REPORTS

OF SPECIAL

CASES

Argued and Decreed in the

Court of Chancery,

In the Reigns of

King *Charles* I. King *Charles* II.
and King *William* III.

None of them ever before printed.

Published by W. NELSON,
of the *Middle-Temple*, Esq;

Ipsæ etenim Leges cupiunt ut jure regantur.

In the *SAVOY*:

Printed by Eliz. Nutt, and R. Golling, (Assignees of *Edward Sayer* Esq;) for B. Lintott at the *Cross-Keys*, R. Golling at the *Mitre* and *Crown*, J. Pemberton at the *Buck* and *Sun*, in *Fleet-street*; and T. Ward in the *Inner-Temple-Lane*. MDCCXVII.

THE PREFACE.

IN former Ages, and until the Fall of Cardinal *Wolſey*, the Lord Chancellor of *England* was uſually a *Biſhop*, or ſome other Eccleſiaſtical Perſon, as a *Dean* or *Archdeacon*; and ſometimes the Great Seal was deliver'd to one of the King's Chaplains, inſomuch that the Learned *Gloſſographer* tells us, there have been 160 *Clergymen* advanced to this Dignity; and that until the 26th Year of the Reign of King *Henry* the Eighth, all the Maſters of the *Rolls* were Churchmen.

The chief Buſineſs of the *Court of Chancery*, at that Time, was to mitigate the Rigour of the Common Law, and *Clergymen* were thought ſufficiently qualified for that Purpoſe, who gave Relief according to their ſeveral Opinions, in Caſes where the Law ſeemed to bear too hard upon the Complainants; and becauſe they formed their Judgments by no ſettled or eſtabliſhed Rules, therefore we have no Reports of their Decrees.

But when the Buſineſs of that Court encreaſed, and Biſhops could not attend the Multiplicity of Cauſes there depending, becauſe of other neceſſary Avocations for Men of that Order, then another Set of Men, bred up in the Study and Practice of the Common Law, were made Judges of this Honourable Court; and ſoon afterwards Equity became artificial Reaſon, and hath ever

ever ſince ſuch a Mixture of Law in it, that it would be much eaſier now for a Lawyer to preach, than for a Prelate to be a Judge of that Court.

And ſince moſt decretal Orders are now founded on certain Rules and Precedents, and many intricate Caſes are there determined; I think the Reports of ſuch Caſes would be as neceſſary as any other Reports now extant, eſpecially when there is ſuch an eminent Judge of the Court as at this Time, who is as impartial in his Decrees, as he is conſpicuous in his Judgment, who never had any Predeceſſor in that Place ſuperior to him in all thoſe excellent Qualities which are requiſite for ſo great a Miniſter, (tho' the learned Lord *Verulam* might be equal to him in ſome,) and who was placed in this high Court for the publick Good, by a Prince who is the true Defender of the

Faith, and of the Liberties of his Subjects at home, and a Terror to his Enemies abroad.

Having given this ſhort Account, why we have ſo few Reports of Decrees made in this Honourable Court, and the Neceſſity of more, it may be expected that I ſhould ſay ſomething of the following Caſes, moſt of which were tranſcribed from the fair Manuſcript of a late Attorney-General, and are ſuppoſed to be collected by him for his own Uſe, amongſt many more which have been copied from that very Manuſcript, and probably by ſome of his Clerks; for I find them already printed in the firſt Reports which were publiſhed of this Nature. Some of the later Caſes have been added by one who formerly attended at the Court, which will be found as good, and the whole as uſeful as any of the *Chancery*

Caſes

Caſes already publiſhed, and may furniſh the Reader with an agreeable Mixture of Profit and Delight.

To conclude: What we have ſaid in the Title Page, that *None of theſe Caſes were ever before printed*, may not, perhaps, be literally true as to one or two of them; yet the Reader is deſired to take Notice, that tho' the Cauſes are between the ſame Parties, yet the Points here argued and decided have been totally omitted by the former Reporters of them: So that not having interfer'd with the Accounts they have given us, our Reports of thoſe Caſes may truly be ſaid to be new, and the rather, becauſe the ſame Cauſes, as reported by us, were depending in other Courts.

Names of the CASES contained in the following Reports.

A.

B.

Bret-

C.

D.

E.

F.

G.

Hard-

I.

K.

Names of the Caſes.

L.

M.

N. *Need-*

Names of the Caſes.

N.

O.

P.

R.

Names of the Caſes.

S.

T.

V.

W. *Wa-*

W.

R E-

REPORTS

AND

CASES

Taken and adjudged in the

Court of Chancery, &c.

Eaſter Term, 1 *Car.* 1.

Okeham verſus *Hall.* Lord *Coventry.*

THE Defendant ſtood in Contempt for not anſwering the Plaintiff's Bill, and thereupon a Sequeſtration was granted, and the Sequeſtrators were ordered to pay the Rents to the Plaintiff towards the Duty demanded by his Bill; and at the ſame time that the Sequeſtration was granted, it was likewiſe decreed, *Term Paſc. 1 Car. 1*

that the Bill ſhould be taken *pro Confeſſo*, unleſs the Defendant ſhewed Cauſe within a certain Time limited for that Purpoſe by the Court. But this muſt be underſtood (as the Practice then was) where the Defendant had appeared; for if he did not appear at all, but ſtood out all Contempts to a Serjeant at Arms, no Decree can be had againſt him, or the Bill taken *pro Confeſſo*, for that muſt be after an Appearance, and when he ſtands on Contempt for want of an Anſwer.

Jackſon verſus *Barrow.* Lord *Coventry*, *Paſch.* 2 *Car.* 1.

2 *Car.* 1. THE Plaintiff being an Aſſignee of an Extent, exhibited his Bill againſt the Defendant who was Tenant of the Lands, to enforce him to attorn Tenant to him, and to pay the *Arrears of Rent* which were in his Hands, and to deliver unto him a true Note in Writing of the Date of the Deed, and for what Term of Years he had it in Leaſe, and under what Rent reſerved, but not any of the Covenants or Conditions contained therein. As to the Arrears of Rent, the Court deſired to ſee Precedents before the Decree was made, and thereupon a Precedent was pro-

produced in point between *Shute* and *Mallery*, 5 *Jac.* r. and in the principal Caſe a Decree was made accordingly.

Perriman verſus *Gorges*. 3 *Car.* 1.
Lord *Coventry*.

THE Father, in Conſideration of Money borrowed of the Plaintiff, did promiſe to ſurrender certain Copyhold Lands to him for and during the Term of two Lives in Reverſion, to commence after an Eſtate for Life then in being, and he ſent a Note under his Hand to the Steward of the Court for that purpoſe; But before the Plaintiff was admitted, the Father died: The Defendant being his Heir at Law, was deſired to make the Surrender, that the Plaintiff might be admitted; which he promiſed to do, and took a farther Sum of Money of the Plaintiff for that purpoſe; but before the ſame was done, he ſold the Reverſion of the ſaid Copyhold Eſtate for a valuable Conſideration: And yet the Plaintiff was relieved, for the Defendant was decreed to ſurrender according to the Agreement of the Father in his Life-time. 3 *Car.* 1.

Markall verſus *Hyde* Mil. & alios.
Paſc. 3 *Car.* 1. Lord *Coventry.*

Term Paſc. 3 *Car.* 1.

ONE *Green* being ſeized of a Manor to which the Advowſon of the Rectory was appendant, did, in Conſideration of 50 *l.* grant the next Avoidance of the Church to one *Stockman*, his Son-in-Law, and afterwards by Deed enroll'd he ſold the ſaid Advowſon to one *Pool* and his Heirs for the Sum of 100 *l.* and covenanted that it was free from Incumbrances, except the Grant of the next Avoidance as aforeſaid.

Afterwards *Pool* granted the Advowſon to the Plaintiff *Markall* and his Heirs; but the Defendant *Hyde* had before that time purchaſed of *Green* the aforeſaid Manor to which this Advowſon was appendant; but the Advowſon was not mentioned in the Purchaſe-Deed, only the Manor *cum Pertinentiis*: There was a Schedule annexed to the Deed to this Effect, (*Viz.*) One Grant of the Advowſon dated, *&c.* (naming a Date long before the Date of the Deed to *Pool*) excepted: And in the Fine levied by *Green* to *Hyde*, the Advowſon was ſpecially named.

The Defendant by his Anſwer ſet forth, That he had contracted with *Green*

both for the Manor and the Advowſon, and it was proved that he did know both of the Grant of the next Avoidance to *Stockman*, and of the Grant of the Advowſon to *Pool*. And now the Grant of the next Avoidance being by ſeveral meſne Aſſignments come to the Defendant *Steward*, and the Church being void by the Death of the Incumbent, and *Steward* intending to be preſented, the Defendant *Hyde* affirmed, that the Right of Preſentation was in him by the Purchaſe of the Manor and the Advowſon; and *Steward* unwilling to contend the Right, was perſwaded not to inſiſt on his own Title, but to accept of a Preſentation from the Defendant *Hyde*, which was done accordingly; and afterwards *Steward* was inſtituted and inducted, and ſo the Church became full of him.

Pool not knowing but that *Steward* the Incumbent was preſented by Vertue of the Grant of the next Avoidance as aforeſaid, did ſell the Fee-Simple of the ſaid Advowſon to the Plaintiff *Markhall* and his Heirs, who exhibited his Bill againſt the Defendants, to be relieved againſt the Uſurpation of *Hyde*, and to prevent any Title that might be made thereby when the Church ſhould become void of *Steward*; and it was de-

creed, That no Benefit ſhould be had by this Uſurpation, ſo as to defeat the Plaintiff's Title, neither ſhould it be given in Evidence againſt him at a Tryal at Law; but that the Plaintiff ſtanding upon the Validity of his Grant of the Advowſon, and the Defendant *Hyde* inſiſting upon the Strength of his Conveyance of the Manor, and alſo of the Advowſon, the Right ſhould be tried at Law as if no ſuch Uſurpation had been, without Prejudice to the Title on either Side; and a Tryal was ordered accordingly.

