Recovery or Feoffment.

If a Man raises Uses upon a Fine, Feoffment, or Recovery, he may reserve to himself a Power of making Leases; but he cannot do it on a Covenant to stand seized, or on a Bargain and Sale; for upon a Fine, Feoffment, or Recovery, a Use may be raised without a Consideration, and therefore will arise to those Lessees without Consideration; and the former Estates which were raised without Consideration, may be defeated without it; but in a Bargain and Sale, and Covenant to stand seized, no Uses will rise without Consideration, therefore not to the Lessees; for where the Persons are altogether uncertain, and the Terms unknown, there can be no Consideration; and for which Reason the former Estates, raised upon good
good Consideration, cannot by such Lessees be defeated.

The two Considerations upon which a Deed is allowed to be valuable, are Marriage and Money; for Marriages being not only for the Hopes of Posterity, but being likewise induced by the Contracts and Settlements that are made at the Marriage, such Contracts are allowed to be valid, since the Marriage had not been but on the Foot of those Contracts, and therefore no voluntary Deed, tho' prior, &c.

Secondly, Where the Party can prove a Consideration.

Considerations are two-fold, 1. Blood,


First, Blood; if a Man parts with any Lands in Advancement of his Issue, and to provide for the Contingencies and necessary Settlements of his Family, 'tis fit the Chancery should make them such good Conveyances tho' they want the Ceremonies of Law; for 'tis the Design and Intent of the Court of Equity to mitigate the Severeities of Law, so as they may best comply with the Peace of Families; for their Establishment is Part of the Nature and End of Government.
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Therefore if a Man, in Consideration of natural Love and Affection, covenants to stand seized to the Use of his Son or Brother; this is a good Use.

But if a Man covenants to stand seized to the Use of J. S. in Consideration that he is an intimate Friend, or School-Fellow, or that he was bound in a Recognizance; this is not good to raise a Use; for the Obligation that a Man has to his own Family, is supposed by all Governments superior to all Obligations of meer Gratitude; and therefore the Chancery will not presume 'tis the Party's Intent to dispose of Lands out of the Family where any Ceremony is absent that is necessary in Law to the making such a Contract.

A Covenant to stand seized to the Use of a Bastard, in Consideration of natural Love, is not good; for since that Copulation is unlawful, the Issue ought not to have from the Government the Privilege of a lawful Son.

Tho' Blood be a good Consideration to raise a Use, yet must the Intent of the Party be declared by Deed, and the Chancery must follow that Intent; for it would be mischievous that any Words of Kindness that express a future Design of Parting with an Estate
Uses and Trusts.

state, should be construed as a present Settlement.

If a Man covenants to stand seized to the Use of such Persons as J. S. shall name, this is void, tho' J. S. names one of the Covenantor's Sons. But if a Man covenants to stand seized to the Use of such of his Sons or Cousins as J. S. shall name, this is good; if he makes the Nomination for a general Covenant, that extends farther than a Man's own Kindred, it is void, and falls not within an equitable Consideration; and being in its Creation void, it can never be made good.

Secondly, Money, if an Equivalent be given, tho' the Contract be not executed with all the Formalities of Law, yet in Equity the Use of the Lands ought to be in the Purchaser.

If a Man, in Consideration of Blood, Co. Lir. makes a Charter of Feoffment, with a Letter of Attorney to deliver Seisin, 49. a. and no Seisin be delivered, no Use shall arise; for the Court of Equity must follow the Intent of the Parties; and they have expressed their Intent not to part with the Estate until the Ceremony is performed.

But if a Man, in Consideration of Co. Lir. Money expressed in the Deed, sells his 49. a. E Land, 787.

8 Co. 94. Vid. 2 Ro. Ab. 787. March 50.
Land, and gives a Letter of Attorney to deliver Seisin, this passes the Use before Livery; because the Equity to pass the Use arises from the Payment of the Money; and therefore now, since the Statute of 37 H. 8. he may choose to have it one Way or the other, according as he first wills, either to enroll the Deed, or take Livery, (vid. Bargain and Sale) but if the Consideration be not expressed in the Deed, it must pass at Common Law.

But if Tenant for Life and the Remainder Man in Fee, make a Charter of Feoffment, and a Letter of Attorney to make Livery, and Livery is made accordingly, this is good; and the Remainder shall pass by the Delivery of the Deed; for when a compleat Conveyance appears at Common Law, the Court of Chancery does not intermeddle therewith.

Selling ex vi termini supposes my Transferring a Right of something for Money, the common Medium of Commerce. But if there be no such Consideration, it may be an Exchange, a Covenant to stand feized, a Grant, &c. but it can be no Sale.
Uses and Trusts.

If a Man bargains and sells Lands for divers good Considerations and Causes, it is void, unless Money be averred.

If there be a Consideration of Money expressed in the Deed, no Averment or Evidence can be admitted against it; for the Affirmative is proved by the Deed, and 'tis impossible in Law or Equity the Negative should ever be proved.

If the Deed says for a competent Sum of Money, 'tis sufficient, without averring the Sum; for 'tis a Sale if there be any Money.

A Man in Consideration of bargains and sells to his Daughter and in Tail, who intermarry, 'tis may be averred, as well in Consideration of Marriage, as also of Seventy Pounds; for a Man may aver any Consideration consistent with that in the Deed.

If a Man in Consideration that was bound in a Recognizance, and other Bonds for him, and for divers good Causes and Considerations, bargains and sells his Land to him and his Heirs, that is not good; but it had been good by Way of Covenant to stand feized, had there been apt Words.
If I bargain and sell my Land to my Son, no Use arises, unless there be a Consideration of Money, *causa qua supra.*

If a Man, in Consideration of so much Money, to be paid at a Day to come, bargains and sells, the Use passes presently, and after the Day the Party has an Action for the Money; for 'tis a Sale, be the Money paid presently or hereafter.

An Averment cannot be allowed by the Heir, that the Consideration is false against the Deed and Conveyance of his Ancestor, *causa qua supra.*

If a Man conveys Lands to A. for the Payment of his Debts, and A. pays Debts to the Value of the Land, he is a Purchaser.

Sixthly,
Sixthly, in what Manner Uses may be raised.

1. How they may be raised with or without Deed.
2. By what Words they may be raised.
3. How they may be raised by Implication of Law.

1. How they may be raised with Deed or without it.

If a Lord releases to a Copyholder 2 Ro. Ab., in Fee, to the Use of another, this is 788. a good Use; for since the Seisin and Use of the Estate is in the Lord, he may transfer the Seisin of the legal Estate by passing the Use to another, or not, as he pleases. Quære, if the Law 2 Ro. Ab.; is not the same of Releases that enure 788. by Way of Enlargement, and transmitting of an Estate; but otherwise Co. Lit. of Releases that enure by Way of transmitting a Right and Extinction of Right; for in these Cases the Releasor has not the Use and Possession of any Estate; for that is in the Dissisor.

If a Husband covenants with his Wife 2 Ro. Ab. to stand seized to her Use, this is void; 788. for Husband and Wife in all Matters of Co. Lit. Pro-
Property, by the Rules of Law, are as one Person; and no Man can covenant with himself.

If a Man makes several Declarations of the Uses of a Fine, or Recovery subsequent, the last Declaration shall stand; for each Declaration is to manifest the Intent of the Fine; now all Acts follow the last Determination of the Mind, and consequently the Fine follows the last Declaration of their Intent.

If a Man declares Uses by Deed, and after declares other Uses by Parol, and the Fine or other Conveyance be pursued according to the Deed, the first Uses shall stand; for a Deed cannot be contradicted but by something of equal Validity.

If the Declaration of the Uses and the Fine differ in Persons, in Quantity, or Quality of the Land, or any other Circumstances, and there be no other Declaration, this shall stand; for the Law presumes that this Deed declares the Intent of the Fine, tho' they differ in Circumstances; because it ought to support Men's Contracts, and take them strongest against the Grantors; but there is no Room for a Presumption, or Guessing at their Mind, where a contrary Intention is expressed.
If a Man declares *Uses* by Deed, and afterwards declares other *Uses* by *Pardon*, and these two Declarations differ in those lesser Circumstances of Quantity, Time, or Person, and the *Fine* is conformable to the last Declaration, that shall stand; for this is not an Averment contrary to the Deed: For then they must be so apparently different that both cannot be consistent. But where the Averment declares the *Use* of a different *Fine*, 'tis not contrary to the former Deed: But the *Fine* mentioned in the Deed, and the *Fine* levied, being in their Circumstances really different, they cannot be presumed to be the same by the Law, because the Intent of the *Fine* levied is expressed to be different from the Intent of the *Fine* mentioned in the Deed.

Now tho' the Expression of a Man's Mind cannot be contradicted, but by Expressions of equal Solemnity, yet where his Mind is only presumed, it may be contradicted by any Expression.

If the Indentures preceding, and those subsequent to the *Fine* differ, the *Fine* cannot be directed, Part by the one, and Part by the other; but, (as it is said) it must be by the latter; for the latter Contract of the same Nature always destroys the former.
Uses and Trusts.

9 Co. 10. a. 2 Ro. Ab. 782. If a Man levies a Fine or suffers a Recovery, he may afterwards declare the Uses, for the Uses are in him in that Case; and therefore 'tis Equity he should dispose of it when, and as he pleases to bar himself and his Heirs. If a Man levies a Fine, and then declares the Uses by Parol, and afterwards by an Indenture declares other Uses, yet the first shall stand; for the first is a Disposition and Transferrence of his Use; and therefore there can be no other Disposition, for nothing is in him to dispose of; and this is also executed now by the Statute, and cannot be divested.

9 Co. 10. b. c. 29 Car. c. If a Man levies a Fine, and afterwards grants a Rent-Charge, and then declares the Uses, Cesuy que Use shall hold it charged, unless he can prove a compleat Agreement before the Grant of the Rent-Charge; for otherwise he must take it as a Substitute of the other, and as he could grant it.

A Use cannot be raised without a Deed or Feoffment.

2 Ro. Ab. 788. If a Man levies a Fine of a Rent, he cannot limit the Use of it to a Stranger, without a Deed; for the Use and Possession of that which has its Nature
Uses and Trusts.

Nature and Being by a solemn Agreement by Deed, cannot pass without such Agreement; for otherwise there would be a greater Evidence that the Use continued with the Party, than that it was disposed of.

On a Fine, sur Consensus de Droit tantum, Uses may be raised without a Deed; for affectio tua imponit nomen operi tuo; and therefore where-ever there is an Act that alters the Possession, the Party's own Words may declare the Intent of the Act; and this being according to the Policy of the Common Law, has not been altered by any Statute.

On a Fine sur Grant & Render, a different Use cannot be averred by Words only; for in this Fine there is a Use implied, because there is a Consideration, (viz) pro finali concordia, &c. and where-ever a Use is either expressed or implied, there can be no verbal Averment to the contrary; for there is a greater Sign that the Minds of the Parties are altered from the verbal Agreement, than that they continue the same, when they leave no solemn Testimony that there was such a one.

But
But by Deed a Use may be raised upon a Fine sur Grant & Render; for otherwise the Deed must be wholly set aside that the Parties have never cancelled, for that is capable of no other Meaning; but the Fine has a plain and direct Sense, different from the Implication of passing a Use, (viz) to pass the legal Estate; and here it passes that only, because when two Contracts are made, there must be such a Construction of them, if possible, that both may have Effect; especially here, where by the Words of the Deed it appears, a Relation was designed to each other.

But if the Fine differs from the Deed in Quantity or Quality, or of the Land, or of the Persons, or in any other Circumstances, a verbal Aver­ment may be allowed to reconcile them; and the Uses may well pass by the Deed causa qua supra.

A Man seized of a Manor in Fee, to which there is an Advowson appen­dant, bargains and sells them in Fee, rendering Rent to the Bargainor in Fee, provided the Bargainee regrant the Advowson for Life, &c. The Bar­gainor covenants to levy a Fine of the Manor, &c. to the Bargainee, and the Bargainee mutually covenants to render back
back the Rent, by the same Fine, to the Bargainor, the Bargainor and Bargainee join in a Fine to J. S. who grants and renders the Manor, &c. to the Bargainee in Fee, and the Rent to the Bargainor in Tail, the Remainder in Fee to J. N. tho' the Bargainor and Bargainee join in the Fine to J. S. whereby the absolute Estate seems to be lodged in him, and the Condition dispensed with, and he renders over the Estate to the Bargainee, as absolute as he had it; yet is not the Bargainee seized of an absolute Estate by the Grant and Render; for the Use of this Grant and Render will rise, on the Deed declaring the Intent of the Fine, Causa qua supra; and according to that the Bargainee has but a Conditional Estate: And tho' the Deed and Fine differ in Persons, it being levied to J. S. and in the Manner of limiting the Rent, yet the Use as in the Deed, may be averred to be the Intent of the Fine.

At Common Law any Use might be raised by Words only.

For Averment of Considerations, see Dy. 229. Consideration, 11 Co.

Secondly,
Secondly, By what Words Uses may be raised.

A Man, in Consideration of B.'s Marriage with his Son A. covenants, that after his Death, the Lands shall remain to the said A. and B. and the Heirs of A. tho' the Marriage takes Effect, yet the Uses do not rise by this Covenant; for here the Seisin of the Father is not appropriated to the several Uses, but only a Remainder limited after the Father's Death, which cannot be without a particular Estate; nor that without a particular Contract, and no Man can contract with himself.

If a Man grants the said Lands to his Son B. after his own Decease, to have and to hold to B. and the Heirs of his Body begotten, the Remainder to C. in Tail.

If a Man seizes in Fee suffers a Common Recovery, in Trust and Confidence that the Recoveror would execute it to him in Tail, Remainder in Fee to his Son; tho' no Consideration be expressed, or any Covenant to compel him to execute it, the Court of Chancery would have formerly forced him
him to it, and consequently the Statute will now execute it in him.

If a Man feized of Lands in Tail, levies a Fine, or suffers a Recovery, and declares no Uses, the Use results to the Tenant in Tail, and he becomes seized in Fee by Virtue of the Recovery, because the Recoveror is Tenant in Fee Simple, and then no Uses are declared of that Recovery; and where no Consideration appears from the Recoveror, the Recovery can be to no other Purpose than to dock the Entail.

If the Uses of a Fine or Recovery be declared by a precedent Indenture, all Parties are estopped from averring any other Uses of such Fine or Recovery, because that was the original Intention of such Fine or Recovery; but if the Use be declared by an Indenture subsequent, no Parties are estopped from declaring other Uses, but such as are Parties to the Deed; because it does not appear to be the original Intention of such a Fine; and therefore a Declaration of other Uses may be averred, and no Body is estopped from such an Averment, but those that are Parties to the subsequent Deed.

But
But if the *Fine* varies from the precedent Deed, then any Person, as well the Parties to such Deed as Strangers, may aver any other *Uses*; because the Deed not referring to the same Time is substantive, and the *Uses* may be averred as if there were no Deed at all.

But by 29 *Car. 2.* of Frauds and Perjuries, the resulting *Use* upon any Fine or Recovery could not be altered without Deed; and then it became a Doubt whether the resulting *Uses* were not executed, and thereby any subsequent Deed excluded: And therefore for that Purpose the Stat of 4 *Ann. c. 16.* declares again, that a subsequent Deed may limit the *Uses* of such Fine and Recovery.

2 Ro. Ab. If a Man gives, grants and confirms his Lands to *H.* and his Heirs, with a Clause of *Warranty*, and the Deed be indented and enrolled, this shall raise an *Use*; because it does not appear to be the Intent of the Parties to pass it by Way of Feoffment, notwithstanding the Warranty; inasmuch as a *Cestuy que Use* can rebutt by Force of the Warranty, tho' he cannot vouch.

B. *Eal Us.* If a valuable Consideration was given, the Fee passed without the Word *Heirs*; for it was Conscience to convey
vey the Fee, (as 'tis said) but the Law is altered.

A Use may be entailed; for the Co. Lit. Chancery is bound up to the Mind of the Donor by the Intent of the Act of Parliament; and this Use may be barred by the Fine or Recovery of the Tenant in Tail, notwithstanding the Party has not the legal Estate, if there be a Consideration for such a Conveyance; for such a Person is out of the Reach of the Statute: But where there is no Consideration there is less Equity in the Case, and therefore less Reason for the Chancery to interpose.

If a Man seized of Lands in Fee makes a Lease for Life, and then covenants on valuable Consideration, to stand seized to the Use of Tenant in Tail, and then Tenant for Life suffers a Common Recovery voluntarily, this is no Forfeiture; for tho' he has only an Estate for Life by Law, and consequently it would, by the Rules of Common Law, be a Forfeiture, yet since he in Reversion held it under further Trusts for Tenant for Life, he is out of the Rule; for there is no Equity that a Man should forfeit that to another, which the other is bound to preserve and keep for him, and cannot lay
Ufes and Trusts.

lay hold of at any Time for his own Advantage.

Thirdly, How an Ufe may be raised by Implication of Law.

2 Ro. Ab. If a Man feized of Lands alone, or with a Stranger, levies a Fine and limits no Ufe, it shall be (as has been said) to his own Ufe by Implication of Law; and the same Law is of a Recovery, or Feoffment.

If a Man feized of Lands in Tail, levies a Fine or suffers a Recovery, and declares no Ufes, the Ufe results to the Tenant in Tail, and he becomes feized in Fee by Virtue of the Recovery, because the Recoveror is Tenant in Fee; and when no Ufes are declared of that Recovery, and no Consideration arises from the Recoveror, no Intent for levying that Fine, &c. it shall be construed only to dock the Entail.

If the Ufe of a Fine or Recovery be declared by a precedent Indenture, all Parties are eftopped from averring any other Ufes of such Fine or Recovery; but if the Ufes be declared by an Indenture subsequent, no Parties are eftopped from averring other Ufes but such as are Parties, &c. Vid. all this ante.
Uses and Trusts.

If a Man makes a Lease for Life or for Years, this shall be to the Use of the Lessee, or if a Lessee for Life or Years grants over his Term, it is to the Use of the Grantee; for (as is said) the Use of the Country to declare Lands to be safely kept, has made the meer Delivery of Possession no Evidence of Right, without a valuable Consideration. But these lesser Estates were not used to be delivered to be kept for the future Support and Provision of the Family, and therefore the meer Act of delivering Possession passed a Right, without Consideration; since there is no Presumption from the Use of the Country that these Estates were transferred under secret Trusts; especially since Rents were usually reserved, and they subject to Waste and other Forfeitures.

If Lessee for Life or Years grants over his Estate, and limits the Use but of Parcel of the Estate to the Grantee, the Remainder of the Estate shall be to the Use of the Grantee by Implication of Law, causa qua supra.

Seventhly, The several Sorts of Uses.

1. Absolute or Contingent, of which hereafter.

F

2. Sole
Uses and Trusts.

2. Sole or conjoint Uses, and conjoint Uses may be divided into Estates of Jointenancy and Tenancy in common.

Jointenancy comes under a two-fold Division.

1. Joint Trusts.
2. Joint Estates in Use of Trust.

First, Joint Trusts are again two-fold, with or without an Interest.

With an Interest; as if one devises his Land to his Executors, to be sold, or his Land to be sold by his Executors; which is all one, and equally transfers the Estate; for to devise Lands signifies to give, grant or dispose of it by Will. Without an Interest; as if one devises that his Executors shall sell the Land; for this does not only transfer it; for to grant that another shall dispose of it by an Act of his, is not, till the Act be accomplished, any Disposition.

And in the former Case the Interest survives, and the Trust with it.

If an Estate be granted to A. and B. for their Lives, to the Use of C. for Life, if A. and B. die, the Estate of C. is determined.

But
Uses and Trusts.

But if an Estate be granted to the Husband and Wife, *habend* to the Husband and Wife, to the *Use* of them and the Heirs of their Bodies, this is an Estate in Tail, vested in the Husband and Wife; but this is not a Grant of an *Use* divided from the Estate, but a Grant of the Estate and the *Use* to the same Person; so that either the Word, *viz. to the Use must be set aside, or that whole Sentence, *viz. to the Use of them and the Heirs of their Bodies, because the Parties have appointed no Possession out of which the *Use* of an Estate Tail may arise.

If there be a Joint Trust, and one refuses, &c. to act according to the Trust, the other can act only as to his Interest. As if a Man devises Lands to Executors, to be sold, and one of those Joint-tenants refuses, &c. the other could only sell his Moiety at Common Law; but now in this he may sell the whole, *per 21 H. 8. c. 4.* tho' the other refuses or dies.

Secondly, Joint Trusts without an Interest.

At Common Law these Joint Trusts are taken as Authorities, and don't survive, for the Common Law judges of a Man's...
Man's Designs from his Words only; and therefore if a Man devises that J. S. and J. N. shall sell his Land, and one of them dies; since he has authorized and put both of them into his Place, one only can't represent him.

But if a Man devises his Land to A. for Life, and that, after the Death of A. his Executors, or that his Sons-in-Law shall sell it, and makes four Executors, or has five Sons-in-Law, and one of them dies, the Survivors may sell it; for the Authority remains with the Plural Number of them, by the plain Words of the Devise; for he has made those Persons that come under the Denomination, as to that A., his lawful Representatives; and since that Land was to be sold after his Death, 'tis highly probable that as one of the four might die during his Life, he could not absolutely intend the Sale should be by them all.

But if in this Case all die but one, he has not an Authority to sell at Common Law, causa qua supra.

But the Court of Chancery, that considers the Nature of the Trust, will empower him to do it, and compel the Heir to join with him, as if it be for the Payment of Debts or Legacies, or to be divided among Nephews or Relations; for 'tis equitable that such an honest and rea-
reasonable Design should be supported, tho' it can't Effect by the Rules in construing those Words that necessarily govern at Common Law.

The Executors in the Case may fell without Deed, for they are but Representatives of the Testator, and the Vendee is in by the Will.

If it be devised that Executors should fell, and one refused, at Common Law, the other could not fell any Part of it, causa qua supra; but now he may fell the whole, because it is within the Equity of the Stat. of H. 8.

The Executors may fell any Part of it as they find Purchasers; for if they have Authority over the whole they have it over every Part; for a Man can't make void his own Act by doing less than his Authority, when he does an Act that he is authorized to do.

If one Executor refuses to fell or administer, the other can't fell the Land to him; for since they are authorized to fell, they must of Necessity be excluded from buying, so that no Power was by the Will given to fell to any of them, but to all other Persons exclusive of them.
Secondly, **Joint Estates in a Use or Trust.**

If a Man enfeoffs or levies a Fine to
A. in Fee, to the Use of himself, and
B. and their Heirs, they are at Common Law Jointenants of the Use; the
Estate in a Use vests according to the Intent of the Parties, which was to place
the entire Use in them, and the Possession only in A. and since the Statute
executes the Possession in the same Manner as the Use was, they were not Ten-
nants in Common, as one in by the Common Law, and the other by the Sta-
tute, but Jointenants by the Words of the Statute.

If a Man makes a Lease for Life, Remainder in Fee to the Right Heirs of
J. S. and J. N. alive, the Heirs are Tenants in Common, for when J. S.
dies, his Heirs have either a sole Property of the Fee, or he has it with others;
he can't have it with others, because there is none in Being to take it with
him; and if he had a sole Property of the Fee, it can't alter without some Act
of his own; but he can't have a sole Property in the whole Remainder, for that
were expressly contrary to the Conveyance; he must therefore have a sole Pro-
perty.
Uses and Trusts.

Property of the Fee in a Moiety; which is a Tenancy in Common.

But in Case of a Use Persons may be Jointenants that don't take at the same Time; as if a Man enfeoffs such a one to the Use of himself for Life, and of such a Wife as he shall afterwards take, they are Jointenants; for here the Husband has no Property in the Land, neither Jus in re, nor ad rem, but the Fee-fee has the whole Property at first to the Husband only, and upon the Contingency of Marriage to them both entirely; and this is the only Rule of Equity to support the Trust in the same Manner the Parties have limited it, and now it is executed by the Statute in the same Form as it was governed in Equity.

If a Disseisin be made to the Use of two, and one agrees at one Time, and another at another Time, yet they are Jointenants; for every subsequent Consent is equal to a Command precedent; and if both had commanded the Disseizin, the first Act had been the Act of both; and therefore from that Act done, they are now esteemed as Joint Disseisors.

If a Man enfeoffs A. to the Use of A. and B. they are Jointenants, tho' B. gave no Consideration, because the Use is disposed of expressly to him.
Uses and Trusts.

If Father and Son join in the Purchase of Lands, on a valuable Consideration, and the Father afterwards devises those Lands, the Court of Chancery will not suppose the Concurrence of the Son was only in Trust for the Father; but that he was made Jointenant for his own Advantage; and this was the ancient Way of Purchase to avoid Wardships.

Eighthly, The Inconveniences of Uses.

Tho' these Uses had a very equitable Beginning; yet like all new Models and general Schemes of ordering Property, it introduced a great many unforeseen Inconveniences, and subverted in many Instances the Institution and Policy of the Common Law.

First, Estates passed by Way of Use, from one to another, by bare Words only, without any solemn Ceremony or permanent Record of the Transaction; whereby a third Person that had Right knew not against whom to bring his Action.

Secondly, Uses passing by Will, the Heirs were disinherited by the inadvertent Words of dying Persons.

Thirdly,
Uses and Trusts.

Thirdly, Lords lost their Wardships, Reliefs, Marriages and Escheats; the Trustees letting Cestuy que Use continue the Possession; whereby the real Tenants that held the Lands could not be discovered.

Fourthly, The King lost the Estates of Aliens and Criminals; for they made their Friends Trustees, who kept Possession, and secretly gave them the Profits so as the Use was undiscovered.

Fifthly, Purchasers were unsecure; for the Alienation of Cestuy que Use in Possession was at Common Law a Dileussion, and r R. 3. c. 1. gave him Power to alien what he had; yet the Feoffees may still enter to vest a Remainder or contingent Use, which were never published by any Record or Livery, whereby the Purchaser could know of them.

Sixthly, The Use was not subject to the Payment of Debts, causa supra, fol. 7.

Eighthly, Many lost their Rights by Perjury, in Averment of secret Uses.

Ninthly, Uses might be allowed in Mortmain.

See The Alteration of Property by the Stat. 27 H. 8. cap. 10.

The Design of this Law was utterly Vaugh. to abolish and destroy that pernicious Way Co. 124.
Uses and Trusts.

Way of Conveyance; and the Means they took to do it was to make the Possession fall in with the Use in the same Manner as the Use was limited; and where they were all Freeholds, it was thought they would be then subject to the Rules of Common Law; but the Method has not answered the Legislature's Intent; for it has introduced several Sorts of Conveyances quite opposite to the Rules of Common Law: For now wherever a Use is raised, the Statute gives Cestuy que Use the Possession; so that 'tis only necessary to form a Use, and the Possession passes, without any Livery or Record at all, and the Reversions, without the Attornment of particular Tenants; and how the other Purposes of the Statute be evaded will after appear.

Here is to be considered;
First, The several Sorts of Uses executed by the former Clause of the Statute, and their several Incidents.
Secondly, The Execution of Jointures by the latter Clauses of the Statute.
Thirdly, The Cases out of the Statute.

First, Of the several Kinds of Uses; and they are two-fold; viz.

1. Uses in Effect.
2. Uses in Possibility.

First,
Uses and Trusts.

First, Uses in Esse; and they are raised by Transmutation of Possession; or without it.

First, Of Uses raised by Transmutation of Possession; as upon a Fine, Feoffment, or Recovery.

1. In what Manner they are raised. V. Poftea.
2. In what Manner they are executed since the Statute. V. Poftea.
3. In what Manner they are pleadable.

First, In what Manner they are raised since the Statute, &c.

1. By what Rules of Law Uses are governed.

A Feoffment is made to the Use of J. S. and his Heirs Males lawfully begotten, with Remainder over; this does not pass an Estate Tail, but a Fee Simple, since the Statute; for since the Statute has brought the Uses into Possession, they ought to be governed by the Rules of Estates in Possession, as to the Words that are essentia]l to the creating such Uses. Now, if there be no Words essential to the
the Creating of an Estate; there is no such Estate at Common Law, and the Statute has not abrogated the Common Law so far as to allow an Estate in Being, without Words necessary to create it; and here no body is limited from whence the Heirs of the Tail may proceed. Also no Fee Simple can be created in Uses, without the Word Heirs, since the Statute, for the same Reason.

If a Man makes a Feoffment to the Use of himself for Years, the Remainder to B. in Tail, Remainder to his own Right Heirs, and after B. dies without Issue, living the Feoffor, the Remainder to the Right Heirs, is void, because it being contingent, there is no Estate of Freehold to support it; for here is no Tenant to the Precipe; and the Not having a perpetual Tenant to the Precipe was an Inconvenience the Statute expressly designed to redress, and consequently to this Rule the Statute has submitted all Uses.

If a Man makes a Feoffment in Fee to the Use of A. for Life, the Remainder to his first Son in Tail, the Remainder to B. in Fee; if A. dies, his Wife being privement Ensient, and a Son is afterwards born, he shall take nothing; for if the Remainder does not vest the Determination
termination of the particular Estate, it shall never vest; for, as is said before, the Statute does not change the Nature and Being of Estates that were settled at Common Law, and a Remainder ex vi Terminii supposes a particular Estate, of which it doth remain.

If a Man makes a Feoffment in Fee to the Use of A. his Son for Life, and afterwards to the Use of every Person that shall be his Heirs, for Life only, 'tis not good to the Heir; for it is against the Rules of Common Law, that a perpetual Freehold for Life only should descend, because it creates a Perpetuity; but it seems in this Case, as if the Chancery (since there is supposed a good Consideration) would have executed a Fee in A. according to the Intent of the Parties.

2. What Rules of Law are set aside by the Statute.

If a Man makes a Feoffment in Fee, to the Use of A. in Fee; but upon Payment of 100 l. or any other Contingency to the Use of B. in Fee, if the Contingency happens, the Fee shall be executed in B. for though, according to the Rules of Common Law, a Fee can't be limited on a Fee, because a Fee Simple is the largest Estate that can
Uses and Trusts.

can be limited; and therefore will not bear a Remainder over, by Way of Limitation; and this can't be construed a conditional Estate; because, to avoid Maintenance, the Common Law allows no Stranger to take Advantage of a Condition: But the Necessities of Commerce and Family Settlements induced the Chancery to pass by this Rule, and the Statute has executed the Possession in the same Manner and Form as the Party had the Use. Now since he had but a conditional Fee in the Use before the Statute, he can't have an absolute and unconditional Estate, since the Statute; for that is to set up an Estate directly contrary to the express Words of the Statute.

Secondly, In what Manner Uses are executed by the Statute. Ante.

If there be a Tenant in Tail, the Remainder in Fee, and Tenant in Tail makes a Feoffment in Fee, and dies, the Issue shall not be remitted.

Where a Feme is Tenant to Life, Remainder to the Heirs of the Husband, and the Husband makes a Feoffment in Fee, to the Use of himself and his Wife, for their Lives, the Remainder to their own Right Heirs, the Husband dies, the Wife is not remitted. The
Uses and Trusts.

The Reason is, because no Man can be remitted contrary to his own Act, and a Statute is interpreted to be the Act of every one, and therefore the Feme Covert and Heir, that are in by the Statute, can't be remitted.

If a Man suffers a Recovery on the Morrow of all Souls, and an Indenture is dated the First of November, wherein he expressed, that all Recoveries hereafter to be suffered between the Parties, shall be to the Uses contained in this Indenture, the Uses limited in this Indenture shall not be executed on the Recovery suffered before; for tho' the Term be as of one Day, and Judgment as of the last Day of the Term, the Recoveries being taken as common Assurances and Uses, according to the Parties Intent, the Word hereafter excludes the Uses from being executed on the Recovery.

If a Man possessed of a Term assigns it over, or grants it to a Use, this is not executed by the Statute, because the Words of the Statute are, whosoever is feized to a Use, the Use shall be executed, &c. But there is Seisin only of an Estate of Freehold, and the Inconveniencies, that this Statute designs to redress, lay in Freeholds only.

But
Uses and Trusts.

But a Man may limit the Uses of a Freehold for Years, and the Use shall be executed by the Statute.

To the Execution of a Use four Things are necessary.

1. There ought to be a Person Seized.
2. Cestuy que Use in Rerum Natura.
3. A Use in Esse in Possession, Reversion or Remainder.
4. That the Estate of the Feoffees may vest in Cestuy que Use, and here only the first and fourth Thing is to be considered; for the second and third Consideration fall under contingent Uses.

First, There ought to be a Person seized, for the Words of the Statute are, if any Person stand or be seized, and if the Feoffees be disseised, and then the Statute were made, the Feoffees have only a Right of Possession, and that be executed; for the Words of the Statute are, that the Estate, Right and Possession shall be in Cestuy que Use, yet this must be referred to the preceding Words, and that is in Case where the Feoffees stand seized.

Thirdly,
Thirdly, In what Manner they are pleadable.

If a Man makes a Feoffment in Fee to A. to the Use of B. B. may plead this Feoffment, and shew that J. S. dis-seized him, without laying any actual Entry, for the Statute executes the Possession in him; he may also plead it without shewing any Agreement there-to, because the Freehold is in him, unless he disagree, and then it must be shewn on the other Side, for thereby the Freehold is immediately out of him.

But in Trespass he must shew an actual Entry; for this Action is grounded on the Disturbance of his Possession, or the Violation of his Right by taking the actual Profits, which no Man could hinder him from, or disturb him in, till he shews he was in Possession.

In Pleading the Party shew'd that A. was seised to the Use of B. and lay a Disseizin, without shewing how he came to be seised, and it was held good; Cestuy que Use can't justify the taking of Beasts Damage-seasant before the Statute, because he had no Estate at Common Law; but he may since the Statute.
If a Man pleads that he bought the Land for 20 l. without shewing the Money paid, or a Day allledged for the Payment of it, this is good; for Buying implies Payment of the Money; and if there was none paid, the Plaintiff may reply, he did not buy, &c.

Secondly, Of Uses that pass without Transmutation of Possession, and they are two-fold according to the two-fold Consideration before-mentioned.

First, Raised by Way of Bargain and Sale, on the Consideration of Money.
Secondly, By Way of Covenant to stand seized, on the Consideration of Blood.

First, By Bargain and Sale. Bargain and Sale is a Contract in Consideration of Money, passing an Estate in Lands by Deed indented and inrolled, if a Freehold of Inheritance; if otherwise, by Word only; and here it is to be considered,

1. The several Parts of the Definition.
2. The Effect of this Conveyance.
3. The Exposition of it.
4. The Pleading of Bargains and Sales.

First,
First, The several Parts of this Definition, and they are five.

1. Who may Bargain and Sell.
2. To Whom, and both these are implied in its being a Contract.
3. The Consideration, of which is already spoken.
4. What may be Bargained and Sold.
5. In what Manner a Bargain and Sale may be made.

First, Who may Bargain and Sell.

The King and all other Persons that can't be seized to a Use, can't Bargain and Sell; for when a Man had sold his Land for Money, without giving Lien, the Use passed in Equity, as it is said; and this is executed and becomes a Bargain and Sale by the Statute, and antecedent to any such Execution; here must be a Use well raised, which can't be without a Person capable of being Seized to a Use.

If Tenant in Tail bargains, and sells his Land in Fee, this passes an Estate determinable upon the Life of Tenant in Tail; for at Common Law, the Use could not be granted of any greater Estate than the Party had in him. Now Te-

G 2  nant
nent in *Tail* had an Inheritance in him, but he could dispose of it only during his own Life; and therefore when he sells the *Use* in Fee, *Cestui que Use* has a Kind of Inheritance, yet determining within the Compass of a Life; and the *Statute* executes it in the same Manner as he has the *Use*, and consequently he will have some Properties of a *Tenant in Fee*, and some of a *Tenant for Life* only; but if *Tenant for Life* bargains and sells in Fee, this passes only an Estate for Life, for he could not pass the *Use* of an Estate for Life to the Bargainee, and the *Statute* executes the Possession as the Party has the *Use*.

Secondly, *To whom a Bargain and Sale may be made.*

A Man may *Bargain* and *Sell* to his Son, but yet the Consideration of Money ought to be expressed, and it ought to have all the other Circumstances of a *Bargain and Sale*; but this shall operate as a *Covenant* to stand Seized, if there be none but the Consideration of natural Love and Affection expressed.

A Man may *Bargain* and *Sell* to a *Corporation*; for they may take a *Use* tho' the Money be given by the Gover-
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nors in the natural Capacity, and a Bargain and Sale in Trust to them is good, tho' the Trust be void when limited to other Persons, causa supra.

Thirdly, Of the Consideration, of which sufficient hath been said before.

Fourthly, What may be bargained and sold.

Any Freehold or Inheritance in Possession, Reversion, or Remainder upon an Estate for Years or for Life, or Co. 69, in Tail may be bargained and sold, and it shall be enrolled. A Rent in Esse may be bargained and sold, because this is a Freehold within the Statute.

A Man possessed of a Term can't bargain and sell it so as to be executed by the Statute, causa supra. Antea.

But a Man seized of a Freehold may bargain and sell it for Years, causa supra, ibid. And this shall be executed by the Statute of Uses, but it need not be enrolled by the Statute of Enrollment.

Before the Statute, a Rent newly created might be bargained and sold; because when the Money as an Equivalent was given, and Ceremonies or Words of Law were wanting, the Chan. Roll 85.
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cery supplied them; therefore this was good to pass the Estate without any Words of Granting.

1 Co. 126. But since the Statute; a Rent newly created, can't be bargained and sold, because there ought to be a Freehold in some other Person to be executed in Cestuy que Ufe; but there can be no Seizin of this Rent in the Bargainor, because no Man can be feized of a Rent in his own Land; and consequently there can be no Estate to be executed in the Bargainee.

Kell. 84. If a Man sells 20 l. Worth of his Land, Parcel of a Manor, this is void, for that 'tis neither certain in it self nor reducible to a Certainty; for no Man is made a Judge of the Value; otherwise it seems, if he had granted the 20 Acres Parcel of this Manor, for an Acre is a Thing certain, and the Situation may be reduced to a Certainty by his Election.

Kell. 84. Co. Lit. 265.

If a Son bargains and sells the Inheritance of his Father, this is void; because he hath no Right to transfer, and the same Law is of a Release.

But if the Son makes a Feoffment of the Inheritance of his Father, this passes an Estate during the Son’s Life; for it is a Disseizin to the Father; and the Son after the Father’s Death, can’t a-
void it; for no Man can alledge an Injury in any voluntary Act of his own.

But if the Son releases, with Warranty, Ibid. he and his Heirs are for ever hereafter barred of the Rebutter.

If there be two Jointenants, and one of them bargains and sells all his Estate, and before Inrollment the other dies, the Bargaine hath only a Moiety, and the Bargainor is in of a Moiety surviving.

If Husband, seized of Lands, in Right of his Wife, or Tenant in Tail bargains and sells Trees in the Lands, and dies before Severance, the Bargaine hath nothing; for they are not Chattels; and as such, not disposable till Severance.

Fifthly, In what Manner it may be Bargained and Sold; and here is, 1st, To be considered, by what Words it may be Bargained and Sold. 2dly, Of the Inrollment.

First, By what Words it may be Bargained and Sold.

At Common Law, Lands might be bargained and sold by Words only, for it was the Consideration that in Equity raised the Use; but since the Statute of...
the 32 of H. 8. cap. 16. Lands can't pass without an *Indenture*.

*Dy. 169.* 'Tis not necessary to a *Use* that the Words *Bargain* and *Sell* are there, but any Words equivalent are sufficient to make a Covenant to stand seized; for valuable Consideration will raise a *Use*; so will the Word *Give*, *Grant*, and *Confirm*. The Words *Bargain* and *Sell* will not pass a Reversion until Attornment, unless it be enrolled; but the Word *Alien* will; nor will the Words *Give* and *Grant*, without a valuable Consideration or Attornment, pass a Rent, tho' the Deed be enrolled.

'Tis already shewn that if a Man makes a *Charter of Feoffment* upon valuable Consideration, with a *Letter of Attorney* to deliver *Seizin*, the Party may choose either to receive *Livery*, or to have the Deed enrolled, and so take it by *Bargain* and *Sale*.

A Man demises, *Bargains* and *Sells* a Manor, Part in Demesne, and Part in Tenants Hands, for 17 Years, the Party may choose either to take it by Way of *Lease* at *Common Law*; and then the Tenants must attorn; or by Way of *Bargain* and *Sale* without Attornment; and this agrees with the Policy of the *Common Law*, to take every Man's *Grant*, so to pass an Interest, as shall be most
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most advantageous for the Grantee:
And since in this Case the Words allow
a double Way of taking it, the Grantee shall be at Liberty to judge which is most beneficial: So at Common Law, if A. Co. Lit.

makes a Lease for Years to B. and afterwards makes a Charter of Feoffment to B., who is in Possession, by the Words Dedi & Concessi with a Letter of Attorney, to deliver Seizin, before Livery he may make Use of the Deed as a Confirmation, and afterwards as a Feoffment; and a Grant to Tenant at Will, may enure as a Confirmation, since no Livery is necessary to one in Possession.

Where Tenant for Years makes a Charter of Feoffment upon a valuable Consideration, by the Words Dedi & Concessi, with a Letter of Attorney, to deliver Seizin, which is done accordingly; this is a Forfeiture, for this shall not be taken as a Bargain and Sale, whereby the Term only is passed, which the Lessee might lawfully pass; but here Livery of Seizin is authorized by him, which ever passes a Freehold, and is a Disseizin to the Reversioner, and consequently a Forfeiture of his Term.

A. by Indenture, in Consideration of natural Affection, grants to B. a Rent in Effe, habend to B. for Life, the Remainder to C. in Tail, the Remainder to the Right
Right Heirs of A. after A.'s Death, and there is an Attornment, and it is found C. was Cousin to A. and adjudged that this should rise by Way of Use without Attornment; for there can be no Estate at Common Law by Attornment after the Death of the Grantor; for to every Contract a Grantor and Grantee is necessary; and if any of these are wanting when the Contract begins to take Effect, 'tis wholly void and insignificant.

Secondly, Of the Enrollment, it has been already shewn, that the Statute of the 27 H. 8. cap. 10. by executing all Uses raised, introduced a secret Way of Conveyance, contrary to the Policy of the Common Law; and to remedy this, the Enrollment of the Deeds of Bargain and Sale was invented; which by cap. 16. was to be within six Months after the Date. And here three Things are to be considered.

1. The Relation between the Enrollment and the Deed.
2. What Estates are to be enrolled.
3. When they are to be enrolled.

First, The Relation between the Enrollment and the Deed.

At Common Law, the Use passed from the Delivery or Date of the Deed; by the
the Stat. of the 27 of H.8. c. 10. the Possession passed, as the Party had the Use, which then was from the Delivery of the Deed; but 'twas thought convenient to add further Circumstances to these Contracts; and therefore cap. 16. provided, That the Possession should not stand or alter from one to another; or any Use be made, by Reason of any Bargain and Sale, unless it be by Deed indented and enrolled within six Months. So that the Bargain and Sale is void and ineffectual to any Purposes; unless it hath the Qualifications required by the Statute: But if it hath these Qualifications, it hath the same Effect it had before at Common Law; (to wit,) to raise the Uses from the Delivery; for the Words of the Statute are only to add some Things, and not to abolish or set aside the Force it had formerly; and if the Use passes from the Date of the Deed, the Possession must pass in the same Manner by the 27 H.8. c. 10. for this Statute of Enrollment doth not destroy the Operation of the Statute of Uses, if the Conveyance be made effectual by all Circumstances required by this Statute; and then the Statute of Uses must have its Effect, according to its own Words, and pass the Possession immediately.

From
From hence it follows, that the Bargainee hath not the Freehold till Enrollment; for till then, there is no Contract effectual to alter the Property.

If a Man bargains and sells his Manor, to which there is an Advowson appendant, the Bargainee can make no Title to present before Enrollment.

A Release to the Bargainor before Enrollment, is good; and it ensues to the Bargainee, because the Releasor can't claim the Right that he hath passed out of himself by his own Release.

If there be two Jointenants, and one of them makes a Bargain and Sale of his own Estate in Fee, and then the other dies, the other Moiety shall survive to the Bargainor; for since the Freehold is in the Bargainor, the Jointure continues.

If a Man bargains and sells his Land, and then suffers a Recovery, levies a Fine, or makes a Feoffment to the Bargainee, and then the Deed is Enrolled; the Land passes by the Recovery, Fine or Feoffment; for since the Freehold and Use is in the Bargainor till Enrollment, it must pass by the Recovery, &c. And when it has passed by the Recovery, the Use can't rise, nor the Possession be executed from the Date of the Deed.

But
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But if the Land had been in any City, Burrough or Town Corporate, that have the Privilege of Enrollment, it had been otherwise; for they are excepted out of the Statute of Enrollment; and so the Possession is executed from the Date of the Deed.

If a Man Bargains and Sells Land to A. and then grants a Rent-Charge to B. and then levies a Fine to the King, and then 'tis to be enrolled, he shall hold the Land discharged; for the Land passes by the Grant; for Grants to the King must be by Matter of Record, and not Deeds recorded, as are the Sales of common Persons; and there can be no Averment or Proof against a Record; and by the Record, it appears, if any Interest were transferred, it passed from the Date which was before the Fine: Also when such Deed is acknowledged in Court, 'tis good without Enrollment; for 'tis not the Enrollment, but the Acknowledgment of it, in a Court of Justice which gives it the Sanction of a Record.

From hence it likewise follows, that after Enrollment, the Freehold is in the Bargainee from the Date of the Deed.

If the Bargainor or Bargaine打死 before Enrollment, it may be enrolled; vide Godbolt, Case 337.
for here are Parties to give and take the Interest when it begins to vest; for it vests from the Date of the Deed; otherwise it is in Case of Attornment.

If a Man Bargains and Sells his Lands, the Bargainee may be Tenant to the Precipe before Enrollment.

He may, by the better Opinion, receive a Release before Enrollment.

The Bargainee may maintain an Action before Enrollment.

If there be two Jointenants, and one of them Bargains and Sells to another Statum suum in Fee, and dies before Enrollment, and after 'tis enrolled, his Moiety passes to the Bargainee, and shall not survive.

If a Man Bargains and Sells a Reversion, and the Rent is incurred; and afterwards the Deed is enrolled, the Bargainee shall have the Rent unpaid; but if the Rent be once paid to the Bargainer, that will be a good Payment by the Tenant of the Land; and the Bargainer is not accountable; because the Contract had not any Effect to pass the Estate from the Bargainer before Enrollment; and the Relation of the Law can't make void an Act that was lawful; for it can't be set aside, but by an express and positive Law,
Uses and Trusts.

If a Man makes a Lease for Life, with a Clause of Re-entry, reserving a Rent; and then Bargains and Sells the Reversion, and the Bargainee demands the Rent, and the Lefsee refuses, and then the Deed is enrolled, the Bargainee can't Enter for the Forfeiture; for till Enrollment, he is not Grantee of the Reversion within the Statute, capable of the Duty; and consequently, at the Day, could make no legal Demand; which was precedently necessary to his Entry.

If Tenant for Life be impleaded after a Bargain and Sale of the Reversion, and then the Deed is enrolled, the Bargainee shall be received; though no Man shall be received by the Stat. Westm. Owen 70.

2. that purchases the Reversion, pendente lite.

If a Man seized in Fee, is bound in Owen 70, a Recognizance, and then Bargains and Sells all his Lands, and then the Recognizance is forfeited; and then a scir. fac. is issued against the Lands in the Hands of the Bargainer, and then the Deed is enrolled; this Scir. fac. is not maintainable.

If a Man Bargains and Sells his Land to A. and before Enrollment Bargains and Sells it by Deed to B. and the last Deed is first enrolled, the last Deed
Deed is of no Effect; for after Enrollment within the Time Deeds have their Effect according to Common Law; and consequently the first Deed hath the whole Effect, and the other passes nothing; the same Law is of a Fine levied to B.

If Land be Bargained and Sold to A. and before Enrollment A. the Bargainee Bargains and Sells it to B. and A.'s Deed is first enrolled, the Sale is good to B. But Quare if B.'s Deed be first enrolled; because when the Contract first becomes effectual to pass an Interest, A. had no Interest transferred to him by any effectual Contract, which he could pass over to B. and if a Contract hath all the Circumstances required by the Law to make it of Force, and yet passes no Interest, it can never pass an Interest after, according to the Rule, quod ab Initio non valet ex actu temporis non convalescit.

If Lands are Bargained and Sold, and a Stranger enters, and then the Deed is enrolled, and the Bargainee dies, his Wife shall be Endowed.

But if Lands are Bargained and Sold, and the Bargainee dies before Enrollment, his Wife shall not be endowed; for the Right of Dower is according to the Rules of Common Law, consummate by
by the Death of the Husband; and at the Death of the Husband, the Bargain and Sale had no Effect to vest the Lands in him; and tho' the Freehold, after Enrollment has a Retrospect to the Date of the Deed; yet there can't thereby arise to the Wife a new Title of Dower, contrary to the Rule of Common Law, without an express Provision by the Statute.

But if a Man Bargains and Sells Cro. Car. Lands by Indenture, and then takes a Wife, and dies, and after the Deed is enrolled, the Wife shall not be endowed.

If there be a Custom in Copyhold Lands, that the Wife of the Tenant shall be endowed of the Lands of which he died possessed, and the Tenant becomes a Bankrupt, and the Commissioners of Bankrupts Bargain and Sell the Lands, and the Tenant dies, the Bargainee is admitted; his Wife shall not be endowed; for after Enrollment or Admittance, the Bargainee is in from the Date of the Deed; and consequently is in paramount to the Wife's Title of Dower, and all other Incumbrances whatsoever made in the mean Time.
2. What Estates ought to be enrolled.

An Estate of Freehold or Inheritance must be enrolled; but not Terms for Years; for they are not within the Words of the Statute.

If a Man Bargains and Sells Lands to his Son, in Consideration of Money, the Deed must be Enrolled.

But if the Father in Consideration of Natural Love and Affection, and also in Consideration of Money, grants Lands to his Son, this need not be enrolled; for Covenants to stand seized are not within the Words of the Statute; and where the Consideration of Blood is expressed, it may enure as a Covenant to stand seized; but 'tis only a Sale when the Consideration of Money is alone expressed; for that excludes all other tacit Considerations: And Cities, Burroughs, &c. that have the Privilege of Enrollments, are not within the Act; for the Intent of the Makers of that Statute might be not to have excepted them from Enrollments in the Courts of Westminster; yet the Statute is so worded, that they are discharged from any Enrollment at all. The Words are, "Provided always, that this Act, nor any Thing therein con-
"tained extend not to any Manor, Lands, &c.

3. When it may be enrolled.

It must be enrolled within six Months from the Date which shall be accounted according to the Computation of twenty-eight Days per Month; for a Month in its proper and original Signification is the Space Time measured by the compleat Course of the Moon; and the Year is measured by the Complement of the Sun's Course.

From the Date, and from the Day of the Date in this Case, is taken all one, as it is in all other Cases of Computation; and therefore the Enrollment may be on the Day of the Date, or on the last Day of the sixth Month after the Day of the Date; for when an Interest passes from the Day of the Date, the Day itself is excluded; yet when a Time is stinted, in which an Act ought to be done, it is in Order to hasten the doing of that Act; and therefore the doing it on the Day from whence the Period is first reckoned, within the Time appointed, and the last Day of the sixth Month, is within the Words of the Time given.
If the Deed has no Date, the six Months are to be reckoned from the Delivery, but not otherwise.

Secondly, The Effect of a Bargain and Sale.

It works no Discontinuance.

A Tenant in Tail, bargains and sells his Lands in Fee, only an Estate of Freehold passes; because it is determinable within the Compass of a Life, and therefore he can’t devise it; for the Statute of 32 H. 1. 35 H. 8. 3. give only a Power to devise a Fee Simple, which is the express Exposition of the Word Inheritance.

But yet the Bargainee hath several Properties of a Tenant in Fee, he is Dispunishable of Waste, doth not forfeit by Alienation; and the Reason is, because, as he gave a Consideration for the Use of the Fee, ’tis fit he should have all the Properties of the Fee that were not prejudicial to the Right of the Issue in Tail, and were not within the Power of the Father to dispose of.

Q. If the Wife be dowable.

But if Tenant in Tail Bargains and Sells Lands in Fee, and afterwards levies a Fine, the Bargainee is then seized
feised of a Fee-simple determinable on the Estate Tail, inasmuch as the Issue in Tail is barred by the Fine, for that bars all Parties and Privies, tho' not the Remainder Man; and when the Right of the Tenant is extinguished the Issue hath no Claim against the Tenant of his Ancestor; but if the Bargainee had levied a Fine, the Issue, by the Statute of Fines has five Years from Cro. Eliz. the Descent; for the Ancestor could not claim in his Life-time.

If the Bargainee in this Case devises the Lands, and dies, and afterwards the Bargainer levies a Fine, the Heir of the Bargainee shall have it, and not the Devisee, for the Devise is Consummated at the Time of the Death of the Devisor, and if then it be void, it cannot after be made good.

If Tenant in Tail Bargains and Sells his Land in Fee, and then levies a Fine in Fee to a Stranger, the Bargainee hath a Fee-simple determinable upon the Estate Tail; for Tenant in Tail hath to all Purposes departed with his whole Estate, tho' the Right of the Issue is saved, and consequently he can pass nothing to the Conversee of the Fine.

A Bargain and Sale works no Forfeiture:

But if a Man levies a Fine of an Advowson, or any Thing lying in Grant
Grant; tho' this divests not the Reversion, yet it works a Forfeiture.

For a Forfeiture is a Punishment, for doing something contrary to the Nature and Being of the Estate he hath, and contrary to the Trust and Fidelity due to the Person from whom it was derived, or his Substitutes; therefore if the Tenant for Life, by Feoffment or Granting it by Record, or any other Act, took upon him the Right to the Fee, it was a Forfeiture; but otherwise, it was, if he sold the Use in Fee; for Uses are only the Creatures of Equity, and not taken Notice of at Common Law; and the Chancery in Favour of a Purchaser for a valuable Consideration, since there is no Prejudice to the Reversioner, will allow this, as a Man grants the Use of an Estate for Life, and the Statute executes the Possession, as the Party has the Use, which is only during the Life of the Bargainer, and works no Forfeiture.

A Bargainee cannot Vouch by Force of a Warranty, annex'd to the Estate of the Lands; for he that is in by the Statute, is in the Post; for he is not in the Possession by the meer Contract of the Party, but by the general Law of the Land; and therefore by the Writs of Entry, cannot be said to be in the per, that is by.
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by such a one; and he that is in the Post can't vouch; for a Warranty is a Covenant, annexed to the Freehold, whereby the Party agrees to take it up when controverted, and to defend it; it can therefore only extend to those that claim the Freehold from him, and not to those that come to it any other Way, but he may Rebut; for tho' he hath not covenanted to defend the Lands to him, yet he can't claim them, because when any Man covenants to defend the Lands, be it to whom it will, it appears thereby the Warrantor can have no Right to claim them, unless a new Title appears after the Warranty.

The Use and Possession passes to the fame Intent; and therefore a Man may Bargain and Sell, reserving a Rent; for tho' no Rent be reserved out of a Use, for a Rent had its Nature and Being at Common Law, and accordingly reserving; yet now the Use and Possession carry a Relation to the same Moment that the Rent is well reserved, and there is an Estate out of which it may issue.

If a Man sells a Reversion upon a Lease for Life or Years, the Bargaineer lor's Case, shan't take Advantage upon a Demand of the Rent, without Notice of the Cro. Jac. Bargain and Sale; for it was never the Intent of the Statute of Enrollment, 

H 4 that
that the Farmer should be forced every six Months to search for the Enrollments in Defence of his own Tenure.

At Common Law, no Man could release to Tenant for Years, unless in Possession; for all Possessions were transferred by Livery solemnly, and there can be no Livery where the Party is in Possession before; therefore there the Interest must pass by Way of Release; but where he is not in Possession, he is within the Rule, and therefore must take by Livery.

If a Man makes a Lease for Life or Years, and after grants the Reversion for Life or Years, and the Tenant attorns, the Lessor may release to the Grantee; for there is no Need of a new Grant and new Attornment, where the Party is already in Attornment of the Reversion.

If a Man Bargains and Sells Lands for Years, he may release to the Bargainee, without Entry; or if he bargains and sells the Reversion for a Year, he may release to the Bargainee, without Attornment, because the Possession is vested in the Lessee by the Statute; and consequently is capable of a Release, causa qua supra.

If a Man, designing to convey Lands to B. demifes, grants, bargains and sells them
them to A. for Years, and afterwards Releases them to A. for the Use of B. this Release is good before there is any Agreement of A. to take the Release by Way of Bargain and Sale; and if A. afterwards chooses to take this as a Release at Common Law, whereby a Possession would be necessary to the Operation of a Release; yet shall not this destroy the Estate of B. because A. being expressed to be made use of but as an Instrument to convey it to B. such an Exposition must be made, as will make him capable of doing it; and not such as would make the Conveyance of no Signification.


Every Bargain and Sale shall be expounded equally and indifferently between both Parties, because they had their Original in Equity; but otherwise it is of Gifts and Grants at Common Law, which are taken strongest against the Grantors.

If before the Statute, a Man had Kell. 85. Bargained and Sold to A. and afterwards had executed an Estate by Live­ry to B. the first Vendee had been without Remedy, causa qua supra. A Bar-
A Bargain and Sale of Land to J. S. in Fee, with a Proviso, that if the Bargainer pay so much at such a Time, the Bargain and Sale shall be void; and the Bargainee covenants not to inter-meddle with the Profits; but for the Default of Payment, the Bargainer is Dowffy v. Blackman, Tenant at Will to the Bargainee; and if he makes a Lease for Years, he is no Disseizor to the Bargainee, because no wrongful Intention; and when the Lease expires, he is Tenant at Will.

Fourthly, The Manner of Pleading Bargains and Sales.

A Bargain and Sale is a Deed Enrolled, and as such must be pleaded; the Deed itself, whereby the Use it self originally passes, is a Matter in Pais, and must be shewn to the Court, and not the Tenor of the Deed which is on the Roll of Record; for the Enrollment is the Transaction of the King, or his Courts of Justice; and therefore they have the Esteem of undoubted Fruits; and consequently Grants to the King, or Instruments to any Subjects made in open Court, are Records, and uncontrollable; but the Deeds of Subjects privately made, not in open Court, when the Party claims from the Date
Date or Execution of these Contracts, have not the Sanction of Records, tho' the Deeds be after publickly Acknowledged and Enrolled; for the private Contract may be falsely and fraudulently dated, or ill executed; and therefore, 'tis necessary they themselves should be shewn, since the Party from their Commencement derives his Title.

But the Tenor of an Enrollment is a Record which can't be produced; because, tho' 'tis certainly an authentick Copy, yet it may be the true Copy of a false Deed.

But the Act of Enrollment is a Transaction of the Court, and therefore can't be denied; but as all other Records may, by Pleading Nulliuel Record, and the only Trial is, by shewing it; but the Time of Enrollment, when it doth not appear on the Rolls it self, as antiently it did not, was to be tried by a Jury; but when the Time doth appear on the Roll it self, as it hath done since the Office of Enrollments, it shall be tried by nothing but it self.

Hence it follows, that if an Infant Bargains and Sells his Lands by Deed, indented and enrolled, yet he may plead Nonage; for notwithstanding the Statute, the Bargainee claims by the Deed as at Common Law, which
which was, and therefore is still defea-
fable by Nonage.

But if an Infant contracts in open
Court; as if he acknowledges a Statute,
&c. he can't plead Nonage against it;
for if the Court have allowed him to
have a contracting Power, there can be
no Averment to the contrary.

If an Infant makes an Obligation,
and afterwards acknowledges and en-
rolls it in open Court, he can't plead
Nonage; for the Recognition of any
Personal Contract, amounts to the ma-
king of one, for the Design of all Per-
sonal Contracts is but to acknowledge an
Obligation, which, when done in Court,
is not to be controverted; but in real
Contracts, the Design of the Statute is,
that the Instrument it self, with apt and
significant Words should pass the In-
terest, and not the Recognizance, which
is only a solemn Act appointed for fur-
ther Notoriety; and therefore the Par-
ty must claim from the Words that
transferred the Estate, which are only
in the Deed.

But if an Infant acknowledges the Sta-
tute or Obligation in Court, he may avoid
it by an Audita Querela, for he is inspec-
ted in Court, and the former Act may
be annulled by an Act of equal Autho-

By
Uses and Trusts.

By the **Common Law**, a Deed acknowledged by the **Husband** and **Wife**, binds only the **Husband**; for the **Wife** can't be examined by any Court, without a Writ, and there is no Writ allowed in this Case, for the better Security of **Wives**, who are, by our Law, entirely subjected to the Will of the **Husband**; so that the Court is not impower'd to take such an **Obligation**, but it is an Act extrajudicial.

But the **Custom of London**, that allows them to trade separately, binds them also by such **Obligation**.

If a Man acknowledges and enrolls a Deed, he can't afterwards plead **Duress**.

If a Man makes a **Lease** for **Years** the 10th of **May**, and afterwards **Bargains and Sells** his Land, and antedates the Deed, the Acknowledgment and Enrollment the 10th of **April**, the Lessee is without Remedy; because there is an Averment against the Record.

The Party that claims by any **Bargain and Sale** must shew in what Court the Deed is enrolled; because he must shew all Things in certain that make out his Title, and otherwise his Adversaries would be put to an infinite Search before he could traverse with Security.

Secondly,
Secondly, Of Covenants to stand seized upon Consideration of Blood; of which see before.

The Original of it was in this Manner before 27 H. 8. When any Man covenant to stand seized to the Use of another, the Remedy was two-fold.

First, By Action at Common Law upon the Covenant, and thereby Damages only were recovered.

Secondly, In Chancery; and here the Remedy arose thus; when any Man covenants to do a Thing, the Party is first bound in Conscience to perform the Thing it self; and if that can’t be, then to render Damages for not doing of it; therefore the Chancery that examines the Conscience of Men’s Actions requires a specifick Performance of the Thing it self, where it can be had: But the Common Law could not carry this Covenant so far without offering Violence to its own Rules; for the Common Law requires Livery, and to allow an Action; for a specifick Performance makes the Agreement binding without it; but by the 27 H. 8 these Uses are executed and therefore no Action lies; for there can be no Complaint for not transferring the Thing, when the Statute transfers it to the Party himself.
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Covenants to stand Seized in Consideration of Marriage, need not be indented or enrolled, for they are not within the Statute of the 16th; for Marriage makes it publick, and it was not thought fit to publish it any otherwise.

And here 'tis to be considered,

1. Who must Covenant to stand Seized, and to whom.

Secondly, What Consideration is necessary to a Covenant to stand Seized.

Thirdly, By what Words a Man may Covenant to stand Seized.

Fourthly, The Effect of a Covenant to stand Seized.

First, Who may Covenant to stand Seized, and to whom.

Tenant in Tail Covenants to stand Seized to the Use of himself for Life, Remainder to his eldest Son in Tail; since he had only the Power of disposing of an Estate for Life, by the Statute de Donis, which he hath not passed out of himself, it is still in him as it was before; and the Remainder is void in its Creation, and therefore there can be no Execution of it, for the Execution must be immediate by the Statute of Uses; and therefore a Fine afterwards levied can't help it.

But
But it seems in this Case, that before the Statute, the Chancery would oblige to a *Specifick Performance* by *Fine* against the Party himself, but not against his *Issue*; *Quære*.

Secondly, *What Consideration is necessary to a Covenant to stand Seized, and how far it extends*.

Tho' a Man can't *Bargain* and *Sell* but upon *Consideration* of *Money*, yet he may *Covenant to stand Seized* upon *other Considerations* besides that of *Blood*.

If a Man, in *Consideration* that *J. S.* was bound in a *Recognizance* for him, *Covenants to stand Seized* to his *Use*, this is good; for the Chancery will oblige a *Specifick Recompence* upon any Agreement, where a *Consideration* was performed on one Side; and where the Chancery would raise an *Use* the *Statute* executes it.

If a Man, seized of certain Lands, in *Consideration* that *J. S.* will pay his *Debts*, and certain *Sums* of *Money* that he shall appoint, out of the *Profits* of the *Land*, *Covenants to stand Seized* to the *Use* of *J. S.* for twenty-four Years, this shall not raise a *Use*; for since the *Debts* are to be paid out of the *Profits* of
of the Land; this is no Consideration to part with them, or vest an Interest in J. S. for the Consideration arises from his own Property, and not from any Equivalent; but otherwise it had been, if the Debts were to be paid out of the proper Lands of J. S. causa qua supra.

If a Man Covenants to stand Seized to the Use of three Persons, for the performing several Trusts to himself, his Wife and Children, and one of these is his Brother, to him alone there is a Consideration; and therefore he alone is seized of the Interest under the Trust aforesaid.

There is a Difference between a Covenant to stand Seized and a Feoffment; for if a Man Covenants to stand Seized to the Use of A. a Stranger for Years, &c. the Remainder to B. his Son in Tail, this is void as to A. for Want of a Consideration, and the Use vests immediately in B. and a void Use is as if no Use be limited; and if no Use be limited, B. must take immediately, and not by Way of Remainder, or else he can't take at all; for a Remainder ex vi Terminii supposes a particular Estate, and B. must not be excluded, because Uses being Creatures of Equity, the Parties Intent must be made good as far as possible, where there is a just and good Ground
Uses and Trusts.

Ground for any Part of the Conveyance.

But if a Man makes a Feoffment in Fee to the Use of A. and a Stranger, or Bastard for Life, the Remainder to his Son in Tail, this is good to A. for upon a Feoffment there needs no Consideration to raise the Use, as is said.

5 Co.8. b. If a Man, seized of three Acres, makes a Lease of one to A. for Life, and of another to B. for Life, and of another to C. in Tail, and then reciting the several Estates, Covenants after all the Estates finished, to stand seized to the Use of his Brother in Fee; if A. dies, the Brother shall have the Reversion of that Acre immediately, and not expect till the other Estates are determined; for it must be construed secundum subjicetam materiam; and the Covenantor hath three distinct Reversions in him.

Thirdly, By what Words a Man may covenant to stand seized.

If a Man, in Consideration of Natural Love, and for Augmentation of his Daughter’s Portion, Gives, Grants, Bargains and Sells, Aliens, Enfeoffs and Confirms certain Lands to J. S. his Daughter, with a special Warranty, and the Deed is enrolled, this ensures by Way of
of Covenant to stand Seized, in Respect of the Consideration.

But if the Consideration be not expressed in the Deed, it seems no Use arises.

If a Man, in Consideration of Marriage of his Son's Daughter, covenants that his Land shall Descend, Come and Remain to him, or her, this is only a Covenant Executory, upon which an Action lies, and the Force of the Covenant is not to alter the Descent; but 'tis no Covenant to stand Seized, whereby he may be intitled in Chancery to a Specifick Performance.

If a Man seized of a Reversion Expectant upon an Estate for Life, Gives, Grants, and Confirms the same to his Son in Fee, in Consideration of Natural Love and Affection, expressed in the Deed to the Use of himself for Life, the Remainder to his Son in Tail, the Remainder to a Daughter, without Attornment or Enrollment, this Conveyance is void, and can't enure by Way of Covenant to stand Seized; for if it enures by Way of Covenant to stand Seized, the legal Estate out of which the Uses rise remain in the Covenantor: But the Intent of the Conveyance is to raise the Uses by Way of Transmutation of Possession, and to transfer the Freehold, out
of which the *Uses* are to rise to the Son; but this Conveyance will not pass that Freehold for Want of *Attornent*, and so the *Uses* can never arise by this Deed.

Fourthly, *The Effect of a Covenant to stand Seized*.

2 Ro. Ab. 790. N. 5. If a Man *Covenants* to stand Seized of the Manor of *D.*, to the *Use* of *J. S.*, this is void, though he afterwards purchases the Manor in Fee.

Noy F. 19. Cro. El. 491. If a Man *Covenants* to stand Seized of the Land that he shall hereafter purchase to the *Use* of his Son, and after purchases Land to the *Use* of himself and his Heirs, the Fee is in the Father.

For if a Man binds any Lands, you must suppose him to have a Power to oblige them; for no Man can do that which he hath no Power to do; but he that hath no Interest, hath no Power to oblige them; and therefore such a *Covenant* in *Equity*, before the Statute, could not oblige him to a *Specifick Performance*, for that were in *Equity*, to bind the Land, which is absurd; and since the *Covenant* is void in *Equity*, there can be no Execution by the *Statute*; for the Rules of Law are equally strict in avoiding this Repugnancy; for
for in Law, every Disposal supposes a precedent Property; and by Consequence, every Covenant to stand Seized presupposes a precedent Seizin.

By the same Rule it is said, that if the Mortgagor, in Consideration of so much Money paid by J. S. Covenants, that after Redemption, he will stand seized to the Use of J. S. and his Heirs, this is a void Covenant; but if a Feoffment be made to A. to enfeoff B. to the Use of C. and A. enfeoffs B. without the Limitation of any Use; yet it shall be to the Use of C.

So if a Man covenants to purchase Land by Michaelmas next, and before Easter following, to levy a Fine to such Uses, and accordingly purchases Land, and levies a Fine, it shall be averred to be to the Uses limited in the Covenant.

For a Man may declare the Intent of a future Act, which he had no Power to do at the Time of the Declaration; for to declare the Intent of a future Act, doth not suppose an immediate Power of doing it; but the doing any Act is itself, which the Law allows to be good and effectual, presupposes the Power of doing.

Another Reason why the Use declared upon the Covenant in the first Case of Land after purchased is bad, is this;
because the Use must be limited by the Donor or Feoffor; for he must limit the Use, that at the Time of Limitation had the Disposal: Now in this Case the Donor limits the Fee to the Purchaser, which controls the Intent of the Covenant.

Secondly, Of Uses in Possibility.

First, Of Executory Fees.
Secondly, Contingent Remainders.

First, Of Executory Fees. How Executory Fees begun, and how the Rule of Law, that no Fee can be limited upon a Fee, is evaded, is already shewn; and when an Executory Fee is well raised, that it can't be destroyed but upon Alienation, upon good Consideration, &c. is shewn; and how Executory Fees may be limited, is here to be considered, and they are to be governed by three Rules.

1. That all Limitations that tend to the Provision of the Family, and to secure against Contingencies that are within the Parties own immediate Prospect, are to be favoured.

2. All Limitations that Perpetuate or tend to Perpetuity, are in themselves void
void and repugnant to the Policy of the Law.

And therefore it is to be seen what is a Perpetuity.

A Perpetuity is the Settlement of an Interest descendable from Heir to Heir, so that it shall not be in the Power of him in whom it is vested to dispose of it, or turn it out of the Channel.

The Inconveniencies of which are, that the Estate is made incapable of answering the Ends for which Perpetuity is maintained and established; for it puts it out of the Power of the Owner to provide for the Necessities of his Family, or the Extremity and various Changes of his own Affairs out of the Estate; besides it would be of universal Damage to the Common Wealth; for it would shut up all Converse, by making the Way of Communication between Land and Money utterly impracticable; to know therefore how far a Limitation may be allowed, without the Danger of being construed a Perpetuity, 'tis to be considered, what Limitations are consistent with these Rules of Reason and Policy.

First, the Law in all Cases, allows the Limitations of Estates for Life, to Persons in Being; for there can be no Danger in such a Common Limitation,
nor any Design to Perpetuate; and therefore here the Party is restrained from Alienation farther than for his own Life.

Secondly, The Law allows of no Estate of Inheritance that goes in lineal Succession; but what is under the Power of that Person to whose Representatives the Estate must descend, and to establish a Right of Succession, and yet to restrain the Power of Alienation is to Perpetuate; and therefore to limit an Estate of Succession, determinable upon remote Contingency, tends to a Perpetuity, since none can purchase with Security, while such a Cloud hangs over the Estate.

Which Rules are equally observable in Freeholds and Chattels.

First, In Freeholds.

If an Estate be devised to J. S. in Fee, and if he dies without Issue in the Life of J. N. then to J. N. in Fee, this is good; for an Estate determinable upon the Compass of a Life, is equally agreeable to the Policy of the Common Law, and can't but be as good as the Limitation during a Life; for why may not a Fee be contracted to an Estate for Life, as an Estate for Life be prolonged to a Fee upon a Contingency.

But if an Estate be limited to J. S. in Fee while J. N. hath Issue, Remainder
Uses and Trusts.

der to J. D. this is void to J. D. for this comes within the Danger of a Perpetuity, and doth not determine within the Common Compass of an Estate for Life,

Secondly, Chattels.

A Grant of a Lease for Years to J. S. co. 3 R. for Life, Remainder to J. N. is not good to J. N. for as Leases for Years being under the Power of the Freeholder, they are recovered as Chattels, and go to the Executors; and a Chattel can't be limited for Life with a Remainder over; because this would create great Insecurity in Common Traffick.

But in Case of Devises, the Courts of Common Law are governed by the Rules of Equity to support the Intent of the Testator; and therefore since the Time of H. 8. when long Leases could first be made with Security, a Devise of a Term for Years to one for Life, with the Remainder over, has been allowed, and the Chancery has forced the Tenant for Life, to give Security to the Remainder Man; but because this was found to multiply Suits and Vexation, it was thought more convenient, that the Tenant for Life should alien according to the Interest he had in him, which was only during his own Life.

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But the *Devise* of a Term for Years in Tail, with Remainder over, is void to the Remainder-Man; for that, according to the former Rules, would introduce a Perpetuity.

The Limitation of a Term for Years in Tail, is an absolute Disposition of the Term, and it shall go to the Executors.

If a Term for Years be limited to a Man and his Issue, and if the Man dies without Issue, the Remainder over, this is void, because the Contingency is not to happen till after a Succession.

If a Term be limited to *A.* for Life, Remainder to his 1st, 2d, and 3d Son in Tail successively, the Remainder to a Daughter, or to *B.* (*a Person in Esse*) if the Party hath no Sons; but afterward a Daughter, neither the Daughter or *B.* shall take this Remainder; for this is an Affectation of a Perpetuity, and is not a Limitation meekly upon an Estate for Life; but it amounts to a Limitation upon the Failure of the Person in the lineal Order to Succeed into the same Estate.

But if it be limited to *A.* and if he dies without Issue, to *B.* the Remainder is good; for here it is not a Limitation to the Issue, but upon a Contingency, which if it doth not happen, it makes the whole Term vest in the Party

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**Notes and References:**

8 Co. 87.  
Leon. 42.  
Lova's Case.  
1 Ro. Ab.  
61. Levensthorp and Ashley, Not. 1, Arg. 4.  
Reeve's Case.  
Mod. Rep.  
115. Burges and Burges, Not. 1, Arg. 4.  
Sir Will. Buckhurst's Case.  
Not. 1.  
Arg. 11.  
12. 2 Arg.  
29. Hale sup. Dy.  
44, vide Child and Bayly's Case, Cro. Car. 459
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Party; and if the Contingency doth fall, the Remainder-Man has it upon the Determination of an Estate for Life. 2 Not. 1. Arg. 16, 17.

If a Term be devised to A. for 18 Years, the Remainder to B. for Life, the Remainder to the first Issue of B. this is good.

If a Term is limited to H. and the Heirs of his Body, and if T. dies without Issue in the Life of H. Remainder to C. and his Heirs, this is good; for H.'s Term is not taken from him by any Contingency, which must of Necessity happen, during the Life of him in whom the Estate is vested.

Where a long Lease is limited to A. for 60 Years, if he lives so long, Remainder to B. his Wife for 60 Years, if she live so long, Remainder to C. his Son, and his Executors, if he outlive A. and B. but if he dies in their Life-Time, leaving Issue, then to the Issue; and if he died without Issue, living A. or B. the Remainder to D. In this Case, if C. dies without Issue in the Life of A. or B. D. shall have the Remainder; for the Remainder of the whole Term is vested in C. which is not divested out of him, and vested in D. upon Failure of lineal Succession to C. but not till the Death of C. without Issue, during the Life of A or B.

As
As the legal Estate of a Term may be devised, so the Trust of a Term may be limited.

A Limitation of a Term for Years to twenty distinct Persons in Esse is good; but the Limitation of a Term to A. for Life, the Remainder to the Right Heirs of B. a Person in Esse, is a void Remainder; and after the Death of A. it shall revert to the Donor; because this might tend to the Establishing an Estate of Inheritance in a Chattel, and putting it out of the Course the Law had settled for it, whereby it ought to go to the Personal Representative.

If a Term be limited to A. for Life, the Remainder is in the Donor; if a Term be limited to A. for Life, the Remainder to the Right Heirs of the Donor, this is a void Limitation, because the Reversion is in him.

If the Trust of a Term be limited to A. for Life, the Remainder to B. B. may dispose of the Remainder; but if a Term be devised to A. for Life, the Remainder to B. B. can't dispose of this Remainder; for by the Rules of Common Law, a Possibility can't be granted over, for a Man that only may have Right, has at present no Right in him; and while the Rules of Law say he has no Right, it is contradictory and
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and repugnant, to allow him to act as a Person having Right by transferring an Interest to another. B. in this Case has only a Possibility to have a Right, because the Estate of A. being of uncertain Duration may outlast the Term for Years; but in Chancery, where the Trust is examined, they allow a Man to provide for his present Occasions out of what he may possibly have; and a Purchaser of it shall not lose the probable Advantage, since he hath given for it a valuable Consideration.

As to Executory Fees, there is another Difference, where they rise by Way of Use, and where by Way of Devise.

First, If it rises by Way of Use, there must be a Seizin in Somebody to be executed in the Grantee of the contingent Use, whenever the Contingency happens; for if there be not a Person that can be seized of a Use, there can be no Use; and consequently there can be no Execution of it; therefore if a Man covenants to stand Seized to the Use of himself in Fee, till such a Marriage takes Effect, and then to the Use of himself for Life, the Remainder to his Wife, his Son, &c. and before the Marriage he makes a Feoffment in Fee, Gift in Tail, or
Lease for Life, upon good Consideration, without Notice of the Uses, the Estates limited after the Marriage shall never arise; because here is Nobody feized to such Uses, and the same Law is of Feoffments to such contingent Uses.

But if in this Case he had made a Lease for Years, he would not have destroyed the future Use, but only have bound it; because there is a Seizin, out of which the Use rises; and at Common Law, if the Feoffees had made a Lease upon good Consideration, as in this Case, it would have bound the Lands, and consequently Cestui que Use must have the Profits of the Land thus leased; and in this Case, since the Statute, the Covenantor has the same Power of obliging the Fee; and therefore those to whom the contingent Estates are limited must take it under the Charge. Quare.

Feoffment to the Use of A. in Fee, and if B. pays so much, &c. then to B. in Fee; A. devises his Land, and dies, it destroys the Contingent Estate; otherwise it is, if he had devised Portions out of the Land, for that could not alter the Freehold.

A Recovery doth not bar an Executory Fee; for the Recoveror with Notice, and without Consideration, is feized to the former Uses.
Secondly, By Way of Devise; if a Man devises Lands to A. in Fee, and upon such Contingency to B. in Fee, A. makes a Feoffment in Fee; this doth not destroy the Contingency; for by a Devise, the Freehold itself is transferred, and there needs no Person to be seized to execute an Estate in the Devisee, as must be where a Feoffment is made to Executory Uses.

But if a Man devises it to A. for 2 Ro. Ab. Life, with a Contingent Remainder; if A. makes a Feoffment in Fee, this destroys the Contingent Remainder; because there is no particular Estate to support it.

Secondly, Contingent Remainders; and here it is to be considered, 1st, In what Manner they are to be executed.

As if a Feoffment be made to J. S. in Fee, to the Use of A. for Life, Remainder to his 1st, 2d and 3d Son, the Remainder to B. in Fee, there are three plain Preliminaries to this Enquiry.

First, There ought to be a Person seized to the Use at the Time when the
the *Use* is executed; and this, as is said before, is Plain by the Words of the Statute; *viz.* If any Person stand or be seized.

Pop. 74. *Secondly, The Estate for Life is immediately executed in A. the Remainder in Fee to B. by the Statute; because the Use is immediately in them, and they have the Possession in the same Manner they have the Use.*

1 Co. 126. a. Pop. 72.
1 Co. 136. a.

*Thirdly, No Possession can be immediately executed in the Sons, because they are not in Being; and therefore capable of no Property, neither in Use nor Possession.*

The Non-performance of all these Rules, caused two false Opinions in this Matter in the Debate of Chudley's Case.

*First, Some thought, according to this second Rule, that the whole Possession must be executed in A. and B. and therefore that the contingent Use, when it falls, was executed out of the first Livery; and the Estate formerly in Feoffees; and this by the Words of the Statute; the Estate that was in the Feoffees shall be in *Cesfive que Use*; and hence they inferred, that since the e
Estate was executed by the Power of the Statute; it must be preserved till such Execution by the same Power; and therefore they said, the Contingent Remainders were in Abeyance, and not extinguishable by the Alienation of Tenant for Life.

But this is a Mistake; First, because this is contrary to the first Preliminary; and for that supposes an Estate in J. S. at the Time of the Execution.

Secondly, Because it is contrary to the Nature of an Abeyance by the Rules of Law; for if there be Tenant for Life, Remainder to the Right Heirs of J. S. living, if Tenant for Life dies, or aliens, during the Life of J. S. the Remainder is destroyed.

Thirdly, Because it would create a Perpetuity.

Some add another Consequence of this Doctrine, that a Use would rise out of a Use.

Others held a different Opinion; and they thought there was an immediate Remainder vested in J. S. to serve the Contingent Use when it falls, and that this Estate was determinable.
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minable upon the Rising and Execution of the Estate in the Sons, &c.

But this could not be, First, because this is contrary to the second Preliminary; for thereby an Estate is immediately vested in A. and B. but by this Opinion, the Estate in B. is only Executory; for it arises to him upon the same Contingency that the Estate of J. S. rises, for he could not have a Fee before; for then there would be a double Fee.

Secondly, Because J. S. would have a Remainder without any Grantor, and the Law leaves it to Parties to limit their own Estates; and where Nobody has limited an Estate, there can be no legal Limitation.

Thirdly, If a Remainder be vested in J. S. he must punish Waste, and enter for a Forfeiture; but the Party designed him no such Benefit; but made him only an Instrument to convey it to others.

The true Opinion is, that the legal Estate is executed in A. and B. but the contingent Remainders are not utterly loft, because the Possession by the Statute must be executed in the same Manner as the Use is limited; therefore there re-
remains a Possibility of Possession to the Feoffees, to this Purpose only, that when the Contingency happens, then the Possession may be transferred to the Remainder-Man; and if this is an Estate not known before, and so has no Determination at Common Law, yet it is such a one as must be raised by the Intent of the Statute, and all its Ends could not be answered without it; and therefore to suppose, as in the other Opinions, no Estate in the Feoffees, or to reduce it to the Standard and Rules of Common Law is equally false and impracticable.

Secondly; How they may be defeated.

1st. Where there is no Power of Revocation given. 2dly, When there is express Power of Revocation.

First, Where there is no Power of Revocation expressed; since Executory Fees, as is said, and Contingent Remainders tend to Perpetuities, they are construed according to the strictest Rules of Law, and as far as possible, put under the Power of the Estate that supports them.
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And hence came the Diversity between destroying and contingent Remainders, and an Executory Fee.

A Remainder is the Residue of a particular Estate disposed of by the same Conveyance; therefore *ex ci Terminii* it supposes,

First, *A particular Estate in Being.*
Secondly, *That individual Estate that was made by the same Conveyance as the Remainder.*

Thirdly, *It supposes an Existence of this Estate when the other goes out of Being.*

Fourthly, *It supposes the Estate should remain in the same Manner as it was disposed.*

Therefore if a Man makes an Estate to the *Use* of *A.* for Life, Remainder to his 1st, 2d, and 3d Son in Tail, Remainder to *B.* in Fee, and *A.* makes a Feoffment in Fee, and then a Son is born, the Contingent Remainder is destroyed; for by the Feoffment, the particular Estate is extinguished, and afterwards, by the first Rule, there would arise no Remainder of it.

If Lands be given to one in Tail, if *J.* *S.* comes to Westminster, and the Remainder to him in Fee, Tenant in Tail dies, the
the Estate descends on Copartners; they make Partition, tho' J. S. does come to Westminster, &c. he shall take nothing; for the individual Estate is altered, and the Freehold altered by the Partition contrary to the second Rule.

If Lands be given to A. and B. for 4 Leon. the Life of C. the Remainder to the Right Heirs of the Survivor; if A. relieves to B. the Heirs shall take nothing, causa qua supra.

A. seizes in Fee devises his Land to Ray, 28. his eldest Son Thomas for Life, and if he dies without Issue living at the Time of his Death, to Leonard another Son, and his Heirs; but if Thomas has Issue living at the Time of his Death, then that the Fee should remain to the Right Heirs of Thomas for ever. Thomas enters after the Death of the Devisor, and suffers a Common Recovery; it was resolved that the Fee that descends to Thomas immediately after the Death of the Devisor, did not merge the Estate for Life, contrary to the express Words of the Devise; for the Remainder to Leonard must be construed to be a Contingent Remainder, because it is limited to take Place upon the Determination of the Estate for Life; for and can't be construed as an Executory Fee; because

K 3
there is no Fee limited to *Thomas*, but upon a Contingency; and therefore if the Law should construe the old Inheritance that descends to *Thomas*, in the mean Time to be a Merger of the Estate for Life, it would immediately have destroyed the *Contingent Remainders*; for the Estate to *Leonard* would not arise as an *Executory Fee* out of the Inheritance, since that was not devised, but descended; and therefore they construed the Estate for Life to have a Continuance in *Thomas*, and that the Reversion did not execute in him; for if they had not construed it to be a distinct Estate for Life in *Thomas*, there would have been no Foot for a *Contingent Remainder* to *Leonard*; and they could not construe it as an *Executory Fee*, in *Leonard*, when there was no *Precedent Fee* limited to *Thomas*; and since it was a *Contingent Remainder* in *Thomas*, the Recovery destroyed the particular Estate; and by Consequence destroyed the *Contingent Remainder*, before such Contingency happened. 1

2 Saund. from 380 to 387. Sampson Shelton's Case.

A Man devises Lands to his Wife for Life, and if she has a Son, named *Sampson*, the Remainder to him and his Heirs, the Devisor dies, the Wife takes
takes another Husband; the Heir at Law, to whom the Reversion descended, bargains and sells in Fee to the Husband and Wife; a Son called Sampson is born, he shall not take the Remainder; 1 Sand. 387.

for when the particular Estate determines by Merger, the Remainder can't vest, and though the Wife had after disagreed to the Purchase, this would only have revived her own Estate, but would never be good to limit on it a new Remainder.

But if it had been by the same Conveyance, it had been otherwise; as if a Feoffment in Fee had been made to J. S. to the Use of a Husband and Wife, Remainder to the Eldest Son in Tail, Remainder to the Husband's Wife in Tail, &c: here is a Tail executed in the Husband and Wife immediately; but this doth not drown the Contingent Remainder; but when a Son is born, the Estate opens and lets it in, after the Estate for Life in the Husband and Wife is determined.

For in Equity, the Trusts arose in this Manner, because this appeared to be the Parties Intention by their own Limitation, and the Statute executes the Possession, as the Use is limited.
Uses and Trusts.

Tenant for Life with a Contingent Remainder, Tenant for Life is disseized, the Contingency happens, the Remainder vests; for since Tenant for Life is put out by Wrong, he has a Right Entry, and in Judgment of Law his Estate continues.

Tenant for Life, with a Contingent Remainder, Tenant for Life is disseized, a Collateral Warranty bars the Contingency; tho' it afterwards happens, during the particular Estate; because no Man can claim that which he is obliged, as Heir, to defend to another.

If a Feoffment is made to J. S. to the Use of A. for Life, Remainder to B. his Wife for Life, Remainder to C. for Life, Remainder to the first Son of C. in Tail, A. makes a Feoffment in Fee, this doth not destroy the Contingent Remainder to the Son of C. for Life, who had a Right of Entry for the Forfeiture; and a particular Estate in Right, on which the Contingent Remainder will depend.

If in this Case, the Wife had entered after the Husband's Death; this could not only have revived her Estate, but the Estate of C. and the Contingent Remainder thereon, which had never
never been put out of Being; otherwise 'tis, as is said, in Sampson Shelton's Case, if the Contingent Remainder had depended upon the Estate of B.

If in this Case, the Son had been born during the Life of C. and neither B. nor C. had entered, the Son could not, but the Feoffees might; for the Possession of the Feoffees must be executed by the Statute in the Son, before he can have a Remainder by the Rules of Common Law; till therefore by the Entry, they have revived the Estate, the Son has nothing; if J. S. in this Case, releases to the Feoffee of A. or to the Disseisor, the Contingent Remainder could never vest; for J. S. could never enter contrary to his own Release.

A. makes a Feoffment to the Use of 2 Ro. Ab. his Wife for Life, Remainder to B. his 794. Cro. El. Son for Life, Remainder to him in 630. Tail, that shall be the eldest Issue of B. at his Death; A. dies, the Wife makes a Lease for Years to B. who makes a Feoffment and levies a Fine to J. S. this does not vest the Contingent Remainder; but if B. dies having Issue in the Life of the Wife, the Issue shall take it; for the Feoffment of B. drowns his own Estate for Life, and is a Forfeituro
feiture to the Wife, and her Entry preserves the Contingent Use, which now immediately depends upon her Estate, as if B.'s Estate were worn out by Effluxion of Time; and if it be the Residue of any of the same Estates that were created by the same Conveyance, it answers the Notion of a Remainder.

Noy 122.
Cro. Jac.
168, 9.
2 Ro. Ab.
793.

A Man covenants to stand seized to the Use of his Son for Life, Remainder to such a Wife as he shall afterwards marry, the Covenantor makes a Lease for Years; this will not prevent the Rising of the Contingent Remainder, nor bind it; for the Covenantor has no Power to demise any thing but the Reversion; and consequently the Freehold remains unaltered to support the Contingent Remainder; but if the Covenantor, in this Case had reserved for himself a Power of making Leases, this Lease would have been good; and a Revocation of the former Uses.

Moer 742
Lea v. Burton.

Tenant for Life, Remainder to his Wife for Life, and if she be disturbed during her Life, the Remainder to the Wife in Fee, the Husband makes a Lease to begin after the Wife's Death, tho' she be disturbed, she shall not have the Reversion; for the Lease has altered
Uses and Trusts.

ed it; so there is the same Estate to be executed in the Wife as was in Being at the Disposition of the particular Estate.

If A. gives Lands to B. for Life, Remainder to the first Son of B. Remainder to the right Heirs of B. and B. makes a Lease for Years; and then a Son is born, this shall not destroy his Estate; for there is the Rent of the same Estate as was limited; for the Freehold itself receives no Variation by the making of a Lease for Years, and if the Remainder to the Son arises, it can't be bound by the Lease for Years; for Tenant for Life had only Power to devise it during his own Life; Quare ta-

men.

If A. seised of a Copyhold in Fee, surrenders it to the Use of his last Will, and after devises it to B. for Life, with a Contingent Remainder; and after B. is admitted Tenant, and after he surrenders it to the Lord of the Manor to the Use of his Will, the Contingency happens, B. dies, his Surrender did not destroy the Contingent Remainder; for in Copyholds a Surrender doth not put the Estate out of the Tenant, as it doth in the Case of Frank-Tenements; and therefore there is a particular E-
Uses and Trusts.

state to support the Contingent Remain-der.


Tenant for Life, with a Contingent Remainder, Tenant for Life Bargains and Sells the Lands in Fee; this doth not destroy the Remainder, for this passes but an Estate for Life, as is said before; and so the Estate of the Bargainee will support the Remainder.

Secondly, Where there is a Power of Revocation.

Co. Lit. 237.

A Feoffment or Fine, &c. with Power of Revocation is void at Common Law as to all Power of Revocation; for the Words of Enfeoffing or Granting, &c. transfer the whole Right, Property and Power of Disposal to the Feoffee, &c. and therefore for the Party to limit to himself a Power of Revocation, and Disposal is repugnant to the Force of the precedent Words, and would introduce a double Power seated in distinct Persons over the same thing, which the Common Law disallows; but this Rule of Law was set aside by the same Construction that hath brought in: Executive Fees; for when before the Statute Uses were limited with Power to revoke, as the Occasion, Circumstan-
ees and Mind of the Party altered it, it was thought reasonable that the Party should have Liberty to Revoke according to their own apparent Intent, by which Uses are ever governed; and since the Possession is executed by the Statute, as the Party had the Use, the Estate continues Revocable.

A Power of Revocation is two-fold; Hard. 435, p. Hale:

1. *A Power relating to the Land.*

2. *A Power simply Collateral to the Land.*

First, A Power relating to the Land is where a Power is limited to one that had, hath, or shall have an Estate or Interest in the Land.

This is again two-fold.

1. Appendant or Annexed to the *Estate in the Land.*

2. In Gross.

First, Appendant or annexed to the Estate in the Land, is when a Man hath an Estate in the Land; and a Power of Revocation, and the Execution of the Power
Power falls within the Compass of the Estate in the Lands; as if Tenant for Life with Power to make Leases or Revoke, Grants a Rent-Charge, and then makes a Lease according to his Power, the Lease shall hold it charged during the Life of the Tenant for Life; for he hath Power to charge his own Interest, which, by his own Act can't be avoided.

And if in this Case, he covenants to stand seized to the Use of a Stranger, he can't, by any After-Act, Revoke the Uses; for since, as is said, the Execution of this Power falls within the Compass of the Estate; so that, unless it be executed during the Continuance of the Estate, it can never be executed; therefore whatever Act passes away the Estate hinders the Execution of this Power of demising; for a Man can't demise that Estate which he hath passed away to another.

Secondly, In Gross, is where a Man hath an Estate and Power of Revocation, and the Execution of the Power falls out of the Compass of the Estate; as if there be Tenant for Life, Remainder in Tail, with a Power lodged in Tenant for Life to make a Lease for

Harl. 416 31 Years, to commence after his Death,
Uses and Trusts.

To raise Portions to his Daughters; this is a Power in Gross; and if Tenant for Life Bargains and Sells the Lands in Fee, this doth not destroy the Power; for since the Execution of the Power doth not fall within the compass of his own Estate, the selling of his own Estate only doth not hinder the making Use of the Power.

But if he had levied a Fine, or made a Feoffment in Fee, this Power had been destroyed; for here he absolutely passes the entire Estate, and divests all the Remainders, and thus, by passing the whole Estate to another, he hath destroyed all the Power of Revocation, and limiting new Uses to his own Benefit; for this Power can't be executed but out of the Remainders; and he hath prevented the Execution of it by having already disposed of the whole Estate to another.

He may Release such a Power of Revocation to the Remainder-Man; for he that is to have an Interest by any Possibility may release the same to the present Possessor, as well as if he had a future Right, for 'tis according to the Policy of the Law, for the Quiet and Peace of the Possessors.

Secondly, Where the Power of Revocation is simply Collateral.

And
And that is, where a Man hath no present Interest in the Land, and by the Revocation of the Estate is to have nothing.

In this Case, a Fine or Feoffment of the Land is no Extinguishing of the Parties Power; for tho' every Man is estopped to claim any Interest contrary to his own Act, whereby he passes an Estate to another; yet if a Man makes a Feoffment; or levies a Fine, and then Revokes; whereby a Stranger claims an Interest; the Stranger, who is the only Person that can claim, is not Estopped to claim it; for no Man is Estopped from demanding his own Right by the Act of another; and if there be no Estoppell in this Case, the Stranger hath a Right by the Contract.

And here of the Manner of Revocation.

First, If a Man is Tenant for Life, having a Power of Revocation, upon Revoking he is seized of his former Estate, without Entry or Claim; for he is in Possession already; and therefore there can be no Entry, and the Claim where the Party is already in Possession is a void Solemnity; for it doth dot make any Change of Property notorious.

Second-
Secondly, If there be Tenant for Life, with a Power to Revoke the Remainders, and limit new ones, he may do both by the same Conveyance.

For since upon Revocation the former Uses are void ipso facto, without any Solemnity; there is nothing to hinder why the same Conveyance should not create new ones, and the Law to support the Contract will suppose the Destruction of the antient Uses to precede the Creation of the new Uses.

Thirdly, He may Revoke Part at one Time and Part at another; for this is not entire, like a Condition, for a Condition is entire, because the Estate must be defeated in the same Manner that it is made; for otherwise the Solemnity of the Entry will not be equivalent to the Solemnity of Livery; but a Revocation is in the Nature of a Limitation, and there is no Solemnity necessary to the Defeating the Estate; and therefore it may be done by Parts; consequently if a Fine be levied of Part, that is a Revocation only of that Part.

Fourthly, The Power of Revocation follows the Estate.

A Covenant to stand seized to the Use of B. and his Heirs, with Power of Revocation upon Payment of Money.
ney by B. and his Assigns; B. dies, he may tender to the Heir who is in Law the Assignee to this Purpose.

Fifthly, a Power of Revocation is in some Cases a Forfeiture.

If there be Tenant for Life, with Power of Revocation over the Estates in Remainder; and the Revocation depends upon Circumstances inseparably annexed to the Person of Tenant for Life, this cannot be forfeited; but if it depends upon Circumstances, it may be performed by another, the King shall take Advantage of it, and Revoke the Uses; as if the Revocation is to be by Writing under the Parties own Hands and Seals, this cannot be forfeited to the King; but if the Revocation is to be upon Tender of a Ring by himself, or any other for him during his Life, this Power is forfeitable.