Norgate verſus *Ponder*. *Paſc.* 3 *Car.* 1. Lord *Coventry*.

Term. Paſc. 3 *Car.* 1.

AN Award was obtained by Fraud, by which the Arbitrators did award, That one of the Parties to the Submiſſion ſhould ſeal and deliver a Bond to the other after general Releaſes firſt given: All which was done purſuant to the Award, and upon a Bill to be relieved it was decreed, That the Bond to ſtand to the Award, and the Arbitration it ſelf, and the Releaſes and the other Bond executed by the Parties, ſhould be brought into Court and cancelled.

Nelſon

Nelſon verſus *Nelſon.* 4 *Car.* 1
Lord *Coventry.*

THE Defendant being Tenant of the Manor of *H.* was employed by the Plaintiff to purchaſe the ſame for him, which he the ſaid Defendant agreed to do; but, contrary to the ſaid Agreement, he purchaſed the ſame in his own Name, but was afterwards perſwaded to let the Plaintiff into the Purchaſe, which was done by Deed mutually executed between them; but in that Deed there were ſeveral Omiſſions of many Things compriſed in the Purchaſe-Deed, and thereupon the Plaintiff exhibited his Bill for Relief againſt the ſaid Omiſſions, and accordingly it was decreed. 4 *Car.* 1.

Lucas verſus *Joſeph Pennington, William Pennington, Wright* and *Noble.* Lord *Coventry,* 5 *Car.* 1.

THE Father of *Wright* the Defendant being Tenant of a Copyhold Eſtate, held of *Joſeph Pennington* as Lord of the Manor, mortgaged the ſame to *Lucas* the Plaintiff's Father, upon Condition to be void upon Payment of a Sum of Money, which not being paid 5 *Car.* 1.

on the Day, *Lucas* the Father entered, and deviſed the ſame to the Plaintiff, and died ſeiſed: After whoſe Death the Plaintiff enjoyed it, and the Lord demanding a Fine, he conſented that the Lord ſhould have the Profits for a certain Time in Satisfaction of the Fine, who enjoyed the ſame accordingly. But he having received out of the Profits more than the Fine amounted unto, refuſed to deliver the Poſſeſſion to the Plaintiff, pretending that the Eſtate was forfeited, in regard that *Lucas* the Plaintiff's Father was never admitted, and had not paid any Fine; and *William Pennington*, whilſt his Father *Joſeph* was in Poſſeſſion under the aforeſaid Agreement to take Profits in Satisfaction of the Fine, procured *Wright* the Defendant to execute a Releaſe to him, but without any Conſideration expreſſed, and then he conveyed the Premiſſes to his Father, who conveyed the ſame to *Noble*, another of the Defendants, and all this without any Conſideration.

Upon a Bill exhibited, the Defendant *Wright* anſwered, That the Mortgage was at firſt unduly obtained from his Father upon his Death-bed, and a greater Sum was expreſſed than was really borrowed, and that notwithſtanding the ſaid Fraud, the whole Money was really ten-

tender'd at the Day, and no body was there to receive it. But *Wright* the Father having made no Entry into his Eſtate again after the Tender, and *Wright* the Son having executed a Releaſe to *William Pennington*; the Court held, That tho' ſuch Releaſe had extinguiſhed his Entry, yet the ſame ſhould enure to the Benefit of him who had the former Right, in Truſt only and for the Uſe of the Plaintiff, and decreed the Poſſeſſion to him accordingly againſt the Defendants, and all claiming under them; and likewiſe that *Joſeph Pennington*, the Lord of the Manor, ſhould accompt for the Profits ſince his Entry, deducting only his Fine.

Moyle verſus Dom. *Roberts.* Lord *Coventry*, 5 *Car.* 1.

ABout 18 Years before the Bill filed, *Moyle* the Father became bound with one *Roſecarrock* in a Bond of 200 *l.* conditioned for the Payment of 100 *l.* to the Lord *Roberts* the Defendant at a certain Day long ſince paſt. Afterwards the Defendant purchaſed Lands of the ſaid *Roſecarrock* to the Value of 500 *l.* which Purchaſe was made about four Years before *Roſecarrock*'s Death. After his Death, the Plaintiff took out Ad- 5 *Car.* 1.

Adminiſtration to him, and being ſued upon this Bond, exhibited his Bill for Relief; and in regard of the Antiquity of the Bond, and for that *Roſecarrock* himſelf was never ſued in his Life-time, it was preſumed that the Defendant did deduct the Debt out of the Purchaſe-Money, and notwithſtanding there were no Proofs made of the Payment of the Money, the Court decreed that the Defendant ſhould be reſtrained from proceeding at Law on the Bond.

Fleetwood verſus *Charnock.* Lord *Coventry.*

THE Plaintiff and Defendant were jointly bound for a third Perſon, who died leaving no Eſtate; the Plaintiff was ſued and paid the Debt, and brought his Bill againſt the Defendant for Contribution, who was decreed to pay his proportionable Part.

Gawle verſus *Lake* Mil'. Lord *Coventry.*

THE Bill was to eſtabliſh certain Cuſtoms of Tything within a particular Pariſh, the Plaintiff alledging that there were ſuch Cuſtoms, and ſetting them forth at large in his Bill.

The Defendant by his Anſwer denied the Cuſtoms, and alledged that it was not

not proper for a Court of Equity to determine whether there were any ſuch Cuſtoms or not, that the Bill was in nature of a Prohibition at Common Law, and in a Caſe where ſuch Prohibition had never been granted, or the Cuſtom tried, and therefore the Bill was diſmiſſed.

Gifford verſus *Gifford.* Lord *Coventry*, 5 *Car.* 1.

5 *Car.* 1.

Gifford the Father being poſſeſſed of a Leaſe for Years, (taken in the Name of another Perſon in Truſt for himſelf, but determinable upon his own Life, and the Life of his Wife) did afterwards purchaſe the Inheritance; and upon the Marriage of his Son with the now Complainant, he ſettled an Annuity of 50 *l. per Annum* upon her, to be iſſuing out of the Premiſſes during the Lives of him the ſaid *Gifford* and his Wife, in caſe the ſaid Complainant ſhould ſurvive her Husband, and conveyed the Inheritance to the Defendant, and died; his Son died, the Widow of *Gifford* the Father ſtill living: And now the Son's Widow exhibited her Bill againſt the Defendant to have the Annuity decreed to her, and the Arrears ever ſince the Husband's Death, and

likewiſe againſt the Perſon in whoſe Name the Leaſe was taken, who to avoid the Annuity had aſſigned his Intereſt to the ſaid Defendant, who claim'd the Lands by Vertue of a Grant from *Gifford* his Father, and the ſame was produced not cancelled; but it was decreed, That neither the ſaid Grant or Leaſe ought to prejudice the Plaintiff, but that ſhe ſhould have the Annuities and the Arrears, and that the Lands ſhould be liable to a Diſtreſs for the ſame.

Moor & alii verſus Com. *Huntington.* Lord *Coventry*, *6 Car.* 1.

6 Car. 1. THE Defendant being Lord of ſeveral Manors, did refuſe to hold Courts, and grant Admittances, *&c.* whereupon the Copyhold Tenants exhibited their Bill to be relieved, and it was decreed, That the Defendant and his Heirs ſhould, from Time to Time as Occaſion ſhould require, procure Courts to be held for the ſaid Manors, and ſuffer the Plaintiffs and their Heirs to make Surrenders to ſuch Perſons, and for ſuch Uſes, as the Copyholders ſhould limit and direct, and that the Surrendrees ſhould be admitted accordingly.

Floyer

Floyer verſus *Strachley.* Lord *Coventry*, aſſiſted by all the Judges, 7 *Car.* 1.

THE Plaintiff exhibited his Bill, to be quieted in the Poſſeſſion of certain Lands which he had purchaſed of the Daughter of one *Pyke*, he being now about 20 Years after his ſaid Purchaſe diſturbed by one *Stephen Pyke*, who pretended a Title as Heir at Law to *Pyke*, and born of the ſame Father and Mother with the Daughter, which was proved by ſeveral Witneſſes, and thereupon he had recovered ſome Verdicts at Law; but the Place where he was pretended to be born was a mean Houſe, and but ſeven Miles diſtant from the Dwelling-houſe of his Mother: And foraſmuch as thoſe Verdicts were grounded on Depoſitions formerly taken in this Court, where the Record of the Bill and Anſwer could not be found, and the Witneſſes which were produced at the Tryal were of indifferent Credit; and becauſe on the Death of the Father an *Office* was found, whereby the Daughter was returned Heir, and no Claim was made by the Son for ſeveral Years after, and for that ſeveral Perſons, as the Lord Chief Juſtice *Popham*, and others, claimed under the Title of the Daugh- 7 *Car.* 1.

Daughter: And at the laſt Tryal of her Title, the Jury were ſubſtantial and credible Perſons, and declared, that for 20 Years and upwards the Daughter was reputed the right Heir, therefore the Poſſeſſion was decreed to the Plaintiff.

Spyer verſus *Spyer*. Lord *Coventry*, 7 *Car.* 1.

7 *Car.* 1. THE Bill was to make Partition, and ſettle Boundaries, between Lands which were Freehold, and other Lands held in *Borow-Engliſh*. The Defendant appearing, it was ordered that a Commiſſion ſhould be directed to certain Perſons, as well to take the Defendant's Anſwer, as alſo to ſet forth the Meets and Bounds, and to return Terrars and Boundaries which was done accordingly, and by Conſent of the Parties the Court decreed the Boundaries, and that the ſame ſhould be ratified and confirmed to all Intents and Purpoſes, as if the ſame had been judicially pronounced upon a full Hearing in Court.