Sixthly, If a Man makes a Feoffment with Power of Revocation, when he hath executed that Power, he cannot limit new Uses upon the same Feoffment; but otherwise it is, if he had a Power to Revoke and limit new ones on the same Feoffment, with a second Power of Revocation, &c. and so in infinitum.
Secondly, The Execution of Jointures by the last Clause of the Statute.

The Original of Jointures was in this Manner; most Lands were settled in Use, whereof Women were not Dowable; and therefore the Wife upon Marriage used to procure the Husband to take the Estate of the Feoffees, and settle it to the Use of him and her self for Life or in Tail, with what Remainder over he pleased; for there was no Confidence at all in those Times in the Dower at Common Law.

Upon the Execution of Uses, there were several Maxims at Common Law, which would have given the Wife a double Provision, as that no Right could be barred before it accrued, and no collateral Thing could be received in Satisfaction of a frank Tenant, in which it must have been adjudged, that the Wife must have Dower, notwithstanding her Jointure; and therefore the Statute provides, that the Intent of the Parties in this Change of Property, which is made, should be observed, as that the Wife should not claim both her Dower and Settlement, contrary to Justice.

To make a good Jointure within the Statute, six Things are regarded:

L 2

First,
First, The Estate must of Necessity take Effect immediately after the Death of the Husband.

If the Husband be Tenant for Life, the Remainder to the Wife for Life, this is a good Jointure, tho’ not within the express Examples of the Statute, for ’tis within the Equity and Design of it.

If the Remainder be limited to the Wife, upon Condition, her Acceptance of such a Conditional Jointure makes it good; for this Estate supports the Wife well enough, and ’tis in her Power to continue it during her Life; therefore an Estate *durante viduitate* is a good Jointure.

If an Estate had been made to the Husband for Life, the Remainder to *J. S.* for the Life of the Husband, to support Contingent Remainders, Remainder to the Wife; this is a good Jointure.

If an Estate be made to the Husband for Life, the Remainder to the Wife for a Jointure; this is no good Jointure; for ’tis not within the Words or Intent of the Statute; for the Statute designed nothing as a Satisfaction for *Dower*, but that which came in the
Uses and Trusts.

same Place, and is of the fame Use to the Wife; and tho' J. S. dies during the Life of the Husband; yet this is not good; for every Interest not equivalent to Dower, being not within the Statute is a void Limitation to deprive the Wife of her Dower, and a void Limitation is as if there were none at all.

If an Estate be made to the Use of 4 Co. 2. A. for Life, the Remainder to the Wife for Life, this is not good, tho' A. dies living the Husband.

If an Estate be made to the Husband Hutton for Life, the Remainder to J. S. for Years, the Remainder to the Wife for her Jointure, this is not good.

If a Man makes a Feoffment to the Use of himself for Life, Remainder to the Son and his Wife, and the Heirs of the Body of the Son, this is no good Jointure, tho' the Wife hath an immediate Franktenement; for to be within the Cases of the Statute, whereby Dower is barred, the Wife must have a sole Property after the Death of her Husband.

A Jointress of Lands mortgaged, and it was decreed in Chancery, that the Wife should pay the Mortgage, and to hold the Land, not only during her Life, but till she and her Executors be re-paid with Interest.
Uses and Trusts.

A Feoffment in Fee to the Use of the Feoffee for Life, the Remainder to the Use of his second Son for Life, Remainder to the Use of such Wife as the Son shall take, Remainder to the Heirs of the Son, the Father dies, the Son marries and dies, the Wife is not by this Settlement barred of her Dower; for this at the Time of the Creation, was no certain Provision for the Wife's Life; for the Son might have married and died in the Life of the Father.

It may be immediately either after the Natural or Civil Death; and therefore if the Husband be banished, the Wife shall have Dower.

Secondly, it must be for Term of her own Life, or a greater Estate, otherwise it doth not answer the Design of the Dower; therefore if an Estate be made to the Wife in Tail or in Fee, this is a good Jointure.

If an Estate be made for the Life or Lives of many others, this is no good Jointure.

A Lease of 100 Years, if the Wife live so long, or absolutely is no good Jointure.

For the Statute provides, that when the Wife hath an Estate for Life by Settlement, she shall be barred of her Dower.
Dower at Common Law; if she hath any greater Estate, she hath an Estate for her own Life included in it; but if she hath any less Estate 'tis out of the Statute.

Thirdly, it must be made to herself, and not to others in Trust for her, by her Assent, and expressed to be in Satisfaction of her Dower; for the Statute only bars the Dower, when by it the Possession (which was formerly a Use) is executed in her.

Fourthly, It must be in Satisfaction of her whole Dower, and not of Part only; for if it be in Satisfaction of Part, 'tis uncertain, for what Part; 'tis in Satisfaction of her Dower: But if it be expressed of what Part, Quære if good.

If an Estate be made to the Wife in Satisfaction of Part of her Dower before Marriage, and after Marriage other Lands are conveyed, wherein it is said to be in full Satisfaction of all her Dower, if she waives the Lands conveyed to her after Marriage, she shall have Dower for all the Lands of her Husband, notwithstanding the Settlement is in Satisfaction of Part.

Fifthly, It must be expressed to be in Satisfaction of Dower.

An Averment is sufficient; for since before the Statute, all Lands were settled
tled by Way of Use, it was not necessary it should be expressed in the Conveyance, that it was in Satisfaction of Dower, since the Wife was not Dowable of Uses; and if the Heir could not take Benefit in such Case by Averment, the Design of the Statute, as to many Cases, would have been avoided.

A Devise of an Estate for Life cannot be averred to be in Satisfaction of a Dower, unless it be expressed so in the Will, for there can be no Averment contrary to the Will, and consequently there can be no Averment contrary to the Consideration implied in every Devise, which is the Kindness of the Testator; and so it cannot be averred, that the quitting of Dower was the Consideration of this Devise, because 'tis not so expressed.

If an Assurance be made to a Woman for her Jointure, and this is not expressed in the Deed but averred, such Averment is not traversable; for 'tis not material by the express Words of the Statute; and therefore 'tis not a necessary Point to entitle themselves to it by the Benefit of this Discharge.

Sixthly, A Jointure may be made either before or after Marriage.

If it be made before Marriage, she is Sole, and as such under no Man's Power; if after Marriage, she takes a Jointure
Uses and Trusts.

ture in Satisfaction of a Dower, she may wave it after Coverture; but if she enters and agrees thereto, she is concluded; for tho' a Woman is not bound by any Act, when she is not at her own Disposal; yet if she agrees to it when she is at Liberty, 'tis her own Act, and she cannot avoid it.

If a Jointure be made to the Wife before Coverture, and the Husband and Wife alien by Fine, the Wife shall not afterwards be endowed of any Lands of her Husband's; for since she quitted her Dower when she was at her own Disposal, she can claim nothing but the Jointure; and that she has passed away by the Fine levied; but if the Jointure was made during the Coverture, and then she relinquished it by Fine, yet she shall have her Dower of the other Lands; for the Acceptance of a Jointure, during the Coverture, is no Bar of her Dower, and she passing it by Fine, cannot be construed as an Acceptance of Property in them, since that Act is capable of another Construction; (viz.) to bar her of her Dower in those Lands.

The Wife may waive her Jointure by Parol in pais, for the Use may be limited by Parol at Common Law; and therefore may be divested by Parol; and the Uses and Trusts, 153

Word,
Words, has no Power to execute the Freehold in her when she refuses.

If an Estate be made to the Wife for her Jointure during the Coverture, the Remainder to J. S. in Fee, and the Wife waves this Jointure, J. S. shall have the Remainder; for here was a particular Estate at the Time of creating the Remainder; so that it had the Circumstances of a Remainder, being the Residue of a particular Estate then in Being; and since the particular Estate was defeasable by an Act that could not hurt the Remainder, the Remainder upon such Destruction of the particular Estate comes in Being.

A Man covenants to stand seized to the Use of himself in Tail, the Remainder to his Wife for Life, the Remainder to B. in Tail, and then he makes a Feoffment in Fee to the Use of himself and his Wife for their Lives as a Jointure, the Remainder to C. and dies without Issue, the Wife is Remitted; for where a Later, and Defeasable, and a Former, and Indefeasable Title concur in the same Person, there must be a Remitter.

But in this Case the Wife hath two Titles both waivable by her, the first indefeasable by any third Person; the later defeasable by a third Person;
Ules and Trusts.

for upon her Claiming by the second Title, she waives the first, and consequently the Remainder in B. commences, and he shall have his Action; and therefore she must be in her former Title to save the Contention and Trouble of the Action.

But if an Estate be made to the Husband in Tail, the Remainder to the Wife for Life, the Remainder to the Right Heirs of the Husband; the Husband afterwards makes a Feoffment in Fee to the Use of the Husband and Wife for their Lives, the Remainder to the Right Heirs of the Husband; the Husband dies without Issue, the Wife may claim, by which she pleases, and is not Remitted volens volens; because here are not two Titles, the one indefeasible, and the other defeasable by a third Person, but both equally firm; for the Right Heir of the Husband, upon the Waiver of the first Estate, by the Wife, can claim nothing in the Land, contrary to the Feoffment of his Ancestor; and therefore that Estate which the Wife claims is indefeasable, and no Stranger is prejudiced by being put to his Action.

But if she makes no Election, she shall be supposed to be in of her elder Estate, because every one is presumed to chuse what is most for his Benefit.
If the Wife has an old Right before the Coverture, and afterwards takes a Jointure of the same Lands she shall be Remitted.

Hob. 72. An Estate settled to the Husband for Life, Remainder to the Wife for a Jointure, except such of the Lands as the Husband should devise, this Exception is repugnant to the Grant; because the Settlement might be avoided by the Husband devising the whole.

Of Pleading Jointures.

Hob. 72. In a Writ of Dower the Tenant pleads a Jointure in Bar of Dower, and concludes that the Wife claimed after the Coverture, by Force of the Jointure, the Wife makes a Title to the same Lands by another Conveyance, and concludes her Replication without traversing the Claim alleged in the Bar; but the Tenant cannot rejoin, that the Wife claimed by Force of the Jointure, without traversing her Claim by the Title alleged in the Replication; and the Reason of the Difference is this, the Claim by Force of the Jointure alleged in the Bar is out of Time, and idly pleaded; and therefore requires no Traverse; for by the general Words of the Statute a Jointure is a good Plea in Bar of
of Dowter; but there is an Exception in these Words, provided if the Lands be assured, during the Coverture, she may have Liberty to refuse them; so that the Wife, to avoid the Bar of the Statute, must plead that she is within the Exception of the Statute; for she must shew what is for her own Purpose and Advantage; but when she sets up a Claim by another Conveyance in the Replication, the Tenant cannot plead a Claim by the Jointure without traversing her Claim by the other Conveyance, because the Matter must be brought to Trial when any Difference in Fact is stated; and he that denies the Fact of any thing properly and fitly pleaded must draw to the Issue by offering a Traverse.

Of the Wife's Alienation of her Jointure.

By the 11 H. 7. 20. If a Woman hath an Estate in Jointure or in Dowter, and aliens by Recovery, or otherwise, he that hath an Interest, and to whom the Land ought to belong, may enter as if the Woman were dead, without Discontinuance or Recovery. A Use at Common Law, settled by the Husband on the Wife for her Jointure,
ture, is within the Intent of the Statute; for 'tis an Hereditament within the Words of the Statute; and tho’ the Statute speaks that it must be by Descent or Purchase of the Husband; yet it must be an Use newly raised to be within the Law; because 'tis Part of the old Estate which the Husband had by Descent or Purchase.

Since the Execution of Uses, an Use settled in Marriage on the Wife by the Husband, is within the Statute; for it comes within the express Words (given to the Husband and Wife, by any seized to the Use of the Husband) for every one is Party to an Act of Parliament; and therefore the Feoffees transfer their Interest in the Manner that it is settled.

A Woman seized of Lands in Fee Simple takes a Husband, and has Issue a Son, and she and her Husband levy a Fine of her Lands with a Grant, and Render back to them both in special Tail, the Remainder to her Right Heirs, if the Husband dies, and the Wife after levies a Fine of these Lands, this is no Discontinuance within the Statute; so if a Woman conveys Lands to the Ancestors of her intended Husband, who re-conveys it to the Husband and Wife in Tail, the Wife, after the Co-
Coverture may alien; and yet be out of the Danger of the Statute; for the Statute intended to redress the Mischief of the Wife's Alienation of the Husband's Lands, and these were originally her own.

If Lands be settled to the Use of the Husband and Wife in Tail special for her Jointure, the Husband dies, the Wife Aliens in Fee, the Issue may enter in the Life of the Wife; for by the 1 Rich. 3. c. 1. the Acts of Cestuy que Use shall bind the Feoffees, and according to his Title and Interest in the Lands; so that the Feoffee of a Use in Tail might have entered after the Discontinuance of Cestuy que Use in Tail, without being put to their Formedon; and therefore if the Statute of H. 7. did not give an Entry in the Life of Cestuy que Use in Tail, it would be to no Purpose.

Husband and Wife, Tenant in Tail Brown's Special, Remainder to the Heirs of the Husband; the Husband dies, the Issue levies a Fine, and by it grants all his Interest to J. S. the Wife makes a Lease, for three Lives, not warranted by the 32 H. 8. J. S. may enter immediately, and oust the Leesee; for J. S. is the Person that has an Interest; and to whom the Lands ought to belong; for the Fine concludes the Issue of the Tail;
by the 32 H. 8. 36. a Fine levied of any Lands intailed to any of the Ancestors of the Conufor is a Bar to all Intents and Purposes, and the Remainder is granted by the Common Law; so that J. S. hath the next immediate Interest, and consequently may enter for this Alienation in the Life of the Wife.

If the Wife be Tenant for Life of the Husband's Lands, the Reversion to the Issue in Tail, and Tenant in Tail suffers a Recovery by Diffcizin of the Wife, and then the Wife releases to the Recoveror with Warranty, the Wife dies, the Issue in Tail dies leaving Issue, his Issue shall not avoid the Collateral Warranty of the Wife; for if the immediate Heir inheritable, either before, or at the Time of the Alienation, consents upon Record, he is not within the Benefit of this Statute by the last Provifo; but if after the Alienation of the Wife, the Issue in Tail had released upon Record, this had been no Bar of the Tail; for when the Issue has any Right as Tenant in Tail, he cannot by his Act bar his Issue. Westminster. 2 C. 1. and since the Statute de Donis is not repealed by express Words, a Consent to part with any Right accrued to Tenant in Tail, is within the Verge of the Statute.

There
Uges and Trusts.

There is a Difference between this Statute and the 6 of R. the 2. for there the next of Kin to the Person ravished shall enter, and by the Words of the Statute, shall hold it Jure Hereditatis; and therefore if a Daughter entered and held it Jure Hereditario, the Son born afterwards shall not divest it; but here the Statute says, That the Person that has Interest shall enter and hold it; and therefore if a Daughter enters, a Son born afterwards shall divest it.

Thirdly, Of the Cases out of the Statute; and they are two-fold:

1. Where Uses are limited upon Uses:
2. Where the Uses of Terms are limited.

First, Where Uses are limited upon Uses; if a Man bargains and sells his Lands to A. to the Use of B. the Statute cannot execute the Use in B. for by the Bargain and Sale; which implies a Consideration, there is a Use in A. and before the Statute it was impossible that two distinct Persons should have the Use of the same Land.

And by the Statute, the first Use cannot be executed in A. since there could not be two plenary Possessors, and the second
cond Use being contrary to the Disposition to A. must be null and void: but
the Chancery that looks upon the Interest of the Parties in Conveyances, con-
strues A. only as an Instrument to take
the legal Estate, and that in Conscience
he is bound to answer the Trust to B.
which he hath taken; Quære tamen, if
the Consideration moves from A.

Pop. 81. If a Man doth Enfeof another to
the Use of J. S: and his Heirs, and up-
on this Consideration, that if J. N. shall
pay so much Money, then the said J. S.
and his Heirs shall be seised to the Use
of J. N. and his Heirs, J. N. pays the
Money, the Use is not executed in him
by the Statute, causæ qua supra; but
the Court of Chancery will undoubt-
edly support such Trust.

4 Rep. 4. A Devise supposes a Consideration,
and therefore it cannot be averred to
any other Use than to the Use of the
Devisee, for that were an Averment
contrary to the Design of the Will ap-
ppearing in the Words.

But if an Use be expressed, it shall
be to the Use of Cestuy que Use, and
will execute; for the Will has only an
implied Use, where no other is limited,
and, Expressum facit Cessare Tacitum.

But if Lands be devised to A. during
the Life of B. in Trust for B. the Re-
mainder
mainder to the Heirs of B. now living; this is a Chancery Trust in B. and not executed by the Statute; for this was the Design of limiting an Estate to A. that a Tail might not be executed in B. whereby he might have a Power to dock it.

Secondly, Where the Uses of Terms are limited out of the Statute; see before; and these Limitations are two-fold.

First, Of Such as wait on an Inheritance.
Secondly, Terms in Gross.

First, Such as wait on the Inheritance: The Case of Bishop Pember's Argument.

The Original of this was in the Time of Queen Elizabeth, when Mortgaging by Way of raising Terms was invented; and then if a Marriage Settlement was made, or a Purchase upon valuable Consideration, and the Mortgage was discharged by the Purchase-Money, or the Marriage-Portion, it was thought fit to take an Assignment of the Term in Trust to the same Persons to whom the Inheritance was limited, to protect it against latter Mortgages.

And hence it is that the Inheritance was limited in Tail, with Remainder over, 6, 11.
over, the Trust of the Term might be limited in the same Manner; and therefore if the Tail was docked by Fine and Recovery, the Trust of the Tail and Remainders ceased, and attended the Inheritance in Fee, for the Trusts could not protect or attend these Estates that were not in Being, and the Trustee, who is but an Instrument to protect others cannot have it to his own Use.

The Intailing a Term is not within the Statute de Donis Condit. for that Statute extends only to Estates of Inheritance, and not to Chattels, which the the Rules of Common Law have carried into another Channel.

And therefore in this Case the Trustee and Tenant in Tail may dispose of it without a Fine or Recovery; and this upon valuable Consideration, will bind the Issue; because, since the Chancery are not bound by the Statute, they are at Liberty to direct the Rules of Equity, and 'tis not Equity to set up the Trust to the Issue when the Ancestor has received for it a Valuable Consideration.

And it will be Assets to pay Intestates Debts, for all Chattels of Intestates are Assets at Common Law; and 'tis not Equity to direct it otherwise.

But if the Inheritance of an Use be intailed, the Alienation of Tenant
Uses and Trusts. 165

in Tail, will not divest it out of the Issue, for 'tis within the Intent of the Statute de Donis, which says that if an Estate be thus limited, the Donee shall not alien to prejudice his Issue; and the Chancery in interpreting Mens Contracts, is bound by the Intent of an Act of Parliament.

If a Term be given to A. in Trust for B. in Tail, with Remainder over, attendant on an Inheritance, and A. surrenders to B. this shall not destroy the Remainder; for tho' the Surrender destroys the Estate at Law, yet the Trust remains in Equity, if the Party had Notice.

But in Case, if A. or B. had aliened upon valuable Consideration, without Notice, this would have destroyed the Equity of the Issue and the Remainder Man.

Secondly, Terms in Gross. Of Executory Trusts, or Terms in Gross, is already spoken in the Law of Executory Trusts.

If a Lease be limited in Trust, and the Trustee renew the Lease, it shall be to the Benefit of Cestuy que Trust; for if the Trustee takes on him the Trust, he takes upon him to act for the Benefit.
fit of the Party to whom the Advantage of the Term was originally designed.

The Father made a Trust for his Will, and devised $500 to each of the Daughters, payable at their full Age or Marriage; or if any or all of them died before, then to others; the Trustee out of this cannot allow Maintenance to the Daughters, tho' they have no other Maintenance, because the whole is devised to others; and therefore, if the Trustee deducts any Part of it, they do not follow the Intent of the Will.

1 Co. 120. Where A, since the Statute of the 27 of H. 8. enfeoffed B. in Fee to the Use of himself and his Heirs, during the Life of C. then to the Use of the first Issue Male of C. in Tail, so on to the tenth Issue; then to the Use of D. in Tail, Remainder, then to the Use of F. in Tail, Remainder to the Use of the Right Heirs of A. B. enfeoffed C. before the Birth of any Issue, without any Consideration; and having Notice of the Uses, afterwards, on a Trial between the Feoffee of C. and his Issue, this Matter came in Question; and the Point of the Case was, whether or no these contingent Uses are destroyed by the Feoffment to C: and it was resolved that they are. In handling this Case, I shall first
first endeavour to shew that C. the Fee-fee of B. did not stand seized to the former Uses; notwithstanding the Feoffment was made without Consideration, and he had Notice of the Uses; for this Feoffment divests all the Estate out of others, and by it B. gained a new Estate in Fee by Wrong, which he passed over to C. so that C. is not seized of the old Estate, subject to such and such Uses, but he has a new Estate that is subject to no Uses, because not expressed or limited; and the Law, by Construction, will not make his Estate subject to Uses annexed to an old Estate, now gone and only remaining in Right; for were the Land chargeable with the Uses into whose ever Hands it came, this would be a Perpetuity; for by limiting a great many contingent Uses, and charging the Lands with them ratione possessionis, into whose Hands forever it came; and it being in the Power of Nobody to bar and defeat these contingent Uses (as it cannot be) (were the Lands charged into whose Hands forever it came) with them, all these Inconveniences, the necessary Consequences of a Perpetuity, must needs follow. Therefore a Use was not a Thing at Common Law annexed to the Possession of the Land, but the Privity of
Estate; therefore the Chancery did not charge all the Persons that had the Lands, but only those Persons that came into the Lands by Privity of Estate, and with the Trust and Confidence at first reposed in the Tenants; and that for the Reason aforesaid, left they might encourage Perpetuities; and they construed in a Court of Equity, the Limitations of Uses, as those of Estates in Possession were at the Courts of Common Law; for the Chancery would not set up a Rule of Property distinct from that at Common Law, especially in Cases so inconvenient; for if the contingent future Uses might not be destroyed as well as contingent Remainders; then by the Limitation of them, an Estate of Inheritance would be so fettered, that Nobody would meddle with the Purchase of it; and what Reason can there be assigned, why a contingent Use cannot be destroyed as well as a Use in Esse, which was daily destroyed, and by the Construction of the greatest Equity; for if the Feoffee to an Use, had for good Consideration enfeoffed another who had no Notice, the Use was destroyed, tho' the Feoffee came in by Privity of Estate; and this for the same Reason, for if the Lands were charged with the Use into who
Hands for ever they came, the Inconveniencies of a Perpetuity would immediately follow; for who would meddle with Lands, that they could with no Possibility know whether it was charged with a Use, or not; for that it might be limited in so secret and private a Manner, that it were impossible to come to the Knowledge of it. Therefore such Feoffee stood seised to his own Use; and the only Remedy for the former Cestuy que Use, was to complain in Chancery of the Feoffee's Breach of Trust. So if Diseizor had entered upon the Feoffee, he had not stood seised to the Use, &c. but the Feoffee must have entered, and then have revived the Use, which as it seems to me, he might be compelled to do in Chancery; and if he had stood seised to the Use, he would have been punished by Law, as a Wrong-Doer, for taking the Estate, and those Profits to himself he had no Right to; and yet would have been answerable to the Cestuy que Use for the Profits, as was the Feoffee; besides he came not in Privity of Estate, and so was not liable to any Contract or Agreement made by other Persons concerning those Lands he claimed not by or from any of them; neither was any Confidence reposed in him. An Alienee, 1 Co. 122.
nor Person Attain'd, were not capable of having any Lands to the Use of other Persons; for they were not capable of having any Lands themselves, for the Benefit of any but the King; the Person Attain'd is only capable to have a Purchase of Lands for the King's Use and Benefit, and that excludes all others; neither can an Alien have Lands, and then he cannot be seized to an Use. A Corporation cannot, by the Common Law, be seized to a Use; for in their Constitution, they are a Body of Men collected by Force of the King's Letters Patent, to such Intents and Purposes; all which are only for the Benefit and Advantage of the Corporation: And therefore they cannot have Lands as a Corporation (which implies to the own Use and Behalf) to the Use of another; for they we not at first created to that End, and they having no Power as a Corporation, any other than they receive by Force of the Letters Patents; and by that they being constituted only to such and such Ends they want Power as a Corporation, to take Lands to the Use of other People, for that is an End Nobody could think of, in the Erection of a Corporation; neither shall the King stand seized to a Use, for all the Lands he is seized of, he
Uses and Trusts.

He is seized in *jure corona*, for the Maintenance and Support of his Crown and Dignity, and the well Government of the Common Wealth, which is a *Use* the Law designed him *primitus*, and consequently 'tis exclusive of all other *Uses*: Neither can it be imagined that the King should in Point of Honour stand seized of Lands only to the Benefit and Advantage of another, and be a Sort of Bailiff to him.

*Tenant* by the *Courtesey*, or *Tenant* in *Dower* cannot be seized to *Uses*, because they come to these Estates by the *Disposition* of Law, for the Advancement and Encouragement of Matrimony; and those Estates are given them for their own Maintenance, and are consequently exclusive of all other *Uses*, for the Advantage of other People.

*Quære* if at this Day an *Estate* be given to a *Man* and his *Heirs*, to the *Use* of him and his Heirs, in *Trust* for another and his Heirs, whether the Woman shall be endowed without any *Trust*; for if she be not, then here will be an *Estate* of *Inheritance* in *Fee Simple*, so settled that no Woman can have *Dower* of it; for a Woman is not *dowable* of a *Trust*; *ideo Quære*. Lord by *Escheat* cannot be seized to an *Use*; for he comes in and claims above the *Use*.
Uses and Trusts.

Use, by a Condition in Law secretly annexed to his Estate in its Commencement; viz. That, if the Feoffee died without Heir, he should re-enter; and so he claiming in by Force of a Title Paramont to the Use, shall never be subject to any Charges that take their Rise and Date from an inferior Time and Title.

Besides he has the Land in Satisfaction for his Services that are now gone; but what Satisfaction will it be if he is still to hold the Land charged with the Use.

A Man possessed of a Term in Trust for another, is attainted of Treason; the King is not subject to this Trust. 2 Roll. 780.

Otherwise of Tenant in Dower; because she comes in in the per, by the Assignment of the Heir, and not in the post, as Tenant by the Courtesy. 1 Inst. 239, or Bro. Feoff. Uses 338. a. makes a Difference between Dower at Common Law, and ad ostium Ecclesiae, and ex Assensu patris; for they are by express Assignment.

Where A. Feoffee to the Use of B. grants a Rent to C. who has Notice of the Use, he shall hold the Rent to the Use of B. and if A. enfeoff D. without Notice, and B. after Stat. R. 3. releases
Uses and Trusts.

If Feoffee to Use grants to J. S. or Common, this ex Natura Rei could not be to the Use of Caesuque Use. Bro. 338. 10. See Contingent Remainders. 3. b.

Where a Feoffee to Use makes a Lease for Life or for Years, or a Gift in Tail, either with a Rent reserved, or without, tho' the Leesee or Donee have Notice of the former Uses; yet he shall not stand seized to those Uses but to his own. Bro. 339. 47. 340. a. And. 314. If a Seigniory be held to the Use of A. and the Tenancy escheats, that shall be to the Use of A. so if Feoffee to an Use vouches and recovers in Value, he shall be seized to the first Use. Bro. 238. pl. 10.

Where a Feoffee to Use enfeoffs another upon Consideration of Blood, that Feoffee shall be seized to the former Uses; but'tis otherwise, if the first Feoffment were in Consideration of Blood.

Where J. S. is a Feoffee to the Use of A. in Tail, Remainder to B. in Tail, Remainder to the Right Heirs of A. and the Feoffee and A. join in a Feoffment to three, (two whereof have Notice
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...tice, the other not) to new Uses, they shall be seized to the new Uses; for A. had a Power over his own Estate for Life and in Fee; but the two Feoffees ought to make Recompence to A. for the Loss that every body else sustained. Hob. 349.

If a Feoffee to an Use doth enfeoff one upon a valuable Consideration, who has Notice of the former Uses to express Uses, he shall stand seized to those express Uses, and not to the former Uses. Hob. 349. 2 And. Bro. Feoff. at Uses, 340. Dy. 341. b. 1 And. 313. But Quere if a Reversion be subject to future Uses, and is granted to a Man and his Heirs without Consideration, to the Use of the Grantee and his Heirs; yet whether 'tis subject to the former Uses. 2 Roll. 79. Dy. 340. b. 2 Roll. 796. 2 Sid. 124. 157. 64. A. agrees with B. to make him a Lease of Black-Acre for Years, then makes a Feoffment to C. upon a valuable Consideration, who has Notice of the Use, he shall be compelled to make it. 2 Roll. 781. Pl. Com. 351. 1 Co. 122. B.

Feoffee to an Use cannot appoint a Bailiff without the Consent of Cesfuy que Use; nor allow him Fees unless the Cesfuy que Use be an Infant. Bro. 338 to 339. 27.

Thus
Uses and Trusts.

Thus have we shewn how Uses in Esse were destroyed at Common Law, and by Consequence how those that are Future, and which 'tis uncertain whether ever they will come in Esse, may be destroyed; for the same Arguments that hold for the Destruction of present Uses, hold good for the Destruction of future Contingent Uses: For if he that comes in of another Estate, than that which the Feoffee to the Use had, shall not be seized to the Uses in Esse; by the same Reason, neither shall he be to future and contingent Uses.

The same Law is of Corporations, Aliens, &c. If then a Use be not a Thing annexed to the Land, it will be asked of me, What it is? To which I answer, that a Use is an equitable Right to have the Profit of Lands, the legal Estate whereof is in the Feoffee, according to the Trust and Confidence reposed in him, which equitable Right also extends it self to those that come to the Lands in Privity of Estate to the Feoffee, and under the same Trust and Confidence that he did; so that, to every Use two Things are incident; a Confidence in the Person, and a Privity of Estate; and when any of these failed, the Use was either suspended or destroyed.
A Use is defined by my Lord Coke to be a Trust and Confidence, which is not issuing out of the Land, but as a Thing collateral, annexed in Privity to the Estate, and the Person touching the Land.

The acknowledging a Statute by Cestuy que Use, was the same Thing as making a Lease within 1 R. 3. and therefore the Feoffee's Land was extendable upon it.

Uses were to some Intents reputed in Law as Chattels, and therefore were devisable; for the Court of Chancery, in the directing and judging concerning Uses, always made such Constructions as were most reconcilable to the Intent and Will of the Parties, where no Inconvenience would follow; therefore it appearing to be the Intent and Design of the Parties, that the Use should be to the Devisee, they adjudged it in him; yet there was a Possessio fratris of a Use, and it was intailed within the Statute de Donis, &c; for Reason would that the Sister of the whole Blood should have the Use before the Brother of the half, for the same Reasons as hold good in Freeholds, and the Chancery in Equity supported the Will of the Donor; so if the Use should come to his Issue, for that the Intent
Intent of the Parties is there a great Direction for the Guidance of the Judgment; Uses were neither Assets to the Heir or Executor, their original Institution being for such Intents and Purposes, that no Execution, &c. might be had of them. But Quare why in Equity, they should not have been liable to Execution, &c.

It may be asked, What this Privity of Estate is, that is requisite to the standing seized to an Use? And it is when a Person comes into the same Estate the Feoffee to Use had in and by Contract with him, for a Disseisor comes into the same Estate, but not by Contract and Agreement; and therefore he is in the post, i. e. claims not by or from the Feoffee: And why a Privity of Estate is requisite to the standing seized to a Use, has been already accounted for in a great many particular Cases: But in general, 'tis because he that comes not in Privity of Estate claims not the Estate by and from the Feoffee, who stood seized to the Use, and consequent-ly claims not the Estate as it was subject to the Uses; but one above that clear and free; and he that claims an Estate by no Contract or Agreement with the Feoffee, but either by Title above his, or by the Disposition and Gift of Law, cannot
cannot stand seized; for this would in a Manner defeat his Title, and frustrate the Benefit of the Estate the Law gave him, and why should a Man stand seized to an Use when he claims not the Estate by Agreement with him that did stand seized, or has not the Estate that was charged to the Use; for Confidence in the Person is as well requisite as Privity of Estate; for so first began Uses, by enfeoffing some Friend to the Use, in whom the Feoffor reposed a Confidence and Trust; and if the Feoffee performed not the Trust, the only Remedy for the Cestuy que Use was to punish him for his Breach of that Trust. But where there is no Trust, there can be no Breach of Trust, and consequently no Punishment for it; of Necessity therefore, wheresoever the Trust and Confidence fail, the Use is gone, because the Remedy is gone; and before we have shewn several Reasons why the Uses must cease, the Lands not being charged with them ratione possessionis, for the Danger of a Perpetuity; but only the Person being charged, is respondent of the Privity of Estate, and Confidence repos'd in him. Confidence in the Person is either express or implied, and if that fails, the Use is gone; as if a Feoffee to an Use, for good Consideration, doth
doth enfeoff one who has not Notice of the Use, the Use is gone, for here is no Trust in him; he not knowing that there were any Uses, no Trust could be reposed in him to let the Cestuy que Use take the Profits; but if he had Notice, a Trust might well be said to be reposed in him, because he took the Land, knowingly, with the Uses: If the Feoffment had been without Consideration, tho' he had no Notice of the Use; yet he stood seized to the Use, for the Law implied Notice of the Use, and so there is a Trust; and this introduces no Manner of Inconvenience in charging him with a Use; because he loses nothing, having given no Consideration; for he would be seized to the Use of the Feoffor, if no Use were limited, and then the Feoffor must be answerable for the Value of this Use to the Cestuy que Use, which would be a vain Security. It seems, tho' this Feoffment were to Uses expressly, yet the Feoffee should stand seized to the old Uses, because he came to the Lands, without any valuable Consideration, and perhaps the first Feoffee to Use was not responsible for his Breach of Trust; but the other Case of a Feoffment, with Consideration, without Notice of the Uses, is widely different from this; for were he is charg-
ed with all the Uses, all the Inconveniences of a Perpetuity instantly follow. For the Limitation of Uses may be so secret, that it is impossible to know of them, and then who would purchase Lands; so that of Necessity, Land would be so settled, that it would not be in the Power of the Tertenant to dispose of it, but it must necessarily remain in the Family which is a Perpetuity. There is a DIVERSITY taken in Plowden between the Feoffment of the Feoffees and of Cestui que Use; for if the Cestui que Use for Life or in Tail made a Feoffment in Fee, either with or without Consideration, all the old Uses were discontinued, and the ancient Estate which the Feoffees had, is gone, and they have a new Estate subject to these new Uses created by the Feoffment; for when Cestui que Use made a Feoffment in Fee, which by the 1 Rich. the 3d. he might lawfully do, he passed a Use in Fee Simple to the Feoffee; which being a new Use to the Feoffee, all the old Uses were discontinued, and consequently the Estate of the Feoffees must be altered; for were it the ancient Estate, it were still subject by the former and elder Limitation of Uses to the old Uses; therefore have the Feoffees, by Construction, a new Estate to the new Uses;
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but if the Feoffees themselves had made a Feoffment without Consideration, the Feoffees had stood seized to the old Utes, for here was no Use nor new Estate; but as it seems they both agree upon the whole, for if one have an Estate for Life to the Use of another, and he makes a Feoffment in Fee, (and this is really the Case of Cestuy que Ufe) the Feoffee shall not stand seized to an Use, for he has a new Estate, and not the old one subject to Utes. 

Quære whether, by the Feoffment of Cestuy que Ufe, only a Use passed, or whether the legal Estate passed; for it seems by Plowden, that only a Use passed; but by Consequence the legal Estate passed, which, as it seems, is Law; the Lands were liable in the Hands of the Feoffees to an Use to Execution for the Debt of Cestuy que Ufe; and for Relief and Help after the Death of Cestuy que Ufe, after the 19 H. 7. c. 15.

Having thus shewed, that by the Common Law, such a contingent Use as in the Case first put, had been destroyed by the Feoffment, we come now to shew the 27 H. 8. did not intend the Preservation of them; for the very End and Design of that Act upon Consideration of the many Mischiefs and Inconveniencies that had been introduced by
Uses and Trusts.

1 Co. 124. Uses, was utterly to extinguish and suppress them; if therefore it should be construed so far in the favour of Uses as to support and preserve contingent Uses in these cases, where before at Common Law they were utterly destroyed, the Act would be expounded against the End of its Sanction, and all those Inconveniences it was made to suppress, would be still in Being; for who could be sure of a Purchase of Lands, when by the Limitation of a future Use in a secret Manner, which by no Act could be destroyed or defeated, he should loose his Land; when that came in Play, the Makers of the 27 H. 8. c. 10. thought that after that Act, no Land could pass by Way of Use, but by Common Law, which was the Way they designed to retrieve and bring in an Use again; and therefore they provided by a Salvo for the Right of all others, that they had before the making of that Act; yet they provided no Salvo for any body’s Right after the Statute; but seem to give all Lands that are seized in Trust to the Cestuy que Trust, without any Manner of Provision for the Rights of other People; therefore if A. do disseize B. since the Statute, and makes a Feoffment to C. in Fee, to the Use of D. in Fee, the Right of B. is not saved by
Uses and Trusts.

by the express Letter of the Act, for that gives the Land to A, without any Manner of Salvo for the Right of B, but by equitable Construction the Judges have saved the Right of B, since that Way of Conveying is in Use, which the Makers of 27 H. 8. thought would be no more in Practice; and therefore made no Provision for the Right of those after the Act; but this the Makers of the Act took for granted; for the Way of conveying by Use is not any Ways prohibited by the Act, but only the Possession executed to the Use. Therefore this Manner of Conveying not being prohibited, and being much practised, the Salvo for others Right is absolutely necessary for every Man's Safety; but because the Makers of the Act thought the Way of Conveying by Use, would still be used by Way of Bargain and Sale, that that also might be notorious, and on the same Level with Common Law Assurances, they afterwards, at the same Parliament Enacted, That they should be enrolled; and this shews, that the Intent of the Law-Makers was not to shew any Manner of Favour to Uses in Esse or Contingency; and as the Preservation of contingent Uses is clearly out of the Intent of the Statute, so it is out of the Remedy of the Body of the Act.
Act provided against the Mischiefs that were before the Act; for the only Intent and Design of the Act is to execute the Possession in those that have the Use; so that to the Execution of every Use within the Intent and Meaning of the Act, it is necessary that some body should be seized to the Use of some other Person; so that if there be no Person seized to the Use, there can be no Execution of the Use, by the Force of the Statute, and there must be a Use in Esse, and not a Right of an Use only, for the Words of the Act are, That every Person that has, or hereafter shall have any Use, &c. So that the Use must be in Esse, in Possession, Reversion or Remainder, and the Cestuy que Use must be in Esse; for the Words of the Act are, Stand seized to the Use of any Person or Persons; for how can the Act execute the Uses to the Possession, if there be no Person to take the Use in Being; and the Estate of the Feoffee, must vest in Cestuy que Use; for the Act says, "That the Estate of such Person seized to an Use shall be adjudged in "Cestuy que Use": And when any of these fail, there can be no Execution by Force of the Statute; and this Construction is absolutely necessary, that the Words of the 27 H. 8. may have their full
full Scope and Meaning; so the Makers of the Act did wisely in making no Provision for Uses in futuro; for if they had, all these Inconveniencies at Common Law had still remained, and Perpetuities had been preserved by the Limitation of contingent Remainders, not to be destroyed; Estates would have been so fettered, that no body could have disposed of them; so that the Statute having made no Provision for these Remainders, they are left to the Construction of the Common Law; and then the contingent Remainder in the Case first put had been destroyed for the Reasons before, when we treated concerning these Remaunders at Common Law: If there be no Seizin, in the Feoffees, when the Use comes in Esse, it cannot be executed, &c. and if the Feoffees be barred of their Entry and Right to come at Seizin, the Possession can never be executed to the Use; were the Lands charged with contingent Uses, into whose Hands soever it came by Force of this Statute; then a Corporation Disseisor of the King, &c. should stand seized to the Use, as before has been shewn they cannot; and the Nature of the Use would now be quite altered; for before it was a Trust and Confidence in the Person, now it would be a Sort of Attendant on
on the Land, or annexed thereto; and then it were a new Hereditament; by Construction of this Statute, the Heir of the Part of the Father, should have the Use, tho' the Lands moved from the Mother's Side; and this would be contrary to diverse settled Resolutions. If there be a Tenant for Life, the Remainder in Fee, and the Remainder-Man covenants, that if the Tenant for Life shall die in four Years, he will stand seized to the Use of J. S. in Fee, and the Tenant for Life makes a Feoffment in Fee, the Feoffee likewise covenanting to stand seized to the Use of J. N. if the Tenant for Life dies in four Years, the Statute cannot preserve and execute both these future Uses at once; therefore one of them must be toll'd, and then the Statute has not the Effect to preserve future Uses. Before the Statute if the Feoffee had bargained and sold, and made over no legal Estate to the Bargainee, no Use had passed; for the Privity of Estate and Confidence remain; and therefore the old Use continues. But then it may be objected, if future contingent Uses are not preserved and all executed by the 27 H. 8. how can the Possession be ever executed to them, since the whole Estate is out of the Feoffees. To this I answer, that only that
that ESTATE is executed to the USE, by the 27 H. 8. that has the Requisites before-mentioned to the Execution of a Possession to an USE; and it is impossible a future USE should have the Possession executed to it by the Statute, when ’tis uncertain whether it will ever come in ESSE or no: But the Feoffee has a Possibility to stand seized to the USE, and when the USE itself comes in ESSE, then the Possibility is come to a Certainty; viz. an ESTATE to the USE of Cestay que USE, and so is executed by the Statute; but if the ESTATE of the Land be altered by a Disseisin or Feoffment, so that the Possibility of the Feoffees is suspended, there he must enter to revive; the future USE is absolutely destroyed, and no ESTATE remains in the Feoffee, for the Benefit of a future USE; for then, if a Feoffment were made to the USE of a Man for Life, and then to the USE of his first Son, not yet born, in Tail, the Remainder to B. in Fee, he would be a Tenant for Life, the Remainder to the Feoffee and his Heirs, as long as the Sons should have Heirs of their Body, the Remainder to B. in Fee, and so there would be a Fee upon a Fee, and the Feoffee might punish the Tenant for Life for Waite, or perhaps enter for a Forfeiture, when perhaps the con-
contingent Remainder would never come in Esse: So that of Necessity he must have nothing but a Possibility, which when it comes in Esse, is such an Estate in him as may serve to answer the future Use, and be executed to it accordingly, by Force of the Statute; for as he had a whole Fee to such Uses, so the Statute parcels out of his Estate, according to the Uses; and as there had been no Execution of the Possession, he must have stood seized to the future Use, when it came in Esse: So now the Statute gives that Estate in Possession to the Use, when it comes in Esse, as it does to Uses in Esse presently. But if when the future Use comes in Esse, there is an Estate adjudged in the Feoffee, it may be asked what Estate there is in him, or what Estate did he gain when he enters to revive a future Use; for his old and antient Estate he cannot get when that is executed by Force of the Statute in others. It seems that in both Cases, he has but such an Estate as may serve to be executed by Force of the 27 H. 8. in the Cestuy que Use; for he cannot divest the Estate lawfully vested before by the Force of that Act of Parliament. So that if the future Use be for the Life of Cestuy que Use, when this comes in Esse, it seems the Feoffee has a legal
a legal Estate to him and his Heirs, during the Life of Cestui que Use, which is that Instant executed in the Cestui que Use, by Force of the Statute; the same Law is, if he had entered to revive the Use; so if the Cestui que Use had an Estate Tail in the Use, the Feoffee shall, when this Use comes in Being, have an Estate to him and his Heirs as long as the Cestui que Use has Heirs of his Body. Then it may be asked, How he can have such an Estate which is a Fee, and yet many Estates Tail, and a Remainder in Fee expectant upon it? But it may be answered, if he hath it only of Necessity, that the Cestui que Use may have an Estate Tail in him, which is co instanti executed in him, the Thing being momentaneous; and so there can be no Manner of Objection made of the Inconveniencies following upon the Limitation of a Fee upon a Fee; there must be an Estate in the Feoffees to serve the future Use; for the Statute says, That the Estate that was in such Person, &c. should be adjudged and deemed in him that has the Use, &c. so that of Necessity, some Estate must be adjudged in the Feoffee, that it may be executed by Force of the Statute; and tho' the Feoffee hath a particular Estate in the Land by his Entry without any
any *Donor*, this is not any Absurdity, it being done by Force of the Statute, tho' regularly at Common Law, no such Estate can be created. No Limitation of a Use is good, but where the like Limitation of an *Estate* in Possession were good at Common Law; for the Design of 27 *H. 8.* was to revive the ancient Common Law, and this Construction must be allowed of Necessity; for now the same Reason that had forbidden, such a particular Limitation of Estate in Possession at Common Law, forbids the like Limitation of a Use; because the Possession is by the Act executed to the Use; therefore must the same Inconveniences necessarily ensue; so that if a Man makes a Feoffment to the Use of one for Years, Remainder to the Use of the Right Heirs of *J. S.* who is living, this Use limited to the Heirs of *J. S.* is void, for the same Reason as if an Estate had been made to one for Years, Remainder to the Right Heirs of *J. S.* because that the Freehold is nowhere so that there cannot be a Tenant to the *Præcipe*, (yet this were good of a Use at Common Law) and so if any one hath a Cause of Action, he may be delayed of his Right, and the like Inconvenience there is in a Use so limited; for
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for no Estate is left in the Feoffee, as before has been said, but only a Possibility. So in all other Cases, the Execution of the Possession to a Use, is construed according to the Rules of Common Law, because the same Reasons hold there. So if a Feoffment be made to the Use of A. for Life, and then to the Use of her who should be the Wife of B. A. dies, B. takes a Wife, she shall take nothing because a contingent Remainder ought to vest at Common Law; either during the particular Estate, or eo Instanti that the particular Estate determines. Yet perhaps in both these Cases at Common Law, the Chancery might have supported the Use in Remainder, because there was no Inconvenience in it then, as there would be now. ’Tis objected, that if a Privity of Estate is requisite, then no future Use can be executed by the Force of the Statute; for when the Statute has executed the present Use in Esse, they are in the Past, that have the Use so executed; and so are not Privies in Estate to the Feoffee, from which the future Uses may arise. To this I answer, that the Statute requires that these Estates that were limited by Way
Way of Use in the same Conveyance with a future Use, and were executed by the Statute, should still remain and continue till the future Use comes in Esse; and this Privity of Estate is, where two Persons have an Interest created by the same Conveyance in one Estate, by one Conveyance; because then they come to one Estate by a Contract or Agreement, to which both are Parties and Privies, (i.e.) confessant; and why the Estate should continue till the future Uses would arise, we have already accounted for, to prevent the Danger of a Perpetuity; and for many other Reasons; which see before. All Statutes, that have been made in suppressing the Inconveniencies arising from Uses, have always been extended by Equity beyond the Letter of them. It was the Opinion of some Judges, in Chudley's Case, that the future Uses, limited upon a Conveyance were in Abeyance; and also the Estate being executed to them by Virtue of the Statute, it was one entire Estate in Abeyance. But the other Judges for very good Reasons were of a contrary Perswasion; for the Statute, as before has
has been said, extends only (by the very express Words of it) to execute the Possession to the Use where the Use is in Esse, and not to a Possibility of a Use, and what Ground can there be for an equitable Construction to carry an Estate in certain to the Possibility of an Use, when the Words of the Statute warrant no such Expositions; so that a future Use, notwithstanding the Statute, remains as it was at Common Law, till it comes in Esse, and then the Statute executes the Possession to it. It was also held in Chudley’s Case, that future Uses must not arise out of the Estate of Cestuy que Use, but out of the Estate of the Feoffee; therefore if A. doth infeoff B. to the Use of C. and his Heirs, and if D. should pay C. 200., then C. should stand feised to the Uses of D. and his Heirs, this Use to D. is void, not being raised out of the Estate of the Feoffee; the Reason of which Resolution seems to have been, that he that stands feised to an Use must come in in Privity of that Estate to which the Use is annex’d; but here the Cestuy que Use comes in by the Statute, and so in the Post; but now it seems to me, that the Limitation to D. would be supported as a Chancery Trust, since they have found
found out a Way to creep out of the Statute, if a Feoffment be made in Fee to the Use of the Feoffee and his Heirs in Trust for J. S. and his Heirs; Quere, Whether this Estate be not executed in J. S. by the Statute; for as it seems, the Feoffee is in by the Common Law; and so the Statute not satisfied; so that it seems the Way of Bargain and Sale is good to raise a Trust; yet it was adjudged that if a Man bargain'd and sold his Lands in Fee to one, to the Use of one for Life, with other Limitations of Uses to Others, that they were void, because a Use could not be limited of a Use, which is the only Reason of the Case next before.

Feoffee to an Use of a Manor re-leases to the Tenants, they cannot have the Services to the Use of Cestuy que Use, because they are drowned; and there can be no Trust without an Estate in Being. Bro. 138. a. But it seems in such Cases, they would be compelled by the Court of Chancery, to answer the Rents to the Cestuy que Use. Duke of Norfolk's Case, 14, 2 Co. 78. b.

Sir Edward Cooke being obliged by Order of the Council-Table, to make a Settlement of his Estate in this Man-
Usages and Trusts.

her, (that is to say) to covenant to stand seized to the Use of himself; for Life, then to the Use of Elizabeth Hatton; his Wife, for Life, then to the Use of his Daughter Elizabeth; for Life, for a Moiety of those Lands, and then to the Use of her Sons in Tail; 'till the Tenth Son, and then for the other Moiety to the Use of his other Daughter Frances; for Life; then to the Use of her first Son in Tail, and so on 'till the Tenth Son, with Crofs Remainders to each of the Daughters, if the other died without Issue; then to the Use of the Right Heirs of Sir Edward Cooke; yet that he might have it nevertheless in his Power to defeat or preserve the contingent Remainders to his Daughters Sons, for which End he covenanted to stand seized, and so no more was out of him than what was vested in the Cesuyque Use; and did not make a Feoffment to Uses, and put the whole Estate out of him, and put it in the Power of the Feoffees to preserve or destroy them, as it was in Chudley's Case; but here he makes a Lease to one for Years; and then grants his Reversion to another in Fee; without considering, that so he coming in in Privity of Estate, under the Confidence Sir Edward had, might stand seised.
feized to the future Uses, that the Estate of Sir Edward was subject to, and then he makes a Feoffment in Fee to others; so that had he seen Reason to suppress these future Uses, he would have destroyed the Deed of Grant of the Reversion, and trump’d up the Deed of Feoffment; but had he seen any Reason to preserve the Remainders, he would have suppressed the Feoffment, and shewed only the Grant of the Reversion; but none of these Things being done, it became a Question between the Feoffees and the Son of one of the Daughters, (the other dying without Issue) and ’twas resolved in Favour of the contingent Use, and so against the Feoffees; a particular Tenant having entered after the Feoffment made by Sir Edward, but ’twas agreed that if Sir Edward had made a Feoffment before he made a Grant of the Reversion, the future Uses had been destroyed; for then the Feoffees had come in of another Estate, not of that subject to the Uses, as was before shewed in Chudley’s Case, the future Uses were to have arisen out of the Estate that Sir Edward had in him, as in the Case of the Feoffees it doth out of their Estate; and if he had passed away the whole Fee then, as in the Case
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Case of the Feoffees, a Possibility only remained in him, then when Sir Edward Cook grants away, by legal Conveyance, his Estate to another, without Consideration, the Grantee of this Estate being in the Privity of Estate, Sir Edward had, and under the same Trust and Confidence, implied by Law that the future Uses may well rise out of his Estate. The next Thing then to be considered is, what is to be operated to the Destruction of those future Uses, by the Feoffment that Sir Edward made, and that can have no Operation to their Destruction; for though he thereby discontinued all the Estates, and the Feoffee stood subject to the new Uses, yet when the particular Tenant entered, then all the Estates again were recontinu'd, and consequently the Estate of the Grantee of Sir Edward, was again subject to the future Use; but this Lease made by Sir Edward would have bound the future Uses, though not the Remainder Men, because the future Uses were to arise out of the Estate of Sir Edward; and so far as that was defeated, so far was the contingent Uses; and had that been wholly destroyed, the future Uses had been so too.—If a Man Bargains and Sells Lands to one for Life, then
to his first Son in Tail, who is not yet born, it seems this is a good contingent Remainder, rising out of the Estate of the Bargainer; but 'tis said by Judge Nudgiate; that by Bargain and Sale only, no contingent Use can be supported, it seems he means by the Estate of the Bargaineer; but Quare, Whether it may not, ut ante, but it seems a Feoffment or Fine is the surest Way, and so to put it out of the Power of the Owner of the Land to destroy the future Uses. Quare, Whether the Consideration given by the Party in Uses will create a Use to one not in Esse.

A. possessed of a Lease for Term of Years, grants it over to B. and C. and their Assigns, to the Use of A. and his Wife, and the longer Liver of them; A. grants away to another such Interest as he then had in the said Lands, &c. and it was adjudg'd that A.'s Grant was void; for he had nothing but a Trust, which he could not assign over; for a Trust cannot be assigned over, because it lies in Privity; and though A. may repose a Trust and Confidence in the Lessee, yet his Assignee, that is no Party to the Agreement, cannot do it, because not privy (i.e.) not confiant of, nor Party to that Agreement; where-
by by the Contract between the Parties, a Trust was reposed in the Tenant of the Land; for though he might be willing to stand intrusted for the Benefit of his Friend, it does not therefore follow that he would for every Body’s Advantage. But it seems to me, in this Case, that if A. had assigned over the Land itself, it would be good by R. 3. but the Words he used were not sufficient to pass the Land itself, for he had no Interest therein; for 27 H. 8. executes no Possession to a Use, but where some Body is seized to the Use of another for Years, Life, &c. so that the Tenant must have a Freehold in the Land, else the Statute executes no Possession to the Use; but if a Fine be levied to the Use of one for Years, then it is executed, for the Conuisee of the Fine is seized. A Man Bargains and Sells his Land for Years, that is executed by the Statute, if the Bargainor had a Freehold for only a Use passed at Common Law, and so had stood seized to an Use; and whatever Interest the Cestuy que Use has in the Use, 'tis executed by the Statute, if any Body be seized to that Use. A. Feoffe to the Use of B. and his Heirs before the Statute, Bargains and Sells the Land to C. and his Heirs,

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no
no Use had passed to C. for there cannot be two Uses of one and the same Land, and the Use of B. continued, for the Privity of Estate and Trust and Confidence remained, and therefore did the Use of B. prior to C.'s Title; for Uses cannot be destroyed nor altered without a Transmutation of the Possession, by which the Privity of Estate, or the Trust and Confidence is altered and gone. The same Law is of Covenants to stand seised.

A. covenants to suffer a Recovery of such Land to the Use of B. and his Heirs, rendering to A. an annual Rent of 42l. it was held that upon the Recovery A. shall have the Rent executed in him, by 27 H. 8. c. 10. and may distrain for the Rent; for though there be no Clause of Distress nor Covenant; for the Recoveror was seised to the Intent another should have the Rent; and though the Appointment of the Rent was after the Limitation of the Uses; as if the Design was that the Rent should issue out of the Estates executed by the Statute; yet that is not material, for the Intent being that a Rent should issue there, such Construction shall be made ut Res magis valeat quam pereat. But
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But if $A.$ dispossesses $B.$ to the Use of $C.$ and his Heirs, and then Bargains and Sells the Lands to $D.$ a Use will pass to him; for though $A.$ committed the Disseisin to the Use of $B.$ and his Heirs, yet has $B.$ no such Use as can be executed by the Statute, viz. an equitable Right to take the Profits; for a Disseisor cannot stand seized to an Use, there being no Privity of Estate, nor Confidence, and so no Ground to subpoena him to Chancery; and they cannot there take Notice of his Title; for they are not to determine the Right of Inheritance; but the Disseisin being done to the Use of $C.$ it seems he may enter upon $B.$ and have the Lands, tho' he have no such Use as is to be executed by the Statute. 'Tis regularly true, that if the Cestui que Use enters upon the Feoffee, he was a Trespassor; yet in some Cases, by Intendment of Law, he might enter and occupy the Lands at the Will of the Feoffee; therefore if a Man before the Statute made a Feoffment in Fee, to the Intents to perform his Last Will, yet might the Feoffor enter and occupy the Land at the Will of the Feoffee; and so as it seems, in the Case of a Feoffment to future Uses, the Feoffor might enter and occupy at Will. If
the Feoffment were made without Consideration, as the Case is to be intended; for the Law gave the Feoffor and his Heirs a Use till the future Use came in Esse; and a Use is nothing but a Right to take the Profits to that End; therefore it gave him Leave to enter and occupy the Lands at the Will of the Feoffee; and so as it seems from Lit., Sect. 464. may his Heir do after him, and in giving him the Use in the mean Time, till the future Use comes in Esse, it gives him Leave to take the Profits. But then 'twill be objected, If the Law gives not a Man Leave in Case where there is a Use expressly limited to him, but makes him a Trespasser, how can it give him Leave to enter, or where there is no such express Limitation to him? To which I answer, that where the Law by Intendment gave him an Entry to occupy at Will, 'tis but to give him Leave to take what the Law gives him; but when a Use is expressly given to a Man there to give him Leave to enter, is to make a Construction quite contrary to the Meaning of the Parties expressed in their Deeds, by which it appears, that the Feoffee was to have the Possession and Occupation of the Land, and to answer over the Profits to the...
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Cestuy que Use; so that the Difference is this; in the one Case there is but a reasonable Construction made to let a Man have that presently which he would have at the long run, that is to say, the Profits of the Land, when there is nothing repugnant to such Construction; in the other Case to expound the Entry of the Feoffor to be lawful, is to make a Construction quite contrary to the plain Intent and Meaning of the Partiees fully expressed, which would be to introduce all Manner of Uncertainty in the Exposition of Deeds. Where the Will of the Parties ought to be supported, if no Inconvenience follow from it, it appears by Lit. Sect. 464. what Uses were at Common Law; for there he says that Cestuy que Use should be a Juror, if the Land were worth 40s. per Ann. therefore when the Statute ordained that a Juryman should have 40s. per Ann. the Judges construed it according to the Common Law, that Cestuy que Use should be the Person, and not the Feoffee.
Uses and Trusts.

Who may have a Use.

If an *Use* be limited to an *Alien*, he cannot have it, but it is forfeited to the King, who cannot seize the Lands, but may have a *Subpæna* to get the Profits or the Estate executed to him.

The King cannot have a *Use*, because he cannot take but by Matter of *Record*; but if the *Use* be found by Office, upon *Record*, then he may take.

If a *Use* be limited to the Poor of the Parish, 'tis good, though they are no Corporation.

When a Man makes a Feoffment in *Fee*, to the Intent to perform his Last Will, and afterwards devises the Lands to another, and dies, the *Devisee* is in by the *Will*; but if a Man makes a *Feoffment* in *Fee* to the *Use* of such Persons, and of such Estate as he shall appoint by his Last Will, and then limits the *Use*, by *Will* to another, the *Devisee* is in by the Execution of *Uses* upon the *Feoffment*, by the Statute; and the Reason of the Diversity seems to be this, in the first Case, he having limited no *Uses*, and having a *Use* to him and his Heirs, the *Feoffment* in both Cases being made without Consideration, the Statute executes the *Estate*.
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State fully in him again, and leaves nothing in the Feoffee; but in the latter Case, there being Uses expressly named, tho' the Feoffor had his Estate again, yet there is a Possibility left in the Feoffee, which becomes an Estate when the Contingency happens: But then it will be objected that the first Feoffment being made upon Trust and Confidence to perform his Last Will, this was a Use in Contingency; and so there is the same Reason for this Case as for the other; but it may be answered, That this is no Use; or if it were one at Common Law, yet that 'tis now destroyed by the Feoffee, who can never perform the Trust reposed in him, because the Estate is presently by the Act out of him, at Common Law, it might be a Use, for he had an Estate in him, so that he could perform the Will of the Devisor; but in the other Case the Will is but a Direction of the Persons and the Estates they shall have according to this Power reserved upon the Feoffment, and there upon the original Feoffment there was nothing for the Feoffees to do.—Tenant in Moor Tail cannot stand seiz'd to an Use; for the Intent of the Statute De donis was, that he should have the Lands and the Profits of them, and he cannot execute...
execute the Estate to the *Use*, and therefore cannot answer the End of the Creation of *Uses*, (viz.) that the Tenant should make Estates according to the Directions of *Cestui que Use*; and it appears by the Intent and Scope of the Act, that the Makers did never intend that the Tenant in Tail should stand seized to an *Use*, for they have restrained him to alien to prejudice his Issue; but if he were to stand seized to an *Use*, as it was a Part of the Trust reposed in him to make Estates according to the Direction of *Cestui que Use*; so it would be a Prejudice to the Issue; and the Statute would never have so carefully preserved the Land to the Issue, if he might have it only to another’s *Use*.

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If a Bastard hath gotten a Name by Reputation, to be such a One’s Son, yet ’tis not a Consideration sufficient to raise a *Use* to him; for still in Law, he is look’d upon as *nullius filius*; therefore the Law can never support that as a good *Use* to him, as the Son of such one, in respect of the natural Affection that a Father bears to his Sons, when by another Maxim the Law supposes, and says, he is *nullius filius*; and so no Body can have any natural Affection for him.
A Man levies a Fine, and covenants by Indenture, in Consideration of natural Love and Affection, Blood and Marriage of his Bastard Daughter, that the Conunee shall stand seized to the Use of the Bastard Daughter, tho' this be not a sufficient Consideration to raise a Use upon a Covenant, yet 'tis expressive of the Intent of the Party; and therefore shall serve as a sufficient Declaration of a Use upon the Fine, where there needs no Consideration. Uses, (as has been said) may be raised either upon the Transmutation of Possession, as upon a Fine, Feoffment or Recovery, &c. or where there is no Transmutation of Possession, as upon a Covenant or Grant upon good Consideration, as upon a Bargain and Sale, where there must be quid pro quo, something given for something; but if in a Covenant there be but a good Consideration, though nothing be given, it is sufficient; and here it will be requisite to see what is a good Consideration to raise a Use upon a Covenant. And first, in the Case of Sherrington and Pleadale ver. Strotton, it came to be a Question, Whether a Covenant in Consideration that the Lands should remain to the Heirs Male of the Body of the Covenantor, and in
Confederation of Brotherly Love and Affection; and that the Lands should remain in the Blood of the Covenantor, were sufficient to raise a Use; for 'twas objected that 'twas not, because no Advantage came to the Covenantor by that Consideration; for 'twas unnecessary, and 'twas no more than was before, and would be afterwards; but the Court did adjudge that the Uses did well rise upon those Considerations; and in the Resolution they seem to have regard to each of these Considerations, as if any of them singly were sufficient to raise a Use, as indeed they seem to be; for as for the first, in Consideration, that the Lands should remain to the Heirs Male of his Body, he covenants to stand seized to the Use of himself for Life, then to others for Life, and then to the Heirs Male of his own Body; this it seems is a sufficient Consideration to give him an Estate Tail, tho' he does not part with his Estate; and so in other Cases it would remain in him, as before; as if a Man makes a Feoffment in Fee to the Use of J. S. in Tail, the Remainder to his own right Heirs, he has his old Reversion in him; but here the Consideration of preserving the Lands to the Heirs Male of his Body, by the Creation
Creation of an Estate Tail; and so having the Force of the Statute De donis to preserve the Inheritance; for the Issue being a good Consideration to raise a Use, that Estate, which the Owner of the Land had, is changed and qualified into an Estate Tail. Accordingly my Lord Coke says, that if a Man makes a Feoffment in Fee to the Use of one for Life, the Remainder to the Use of the Heirs Male of his own Body; this is an Estate Tail in him; yet here the Uses were not out of him; so that a Man may modify a Fee that continues in him; but he cannot take a Fee as de novo, when he has the old one in him. In the Case of Pybus and Mitford, it was held, that if a Man covenanted to stand seized to the Use of his Heirs Male, begotten on the Body of his second Wife, he had thereby an Estate Tail.

A Father makes a Feoffment in Fee to his Son, with a Letter of Attorney to make Livery, but no Livery is made, no Use shall arise to the Son; for it appears to be the plain Intent of the Parties, that the Land shall pass by the Common Law by the Feoffment seized, and that the Feoffee should be in the Per, and it would be unreasonable to make such Construction as to raise a
Uses and Trusts.

Use, and so make the Son come in by the Statute; and in the Post, contrary to the express Agreement of the Parties mentioned in the Deed. It seems the Diversity taken before, came in by a Construction made in Favour of Lords, upon the 32 & 34 H.8. to hinder the Disposition of one third Part. When the Feoffment was made to the Use of the Feoffor's Last Will, this was expounded to be no more than referring a Power to dispose of the Land by Will, which, as Owner, he might do before, and not that he design'd himself to raise a particular Authority to limit an Use to this or that Person, upon the Feoffment; so the Feoffment being made without Consideration, was to the Use of him and his Heirs; and therefore when he disposes of the Land, tho' he did it as having a Power by the Feoffment, yet the Will took Effect, as he was Owner of the Land; but this Distinction seems to me to have no Manner of Reason or Ground for it, in any fair Construction. When a Man makes a Feoffment in Fee to the Use of such Persons, and of such Estate as he shall appoint by his Last Will, the Feoffor is in the mean time seized of a qualified Fee, and has a double Power over the Land, either as Owner of it to
to dispose of it by Will, without tak- ing any Notice of his Power referred upon the Feoffment, or by limiting Uses and Estates, according to that particular Power. If therefore he devises his Lands by the Will, generally, it takes Effect as if he were Owner of the Land; for having Liberty to chuse whether he will make any Use of the Power referred to him upon the Feoffment, and yet having Power, as Owner of the Land to dispose of it, when he devises it generally without any Relation to his Power, it seems his plain Intent was to waive the Execution of the particular Power he had upon the Feoffment, and to make Use of the general Power he had as Owner of the Land; and now since the Lands are of Socage Tenure, devisable by Will, in every such Devise by Will, the Devisee would be in by the Will, tho' sometimes, in Case of Knight-Service, Lands were otherwise; as if after such Feoffment, or by such Feoffment of three Cro. El. Acres, he had disposed of it to A. 878, and afterwards by Will generally had devised the third, the Devisee had been in by the Feoffment, and not by the Will, because as Owner of the Land he was restrained from making any Devise at all; and therefore that
the Will might be of some Effect, (which was most certainly the Deviseor's Intent) it was expounded, and that most reasonably to be a pursuing of his Authority according to the Power reserved to him upon the Feoffment; but if he had made no Disposition of the Lands, but only as general Owner of them had devised them, there, because the Will was of Effect to pass two Acres, the Devise was void for the third.

A. suffers a Recovery to the Use of his Last Will, if he declares Uses by Deed in the mean Time; yet they are revocable, being founded on a Recovery suffered to Uses that were alterable at the Will of A. therefore in such a Case he may either declare new Uses, or if he makes a Lease for Years, that shall bind the Persons nominated by the Declaration of the Uses to the Will. Hob. 349. Bro. 337. b. 19 H. 8. 12. Dyer 166, 324.

In an Action on the Case for flandering his Title, the Defendant pleads that one Sir Henry Shavington was seized of the Lands whereof, &c. and had Issue three Daughters, and covenanted with others, in Consideration of a Jointure to be made to his Wife, the Advancement of his Issue Male, if he
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he should have any, the Preferment of his Daughters, and the Continuance of the Land in his Blood; and for divers other good Considerations, to stand seized of the Lands E.G. of six hundred Acres, to the Uses, Intents and Purposes, and under the Proviso ensuing, (viz.) to the Use of himself for Life, and after of Three hundred Acres in certain, to the Use of his Wife for Life, for a Jointure, and of the other 300 Acres after his Death; and of the other Three hundred limited for his Wife's Jointure, after both their Deaths, to the Use of the Heirs Male of his Body engendered; and for Default of such Issue, then of the Three hundred Acres not limited for his Wife's Jointure to the Use of his three Daughters severally, and the Heirs of their Bodies; and for Default of such Issue to the Use of the right Heirs of Sir Henry; and then there was the like Limitation of the other Three hundred Acres; and if any of the said three Daughters die without Issue, then her Portion to the Survivors by Moieties, Remainder to the Right Heirs of Sir Henry, and then comes this Proviso: Provided always, and it is covenant and agreed between all the said Parties, that it shall be
be lawful for the said Sir Henry, by his Will, in Writing, to limit any Part of the said Lands to any Person or Persons, for Term of Life, Lives or Years, for Payment of his Debts, performing of his Legacies, Preferment of his Children, or any other reasonable Consideration, as to himself shall be thought good; and all Persons thereof seized to stand seized to the Use of such Persons, and for such Interests as shall be so limited after by his Will. Afterwards Ursula, the eldest Daughter died without Issue: Afterwards the said Sir Henry, by his Will in Writing, for the Advancement of his Daughter Oliffe, and her Husband, and the Heirs of the Body of the said Oliffe, limited a great Part limited to Grace, to the said Oliffe, for 1000 Years, without reserving any Rent; and afterwards the said Sir Henry died without Issue Male, and so the Defendant justifies his saying, that Oliffe and her Husband had Right to the Lands; and upon this Plea the Plaintiff Demurs, and this Limitation for 1000 Years was adjudged to be void, and consequently the Defendant had slandered the Plaintiff's Title; and so Judgment was given for the Plaintiff; and that by the Opinion of all the
the Justices in England; and that upon these Grounds and Reasons. Tho’ upon a Feoffment, Uses may be limited without Consideration, yet they cannot by Covenant or Bargain and Sale; and the Reason seems to be this, when a Man made a Feoffment in Fee, without Consideration, and without expressing any Uses, whereby the Feoffee came into the Land for nothing, it was thought very reasonable and equitable that the Feoffee coming to a considerable Estate, without giving any thing in exchange for it, should stand seized to the Use of the Feoffor; for that seemed to be the Intent of the Parties, it not being to be imagined that any Man would give away an Estate without giving any Manner of Reason or Consideration for it; but when upon the Feoffment Uses were expressed, then these express Uses were supported, tho’ the Feoffment, Fine, &c. were without Consideration, because that seemed to be the plain Intent and deliberate Design of the Parties, that the Estate should be settled according to those Limitations; and there would be no Equity in overthrowing such a Design; but in a Covenant or Bargain and Sale, no Use can be raised without a good Consideration; tho’ there be
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Uses expressed; for in a Feoffment it is Equity that gives a Use, tho' there be none expressed; and the same Equity will not support any Use by Covenant or Sale, tho' expressed, if there be no Reason for it, as there is not in a Bargain and Sale, without Consideration. But it may be asked, since Uses on a Feoffment, if expressed, may be supported without any Consideration, why may not Uses upon a Covenant, &c. if expressed, tho' without any Consideration, be supported too? To which it may be answered that if a Feoffment be made in Fee, without Consideration, the Feoffee hath a legal Estate and Right to take the Profits of that, and that the Feoffor should take the Profits, is only an equitable Construction in his Favour, which if he will pass away by limiting it to others, or in this or that Manner, he may; but when a Man, that has a legal Estate and an equitable Right too to take the Profits, will covenant to stand seized to an Use; he that will take the Benefit of the Use of the Land, must shew some good reasonable Cause to take the Profits in Equity, since he hath none in Law; which no Man could do but he that comes to the Use for a good Considera-
Consideration. When a Feoffment is made to an Use, a Trust is reposed in the Feoffee, which may be very well done, without any Consideration; nay, it better answers the End of a Trust, if it be done without any Consideration; and when a Trust is reposed in any Body, he must perform it, or he is Guilty of a Breach of Trust; but when he covenants to stand seized to a Use, the Cestuy que Use ought to shew some good Reason to intitle himself to the Profits of Lands in Equity. And a Bargain and Sale, ex vii Termini, implies a Consideration; and that there should be Quid pro quo. And as an Use cannot be raised upon a Covenant in a Bargain and Sale without Consideration; so if a Man for good and valuable Considerations Bargains and Sells Lands, or covenants to stand seized to an Use, no Use is thereby raised; for the Words are too general to shew the Nature of the Consideration; and it appears not by them, whether any Consideration was given or not; and what is a good one to raise a Use ought to appear to the Court to be so; for they are to judge whether the Considerations given were sufficient, or not, to raise a Use; but yet, because, if in Truth, a Consideration was paid, &c. it is reason-
reasonable the Party should have the Benefit of it, tho' *prima facie*, because there is none mentioned in the Deed, therefore there seems to be none; yet the Party may aver, that there was a Consideration paid, and set it out, which if it is an *Use* shall be raised to him; and this Averment is always *traversable*; and tho' there be a Consideration which is always a good one, mention'd in the Deed, as suppose Money; yet may the Party aver another, besides that, if it stands with the Deed, as all Considerations must that are averred to be of any Force or Effect; as if there be a Consideration of Blood aver'd, the Party must be of the Blood of the *Covenantor*. If A. *covenants* with B. for good Considerations to stand seized to his *Use*, no *Use* is raised to B. but if in Truth B. be of his Blood, and in Truth the *Covenant* was made for Advancement of his Blood, he may *aver* it, and so have the *Use*. When the Consideration is a *Covenant* to stand seized to *Use*, or in a Bargain and Sale, is good, and the Person certain, there that Person may take an *Averment* that the Consideration was paid, and according to the Truth of the Case; but where the Person is uncertain, and the Consideration general, there no *Averment* can be
be taken by any Person. In the first Case the Averment by the particular Person is but Reducing the general Consideration to some Certainty, and making out that in particular, in Favour of the Person who was before included in the general Words; which is very reasonable, in Case a good Consideration were bona fide paid by him; but in the latter Case the Intent of the Covenantor was void ab initio; for it appearing that he designed no Body in particular, for the Benefit of the Use he would raise, no Person in certain could aver any particular Consideration why he should have the Use; because it plainly appears by the Deed, he did not design him for the Use any more than any other Person; and the Law will not give a Use to any Body contrary to the Intent of the Party mentioned in the Settlement; therefore if A. for divers good Considerations, covenants to stand seized to the Use of him that B. shall name, and nominates one, no Use is raised to him; for there is no particular Consideration expressed, and the Nominee of B. cannot aver any, because it appears that A. knew not who the Nominee would be, and therefore could have no Respect for any particular Person to make him raise
raise a Use. If B. had paid Money, 
Query whether he might not have a-
verred it; and so made good the Use 
to the Nominee; but if A. in Consi-
deration of the Advancement of his 
Blood, had covenanted with B. to 
stand feized to the Use of such a one 
of his Kindred as B. should appoint, 
and then B. had nominated one, the 
Nominee had a good Use; for A. had 
a Design, for very good Reasons, to ad-

cance some of his Family, and he on-
ly left it to B.'s Judgment who should 
be the Person. When Uses are raised to 
Sons in Consideration of Natural Love 
and Affection, and afterwards there is a 
Provifo that the Covenantor, for divers 
good Considerations, might make Leaves 
for any Number of Years or Lives, to 
any Person he would, he cannot by 
Force of this Provifo, make any Leave 
to any of his Sons, or any other Per-
son; for the Consideration is too ge-
neral to raise a Use; and no particu-
lar Averment can be made by any Per-
son in certain, and the Consideration 
that is requisite in a Covenant or Bar-
gain and Sale to raise a Use, will be 
so in a Provifo to raise Uses in that 
Covenant or Bargain; for the Provifo 
is but an under Sort of Agreement, and 
what is requisite in the Covenant, which
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is the fundamental Agreement; for the Settlement of the Uses will be requisite in the Proviso of that Agreement; for it is an Agreement of the same Sort or Nature with the other; and the Uses raised by it are only raised by Covenant and Agreement, and not upon Feoffment, where Uses may be raised without any Consideration originally; and by the same Reason as it seems by Proviso. In the Case of Mildmay, the Use intended to be raised was designed to come under that Clause in the Agreement, for divers other good Considerations; and therefore for the Reasons aforesaid, it was void; but if the Lease to Oliffe had been for any other Consideration mentioned in the Proviso, it seems it would have been good upon these Words, other Considerations mentioned in the Proviso. It was resolved that the Considerations, upon which a new Use must have been raised according to the Power of the Proviso, must not have been any of those Considerations mentioned before in the Deed; for the Word other implies so much; and therefore for that Reason also, the Use raised by the Power of the Proviso was void, being done for the Advancement of his Daughter, which was mentioned before, and was the
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the Consideration for raising the Use in the Indenture. If the Proviso had been that upon the Consideration of Blood he might have made Leases to any of his Kindred, it seems the Intent had been good; for the Lease might rise upon the Consideration, which was as good in that Case as in any Case of Blood; and the Persons to whom it was to be made were to be those expressed in the Consideration; but if it had been that for Consideration of Blood he might have made Leases, it had been void, though the Lease in facto were made to one of his Blood; for the Power was too general at first, and so void.


If a Feoffment be made, or a Fine be levied, or Recovery be suffer'd, without Consideration, and no Uses are expressed, it is to the Use of the Feoffor and his Heirs. But if any Uses be expressed, it shall be to those Uses, tho' no Consideration be had; and herein is the Difference between raising Uses by Fine, Feoffment, or other Conveyance operating by Transmutation of Possession and Uses raised by Covenant; for upon the first, if no Uses were expressed, it is Equity that assigns the Feoffor to

Where there is a Recovery to the Intent to make such Estates; he is seized to his own Use in the mean Time.

Moor 103.

Moor 500. of Things lying in Grant.
Uses and Trusts. 223

to have the Use; for by the Law, the Feoffor has parted with all his Interest; but where he expresses Uses, there can be no Equity in giving him the Use against his own Will; and there can be no Presumption that the Conveyance was to the Use of the Feoffor against his own Declaration; but in Case of a Covenant, it is Equity that must give a Use; for the Person can have no Right by Law; therefore in such Case there can be no Use without a Consideration; for there is no Equity there should.

Husband and Wife levy a Fine of the Wife's Land to the Use of the Heirs of the Husband, begotten on his Wife, Remainder to the Heirs of the Husband, this is a void Limitation; for the Husband had no Use in presenti, and so the other Uses cannot be supported.

A Trust is limited thus, If such a Marriage takes Effect, after M.'s Age of 16, being the Daughter of H. and the shall have Issue Male of the Body of S. then to both for Life, he marries her at 12 Years of Age, she lives 'till near 17, and dies without Issue, he shall have no Trust for Life; because she having no Issue Male, there was a Failure of the precedent Qualification to enable him, it seems she living 'till after Six-

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ten fulfills the first Words well enough, &c. if the Marriage should take Effect after her Age of 16, after the Death of S. and M. the Daughter of H. without Issue. The Trust was limited over to others; but decreed that 'till the Daughter of S.'s Death, he in Remainder could not take, but that the Heir should have the Trust till that happen'd; for so much of a Trust as is not dispos'd of, must be to the Heir. A Woman shall not have the Thirds of a Trust of a Term to wait upon an Inheritance against the Purchaser, by her Title of Dower, but against an Heir perhaps she may?

If Cestuy que Uge enters upon the Feoffee, he is Tenant at Will. See how Uses are executed by the Statute, Leon. 1298. all Pernancy of Profits is gone by the 27 H.8. so as now no Body can be Tenant to the Pratice, in Respect of that. Tenant in Tail, Remainder in Fee, he in Remainder, in Consideration that the Land should continue in his Blood, and for divers other good Considerations, covenants to stand seiz'd to the Use of himself in Tail Male, then to the Use of his Brother in Tail Male, then to the Use of the King in Fee, no Use is hereby raised to the King, unless some valuable Consideration be aver'd to

Ibid. 73
3 Vent. 58
Dyer 32. 9
Parl. Ca. 194

Ibid. 73
Co. 15
Moor 95
Uses and Trusts.

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to be given by the King; and if this
Use in the King should preserve the E-
state from being barred, yet that could
be no Reason to give the King an equi-
table Right to take the Profits; for
that is no Advantage to him. If the
Use had been limited to the King, in
Consideration that he was the Head of
the Commonwealth, and had the Care
and Government of his Subjects, yet
had no Use been raised to him, for
that is no particular Consideration to
entitle him to the Profits of those
Lands; neither has he any more Rea-
son to have them now than before; for
Ex officio he takes Care of the Com-
monwealth, and to that End he has a
sufficient Revenue.

Where the Lord Paget seiz'd of Lands
in Fee, covenants with T. F. and oth-
ers, in Consideration of the Chars-
ges of his Funeral Expences, Payment
of Debts and Legacies, out of the Pro-
fits of his Land, and for the Advance-
ment of his Son, Brother, and others of
his Blood, that he and his Heirs would
stand seized of the said Manors to the
Use of the said J. F. for the Life of
the Lord Paget, and after his Death
to the Use of C. D. for the Term of
Twenty-four Years, and then to the Use
of
Uses and Trusts.

of W. P. his Son in Tail, with divers Remainders over; it was adjudged in this Case, that my Lord Paget had an Estate for his own Life; and the Reason given is, because all the Remainders were to commence after his Death; and so the Estate remained in him, during his own Life; but it seems that this must be understood, that all those Estates that were good, and upon a valuable Consideration, were to commence after his Death; for all Estates were limited to the Covenanters, during the Life of my Lord Paget; but it doth not appear to be on a valuable Consideration; it was also resolved that C. P. took not the Estate for Twenty-four Years, because there was no Consideration to raise it to him; for they had nothing to do to pay his Debts and Legacies, neither were they thereto chargeable; but if they had been his Executors, it had been good; for that had been their proper Work and Employment: It was also resolved that W. P. should take before the Twenty-four Years expired, because the Words were after the End or Expiration of the said Term of Twenty-four Years, which signifies the legal Interest, and not the Time; and the said Term being void, the Remainder Man's Interest com-
commenced presently; for it was the Design of the Party, that he should take after that Interest determined; and if there be no Interest, he ought to take it presently, or else the Deed would be construed most in the Grantor's Favour; but if the Words had been, and after the Twenty-four Years expired, then to the Use of W.P. in Tail, there, tho' the Term had been void, yet no Use had been raised to him, till after the Years expired; for by express Limitations, the Use was then to commence. In this Case, there was this Diversity taken by Manwood Chief Baron. If a Man covenants to stand seized to the Use of one for Life, then to the Use of another in Fee, and the Tenant for Life refuses, the Remainder Man's Interest shall not commence presently; for it must be Equity that gives any Body a Right to take the Profits, during that Estate for Life, and the Remainder Man's Interest is not to commence 'till after his Death; so that in the mean Time no Body being able to claim any Interest upon any good Consideration, the Use must remain in the Covenantor; but if a Feoffment in Fee be made to the Use of one for Life, then to the Use of another in Fee, and the particular Tenant refuses, the Remainder

Q 2 remainder
mainder Man's Interest shall commence presently; for the Feoffor had disposed of the whole Land; and it is Equity that gives him a Use when the Feoffment is made without Consideration; but against his express Limitation, there can be no Equity in giving him a Use; and the Feoffee paying no Consideration, there is no Reason that he should have any; and there being a Use limited to commence after the Estate for Life, which now is not, it is Reason, that it should commence. Quere of this Diversity, and whether, If the Feoffment was made in Fee, upon Consideration, the Feoffee should not have had the Use during the particular Estate. My Lord Hale said that a Trust being a Thing created by the Contract of the Party, is wholly directed by the Party; consequently those that come in the Post, are not liable to a Trust, because they are not within the Direction of the Party, unless they are named, and then he seems to think they are bound, as thus: If an Estate is given to a Man and his Heirs, in Trust, those that do not come under that Limitation are not charged with a Use by the Party.

A Man makes a Feoffment in Fee to the Use of such Person or Persons, and
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and of such Estate and Estates, as he has or shall appoint by his Last Will and Testament, which was made before, and published again after the Feoffment. Quare whether the Estates be presently executed according to the Limitation of those Deeds, or he be seiz'd of a qualified Fee. The Stat. 27 H. 8. so executes the Possession to the Use, in the fame Manner, Plight and Quality as the Use, &c. but that must be understood where the Estate to the Use is large enough; for if Lands be given to A. and B. during their Lives, to the Use of C. if A. and B. dies, C.'s Estate is determined; for the Seisin to Use, that A. and B. had, was only for their Lives, and the Execution of it in C. cannot make the Estate larger.

Where Persons shall be Jointenants for the Limitation of a Use to them, see Inst. 188. a.

If the Father and Son purchase Lands jointly, the Law will not suppose that the Son purchased only in Trust for the Father, and consequently shall survive to the Son. The Stat. 27 H. 8. executes the Possession presently, as to the Estate; so if a Man Bargains and Sells for Years, the Leesee is in Possession presently, and the Leesor has a Reversion.
so as there are two divided Interests before any Entry by the Lessee, yet the Lessee cannot have Trespasses before actual Entry; but by a Common Law Lease the Estate is not divided before the Entry of the Lessee; so says Cooke, upon a Bargain and Sale the Freehold passes presently; but the actual Freehold is not in him till an Entry; for it is impossible an Act of Parliament should give any more than a Civil Seisin; it cannot give a natural one; but a Release may be made to one that has nothing but a Freehold in Law; so it seems upon a Bargain and Sale for Years, the Party being in Possession of the Estate of the Lands for that Time, a Release to him will be good to increase his Estate; but in Case of a Common Law Lease, it seems a Release will not be good before the Entry of the Lessee; for the Estates are not devised till then, and so there can be no Privity of Estate, and the Lessee can have no Demand upon the Lessee, which a Release supposes; but in Case of a Bargain and Sale there is a Privity, and the Demand of the Rent shall incur before actual Entry.

'A. seized in Fee of three Acres of Land, makes a Lease to A. of one 4 Acre
Acre for Life, to B. of another Acre for Life, and a Gift in Tail to C. of the other Acre, and covenants after all the Estates ended to stand seized to the Use of his Brother in Fee, B. dies, his Brother shall have that Acre in Fee presently, and shall not stay 'till the other Estates are ended; for if he should, perhaps that would never be; but if the last had been a Lease for Life, it had been all one, as it seems; for this Covenant should be expounded, Reddendo Singula Singulis. Where the Lord releaseth to a Copyholder in Fee, to have and to hold to him and his Heirs, to the Use of another, that A br. 788 is a good Use; for the Release ensues by Way of Enlargement of his Estate, and by this Release the Copyhold Estate is extinct and gone, as it seems, to the Execution of a Use into Possession; by the Stat. it is requisite that there must be a compleat Possession; for the Feoffee must make an actual Entry; for the Intent of the Stat. was not to help out a Possession already good; so it seems, if a Reversion be granted to one to the Use of another, that this is not executed before Attornment, for the Reversion passes not 'till then; but if a Man hath a Reversion granted to him by Fine, and before Attornment,

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he Bargains and Sells it to another; the Reversion is executed by the Stat. in the Bargainee; for as in the first Case the Grantee had no Reversion for want of Attornment; and it consequently could not be executed; so in the last Case, the Conusee had a Reversion before Attornment, which he passed the Use of to another, and then the Stat. executes the Possession to the Use, but in the same Plight as the Use was, and consequently still 'till Attornment, there wants a Privity of Distrainting, &c. A. makes a Lease for Years to B. and then grants the Reversion by Fine or Bargain and Sale to D. to the Use of C. this is executed by the Stat. in C. without Attornment; because a Reversion was granted and presently executed by the Stat. eodem instanti; so that there could be no Time for the Tenant to Attorn to the Grantee; and if an Attornment was necessary, no Grant could be made by Fine to the Use, &c. because no Attornment could possibly be had; but if the Grant were by Deed, then no Reversion could pass before the Attornment; and so not be executed by the Statute. Tenant for Life makes a Feoffment to F. S. he in Remainder releaseth to him, the Uses are for ever gone; for the
the Feoffee comes in of another Estate than what was subject to Uses; and the Release only removes the Right of the Remainder Man', but leaves the Feoffee in, of the same Estate he had before.

A. covenants with B. that if B. enfeoffs him of three Acres of Land in D. that then he the said A. and his Heirs, and all others seized of such Lands, shall stand thereof seized to the Use of B. and his Heirs. A. enfeoffs another of the Land in D. now the Use shall rise to B. and his Heirs; for the Feoffment did not destroy the Contingency; for the Use was not to rise 'till after B.'s Feoffment, which it well may. There is this more in Cook's Settlement before-mention'd; had he made a Feoffment before he had granted the Reversion, the contingent Uses had been destroyed; for the Feoffee had not come in in Privity of Estate, which was subject to Uses; but of a new Estate this must be intended of a Feoffment made before the Contingency happens; for else the Estate had vested, and then it could not be destroyed; but the Grant of the Reversion being made first, and without any Consideration, the Grantee of the Reversion stood seized to Uses; and then when the Feoff-
Feoffment was made, and the Estate discontinued; yet when the Tenant for Life in Remainder entered, he thereby recontinued all the Estates, and consequently the Reversion in the old Plight; so that when the Contingency happened, the Use was executed out of the Estate of those in Reversion; and herein lay the Difference between conveying by Feoffment, and a Covenant to stand seized; for if he had made a Feoffment to those Uses, then the contingent Use must have arisen out of their Estate; and that Act which the Tenant for Life could do, would amount to no more than to disinherit the Estates, and then when the particular Tenant had recontinued the Estates, the Feoffees had stood seized to the contingent Use, which would have been executed when it happened; but the Conveyance being by Covenant, and so the Use to arise out of the Estate of the Covenantor, any Conveyance that hindered the Purchaser from standing seized to a Use, as where the Person comes not in Privity of Estate, destroyed the Remainders. J. S. seized of Copyhold Land held of Sir T. B. by Indenture, dated 22 Dec. between him on the one Part, and the said J. S. and G. S. his Son, on the other Part, did Bargain and
and Sell, Enfeoff and Confirm unto the said J. S. the said Lands, to have and to hold to the said J. S. and G. S. their Heirs and Assigns, to the only Use and Behalf of the said J. S. and G. S. their Heirs and Assigns for ever, and Livery of Seisin was made according to the true Intent of the Indenture. In this Case, these Points were remarkable. First, That G. S. being not named, but in the Habendum, could not take by the Habendum; for the Livery did not help him, being made according to the Intent of the Indenture, which Indenture was void to him, and now could have no Intendment in Law to give him any legal Estate, and consequently the Livery would not give him any thing, being only pursuant to the Indenture; but tho' the legal Estate limited to him were void, yet the Use limited to him was good; for that is construed according to the Intent of the Parties, and may as well come after the Habendum as before. And then it was further resolved that they were Jointnats, because the Use was jointly limited to both; and the Statute executes the Possession according to the Use, and J. S. was not in here by the Feoffment, as he should have been, had the Use been limited to him alone, because it appears to be the Intent of the
the Feoffor, that they should have one Joint Use; and so the Limitation of
the Use to him removes the Estate he had before settled in him; as if one
makes a Feoffment in Fee to the Use of the Feoffee, and the Heirs of his
Body, this divests the Common Law Estate, according to the Intent of the
Parties expressed by the Limitation of the Uses; and tho' this must be own'd
to be out of the Words of the 27 H.8. yet it is within the Meaning of the Act,
and shall be executed by it. The Words of the Act are when any Person,
&c. stand or be seized to the Use of any other Person, &c. and here the Person is
seized to the Use of himself; and so of the like Cases, a Use shall not be
suspended or extinct by a joint or sole Seisin of the Land; as if A. had at
Common Law been enfeoffed to the Use of himself and B. the Use had
been a Joint Use to him and to B. tho' A. were sole seized of the Land,
for no Part of the Use had been suspended and extinct; and therefore it
seems the Use shall survive in such Case. The like Law must be of a
Trust now. So if A. and B. be en-
feoffed to the Use of A. and his Heirs,
and A. dies, the whole Use shall de-
scend to his Heir, but B. shall remain
the sole Tenant of the Land, for this seemed the Intent of the Parties by the Limitation of the Use.

A. with seven others was seized to the Use of himself and his Heirs; the Use was held suspended for an Eighth Part. A. covenants with B. that when A. shall be enfeoffed by B. of three Acres of Land, that then A. and his Heirs will stand seized of the Land in S. to the Use of B. and his Heirs, and afterwards A. enfeoffs a Stranger of his Lands in S. and B. enfeoffs A. of the three Acres; it is said to be resolved in this Case, that the Use will arise to B. of the Lands in S. tho' the Stranger had not Notice of the Use; but it seems this must be understood that the Feoffment was made without Consideration; and Quare then, for if it were made with Consideration, then there is no more Reason the Land should be charged with the Use, into whose Hands forever it came, by Reason of the Covenant, than there is by Reason of an Use actually raised; for a Covenant, cannot extend beyond the thing itself.——Uses were governed at Common Law by the same Rules as the legal Estate itself was; so if it were entailed, it was descendable in like Manner as a legal Estate intailed;
so, there was \textit{posseßio frātris} of a \textit{Use}; and if the \textit{Lands} were \textit{Gavelkind} \textit{Lands} the \textit{Use} descended to all the Sons alike; so if by Custom the \textit{Land} was descendable only to the eldest \textit{Daughter}, the \textit{Use} would descend so too.

So if a Man seized of \textit{Lands} of the Part of the \textit{Mother}, makes a \textit{Feoffment} in \textit{Pee} without \textit{Consideration}, the \textit{Use} shall be to him and the \textit{Heirs} of the Part of the \textit{Mother}; and in this all agree; but if he reserves a \textit{Use} to him and his \textit{Heirs}, then \textit{Hobart} says, the \textit{Use} shall go to the \textit{Heirs} of the Part of the \textit{Father}; but the better Opinion seems to the contrary.—An \textit{Estate} raised by \textit{Usē} may be waived in \textit{pās}, as upon a \textit{Feoffment} to the \textit{Usē} of \textit{Cestuy} que \textit{Usē} it may be waived in \textit{pās} at the \textit{Common Law}. Before 27 H. 8. if a Man had Bargained and Sold \textit{Land} for valuable \textit{Consideration}, a \textit{Usē} in \textit{Pee} had passed without the Word \textit{Heirs}; for Equity having the \textit{sole} \textit{Management} and \textit{Disposal} of these \textit{Affairs}, they had not regard to the \textit{strict} \textit{Rules} of \textit{Law}, but to the \textit{Intent} of the \textit{Parties}; but now the \textit{Stat.} transferring \textit{Usēs} into \textit{Possession}, whereby they become \textit{Common Law} \textit{Estates}; as there is the same \textit{Reason} for requiring Words
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Words of Limitation in such Cases, as where Lands pass by Common Law Conveyance, so, in fact, it is, and consequently the Intent of the Parties must be legally expressed, or else no Estate will pass.

A Woman was not Dowable of an Estate in an Use; neither could a Man be Tenant by the Curtesy of a Use; and so most Estates being in Use, it was usual for the Friends of the Woman, either before or after Marriage to get some legal Estate settled upon her for her Jointure, which was the first Occasion and Original of Jointures. By the Common Law a Use was alienable by Cestuy que Use, or he might have a Bill in Chancery to compel; the Cestuy que Use could not enter upon the Lands and make a Feoffment of them; but if he did he was Disteiser; but if the Feoffees had re-entered upon the Feoffee of Cestuy que Use, they should stand seized to his Use, it seems by the Stat. of R. 3. no Body can make a Plow. Feoffment of the Land in Possession, 350, 351, but he that has the present Use in Possession; so if there be Feoffees to the b. Use of A. for Life, then to the Use of b. B. in Fee; tho’ by the Stat. A. may Dyer 330. make a Feoffment in Fee of the Land, because during his Life the whole E- state
States is to his Use, and after the Death of A. the Feoffees may enter and revive the Use to B. yet B. cannot, during the Life of A. make a Feoffment of the Lands, because the whole Estate is to the Use of A. and B. has no Right to a Possession, and the Feoffees cannot enter to gain a particular Estate; for that would be without any Donor. But if there be Tenant for Life to the Use of A. and then the Reversion is granted for Life to the Use of B. and then the Reversion in Fee to the Use of C. here being several Estates, B. may grant the Reversion that is to his Use, and so may C. for none of the Inconveniencies follow from hence that there do in other Cases where the Estate is but one; but if there be one Estate to the Use of A. for Life and to the Use of B. in Fee, tho' B. can make a Feoffment, and thereby pass the Possession, yet it seems he may make a Lease or Grant of a Rent to commence after the Death of A. He that has a Use in Esse, has Power by R. 3. to make a Feoffment, but not he that has a Use in Right only, but such Person may do an Act that extinguishes his Right, as by releasing, &c. The Intent of the Stat. was to give Remedy to transfer an Estate, not vest it; so that if one
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be seized of Lands in Fee, to the Use of A. in Tail, Remainder to B. in Fee, A. by Force of the Statute makes a Fee-ment in Fee, and dies without Issue, B. has no Power to gain this Use; but by the Entry of the Feoffees, and 'till then he has no Power by 1 R. 3. to do any thing with the Land; but if the Feoffee to an Use be disfeized, and Cestuy que Use releases to the Disfeizor, this extinguishes the Use, and by the Statute bars the Entry of the Disfeisee. Where Feoffees to an Use are disfeized, and afterwards the Disfeisor enfeoffs Cestuy que Use, who enfeoffs a Stranger, by this the Use and Possession both pass, and the Feoffees cannot enter to revive the Use, it seems, tho' a Use were devisable at Common Law, yet no Power is given by 1 R. 3. for the Cestuy que Use to devise the Land; for the Intent of the Statute was not to make Land devisable, but only to give Power to the Cestuy que Use to alien, during his Life, by an Act executed. If the Lord Dyer of a Seigniory, or the Grantee of a Rent-Charge, be also Cestuy que Use of the Land; and by Virtue of 1 R. 3. makes a Fee-ment in Fee, by this the Seigniory and Rent are both destroy'd; but if they both had made the Fee-ment as Attornies, the Rent remained. R If
If Cestui que Use made a Feoffment in Fee upon Condition, and entered for the Condition broken, he shall be seized of the legal Estate of the Land. If Cestui que Use in Tail makes a Feoffment in Fee, this only is during the Life of Cestui que Use; for he had no longer Power over it; but if he aliens by Fine, that it seems is good to bind the Issue, if the Alienation were since the Stat. of H. 7. but it seems a Recovery had against him, does not bind the Issue, because he is not Tenant to the Precipe, and there can be no Recovery in Value by him, to recompence the Issue.