Inter

Inter *Theophilum* Dom. *Suffolk*, & *Richardum Greenvill* Mil. & Bar. & *Mariam* Ux. ejus, Def. Lord Keeper, Juſtice *Hutton*, Juſtice *Whitlock*, 26 *Julii*, 7 *Car.* 1.

THE Defendant the Lady *Greenvill*, whilſt ſole, had a Decree againſt the Earl of *Suffolk* for 600 *l. per Annum*, againſt which Decree the Earl prayed to be relieved, in regard there was a verbal Agreement between Sir *Richard Greenvill* and the ſaid Lady before Marriage, That ſhe ſhould have the ſole Diſpoſal of the ſaid 600 *l. per Annum*: That accordingly, before the ſaid Marriage, ſhe by Deed aſſigned the Benefit of that Decree to one *Cutford*, and that afterwards ſhe and *Cutford* releaſed the ſame to the ſaid Earl; but not having the ſaid Deeds to produce, and alledging that Sir *Richard Greenvill* had got and cancelled the ſame, which he denied, it was ordered that he and *Cutford* ſhould be examined upon Interrogatories to diſcover the ſaid Deeds, or Copies thereof; and accordingly they were examined: But the Matter being not cleared by ſuch Examination, or what were the Contents of ſuch Deeds, the Court were all of Opinion, that there 7 *Car.* 1.

there was no ſufficient Proof to bar Sir *Richard Greenvill* from the Benefit of the ſaid Decree, for that the Arrears of the ſaid 600 *l. per Annum* being in its own Nature a *Thing in Action*, and ſo to be meerly recover'd by the Proceſs of this Court, cannot in Law be aſſigned over to another. So that if the Aſſignment to *Cutford* had been proved, (as it was not) it would have been a void Aſſignment in Law, and ought not to be ſupported in a Court of Equity, eſpecially where no Conſideration appears to make it better in Equity than it is at Law.

They were all of Opinion, that the verbal Agreement of Sir *Richard Greenvill*, in Conſideration of the ſaid Marriage, was to ſubvert both the Grounds of Law, and the Right which was veſted in him by the Inter-marriage; and therefore if ſuch Agreement is not ſettled by ſome legal Aſſurance to make it binding in Law, it is not fit to be maintained in a Court of Equity, in order to give a Feme Covert ſuch a Power as is now pretended.

'Tis true, *Things in Action* are ſometimes turned over by a Letter of Attorney; but if it had been ſo in this Caſe, yet preſently by the Inter-marriage the Letter of Attorney had been revoked and

and determined, and all Covenants, Promiſes and Agreements, made by the *Husband* to his *Wife* before Marriage, relating to the Diſpoſal of his Eſtate, would be extinguiſhed by the Marriage: and therefore if *Cutford* had an effectual Letter of Attorney executed to him, and the ſame could be produced, yet he could not in his own Name ſeal ſuch a *Releaſe* to the Plaintiff as he had done; the Contents whereof appearing only on his ſingle Teſtimony, he ought not to be admitted as a Witneſs, for he was a Party intereſted, and might juſtly be ſuſpected of Partiality, becauſe of former and continued Differences between him and Sir *Richard Greenvill*: And therefore the Court held it dangerous to admit the Sufficiency of a Deed to be proved by the ſingle Oath of ſuch a Witneſs, eſpecially ſince the Conſtruction of Deeds was the proper Office of the Court of Chancery, but the Fact relating to the executing ſuch Deeds was proved by Witneſſes: So the Bill was diſmiſſed, and Sir *Richard Greenvill* had Liberty to proſecute the ſaid Decree againſt the Plaintiff.

Maynard & al. verſus Dom. *Middleton.* Lord *Coventry*, 8 *Car.* 1.

8 *Car.* 1. THere being ſeveral Differences ariſing between the Plaintiff and Defendant, and they having petitioned the King therein, His Majeſty recommended it to the *Lord Keeper* to compoſe the ſame, who having heard what was alledged on both Sides, made a Writing in nature of an Award, and *decreed* the ſame without Bill or Anſwer; and in the decreeing Part it was mentioned, that upon Reference from His Majeſty, and upon the Submiſſion of the Parties, it was *ordered and decreed*, That all the ſaid Parties, their Heirs, Executors and Adminiſtrators, ſhould juſtly obſerve and perform all and ſingular the Articles, Clauſes and Things therein mentioned, according to the true Intent and Meaning of the ſaid *Order and Decree.* And in ſome Places before the decreeing Part 'tis only ſaid, that it was *ordered ſo and ſo*; in other Places, 'tis *ordered and declared*; and in other Places, 'tis *ordered, adjudged and declared*: But not long afterwards the Parties agreeing, did petition the Court to decree it; which was done accordingly.

Vendall & al. verſus *Harvey.* Lord *Coventry*, 8 *Car.* 1.

ON the ſame Day in which the Plaintiff's Cauſe was to be heard, his Counſel, as they were going to the Bar, were ſerved with an *Injunction* out of the *Exchequer*, and the Court being acquainted therewith, the Defendant was ordered to attend, who was ſo far from denying the Service of the Injunction, that he owned it was done by his Direction. Thereupon the Court appointed two Orders made by the Lord Chancellor *Elleſmere* to be read, by which it appeared, that an Officer of the *Cuſtom-houſe* being ſerved with a *Subpœna* to anſwer a Bill, he refuſed, and procured an *Injunction* out of the *Exchequer* to ſtay the Suit; but it was ordered, that the Plaintiff ſhould and might proceed in the Suit, notwithſtanding ſuch *Injunction*, and the Party was committed for ſerving the ſame, the Court taking it to be a great Derogation to their Authority: And therefore the Court asked the Defendant, If he would waive his Injunction, and proceed in the Cauſe? To which he anſwered, That he deſired Counſel might be aſſigned to him: Which was done 8 Car. 1

accordingly, and another Day was appointed for Counſel to be heard on both Sides; at which Day the Defendant inſiſted, that it was not in his Power to waive the Injunction, and thereupon the Court examined him on Interrogatories, how it was that he had not Power in his own Suit, he coming in on a Contempt, and ordered the Plaintiff's Counſel to open the Cauſe; which was done: And the Defendant ſtill inſiſting on the Injunction, the Court decreed, That they would not ſuffer it; for if it was pretended that the Defendant being a *Receiver*, ought to be ſued in his *proper Court*, and not elſewhere, that had been over-ruled by many Precedents upon great Deliberation in the time of Sir *Nicholas Bacon*, Sir *Thomas Bromley*, the Lord *Elleſmere*, and other Chancellors and Keepers of the Great Seal: And in the preſent Lord Keeper *Coventry*'s time, one *Clerke* was ruled to anſwer after he had pleaded the Privilege of the *Exchequer*, and did anſwer accordingly; and this Order was made upon Conference with Sir *John Walter* Chief Baron, and the reſt of the Barons of the *Exchequer*: And the Court declared, That if the *Privilege of the Exchequer* was to be allowed where the Suit was againſt an *Accomptant* only, yet

there was no Colour of allowing it where the Suit was againſt another Perſon not privileged, as in this Caſe.

As And whereas it was objected, That the *Exchequer* had the Priority of Suit in this Cauſe; it was anſwered, That did not appear, and that the Plaintiffs here were Strangers to any Suit in the *Exchequer*; and there were many Precedents, where then Defendant in one Court of Equity hath been admitted to a croſs Suit in another Court of Equity, without expecting the Event of the firſt Suit; for if the Plaintiff in the firſt Suit ſhould diſcontinue or be diſmiſſed, the Defendant hath no Help there but by a croſs Suit, and the Court of *Exchequer* hath allowed new Suits to be brought there concerning Matters which have been judicially determined here: And this Court hath done the like by the *Exchequer*. And as to the Objection of the Inconveniency, to have the ſame Matters, and between the ſame Parties or others, to depend in ſeveral Courts at the ſame time, becauſe the Courts might differ in Opinion, and the Judgments claſh; it was anſwered, That where any Matter of Difficulty ariſeth in a Cauſe which hath been heard in the *Exchequer*, and afterwards came into this Court, that the *Chancery*

calleth ſome of the Barons to aſſiſt, and the Court declared that Privilege doth not hold, unleſs all the Defendants were privileged; nor then neither; for as this Court doth not hinder the Proceedings in the *Exchequer*, ſo that Court is not to obſtruct the Proceedings here by any Injunction. Therefore the Plaintiff ſhall be at Liberty to proceed; and the Defendant's Counſel were enjoined by this Court not to move in the *Exchequer*, or to do any thing to hinder the Proceedings here, for which Purpoſe the Plaintiff may take an Injunction. And as concerning the Contempt of the Defendant, and the Puniſhment thereof, the Court adviſed farther, and ordered him to attend *de Die in Diem*.

Meechett verſus *Bradſhaw*. Lord *Coventry*, 9 *Car.* 1.

9 *Car.* 1. THE Plaintiff was bound for the Defendant in ſeveral Sums of Money, and in order to indemnify him, the Defendant by Letter of Attorney aſſigned to him ſeveral Debts, and covenanted not to *releaſe* the ſame, or any Part thereof: Afterwards the Defendant being a Tradeſman became a Bankrupt, and the reſt of his Creditors came in and

and compounded, and were paid out of the Reſidue of his Eſtate not aſſigned to the Plaintiff by the Letter of Attorney as aforeſaid.

Afterwards the Defendant intending to receive ſome of the Money which he had aſſigned to the Plaintiff before he had committed any Act of Bankrupcy, and combining with ſome of the Creditors who had compounded to ſhare the Money which he had aſſigned to the Plaintiff, he exhibited his Bill to be relieved, and to have the Letters of Attorney confirmed; and the Court being ſatisfied that the Aſſignment was made *bonâ fide*, and before any Act of Bankrupcy, did decree, That the Creditors who had compounded ought not to claim or have any Share of the Money or Debts aſſigned, and that the Letters of Attorney ſhould be confirmed to the Plaintiff againſt the Defendant, and all claiming under him.