If a Man recovers by erroneous Judgment, and makes a Feoffment to his own Use, and upon Error, the Judgment is reversed, the Party may enter without a Seire facias against the Feoffees; for it is plainly within the Letter of the Statute; if Cestui que Use makes a Lease for Years by Deed indented, reserving Rent, he may have an Action of Debt upon the Contract, for the Lessee is estopped; but he cannot avow Taking the Distress, because he has not the Reversion. If the Reservation of the Rent be not by Deed indented, it is not good, because he has not the Reversion.
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Query, Whether Cestuy que Use may make a Feoffment by Letter of Attorney. If Cestuy que Use makes a Lease, Ch. Reg. the Reversioner shall punish the Waste done, and enter for the Forfeiture; if he recovers the Rent it shall go to his Heirs: If a Condition be added to the Non-payment of Rent, he must enter; but Query whether he shall retain it against the Feoffees. Cestuy que Use could not distress the Beast's Damage-feasant, before the Statute but since he may: A Trust may be entailed, as it seems, and then the Fine of Cestuy que Use will bar it; and there seems the same Reason for a Common Recovery.

A Trust in Fee is not forfeitable for Hard Felony; for no Statute made Uses forfeitable in such Case; but it seems by my Lord Hale, that it is by Force of 26 H. 8. 20. the last of which mentioned Uses, which Statute being made after 27 H. 8. must mean Trusts, as now Uses are made liable to be executed by the Stat. of H. 7. yet 29 Car. 23. was made to make Trusts liable to pay Debts; for according to Hale, before that Statute they were not Assets to pay Debts. A Trust in an Alien is forfeited to the King, in the Case of the King's Debtor, Trusts were liable per Curtum Scaccarii. If Cestuy que Use willed R 2 that
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that his Feoffees should make an Estate Tail to J. S. and died, the Use was changed before the Execution of the Estate.

Who may declare Uses.

If Husband and Wife be seized of Lands in Right of the Wife, and they make a Feoffment, and declare the Uses, that shall not bind the Feme; for the Feoffment does not bind her. It is but an Act in pais, and she being sub potestate viri, it may be made contrary to her Will; but if they levy a Fine of the Wife's Land, and declare the Uses, that shall bind the Feme; for the Wife may levy a Fine, because she is privately examined before a Judge; and if she may levy a Fine with her Husband, she may declare the Uses; for that is but pursuant to the End and Intent of the Fine; and if the Husband alone declares the Uses of such a Fine, that is good, and it shall bind the Feme, if her Disaffent does not appear; for the Will of the Feme being in the Disposal of her Husband, he being reputed as the Head, and they two being considered in Law but as one Person, the Declaration made by him is considered as the Declaration of

Moor 197.
2 Co. 57.
1 And. 164.

Owen 6.
If the Fine be of the Husband's Land, to which the Feme has Title of Dowry, her Disaffent to the Husband's Declaration of Uses, will, as it seems, bind the Operation of the Declaration.

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of both, when nothing appears to the contrary, and consequently, though the Estate of the Land moves from the Wife, yet if she alone declares the Uses of a Fine levied of her own Land, such Declaration is null and void; for it is made by one that has by Law no disposing Power, even of her own Estate, but has her Will subjected to the Husband's Will, and so is not *sui juris*; but yet on the other hand, if the Husband make one Declaration of Uses, and the Wife another, both Declarations are void; the Wife's is so upon the Reason before mentioned; and the Husband's is so because the Estate being the Wife's, and so not in the Disposal of the Husband, without the Concurrence of the Wife; after the Fine levied, he might make what Declarations he pleased of the Uses; he might dispose of the Estate as he pleased, in Spite of his Wife; and so all the Care the Law takes for the secret Examination of Feme Coverts, in the levying a Fine, would be vain and fruitless, and the Declaration of the Uses is but pursuant to the Design of levying the Fine; and so she ought to consent to that as well as the other; and so though an Infant can do no Act to oblige himself, yet if he levies a Fine, he is enabled by
by Law to declare the Uses; and if he
reverseth not the Fine, during his Non-
age, the Declaration of Uses will stand
good for ever; for tho' that be a Mat-
ter in pais, and all such Acts an In-
fant may avoid at any Time after his
full Age, if he do not consent; yet
being made in Pursuance of the levying
a Fine, which Fine must stand good for
ever, so will the Declaration of Uses
too.

So if one Non compos levies a Fine,
it is unavoidable; but yet he may, by
Deed, declare the Uses of that Fine;
which Declaration of Uses will also
stand good for ever.

If the Husband and Wife agree in
the Declaration of Uses of Part of the
Lands, and disagree for the Residue,
the Declaration of Uses for that Part
they agree in shall stand good, and be
void for the rest; for as to that Part in
which they both agree, all the Re-
quises are found necessary to make a
Declaration, and the Defect of the
other Part can have no Influence on
that which is good; but if they agree
in the Limitation of Uses for Part of
the Estate in the Land, and disagree in
the other Estates, there all is void; for
else there will be another Moulding of
the Estates than the Ferme designs, and
her
her Consent is requisite to every Estate that shall be created by the Limitation of Uses; and it is to be ordered by her Direction. Thus if the Husband declares the Uses to himself and Wife for Life, the Remainder to the Heirs of the Wife, and the Wife declares the Uses to herself for Life, and then to her own Right Heirs, both Declarations are void, and it shall not stand good for the Remainder in Fee, and be void for the rest; for the Estate moving from the Wife, whatever Uses do take Effect must be by her Direction and Consent, and in the same Manner as she pleases; tho' the Husband has Power over the Estate of the Wife, during Coverture, yet if she declares the Use one Way, and he another, his Declaration is absolutely void, and it shall not stand good, during the Coverture. The Reason of the Difference seems, that in other Cases the Husband having Power over the Wife's Estate, he may grant an Interest as from himself, during the Coverture, for so long as he has Power over her Estate; but when they levy a Fine in Fee, the Estate passes solely and entirely as one Estate in Fee-simple from the Wife; and the Uses that are declared thereupon must be all with the Consent
Consent of the Wife for the whole Estate, because the whole Estate and Interest passes from the Wife; but if a Jointenant levies a Fine, and one declares the Use one Way, and another another Way, here both the Declarations shall stand, viz. the Declaration of each shall stand for his Moiety in Respect of their several Interests. If Baron and Feme levy a Fine, and an Indenture in both their Names, is brought to the Wife to seal, declaring the Uses of the Fine, and the Wife refuses to seal, this Declaration shall not bind her, because, tho' a Declaration of the Husband be sufficient, yet here her Refusing to seal was a sufficient Declaration of her Disaffent. When Baron and Feme sell the Land to one, and after levy a Fine to him, this shall bind the Feme; yet here is no Declaration of Uses; but it is presumed to be to the Use of the Conusee, and his Heirs, and consequently is binding. If a Fine, levied by Baron and Feme, be reversed by Reason of the Nonage of the Wife, the whole Estate shall be vested presently in the Feme; and there shall not be any Disposition during the Coverture.

Note, The Baron and Feme seized of Lands, and Baron covenants by Indenture, in Consideration of 20l. to suffer a Recovery
covery of Lands to the Use of the Recoverors, till they have made a good and indefeasible Lease for forty Years, and then to the Use of the Husband and Wife, and the Heirs of the Husband; it was held that this Declaration should bind the Wife, the Husband alone making it.

Where Baron and Feme levy a Fine of the Wife's Land, and both by Indenture, in Consideration of a Sum of Money, limit the Use to the Conussee, with a Condition and Clause of Re-entry, upon Payment of such Sum which was allowing 10 per Cent. which, with the taking the Profits together, made it an Usurious Contract; but before the Fine engrossed, there was another Deed, wherein it was covenanted that the Conusor should take the Profits till Default of Payment; at the Day appointed, the Feme disagrees to the Deed; yet it was held she was bound; for the first Deed was Declaration to the Uses to which she agreed, and the last Deed was but Explanatory of the first; the last Contract was about the Money which the Feme had nothing to do with, but was the Husband's.

If A. be Tenant for Life, Remainder to B. in Fee, and they levy a Fine, this

\textit{Abr. 798.}
this shall be to the Use of A. for Life, and then to the Use of B. in Fee; so if the Owner of the Land, and a Stranger levy a Fine, it shall be to the Use of the Owner only.

If an Infant Bargains and Sells Lands, and then levies a Fine to the Bargainee, though the Bargain and Sale be made, yet it shall amount to and stand as a Declaration of Uses upon the Fine; so if by Custom an Infant of the Age of Fifteen may make a Feoffment, and he accordingly makes one to the Use of his Last Will, tho' he cannot by Law make a Will, yet he may declare the Uses upon the Feoffment.

Husband makes a Feoffment of the Wife's Land to A. and he and his Wife levy a Fine to A. this shall be to the Use of A.

What Considerations are sufficient to raise a Use.

Brotherly Love and Affection is a good Consideration to raise a Use, according to the Case of Bedel; and the Continuance of the Land in the Name, &c. is a good one; so that all the Considerations in this Case are good to raise a Use, tho' taken singly and apart. If a Man covenants, in Consideration of Natural
Natural Love and Affection to his Brother, to stand seized to the Use of him and his Wife; it seems that is good to raise a Use to his Wife, they being both but one Person; so that the Love and Favour he bears to his Brother may be very well said to extend to his Brother's Wife; and accordingly in the Case of Boul and Wynston, it is adjudged that where the Father covenants, in Consideration of Natural Love and Affection to his eldest Son, to stand seized to the Use of him for Life, and then to the Use of such a Feme as he should marry for Life, that was a good Consideration to raise a Use to the Wife, as well as if a Man covenants, in Consideration of the Marriage of his Son with such a Feme, to stand seized to the Use of the Son, and the Son's Wife; this is a good Consideration to raise a Use to them both; tho' a Consideration be absolutely requisite to the raising a Use upon a Covenant, yet no Consideration needs be mentioned in the Deed; but if the Person be such an one as has an obvious Consideration of his Side, a Use shall presently rise to him; as if a Man covenants to stand seized to the Use of his Wife or Brother, or any of his Kindred, this is sufficient to raise a Use to them, without any Mention

Cro. Jac. 164.
2 Roll 78.
307.
Plow. 4.

7 Co. 42.
2 Roll 783.
Mention of a particular express Consideration; for the Love and Affection between them is obvious; which being a Consideration in itself sufficient to raise a Use, it shall be presumed that it was to the Intent the Use was limited; nay, if there be a Consideration to some certain Person, and afterwards a Use is limited to another Person, that does not come under the Consideration expressed; yet if he be a Person on whose Side there is a manifest Presumption of another Consideration, he shall have the Use limited to him by that Consideration, tho' he could not take by Virtue of the first. Thus if a Man covenants, in Consideration of Natural Love and Affection that he bears to his eldest Son, to stand seized to the Use of him, and then to the Use of any other of his Kindred, as Brother, Cousin, &c. this shall give a Use to them, tho' they do not come within the Consideration that is expressed to the eldest Son; for there is an obvious and apparent Consideration to raise a Use to them; and it seems by the same Reason, if any other Consideration were had for raising the first Use, it were the same thing; but if a Consideration be expressed for the raising a Use to a Person, that would take by the implied Consideration, with-
out any express one, yet if that express one fails, no Use shall be raised by Force of the implied one, for *expressum facit cessare tacitum*. Thus if a Father, in Consideration of 100l. covenants to stand seized to the Use of his Son, this must be enrolled, or else no Use passes; yet if no Money was paid, a Use would rise to the Son by the implied Consideration, without any Enrolment. So if a Man, in Consideration of the Natural Love and Affection he bears to his Children, covenants to stand seized to the Use of himself for Life, then to the Use of his Wife for Life, &c. this will raise a Use to the Wife; for tho' she does not come within the Consideration, yet there is a manifest Consideration of her Side; and consequently shall a Use very well arise to her.

The Consideration of ancient Acquaintance, or being Chamber-Fellows together, or entire Friends, will not raise a Use.

If A. in Consideration of B.'s being bound in a Recognizance for him, Bargains and Sells the Land to him, no Use will arise to him, because it is not a Bargain and Sale; there is not *quid pro quo*; but yet it is agreed that such a Consideration is sufficient to raise a Use upon a Covenant; but the Words were not apt
apt to make a Covenant to stand seiz'd, and so the Deed had not any Operation.

If a Man, in Consideration of Love and Affection to his Wife and Children, and to the Intent to settle his Lands in his Name and Blood, covenants with his Brother and Strangers, to stand seiz'd to the Use of himself for Life, then to the Use of his Wife for Life, and then to the Use of the Covenanters, and their Heirs; it was held that no Use arose to Strangers, because they could not come within the Consideration; yet it did arise to the Brother, both from the Consideration expressed of settling the Land in the Name and Blood of, &c. and also because he was his Brother, yet there was a Trust limited after the Use to him.

If a Man in Consideration of Money given by A. covenants to stand seiz'd to the Use of A. and B. and C. or to A. for Life, Remainder to B. for Life, Remainder to C. in Fee, this is good, and shall raise Uses to them all; for tho' the Money be given but by one, yet it is a Consideration for all the Estates, and shall be presumed to be given for all; but Natural Love, &c. is a personal Consideration, applicable to no Stranger; and so no Use can arise by
by Force of the Consideration to any Body but to those that came under it. There is a Case in Roll's that goes so far as to say, that if a Consideration of Money be given by A. and consequently the Owner of the Land covenants by Deed with B. and C. to stand seiz'd to their Use, viz. to the Use of B. and C. that by this a good Use is raised to them, and the Money is look'd upon as paid for them. If a Man, in Consideration of the Marriage of his Son with such a Woman, covenants to stand seiz'd to an Use, the Remainder to C. this is void to C. because he is a Stranger, but yet it is said by Counsel, in Plow. 307. Moor 505. Consideration to J. S. will make the Covenantor have a particular Estate; but Quere Whether it be by Conveyance, or to support any other Use. 2 Roll 784. That in such Case the Use to C. is good, because the Use limited afterwards is good, and that is not to commence till after the Estate of C. ended; and so the Use to C. shall be held good to support the Uses to the others that follow; but Quere well of that, for if the Limitation be void, it seems the other Uses may as well be supported without it; and Roll that has took almost every Thing that is remarkable out of that Case, yet has left this out.
If a Man, in Consideration of Natural Love, &c. to J. S. taken and reputed as his Son, covenants to stand seiz'd to his Use, by this no Use is rais'd to a Bastard Son.

If a Man for divers good Causes and Considerations, covenants, &c. no Use arises, the Consideration is too general, and the Certainty ought to appear, for the Court to judge whether the Consideration be sufficient or not.

But if a Man Bargains and Sells Lands for a certain Sum of Money, that is sufficient to raise a Use, without mentioning any Sum of Money in certain; for whatever the Sum be, it is sufficient to raise a Use; and so there needs no Averment of any Sum in certain, for the Court to determine.

A Man covenants, in Consideration of Money, to stand seiz'd of the Lands to the Use of A. and his Heirs, and being seiz'd of other Lands, covenants that if he should afterwards sell them, A. should have the Refusal; and if he went about to sell them to any Body, without making him the Offer, that from thenceforth he would be seiz'd to the Use of him and his Heirs, he afterwards goes about to make a Sale of them, without offering him the Lands; it was held that the Use arose to him; for
for the Money paid for the other Lands was also a Consideration for the Covenant. It seems at Common Law, the Party had two Remedies to come to the Effect of his Covenant, either to sue in Chancery, and have a specifick Performance of the Covenant, or else to have an Action.

If a Man covenants now to stand Plow. seized to a Use, and there is no Consideration, so that there can be no Use raised by Law. Quere whether or not the Party may have an Action of Covenant, and recover Damages. Where the Party shall convey by Way of Use, and not by Common Law Conveyance.

A Man covenants, that in Consideration A. had conveyed divers Lands to him, after the Death of A. to levy a Fine of his Lands to the Use of himself for Life, and then to A. in Tail, the Fine is not levied, no Use shall rise by Force of that Covenant; for the Intent was not that it should rise presently.

To what Uses a Conveyance shall be said to be had.

A Fine is levied to several Conveyances, with a Render to one for thirty Years, and several void Remainders, the Fine
Fine shall be to the Use of the Conues; for otherwise the Render cannot be good; for if it be to the Use of the Conusor, the whole Estate will be in him, as before, and the Render naught; but if the Render had been void in all, then the Use should be according to the Intent of the Render. Quare, Why it may not as well be to that Use, where but Part of the Render is void.

Consideration.

If a Man covenants in Consideration of Natural Affection to his Son, to stand seized to his Use, tho' there be no other Consideration mentioned, nor no general Words, as for divers other good Causes and Considerations, it may be averred that it was in Consideration of Payment of Debts of the Father by the Grand-father; and also of Lands settled by the Grand-father upon the Father; for these Considerations are not contrary to the Deed, but may well concur.

If a Man covenants in Consideration of a Marriage to be had between him and B. to stand seized to the Use of himself and B. for Life, no Use rises till the Marriage; and if they should marry
marry, and be divorced *Causa præcontract*, it seems the *Use* to B. would cease.

A Man covenants, in Consideration of the Marriage of his Nephew, and of two hundred Marks paid by the Father of the Woman he is to marry, to stand seized, &c. the Marriage takes no Effect; it was held by the Judges that a *Use* would not rise upon the Money. A Man covenants that two Persons shall quietly enjoy his Land; no *Use* arises.

**Limitation of Uses upon Conveyances.**

Tho' the Appointment and Limitation of *Uses*, by an Indenture in Writing, precedent to a Fine or Recovery, do not bind the Estate of the Land, yet being made in so solemn a Manner, it is not to be controverted, but by Matter of as high a Nature; and so if the *Uses* of a Fine or Recovery to be had, be declared by a Deed precedent, no Averment by Parol will alter the Declaration in Writing, according to the Maxim, *unumquodque dissolvitur eo ligamine quo ligatum est*, because an Agreement by Deed, for the Direction of *Uses* is not obligatory as to the Estate.
of the Land, but only a bare Contract between the Parties, and consequently by Deed it may be disannulled; as all Contracts, by Consent of the Parties, may lose their obligatory Power; so if the Party declares other Uses by Deed, before the levying the Fine, the last Declaration shall stand, as the last Declaration of the Mind of the Party. If there be any Variance between the Agreements Declaratory of the Uses of the Fine, and the Fine itself, as in the Number of Acres, Time, Persons, or the like, there a Declaration of Uses by Parol, shall stand good, tho' posterior to a former Declaration by Deed; for when there is a Variance between the Agreement and the Fine levied, then it cannot be presumed to be the Fine intended by the Agreement, because different from it, and then it shall be guided by the parol Declaration, which may well direct the Uses of it, because being different from the Deed of Agreement, there is no need to guide the Uses of the Fine; but if there be no parol Declaration of Uses, the Fine should be guided by the Declaration of Uses contained in the Deed, notwithstanding some Variance there may be between the Deed and the Fine; for when no other Fine is levied, or no other
other Declaration of Uses made, there the Fine shall be that presumed to be mentioned in the Agreement. Where there are two several Declarations of Uses, by Deed precedent to the Fine, there the last shall stand in toto, for it is wholly a Revocation of the former; and so the Fine shall not be to the Uses of both Deeds compounded and thrown into one another.

It came to be a Quære in Dowman's 9 Co. 9. Case, Whether a subsequent Declaration of the Uses of the Recovery were good to raise Uses upon the precedent Recovery; for the Intent of the Uses, as was agreed, must either be precedent or present with the Recovery; but it was adjudged to be good; for when there is no other Declaration of Uses, then the subsequent one is supposed to be the Intent of the Party at the Time of the Recovery suffered; for so the Parties themselves have declared it to be; but where the Declaration of Uses by Indenture precedent and subsequent differ, that against precedent Declarations no parol Averment is to be admitted; but against a subsequent Declaration by Deed, there may be a parol Averment; for if before, or at the Time of the Recovery suffered, there was such a particular Declaration of Uses.
Uses by Parol, then the Estate was presently executed to those Uses; and then any Manner of Declaration by Deed comes too late; if in the mean Time between the Recovery and the Deed subsequent Declaratory of the Uses, there be any Lease, &c. made of the Lands, then the subsequent Declaration is not sufficient of itself to shew that the Intent of the Parties was that the Recovery should be suffer'd to those very Uses declared by the Deed subsequent, and thereby to avoid all mean Estates and Charges; but there must be some other very good Proof that such was the Intent at the Time of the Recovery had. Where a Recovery is suffer'd without Consideration, it is to the Use of the Recoveree, who consequently may declare the Uses of it by Deed subsequent, when it is suffer'd with Consideration; and so the Estates shall be executed. Quære, Whether the Recoveree can declare the Uses by any subsequent Deed; tho' he seems to stand in the same Place with the Recoveror, where it is without Consideration. If any Clause, Privilege or Consideration be added to a Use declared by Parol, yet the Declaration of the Use shall stand good, though the Clause, &c. be void. An Indenture for Years, after the
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the Recovery was held sufficient to declare the Uses of that Recovery.

Pleading of Uses.

The Form of pleading Uses is to say that a Recovery was had to such and such Uses; and in an Assize, by the Lord Cromwell against Andrews, of Lands and Tenements in Aleyton, Indentures were giving in Evidence; whereupon the Jury find a special Verdict, viz. that J. B. was seized of the Manor of A. in Fee, and of the Advowson of the Church of A. thereto belonging; and by Deed Bargained and Sold the Manor, with the Appurtenances, to A. A. to have and to hold to him and his Heirs, to the Use of him and his Heirs, in the same Manner and Form as is aforesaid in the Indentures mentioned; and by the same Indenture, J. B. covenanted to suffer W. R. or R. A. to recover the said Manor, with the Appurtenances, by a Common Recovery to the Uses following, to the Use of A. A. and his Heirs, rendering forty-two Pounds to B. and his Heirs, at two Feasts, with a Clause of Distress, and Nomine pana; and it was further covenanted that Blunt, before Easter next, should levy a Fine of the said Manor to A. and
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A. and his Heirs; and by the same Fine A. A. should render forty-two Pounds per Ann. to the said J. B. and his Heirs. Provided always that the said A. A. shall by his Deed sufficient in the Law, give the Advowson and Parsonage of the said Church to the said J. B. during his Life; and if it happens not to be vacant in his Life, then one Turn to his Executors; and it was further agreed, that all Manner of Estates, Assurances and Conveyances hereafter to be made, should be to the Uses and Intents comprized in the Indenture, and to no other Intent or Use, and accordingly a Recovery was had against J. B. and then J. B. and A. A. levied a Fine to R. R. and his Heirs, who granted and rendered the Rent of forty-two Pounds to J. B. and the Heirs of his Body, the Remainder to my Lord Mountjoy, in Fee, and the Land he rendered to J. B. and his Heirs, and the Jury find that this Fine was levied to the Use in the Indenture mentioned, A. A. died before he made any Grant of the Advowson, according to the Proviso. J. B. having never requested it, the Church became vacant in the Life of J. B. E. A. enters upon the Manor as Heir to A. A. and J. B. enters for the Condition
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Condition broken, and Bargains and Sells the Manner to the Lord Cromwell, on whom A. A. enters; Lord Cromwell dies, and his Heirs enter, upon whom E. A. and the rest, by his Command, re-enter, and whether it was a Disseisin, was referred to the Court; and first, it was resolved, that though the first Deed of Bargain and Sale passed no Estate, not being enrolled, but served only as a Declaration of Ufes, yet the Word Proviso made a Condition; and so all the Ufes afterwards raised and executed by the Recovery were Conditional; for as there may be a Deed precedent to raise the Ufes of the Recovery; so there may be a Consideration added to those Ufes which will make the Estate Conditional, when it is afterwards executed; and the Condition need not be made at the same Time the Estate is made; for making a Conditional Use makes afterwards a Conditional Estate, the Statute 27 H. 8. 10. executing the Possession in the same Manner and Plight that the Ufes are in. Secondly, It was resolved, that upon the Recovery the Rent in Fee was executed accordingly in F. B. by Force of 27 H. 8. Thirdly, It was resolved, that the Estate being executed Conditionally upon the Recovery, the Fine after-
afterwards by J. B. who had the Condition, and by A. A. who had the Estate, to D. did not extinguish the Condition; for tho’, generally speaking a Fine will extinguish all Manner of Right and Title that a Man hath to Lands; yet if there be an antecedent Agreement to qualify and restrain its Operation, it shall have its Effect according to the Agreement; as here it was covenanted that all Manner of Assurances afterwards to be had, should be to the Uses in that Indenture mentioned, which controlled the general Use of the Fine, and preserved the Condition, according to the Intent of the Parties; for when Men agree and levy a Fine, generally, there all the Conusee’s Right shall be extinguished; and when they both agree in restraining and abridging the Use of the Fine, there is no Reason to extend the Operation of that Fine beyond the Intent of the Party. A Lord may release his Right, reserving a Rent, and one may enter into Warranty, with a Salvo to his Rent; and the like Case, as to the Point of Extinguishment, was reserved in the Case of Putnam and Duncomb, where it seems also to be agreed, that if such Indenture between two, if the Fine be afterwards levied to one accordingly, he...
he is concluded from saying the Fine was to any other Use; or if he refuse to take the Fine to those Uses, then 31. Rent, the Feoffee levies a Fine for further Assurance, rendering 31. Rent, the old Rent remains, and he may avow upon the Deed. Moor 384, 295.

it was held the Rent was saved by Virtue of the Agreement; so that the Rent may be saved either by a Collateral Agreement or a Special Entry; whereas it was insisted in Cromwell's Case, that in such Case the Salvo ought to appear upon the Record and Fine itself, and not by Matter Dehors. But it was otherwise resolved; and accordingly it was held in the Case of Cromwell, when it came in Question before, a precedent Feoffment will guide a subsequent Fine; as if there be a Feoffment to two, and their Heirs, to the Use of them and their Heirs, and a Fine is levied to them and the Heirs of one; this will not prejudice their Estate;
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Estate; for they shall both have the Fee still, for in the Fine there is a Necessity that the Fee should be limited to one. A Fine *sur Grant and Render*, cannot be averred by Parol to be to any other *Uses* than what are mentioned in the Fine; so that if an Estate in Fee be granted and rendered back to one in Tail, he shall have it to his own *Use*; and so if the Conufee keep the Fee, he shall have it to his own *Use*; but by Deed the *Use* of a Fine *sur Grant and Render* may be directed; and if there be a Deed to lead the *Uses* of such a Fine, tho' there be some Variance between the Deed and the Fine; yet it shall be said to be to the *Uses* of the Deed, if there be no other *Uses*, and that that was the Intent.

*2 Co. 75.*

*2 Co. 76.*

If A. has ten Acres and B. has ten Acres, and A. levies a Fine to B. of Twenty, who renders Twenty, it is good; but for Ten, unless there be a Special Agreement; for he cannot render more then he receives: It was objected, that since there can be no Declaration of *Uses* upon a Fine *sur Grant to Render*, but by Deed, and this Limitation by Deed was not good to bind Perkins, who had the Estate of the Land, but was a Stranger to the Deed, and consequently no Deed by them
them would be of any Effect to bind him; and there being no Use but what was implied upon the Fine, there was no Conditional Estate; but it was an-
answered that P. was but an Instrument to convey the Land in the
same Manner as J. B. and A. A. had agreed, and so had nothing to do
to limit the Uses; for if he would not make the Render as they would have him, he had not been employed; and if after the Fine levied he had refused
to render, yet the former Agreement would declare the Use of his Estate,
tho' a Stranger, according to the Intent and Purport. So if A. Bargains
and Sells Lands to B. and covenants to levy a Fine to him, and that C.
shall bring a Writ of Entry, &c. and so a Common Recovery shall be had,
which shall be to the Use of B. and his Heirs, in this Case, tho' C. be but
a Stranger, yet being but an Instrument, the Declaration of Uses by the other
two shall be good; the Render of C. cannot extinguish the Condition; for
his Seisin is but instantaneous, and only to the Purpose to render back the
Estate.

There was an Estate in Fee in the Rent, upon the Recovery; but that Rent, and the new one created upon the
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the Fine, but that was nothing to the Use of the Land, and could not alter that neither one Way nor other; for tho' there be a new Rent in Being, yet there is no new Use in A. and so his Estate remains Conditional upon a Fine that enures by Way of Release or Extinction.

No Use can be limited unless there be some other Conveyance, as it seems, which passes the Estate; for there it seems they are taken as one Conveyance; neither can the Surrender of a particular Estate be to a Use.

If the Disseisee limits the Use to one, and the Disseisor to another, and the Conusee to a third, the Use of the Disseisee shall stand; so if the Recoveror limit the Use to one, the Vouchee to another, and the Owner to a third, the Declaration of the Owner shall stand; tho' a Condition concurring with that in the Deed may be averred by Parol, yet no Use can be averred by Parol, when there are Uses contained in the Deed expressly. A Man cannot covenant with his Wife to stand seized to her Use; it seems at Common Law a Use might have been raised by Word, upon a Conveyance that passed the Possession by some solemn Act, as a Feoffment; but where there was no such Act, there
there it seems a Deed Declaratory of the Uses was necessary; for as a Feoffment which passed the Estate, might be made at Common Law, by Parol; so by the same Reason might the Uses of the Estate be declared by Parol; but where a Deed was requisite to the passing of the Estate itself, it seems it was requisite for the Declaration of the Uses, as upon a Grant of a Rent, or the like. So it seems, a Man could not covenant to stand seized to a Use, Pop. 49, without a Deed, there being no solemn Act; but yet a Bargain and Sale by Parol has raised a Use without, and it has been held to do so since the Statute. In Cities exempted out of the Statute, it has been held, that if a Fine be levied of a Rent, no Use can be limited of it without Deed; but now by 29 Car. 2. c. 3. all Declarations of Trust, other than such as arise by Implication of Law, are to be in Writing, and signed by the Party, who is by Law enabled to declare such Trust, or else it must be by his Last Will in Writing.

A Man suffers a Common Recovery Oct. Mich. and the 14th of November next, by Indenture, he declares that the Uses of all Recoveries hereafter to be suffered, shall be so and so, and so this Indenture does not declare the Uses
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Uses of the Recovery precedent, tho' the Term be reckoned but as one Day in Law; but yet it seems, if there be an Averment, that it was the Intent of the Party in that Indenture, to guide the Uses of the precedent Recovery, it will be good; but Quære since the Statute 29 Car. 2. whether that will do; for as the Statute of Wills requires that a Will should be in Writing, and if that be not sufficient that is writ, no Averment will help out the Defect; so the Statute 29 Car. 2. requiring a Declaration of Uses to be in Writing, it seems by the same Reason, no Parol Averment can help it.

A Man covenants to levy a Fine to four, to such Uses, and after two die, and it is levied to the Survivors, the Uses shall be directed by the first Indenture.

Cro. Jac. A Man grants a Rent of 20l. per Ann. and covenants to levy a Fine to these Uses, viz. that if it shall happen the said yearly Rent to be in Arrear, and not a sufficient Distress found, or any Rescous or Replevin be made, then that the Grantee shall enter, &c. in this Case the Rent was in Arrear, and then the Fine levied, and then a Distress taken, and a Replevin sued. Two Judges held that the Use being raised
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raised by the Fine, it could not extend to those Averments that were before the Fine; but the other two held it should, the whole being reckoned but as one Conveyance.

A. covenants to levy a Fine of one hundred Acres, within the Year, and after the Year, a Fine is levied but of eighty; it shall be guided by the Covenant before.

Husband and Wife seized of Lands to them, and to the Heirs of the Husband, Bargain and Sell the Land to one P. upon Condition that if they or any of them, their Heirs, Executors, Administrators and Assigns of the Husband, should at such a Day pay 500l. to the said P. that then it should be lawful for the Husband and Wife, and the Heirs of the Husband to enter, and so hold it as in their former Estate, and that after the Payment, this Indenture, and all Fines and other Assurance should be to the Use of the Husband, and his Heirs, this being Contradictory to what went before, is void, or else shall serve only to direct the Uses of the Fee-simple, after the Death of the Wife. When Uses are declared by a Deed precedent, no Writing will control that, tho' under Hand and Seal, unless it be a Deed; as was the Case of
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of Jones and Morley, where a Deed declared the Uses of a Fine, to be levied next Hill. Term, to one and his Heirs, before the Fine levied, Husband and Wife, by Writing under Hand and Seal, declare it shall be to the Use of her and her Heirs; it was held that if the Fine had been pursuant, this would not have controlled the former Deed; but because the Agreement was in Hill. Term, to levy it next Hill. Term, and the Fine was levied the same Term, there was a Variance; and so the former Deed was controlled. If Lands be granted to A. Habendum to A. and B. and their Heirs, to the Use of them and their Heirs, tho' B. can take no Estate, because named after the Habendum, yet the Limitation of the Use is good, and by that they shall both be Jointenants. If a Man covenants to stand seized of all the Lands he has, or which he shall afterwards purchase to the Use of A. this will only bind the Lands he then had; for if he afterwards purchase other Lands, no Use shall arise upon it; for a Covenant to stand seized, is a Covenant that affects an Alteration of the Land itself, which no Man has Power over but the Owner; and it is not now in the Nature of a Contract.
Contrary to do any thing but that which reaches the Lands themselves.

So if one Jointenant covenants to stand seiz'd of the Moiety of his Companion, after his Companion's Death, to such Usfs, no Use will thereby arise, tho' he does survive his Companion; for he could not then Charge the Moiety. But if a Man covenants to purchase Lands before Michaelmas, and to levy a Fine of them to B. which shall be to the Use of A. and his Heirs, and this is done accordingly, it is good; for this Agreement was not designed to raise the Uses of its own Force, but only that it should be an Agreement precedent to direct the Uses of the Fine to be levied.

If a Man levies a Fine of his Lands, and covenants, in Consideration of Natural Love, and the Marriage of his Bastard Daughter, that the Conusee shall stand seiz'd to her Use, this is a sufficient Declaration of the Use to her, tho' it be not sufficient upon the Covenant to raise a Use. See about Contingent Uses before, and Title Contingent Remainders.

A Man may have an Assize upon a Feoffment to his own Use, without an actual Entry, and without Laying an Agreement; for the Statute executes it in...
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in him; but an Action of Trespass he cannot have, before an actual Entry. A Man may plead that such a one was seized to his Use, without shewing the Commencement of the Use. A Man brings a Writ of Waste, the Writ sets forth a Feoffment to such Persons, to several Uses, but does not say the Feoffment was to them and their Heirs; and if it were not a Feoffment in Fee, the Use could not rise; but it was held well enough, because all the Forms of the Writs had been so; and yet the Plaintiff might have had a general Writ, and declared Specially.

A. seized of twenty-five Acres at W. covenants to levy a Fine of them all, and that twenty-four of them shall be to the Use of C. in Tail; and for the other it shall be to the Use of him in Fee, afterwards a Fine is levied of twenty-four; Quere whether the Uses of them twenty-four, are not directed by the precedent Conveyance.

A Man makes a Feoffment in Fee, and afterwards declares by Indenture, that this Feoffment was to the Use of himself, and after Marriage with A. to her for Life, and then to the Use of his own Right Heirs, this is a good Limitation of Uses; and after Marriage A. shall have a Use, and in the mean Time he is
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is seized to the Use of himself and his Heirs.

A Man covenants, in Consideration of Marriage to be had between him and B. to convey certain Lands to their Uses for Life, and afterwards he levies a Fine to those Uses, there is an Estate vested in them, tho' the Marriage should take no Effect; for it was a Declaration of Uses upon the Fine, which is good, tho' there be no Consideration; but if there had been nothing but a Covenant to stand seized to Uses, no Uses had then risen without a Marriage.

And if a Man covenants, in Consideration of the Marriage of his Son with B. to stand seized to the Use of his Son and B. and they are married infra annos nubiles, and afterwards they disagree, the Use to B. shall cease; and it seems there is the same Reason the Use to his Son should cease, since the Consideration ceased, the Marriage being the only thing the Use was founded upon.

A Man covenants to stand seized to the Use of B. and his Heirs, if such an Act be not done, B. dies, the Act is not done, a Use shall arise to the Heir of B. who shall be in by Different.
A Man covenants, in Consideration of Natural Love, &c. to stand seized to the Use of himself for Life, then to his Son for Life, then to D. his Bastard for Life, with several Limitations over, and covenants to make a Feoffment for further Assurance to the same Uses; and accordingly, a Feoffment is made, yet D. shall take nothing, because the Feoffment was made but for further Assurances, according to the Covenant, by which he could take nothing, if it were only said to the same Uses, and not for further Assurance.

Quarea, Whether D. would not take.

A Man covenants to convey his Land to such and such Uses before Easter next, and covenants to stand seized of so much as shall not then be conveyed to the Use of the same Persons, none is conveyed before Easter, the Uses of the whole shall rise.

Tenant for Life, with Power of Revocation, levies a Fine, and by Deed, ten Days after, declares the Uses of that Fine, which Deed had all the Circumstances required in the Deed of Revocation, and whether the Power of Revocation was extinct by the Fine, or that the Deed of the Declaration of Uses was to be reckoned together, with the Fine, as one Conveyance; and so his
his Power executed was the *query*; and it was held that the Power was extinct by the *Fine*, and the Deed afterwards came too late, for the *Fine* passed it away, and the Deed afterwards shall not vest any thing lawfully vested by that Fine; yet if the Intent at the Time of the Fine levied was to make such a *Declaration* by Deed, *query* whether the Fine will extinguish it, but a bare *Declaration* afterwards, without full Proof of the Intent, at the Time of the Fine levied, will not control the natural Operation of that Fine. A *Man* has *Power* to revoke by Deed sealed and signed in the Presence of two Witnesses, and Covenants by Deed, having those Circumstances to levy a *Fine* to other *Uses*, which he does, and it was resolved to be but as one Conveyance, and it should amount to a *Revocation*. The Deed of itself amounting to a Revocation, because it looked as something to be done, and the Fine of itself could not, because it had not those Circumstances.

A Feoffment is made to *Husband* and *Wife*, for their Lives, Remainder *seniori puero*, Remainder to *K.* in *Fee*, *Husband* and *Wife* levy a *Fine*, and by Indenture declare the *Use* to *Husband*
Husband and Wife for Life, and then to the eldest Child, then to K. in Fee; it was resolved the Fine did not destroy the Estate in Remainder, but it was in Abeyance; and that the Indenture leading the Uses of the Fine put it out of all Dispute that the Remainder should go to the eldest Child, whether Male or Female; and yet it does not appear, there was any Design beforehand, or Agreement to levy this Fine; it was held likewise that the Daughter may aver that seniori puero was intended the eldest Child, Male or Female.

Where two Deeds or Acts done at several Times, shall be look'd upon in Law but as one and the same, see Cro. Jac. 643. Tenant in Tail levies a Fine, without Consideration, or expressing any Use, he shall be seized in Tail, as before; for it is by Coveyance of Law that he hath any Estate, and whatsoever Estate he takes by Law, must be rightful, and according to the Rules of Law; and to give him an absolute Estate in Fee, would be to the Prejudice of him in Reversion. Quare if it be not the same of a Recovery.
What may be granted to an Use.

All Lands and Inheritances real may be granted to an Use; but no Inheritance personal can be granted to an Use as Annuities, and the like; for their having the Inheritance consists in taking the Rents; so he cannot have the Freehold upon the Trust and Confidence to permit another to take the Profits; so Things which are mere Rights cannot be conveyed by Way of Use, as Commons, &c. Ways in Gross; Palm. for a Man cannot walk over Another's Ground to the Use of a third Person. The Lords decreed that the Office of High Chamberlain could not be granted by Way of Use; nothing that passes by Way of Extinguishment can be granted to an Use.

A Man seized of the Manor of S. in O. and of divers other Lands in O. suffered a Recovery of all, and limits the Use of all his Lands and Tenements in O. to his Wife for Life, and of the Manor of S. to his younger Son in Tail; it was held the Wife had nothing of the Manor of S.

A Devise may be made to a Use; but Quarry if the Limitation of the Use be void, whether the Devisee shall be seized to the Use of the Devisor and his Heirs; tho' if an Estate passes by
by Way of Extinguishment, no Use can be limited upon it; yet if Tenant for Life surrenders his Estate to him in Remainder, to the Intent to suffer a Recovery, which is accordingly done, if no other Use be limited, it shall be to the Use of him for Life; if they both join in a Feoffment to the Use of J. S. and his Heirs, who suffers a Recovery, and doth vouch, this it seems shall be to the former Uses, because the Use was to J. S. and his Heirs; yet that was only to keep the Estate in him, to the Intent that he might be a Tenant to the said Præcipe.

If a Man covenants to levy a Fine to Uses, the Fine must be drawn according to the Covenant, or else he is not obliged to levy the Fine. A. enfeoffs B. and covenants to make further Assurances, B. leaves to A. who then levies a Fine to B. this bears and conveys the Estate for Years, without a precedent Agreement, otherwise it goes in Corroboration of it.

A Man conveys Lands to one, and covenants to do Acts for farther Assurance, and then levies a Fine to him, this will be to the Use of the Bargaine; for the Covenant is a Declaration of the Use to him, but that Covenant is to be considered by the Estates that pass
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pass by the first Conveyance; and it is to be looked upon as a Declaration of no more; as if a Man passes the third Part of his Lands to J. S. and covenants to make further Assurances of his Estate to him, and levies a Fine of all to him, this Covenant shall declare the Use of the Fine to the Vendee, for the third Part; but the other shall have the Use of the two other Parts. A Recovery is suffered to the Intent the Recoverors should make such Estates, the Uses are not in the mean Time to the Recoveree; for that would prevent the Execution of the Estates.

A Man suffers a Recovery to the Use of himself for Life, Remainder seniori puero in Tail, in contingent Remainder to himself in Tail, he levies a Fine and declares the Uses by another Indenture to him for Life, Remainder to his eldest Child in Tail, Remainder to himself in Tail; it was resolved the Fine did not destroy the Remainder seniori puero; for it goes in Corroboration of the Estate, and that the last Indenture declared the Intent of the first to mean by seniori puero, either Boy or Girl, according as they should be born first.

A Fine is levied to four, to the Intent they should make an Estate of the said
said Land to such a Person as the Conufor should name, and that they should not be seized to any other Use but to that Specially; it was held that before the Nomination they were seiz’d to their own Use; and if the Conufor died before Nomination, to the Use of his Heir; and one Judge held the Conufor might name which of the Conufees he pleased; but the other two held not; but he ought to be such a one as would take the Estate; and one Jointenant cannot give from his Companions. Quære, If a Man grants two Acres in D. and covenants to levy a Fine for further Assurance, and levies a Fine of all in D. and he has four Acres there for the Surplusage, whether the Use shall be to the Conufor.
Of Bargains and Sales.

No Person that cannot be seized to a Use can pass Lands by Way of Bargain and Sale, for it only passes an Use at Common Law; and tho' the Possession and Uses pass both together, tanquam uno statu, yet there must be a Seisin to a Use in every Bargain and Sale, else there could be no Execution by Force of the Statute; yet every Body that comes in by a Bargain and Sale, comes in by the Statute; therefore the King, nor any Corporation, cannot Bargain and Sell; and there seems the same Reason for an Alien; but if there be a proper Consideration, it seems a Bargain and Sale may be made to any Body; but then the Consideration must be Money, for nothing else will make it a Bargain and Sale; and it may amount to a Covenant to Stand seized, or an Exchange, but not a Bargain and Sale, without the Consideration of Money. Money given by the Governors of an Hospital is a good Consideration to raise a Use to them in their publick Capacity; and tho' a Body Politick cannot be seized to a Use, yet upon a Bargain and Sale to them, a Trust

Lands let for a Year, reserving a
Pepper-Corn, if demanded, is a good Bargain
and Sale. Mo. 262. 10 Co. 24, 34.
2 Roll 788.
Of Bargains and Sales.

Trust may be limited that they shall dispose of the Rents and Profits of the same amongst the Poor of the said Corporation. It seems anything that a Man has a Freehold or Inheritance in, may be Bargained and Sold by Force of the Statute; for so are the Words of the Statute; but a Man possessed of a Term for Years, cannot Bargain and Sell it by Force of the Statute 27 H. 8. c. 10. to have it executed, because it is not within the Statute. At Common Law upon a Bargain and Sale, a Use would rise, tho' the Bargain and Sale were by Parol; but now, as to Estates of Freehold and Inheritance, they are restrained by the 27 H. 8. c. 16. for now they must be made by Deed indented and enrolled; but a Bargain and Sale for Years was out of the Statute; and therefore might, as it seems, be made by Parol; and Houses and Lands in Cities, where the Mayor, &c. had Power to enrol Evidences, being excepted, it has been since resolved that a Bargain and Sale is good by Parol there, for the Statute was Defective; for it executed such Lands, &c. out of the Statute of Enrolments, but does not enact that the Sale of such Estates should be enrolled in those Cities. It seems by the Statute for execu-
executing Uses into Possession, a Rent new created may be bargained, &c. but now it cannot be, because there must be a Seisin to an Use, or else there can be no Execution by the Statute, before the Intent of the Party was regarded and supported by Chancery; and this seems to be, my Lord Hale's wary putting of the Case of Jackson, which see. The Words Bargain and Sell are not necessary to make it a Bargain and Sale within the Statute; but any Words at Common Law, that upon a valuable Consideration would have raised a Use, will be sufficient to create a Bargain and Sale, within the Statute; but there it seems that the valuable Consideration must be Money; so that if a Man for Money covenants to stand seized, or aliens, or demises, grants and to Farm lets, these Words, if the Deed be indented and enrolled, amount to make it a Bargain and Sale; and if the Money be paid but by one, it is sufficient, and shall make the Estate to pass to all, if no Consideration be expressed; yet if it be averred that there was one paid, it is sufficient; but if a Consideration be expressed in the Deed, and be acknowledged to be received, tho' in Truth none was paid, yet the Party and his Heirs...
Heirs, are esstpped, from saying there was none paid. The Intent of 27 H. 8. c. 10. was to destroy these Inconveniencies that had crept into the Law by Uses, and restore the former Laws for passing of Lands by Matter that is notorious into Practice and Use again; and therefore, left still they should convey by Way of Use, and the Inconveniences remain, was that Statute of 27 H. 8. c. 16. made, which requires the Deed to be enrolled, and so made notorious in whom the Estate should be; so that by Force of the Statute, no Estate can pass by Force of a Bargain and Sale; but where the Deed is enrolled, so that 'till that Circumstance be had, the Deed is ineffectual. Before this Statute the Use and Possession passed presently, both together tanquam uno statu, upon the Delivery of the Deed; but this Statute requiring another Circumstance, 'till that be had, the Deed is of no Effect; and when it is had, this Statute is satisfied; and the Use and Possession are said to pass both together by Relation, from the Delivery of the Deed, by Virtue of the former Law; this left not abolishing it, but only adding another Circumstance to it, and then leaves the former Law to Operation; so that when the Deed is
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afterwards enrolled, it hath Relation, for the Advantage of the Bargaineer, to protect him from all Incumbrances made in the mean Time by the Bargainer, and for him to take Advantage of the Acts done for the corroborating his Estate, and the making good any Disposition that he will make in the Interim of the Land. But as for Houses and Lands that are in Cities and Boroughs, where they have the Power of enrolling Evidences, by being excepted out of the Statute, they pass presently upon the Delivery of the Deed.

If a Man Bargains and Sells Lands by Deed indented; but before Enrolment he levies a Fine of the Lands, to the Party himself, he shall be in by the Fine, tho' the Deed be afterwards enrolled; for 'till the Enrolment, the Bargainer has the Estate, all those Circumstances not being had which are requisite to make it a good Bargain and Sale; and before Enrolment the Estate passes by the Fine; the same Law of all Conveyances passing the Possession. If in the mean Time the Bargaineer dies before Enrolment, his Heirs shall take and be in by Discent; for the Enrolment, as between Bargainer and Bargaineer, makes the Estate pass ab initio, by Force of

161, 203. 4 Co. 71. 10 Co. 96.

Moor 80. 337. other-wise if they lie in a City.

Yelv. 113. Dycr 229.
Of Bargains and Sales.

Where Tenant for Life, with Power to make Leases to commence after his Death, 

Bargains and Sells the Land in Fee, the Power does not pass. A Bargain and Sale will not pass a contingent Use in the Bargainer, but a Feoffment will. If one Jointenant Bargains and Sells all the Lands, and before Enrolment the other dies, his Part shall survive; for the Freehold not being out of him, the Jointure remains; but yet when afterwards the Deed is enrolled, only a Moiety shall pass; for the Enrolment by Relation cannot make the Grant of any better Effect than it would have been if it had took Effect immediately; but tho' that Enrolment be made, he that Bargains and Sells the whole shall have the other's Part by Survivorship, tho' the Deed be afterwards enrolled, and shall relate to the Delivery; because tho' the Relation will work for the Benefit and Advantage of the Bargaineer, yet it shall not prejudice the Bargainer; yet in such Case, if the Bargainer dies, his Part shall not survive; for the Relation the Deed afterwards by Enrolment has,
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supports the Interest of the Bargainee, as passing ab initio.

If the Bargainee, before Enrolment, Bargains and Sells to another, and then both Deeds are enrolled, according to Cooke, it is good, which seems reasonable that the Relation should as well confirm his own Acts against himself, as protect him from the Acts of the Bargainer; but as the Case is reported by Cro. the Judges were divided; and it seems by him in another Place, as if it were adjudged not to be good; and so it is reported by Hob. A Man Bargains and Sells the Seventh, and acknowledges the Statute the Eighth, and afterwards the Deed is enrolled; and upon an Issue whether the Bargainer was feized the Eighth, it was held that he was not in Respect of the Relation; but in another Case afterwards the Judges were divided, and seemed to be against it, tho' Coke be express, and says that as to passing Estates, the Enrolment makes the Deed relate even as to Strangers as well as Parties.

A Man seized of a Copyhold in Fee, by the Custom of which Manor, the Wife of every Copyholder that died seized of any Estate, shall be endowed, becomes a Bankrupt, the Commissioners Bargain and Sell the Land; the
Bankrupt dies, the Deed is enrolled. It was held that the Wife should not be endowed; for now by Relation he did not die Tenant; and this confirms what my Lord Cooke says, that the Estate shall pass by Relation, even as to Strangers. So if one does Bargain and Sell Land, and takes a Wife, and dies, and then the Deed is enrolled, the Wife of the Bargainer shall not have Dower; for by the Relation the Estate passed before she was his Wife; and by the same Reason, if the Estate shall be said to pass as to Strangers, ab initio, for their Disadvantage, it shall pass for their Advantage. And therefore if a Bargain and Sale be made to a Man, and he dies, and then the Deed is enrolled, it seems his Wife ought to be endowed.

If a Man Bargains and Sells Lands by Deed indented to one, and then Bargains and Sells them to another, and the first Deed is enrolled within the six Months, the last Bargain and Sale is void; and so it is if a Man do after the said Bargain and Sale levy a Fine of the Lands to another, and then the Deed is enrolled, the Fine is of no Manner of Use, and so it is, if the last Bargain and Sale be first enrolled. But if the first Bargain and Sale be never
Of Bargains and Sales.

never enrolled; so as it never takes Effect, then it seems the Second, &c. shall stand good, like the Case of two Surrenders of Copyhold Lands, a Release to the Bargaine, before Enrolment, is good, and a Recovery suffered against him is good; for he is Tenant to the Precept, by the Enrolment afterwards, which farther proves what my Lord Cooke says, that even as to Strangers, the Relation works; as to passing the Estate it is not material when the Deed is acknowledged, provided it be enrolled within the six Months.

It seems the Bargaine, before Enrolment, may grant a Rent out of the Lands, this Relation is not properly a Fiction in the Law; but here are several divided Acts that have a Real Eff, which when they happen, are reckoned at Law but as one Act; whereas a Fiction in Law, is what the Law supposes to be in effe; and it is really not so; if Tenant for Life be impleaded, the Bargaine of the Reversion shall be received after Enrolment; but yet if one purchases a Reversion, hanging the Writ, he shall not be received. If a Man Bargains and Sells Land, and then a Stranger enters, and the Deed is enrolled, the Bargaine may, as it seems
Of Bargains and Sales.

seems, maintain an Assize; for now by Relation, it is a Difference to him.

Hob. 222. If a Man Bargains and Sells Lands, and then grants a Rent-charge, and then levies a Fine of the Land to the Bargainee, it seems the Bargainee shall hold it charged, because he comes in by the Fine. A Man makes a Lease for Years, rendering Rent, and then Bargains and Sells the Reversion, and then a Rent-Day incurs, it seems the Rent does belong to the Bargainee; and so if a Bargain and Sale be made of an Advowson, and before Enrolment the Church becomes vacant, it seems it belongs to the Bargainee to present; for the Enrolment hath Relation to make the Deed pass, as to Strangers, ab initio, as appears from the Cases; a multo fortiori it has between the Parties themselves; but yet it was held by the Justices, in Sir Henry Dmcock's Case, that Payment to the Bargainer, by the Lessee, was good, and the Bargainee has no Remedy; which Case seems to agree that the Right belongs to the Bargainee, but allows Payment to the Bargainer, because the Bargainee, before Enrolment, has not the Reversion completely in him; and therefore if the Bargainee demands the Rent, and there is a Clause of Re-
Of Bargains and Sales. 295

entry, and then the Deed is enrolled, the Bargaine cannot enter, because not compleat Grantee before Enrolment; if the Bargainor continues Possession after Enrolment, he is a Disconsor. If a Release be made to the Bargainor, it seems it is good, and shall enure to the Bargaine.

When the Enrolment must be, and of what.

The Enrolment must be within six Lunar Months after the Date, excluding the Day of the Date; and if the Deed bears Date one Day, and be delivered the next, or some long Time after, yet the Enrolment must be within six Months after the Date. If the Enrolment be on the Day it bears Date, it seems it is well enough; for tho' when an Interest is given to commence from the Day of the Date, that Day is excluded; for the Grantee ought not to take before the Interest was designed him; for that would be to the Prejudice of the Grantor; yet where a Time is given for a Thing to be done, if it be done before the Time, or before that Space it was allow'd to commence from, it is within the Reason of the Allowance of any Time, and so seems to be
be good; and yet it would be good if it were done the last Day of that Time, as the last Day of the six Months, excluding the Day of the Date, because it is within the Time expressly allow'd.

All Estates of Freehold and Inheritance that pass by Way of Bargain and Sale, must be enrolled; but Estates for Years need not; but if a Use be designed to be raised to one upon valuable Consideration of Money, the Deed must be enrolled, tho' that Person was such a one that a Use would have rose to him, without the Consideration of Money; but if there be both a Covenant to stand seized, and a Grant for Money, if the Deed be not enrolled, it will rise upon the Covenant. Lands, &c. in Cities and Boroughs that have the Privilege of Enrolment, are not within the Act of Bargains and Sales, and need not be enrolled at all; for the Intent seems to be that they should be enrolled in the Cities and Boroughs, yet these are only Words to except them out of the Statute, but none to enforce the Enrolment in any other Place. If the Courts of Westminster are adjourned to another Place, yet the Enrolment must be where the Courts are, for it is confined to the Courts, and not to Westminster itself. If a Man has
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has Power to revoke Uses, and he Bar. 1 Vent. 
gains and Sells the Lands in Fee, it 291. 
feems this need not be enrolled.

The Effect of a Bargain and Sale.

A Bargain and Sale works no Dis- 9 Co. 106. 
continuance; for at Common Law no- 10 Co. 96. 
thing but a Use passed; in which Case it was Equity that no more should 
pass than what lawfully might, and the Statute executes the Possession in 
the same Manner as the Use; therefore if Tenant in Tail Bargains and Sells 
in Fee, nothing but an Estate descen- 327, 252. 
dable, during the Life of Tenant in T. 
passes; for by the Common Law there is no Discontinuance without solemn 
Act or Livery. If Tenant for Life 
Bargains and Sells his Land to one and his Heirs, the Bargainee has but an E-
state for the Life of the Bargainor, and he is liable to forfeit or to be punished for 
Waste, and the like; but when Te-
nant in Tail bargains in Fee, the Bar-
gainee has an Estate to him* and his

* The Bargainee of a Tenant in Tail, has a base Fee not determined, nor determinable ’till the Entry of the In-
sue. Salk. 619. 1 Sand. 260. Took and Glaicock was there denied; as also Lit. sect. 612. if literally 
taken.

Heirs,
Heirs, during the Life of Tenant in Tail; but he is dispunishable of Waste, and his Wife shall be endowed; and the Reason of the Difference is because that the Person that should take Advantage of these Things, has passed away all his Right; a Bargainee cannot vouch by Force of a Warranty annex'd to his Estate, because he comes in the Post; but he may rebut upon a Bargain and Sale of Lands, a Rent may be reserved, because the Possession and Use passes both together, tanquam eodem instanti. The Bargainee of a Reversion cannot take Advantage of the Non-payment of Rent, upon a Demand, without giving Notice of the Bargain and Sale; but it seems he may have an Action of Waste and Debt for Rent, without any Notice. When a Man is in Possession, there the Inheritance may be conveyed to him by Way of Release; and if a Man makes a Lease for Years, or for Life, and then grants the Reversion to C. for Years, and the Tenant attorns, he may release to the Grantee of the Reversion, to enlarge his Estate. So if a Man Bargains and Sells to one for Years, he may release to the Bargainee before Entry; for he has Possession by Force of the Statute; so if he Bar-
Of Bargains and Sales. 299

Gains and Sells the Reversion for a Year, he may release to the Bargainee, for he has the Possession in him by Force of the Statute, without any Attornment; and this is the modern Way of Conveying Lands.

A. designing to convey Lands to B. Grants, Demises, Bargains and Sells them to C. and before any Entry, releases them to C. and his Heirs, to the Use of B. and his Heirs, the Lands shall pass by Way of Bargain and Sale, ut res magis valeat, &c. And if C. afterwards chooses to take by Way of Demise at Common Law; yet that Roll shall not divest the Estate of B. C.

being but an Instrument to convey: Every Bargain and Sale shall be expounded indifferently between the Parties, and not like a Grant at Common Law, most against the Grantor; because it was Equity that always made the Construction of Bargains and Sales. A Freehold in Law passes before Entry.

Pleading of Bargains and Sales.

A Bargain and Sale by Deed indented and enrolled, is but a Deed recorded, and therefore in pleading, the Profect must be made of the Deed itself, and not of the Tenor of it enrolled;
so that if an Infant Bargains and Sells Lands by Deed indented and enrolled, yet notwithstanding that he may plead his Nonage; for it takes Effect as a Deed, notwithstanding the Enrolment; but if an Infant binds himself in a Bond, and afterwards enrolls it, he cannot plead Nonage to it; for it is now a Record, and it is turned into a Thing of a higher Nature, the Effect of both being the same; but when a Deed is had of Lands, in such Case Lands passes by the Deed, and therefore cannot afterwards pass by Acknowledgment and Enrolment.

A Deed by the Common Law ought to be enrolled for the Husband only, and not for the Wife; but if she do acknowledge it, it shall not bind her. If a Man acknowledges and enrolls a Deed, Quare whether he may afterwards plead Durest; for the acknowledging it afterwards is voluntary. If a Man pleads a Deed enrolled, he must shew in what Court it was enrolled; and because it was not done, it was held ill, even after a Verdict, because by the Statute the Enrolment is to be in some certain Court; and therefore he ought to shew it was according to the Statute; and the saying it was secundum formam Stat. is not
Of Bargains and Sales. 301

not sufficient; the Enrolment is Matter of Record, and shall be tried by the Record; but the Time of the Enrolment is Matter in pais, and shall be tried by the Country; but this, as it seems, must be understood where the Time of the Enrolment was not entered upon the Record; for where it is, there it is proved of Record; for since 16 Eliz. the Practice has been to enter the Time of the Enrolment; and therefore it was resolved that where a Man made a Lease for Years on the 10th of May, and Bargained and Sold by Deed, dated 10th of April, and enrolled also, as of that Time, that in such Case no Averment could be taken, but that the Deed was of that Time.

If a Man pleads a Bargain and Sale, Quere whether he need aver Payment of the Money.
Of fraudulent Conveyances.

By the Common Law, if a Man had a Right and Title to a Thing, or a just Debt owing to him, he might avoid any fraudulent Conveyance made to deceive him of that Right or Debt; as if a Man had a Right to Goods, and he that had them fold them by Covin in Market Overt, to alter the Property of it; or if any passes away Goods to deceive a Creditor, these Acts might have been set aside; but if the Gift were precedent to the Right or Debt, there was no Way, in such Case to set aside the Conveyance; but the 13 El. and 27 El. have remedied this Inconvenience; by Virtue of which Laws all Conveyances made to deceive Creditors or Purchasers are void, as against them; and if Conveyances are made for good Consideration; yet if they are made with a Design to deceive Creditors, they are void by those Statutes; and if made bona fide, if without Consideration, they are also void, as against them; but it seems this must be understood with several Restrictions. Thus, a Man made a fraudulent Deed of all his Goods to one of his Creditors; and it was held within the Statute,
Fraudulent Conveyances. 303

tute, and void against another Creditor. Thus if one be indebted to several, and then makes a Gift of all his Goods to his Son, in Consideration of Natural Affection, tho' this Gift be made bona fide, yet it shall be void against Creditors; but if it shall be made before the Debts contracted and bona fide, it seems it would not be set aside; for the Intent of the Act was not to set aside all voluntary Settlements; but if a Gift be made upon any Trust, either expressed or implied, between Donor and Donee, tho' made bona fide, yet it shall be within the Statute; for all Statutes made for the suppressing of Fraud are liberally expounded; and therefore the Word Forfeiture, tho' mentioned among Penalties, and the like, shall be expounded to extend to all Forfeitures to the King and Subject. 50 E. 3. relieves Creditors, when their Debtors fly to Privileged Places, having given their Tenements and Chattels to their Friends in Trust, and so does 2 R. 2. Stat. 2. c. 3. and by 3 H. 7. all Deeds of Gift of Goods in Trust, for the Persons that made the Gift shall be of no Force. By the 27 Eliz. it is enacted, That if a Man settles Lands to Uses, with a Power of Revocation, and afterwards sells the Lands for valuable
Consideration, that the former Uses shall be revoked to him; but the Act only mentions Purchasers; and therefore as to Creditors, if it were not made with an Intent to deceive them, it seems it shall not be avoided by them; for they are not mentioned in the Clause; and if a Man, having a future Power of Revocation, Bargains and Sells the Land before his Power commences, yet it is within the Act; so if the Power of Revocation be reserved, with the Consent of A. and he conveys his Land, not having revoked, the Conveyance shall be good. So if one having a Power of Revocation, extinguishes by Feoffment, and then sells, the Sale shall be good; for the Feoffment comes within the Law of all fraudulent Conveyances.

If a Man makes a fraudulent Lease, and then another bona fide, without Rent or Fine, the second Lessee shall not avoid the first Lease; for no Purchaser shall avoid a former fraudulent Conveyance; but a Purchaser for valuable Consideration, which excludes all Consideration of Blood, and the like; and he that will, by Virtue of these Acts, avoid a former fraudulent Conveyance, must be such a Purchaser, and must also come in without any Fraud.
**Fraudulent Conveyances.**

*Fraud* or *Guile*; if a Gift be made to *deceive one Creditor*, it is void against 615. all Creditors that are within the Statute; it is not necessary that he that *contracted the Debt* should make the *fraudulent Conveyance*; for if a Man *binds himself* and his Heirs in a Bond, and Lands descend to his *Heir*, who makes a *fraudulent Conveyance* of those Lands, the Creditor shall avoid it.

If a *fraudulent Conveyance* be made 6 Co. 65, to deceive *Purchasers*, and one having Notice thereof purchases the Land, he shall avoid the former *fraudulent Conveyance*, notwithstanding his Notice; for it is by the Statute made absolutely void. The *Father* makes a *Lease* to 6 Co. 72. the *Son*, who makes a *fraudulent Assignment* of that Lease, the *Father* dies the *Son* sells the Inheritance, the *Vendee* shall avoid the Term; and if the *Son* to Co. 34 had only sold the Term, the *Vendee* should have avoided that *fraudulent Assignment*. A Man makes a *Jointure* to his *Wife*, with an Intent to deceive *Purchasers*, they shall avoid it. A to Co. 57. *Feoffment* was made to deceive *Creditors*; and tho' by Event, the King was cheated of his Ward, yet being only to that Intent and Purpose, it was not to be extended further. So a *Redemife* to
Fraudulent Conveyances.

A. to the Intent the Wife of the Tenant should not be endowed, during the Life of A. it is not to be extended to any other Intent or Purpose.

If Lands are given to the King, with an Intent to deceive Purchasers, the Purchaser shall avoid such Gift; so if a Reversion be granted to the King, on Purpose to hinder Docking the Reversion, and the Tenant suffers a Recovery, and sells, and dies without Issue, the Purchaser shall hold against the King.

Pleadings relating to fraudulent Conveyances.

A fraudulent Conveyance may be given in Evidence upon the general Issue, and need not be pleaded. Covin must be pleaded expressly by Averment, and cannot be presumed; and therefore in a Special Verdict, if the Jury find such Circumstances in the Case, as might very well have induced them to find Fraud, yet if they do not expressly find it, it shall never be presumed.

The fraudulent Gift is good against every Body but Creditors, &c. it stands between the Parties themselves; for it seems by the Case of Hawes and Loader, that the Executors cannot main-
Fraudulent Conveyances.

tain the Possession of the Goods against the Donee, even to satisfy Creditors; but quoad the Creditors, they are all liable in his Hands. One held of divers Lords by Heriot Custom, and to the Intent to deceive one, made a Gift of all his Beasts Heriotable, the Lord aggrieved brought his Action for the Value of all the Beasts; and held by two Judges that it was well, and another cont. and by one that they ought to have joined.

A Man having a Lease for Years, Co. Lit. 3, forges another for Ninety, and sells the forged Lease, and all Right and Title to the same; and his Interest in the Land; and altho' by the general Words, his true Interest in the Land passed, yet it was resolved he was not a Purchaser for a valuable Consideration, within the Statute; for the Purchase and Contract was for the forged Term; tho' in a Gift of Goods, if one continues the Possession, it is a great Sign of Fraud; yet in Mortgages it is none at all. If a Man settles Lands in Trust upon himself for Life, and then to his Child, not fraudulent, and then for valuable Consideration sells the Land to another, Quare whether the former Conveyance shall be avoided during his Life; and if a Man enfeoffs others with Power of Re-
Fraudulent Conveyances:

vocation, and then covenants to stand seized to another's Use, who sells the Land, the first Feoffment is not hereby avoided, the Covenant to stand seized, being only upon Consideration of Blood, which is not a Consideration that will avoid a precedent Estate. A Woman Covert purchases Land with the Money she had in another's Name in Trust for her, the Trustee jacens in extremis, at her Request makes a Lease for two hundred Years in Trust for her, upon Consideration, that if he should survive the First of June, and pay Twelvepence, the Lease should be void; he does survive, but does not pay, and then for 100l. makes a Lease to another, without any Direction from the Feone; and whether the second Lessee should avoid the first Lease, or no, was the Question, but not resolved.

A Man binds himself in a Bond to pay Money, and then in a Statute to make such a Conveyance, &c. a fraudulent Conveyance is made contrary to the Defeasance of the Statute, tho' the Conveyance be void against the first Debtor, yet it is a Breach of the Consideration of the Statute, and he shall be satisfied before the Debt upon Bond.
Fraudulent Conveyances. 309

If one makes a Lease for Years, with a Proviso to be void upon Payment of 10s. this Lease will be void against Purchasers; but if it be a Mortgage for a considerable Sum of Money, tho' it be in the Power of the Mortgagor, yet it is not void.

So if one promises a Woman, before Cro. Jae. Marriage to make her a Jointure of 455. 1000 l. a Year, and after Marriage makes a Lease to commence after his Death, for 100 l. a Year, with a Proviso that on making the Settlement the Lease should be void; yet it was held a good Lease against the Purchasers. And a voluntary Settlement was held void against Purchasers, though there appeared no Circumstances of Fraud in it.

A Lease in Trust for his Daughter and Heir to take the Profits to raise her a Portion, if she married with the Consent of the Father, then in Trust for her after Marriage, it was held to be well enough, and not void; for the Marriage made it a good Consideration, and the Man might have Respect to that in marrying her.

So, tho' a Deed be fraudulent in its Creation, yet by Matter ex post facto, it may be good; as if one makes a

X 3 Fcoff-
Fraudulent Conveyances.

Feoffment for a valuable Consideration, and then the first Feoffee enters, and he makes a Feoffment for valuable Consideration, yet the Feoffee of the first Feoffee, shall retain the Land. The Concealing of a Conveyance will not make it fraudulent; when upon revealing it it appears to be good.

If a Settlement be made in Consideration of the Marriage, the Consideration will so far extend to all the Estates raised, tho' not within the Statute, as to cause that they shall neither be construed fraudulent or voluntary. If Lands are settled in Consideration of Marriage, and a Portion, with a Power to charge them with 2000l. which is done by Lease and Release, the former Conveyance shall never be presumed to be fraudulent, and void by the last, tho' the Power be not strictly pursued as it ought to be.

A Man makes a fraudulent Conveyance to prevent the Escheat, and then commits Felony, the Land shall go to the Lord; so if one commits Treason nine Days after the Conveyance upon his Son, the Conveyance shall be presumed Fraudulent; otherwise, if it were made in Pursuance of an Agreement made before. A Man and his Wife seized in Fee of Lands, in Right of
Fraudulent Conveyances.

of the Woman, in Consideration of the Marriage of their Son, and 500 l. paid for a Portion, levy a Fine to the Use of the Father and his Wife for their Lives, then to their Son, and his Heirs; Proviso that it should be lawful for the Father to revoke, with Consent of four Persons, the Relations of the Son's Wife; the Father dies; the Mother, without Consent, sells the Lands for valuable Consideration to other Persons, it was held that the Vendee should not avoid the Settlement, the Power of Revocation being very much out of the Power of them to effect; the Consent of such being necessary over whom the Father and Mother could not be presumed to have any Power. Otherwise, if the Consent were lodg'd with those Persons, that may be supposed to be at the Disposal of the Persons to whom the Power is reserved.—Fines levied by Fraud shall not bind; see here several Cases of Covin.—A Sale in Market overt will not bind the Property of Goods. —Tenant for Life, with Remainder to another in Tail, with Power of Revocation, becomes indebted to the King, the whole Estate is subject to the Debt, though there be no Revocation, nor Averment of Fraud made.
He that makes a fraudulent Gift within the Statute, must be the same Person that afterwards makes a Sale of the Lands. — A verbal Agreement before Marriage, will be of Effect to prevent its being said to be fraudulent.
ADDITIONAL

CASES

Inserted by the

EDITOR, which have been adjudg'd subsequent, in Time, to these in the foregoing Trea-
tise; and a few others omitted by the AUTHOR.

SIR John Trevor, late Master of the Rolls, being seized of the E-
state in Question, which was the ancient Estate of the Family, and of the Value of 239l. per Ann. or there-
abouts, on his Marriage with Jane Sir J. T.
Puleston, Widow, enters into Articles on the Twenty-third of October, 1669. with the said Jane, and with William
Salisbury and Sir Richard Lloyd, as her Trustees, whereby, in Consideration of the intended Marriage, and of the
Love
Love and Affection he had and bore to
the said Jane, and the Heirs Male of
their two Bodies; he doth for himself;
his Heirs, Executors and Assigns, co-
venant, promise and grant, with the
said Trustees, their Heirs and Assigns, that
he would, at his own Costs and Charges,
before the End of two Years next
after the Date thereof, at the Request
of the said Trustees, their Heirs and
Assigns, settle, convey and assure to the
said Trustees, and their Heirs, as they
or their Heirs, or their Counsel should
direct and appoint the Lands in Quest-
tion, to the several Limitations and
Uses in these Presents mentioned and
expressed; and also in the said Settle-
ment and Conveyance, as should be
agreed on by the said Sir John Trevor,
William Salisbury and Sir Richard
Lloyd, and to no other Use or Uses
whatsoever, viz. to the Use of Sir
John Trevor for Life, without Impeach-
ment of Waste, and after his Decease,
to the Use of the said Jane Puleston,
for her Life, and after her Decease to
the Use of the Heirs Males of the Body
of the said Sir John Trevor, upon the Body
of the said Jane Puleston to be begot-
ten, and the Heirs Males of such Heirs
Males issuing; and for Default of such
Issue, to the Use of the Right Heirs of
Sir
Uses and Trusts.

Sir John Trevor for ever, with a Covenant from Sir John Trevor, with the Trustees, and their Heirs, that the said Premises should remain to the said Jane Puleston, during her Natural Life, after the Death of the said Sir John Trevor, free from all Incumbrances, and a Covenant in the Words following: And the said Sir John Trevor doth further, for him and his Heirs, grant and agree to and with the said Will. Salisbury and Sir Richard Lloyd, their Heirs and Assigns, that in Case the Uses and Limitations in these Presents are not hereafter well and truly raised, according to the true Intent and Meaning of these Presents, that then the said Sir John Trevor, and his Heirs, shall stand and be seised of all and singular the said Premises, until such Time that a further Assurance of the said Premises be made, to such Use and Uses, Intents and Purposes, as herein before-mentioned, expressed and declared; and soon after the Marriage took Effect, and Sir John had Issue by the said Jane, the Plaintiff, his eldest Son, the Defendants, three younger Sons, and two Daughters; these Articles were laid by for several Years, and nothing further done upon them; but in 1692. Sir John Trevor levies a Fine of these Lands; and the two
two Trustees being dead, without having ever requested a Settlement, the Plaintiff, some Time after this Fine, marries against his Father's Consent, and by several other Acts of Weakness and Disobedience, became so obnoxious to his Father, that 29 Septemb. 1699. Sir John Trecor makes a Deed, wherein he recites these Articles, that he had thereby agreed to settle and convey these Lands to the Use of himself for Life, Remainder to the said Dame Jane his Wife, for Life, Remainder to the Heirs Males of his Body, on the Body of the said Dame Jane to be begotten; and reciting that his Son Edward (the Plaintiff) was very weak and disordered in his Understanding, and that all Methods to improve him had been ineffectual; and also reciting, that he had married with a strange Woman, and thereby brought Disgrace on his Family, to the Ruin thereof; and that he was of a furious Spirit towards his Brothers and Sisters; therefore, and for several other Causes and Considerations, Sir John declares that it was the Intent and Meaning of the said Parties, at the Time of levying the said Fine, that the same should be and enure to the Use of himself for Life, without Impeachment of Waste, then to the Use
Uses and Trusts.

Use of the said Dame Jane for Life, Remainder to the Defendant, John Trevor, his second Son, and the Heirs Males of his Body, with like Remainders to Arthur and Tudor Trevor, his two youngest Sons, with Remainder to his own Right Heirs; and a Proviso, that if any of his three younger Sons should marry without his Consent, that then he should have Power to demise or lease the said Premises for the Term of 500 Years, reserving Rent, or no Rent, as he thought fit, to any Person or Persons he should think fit; and on the 16th of October next following, he makes the like Settlement of other Lands, of the Value of 630l. per Ann. and upwards, and the Twentieth of May, 1717. dies intestate, leaving a Personal Estate to the Value of about 40000l. and also a Real Estate in Ireland, of the yearly Value of 750l. or thereabouts, being let out on Leases for Lives, and worth to be sold, about 24000l. and also some new purchased Lands in England, of the Value of 300l. per Ann. or thereabouts, and by his Death the new purchased Lands, and the Estate in Ireland, descended to the Plaintiff, his eldest Son, who also became entitled to his Share of the Personal Estate, which amounted to upwards
wards of 9000l. After his Death John Trevor entered on the Lands settled on him, as aforesaid, for which he being provided for beyond his Share of the Personal Estate, could have no Part thereof, by Reason of the Statute of Distributions; and this considerably augmented the Shares of Edward the eldest Son, and the other Brothers and Sisters; notwithstanding which, the Plaintiff, the eldest Son, brought his Bill to have the Trust performed, and a specific Execution of these Articles, and that the Lands comprised in the Articles may be conveyed to him, and the Heirs Males of his Body, according to the Purport of the said Articles, and to have a Discovery of the Deeds and Writings, and an Account of the Rents and Profits from the Time of his Father's Death. It appeared that these Articles had been thrown by for several Years as useless, and were, after Sir John Trevor's Death, found at the Bottom of an old Trunk; but the Plaintiff having gotten the same into his Custody, brought this Bill for a specific Performance thereof.

For the Defendants it was insisted, that though by the first Part of the Articles they seemed to be only executory, yet by the last Part, by the Co-
Uses and Trusts.

For the Defendant,
That no Settlement having been made, the Uses continued to be executed by Virtue of that Covenant; that by these Uses he was plainly Tenant in Tail, then by the Fine had bound his Issue, and made himself Master of this Estate, which he might settle and dispose of as he thought fit; that he was Tenant in Tail, appeared from this, that if a Settlement had been made pursuant to the very Words of the Articles, he had an Estate-tail in himself; that wherever the Ancestor takes an Estate for Life, and afterwards in the same Deed, a Limitation is made to the Heirs Males or Heirs Females of his Body to be begotten; that in such Case the Heirs Males, or his Heirs Females take by Descent, and not by Purchase; that this is a known and standing Rule of Law which has never yet been shaken; that the Limitation after to the Heirs Males of such Heirs Males was Tautology, and of no Use; that it was saying no more than what the Law would have said without those Words; and therefore,
if there were two such Limitations one after another, they would not impeach or control the first Limitation; and this appears clearly by *Shelley's Case*, 1 Co. and in a Case of *Legat and Sewell* in this Court, where the Judges of C. B. by Certificate under their Hands, gave their Opinions accordingly, that the Settlement being actually executed, the Law was open, and the Plaintiff had no Occasion to come into this Court for a Specific Execution of what was already executed; that this was plain from the Covenant, that the Wife should enjoy during her Life, free from Incumbrances; and this Covenant does not go to the whole Estate agreed to be settled, but only to the Estate for Life of the Wife; that if the Issue were intended to take as Purchasers, this Covenant would have been extended to the whole Estate, as the Issue under this Marriage Contract were Purchasers of it, as well as the Wife; but the Heirs Males of the Body of Sir *John Trevor*, coming in only by Virtue of the Intail, it would have been vain and idle to have carried that Covenant beyond the Estate for Life of the Wife, because it would only be a Covenant for himself, that the Clause without Impeachment of Wafe did not necessarily argue an Estate
Estate for Life in Sir John Trevor; that it was for the Sake of the intervening Jointure to his Wife, which would have obstructed that Power without express Words; and he might have been enjoined for Waste in this Court, for the Preservation of her Jointure, if he had not reserved to himself an express Liberty of committing Waste; that this Court was not bound in all Cases to carry Articles executory (admitting this were so) into Execution; that if the Nature and Circumstance of the Case were such as to make it inequitablc and unconscionable, this Court would never decree a specific Execution of Articles; that in this Case it was unreasonable to ask Assistance of this Court, when so much greater Compensation was to come to the Plaintiff; that by the Descent of so a Real Estate, and the Accession of so great a Share of the Personal Estate, the Plaintiff was abundantly recompensed for the Value of the Estate in Question; that it was in Sir John Trevor's Power to have prevented them of either, and his not doing it was equivalent to an express Devise thereof to him, and therefore ought to be looked on as a Satisfaction; that in the Case of Bandy Wigmore, in this Court, where the Hu...
band, before Marriage, gave a Bond to leave his Wife worth 500l. if she survived him; and he afterwards died intestate; and her distributive Share came to above 500l. this was adjudged a Satisfaction of the Bond; that Sir John Trevor plainly took it, he had a Power over this Estate; that his Judgment was so well known, that he never would have attempted it, if he had not thought it clear; that the Disobedience and Behaviour of his Son, the Plaintiff, were such, as put him under a Necessity of considering the Nature and Extent of his Power over this Estate; and since he, who was so good a Judge in Cases of this Nature, had disposed of the Estate, this Court would presume he had Power so to do, and that the Motives of his Proceeding here-in were just and warrantable.

But notwithstanding these Reasons, it was agreed for the Plaintiff; my Lord Chancellor said, this ought to be considered now as if this Bill had been brought within two Years after the Making of the Articles; that if a Bill had been then brought, there could have been no Doubt but that a Settlement must have been decreed pursuant to the Intention of the Articles; that upon Articles the Case was stronger than on a Will
a Will; that Articles were only Minutes or Heads of the Agreement of the Parties, and ought to be so modelled when they come to be carried into Execution, as to make them effectual; that the Intention of the Parties was only to give Sir John Trevor an Estate for Life; that if it were otherwise, it would have been vain and ineffectual; and it would have been in his Power, as soon as the Articles were made, to have destroyed them; that then the Consideration of Love and Affection which he had to Jane, and the Heirs Males of their two Bodies, would have run thus; that he did, in Consideration thereof, settle an Estate on himself, which he might give away from his Heirs Males whenever he thought fit; that this was much stronger, by Reason of the Limitation, and to the Heirs Males of such Heirs Males issuing; that the Construction contended for by the Defendant, would make these Words perfectly useless and idle; that he did indeed admit it to be so reported in Shelley's Case, 1 Co. but he said, 1st, That was not material to the Principal Point in Question there. 2dly, That in Anderson's Report of that Case, nothing like it was taken Notice of, and he said, that few or none of the Points reported
reported by Lord Cook, were the Resolutions of the Court. 3dly, That the Reason of the Case was, for that if it had vested in the eldest Son by Purchase, and that Heirs Males of the Body should have been a Description of a Person; that then, if he had died without Issue, there had been (as was then held) an Estate-tail, and none of the younger Sons could have succeeded it; but this has been held otherwise since that Time, and a Judgment in Point, in Carter's Reports, (as he remembered) that the Estate-tail should go to all the Sons successively, notwithstanding its vesting in the eldest Son by Purchase; that he did not know how the Case of Legat and Sewell was; but if it were as cited, he thought it not make the Law; that the Intention of the Articles was plain, to make the Issue of that Marriage Purchaser; that they were wholly relative to a subsequent Settlement to be made, that the Agreement to settle to the Uses therein; and also in the said Settlement to be agreed upon, could only be intended to such other Uses as were necessary to make the Settlement effectual; and that it could never be intended other Uses inconsistent with, and repugnant to those Articles; that if that had been their Intent,
Uses and Trusts.

Intent, it had been in Effect but Agreement with the Trustees to settle those Lands as he thought fit; that the other Uses to be agreed upon, must not be such as would overthrow the present Uses, but such as would establish and support them; that this could only be by a Limitation to Trustees to support the contingent Remainders; that this Limitation to the Heirs Male of his Body was in Effect but a Limitation to his first and other Sons; and if the Articles had been so penned, would not this Court have decreed a Limitation to Trustees to preserve them? or if by Fine, or otherwise, they had been destroyed before they took Place, would not this Court have set them up again? that the Limitation to the Heirs Males of his Body, upon these Articles, was but a contingent Remainder, and yet such as within the Intent of the Parties ought to be preserved; that the Covenant to stand seised was until such Time as the Uses therein were well and truly raised, according to the true Intent and Meaning of the Articles; that if a Settlement had been made Defective in any Particular, that would not have been final or conclusive; that a second Settlement must have been made till the Uses therein were...
were well and truly raised, according to the true Intent and Meaning of the Articles; that if a Settlement had been made Defective in any Particular, that would not have been final or conclusive; that a second Settlement must have been made till the Uses therein were well and truly raised; that this Covenant for ever subsisted till such Settlement were made; that he did not believe it was Sir John Trevor's Opinion, that he was absolute Master of this Estate, and might dispose of it as he thought fit; that if that had been his Opinion, he would have thought it sufficient to have levied a Fine thereof, without transmitting down his Son to Posterity with such a Blemish; that the Reason of that could only be to discourage his Son from attempting to break in to the Settlements he had made of this Estate; that if it were otherwise, he thought it no Imputation on Sir John Trevor's Judgment; that the Provocations he might be under from his Son's Disobedience and Misdemeanour, might so far bias his Judgment, as to incline him to think he had Power over this Estate, that he would not look on these Settlements in 1699. as made by Sir John Trevor, Master of the Rolls, but as made
made by a Father, provoked by the undutiful Behaviour of an eldest Son; that he hoped never to see the Time when this Court should so far have Power as to judge what Behaviour of a Son should amount to a Forfeiture of his Estate; and therefore thought, if the Settlement had been made, no Mis-behaviour of the Son could amount to a Forfeiture of it; that as to the Estate descended on the eldest Son, this came to him by Accident, it was not given to him by his Father in Satisfaction of the Articles; and there may happen a Case where no Estate at all may descend to an eldest Son; and if a Father, upon such Articles should have Power to defeat an eldest Son, and leave him no other Provision, it would be of dangerous Consequence to establish a Precedent of such a Power; that tho' the eldest Son in this Case happened to be well provided for, so were the younger Sons too; and as they were sufficiently provided for, there was the less Reason to take away this from the Eldest; that this Estate being specifically agreed to be settled, it was a Trust for the eldest Son, which he came here to have an Execution of, and not to have a Re-compence or Satisfaction for it; that this Trust passed with the Lands into whose
Uses and Trusts.

And therefore a Conveyance was decreed to be executed to the Plaintiff, and the Heirs Males of his Body, and an Account of the Profits from the Father's Death, and the Deeds and Writings to be delivered up. 

**Hill. II Geo. in Chancery.**

The Father of the Plaintiff, and the Defendant, in Consideration of his Marriage with their Mother, and of a Portion in Money, did in the Year 1673. article to settle his Estate to the Use of himself for Life, then to his intended Wife for Life, then upon Trustees, to preserve contingent Remainders, then to the first Son of that Marriage, and to all and every the Sons, &c. in Tail Male, with several Remainders over, with Power to make a Jointure to any Wife of 1000l. per Ann. and a Proviso that it should be lawful for him, by and with the Consent of the Trustees, to sell the Estate, and with the
the Money arising by such Sale, to purchase other Lands, and to settle the same to the like Uses, as in the said Deed, dated Anno 1673.

Afterwards the Father sold the Lands, and with the Money purchased other Lands, now in Question; and in the Year 1692. he settled the new purchased Lands, by and with the Consent of the Trustees, in the first Settlement, to the Use of himself for Life, Remainder to the Defendant for Life, (who by the first Settlement had an Estate-tail, Remainder to Trustees, to preserve contingent Remainders, then to his first and every other Son in Tail Male, with several Remainders over, with a Power to make a Jointure to any Woman he should marry, of the yearly Value of 600l. and soon after the Father died.

Then the Defendant, who was his eldest Son, in Consideration of his Marriage, and of a Marriage-Portion by Deed, dated 1698. conveyed the new purchased Lands to Trustees to the Use of himself for Life, then to his intended Wife for Life, then to Trustees to preserve contingent Remainders, then to his first and every other Son in Tail Male, with several Remainders over.
Uses and Trusts.

The Defendant, Thomas Reeves, having only a Daughter, and no Issue Male by his said Marriage, would now sell these Lands, alleging that the Remainders limited to the Issue Male, were voluntary, not being within the Consideration of the Settlement made by him in the Year 1698.

Therefore this Bill was exhibited by the next in Remainder to obstruct the Sale, and to oblige the Trustees to enter to preserve the contingent Remainders, and that the Deeds and Evidences may be brought into Court to know how the Title stands, he suggesting that by the Marriage Articles of their Father, dated Anno 1673, he covenanted to settle his Estate, as aforesaid, but with a Proviso to sell the same, by and with the Consent of the Trustees, and to purchase other Lands, and to settle them upon the same Uses, as in the first Settlement, &c.

And it was argu'd for the Defendant, that the Settlement in 1673, made upon the Marriage of the Father, both of the Plaintiff and Defendant, though mentioned to be by Articles only, was and is a good Settlement, by Way of Covenant to stand seised; and that the Defendant is by the express Words of that Settlement, made Tenant in Tail of the Lands sold, and the Proviso be-
ing to settle the new purchased Lands to the same Uses, as in the first Settlement, it was not in the Power of his Father to make him Tenant for Life, by any other Settlement whatsoever; so that he must still remain Tenant in Tail of the new purchased Lands, and that Settlement made by his Father in the Year 1692, when he purchased those Lands as far as it crosses the Limitations in the first Settlement is entirely void, being voluntary; so that the Settlement made by the Defendant in the Year 1698, upon his Marriage, is good, and such of the Lands which are not contained in that Settlement, the Defendant may sell, and the Plaintiff hath no Right to contest the Sale, even of those Lands, he being no Ways within the Consideration of that Settlement.

On the other Side it was insisted for the Plaintiff, that this Settlement made by the Father, in the Year 1692, of the new purchased Lands, appears on the very Face of it, to be made in Consideration of the Settlement made by him in the Year 1673, which tho' mentioned to be by Articles; yet strictly speaking, those Articles amounted to a Covenant to stand seised, and the Settlement made in 1692, being in Execu-
Execution of that Covenant, and acquiesced under ever since it was made, must be now taken as a full and entire Execution of that Covenant; and tho' the Father could not be compelled by a Court of Equity to make the Defendant Tenant for Life, who by the first Settlement was Tenant in Tail, yet the Father having of his own Accord, and with the Consent of the Trustees, made this Settlement, and no Objection made to it, during his Life, the Defendant shall not be admitted to say it is not good, it not corresponding with the Provifo in the first Settlement.

This is not the like Case of Wakely against Wakely, where the Father on his Intermarriage, &c. articled to convey his Estate to the Use of himself and his Wife, for Life, Remainder to the Heirs of their two Bodies; and afterwards he had issue a Son, who coming of Age, the Father, by his Last Will, which he mentioned to be in Execution of the Articles, devised the Estate to his Son for Life, Remainder to his first and every other Son, &c. in Tail Male, with several Remainders over, and afterwards the Son brought his Bill in this Court, to be relieved against this Devise, it not corresponding with
with the Articles; and the Court declared that tho', by the *Equity of the Articles*, the Son should be *Tenant in Tail*; and if he had sued in this Court, to compel the Father to an Execution of the said Articles, the Court would have decreed an *Estate-tail* to him; yet if the Father, by the Consent and Approval of the Trustees, had made such a Settlement, this Court would never set it aside.

But in that Case the Father had done it by his Last Will, without the Consent of the Trustees, and without the Consent of the Son, who was then of Age, and by that Means the Son, having no Power to make a Jointure, or any Charge on the Lands, to make Provision for the younger Children, that Devise was set aside.

But in the Principal Case, the Settlement in 1692. was made by the Consent of the Trustees in the first Settlement, which is therefore good, and a full Execution of the Covenant in that Settlement.

And so is Mathews's Case, who by his Father's Marriage Articles, was made *Tenant in Tail*; but some Time afterwards the Father made a Settlement, by which Mathews was made *Tenant for Life*, with a Power to set-
tle a Jointure of 600l. a Year, on any Woman he should marry; and being about to marry, it was the Opinion of several eminent Lawyers, he could make no greater Jointure; for tho' he was Tenant in Tail, by the Articles; and if it rested there, he might have made what Jointure he thought fit, yet being Tenant for Life, by a subsequent Settlement varying from the Articles, he could not make the Jointure beyond 600l. per Annum, and thereupon he applied to the Parliament, and obtained an Act to make up the Jointure 1000l. per Annum, but that his Estate in Possession, and all the Remainders over, should continue as before.

Next, the Counsel for the Plaintiff cited the Case of Burton against Hastings, in this Court, which was thus, (viz.) By the Marriage Articles the Wife's Estate was to be settled on the Husband and Wife, and on the Heirs of their two Bodies to be begotten, and afterwards it was settled to the Use of the Husband and Wife, during their Lives, Remainder to the first and every other Son of the Husband in Tail Male, Remainder to the Heirs of the Body of the Wife; they had no Son, and but one Daughter, the Husband died, and the Widow married again, and
and then the Husband and Wife joined in a Fine, and settled the Estate to other Uses; thereupon the Daughter exhibited her Bill, and prayed Relief on the Articles; because by the Equity thereof, the Husband and Wife ought to be but Tenants for Life, and the subsequent Settlement could not enlarge the Estate of the Wife to an Estate-tail general, (viz.) to her and the Heirs of her Body; but she had no Relief; the Lord Chancellor Cowper declaring he could not relieve against the Settlement, tho' if it rested on the Articles, without any Settlement made, he would have decreed that the Articles should be carried into Execution.

It was further insisted for the Plaintiff, that he was proper in this Application, and had Reason to pray the Aid of this Court; and for that Purpose a Case was cited between Sir Richard Mead and the Lord Kerry, which was thus, (viz.) The late Lord Kerry, in Consideration of a Marriage and a Marriage Portion, settled his Estate to the Use of himself for Life, then to Trustees to preserve contingent Remainders, then to his first and every other Son, in Tail Male, &c. and before he had any Issue, he borrowed Money of the Plaintiff; and for securing the Repayment thereof, with
with Interest, he levied a *Fine*, &c. and upon a special Verdict found in the Cause, the Question was if the Charge was good against the present Lord; for that on his Father's levying the Fine, the Trustees did not enter to preserve the contingent Remainders; so that it is very proper that the Plaintiff in the Principal Case should come into this Court to compel the Trustees to enter, in order to preserve the contingent Remainders, especially since the Plaintiff is a Purchaser under the Settlement made *1692*. for that his Father, who made that Settlement, had thereby abridg'd his Power of Charging the Estate with *1000 l. per Annum*, which by the Settlement made *Anno 1673* he had Power to do.

Every *Remainder Man* hath a Right to come into this Court, and pray the Aid thereof, to compel Persons to bring in the Deeds and Evidences relating to the Estate; but this is a Bill of the first Impression, as to the Prayer; for the *Trustees to enter to preserve contingent Remainders*; for their Title is meerly at Law, neither doth it appear in Cause that the Trustees refused to enter.

Now, if this Case is considered upon the Deed made *Anno 1673*, the Defendant
fendant is Tenant in Tail of the Lands thereby settled; but the Deed made 1692. of the new purchased Lands, was intended to be a Family Settlement, and a full Execution of the Covenant in the Deed, made 1673. by which Deed the Defendant being made Tenant for Life, he shall not be at Liberty to incumber any Part of the Lands thereby settled by his Father; therefore the Decree was for the Plaintiff.

And in pronouncing this Decree, the Lord Chancellor said, that where a Settlement is made by the Father, of other lineal Ancestor, in Consideration of the Marriage of his Son, in such Case all the Remainders limited to his Children and their Posterity, are within the Consideration of that Settlement; but when it is made by a Brother, or any other collateral Ancestor, on his Marriage, after the Limitations to his own Issue, all the Remainders limited to his Collateral Kindred are voluntary, and not within the Consideration of the Marriage Settlement.
THE Lord Barnard, for the Advancement of the Plaintiff, a younger Son, in Marriage, Sir——
Jolliff's Daughter enters into Articles with Sir——Jolliff, to this Effect:
Jolliff covenant and agrees, inter alia, to settle Lands free from Incumbrances, according to the usual Limitations in Marriage-Settlements; and in Consideration thereof, the Lord B. covenants and agrees to settle Lands, by the Name of the Value of 2000l. per Annum; (but with a Life or two upon them) upon Trustees, to like Uses; but with these Words, That in such Settlement there shall be Covenants that he is seised in Fee, has good Right to convey, and that the Trustees shall enjoy, free from Incumbrances. It happen'd that these Lands were charged by Lord B.'s own Marriage-Settlement, with 6500l. to be paid to such Daughter or Daughters, as should be living at my Lord's Death, and not provided for.
The Bill was to have a specifick Performance of the Articles, by my Lord's paying off, or otherwise giving collateral Security against this contingent Portion of £500, he having then one Daughter about Sixteen Years old. It was urged for the Plaintiff, that it was usual for this Court to decree a specifick Performance of Articles and Covenants, and not to depend only upon the uncertain Reparation of Damages which the personal Estate may perhaps not be able to satisfy; and this was not controverted where it was possible to be done. But the Lord Chancellor held, that here was not any Covenant that the Lands were free from Incumbrances, but only a Covenant that he would, in the Settlement (which was after to be executed) covenant for that Purpose; so that the Parties seem'd to be satisfied with a bare Covenant only; and the Marriage-Articles were only a Covenant to covenant; so that inserting that Covenant in the future Settlements, was a specifick Performance of those Articles; and was all that my Lord agreed to do; or that the Plaintiff, by his Bill, desir'd to have.