Ford verſus *Stobridge.* Lord *Coventry.*

THE Plaintiff was bound as Surety for the Defendant, and the Debt was recovered againſt him, and he having no Counter-bond, brought his Bill to recover the Debt and Damages againſt the Defendant, which was decreed accordingly. *Quod nota.*

Marſton verſus *Marſton.* Lord *Coventry,* 8 *Car.* 1.

8 *Car.* 1. THE Father both of the Plaintiff and the Defendant being ſeized of a Copyhold Eſtate, ſurrender'd the ſame to the Uſe of his Will, and deviſed it to the Defendant, who was his eldeſt Son, paying his Debts, and ſo much Money to the Plaintiff his Siſter for her Portion when of Age; but if he failed to pay the Portion, then ſhe was to have as much of the Copyhold Eſtate as did amount to the Value of her Portion. She afterwards came of Age, and the Defendant refuſed to pay the Portion. Whereupon the Homage allotted to her as much of the ſaid Copyhold Lands as they adjudged to be the Value of her Portion; but the Defendant being admitted, refuſed to ſurrender the ſame.

ſame. Thereupon the Plaintiff exhibited her Bill, to have her Portion, or the ſaid Allotment, decreed to her, and the Court gave Day for Payment of the Portion; and if he failed, then he was decreed to ſurrender the Allotment to the Uſes declared in the Will.

Mauter & Ux. verſus *Fotherby*. Lord *Coventry*, 10 *Car.* 1.

Bill.

LEgacies were deviſed to be paid to Children when they came to their ſeveral Ages of 21 Years: Some of them who were of Age applied to this Court for their Legacies; but the Court being not ſatisfied whether the Eſtate would be ſufficient to diſcharge all the Legacies to all the Children, ſome of them having not then attained their Ages of 21 Years, did decree, That thoſe Legatees who were of Age, ſhould receive their reſpective Legacies, but that they ſhould make Retribution reſpectively out of the ſame, if the Court ſhould think fit. So that the younger Children who were not of Age, and who were to be paid laſt, might have a proportionable Part and Share, in caſe the Eſtate ſhould not be ſufficient to anſwer the full of every Legatee's Part. 10 *Car.* 1.

Hut-

Hutchings verſus *Strode.* Lord *Coventry*, 10 *Car.* 1.

10 Car. 1. SIR *Thomas Phillips* being ſeized *(inter alia)* of ſeveral Parcels of Land, for which the Plaintiff ſeeks Relief, did *Anno* 19 *Jac.* leaſe the ſame to certain Perſons for 500 Years, and afterwards, *viz. Anno* 22 *Jac.* grant the ſame by *Copy of Court-Roll* to the Plaintiff, who was admitted and paid a Fine, and held the ſame for Lives. Afterwards *Strode* the Defendant purchaſed the Manor-houſe and the *Demeſnes*, and got the *Leaſe* aſſigned to Perſons in Truſt for himſelf, and then claimed theſe Lands as Parcel of the *Demeſnes*, alledging that the *Copyhold* Eſtate was deſtroyed; and the Plaintiff claiming them as *ancient Copyhold*, the Court was of Opinion, That his *Grant* being before the Defendant *Strode*'s Purchaſe, ought not to be prejudiced by the Leaſe, eſpecially if the ſame were *ancient Copyhold* Lands, and not Parcel of the *Demeſnes*: However directed a Tryal at Law, whether the Lands were *Copyhold* or not, and the Leaſe not to be given in Evidence at the ſaid Tryal, and there was a Verdict that the Lands were not *Copyhold.* But it appearing to the Court that the Lands had

had been *ancient Copyhold* Lands; and for that Sir *Tho. Phillips*, in a Survey of the Manor, had mentioned the ſame as Parcel of the Copyhold of the ſaid Manor; and for that the Plaintiff had for ſeveral Years enjoyed the Lands quietly as *Copyhold*, notwithſtanding the ſaid Leaſe; and it alſo appearing that the Plaintiff's Eſtate was known to the Defendant at the time he purchaſed the *Demeſnes*, and that he bought it but as an Eſtate in *Reverſion*: Therefore the Plaintiff was decreed to hold it according to his *Grant*, and the Defendant was ordered, notwithſtanding the Verdict, to pay good Coſts both here and at Law.

Lake verſus *Prigeon.* Lord *Coventry*, 9 *Car.* 1.

THE Defendant being *Regiſter* to the Biſhop of *Lincoln*, did for a Sum of Money grant the *Deputation* thereof to the Plaintiff for a certain Term of Years, who enjoyed the ſame for ſome time, but was turned out before the Term expired; and the Defendant having got the Agreement in Writing, refuſed to deliver it to the Plaintiff, ſo that he could have no Remedy at Law, and therefore exhibited his 9 *Car.* 1.

his Bill for Relief here. To which the Defendant demurr'd, and for Cauſe ſet forth the Statute 5 & 6 *Ed.* 6. prohibiting the *Sale* of any *Office of Juſtice*, or the *Deputation* thereof, and averred that the *Office of Regiſter* concerned the Adminiſtration of Juſtice: And for that the Plaintiff by his Bill had confeſſed that he had given Money, or contracted for it, contrary to the Meaning of the Statute; therefore he was diſabled to execute the ſame, and the Demurrer was held good.

Gwynn verſus *Edmonds.* Lord Keeper *Coventry.*

Rowland Owen being ſeized in Fee of the Premiſſes in Queſtion, made a Leaſe thereof to the Defendant *Edmonds* for 21 Years, and afterwards granted the Reverſion to the Plaintiff *Gwynn*. The Term expired, but *Edmonds* refuſed to deliver the Poſſeſſion, alledging that before *Rowland Owen* had any Eſtate or Intereſt in the Premiſſes, one *Owen ap John* was ſeized thereof in Fee, and made a Leaſe to the ſaid *Edmonds* for 21 Years, and afterwards granted the Reverſion to one *Griffith Edmonds*, Brother to the Defendant, who releaſed his Right to the Defendant, and affirmed that

that the firſt Leaſe made by *Rowland Owen* was only to prevent Suits at Law which might ariſe, for that after the ſaid Releaſe *Griffith Edmonds* had delivered the Deed, (*viz.*) the Grant of the Reverſion, to the ſaid *Rowland Owen*, who was Heir at Law to *Owen ap John* the Grantor, and that the Acceptance of the Leaſe from *Rowland Owen* ought only to be an Eſtoppel during the Term. But it appearing to the Court, that *Griffith Edmonds* the Grantee of the Reverſion, and under whom the Defendant claimed by Vertue of the ſaid Releaſe, had made a Feoffment of the Premiſſes to the Plaintiff *Gwynn*, *Anno* 7 *Jac.* which was executed by Livery and Seiſin, and to which the Defendant *Edmonds* was a Witneſs, and for that the Defendant's Title by the Releaſe was never ſet on Foot until the Leaſe was expired; Therefore the Poſſeſſion was decreed to *Gwynn* and his Heirs, according to the Grant of the Reverſion to him by *Rowland Owen* as aforeſaid.

Morris, Lambeth & *Margery* Ux. verſus *Darſton.* Lord Keeper *Coventry*, 11 *Car.* 1.

11 *Car.* 1. ONE *Curtis*, the Father of *Margery* now the Wife of the Plaintiff *Lambeth*, and who married one *Price* her firſt Husband, did (in Conſideration of the ſaid Marriage, and of a Sum of Money paid unto him by *Price* the Husband) ſettle certain Lands on the ſaid *Price* and *Margery* his Wife for Life, Remainder upon the *Heirs of their two Bodies* lawfully to be begotten, Remainder to the *right Heirs of the ſaid Price* for ever.

Price afterwards ſettles the ſaid Lands upon the Defendant *Darſton and his Heirs*, in Truſt and for the Uſe of himſelf for Life, Remainder to the Heirs of his Body; and for want of ſuch Iſſue, to *Margery* and the Heirs of her Body; and for want of ſuch Iſſue, to the Plaintiff *Morris* and the Heirs Males of his Body, with ſeveral Remainders over to other Perſons.

Price died without Iſſue, and *Margery* afterwards married with the other Plaintiff *Lambeth*, who exhibited his Bill to have the Premiſſes reconveyed to him and his Wife according to the Uſes limit-

limited in the laſt Deed, and at the Hearing his Counſel inſiſted, that the Limitation in that Deed, (*viz.*) to *Darſton* the Truſtee and *his Heirs*, with a Remainder to the Heirs of the Body of *Price*, was inſerted only through the Ignorance of the Writer; for if thoſe Words had been omitted, (as they ought) then the Plaintiff *Margery* would have an *Eſtate Tail*, as was intended by the ſaid *Price* her firſt Husband, otherwiſe ſhe had but an Eſtate *for Life*, which ſhe had before by the *Settlement* of her Father.

But the Defendant's Counſel inſiſted, that the Clauſe was inſerted by *Price*, on purpoſe to bar his Widow from doing any Act to prejudice thoſe in Remainder; and for that *Price* was likely to have no Iſſue by *Margery*, and did afterwards die without Iſſue, it was decreed that ſhe ſhould have the Lands for *Life*, Remainder to her Iſſue if ſhe ſhould have any; and that if the Plaintiff *Lambeth* ſhould have any Iſſue by her which ſhould die, then he to be Tenant by the Curteſy, and hold the ſame during his Life: And a Conveyance was directed to be drawn for that Purpoſe, and to bar *Margery* to prejudice the Eſtates in Remainder.

Lip-

Lippiat verſus *Nevile.* Lord Keeper *Coventry*, and Juſtice *Hutton.*

THE Father made a Settlement of a Manor, reſerving only an Eſtate to himſelf *for Life*, Remainder *in Tail* to his Son the Defendant; and afterwards he married a *ſecond Wife*, and ſettled *part* of the ſaid Manor on her, and then died, his Wife ſurviving, who enjoyed it for the greateſt part of her Life. During which Time ſhe granted ſeveral *Copyhold Eſtates* to the Tenants, who enjoyed the ſame under ſuch Grants; and among the reſt ſhe granted a Copyhold Eſtate to one *Smith* for his Life, and after his Death ſhe granted the *Reverſion* to the Plaintiff *Lippiat.* But not long before her Death, the Defendant, who was Tenant in Tail, brought an Ejectment againſt her, but confirmed the Eſtates which ſhe had granted to the Tenants by ſigning their Copies.

Upon the Death of the ſaid *Smith*, who was one of the ſaid Copyhold Tenants, the aforeſaid *Lippiat*, who had the Grant of the Reverſion, deſired to be admitted; but the Defendant, being Lord of the Manor, refuſed it: Whereupon he exhibited his Bill to be relieved.

lieved. And in regard *Smith* had enjoyed it all his Life-time, and for that the Defendant had *confirmed* the Eſtates of the other Tenants, the Court decreed that the Plaintiff ſhould be admitted, and hold his Eſtate likewiſe according to the Grant made by the *Widow*.

Coſin verſus *Young*, *Fuller*, & al. Lord Keeper *Coventry*.

THE Plaintiff *Coſin* delivered ſeveral Sums of Money to one *Young*, to put out at Intereſt for his Uſe, who informed the Plaintiff, that he had put the Money out accordingly, and had got the Securities in his Poſſeſſion, when in truth he had purchaſed Copyhold Lands in his own Name with the Money; to which he was admitted, and afterwards ſurrender'd the ſame to the Uſe of himſelf for Life; and after his Deceaſe, to the Uſe of the Defendant *Fuller*, who was his Siſter's Son, and to ſeveral other of his Nephews.

Afterwards when this Practice was diſcovered, *Young* enter'd into a Statute to *Coſin* the Plaintiff, conditioned to ſurrender all his Copyhold Eſtates to him, and accordingly did ſurrender the ſame; but before the Plaintiff was admitted, *Young* the Surrenderor died. And in

regard *Fuller* was preſented to be his next Heir, *Coſin* the Plaintiff was denied to be admitted: Whereupon he preferred his Bill to be relieved, and the Fraud plainly appearing, and that all *Young*'s Eſtate would not ſatisfy the Plaintiff, and for that *Young* did declare a little before he died, that his Nephews the *Fullers*, being then Infants, ſhould ſurrender when they came of Age, the Court decreed the Plaintiff to hold the Lands till that time, and that the Defendants ſhould ſurrender to him when they came of Age.

Gird verſus *Togood.* Lord Keeper *Coventry.*

ANno 13 *Jac.* 1. Lands were mortgaged, and the Mortgage being long ſince forfeited, the Plaintiff, as Executor to the Mortgagor, did in the Year 1643 bring a Bill to redeem; but after ſo long a Time, and the Lands being ſettled on the Son of the Mortgagee upon his Marriage, the Court would give no Relief, but decreed the Defendant to hold the ſame: And for that there were ſome Lives expired ſince the Mortgage, ſo that the Eſtate was of better Value than when firſt mortgaged, the Court ordered the Defendant to pay

ſome Money for the ſame: And for that the Executor was directed by the Will of the Mortgagor to pay the Surplus-Money (after the principal Debt and Intereſt was ſatisfied) to ſuch Uſes as therein mentioned, he was decreed to pay the ſame accordingly, and that the Defendant ſhould hold the Lands againſt him, but not againſt the Heir, becauſe he was no Party to the Bill.

Jones verſus *Baugh.* Lord Keeper *Coventry.*

THE Plaintiff was poſſeſſed of a Leaſe for Years, and made a *voluntary Conveyance* thereof to the Defendant, in Truſt for himſelf, his Wife and Children; the Wife died leaving Children, and the Plaintiff being much in Debt, and having no Eſtate to pay the ſame beſides this Leaſe, exhibited his Bill to compel the Defendant to join in a Sale of the Intereſt thereof to raiſe Money for Payment of his Debts, and for his Maintenance; and withall conſenting that a reaſonable Part thereof ſhould be deducted, and remain in the Hands of the Defendant for the Portions of the Children ſuitable to their Mother's Fortune; which was decreed accordingly, and the Maſter to

aſcertain the Portions, and the Defendant was diſcharged of the Truſt ſave only as to the Children.

Wentworth Mil. verſus *Young* Mil. Lord Keeper *Coventry*, 14 *Car.* 1.

14 *Car.* 1. THE Plaintiff married the Defendant's Daughter, with whom he had 1500 *l.* in Marriage; and his Wife afterwards dying, and leaving Iſſue two Daughters, he entred into Articles with the Defendant, That as well the 1500 *l.* which he had in Portion with his Wife, as 1500 *l.* more which he gave out of his own Eſtate, ſhould be ſecured for them by a Purchaſe of Lands, or Leaſes of Lands, and paid unto them at their Ages of 21 Years, or Marriage. The Court was of Opinion, That if the Money had been laid out in Lands purſuant to the Articles, and the Children had died before the time of Payment, the Lands would have gone to their *Heir*; but ſince it was in Money, and if they both ſhould die before it became payable, that it ſhould go to the Father, and to his Executors or Adminiſtrators.

Sherbourn verſus *Houghton.* 14 *Car.* 1.

THE Bill was to be relieved upon a Truſt: The Defendant pleaded the Juriſdiction of the *Dutchy*, but was ordered to anſwer. 14 *Car.* 1.

So where the Bill was for a perſonal Thing, and the Defendant pleaded the Juriſdiction of the *County Palatine*, it was referred to Mr. *Page* to ſearch Precedents, and certify the Court; who reported upon View of Precedents, That the Juriſdiction of the *County Palatine* had been allowed between Parties dwelling in the ſame, and for Lands there, and for Matters local; and in the Argument of the principal Caſe, the 4th *Inſtitutes* was cited in a Caſe between Sir *John Egerton* and the Earl of *Derby*, concerning the Juriſdiction of the *County Palatine* of *Cheſter*, and upon a long Debate the Plea was over-ruled. *Inter Halfe & Daniell*, 14 *Car.* 1. See *Hob. Rep.* 77.

Willoughby verſus Com. *Rutland.*
15 *Car.* 1.

15 Car. 1. THE Earl of *Rutland* bequeathed 500 *l.* to the Plaintiff, to be paid unto her at the Age of 21 Years, or Day of Marriage; but before either, the Defendant paid the ſaid 500 *l.* to her Father, upon condition he would make it 1000 *l.* which he *covenanted* to do: And afterwards by his Will he deviſed unto his ſaid Daughter 1000 *l.* to be paid unto her at the reſpective Times as aforeſaid, and died without mentioning that he deviſed the ſaid 1000 *l.* in *purſuance of the aforeſaid Covenant.* And now after her Father's Death ſhe exhibited her Bill againſt the Defendant for the 500 *l.* but it was diſmiſſed.

Newell & Ux. verſus *Ward* & *Brightmore.* 12 *Car.* 1.

12 Car. 1. ONE *Ward* being ſeiſed of an Eſtate in Fee, deviſed 20 *l.* to the Plaintiff's Wife, to be paid unto her at her Age of 21 Years; and deviſed the ſaid Lands unto *William Ward* and his Wife for Life, *upon condition* that the ſaid *William*, his Executors, Adminiſtrators, or Aſſigns, ſhould pay all his Debts and Lega-

Legacies: And after the Deceaſe of the ſaid *William Ward* and his Wife, and the Survivor of them, then he deviſed the Inheritance to their Son *Edmond Ward*, and *the Heirs of his Body*, with ſeveral Remainders over, and made the ſaid *William Ward* his Executor, and died. Afterwards he and his Wife, and Son, join in a Conveyance of theſe Lands to the Defendant *Brightmore*; then *William Ward* died, leaving no perſonal Eſtate. And now the Plaintiff being of Age, and married to *Newell*, ſhe and her Husband exhibited a Bill againſt the Widow of *William Ward*, and againſt the Purchaſer *Brightmore* for her Legacy, alledging that the ſaid purchaſed Lands ought in Equity to be liable to the Payment thereof during the Life of the Widow, who confeſſed the Will and the Sale to the other Defendant *Brightmore*, but that her Husband left no Aſſets, and that ſhe was neither Executrix or Adminiſtratrix.

The other Defendant *Brightmore* inſiſted, that the Lands were not liable to pay this Legacy, becauſe by the Limitation over to *Edmond Ward*, and *the Heirs of his Body*, after the Death of his Father and Mother, the *Condition* in the Will was deſtroyed; and therefore that a Purchaſer's Eſtate was neither

liable in Law or Equity to pay the Debts and Legacies, tho' he had Notice thereof.

But the Court was of Opinion, that the Lands were liable in Equity, and therefore the Purchaſer was decreed to pay the ſame with Damages and Coſts; and when paid, he was to take his Remedy againſt the other Defendant the Widow for the Profits received, which the Court declared were likewiſe liable to pay this Legacy, and ſhe was decreed to pay the ſame to the Purchaſer, for which purpoſe he was to have the Benefit of this Decree.

Joyce verſus *Osborne.*

THE Father of the Defendant was ſeiſed of a *Rectory impropriate*, and, as he apprehended, of the *Perpetual Donation of the Vicaridge*; the Endowment whereof was very ſmall, and the Vicaridge-Houſe being very much in decay, he conveyed another Houſe and Lands to Truſtees and their Heirs, for the better Maintenance of the Vicars, *&c.* and conceiving the Vicaridge to be *Donative*, did in the ſaid Conveyance appoint how the *Vicars ſhould be qualified*, and directed the Truſtees and their Heirs to make a Leaſe of the ſaid Houſe and Lands

Lands for 80 Years to the Incumbent for the Time being, if he ſhould ſo long live; which was accordingly done, and his Appointment obſerved for ſome time.