My Lord Chancellor said, Notice or no Notice of this Incumbrance was
very material in this Case; for a Covenant is in this Manner: If any Incumbrance is discover'd between the Executing the Articles and Sealing the Deed of Settlement, whereof the Party had no Notice, that Incumbrance shall be discharge'd, even before Sealing the Deed of Settlement, both upon Account of the Fraud, in concealing such Incumbrance; and because it would be needless to enter into a Covenant, which before entering into it is already known to be broke. But against all other Incumbrances discovered afterwards, there is the Parties Covenant only. Now where you have Notice of an Incumbrance, before executing the Articles, it is a stronger Case than the last; for you covenant with your Eyes open, to accept the Parties Covenant against an Incumbrance you were aware of; and when you have chosen your Method of Security your self, this Court will give you no other, nor make the Party do a farther Act than by the Articles he has agreed to do; and the rather in this Case; for that the Portion it not a certain Incumbrance, but a contingent one; and therefore it is reasonable to suppose, that my Lord Barnard would not be compell'd to charge his remaining Estate, at all Hazards,
to secure against an Incumbrance that was but contingent, to the Prejudice of his eldest Son, especially when he had provided for the younger Son so plentifully. And decreed that my Lord B. should execute a Deed of Settlement, with Covenants exactly pursuant to the Articles only. But because the Estate was subject to a present Charge, viz. to the Payment of a yearly Sum for the Daughter's Maintenance, from her Birth; that the Lord B. should pay and discharge all Arrears of that and the growing Annuity, as it shall arise, taking Acquittances from his Daughter, and leaving them with the Plaintiff for his Security.

It was strongly urged by Mr. Vernon, That supposing these Articles were but a Covenant to covenant, yet as soon as the Articles were performed, by sealing the Deed of Settlement, then they might come the next Day and exhibit their Bill to enforce an Execution, specifically of the Covenant in such Deed of Settlement; and why may not the Court decree that to be done now, as well as that which after the Performance of this Decree, they will immediately decree upon a new Bill.

Lord Chancellor said, in this Case, they could not; for the Incumbrance was
Was not necessary, but contingent; and if you brought an Action at Law upon such a Covenant, you should not recover Two-pence Damages, 'till a Breach, which possibly may never happen. Besides the Covenant in the Deed of Settlement, is not to be that the Estate is free from Incumbrances, but that the Trustees shall enjoy free from Incumbrances; which so long as they do, the Covenant is not broke; and it seems the Portion being contingent, and not certain, was the Reason of this Part of the Decree, because it is plain, by the latter Part of the Decree, where the Incumbrance was certain (viz. the Payment of a certain Sum) the Lord B. was decreed immediately to discharge it; tho' by the Articles he did but Covenant to Covenant, as is aforesaid; and there is no other Difference between those two Matters, in controverting the Point of Notice in this Case. It appear'd that Sir Edward Northey was employ'd as Counsel by the Plaintiff; and Jolliff had Notice, as he owned, but afterwards, he not being able to dispatch it fast enough, the Matter was taken out of his Hands, and one Sir—— was employ'd, who drew the Writing, and finish'd the Matter, and no Proof was made, that he had any Notice of this Incum-
Incumbrance; whereupon the Question was, Whether Notice to a Counsel, or Agent, that is once employ'd, and goes not through with the Business, shall be Notice to the Party himself? for it was allow'd on all Hands, that if he goes through Notice to Counsel, Attorney, Scrivener, or any other Agent, it is sufficient Notice to the Party himself.

The Chancellor was in Doubt, but another Proof of Notice being accidentally discover'd, this Matter was not determin'd; for it appears that in these Articles, Notice was taken of my Lady B.'s Jointure in these very Lands, which necessarily leads to the Deed, whereby that Jointure is made; and in that Deed there was this Portion charged upon the Lands, and whatever is contained in a Deed to which any other necessarily leads you, you are presumed to know, which was allow'd, without a Word more.

Note the Difference between a present Covenant, that Lands are free from Incumbrance, and that a Man shall execute a Deed, with a Covenant that the Lands are free,

And between a Covenant that Lands are free, and that the Trustees shall enjoy the Lands free.
If a Man devises 1500l. to A. and B. for such Uses as the Testator had declar'd to them, and by them not to be disclosed, and he discloses the Trust to A. who by Letter discloses it to B. this shall be a Trust, and the Letter is a good Declaration thereof, tho' either or both the Trustees be dead. Trin. 1689, between Crooke and Brooking. 2 Vern. 106.

But if a Man devises Forty Pounds to be paid to his Cousin F. S. and by him to be disposed of in such Manner as the Testator should by a private Note acquaint him with, and dies without having made any such Appointment, this shall be a good Request to F. S. and shall not go to the Executors, from whom it was intended to have been given away. 1 Chan. Cases 198.

If an Improprinator devises to one that served the Cure, and to all that should serve the Cure after him, all the Tithes and other Profits, &c. tho' the Curate is incapable of Taking by this Devise, in such Manner, for want of being Incorporate, and having Succession, yet the Heir of the Devisee shall be feized in Trust for the Curate for the Time being. 2 Vent. 349. decreed by Finch Lord Chancellor.
Uses and Trusts.

A. lent B. 100l. and in the Note which was given, Mention was made that it should be disposed of as A. should direct; on a Bill exhibited for it; the Court declared it was a Deposītum, or Trust, and decreed Payment of it, tho' it was barred by the Statute of Limitations. 2 Ven. 345.

If A. in Consideration of Eighty Pounds, conveys an Estate absolutely to B. and afterwards A. brings a Bill to redeem, and B. by Answer, insists that the Conveyance was absolute; but confesses that after the Eighty Pounds paid, with Interest, it was to be in Trust for the Wife and Children of A. and A. replies to the Answer, though there be no other Proof of the Trust, yet it will be decreed for the Wife and Children. Pasch. 1693. between Hampton and Spencer. 2 Ver. 288, 289.

So if J. S. makes his Will, and his Wife Executrix, and the Son afterwards prevails on his Mother, by telling her, &c. to get J. S. to make a new Will, and name him Executor therein, he promising to be a Trustee for the Mother, which is done accordingly; and in that Will there is but a small Legacy given the Wife, this will be decreed a Trust for the Wife, on the Point of Fraud, notwithstanding the Statute of Frauds and
and 

and 

Perjuries. Hill. 1684. between 

Thyn and Thyn. 1 Vern. 296.

If a Man purchases Lands in another’s Name, and pays the Money, it will be a Trust for him that paid the Money; tho’ there be no Deed made, declaring the Trust thereof; for the Statute of Frauds and Perjuries extends not to Trusts raised by Operation of Law.

2 Vent. 361. 1 Vern. 366. S.P. admitted; but there said that the Proof must be very clear that he paid the Purchase-Money.

If there are three Leesees of a Church, and one of them surrenders the old Lease, and takes a new Lease in his own Name, it shall be a Trust for all. Mich. 1684. between Palmer and Young.

1 Vern. 276. per_curiam.

A. and B. agreed together to take a Lease of a Colliery for less than three Years, for which they contracted at a certain Rent; but by the Agreement, the Lease was taken in A.’s Name only, tho’ at the Time of the executing thereof, the Lessor insisted that B. should be a Joint Leeree with A. and should receive a Moiety of the Profits, and be answerable for a Moiety of the Rent, and refused to let it on any other Terms, and accordingly demanded and received a Moiety of the Rent from B. on
B. on a Bill brought by B. A. pleaded the Statute of Frauds and Perjuries, and that there was no Declaration of a Trust in Writing, B. insisted that it was good, being a Lease for less than three Years; or if his Title was not good on that Account, yet it was good, as a resulting Trust; as to the first, the Court held, that tho' a Lease for three Years may be good by Parol, yet when such a Lease is made in Writing, the Trust of that Lease cannot be declar'd by Parol; and as to the second, ordered the Plea to stand for an Answer; the Judge who sat in my Lord Chancellor's Absence, being in Doubt about it, tho' he inclin'd to over-rule the Plea.

Mich. 1682. between Riddle and Emerson. 1 Vern. 108.

A.'s Father had executed a Grant of the next Avoidance of a Church, to B. the Defendant's Father, who was a Clergyman, and a Person much intrusted and employed by him, and the Grantee knew nothing of the making of this Grant; and being examin'd in a Cause, had depo'd that he did not purchase it; and it was held that this was a resulting Trust to the Grantor, there being no other Trust declared.

Hill. 1697. between the Duke of Norfolk and Brown.

But
But if the Mortgagee assigns over his Mortgage to J. S. and declares a Trust thereof by Parol, for A. and B. only, it shall prevent a resulting Trust to the Assignor; for the Statute of Frauds, which saves resulting Trusts, extends only to such as were resulting Trusts before the Statute, and a bare Declaration by Parol, before the Act would prevent any resulting Trust. 

Trin. 1693. between Lady Bellasis and Compton. 2 Vern. 294. but no Decree.

If a Father purchase Lands in the Name of his eldest Son, this shall be an Advancement for the Son, and not a Trust for the Father, though the Father has been in Possession of it, and has receiv'd the Rents and Profits thereof. hill: 28 Car. 2. between Lord Gray and Lady Gray, 1 Chan. Cases 296. 1 Chan. Cases 27. S. P. 2 Chan. Cases 231. S. P. and there said to be the constant Rule.

So where the Lord of a West-Country Manor, his Tenants refusing to renew, made a Lease to his Daughter, for Ninety-nine Years, and afterwards sold the Estate to J. S. who had Notice of the Lease, and took a collateral Security that the Daughter should re-lease within Four Years after she attained her Age of Twenty-one Years; and
and though it was insisted that this was a Trust for the Father; and that it was the usual Method that Lords of West-Country Manors took, when the Tenant in Possession refused to renew; yet my Lord Chancellor held it no Trust for the Father, but an Advancement for his Child; and that the Purchaser having purchas’d with Notice of it, and taking a Collateral Security, he must make the best of his Security. *Trin. 1687.* between *Jennings* and *Selleck.* *1 Vern.* 467 decree.

So if a Father purchases a Copyhold Tenement, in the Name of his eldest Son, an Infant of about Eleven Years old, and lays out 400l. in Improvements, pays the Purchase-Money, and all the Fines, and enjoys it, during his Life, but having surrendered it to the Use of his Will, devises it to his Wife for Life, and after to his younger Children, who were otherwise unprovided for, and the eldest Son recovers in Ejectment, the Wife and Children cannot be relieved against it; for the Purchase shall be consider’d as an Advancement for the Son, and not a Trust for the Father, tho’ he enjoyed it during his Life; for the Son was but an Infant at the Time of the Purchase. *Pasch. 1687.* *Mumma* and *Mumma.* *2 Vern.*
Uses and Trusts.

2 Vern. 19. 2 Vern. 28. S. P. decreed.

A Man bought Copyhold Lands of the Nature of Borough English, in the Name of his eldest Son, but there was no Declaration of Trust in Writing; but the Plaintiff would have had it a Trust; for the Father, who as well as the Eldest, were both dead; it was agreed the Father paid the Purchase-Money, and many Witnesses were examined on both Sides. And Acts of Ownership, as Receipts of Rents, Repairs, &c. prov'd in both Father and Son; so that the Proofs, as to the Matter, seem'd to be pretty equal; but there being no Declaration in Writing that it was a Trust for the Father; the Court decreed it an Advancement for the Son, which was affirmed in the House of Lords. Trin. 1701. between Shales and Shales.

So if a Father purchases in his eldest Son's Name, and the Son is put into Possession, who afterwards falls sick, and in his Sickness the Father gets him to seal a Deed, declaring his Name was made use of only in Trust for him; and the Son recovers and continues in Possession, and marries, after his Decease his Wife shall be endow'd, notwithstanding this Declaration of Trust; and
Uses and Trusts.

And though the Father had got a conveyance of the legal estate from the younger Son; for this is a secret and fraudulent deed of trust, to deceive creditors and purchasers. *Pasch.* 1702.

between Bateman and Bateman. 2 Ver. 436.

If the Grandfather takes Bonds, in the name of his Grandchildren, the Father being dead, this shall be an advancement for the Grand Children, and not a trust for the Grandfather; for the Father being dead, the Children are under the immediate care of the Grandfather. *Pasch.* 32 Car. 2. between Ebrand and Dancer. 2 Chan. Cases 26.

If lands are devised to trustees and their heirs, in trust for a feme covert, and that the trustees shall from time to time pay and dispose of the rents and profits to the said feme covert, or to such persons as she, whether sole or covert shall appoint; and that her husband shall have no benefit thereof; and as to the inheritance in trust to such persons as she by will, or other writing, under her hand should appoint; and for want of such appointment to her and her heirs, this shall be a trust, and not an use executed by the statute. *Mich.* 1686. between
between Nevil and Saunders. 1 Vern. 415.

But where a Man devis'd the Rents and Profits of certain Lands to T. B. the Wife of W. B. during her Natural Life, to be paid by his Executors, into her own Hands, without the Intermeddling of her Husband; and after her Decease he devis'd them to others; and it was held by Rokeby and Eyre, Justices, that the Lands themselves belonged to the Wife, against Holt Chief Justice, who held strongly that the Executors were only Trustees for the Wife. Between South and Allen. 1 Salk. 228.
A Short and Accurate
TREATISE OF
Dower.

ACTIONS relating to Estates for Life, concern either Estates in Dower, or other Estates for Life.

First, relating to Estates in Dower; and they are either Droitural or Possessory.

1. Droitural, as the Writ of Right of Dower, concerning the Quarantine.
2. Possessory, as

A a 1. The
First, Of the Writ of Right of Dower.

The Dower is the Provision which the Law makes for the Wife, after the Decease of the Husband; and in (a) Socage Tenure, it was originally Half during the Widowhood, because whatsoever was got during the Coverture, was supposed to be by the joint Industry of them both; but Half only during the Widowhood, because it was not to be carried away from that Family into

(a) Socage Tenure is the Condition upon which Tenants held their Lands, to plow the Land of their Lords, with their own Ploughs, and do other inferior Services of Husbandry, at their own Charge. This slavish Tenure has, by the Agreement of Lords and Tenants, been turned into the Payment of a yearly Sum, which is called Free Socage, in Contradistinction to the other Tenure, which was called Villanum Socagium. Bract. lib. 2. c. 35. Co. Lit. 117.
another: So in (a) **Knight-Service** it was a Third; one Third being allow'd for the Performance of the Service, and the other two Thirds were to be divided between the Wife and the Heir; and here the Wife was to hold during her Life; for they consider'd it here, not as an Acquisition that was to go back into the former Husband's Family, if she married another; but as a Tenure that was to continue, according to the Form of the Infeudation, which was during Life; and therefore look'd on the Marriage Contract for an Infeudation after the Death of the Husband; not only in every Manner which he should have during the Time of the Coverture; but since the Marriage was only a Contract for such (b) **Infeudation**, it

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(a) **Knight-Service**, or Servitium militare, was a Tenure, whereby several Lands in this Kingdom were held to the King, which drew after it Homage and Service in War, Escheue, Ward, Marriage and Relief; but it is now taken away by the Statute of 12 Car. c. 24.

(b) This Word Infeudation, is a Term borrowed from the Civil Law, which signifies (according to the Civilians) the Granting Lands, Honours or Fees, either to a Man, during the Will of his Lord or Sovereign, or for the Feudary's own Life, or to him and his Heirs for ever, upon this Condition, that he and his Heirs acknowledge the Donor, and his Heirs to be their Lord and Sovereign, and bear Faith to him and his Heirs, for the said Tenure, and do such Services as was covenanted between them, and proper to a Feud.
was not actually made until the Heir had assigned which was the Completion of the Infeudation. Hence it was that the Assignment was by the Heir, where all other Infeudations were made *co-ram paribus Curia*; therefore the Heir made the Assignment, as Lord of the Manor, who was to create the Tenure; but if there was any Dispute, touching the Quantity, it was determinable by the \((a)\) *Pares*. If they did not like the Determination, the Wife might remove it to the County-Court, and so to the King's Court; and the Heir immediately to the King's Court; to avoid Delay to the Wife, it was set out by Way of *Metes and Bounds*, because it was a Tenancy of the Heir, and therefore like all other Lands in Tenure, was to be separated from the Demesnes of the Manor; the Infeudation defeated the Descent; because by the Marriage Contract, the Tenure was to take Place on the Death of the Husband; so only two Thirds can be supposed to descend in

\((a)\) This word *Pares* signifies Men of the like Condition in Life, and under the same Law, who were called to the King's Court, the County-Court, or Court-Baron, to Judge of Matters in Dispute, between their Fellow Countrymen, that were under the same Jurisdiction. *Spelman's Gloss.* 448.
Of Dower:

Demesne to the Heir; since in the other Third a Tenure is created in the Wife to hold of the Heir immediately from the Death of the Ancestor; and the Reason why the Law created this as a Tenure was, that the Heir might be obliged to do the Service for it, during the Time of its Continuance, as he was obliged to do for all Lands which he had given out in Tenure, as well as those he held in Demesne; and had there been no Tenure it had been cut off from the Manor, during the Life of the Wife, when the Heir was a Tenant and no Lord of the Manor; the Assignment of Dower was in the Nature of Subinfeudation; and this Tenure continues after the Statute of (a) Quia Emptores terrarum, since the Heir does not part with the Fee.

The Writ of Right of Dower is Patent, and shall be directed unto the Heir, to sue in the Court of the Heir,

(a) The Statute of Quia Emptores Terrarum, is a Statute made in the 18th of E. 1. whereby none might grant Lands or Tenements in Fee simple, to hold of himself, and is so called, because the Statute begins with these Words, Quia Emptores Terrarum & Tenementorum de feodis magnatum & aliorum Dominorum in prejudicium eorum, &c. Terras & Tenementa sua vendiderunt tenendum in feodum ibi; so that these Words, and what followed, shew the Cause of making that Statute. 2 Inst. 500. 1 Inst. 98. b.
as it appeareth by Britton; and where the Writ is directed to the Heir of the Husband, and the same Heir is seised of the Land whereof the Wife demanded Dower; then if he will not assign Dower unto the Feme, the Feme, who is Demandant, may remove the same by a (a) Tolt, into the County-Court; and also may remove the same out of the County-Court into the Common Pleas, by a (b) Pone, without shewing any Cause in the Writ, as the Demandant shall do in a Writ of Right Patent; but the Tenant in a Writ of Right Patent, shall not remove the Plea out of the County-Court into the Common Pleas, without shewing Cause in the Pone; and the Tenant in a Writ of Right Patent, or in a Writ of Dower, may remove the Plea into the Com-

(a) A Tolt is a Writ whereby a Cause depending in a Court-Baron, is remov'd into the County-Court, and is so called, because thereby Lis tollitur e Curia Baronis & ad Curiam vicecomitis defertur.

(b) This Writ is called a Pone, only from the Mandatory Part of the Writ, which is, if the Party makes the Sheriff secure that he will prosecute his Claim against the Defendant, the Sheriff is commanded to compel the Defendant to give Security to answer the Plaintiff’s Complaint by the Words tunc pone per radios & salus pluegos (the Defendant): And it is for the Demandant in Dower to remove the Cause into the Court of Common Pleas. See New Nat. Brev, 15.
mon Pleas, by a \textit{(a) Recordare} out of the Court of the Lord, upon Cause shewed in the Writ; and what Causes are sufficient, and good to remove the Lord's Plea out of the Court, or out of the Country, and what not, does appear in the Register; and therefore see the Cases there; but the Demandant could not remove the Plea out of the Court of the Heir, by a Pone, because he ought first to remove it by a Tolt into the County-Court, and from the County-Court he may remove it into the Common Pleas, by a Pone, without shewing the Cause in the Writ, as before is said.

Since the Dowree holds of the Heir, as the Heir holds over of the Lord; the Writ of Right of Dower is directed to the Heir, who, upon that Writ, may assign Dower, without any further Contet; and if the Heir be Lord of the Manor of which the Wife is to be endowed, then the Assignment is to be by

\textit{(a) Recordare} is a Writ directed to the Sheriff to remove a Cause depending in an inferior Court, to the King's Bench or Common Pleas; and is so called by these Words of the Writ, \textit{The Judge of the inferior Court, is commanded to make a Record of the Proceedings in the County-Court, and transmit the Cause into the King's superior Court of Record. New Nat. Brev. 3. A. 16. E.}
Of Dower.

the Heir, with the Approbation of the Pares Curia; but if the Heir be only Tenant, and not Lord of a Manor, then the Assignment cannot be in the Court-Baron of which the Tenant holds, because the Writ is not directed to that Lord, to give him Authority to proceed; for the Writ of Right was only where the great Controversy happen'd between the immediate Feudaries of the Manor; and the Dowress is Tenant to the Heir, and not to the Lord; therefore the Writ cannot come into the Court-Baron, unless where she is to be endowed of the Manor itself, or where the Lord is Guardian in Chivalry to the Infant, then the Writ shall be directed to the Lord to endow her; and this is an Act done by the Lord, as Guardian to the Infant, and as annexed unto the Estate, which falls into the Lord's Hands, during the Minority of the Infant; but in that Case, if the Infant had an Estate in Socage-Tenure, whereof the Wife might endow herself, that was an Endowment (a) De la plus Beale.

If

(a) Dower de la plus Beale, is that Kind of Dower, which is neither of the other Kinds of Dower, viz. Dower at the Common Law, Dower by the Custom,
Of Dower.

If the Heir, or Lord of the Manor, would not endow the Feme, she may have a Toll into the Sheriff's Court, without any Cause shewn, because it was in her own Delay, and where the Heir had no Court, unless she acquiesced in the Endowment made by him, her only Remedy was to remove it by Toll immediately; and where the Lord was Guardian in Chivalry, and refused to endow, because she might have Dower de la plus Beale into whatever Court the Cause was removed, he might plead such Title to Dower in the Wife, in Bar of his Assignment, because the Lord was not obliged to divide his own Feud, the Wife having otherwise a sufficient Dower to sustain her.

And in a Writ of Right Patent, the Plea may be removed at the Tenant's

Dower ad opium Ecclesia, or Ex assensu patris, but is therefore contradistinguished from them by this Appellation, De la plus Beale, so called, because where there are Lands held by Knight-Service, and some by Socage Tenure, of which the Husband died seised, the Guardian in Chivalry may pray that the Wife may be endowed De la plus Beale, i.e. of the most Fair of the Lands held by the Socage Tenure, according to the Value of the Third Part, which she claims of those Lands held by Knight-Service; and the Reason is, because this Knight-Service is for Defence of the Realm, and therefore it is pro bono publico, that such Service do remain entire, and ought to be favoured.

Co. Lit. 39. b.

Suit,
Suit, by a *Recordare* out of the Lord's Court into the Common Pleas, before the Justices there; and by the same Reason, it seemeth, it may be removed at the Suit of the Tenant, in a *Writ of Right of Dower*, out of the Heir's Court into the Common Pleas, before the Justices there, by a *Recordare*, for good Cause; *sed Quare*.

And if the *Husband* do enfeoff a Stranger of all his Lands, and dies, and his *Heirs* have nothing by Descent; now if the *Feme* be to sue forth a *Writ of Right of Dower*, it seemeth that she shall sue her *Writ of Right of Dower*, directed to the *Feoffee*; for after the Endowment, the *Feoffee* shall be her Lord, and she shall hold the *Dower* of him, by *Fealty*; but before the Statute of *Quia Emptores*, &c. if the *Husband* enfeoff a Stranger of Parcel of his Lands, to hold of him; then if the *Feme* be to sue a *Writ of Right of Dower* against the *Feoffee*, the *Writ* shall be sued in the Heir's Court, and directed to the Heir, for the Seigniory that remaineth in him.

And so if the *Husband*, at this Day, giveth Parcel of his Manor in Tail, to hold of him, and dieth, the *Feme* shall sue her *Writ of Right of Dower*, in the Court of the Heir of her Husband, and
Of Dower.

and against the Donee in Tail, and the Writ shall be directed to the Heir.

But if the Husband makes a Gift in Tail, of all the Lands that he hath, and dies, and the Feme is to sue a Writ of Right of Dower of that Land, then her Husband's Heir cannot have any Court, because he hath but a Seigniory in gross; and therefore it stands with Reason, that she should have her Writ of Dower against the Donee in Tail, directed to the Sheriff, returnable in the Common Pleas; and she shall have this Clause in the Writ, Quia B. capitalis Dominus feodi illius nobis inde remissit Curiam suam.

Dower is the Consequence of the Marriage Contract, which was understood, that the Wife should have the Third Part of the Estate, the Husband was seised of, during the Coverture, to sustain herself and younger Children, during her Life, because she was supposed to be equally concerned in the Acquisition. In Knight-Service, she had a Third, because one Third was allowed for the extraordinary Burthen of the Tenant, and one Third for sustaining the Heir; so she always equally divided with him; but the Heir was always to set it out; and she was not to carve for herself, because the Wife held
Of Dower.

held of the Husband's Representative, as inferior to the Husband, and consequently as subject in Tenure to the Heir, who represented him; but if the Heir did not set out according to Equality in his Court, she might apply to the County-Court, and to the King's Court, and where the Heir had no Court, she may enter a Dominus remisit Curiam suam; and hereby the Writ of Right of Dower was returnable into the King's Court; but if the Heir had a Feudal Court, she might have had it there set out; and then it was either assigned, and set out by the Heir himself, or by his Pares; for this was an Act that he himself might do, as well as his Pares in that Court; because it was presumed that he would rather be more Beneficent to his Mother, than act according to the strict Division required by Law; and this Power continued to the Heir, as long as the Tenure continued; so that he had a Power over the Lands, as a Feudal Lord, before the Statute Quia Emptores, &c.

And if the Husband aliened the Lands to hold of himself, since the Feoffee continued Feudatory to the Husband, the Heir was to assign Dower in his Court; but since the Statute, the Feoffee...
Feoffee holds of the superior Lord; therefore the Heir remits his Court; and the Writ of Right of Dower is to be brought in the King's Court by the Dominus remisit Curiam suam; but the Tenant in Tail or for Life, &c. did after the Statute hold of the Lord; and therefore the Heir's Assignment of Dower continues.

And so if the Husband makes a Leafe of all his Lands unto a Stranger for Life, and dieth, and the Feme is to bring a Writ of Dower against the Leffe, for Life, then it seems reasonable, that the Feme have her Writ of Right of Dower against the Leffe for Life in the Common Pleas; because that he in the Reversion hath not any Court.

And altho' that this Clause, Quia B. capitalis D'nus, &c. be put into the Writ, the Lord has not any Court to hold, because it is a Seigniory in Grofs, and not any Demesne Land to hold a Court, &c. and then altho' the Lord did never remit his Court, and that there is not any Matter apparent remaining in the Chancery, to prove the Lord's Will, or Assignment, to remit his Court; yet the Writ returned into the Common Pleas, before the Justices there, is good; and they shall proceed.
proceed thereupon; if the Lord hath not any Court to hold Pleas of this Matter.

And it seems, that the Lord shall not have his Action against the Demandant, for suing the Writ in the Common Pleas, if he hath got no Court to hold Plea thereupon, and to do Right unto the Party.

But if the Lord hath a Court to hold Plea, then he may have a Prohibition to the Justices of the Common Pleas, that they do not proceed upon the Plea, otherwise not. Quære de hoc.

When the Husband, being Lord, aliens Lands to hold of the supream Lord, of Consequence they are no more Attendant to his Court; and therefore there is implied a Dominus remisit Curiam suam; so that no Action lies for the Heir, for bringing the Writ into the King's Court, since the Ancestor remitted his Court, by such Alienation; and no Action lies by the Mesne Lord, because the Title of the Wife begins before the Tenure arose to him; for the Wife's Title arises from the Seisin of the Husband, which was preceding the Alienation, whereby the Alienee is attendant upon the next Lord, and by Consequence, the Court
is remitted to the Crown by Alienation.

And this Writ of Right of Dower, where a Wife is endowed of Part of her Dower, and she would demand the Residue against the same Tenant, and in the same Town; then she ought to sue this Writ of Dower; for the Words of the other, viz. unde nihil habet, will not serve, because that she hath received Part of her Dower; and therefore, of Necessity, it behoves her to sue this Writ of Right of Dower, to recover the Residue; and the Writ shall be directed to the Heir, or to his Guardian, if he be in Ward, as a Writ of Right Patent shall be, &c.

The Reason of this is, because the Possessory Writ, as the Writ Unde nil habet is, must demand the whole Dower of the whole Estate of the Husband; and that Possessory Writ she can have but once; therefore if she omits out of the Writ of Unde nil habet any of the Lands which the Husband was seised of, during the Coverture, she is put to her Writ of Right of Dower quoad the Lands.

And if a Feme loses her Land which she holds in Dower by Default in a Praeipe quod reddat; yet, according to the Opinion of some Men, she shall have
have a Writ of *Right of Dower*; but it seems by the Equity of the Statute of *W. 2. c. 4.* That if a *Feme* lose, by Default, the Land whereof she hath had *Dower*, that by that Statute she may have a *Quod ei Deforciat*, to recover that Land; and before the Statute, she had no Remedy to recover the Land, but only in an *Action of Disceit*, if she were not summoned.

At Common Law, if *Tenant for Life* was barred in the Possessory *Action*, he never could have the *Action Driitorial*; but if he was barred of his *Seisin*, as he was in the Possessory *Action*, he was barred of his Right for ever; and the Reason is, because no Body could have a final Judgment to Perpetuity, to put the Lands in Peace, by the *very Tenant*, or *Tenant in Fee-Simple* of those Lands, and that bound the Right for ever against all Persons, even against all Strangers that did not Claim within the Year and Day; but *Tenant for Life* of Lands, claims the *Seisin* only, therefore whatever barred the *Seisin*, was a Bar to their Right, since they had not a meer Right, distinct from the *Seisin*; and therefore, if even the *Tenant in Dower* was barred by Default, in a Writ of Dower, *Unde nihil habet*, she was perfectly barred thereby, because
cause the Bar to her Seisin was a Bar to her Right; but if the Lands were omitted in the Writ of Dower unde nihil habet, the Judgment in the Writ could be no Bar quoad the Dower in those Lands, because the Judgment was not concerning the same; but as to the Lands mentioned in the Writ, Judgment by Default was a Bar, 'till helped by the Statute of West. 2. c. 4. which gives the Quod ei Deforciat.

And if the Feme hath Dower, and lose the same by Assize, or Action tried, it seems she hath no Remedy but by Attaint; for it seems she shall have no Remedy to recover by a Writ of Right of Dower, because she had the Land once assigned to her in Dower; and she was in Possession of the same; so that the Title was executed, and so she ought to sue an Action of her own Possession, if she be afterwards deforced.

For the Statute extends only to Estates for Life, or in Dower, where the Tenants lose by Default, and not where they are barred by Judgment, upon the Merits of their Cause.

And after the Plea removed into the Common Pleas, the Process is then a Grand Cape, and a Petit Cape; and in the Heir's Court, the Manner is to make a Process
Of Dower.

Process in the Nature of a Summons, and of a Grand and Petit Cape; and the Writ to the Heir is thus,

REX A. salutem. Precip. tibi quod sine dilatione plenum rectum teneas B. que suit uxor C. de tertia parte decem acr. terra cum pertinent. in W. quam clamat tenere de te in dote per liberum servitium tertia partis uniūs denarii per Annum; pro omni servitio quod ei deforciat, &c.

And also a Feme may have a Writ of Right of Dower of the Moiety, according to the Usage of Gavelkind, where she hath received Part, and is deforced of Part.

And also it appeareth in the Register, that the Feme shall have a Writ of Right of Dower directed unto the Heir himself, where he himself deforseth her of the Profits of an Office, and the Writ is thus,

REX A. salutem. Precip. tibi quod plenum rectum teneas B. de tertia parte exituum provenientium de Custodia Gaole Abbatis Westm. & de tertia parte trium Rodarum terrae uniūs Rode prati, & redditūs tot per Annum & lagenarum cervisie vel tot fercularum per Diem vel per septimanam vel per Annum cum pertinentis in villa Westm. quas clamat pertinere ad liberum tenementum suum.
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Dower demanded of the Profits coming from a Fair de N. 11 El. 3. Dow. 85. C. Lit. 32. Dower is demandable of the Moiety of Stallage, coming from the Fair of D. and good, without saying the Moiety of the Profits of Stallage, for Stallage is a Profit. Ra. Ent. Of Stal. 234. De tertia parte exit. & profic. lage. de quodam mercato quolibet anno in festo. S. Mich. 12 Ed. 3. Dower may be well demanded of the Third Part of the Profits of a Bailiff's Office, Parker, &c. without demanding the Third Part of the Office, because entire; dubitatatur in the Office of F. v. 45 Ed. 3. Dower 50. where the Feme is endow'd of the Third Part of the Profits of a Mill, and had the Freehold of the Third Part of the Mill in her. 21 Ed. 3. 51. Dower, of the Third Part of the Office of the Marshalsea.

And by the Writ it appeareth, that the Feme shall have a Writ of Dower of what is appendant, or appurtenant.
Of Dower:

to the Land which she holdeth in Dower, if she be deforced thereof.

Of a Writ De Quarentina Habenda.

The Writ of Quarentina Habenda, lieth where a Man dieth seised of a Messuage and Lands, and immediately after the Death of the Husband, the Heir, or he who ought to have the Lands after his Death, will put the Wife out of the Messuage, &c. then the Wife will have this Writ; for by the Statute of Magna Charta, cap. 7. the Wife shall remain in the Capital Messuage after the Death of the Husband, forty Days, if it be not a Castle, and that Writ is Vicountiel, and shall be directed to the Sheriff, and he shall hold Plea thereof.

This Writ was given by the Statute of Magna Charta, c. 7. and therefore the Statute is recited in the Writ; and it was for the Time which the Wife was to continue in the Husband's House, and until she had got an Assignment of her Dower; and that the unnatural Heirs should not turn her out immediately; therefore the Writ is Vicountiel, that the Sheriff might restore her; in Case she was put out before the forty Days were ended.

And
And the Writ is in this Form,

**REX vicecomiti salutem, or, ballivos suis salut.** Ex querela B. que fuit uxor D. accapimus quod cum in Magna Charta de libertatibus Anglie continetur, quod vidue maneant in capitali Messuagio maritorum suorum per dies 40. nisi Messuag. illud castr. sit, infra quod tempus dotes sua assignentur eisdem, & quod interim habeant rationabilia estoveria de bonis eorumdem, J. de C. ipsam B. statim post mortem predict. viri sui, de capitali Messuag. quod fuit ejusdem D. in H. licet nec castrum sit, nec dos ei assignata fuerit, violenter ejectit, & ipsa estoveria sua de bonis ejusd. D. percipere non permittit, ad ipsius B. damnum non modicum & gravamen, & contra tenorem chartae predicta, & quia prefat. B. injuriari nolumus in hac parte vobis precipimus, quod vocatis coram vobis partibus predict. & auditis hinc & inde earem rationibus eodem B. plenam & celerem justitiam inde fieri faciatis juxta tenorem chartae predicta, ne pro defectu justitiae querela ad nos venerit, Tefte, &c.

And upon that Writ, the Sheriff shall award Process against the Party, to come.
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come and answer the same, and shall not stay until the County-Court be held; for this Writ is a Commission to him, and upon the same he shall immediately make Process to answer, &c. within two or three Days, according to his Direction; and thereupon to proceed as Justices should do in a Commission of Oyer and Terminer, &c.

Dower unde nihil Habet.

A Writ of Dower unde nihil habet, lieth in Case where a Woman taketh a Husband who is sole seised of Lands or Tenements, to him and his Heirs, in Fee-simple, or to him and the Heirs of his Body; or if the Husband, during his Marriage, be solely seised in Fee-simple, or Fee-tail of such Estate, that the Issue begot between him and his Wife, may inherit the same; then if the Husband doth alien the same, or dieth seised thereof, or be disseised and dieth, his Wife shall have a Writ of Dower unde nihil habet, against him who is Tenant of the Freehold of the Land, or against him who is Guardian by Knight-Service of the Land.

And
And the Form of the Writ is thus,

\[\text{REX vic. salém. Mandamus vobis quod juste & fine dilatatione redd. B. quæ fuit uxor C. rationabilem dotem suam, que ei contingit de tenemento quod fuit prædict. C. quondam viri sui in N. unde nil habet, ut dicit, & unde queritur quod A. ei deforciat, & nisi, &c.}\]

Note; Altho' the Writ be conditional, nisi fecerit, tunc summoneas, yet the Demandant is not bound to accept the Tender in pais; for then she should lose her Damages for the Time past; nor is the Tenant bound to tender it there; and yet he may plead in the Common Pleas, tous tempts prist. 11H.4. 62. 11 H. 4, 40, 41.

It is plain the Wife cannot have Damages but from the Time of her Demand, because the Tenant of the Land cannot set out the Dower, 'till the Feme be there to accept it; and therefore when the Writ of Dower comes to him, he is not bound to set out the Dower; because the Dowress is not with the Sheriff to accept it: Indeed, if she comes with the Sheriff, it will make a Demand in pais, from thence to
to recover her Damages in the same Manner as if she had made her Re­quest before the Writ brought; but if she has not made such Demand in pais, the Defendant may plead tous temps prist, since, as it is said, he is intitled to the Profits, till Default; but he cannot plead tous temps prist, against her after an Essoin cast; because by that, his Delay appears on Record.

And against the Guardian the Writ is thus,

\begin{quote}
Precipe A. custod. terræ J. quod red­dat, &c. B. qua fuit uxor D. &c.
\end{quote}

if he be Guardian of the Land and Body, he ought to be named so in the Writ; otherwise it shall abate. 18 Ed. 2. Brev. 832.

That he is to be na­med Guar­dian.

Because if the Dowress do not name him Guardian of both in the Writ, she does not intitle herself to the Action against him; for he is not to set out Dower for her, but as Guardian of the Infant.

And note; She ought to make him Heir by the Writ to him that was last feised. 11 Ed. 3. Brev. 471. because if the Writ be brought against the Heir of
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of the Assignee of the Husband, unless she shews that the Tenant is Heir to the Person that was last feised, she does not intitle herself to an Assignment from him.

Otherwise where she is endowed ad ostium Ecclesiae, it is thus,

Precipe A. quod reddat B. quae fuit Precipe of uxor C. cent. acr. terrae, cum pertin. Dower ad in N. de quibus prae. ostium Ecclesiae. quondam C. quondam viri C. viri iphius B. eam dotavit ad ostium Ecclesiae, quando eam desponsavit, unde nil habet, &c.

And if she be endowed De assensu patris, then thus,

Precipe A. quod reddat B. quae fuit Ex assensu uxor C. cent. acr. terrae, &c. de quibus patris prae. & filius & hares iphius A. &hletes iphius B. de assensu & voluntate iphius A. patris sui, eam dotavit ad ost. Ecclesiae, unde, &c.

And the Writ of Dower unde nihil Dower may be sued in the County before the Sheriff, by a Justices, and a Wife shall be endowed of an Advow-son, Villains, Commons, &c. and of other Profits and Liberties of which her Husband had any Estate of Inheri-
tance,
tance, which Estate the Issue, betwixt them, by Possibility, may inherit, &c.

And the Wife may sue a Writ of Lands or Tenements in London; and the Writ shall be directed to the Mayor and Sheriffs of London, and it shall be such:

Præcipe to the Sheriffs of London.


Dower in London, against several Tenants.

And by that it appears, that a Woman shall have a Writ of Dower in London against several Tenants by a several Justicies in the Writ, as well as she shall have the Writ of Dower against several Tenants by several Præcipe's, and all in one Writ, and the Process is Summons, Grand and Petit Cape, in the Common Pleas.

A. Brought
Dower.

A. brought Dower against B. de liberotenemento in C. & D. B. appeared; and before Plaint made, she brought another Writ in the same Vill; this Writ shall abate, though no Plaint was made before; for by Shard, one shall not have two Writs of Dower unde nihil habet, against the same Tenant, in the same Vill, if it be not upon Special Matter; as if the Tenant purchase other Lands, after the first Writ, whereof she is dowable. ii E. 3. Brev. 476. Otherwise it is of an Assize. 39 H. 6. 12.

The Writ of Dower being returnable before Justicariiis resident, the first Writ is depending at the Time of the second Writ purchased; and therefore it may be pleaded in Bar thereof, if they both relate to the same Lands; but in the Case of the Assize, if the first never be returnable before the Just. itinerant, the Commission is at an End; and a second Writ may be brought at the next Assizes, since the first cannot be said to be pending.

Of Admeasurement of Dower.

The Writ of Admeasurement of Dower lieth where the Heir, when he is within Age, endoweth the Wife of more than the
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than she ought to have Dower of, or if the Guardian endoweth the Wife of more than of a Third Part of the Land of which she ought to have Dower, then the Heir at full Age may sue this Writ against the Wife; and thereby she shall be admeasured, and the Surplusage she had in Dower, shall be restored to the Heir; but in such Case, there shall not be assigned a new any Lands to hold in Dower, but to take from her so much of the Lands as surpasseth the Third Part whereof she ought to be endowed; and he need not set forth of whose Assignment she holds.

17 Ed. 3. 66. a View is not grantable on this Writ 17 Ed. 3 67. cont. adjudg'd, 78 E. 3. 20. and it seems that the Heir within Age, shall have an Admeasurement of Dower of his own Assignment. 7 E. 3.  Admeasurement B. but if the Heir, at full Age, assigns Dower, he shall not have this Writ against his own Assignment. 6 H. 3. Admeasurement 18.

And if the Heir within Age, before the Guardian enters into the Land, do assign to the Wife more Land in Dower than she ought to have, then the Guardian shall have the Writ of Admeasurement against the Wife, by the Statute of West. 2. c. 7. and if the Guardian brings the Writ, and does pursue it against the Wife, yet the Heir at his
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full Age, by the same Statute, shall have the Writ of Admeasurement of Dower against the Wife.

And the Writ is Vicountiel, and shall be sued in the County before the Sheriff, and is thus:


The Writ of Admeasurement lieth upon the Assignment of Dower by the Heir, within Age, or his Guardian; because any Act of such Heir cannot intitle her to more than is due by the Law; and by Consequence a Writ of Admeasurement must lie, and there was no View in this Writ; because it proceeded on a Supposition, that it had been viewed, and found to be more than a Third Part; and therefore to have allowed
allowed a View afterwards, in order to see such an Error, was to suppose that the Writ had originally no Foundation; and it was Vicountiel, because it was presumed the first Assignment was in the Court of the Heir; and if there was any Mistake there, it was to be rectified in the Court of the Sheriff. Vide 13 E. 3. Admeasurement 17. Yet Bracton says, if she hath Lands in Dower in divers Countries, there it ought to be coram Justiciariis; and note, there the Tenant shall have several Writs.

So note first, In every Writ of Admeasurement, all the Land which he hath in the same County, shall be nam’d and admeasur’d.

Secondly, If he hath Lands in several Counties, there shall be several Writs and several Extents of the whole Land, whereof the Party died seised; and it seems he may have one Count and one Admeasurement. Quære how it shall be made. 13 Ed. 4. Admeasurement 17. yet note 7 R. 2. ibid. 4. the Defendant was put to answer, notwithstanding this Exception.

The Reason why the Writs must be coram Justiciariis, where the Lands are in several Counties, is, because the Sheriffs of two Counties cannot set out a perfect Dower; for they cannot meet out
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out of their Cities, in order to do it; and the Dower might have been Right in the whole, though it was out of Proportion in one of the Counties; therefore there is no correcting Dower set forth in two Counties, nor considering it whether just or not, but only by considering it coram Justiciariis; but the Tenants must have several Writs, because an Inquest must be taken before the Justices in several Counties; but tho' there be several Writs, yet the Count must be upon them all, because the Question before the Court, is touching the Assignment of the Dower, which is one entire Thing; and therefore the Judgment must be of the Assignment upon all the Writs, tho' the Inquest must be several upon each of them. It seems the Inquests must be taken in every County, where the Defendant is dowlable, of how much more or less than a Third is assigned in every County; and upon comparing all the Inquests returned, the Justices are to give Judgment, that the Heir should recover those Acres that were over assigned, and by the Consequence of that Judgment, the Defendant will hold the rest as a reasonable Dower.

And, it seems, that in the Count the Conclusion is, Et inde product sectam. How the Conclusio
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& petit ad mensurationem &c. as in the Count of Admeasurement of Pasture; and if the Dowress can plead nothing in Bar of the Admeasurement, her Manner of pleading is, Venit & Defendit vim & injur quando, &c. & concedit ad mensurationem præd. fieri, &c. ideo praecptum est eic. (of the several Counties) quod assumptis secum 12 lib. & legal. hominibus, &c. per quos, &c. quin, &c. in propria persona sua accendant ad prædictam terram ad mensurandam, & quod per eorum sacrum ad mensurari faciant terram illam, ita quod predict. Defend. nil h'eat in illa plus in dotem, quam ad ipsam pertinet habitum, secundum dotabilem dotem suam, & ad mensurationem quam, &c. Scire facias hic tali die sub sigillo, &c. sigillis, &c.

When the Writ is returned, it is entered up in this Manner,

PER quod predictus eic. adjunc & ibidem ad mensurari secerit terr. illam, tam per discretionem suam, quam per sacrum 12 prob. & legalium hominum. ad hoc jurat. qui diçunt super sacramentum suum, quod in villa de H. a. acra terra sunt assignata præd. Defend. plus quam illa habere debet, & plus quam ad ipsam pertinet habitum secundum rationabilem dotem suam, and then the Judgment is, Quod (the Heir) recuperet a. acras terra predictas.

And
And where the Lands are in several Counties, there are several Inquests; and one entire Judgment, for the Number of the overplus Acres are contained in all the Inquests. Rastall's Entries, Admeasurement de Past. fol. 23.

And for the Guardian, the Writ is thus,

Questus est nobis A. Custos terrae & haered. C. quod B. que fuit uxor prædict. C. plus habet in dotem ipsius, &c. ita quod non habeat plus in dotem; &c. & quod prædict. Custos habeat, &c. ne amplius, &c. Teste, &c.

And when the Plea is in the County, the Plaintiff may remove it without any Cause set forth in the Writ; and the Defendant may likewise remove it without any Cause in the Writ, as in Replevin.

And if the Writ be removed into the Common Pleas, by a Pone, and Process be awarded against the Defendants, according to the Statute, which is Summons, Attachment and Distress, &c. then the Sheriff cannot make the Admeasurement, but to extend all the Lands, particularly, and to return the same into the Common Pleas; and
thereupon the Admeasurement shall be made by the Justices.

And if the Guardian assign for Dower to the Wife, more than she ought to have, and afterwards grants over his Estate, his Assignee shall not have a Writ of Admeasurement. Note these Points following are well resolved.

First, If the Guardian assign Dower, and grants over the Ward, the Grantee shall not have Admeasurement.

Secondly, If the Ancestor assigns Dower, and dies, the Guardian of his Heir shall never have Admeasurement, but his Heir shall have it; but this seems to be in Case where the Ancestor was within Age at the Time of the Assignment.

Thirdly, Where the King seizes a Ward, to which he hath no Right, the Guardian sues an Ouster le main, and has it, salvo dote, it seems, in this Case, the Guardian shall have Admeasurement; otherwise it is of the Assignee or Grantee of the King. 7 R. 2. Admeasurement 4. Note there also, if the Disseisor endow the Wife of more than a Third Part, the Heir shall have an "Assise."

The Reason is, because the Grantee comes in under the Guardian, and therefore is bound by his Acts; but if the Heir be
be of full Age; and assigns Dower; and dies, his Heir shall have no Writ of Admeasurement, tho' he assigned too much, because he is bound by the Act of his Ancestor; but if the Heir be within Age, and assigns Dower, and dies, his Heir being of full Age, he shall have a Writ of Admeasurement, because his Ancestor was not bound by his Act, during the Minority; but if the Heir be within Age, when he assigns Dower, and dies, leaving an Heir within Age, such Heir shall have an Admeasurement when he comes of full Age, when he may be thereby bound: and the Guardian shall not have thereby a new Admeasurement during the Minority, because he must take the Estate in the Condition the Ancestor left it, tho' such Assignment of the Ancestor was to the Prejudice of the Guardian.

And if the Disseisor endows the Wife of more than a 'Third Part, the Heir shall have an Affise, because he had no Right to assign Dower, and therefore the Wife does not come in under a Person who had Power to make an Assignment; quoad that Part which is more than her Dower; so that in that, she is looked upon as a Disseisor; and by Consequence the Heir may have an Affise.

And
And so if the Heir, within Age, assigns to the Wife more in Dower than she ought to have, &c. the Guardian in Right may have a Writ of Admeasurement; but if he Grants over his Estate, his Assignee, who is Guardian in Fact, shall not have the Writ, because it was a Thing in Action given to him; and the Heir shall have a Writ of Admeasurement of Dower for Dower assigned in the Time of his Ancestor; hoc videtur, if the Ancestor was within Age at the Time, &c.

And if a Woman be endowed in Chancery by the King, the Heir shall have a Writ of Admeasurement against her, if she has more assigned unto her for Dower than she ought to have. If upon Recovery of the Third Part in Dower, the Sheriff assigns a Moiety, the Tenant hath no Remedy against the Sheriff by Assign, but he may have a Scire facias to assign Dower de novo. 23 R. 2. Execution, 165. Vide 21 Hist. 7. 29.