But the Donor being miſtaken in his Title, for the Vicaridge was *Preſentative*, and not *Donative*, and by this Means the Right of Preſentation being fallen to the King by Lapſe, the Plaintiff was preſented under that Title: But the Defendant excepted againſt him in regard he was not qualified according to the Appointment in the Deed, and thereupon the Truſtees refuſed to make a Leaſe unto him of the ſaid Houſe and Lands; whereupon he exhibited his Bill to be relieved.

The Court declared, That the Qualification required by the Deed was occaſioned through the Ignorance of the Donor, who thought the Vicaridge to be *Donative*; but that the Benefit of the Gift, and the Arrears thereof ever ſince the Plaintiff had been incumbent, ought to redound to him: For in Caſes of *Charitable Uſes*, the Charity is not to be ſet aſide for want of every Circumſtance appointed by the Donor; if it ſhould, a great many Charities would fail.

Now in this Caſe it was appointed, That none ſhould enjoy this Houſe and Lands

Lands but ſuch as came into the Vicaridge by the *Donation* of the Defendant's Father and his Heirs: In which he was miſtaken, for the Vicaridge was *Preſentative*, and if ſo, 'tis impoſſible that any one ſhould enjoy this Charity, there being other Circumſtances limited by this Grant, (*viz.*) That the Vicar for the Time being was to have no other Benefice, and they were obliged to Reſidence, otherwiſe they were not to enjoy this Charity. The Plaintiff was decreed to hold it under thoſe Conditions, and the Truſtees were to make a Leaſe to him accordingly.

And whereas the Defendant intended to proceed againſt the Plaintiff to remove him by a *Quare impedit*, the Court declared, That the Plaintiff ſhould have the Benefit of the Decree no longer than he could maintain his Title to the *Vicaridge*.

Maggeridge verſus *Grey*. Lord Keeper *Littleton*, 17 *Car.* 1.

17 Car. 1. THE Plaintiff's Husband had left a conſiderable Sum of Money, which he directed to be paid to certain Perſons, in order to buy Lands for the Endowment of an *Hoſpital*: But the Perſons to whom it was to be paid refuſing to

to undertake the Truſt, the Court ordered other Truſtees to perform the ſame; and that ſeveral Perſons of Quality might elect poor People qualified according to the Will of the Donor, to be placed in the Hoſpital; and that the Truſtees ſhould have Power to diſplace and remove ſuch who did not conform themſelves to the Rules of the *Hoſpital*, tho' there was no ſuch Proviſion in the Donation.

Martin & Ux. verſus *Brockett.* Lord Keeper *Littleton*, 17 *Car.* 1.

17 *Car.* 1. THE Defendant was to pay the Plaintiff's Wife 300 *l.* after his Death; he ſold his Eſtate, and the Plaintiff and his Wife preferred a Bill to have the Money ſecured to them after the Defendant's Death; and the Court decreed that the Money ſhould be retained in the Purchaſer's Hands, and to be paid as aforeſaid, and that he ſhould be protected againſt the Defendant for the ſame.

Nicholls

Nicholls verſus *Chamberlaine.*

Chamberlaine being indebted to one *Aſcue* in 1000 *l.* the ſaid *Aſcue* made his Will, by which he deviſed ſeveral Legacies to Perſons therein named, and made *Chamberlaine* his Debtor *ſole Executor.*

The Plaintiff *Nicholls*, who was one of the Legatees, demands his Legacy; which *Chamberlaine* denied to pay, inſiſting that he had not *Aſſets*, for that the Debt he owed to *Aſcue* was *releaſed* by his being made *Executor*, and ſo not liable to pay the Legacies given by his Will.

But it was decreed to be *Aſſets*, and upon an Appeal to the Lords in Parliament, it was referred to Baron *Trevor*, Juſtice *Pheſant* and *Rolls*, who certified that it was *Aſſets* in Equity; and ſo the Decree was confirmed.

Offley verſus *Jenney* & *Baker.*

THE Plaintiff *Offley*, and one *Jenney* the Defendant's Son, being an Infant of five Years old, were *Executors* of Sir *John Offley*, and the Plaintiff exhibited his Bill to be relieved for a Debt. To which the Defendant demurr'd,

murr'd, becauſe the *Infant Executor* was not made a Party; and the Bill being amended, the Defendant demurr'd again, for that the *Infant* did not ſue by his Guardian; and the Father being not thought proper to be Guardian, he being Defendant, the eldeſt Six-Clerk was appointed for that Purpoſe.

Morton verſus *Kinman* & *Poplewell*, *Anno* 1649.

Anno 1649.

Morton the Plaintiff's Father died inteſtate, leaving a very good perſonal Eſtate. The Widow being about to marry one *Kinman*, they came to an Agreement by Articles, That he ſhould take out Adminiſtration to the Goods and Chattels of the ſaid Inteſtate *Morton*, and ſhould enter into a Statute to pay the Plaintiff, who was the Son of *Morton*, ſo much yearly until he ſhould come of Age; and accordingly he did enter into a Statute, and did adminiſter, and with the ſaid perſonal Eſtate he purchaſed Lands in Fee, and many Years afterwards died, leaving the Defendant *Kinman* an *Infant* his Son and Heir: But he died without any perſonal Eſtate, and much indebted to the Plaintiff, having neglected to pay the yearly Payment according to the Agreement

ment aforeſaid; and for that the real Eſtate could not be extended during the *Minority* of the Defendant, the Court decreed againſt him and *Poplewell* the Guardian, That the Plaintiff ſhould hold it till he was ſatisfied of his Debt and Arrears.

Hunt verſus *Carew* and his Son. Lords Commiſſioners, *Anno* 1649.

Anno 1649. THE Father being ſeiſed of an Eſtate *for Life*, Remainder in Tail to his Son; and the Plaintiff thinking the Father had the Inheritance, applied himſelf to the Son for his Aſſiſtance in procuring a Leaſe from the Father, determinable upon Lives, offering 400 *l.* Fine, and a ſmall yearly Rent: Whereupon the Son informing the Plaintiff, that his Father had a Power to make ſuch Leaſe, procur'd the ſame of him, and the Son received 300 *l.* of the Money.

Afterwards the Plaintiff being informed that the Father had only an Eſtate *for Life*, deſired the Son to confirm the Leaſe, which he refuſed; and thereupon a Bill was exhibited againſt the Father and Son to compel him.

The Father by his Anſwer ſets forth, That his Son wrote to him that he had very urgent Occaſion for Money to pay his

his Parliament-Compoſition, and earneſtly deſired him to conſent to the making the Leaſe; and thereupon he granted the ſame, which was brought to him engroſſed before he had ſeen the Draught, and thereupon he ſealed the ſame, believing that he had Power ſo to do without his Son; but ſaith that they were both circumvented in the Value, for that it was worth above 200 *l.* more than was given by the Plaintiff, and that he had ordered his Son 300 *l.* of the Money.

The Son, by his Anſwer, confeſſed that the Plaintiff came to him about the Leaſe, which he was willing to procure of his Father, becauſe he wanted Money to pay his Compoſition, but that he treated in Behalf of his Father; for the Plaintiff would not give the Sum which he demanded; therefore as to that he left him wholly to his Father, and that he always told him he would not join in the Leaſe, and denied that he ever declared that his Father had Power alone to grant the Leaſe, or that it was made by his Conſent, or that he ever ſaw it or a Counterpart; neither did he know upon what Conſideration, or for what Term it was granted, but confeſſed he ſent to his Father, and acquainted him that leſs was offered than what

what the Leaſe was really worth; but deſired him to uſe ſome Means to procure Money for his Compoſition; and confeſſed that he had received 300 *l.* from him, not as part of the Purchaſe-Money for the Leaſe, but only as ſo much directed to be paid to him from his Father, and that the Bargain was worth 200 *l.* more than was given; and the other Defendant ſaid that he was offered 150 *l.* more.

But the Court ordered, That ſince the Plaintiff was not acquainted that the Father had exceeded his Power, and he relying on the Affirmation of the Son, (who had moſt of the Money) that the Leaſe would be good without his joining, by which he was deceived; that therefore both ſhould join at their own Coſts to make an Aſſurance, and confirm the Leaſe to the Plaintiff during the Eſtate thereby granted.

Merrick & Ux. verſus *Harvey* Mil. Lords Commiſſioners, *Anno* 1649.

Anno 1649. THE Plaintiff married a Widow, and there being ſeveral Accompts depending between her former Husband and the Defendant, who was much indebted to him, the Accompt was ſtated, and on the 2d of *November*, 1639, the De-

Defendant gave *Bond*, with Sureties, for the Payment of the Money due on the Ballance.

Two Days afterwards (ſome Things being forgotten) a farther Accompt was adjuſted between them, and then *General Releaſes* were given to each other, which was not intended to *releaſe the Bond*; and it appearing ſo to the Court by ſeveral Circumſtances, it was decreed that the ſaid *Releaſe* ſhould be ſet aſide, and no Advantage taken of it as to the *Bond.*

Hungerford verſus *Auſten.* Lords Commiſſioners, *Anno* 1650.

THE Defendant was Lord of a Manor, and the Plaintiff was a Copyhold Tenant thereof; and it was agreed between them, that the Defendant ſhould grant a Licence to the Plaintiff to let the ſaid Copyhold Eſtate for as long a Time and in as large manner as had been formerly granted to his Father or Mother, and 300 *l.* was paid for the ſame to the Defendant: But he denying the Agreement, and refuſing to grant ſuch Licence, the Plaintiff exhibited his Bill to compel him; and having proved the Agreement, and the Defendant confeſſing that he granted a *Anno* 1650.

Licence to the Plaintiff's Mother to let it for 60 Years, the Court did decree that he ſhould grant the like Licence now.