Dower assigned by the Infant, more than was necessary, shall not be avoided by Entry. Vide 10 Ed. 3. 21. Dower shall not be admeasured by a Writ of Dower. 19 Ed. 3. Quare Impedit, 154.

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The Reason is, when the Feme recovers Dower, and the Sheriff assigns it by Award of the Court, and by the Inquest of twelve Men, the Sheriff is no Wrong-doer, tho' he assigns more than her Share, so that the Heir can have no Assise against him, but he must apply himself to the Court for a new Inquest; and therefore must call in the Tenant in Dower, by Scire facias. And when the Heir assigns, during his Minority, more than is necessary, he cannot, at his full Age, avoid it by Entry, because Part is well assigned, since she was intitled to some Dower, and consequently he cannot avoid, but quoad the Overplus, and such Overplus cannot be distinguished till it be admeasured.

Secondly, This Assignment was supposed to be done with the Approbation of the Pares of the Heir's Court, and so could not be avoided without an Inquest; but if the Wife brings a Writ of Dower, and the Dower be set out under the Direction of the Court, the Heir shall not have Admeasurement when he comes of full Age, because it is supposed the Court will take Care of the Interest of the Infant; therefore its Act cannot be impeached, tho' the Wife had thereby more than

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Whether he ought; but _Quare_ whether the Heir may not have a _Scire facias_, if the Sheriff has set out more than he ought; and if the Guardian do assign _Dower_ more than he ought to have, the Heir, during his Nonage, shall not have a Writ of Admeasurement; but if he himself does, &c. then it seems reasonable that he himself, during his Nonage, may have the Writ of Admeasurement of Dower. _Quare tamen._

But if the _Wife_, after the Assignment of _Dower_, do improve the Land, and make it better than it was at the Time of the Assignment, an Admeasurement does not lie of that Improvement. 14 H. 3. _Admeasurement_ 10. 13 E. 1. _ibid._ 17. but if the Improvement be by Casualty, as a Mine of Coals, or of Lead, which are in the Land, &c. which have been occupied in the Husband's Time, the Doubt is the more; but she shall not dig new Mines, for that would be Waste.

The _Distinction_, touching the Mine, seems to be this, That where a Mine is not open, she cannot work it at all, because it will be Waste; if it be open, and in Work, it seems to be only a casual Profit; and a casual Profit shall not avoid an Assignment, or be so admeasured as to vacate it, since it is not.
not certain to continue during the Life of the Dowress; and therefore not to be computed into the Value of that Part, which the possessees, unless the Value was coextensive with the Estate which she is to have in it.

And if the Ancestor dieth seised, and the Husband die before he entereth into the Land, yet the Wife shall be endowed, tho' her Husband had but a Possession in Law.

But a Man shall not be Tenant by the Courtesy of Land, if the Wife had not a Possession in Deed, if it be not in Special Cases, as of an Advowson, of Rent, where she dies before the Day of Payment.

And in that Case, if the King's Tenant die seised, and the Ter-tenant dies before he enters, then the Wife shall be endowed.

But if the Heir enters and intrudes upon the King's Possession, and afterwards dies before he sueth his Livery, the Wife shall not be endowed by the Statute of Prerog. Reg. c. 12. which is, that if the Heir intrude upon the King's Possession, that nullum accrescit ei lib. tenementum. Where a Woman takes a Lease for Years of Land, she shall not be endowed of the same Land, during the Term; accordingly

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Where the Wife to be endowed, the Husband, if the Heir be restored.

where the Wife takes the Commitment of the Wardship from the Grant of the King, without any Execution of Dower, she shall be barred of Dower, during the Nonage of the Heir. 6 H. 4. 7. But if the Baron be attainted; and dies, and the Wife takes a Lease for Years of the Land, from the Grant of the King, the Heir of the Husband being also in Ward of the King for other Tenements that were intailed; and afterwards by Act of Parliament, or Repeal of Judgment, the Heir is restored, now she shall have her Dower; for that the Lease was made before the Title of Dower commenced. So if A. makes a Lease to a Feme, for Years, and afterwards they intermarry, A. dies within the Term, his Wife shall be endowed. 6 H. 4. 7. 8. Sir John Cornwallis's Case. Dyer 76. Tenant at Will shall be in Dower of the same Lands.

The Reason of this Case is, because when the Wife takes a Term, or has a Term in the Land, by her own Act, she agrees to hold it under the Reservation of the Rent; therefore she cannot afterwards recover a Freehold in that Estate, which would make a Merger of the Term, quoad that third Part; and by Consequence, take away the Security, which the Heir had for his Rent.
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since he could not afterwards distrain in that third part for his Rent, and therefore such Term will be a Bar to the Wife's recovering Dower in that Land, since she has covenanted with the Heir to hold of him in another Manner; but though the Wife were 'Tenant at Will, she may bring Dower, because the bringing the Writ is a Determination of the Will. And where the Estate, which the Husband hath during the Marriage, is ended, there the Wife shall lose her Dower.

As if Tenant in Tail do discontinue in Fee, and afterwards taketh a Wife, and disceifeth the Discontinuee, or the Discontinuee doth enfeoff him, and afterwards the Tenant in Tail dieth seised, his Heir is remitted, and the Wife shall lose her Dower, because the Heir is seised of another Estate of Inheritance than the Husband had during the Coverture. Vide infra.

And so if a Man have a Title of Action to recover any Land, and afterwards he entereth and disceifeth the 'Tenant of the Land, and dieth seised, and his Heir entereth, his Heir is remitted unto the Title which his Ancestor had, and the Husband's Wife shall lose her Dower, for the Estate which the Husband had is determined;
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for that was an Estate in Fee by Right, and the Heir hath the Estate in Fee, which his Ancestor had by Right. According to this Diversity. Vide 19 Ed. 3. 27.

If a Man makes a Gift in Tail, reserving a Rent to him and his Heirs, and afterwards the Donor hath a Wife, and dieth, and the Tenant in Tail dieth without Issue, the Wife of the Donor shall not be endowed of the Rent, because the Rent is extinct; for it was reserved upon the Estate-tail, which is ended; but altho' that the Tenant in Tail dieth without Issue, yet his Wife shall be endowed, because the Land continueth, and is not determined, as the Rent is.

N.B. If a Rent be granted to J. S. and his Heirs, upon Condition that if the Grantee or his Heirs be within Age, the Rent shall cease during their Nonage, the Wife shall recover Dower of the Rent against the Tenant; but cesseet executio during the Nonage. 12 E. 3. Condition, Perkins fol. 65. Pl. 277.

If the Grandfather dies seised, and after the Father dies seised, and the Son hath the Land, and then the Wife of the Grandfather is endowed of the third Part of the Land, and dieth, yet the Wife of the Father shall not have Dower of the third Part. Quia dos de dote peti non debet.
The Dowress holds of the Heir; but by the Institution of the Law, she is in of the Estate of her Husband; so that after the Heir's Assignment, she holds by an Infeudation from the immediate Death of the Husband: Hence it is that Dower defeats Descent, because the Lands cannot be said to descend as Demesne, which are in Tenure, and the Assignment of Dower being in Nature of Infeudation, and taking Place immediately from the Death of the Husband, there are only two Thirds which descened as Demesne: Hence the Maxim arose that there could not be Dos ex dote; for if there were Grandfather, Father and Son, &c. at supra, the Mother was not intitiled to be endowed of a third Part of that Third, because it was in Tenure of the Grandmother, during the Life of the Father, and he was never seised of it.

But if the Grandmother had died, during the Life of the Father, the Mother should be endowed; because the Tenure of the Dowress's Grandmother was determined, and so was Demesne in the Life of the Father.

So if the Grandfather had enfeoffed the Father, and died, and the Grandmother had recover'd Dower of the Father,
Father, and then the Father died, the Mother should be endowed, not only of the Estate in Possession, but of one Third in Reversion, of that Part (viz.) which the Grandmother held in Dower, because the actual Seisin of the Father, by the Feoffment, was before the Tenure of the Grandmother took Place upon the Estate, tho' the Title to such Tenure was precedent; therefore the Title of the Grandmother does not avoid the Seisin of the Father, which he attain'd by the precedent Livery, but only burthens it with an Estate for Life; so that the Seisin of the Father, in this Case, being not defeated by the Tenure of the Grandmother, as it was in the former Case, such Seisin must therefore be esteem'd to have Continuance during the Coverture; and from this Notion it is clear, that if Tenant in Tail discontinues and after takes a Wife, and dispossesses the Discontinuee, and dies, his Wife shall not be endow'd, because her Tenure must arise out of the Estate gained by Dispossess, and by Consequence, such Tenure is defeated by the Remitter; for she cannot hold of the Heir, as by Infeudation of that Estate, which he has not in him.

If the Husband be Tenant in Common, with two others in Fee, of certain
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tain Lands, and dies, his Wife shall be endowed of the third Part of the Land, by Metes and Bounds to hold in Common, &c. it is to be holden by Metes and Bounds, quoad the Heir, and she must stock the Land in Proportion to a Third of a Moiety; and quoad the other Moiety, she must still hold in Common with the other Tenants.

To Dower must always be in Severality by Metes and Bounds, quoad the Heir, because it is a Tenure of the Heir, and therefore must be divided from his Demesnes.

And if a Wife be endow'd of a Mill, or of an Office, she shall have the third Part of the Profits thereof assigned to her, and she shall have a Frechold in the third Part of the Mill, &c. M. 45. E. 3. A Woman at the Age of Nine Years, or more, at the Death of her Husband, shall have Dower of his Land; but if she be of less Age, &c. then she shall have no Dower.

If a Woman be endow'd, and after loseth it by an Action tried, if she prays in Aid of him in the Reversion, she shall be endow'd of that which remaineth. Vide 4 E. 3. 25, 36. 10 E. 3. 7. yet there seems this Diversity, if a Wife be endow'd by a Disseisor, she shall have the Warranty; but if the

How the Wife of a Tenant in Reversion, how to be endowed.

Dower by Metes and Bounds.
Of Dower.

Reversion of those Lands be only granted over by the Heir, the hath lost the Warranty against the Grantee. 17 E. 3. 7. 21 E. 3. 48. 10 E. 3. Quid juris, 41.

If the Husband exchangeth Lands, &c. and afterwards dieth, if the Wife have Dower of the third Part of the Land taken in exchange, she shall not have Dower of the other Lands, &c. which were given in Exchange.

If a Woman be Guardian in Socage, and she brings a Writ of Dower against a Stranger, he may plead that she holdeth Lands in Socage, of which she may endow herself de la plus Beale, and then upon that the Wife may endow herself of those Lands, unto the Value of the third Part, which she ought to have of the other Lands which the Guardian holdeth, &c.

And whether she may endow herself de la plus Beale, unto the Value of the third Part, which she ought to have of all her Husband's Lands or no, Quare. For some hold that Dower de la plus Beale shall endure but during the Minority of the Heir which is in Ward.

The Son would have endow'd his Wife of a Reversion of Land, which one held for Life, ex assensu patris, and
Of Dower.

and held not good, \textit{M. 4. E. 3.} because it was not in Possession, whereof a Right of \textit{Dower} may be claimed.

And the \textit{Writ of Dower ex assensu patris} lies as well against the Guardian as against the Tenant of the Freehold.

If the \textit{Tenant} fore-judge the \textit{Mesne}, yet the Mesne's Wife shall be endow'd. If a Man recovers in Value against the Husband, by a \textit{Warranty ancesfrel}, yet the Wife shall be endow'd, because the same is by Force of the Warranty made, and not by Reason of a paramount Title to the Land.

Where the \textit{Husband's Lands} are evicted by a \textit{Title Paramount}, the \textit{Wife} cannot be endow'd, because the \textit{Wife} cannot be intitiled to an Infeudation, where the Husband is not intitiled to the Land itself; but if Land be recover'd by Way of Recompence in Value, either by \textit{Homage ancesfrel}, or otherwise; such Recompence binds the Land only from the Judgment of such Land being precedentely bound. By the \textit{Wife's Title} to her \textit{Dower}, she shall have her Dower out of the Lands recover'd in Value; and if the \textit{Wife} be evicted in any Part of those Lands assigned unto her for her Dower, she is intitiled to recover in Value against the \textit{Assignor}. 

Where \textit{she} shall have \textit{Dower out of Lands recovered in Value}. 

\textit{Assignor}
Assignor of Dower, be he Disleisor or Heir; because it was not an Infeudation of that Third to which she was intitled; but she shall not recover against the Heir's Grantee of the Residue of the Lands, because he did not make the Infeudation, and the Tenure is not in him, but the Reversion still continues in the Heir; and albeit, the Heir had granted the Reversion of the third Part, yet she could not recover against the Grantee, because the Heir could not grant over the Reversion, without her Attornment; and she is not oblig'd to attorn, unless such Grantee of the Reversion will enter into a Warranty to defend her Estate; and it seems that the Recompence which the Wife has, is only against the Person who made the Assignment of Dower, and doth not touch any Estate not subject to such Infeudation. The younger Son shall not assign Dower to his Wife, ex assensu patris of the Father's Land, because no Heir apparent.

The Endowment ad ostium Ecclesiae; or, ex assensu Patris, are particular Infeudations in the Life of the Husband, though to take Place after his Decease, and therefore the Wife may enter without any Assignment of the Heir, or any further Specification of the
Of Dower.

the Father, than what was contained in his original Deed; because the Tenure was erected in the Life of the Husband; and none can endow in this Manner, but the Heir apparent; because no Body else can be certainly intitled to the Demesne, and therefore they cannot make such Sort of Infeudation out of them, nor could the Heir do it, without the Assent of the Father; because the Demesnes are in him, nor could the younger Son even in Borough English do it, because there may Co. Lit. be a younger; and these Sort of Dowers were so constituted as to take Place at all Events, either in the Life of, constituted, the Father, by his Assent, or after his Death by the Infeudation of the Husband.

If the Husband enters into Religion, A Wife shall not have Dower, during his Life; for the entering into Religion is only a Separation, and no Dissolution of the Marriage; and if he were deraigned, he may enter upon his Estate again; and it seems the Ecclesiastical Law will give the Wife Alimony, during his Life; but she cannot have a separate Interest, by Way of Dower, during the Marriage.

The Wife shall have the Third Part of an Advowson for her Dower: If Dd the
the Wife do elope from her Husband, and remain with the Adulterer, she
shall lose her Dower.

But if she remain in Adultery, upon the Husband's Lands or Tenements, she shall have Dower, because the same is not an Elopement.

By the old Feudal Law, the Vassal, if he committed Adultery with his Lord's Wife, it was a Forfeit of his Feud, and consequently if the Wife of a Tenant committed Adultery, she forfeited the Infeudation of her Dower; but the subsequent Laws put it upon Elopement; because by that the Adultery became flagrant, and they would not allow secret Adulteries to be pretended after the Death of the Husband, by which the Heir blemish'd the Reputation of his Ancestor.

If the Husband be attainted of Felony by Outlawry, or otherwise, she shall lose her Dower. Vide the Common Law alter'd in this Case. 1 E. 6. c. 12.

When the Husband's Estate escheated to the Lord for Felony, or to the King for Treason, there was an End of the Wife's Dower, because the King or Lord came in by Title Paramount, and the Estate of the Husband was at an End, out of which the Infeudation was

Of Dower.

May lose her Dower by Adultery. But not if she is upon the Land.
Of Dower.

When she

could not
claim
Dower of
the Feoffee,
to be; so if the Husband had enfeoffed
any Person, and had committed Treason or Felony, she could not have claimed her Dower from the Feoffee, because the Feoffee after the Death of the Husband, held of the superior Lord; and the Estate of the Husband, which he had during the Coverture, is forfeited; but if the Husband had not committed the Treason or Felony, then she might have claim'd her Dower of the Feoffee, tho' since the Statute of Quia Emptores, the Feoffee holds of the superior Lord, because the Marriage is considered as a Charge upon the Estate to any Person that comes in the Per; as under the Conveyance of the Husband, and therefore the Wife's Dower was consider'd as an Infeudation charged on the Estate of the Feoffee; but if the Husband had committed a Forfeiture after Feoffment, it would have work'd as an Escheat of the Mesnalty, and consequently the Feoffee would have held of the Lord Paramount; and the Wife could not therefore have had Dower; but where there was no Forfeiture, the Mesnalty had a Continuance, and then the Wife's Dower was to charge the Feoffee, as a prior Infeudation arising out of the Marriage Contract.

But
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Of Dower.

But after the Statute of *Quia Emptores*, &c. this Distinction, which arose out of the Mesne Tenure, became obsolete; and therefore they thought, since the Husband could not by his Alienation, defeat the Wife's Dower, so neither ought he by his Act of Forfeiture; therefore, agreeable to this, the Statute of 1 *E. 6. c. 12.* was made to preserve the Wife's Dower where the Husband had forfeited.

If one Jointenant makes a Forfeiture of his Part, his Wife shall not be endow'd, because the Husband was never sole seised.

In that Case of Jointenancy, during the Joint Seisin, the Wife's Contract of Dower can never attach upon the Estate; because the other Jointenant comes in by the Feudal Contract, superior to the Marriage Contract, so to the Wife's Infeudation; for though the Marriage Contract had been prior to the Jointenancy, yet it will not attach upon it, because the Estate in Jointenancy is so created, that it should survive, *Et cujus est dare eiusdem disponente*; therefore, though the Marriage were precedent, yet it cannot take Place upon this Infeudation; but as soon as the sole Seisin commences, the Wife of the Feoffee shall be endow'd, and the Wife of
Of Dower.

Of the former Companion of the Alienor, who is now become Tenant in Common with the Feoffee.

Endowment ex assensu matris is good, but ex assensu fratriis, is holden not good.

And Dowment ex assensu patris, after Marriage, is good. Dowment ex assensu matris is good, because the Son is Heir apparent of her Lands; but ex assensu fratriis is not so, because one Brother cannot be said to be Heir apparent to another, seeing the Brother may marry, and have Children, and the Dowment ex assensu, &c. is good, at any Time during Marriage; because it is only ascertaining the Quantity of Infeudation, nor is there any Objection that this should over-reach a Purchaser; because when ever an Heir Apparent is married, it is sufficient Notice to enquire into the Settlement of the Land of the Father. If a Man marry a Woman in a Chamber, Dowment ad ostium Camera, is not good.

Dowment ad ostium Ecclesiae of the Moiety of the Land, is good.

And a Woman married in a Chamber, shall not have Dower by the Common Law. H. 16 H. 3. Quære of Marriages made in Chapels not consecrated, &c. for many are by Licence from
Of Dower.

from the Bishops married in Chapels, &c. and it seemeth reasonable they in such Cases, should have Dower.

Formerly they held, if they were not married at the consecrated Church, that the Wife should not be endow'd; because the Contract not being solemnly made, was no sufficient Foundation for an Infeudation; but afterwards, when the Solemnization of Marriages in consecrated Chapels were allow'd, by Licence from the Bishops; and when it came to be held that Marriages were good, tho' done in Private, and in unconsecrated Places, since they held that the Sacrament depended on the Priest, and not on the Place, they then determined (since that the Heir's Title to the Demesnes depended on the same Title as the Wife's Claim to Dower) that Dower was demandable upon such private Marriages.

And in some Places the Wife shall have the Moiety in Dower, as in Gaivelkind.

And in some Cities she shall have all by the Custom, which is call'd Free-Bench.

The Free-Bench seems to have its Rise from the same Custom as Borough-English in Villeine Tenure, the Lords having the Custom to possesse their Tenants
nants Wives, they contracted that the younger Son should inherit; but the Wife obtained the Privilege over the whole Estate, and easily compounded for Crimes of that Kind.

And Glanville fayeth, that ad ostium Ecclesiae a Man cannot assign more than the third Part in Dower; and if he do, the Wife shall be admeasured, &c. but less may be assigned by Law; yet at this Day, it seemeth that the Assignment ad ostium Ecclesiae, of more than the Third Part, is good; and she shall not be admeasured for it.

The Reason why in Glanville's Time, Endowment ad ostium Ecclesiae of more than a Third Part was not good, seems to be, because it hurted the Fruit of the Lord's Feudal Service, during the Minority, but since it subsists on a Contract made on a Condition of Marriage, it ought to prevail, though it exceeds a Third; and this is the Reason of the latter Resolution.

And the Wife shall not be distress'd in the Lands which she holdeth in Dower for the Debts of the Husband in his Life due to the King, nor in the Lands of Inheritance of the Wife, nor in the Lands, which she hath by Purchase, made by the Husband, to him and his Wife, and to their Heirs; and if she be distress'd
Of Dower.

distrain'd by the Sheriff, she may sue forth this Writ,


REX vic', &c. salutem. Cum secundum leges & consuetud' Regni nostri Anglia, Mulieres in terris & tenementitis quæ tenent in dotem de dono virorum suorum, vel quæ de hæreditate sua sint vel quæ sibi perquisiverant, pro debitis virorum suorum Reddend. distressingi non debeant, Ac Tu. B. que suit uxor A. distressingis in terris & tenementitis suis quæ tenet in dotem de Dono prædict. A. & etiam, &c. que fuerunt de hæredit. ipsius B. sicut ex querelâ sua accipimus, Tibi præcipimus quod ipsam B. in terris & tenementitis suis quæ tenentur in dotem vel sint de hæreditate sua propriâ vel ex perquisito ipsius B. pro debito ipsius A. quondam viri sui Reddend. ne distressingi fecer contra legem & consuetudinem prædict. & dissectionem si quam, &c. ei redeliberar facias, Teste, &c.

There is another Form of the Writ in the Register for Tenant in Dower, which is directed to the Sheriff, commanding him that he do not distress the Wife in those Lands which she holdeth in Dower, or of her own Inheritance for her Husband's Debt; but that Writ
Writ hath these Words in the End of it, *Dum tamen hæreses & Executores with this testamenti ipsius A. ad debita illa nobis Redenda, sufficient' non Distriung';* and by these Words in the Writ, it seemeth, that if the Heir or Executor, have not sufficient of Lands or Goods to pay the Debt, that the Wife shall be charged, and the Debt distrain'd for her Purchase in the Joint Lands made by her Husband and her, but not in her Lands of Inheritance, nor in the Lands, wherein she had Title of *Dower,* before the Husband became indebted to the King; and that the first Writ is according to Law in these Cases.

But if the *Husband* be indebted to the *King* before she hath Title of *Dower,* it seemeth to be otherwise. Vide 4 *Assise* 36, 53. *Assise.* 5 *Dyer* 224. Sir William St. Lewis's Case accordingly.

And there is another Writ in the Register for the Wife, directed to the Sheriff, that he do not distain her in Lands and Tenements which her Husband and she purchased jointly; before the Husband was indebted to the King, if they purchase the Lands jointly to them in Fee, the Lands, after the Death of the Husband, in the Hands of the Wife, and her Heirs, shall be...
be discharged of the Debt; and if she be distrained, that he deliver them again to the Wife.

And by the same Reason, tho' the Husband be before indebted to the King, that if he and she purchase the Land jointly in Fee to them, after the Death of the Husband, the Wife, and her Heirs, be discharged of the Debt.

And there is another Writ in the Register, for Tenant in Dower, directed to the Sheriff, that he do not distrain the Wife for the Husband's Debts, because that the Heir, who ought to pay the same out of the Lands, is within Age, and in Ward to the King; or because that other Tenants, who should be charged with the Payment thereof, are omitted.

And so, it seemeth, the Land of the Tenant in Dower shall be discharged, if there were other Lands of the Husband's to pay the Debts; and those Writs appear in the Register, fol. 143.

And another Writ directed to the Sheriff, that he do not distrain the Wife who holdeth Lands in Dower, for the Debts of the Husband, which he owed to the King, before the Contract of Marriage between him and the Wife purchased jointly in Fee, for the Husband's Debts, which he became Debtor for.
Of Dower.

for before the Purchase; and she may have such Writ out of Chancery, directed unto the Treasurer, and Barons of the Exchequer, commanding them that they enquire thereof; and if they find the same, that they suppress and discharge the Wife, with this Proviso of the Writ, **Proviso, quod debita illa de Execut. & Hæred. prædict. A. ac tenentibus terrarum quæ fuerunt suæ & quæ inde de Jure debent onerari ad opes nostras levand' ut justum est. Teste, &c.**

The true Distinction of these Cases is, that if the Debt to the King be subsequent to the Marriage, then the Wife's Dower, being a Contract for Infeudation, at the very Time of the Marriage, and which binds the Lands, the Assignment of Dower over-reaches the Charges, by Debt of the King; for if the Husband could not alien, during the Coverture, so as to defeat the Wife's Infeudation, he could not make any other Charges that would impeach it; and therefore the Wife there may have a general Prohibition, since the King's Debt does not affect the Lands; but if the King's Debt was before the Marriage, then the Contract for Infeudation, was subject to the Burthen of the King's Debt; and therefore
fore there she can only have a *Special Prohibition*, with an *Ita quod*, that there are Lands in the Hands of the Heir, or Chattels in the Hands of the Executor, to answer the King's Debts; for if there be not, then the King may levy the whole Debt upon the Dowress, and she must come upon the *Feoffees* of the Husband, who are equally liable to Contribution; for the Husband, by subsequent Alienation, cannot put such a Disadvantage upon the Crown, that has given him Credit, as to force the Crown to bring in every *Alienée*, in order to be paid by them; but the King has a Right to seize the Lands in whose-ever Hands he finds them, if such Person comes in subsequent to such Charges.

The Writ *De dote assignanda* lieth, where it is found by Office that the King's Tenant was seized of Tenements in Fee, or Fee-tail, the Day he died, &c. and held of the King in *Capite*, then the Wife may, and ought to come into the Chancery, and there make Oath, that she will not marry without the King's Licence; and thereupon the King may assign her *Dower* in the Chancery of those Manors and Lands.

There was to be no Marriage of the Dowress, during the Nonage of the Heir.
Heir, that was in Ward of the King, without the King’s Licence, because, by the general Constitution of the Feudal Law, every Feudatory of the Crown was to marry with Licence, that there might be no Disparagement to the Family, whilst they were under the Care of the Crown; and the Dower being assigned by the Crown, was in the Nature of a Royal Infeudation, therefore under the same Necessity to take out a Licence, and thereupon she shall have a Writ unto the Escheator, where the Lands are, which shall be thus,

Of Dower:


When she may have a Writ to the Escheator.

And when the Wife hath made her Oath in the Chancery, she may have a Writ de Dote assignanda, directed to the Escheator, to assign her Dower; and the Writ shall recite, that she hath made her Oath in the Chancery, &c. but the Use is to make the Assignment of Dower in the Chancery, and to award a Writ unto the Escheat-
or, to deliver the Lands assigned unto her; and altho' the King doth commit
the Custody of the Land unto another, yet the King may assign Dower to the
Wife in Chancery; and the shall have
a Writ to the Escheator, to deliver un-
to her that Dower, as appeareth by the
Regift. 298. a. Vide Keilw. 133. it
seems that the Committee cannot assign
Dower. *Quære tamen,* if it shall not
be good till the Heir sues Livery; and
the Writ shall be such,

R EX Escheator, &c. sal. Cum inter

Another

Write to
the Es-

cheator.
And if the Wife, after the Death of the Husband, doth come into the Chancery, and prayeth her Dower, there the King may grant a Writ unto the Escheator, commanding him to take Security of the Wife, that she do not marry without, &c. and to assign Dower unto her; and the Writ is,

**Reg. Brev. 297. a.**

If a Man dieth seised of Lands, which are holden by Knight-Service of any Manor, or otherwise, of any Abby, Bishoprick or Priory, or such as are in the King's Hands, by Reason of the Vacancy of the Abbot or Bishoprick, &c. then, if the Wife will have Dower, she ought to sue in the Chancery, to have such Writ directed unto the Escheator, to assign her Dower; but there the Wife shall not take Oath that she will not marry without the King's Consent, as appeareth by the Writ; for the Prerogative does not obtain in that Case, for the King assigns Dower, as Guardian of the Temporalities, and not as superior Lord; and the Writ is,

RÉX, &c. Præcipimus tibi, quod Writ to the Escheator, when the Lands are held of Spiritual Lords.
A. quæ fuit uxor B. defuncti, qui de Abbatia de Burgo S. Petri nuper vacant & in manus nostras exist. tenuit per servitium militare rationabilem dom. suam de omnibus terr. & tenement. &c. quæ prædict. B. vir suus tenuit de Abbatia prædict. in Baliva tua die quo obiit, & post mortem ipsius B. in man. nostras exist. &c. ut supra.

And
And the like Writ may be sued by the Wife, for Lands which her Husband held by Knight-Service of the Manor of him who is in Ward of the King, by Reason of his Nonage; but there she shall not make Oath that she will not marry, &c. no more than in the precedent Case; caus a qua, &c.

And the King may assign Lands in Dower, in the Chancery, rendering Rent yearly, &c. to the King, because the Lands do exceed the Value of the Third Part of all the Tenements, whereof she ought to have Dower; and then upon that Assignment made in the Chancery, she shall have such Writ to the Escheator.

R EX Escheatr. sal. Sciatiss, quod de terris & tenementis, quae fuerunt E. de B. defuncti, qui de nobis tenuit in capite, & qua occasione mortis ejusdem E. captata sunt in manus nostras, assignavimus M. quæ fuit uxor predict. E. manum subscripta, viz. de B. C. &c. cum pertinentiiis in Com. T. qua ad 100 libras extend. per Ann. habend. in do- tem, ipsam de terr. & tenement. predict. secundum legem & consuetud. Regni nostri Anglia, contingent. Reddend. inde nobis per Annum, ad Scaccarium nostrum tantum, quod excedit do- tem su-
Of Dower.

predictedam. Ideo tibi precipimus, quod eadem M. dict. maner. cum pertinentiis liberes habend in dote suam, in forma predicta, Teste, &c.

And if the Wife be impotent, so as she cannot come into the Chancery, to make Oath, and to demand her Dower to be assign'd by the King, if she will demand Dower, she may have a Special Writ, directed to certain Persons to take her Oath, and receive an Attorney for her, to sue for her Dower in the Chancery, &c. the Writ appeareth in the Register, f. 298.

And if the King makes Livery unto the Heir, at his full Age, saving unto the Wife her Dower, to be assign'd by the King, then if the Wife will demand Dower, she ought to sue for the same in Chancery; and if she do demand her Dower there, then shall issue a Special Writ unto the Escheator, that he may warn the Heir to be in Chancery at a certain Day, &c. and there the Wife shall have the same Day to receive her Dower, &c. and the Writ which shall issue against the Heir is,

Of Dover.


But if the King makest Livery unto the Heir, by his Writ, directed unto the Escheator, by which Writ he commandeth his Escheator to deliver Seisin unto him, of all his Lands, &c. Salvo jure cujuslibet, and he putteth not in the Writ these Words, Salva M. que suit
Of Dower.

fuit uxor, &c. rationabili dote ipsius de terr. & tenement. & ipsis contingen. per nos assignand', then, in that Case, the Wife ought to sue her Writ of Dower against the Heir, if she will demand Dower of those Lands, because the King made Livery generally of those Lands by his Writ, without any Reservation of Dower to be assign'd by him, &c.

And if the King makes a Reservation of Dower, to be assign'd by him, by his Writ of Livery, which is directed to the Escheator, if the Wife never demanded Dower, or if she have Dower assign'd to her by the King in Chancery; yet after the Assignment made by the King, the Reversion thereof is in the Heir, and he shall not sue Livery of that Reversion, after the Death of the Tenant in Dower, because the Writ of Livery doth not reserve any Thing to the King, but Assignment of Dower to the Wife; but the Writ doth command the Escheator to deliver Seisin of all the Lands; and that the Escheator doth, and by that the Livery of all the Land passeth from the King; and therefore it followeth, that when the Wife is assign'd her Dower by the King in Chancery, yet the Reversion doth remain in the Heir.

When the Words Salva dote are not in the Writ.

Where the Heir shall sue Livery of a Reversion, after the Death of Tenant in Dower.
Of Dower.

Heir, &c. for which he shall not sue a new Livery of that Reversion, after the Death of the Tenant in Dower, &c. tamen Quere of that Case.

When the King's Feudatory dies, during the Minority of the Heir, the King is to perfect the Infeudation of Dower, and therefore to make the Assignment; and tho' the King does not make the Assignment, during the Minority, yet he may reserve to himself the Power of Assignment after the Heir's full Age, and that is a Prerogative for the Benefit of the Dowrefs, since it may be better, and more compendiously done by a Petition in Chancery, and setting it out by the Escheator, than by a Suit at Law, which is subject to great Delay; and therefore the King may, if he pleases, on the Livery to the Heir, make an Exception of his Prerogative, touching the Assignment of Dower, and then the King shall assign Dower at the full Age of the Heir; but then such Assignment, being an Infeudation of the Dowrefs, in delivering the Dower out of the King's Hands; by Consequence, the Heir need not sue Livery of the Reversion; but if the Dowrefs does not Petition, then the King often granted the Livery to the Heir, without any Exception, touching his
his Prerogative of assigning Dower, and then the Dowress was put to her Suit at Common Law, against the Heir, if he did not assign, because Livery giving the whole Demesnes out of the King's Hands, into that of his Tenants, without any Reserve, the King parts with his Power of making any Infeudations of that Estate; and that must be construed to be the Intent of the Livery, where it is without any Reservation, but the Onus of the Dowress follows it, into the Hands of the Heir, where she must obtain it, as by Law she may.

And if the Wife be assign'd Dowry in the Chancery, and afterwards it is fromised by the Heir, or by Another for the King, that the Land assign'd to the Wife, is not extended to the very Value, but that the Land assigned unto her, is much more in Value than it is extended at, and that the Lands which remain in the King's Hands are extended to the very Value, &c. then the King shall send a Writ to the Escheator, to make a new Extent; and upon that Writ return'd, if it be found that the Land assign'd to the Wife, is of greater Value, &c. then upon return thereof, a Scire facias shall be awarded against the Wife, to shew E 4 cause
Caufe wherefore she fhall not be a
new endow'd, &c. and if she be warn'd,
and make Default, it feemeth she fhall
be a-new endow'd for the Default; or
if she appear, and cannot fay any Thing
contrary to that new Extent, she fhall be
endow'd a-new, fo as Part of the Land
affign'd to her, fhall be taken from her
at the King's Pleasure; or the King
may make a new Assignment of all
that she had in Dower, if he pleafeth,
and a new Writ fhall be to the Sheriff,
to deliver her Seizin thereof, fo newly
affign'd to her.

Where the Dowress
fhall have
a Scire
facias to
re-feize the
Lands.

Quare the Ufe of this Point.

So if the Dower of the Feme be
evicted upon elder Title, upon the Re-
cord brought into Chancery, by which
she was evicted, she fhall have a Scire
facias to re-feize the Lands, and to be
endow'd de novo of the Residue, tho'
after Livery made to the Heir, 43 Aff.
32. it feems also, that if Dower be af-
sign'd to the Wife, within Age, in Chan-
cery, and after Livery is made to the
Heir, she may have a Writ of Dower
of the Residue. 18 E. 3. 29.

Where the
King fhall
send a
Writ to
the Es-
cheator to
re-feize
the Lands.

And if the Wife maketh Oath that
she will not marry herself without the
King's Licence, and is endow'd upon
the fame, &c. and afterwards she marri-
eeth without Licence, &c. then the King
fhall
Of Dower.

shall send a Writ to the Escheator, that he re-seize all the Lands which she holdeth in Dower, as appeareth by the Register, and not all the other Lands which she or her Husband had in their own Right; and the Writ is,

REX Escheat', &c. Cum A. que fuit uxor J. de B. defuncti, qui de nobis tenuit in capite, que nuper sacramentum præstítit corporale quod se non meritaverit Licentia nostra super hoc príus non obtentá, ut accípimus tamen se sine tali Licentia nuper maritáss; nos contemntum hujusmodi nolentes transire impunitum, tibi præcipimus, quod si ita est, tunc terras, & tenémenta omnia quae prædicta A. tenet in dotem de Heredit. ipsius J. in Balice. tua, sine dilatione capias in manus nostras, ita quod de exitibus inde provenientes nobis respondes, ad Scaccariwm nostrum quousque nobis de foris facturum ad nos inde proveniente satisfact. fuerit, vel aliud inde duxerim. demand. Tésto, &c.
Of a Writ De Quod eī Deforciat.

The Writ of *Quod eī deforciat*, lieth where Tenant in Tail, or Tenant in Dower, or by the Curtesy, or for Term of Life, lose their Lands by Default, in a *Precipe quod reddat*, brought against them, they have not any other Remedy, if they were summon'd according to Law, &c. but this Writ, which is given by the Stat. of *Westm.* 2. c. 4. and the Writ is mention'd in the Statute.

The Writ of *Quod eī deforciat* seems to have arisen from the Inconveniency which Wives suffer'd, by a Trick, to disappoint them of *Dower*; for the Husband was wont to be impleaded by his Alienees, and lose by Default; and Judgment being given for the Alieenee to recover, on such Default of the Husband, his Seisin, he came in by Title Paramount; and therefore defeated the Seisin of the Husband, and consequently the Title of the Wife to Dower, and it was generally held that no Judgment by Default, could be defeated, but by the very Tenant; and therefore such was Mischievous, not only to Tenant in Dower, but to Tenant for Life, and Tenant in Tail, that happen'd
De Quod ei Deforciat.

pen'd to lose by Default; for they could not have a Writ of Right, because they were not Tenants in Fee, so this Statute gave them a Quod ei deforciat, by which that Recovery could not bar the Demandant's Right, but the Defendant was oblig'd to sue an elder Title; but the Issue in Tail could not have this Writ, because he had his Formedon in the Descender, by the Statute De donis; yet the Writ or Count do not suppose any Recovery. 18 H. 6. 25. is upon losing by Default in a Cassavit, Reg. Brev. 171. and the same is such,

reddat B. que suit uxor C. unum meffuagium cum pertinent. in N. quod clamat esse rationabilem dotem suam, & quod idem A. ei injuste deforciat, ut dicit, &c.

And if the Tenant in Frank-marriage bring such Writ, it is,

Quod juste, &c. reddat, &c. quod clamat esse jus & maritagium suum, & quod idem J. ei injuste deforciat.

And if Tenant in Tail. Præcipe, &c. quod clamat tenere sibi, & hered. de
De Quod ei Deforciat.

de corpore suo execuntibus, & quod prædict. A. ei injuste deforciat, &c.

It is good, without shewing whose Gift it is in his Count. 29 E. 3. 47. 30 E. 3. 31. for the Writ is brought only after a Recovery by Default of his own Seisin; and therefore who made the Gift, is not material, but Matter of Evidence only; and consequently need not be set out in the Count.

And for Tenant for Life, the Writ is,

Quod clamat tenere ad terminum vitae suæ, (and if Tenant by the Curtesy) Quod clamat tenere per legem Angliae.

That the Register is, That this Writ for Tenant by the Curtesy, is by Equity of the Statute, and in this Manner, tho' not nam'd by the 24th Chapter of this Statute; but if the Tenant in Tail, or such other Tenant, who hath a particular Estate, lose by Default, where he is not summon'd, &c. then he may have a Writ of Disceit, or a Quod ei deforciat, as he pleaseth.

If a Man lose by Default in an Action of Waste sued forth against him, he shall not have a Quod ei deforciat, for the Verdict which found the Waste.

Accord.
De Quod ei Deforciat.


And if a Man lose any Land by Default, in a Writ of Right, in a Court-Baron, he may remove that Record into the Common Pleas, and have a Quod ei, &c. upon that Record. Item, if he do not remove it; but then, it seems, that the Quod ei, &c. shall be sued in the Common Pleas, or in the Court-Baron, were he loseth the Land, as he pleaseth; tamen Quare.

Note; Upon a Recovery, by De-What no
default, in a Court-Baron, Quod ei, &c. Issue. lies in the Court of the King; and therefore it is no Issue to say, Nul tiel Record; but he ought to say no such Record or Recovery, by which it appears that the Tenements were lost by Default. 2 E. 4. 11. H. 7. 9. 6 H. 4. 3.

In the Quod ei, &c. it was enough for the Plaintiff to shew that he was Tenant for Life, by the Curtesy, or in Dower, &c. and he was not oblig'd to set forth the Recovery in his Writ or Count, but that came on the Defendant's Side; and he might plead that there was no such Record or Recovery in Abatement of the Writ; for if there was no Recovery by Default, then the Plaintiff
De Quod ei Deforciat.

Plaintiff has misconceived his Writ; for he might recover by Assize or Writ of Dower; and it would be impertinent to clog the Plaintiff's Writ or Count, with a Recovery by Default, because that is Part of the Defendant's Title; and therefore comes properly on his Side to shew; and if there be such Recovery, the Defendant must set it forth in Bar; and also his Title, as if it be by a Gift in Tail; and he had recover'd by Default, in a Formedon, he must set forth and say, that he is Paratus manuteneere jus & titulum per dominum prædict. and the Defendant, by Way of Replication, may traverse the Gift, or traverse the Seisin of the Dower. Raft. Entries 537. but the Plaintiff can never traverse the Recovery, because that is the Foundation of his own Writ; but if the Defendant traverses it in Abatement of the Plaintiff's Writ, if the Record be in a Court-Baron, then it may be remov'd by a Recordari into the Common Pleas; but if the Recovery, by Default, be in a Court of Record, it must be remov'd by Certiorari and Mittimus.

And the Quod, &c. lies against a Stranger to the Recovery; as if a Man recover's by Default, and maketh a Feoffment after, the Quod, &c. shall be brought against.
De Quod ei Deforciat. 431

against the Feoffee. 44 E. 3. 43.

accord. Dubitatnr. 11 E. 3. 30. Quod
ei, &c.

And if a Woman lose by Default, and taketh Husband, he shall have the Quod, &c. but if Tenant in Tail loseth by Default, &c. his Heirs shall not have a Writ of Quod, &c. but a For- medon, for that is his Writ of Right.

Where a Woman hath Dower assign'd to her in Chancery, for the Nonage of the Heir, who is in Ward of the King; and afterwards the Heir, at full Age sueth a Scire facias in the Chancery, to avoid that Endowment, and recovereth on that Scire facias, in Default of his Wife; now the Wife shall have a Quod, &c. in the Common Pleas, upon that Recovery.

And so if a Man recovers in the King's Bench, any Land by Default, upon a Scire facias sued out of a Record, which is there, the Tenant, who lost by Def- fault, shall have his Quod ei, &c. and shall sue the same in the Common Pleas.

If two Coparceners, Tenants in Tail, lose their Land by Default, they shall join in a Quod ei, &c. and yet the Default of one is not the Default of the other. M. 46. E. 3.

And
De Quod ei Deforciat.

And in a Præcipe quod reddat, if the Tenant for Life, or in Tail, appears, and after departs in Despight of the Court, he shall lose his Land, and yet he shall have a Quod ei, &c. for that Recovery was by Default, because he did not appear when he was demanded.

And if Tenant in Tail, or Tenant for Life, after the Mise joined in a Writ of Right, depart in despight of the Court, he loseth his Land, and there he shall not have a Quod ei deforciat, because Judgment final shall be given against him in that Case.

The Reason of the Distinction in the foregoing Cases, seems to be, because in a Præcipe quod reddat, in Entry, the Plaintiff only recovers Seisin; and thereupon, in this Case, the Quod lies, which was intended in this particular Case, instead of the Writ of Right for these Tenants; but where the Mise is joined upon the mere Right, and the Tenant departed in Despight, &c. Judgment Final was given against him; and there could be no new Writ of Right; therefore in these Cases, no new Writ of Quod ei deforciat was given in Lien thereof.

Eason and Feme.

If the Husband and Wife be seised of Lands, in Right of the Wife, for the Life of the Wife, and they lose the Land
De Quod ei Deforciat.

Land in Pracipe, by Default; yet they shall have a Quod ei, &c.

And if Tenant for Life, lose his Tenant Land in a Cessavit brought against him; by Default, yet he shall have a Quod ei, &c. by the Statute of Westm. 2 H. in a Cessavit.

5. c. 3. and M. 6 E. 3. because the Lord, in this Case, as well as in all other Cases, by Default, makes Title by the Cessier, in Maintenance of the Default.

And if the Tenant, by a Receipt upon the Default of Tenant for Life appeareth, and is receiv'd; and pleadeth; and afterwards loseth by Action tried, yet the Tenant for Life shall have a Quod ei, &c. for the Judgment is given against him by his Default.

33 E. 3. Quod ei, &c. n 17. 3 H. 41 15.

33 E. 3. Accovry 255. n 11 17.

And if the Tenant vouch, and the Vouchee will not appear, for which the Tenant loseth by Default of the Vouchee, it is to see whether the Tenant shall have a Quod ei, &c. for he loseth the Land by Default, tho' not his own; for the Statute is, Et cum temporibus retroactis, cum aliquis amissiset terram suam per defaltam; ne habeat aliud recuperandi quam per Brève de recto; and there it doth not say, Per defaltam suam; but generally; but after in the Statute
Statute, it says, *Provisum fit quod de cetero non fit eorum defalata eis ita prejudicialis, &c.* and by that, it seemeth that the Tenant ought to make Default; and it seemeth, that the Default of the Vouchee, is the Default of the Tenant, and so Default in both. *Quare hoc.*

The like. But if the Tenant vouch, and the Vouchee appeareth, and entereth into the Warranty, and afterward loseth by Default; now if the Tenant loseth by the Default of the Vouchee, he shall not have a *Quod ei, &c.* because he shall not have Judgment over in Value against the Vouchee, by Default of the Vouchee, for that is not the Default of the Tenant; *ergo Quare.*

If the Vouchee do not appear, it is the Default of the Tenant, in not bringing in his Vouchee at the Day, in order to defend his Title; therefore the Demandant recovers by Default; and by Consequence the Writ lies for the Tenant that loseth upon such Default, who becomes Demandant in a *Quod ei deforciat,* to make the former Demandant shew his Title, on which he could maintain his former Writ. Indeed if the Vouchee came in, and after made Default, no Writ of *Quod ei deforciat* lies; but such a Recovery may
De Quod ei Deforciat.

may be pleaded as a Bar to the Quod ei, &c. because the Demandant in the former Action had Judgment to recover in Value; and therefore having the Recompence by the former Judgment, he could never maintain this Writ, to recover the Thing itself; but in the former Case, Vouchee not appearing at all, there could be no Judgment for Recompence in Value; and if the particular Tenant had not this Writ, he would be without Remedy; and this is the Reason, why in a Common Recovery, Tenant in Tail cannot implead the Recoveror in a Quod ei deforciat.

And if Husband and Wife lose, by Default, the Land of the Wife, which she holdeth for Life, if the Husband dieth, she shall not have a Quod ei deforciat, but a Cui in vita; for it is a Demise made by the Husband. The Statute Westm. 2. c. 3. expressly gives a Cui in vita, in this Case, therefore not within the Statute that gives a Quod ei deforciat; and when he bringeth the Quod ei deforciat, he counteth that he was seised of the Land in Demesne, as of Freehold, or in his Demesne in Tail, without shewing of whose Lease or Gift he was seised; and he ought
De Quod ei Deforciat.

ought to allledge Esplees, in himself, &c.

We have already mention'd why he need not shew of whose Leafe or Gift he holds in the Count or Writ; but only in general say, that he himself was seised, ut supra, because to allledge it generally, was sufficient to entitle himself to the Writ, because he lays the Esplees, which shews the Seifin; and if he shews the Seifin, he need not say of whose Gift, because the Ouster is of that Seifin, which he has laid to be actually in him, and then the Defendant ought to deny the Right of the Demandant, &c. and shew how that at another Time, he recover'd the Land against the Demandant, by a Formedon, or other Action; and shall say at the End of his Plea, Quod ipse paratus est ad manutenendum jus, & titulum suum pradict. per donum pradict', &c. inde petit judicium, &c. and then the Demandant in the Quod ei deforciat, shall traverse that Title, or shew Matter to bar that Title, &c. but he shall not make a Defence, and then plead in Bar, as he shall do in the Formedon, &c.

The Meaning of this is, that in the Formedon, after the Defendant has enter'd into the Defence, that is, Venit & defend. jus suum quando, &c. & dicit quod
De Quod ei Deforciat.

*quod præd* the Plaintiff *Actionem suam versus eum habere non debet quia dicit &c.* and so shew Matter to defend himself from the Plaintiff's Action.

But in *Quod ei deforciat*, the Defendant, by Way of Bar, is to set up his former Recovery, by Default, and protect that Recovery by Title, and so to aver the Defence of that Title, whereby he recover'd; therefore it would be very improper for him to say *Actionem suam versus eum habere non debet*, because the Tenant has expressly given the Action, where there was a Recovery by Default; and to begin his Defence in that Manner, would be an Averment against the Statute.
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