Thomas verſus *Jones.* Lords Commiſſioners, *Anno* 1653.

Anno 1653. THE Defendant being a Priſoner in the *King's-Bench*, refuſed to anſwer; whereupon it was prayed, that the Bill might be taken *pro Confeſſo*, if he did not anſwer by a Day: But the Court was of Opinion, That the Bill could not be taken *pro Confeſſo*, unleſs the Defendant was in the *Priſon of the Court.* Whereupon he was removed by *Habeas Corpus* into the *Fleet*, and having a Day given him to anſwer, and he ſtill refuſing, the Bill was taken *pro Confeſſo*, and he was ordered to be kept cloſe Priſoner.

Moor & al. verſus Lady *Somerſet.*
Lords Commiſſioners.

THE Plaintiff having exhibited his Bill for Matters ariſing within the County of *Cheſter*, the Defendant pleaded to the *Juriſdiction of this Court*; ſetting forth, That the County of *Cheſter* had been Time out of Mind a *County Palatine*; That the Privileges thereof had been eſtabliſhed by the Laws and Statutes of this Realm; That there was a Chief Officer there called *The Chamberlain of Cheſter*, who was Judge of the *Exchequer Court* of *Cheſter*, being a Court of Equity, *&c.* That all Pleas of Lands and Tenements, and all Contracts; Cauſes and Matters ariſing within the ſaid *County Palatine*, were pleadable, and ought to be pleaded and determined in the ſaid County, and not elſewhere; and that if any ſuch Cauſes were pleaded and adjudged out of the ſaid County, the ſaid Judgments were void, and of no Effect, except in Caſes of Error, *&c.* And that no Inhabitant of the ſaid County ought to be compelled by any Proceſs to appear and anſwer to any Matter or Thing, except as aforeſaid. And the Defendant *averred*, That he and the Plaintiff, at the exhibiting of the

Bill, were Inhabitants of the County of *Cheſter*: And foraſmuch as he prayed by his Bill to have Relief touching the Poſſeſſion of a Moiety of a Manor and certain Lands therein mentioned, lying in the ſaid County, wherein the Plaintiff claimed a Title with the Defendant as Coparceners, and that all the Matters in the Bill concerned the Title and Poſſeſſion of the ſaid Manor and Lands; the Plea was allowed, and the Plaintiff's Bill diſmiſſed.

Earl of *Carliſle* verſus *Gober* & Ux. Lords Commiſſioners *Widdrington*, *Tyrrill*, and *Fountaine*, *Anno* 1659.

Anno 1659. THE Plaintiff mortgaged his Lands in Fee to one *Andrews*, to be void upon Payment of 100 *l.* and Intereſt on a certain Day, and he covenanted to pay the Money, and gave Bond for Performance of Covenants.

The Money was not paid; *Andrews* the Mortgagee died; the Wife of *Gober*, the now Defendant, was his Heir at Law; and ſhe and her Husband having formerly exhibited a Bill againſt the now Plaintiff, to have the Money paid at a certain Day, or the Plaintiff to be forecloſed of the Equity of Redemption; it was thereupon decreed accordingly.

Afterwards the now Plaintiff diſcovering that *Andrews* the Mortgagee had made a *Will*, and an *Executor*; which Will was proved, and the Mortgage-Money given to the *Executor*; he exhibited a Bill of Review againſt the now Defendants, (and before the Time given by the former Bill, for the Payment of the Money was lapſed) ſetting forth all this Matter, and that the *Executor* was not party or privy to the former Decree, nor was it then known that there was either *Will* or *Executor*, and ſo prayed to be relieved againſt the *Decree*, and that the Court would direct to whom the Money ſhould be paid, and that the Bond might be delivered up, *&c.*

The Defendants plead the former *Decree*, and on arguing the Plea, the Court held it to be an extraordinary Caſe; and that if the *Executor* had the Right both by the *Covenant* in the Mortgage, and by the *Bond* and *Will*, the Court could not take it from him; and that if the Heir of the Mortgagee ſhould have the mortgaged Lands by Vertue of the Decree, the now Plaintiff would be likewiſe liable to the *Executor* for the Money upon the *Bond* and *Covenant*, and ſo to double Payment, which would be very hard; and that a *Bill of*

Review would not lie in this Caſe, becauſe that muſt always be between the *ſame Parties* to the *Original Bill.* Now the *Executor* was no Party to that Bill; and as to the mortgaged Lands, the ſame being forfeited ſince the Decree, the Plaintiff could not have them again; and if the Executor had any Right to the Money, he might obtain a Decree againſt the Heir of the Mortgagee for the Land, or for the Price of it, if it was ſold; yet the Court would not put the Executor to take that Courſe, becauſe he had a Remedy at Law upon the Bond and Covenant, which the Court could not hinder him to proſecute.

However, it was ordered, That the Heir of the Mortgagee ſhould anſwer without Prejudice to his Plea of the Decree as aforeſaid; and that he ſhould bring the Mortgage-Deed and Bond into Court; and that he ſhould ſell the Land, and bring the Money likewiſe into Court, there to remain whilſt he and the Executor interpleaded for the ſame.

Hamp-

Hampſon verſus Lady *Sydenham.* Lords Commiſſioners, *Anno* 1651.

THE Plaintiff being Guardian to an *Infant*, lent Sir *John Sydenham* Money, who was likewiſe *under Age*; and Sir *John* and others enter'd into a Bond for the Repayment of the Money: And afterwards he died under Age, the Money not being paid, having before his Death *made his Will*, and the Defendant his Lady *Executrix*; and by his ſaid Will he appointed that his Executrix ſhould out of his perſonal Eſtate pay all his Debts, and particularly thoſe to which he had ſet his Hand, and left ſufficient Aſſets to pay the ſame. *Anno* 1651.

The Executrix proved the Will, and poſſeſſed her ſelf of the ſaid Perſonal Eſtate, and refuſing to pay the Money due on this Bond, the Plaintiff exhibited his Bill to diſcover Aſſets, and to compel the Payment of the Money.

The Defendant by her Anſwer confeſſed Aſſets, but pleaded the *Nonage of her Husband* when he enter'd into the Bond, and inſiſted that ſhe for that Reaſon was not liable to pay the ſaid Debt. But it was decreed, That tho' her Husband was *under Age*, yet he had Power by Law to make a Will of his

perſonal Eſtate; and having by his ſaid Will *appointed that his Debts ſhould be paid*, therefore in Equity they ought to be paid purſuant to the Will, notwithſtanding the Minority of the Obligor.

Matthews verſus *Thomas* & al. Lords Commiſſioners, *Anno* 1649.

Anno 1649. A Debt was owing to the Teſtator, who by Will made the Defendants his Executors, and deviſed the Debt to the Plaintiff. The ſaid Executors proved the Will, and releaſed the Debt; and thereupon the Plaintiff exhibited his Bill againſt the Executors, and againſt the Debtor, to be relieved againſt their *Releaſe*, charging them with Practice, *&c.* The Defendants pleaded this *Releaſe*, and upon arguing it, the Plea was allowed, and the Bill diſmiſſed.

Anno

Anno 13 Car. 2.

Needler verſus *Barbara* & *Robert Wright.*

Lord *Clarendon*, aſſiſted by the Lord Chief Juſtice *Hyde.*

13 Car. 2.

Charles Wright being ſeiſed in Fee of an Eſtate expectant upon the Determination of the Life of *Dorothy Wright*, did in 1636, for a valuable Conſideration, demiſe the ſame to one *Blemell* for 51 Years, to commence after the Death of the ſaid *Dorothy*, rendering Rent, *&c.*

Blemell ſurrendered the ſaid Leaſe; and afterwards the ſaid *Charles Wright*, in Conſideration of 25 *l.* demiſed the Premiſſes to one *Lawrence* for 61 Years, to commence as aforeſaid, and covenanted that he was ſeiſed in Fee, that he had Power to make Leaſes, and that he would make any further Aſſurance; and confeſſed Judgment for the Performance of Covenants, and alſo made Oath that he was ſeiſed in Fee, *&c.*

The Intereſt of this Leaſe by ſeveral meſne Aſſignments came to the Plaintiff *Needler*, and *Dorothy Wright* being dead, the Plaintiff aſſigned the Leaſe to another

ther in Truſt to attend the Inheritance, and by a Fine and Recovery, and alſo by Deed enrolled, he purchaſed the Reverſion and Inheritance of the Premiſſes, and being in Poſſeſſion laid out 1000 *l.* and upwards in Building, and enjoyed the ſame till the Death of *Charles Wright*.

After whoſe Death, *Barbara* and *Robert Wright* claim the Lands by Vertue of an *old dormant Entail* precedent to any of the ſaid Eſtates, *Barbara* claiming only an Eſtate *for Life*, and *Robert* the Inheritance, by Vertue of a Deed and Fine by which it was entailed on him.

The Plaintiff exhibited his Bill to have the Validity of this Deed examined, alledging it to be *voluntary*; and thereupon a Tryal at Law was directed, Whether *fraudulent* or not? And no Fraud being proved, a Verdict paſſed for the Defendant; and thereupon the Court would give no Relief, nor the Defendant any Coſts.

Hol-

Hollowell, Kirk, & *Merry,* verſus *Abney, Abney,* & *Kendall. Anno* 13 *Car.* 2.

Kendall contracted with *Merry* to ſell him certain Lands in *Leiceſterſhire*; afterwards *Abney* the Father, who lived near the Lands, purchaſed the ſame of *Kendall*, in Behalf of *Abney* his Son, a Merchant in *London*, and had a Conveyance from *Kendall* to *Abney* the Son and his Heirs. 13 *Car.* 2.

The Plaintiff *Merry* exhibited his Bill to be relieved upon his Contract with *Kendall*, and againſt the Conveyance to *Abney*, and charged *Notice* of this Contract to both the *Abneys*.

Abney the Son pleaded, That he was a Purchaſer *bonâ fide* for a valuable Conſideration, without any Notice of *Kendall*'s Contract with *Merry*, and without any Truſt for his Father.

The Court declared, That in this Caſe *Notice* to the Father was *Notice* to the Son, and ſhould affect him tho' a Purchaſer; for *Notice* of a dormant Incumbrance to a Party who purchaſeth for another, ſhall affect the Purchaſer himſelf; and decreed that *Abney* ſhould convey to *Merry* the Plaintiff, it appearing that his Father had *Notice* of the Contract before he purchaſed for his Son.

Vena-

Venables verſus *Foyle*. *Anno* 13 *Car.* 2.

13 Car. 2. MRs. *Venables* being Tenant to *Wincheſter College* of the *Rectory* of *Andover*, and indebted to the Defendant *Foyle* in 700 *l.* agreed with him that he ſhould pay 400 *l.* more to the *College*, and that ſhe would ſurrender her Leaſe, and take a new one in his Name. And it was alſo agreed, that ſhe ſhould for the firſt Year of the ſaid Leaſe hold the Premiſſes, and pay the College Rent; and that if ſhe in that Year did pay Mr. *Foyle* 1100 *l.* and Intereſt, then he ſhould aſſign the new Leaſe to her.

The 400 *l.* was paid, and the new Leaſe taken in Mr. *Foyle*'s Name. The firſt Year expired, and Mrs. *Venables* neither paid the Money to Mr. *Foyle*, or the Rent to the *College*; but at the End of three Years ſhe permitted him to enter upon part of the Rectory and Tythes, and to enjoy the ſame.

Afterwards he exhibited his Bill againſt her, either to pay the Money, or be forecloſed of the Equity of Redemption. She put in her Anſwer, by which it appeared that her Intent was, that the Plaintiff ſhould ſatisfy himſelf by the Perception of the Profits, and not to pay him in *Specie*. Thereupon Mr.

Mr. *Foyle* the Plaintiff, upon an Accompt ſtated of what was really due to him, and in Conſideration of the Payment thereof by her Son *Nicholas Venables*, did aſſign the ſaid Leaſe to him. In which Deed of Aſſignment the Suit between him and Mrs. *Venables* was recited, and that his Intereſt in the Leaſe was only a forfeited Mortgage; and the Aſſignee *Nicholas Venables* covenanted to indempnifie Mr. *Foyle* againſt his Mother, *&c.*

This being the Caſe, ſhe now exhibited her Bill againſt her Son and Mr. *Foyle* to be relieved, ſetting forth, that the Eſtate to him was but a Mortgage, and therefore that upon Payment of the Money ſhe ought to redeem againſt both.

Nicholas the Son pleaded ſeveral Outlawries, ſo ſhe could not proceed againſt him. And Mr. *Foyle* anſwered, that he had aſſigned his Intereſt to the Son upon Payment of what was really due to him, and no more; ſo that the Caſe was thus: (*viz.*) A Mortgage being forfeited, the Mortgagee aſſigns his Intereſt to another upon Payment of the Money; tho' it was inſiſted for the Plaintiff, that this was a Breach of Truſt in Mr. *Foyle*. And the Court was of Opinion, that Mr. *Foyle* ſhould accompt for

for all the Profits, both before and after his Aſſignment to *Venables* the Son, and pay himſelf in the firſt Place, and the Surplus to the Plaintiff; and that he ſhould convey and procure all Perſons claiming under him to convey the Leaſe to the Plaintiff, free from Incumbrances done or committed by him or them.

Afterwards Mr. *Foyle*, being not able to perform this Decree, exhibited another Bill againſt Mrs. *Venables* and her Son *Nicholas*, ſetting forth a Fraud and Practice between them, and that he was willing to accompt to the time of the Aſſignment, but not afterwards, and to comply with the Decree as far as he was able, and prayed that *Nicholas* might be compelled to accompt from the Time of the Aſſignment to him, and to convey, *&c.*

Then *Nicholas* exhibited another Bill againſt his Mother, claiming the Original Leaſe by a Title paramount to her; and it appearing that he had ſuch a Title, Mr. *Foyle* was diſcharged againſt him.

Bretton

Bretton verſus *Bretton.*

THE Teſtator bequeathed Money to *younger Children*, and afterwards died and left ſeveral Daughters and one Son, who was Heir at Law, and who had a fair Inheritance from his Father, and was by Birth *younger* than the Daughters, who claimed a Share of the Money by Virtue of the Deviſe: But it was decreed, That he was not to be comprehended under the Name of a *younger Child* within the Intent and Meaning of the Will, and therefore ſhould not take by it as ſuch, he being Heir at Law as aforeſaid.

Meynell verſus *Garraway.* Lord *Clarendon*, aſſiſted by Sir *Orlando Bridgman*, *Anno* 14 *Car.* 2.

ONE *Wingate*, in the Year 1652, mortgaged a Leaſe to one, and in the next Year, *viz.* 1653, he mortgaged the ſame Leaſe to *Meynell* the Plaintiff, and both the Mortgages being forfeited, the Defendant Mr. *Garraway*, *Anno* 1656, purchaſed the Inheritance, and having Notice of the firſt Mortgage, he diſcharged the ſame out of the Purchaſe-Money: But before he had diſcharged that 14 *Car.* 2.

that Mortgage, and had got it aſſigned in Truſt to attend the Inheritance, he had Notice of the ſecond Mortgage; and the Money being demanded of him, and he refuſing to pay it, *Meynell* exhibited his Bill, to diſcover whether *Garraway* was a Purchaſer *bonâ fide* for a valuable Conſideration, and that he might ſatisfy this ſecond Mortgage upon aſſigning the Intereſt to him.

And it being referred to a Tryal at Law, Whether a valuable Conſideration was *really paid?* as alſo, Whether the Purchaſer had *Notice of the laſt Mortgage before he bought the Inheritance*, and when he had ſuch *Notice?* And there being a Verdict, that he had *Notice before the firſt Mortgagee had executed the Aſſignment*, but that he had paid *Wingate* for the Inheritance before he had *Notice* of the ſecond Mortgage, the Plaintiff's Bill was diſmiſſed.

Sir *William Denny* Bar. verſus *Filmer*. Lord Chancellor *Hyde*, and Lord Ch. Juſt. *Bridgman*, *Anno* 14 *Car.* 2.

14 *Car.* 2. BILL *of Review* to reverſe a Decree, and the Error aſſigned was, That the Decree was founded upon a Bill taken *pro Confeſſo*, when the Defendants to that Bill were not brought in upon any Contempt.

There

There was a Demurrer to this *Bill of Review*, and in arguing the ſame it was inſiſted, That the Decree was regular; for tho' the Defendants were not brought in upon any Proceſs of Contempt, yet they appeared by their Clerk upon Service of a *Subpœna*, and afterwards moved the Court for a longer Time to put in their Anſwer than of Courſe they could have: Which Time was granted. And this was compared to a Judgment at Law by Default, where after the Defendant hath once appeared, and afterwards makes Default, Judgment ſhall be enter'd againſt him.

But on the other Side it was inſiſted, That the Decree was erroneous, and not warranted by any Precedent, becauſe the Defendants were not brought into Court upon any Proceſs of Contempt; neither was any Day aſſigned to anſwer before the Bill was taken *pro Confeſſo*: And this was alledged to be the conſtant Courſe and Rule of the Court.

Thereupon it was ordered, That the Defendants ſhould anſwer by a certain Day, and the Benefit of this Demurrer ſhould be ſaved to them till the hearing the Cauſe; which was afterwards heard by Sir *Harbottle Grimſtone*, Maſter of the *Rolls*, who upon long Debate was of Opinion, that the Decree was erro-

neous; but appointed Precedents to be ſearched.

And afterwards the Cauſe coming to be heard by my *Lord Chancellor*, aſſiſted by the *Chief Juſtice Bridgman*, they were of Opinion, That becauſe the Defendants appeared to the *Subpœna* to anſwer, and craved a farther Day and had it, and ſtill ſtood out all Contempts, and could not be taken, that the Decree was well grounded, and ordered the *Bill of Review* to be diſmiſſed.

Edgworth verſus *Davis*. Lord Chancellor *Hyde*, and Mr. Juſtice *Brown*, *Anno* 14 *Car.* 2.

14 *Car.* 2. THE Bill was to have an Accompt of the *Profits of Lands*, which the Defendant had received upon a Truſt for the Plaintiff during his *Minority*, and for Money received upon Bond, and for Writings.

The Defendant pleaded, That the *Lands* lay in *Cheſhire*, within the *County Palatine* of *Cheſter*, and in *Leiceſterſhire* and *Lancaſhire*, within the *Dutchy* of *Lancaſter*; and that he lived in the *County Palatine* of *Cheſter*, and not within the Juriſdiction of this Court.

This Plea having been formerly argued before the Judges in the Abſence

of the *Lord Chancellor*, they ordered Precedents to be produced, which was done as followeth:

ff. *Farne* ver *Smith*, 12 *Eliz.* A Plea that *Lands* lay within the *Dutchy* of *Lancaſter*, and over-ruled.

ff. *Smith* ver *Delves*, 7 *Nov. Anno* 2 *Jac.* 1. The Bill being to produce *Writings* and *Evidences*, the Defendant pleaded, That the *Lands* which thoſe Writings concerned lay in *Cheſhire*, and that the Parties lived there; and concluded, that the Matter was not within the Juriſdiction of this Court: But the Suit being not for the *Land* it ſelf, but for the *Writings*, the Plea was held idle, and over-ruled.

ff. *Sherborn* ver *Haughton*, 3 *Maii*, 14 *Car.* 1. The Bill was to be relieved upon a *Truſt*. The Defendant pleaded the Juriſdiction of the *Dutchy*: Ordered to anſwer.

ff. *Hales* ver *Daniel*, 24 *Oct.* 5 *Car.* 1. The Bill being to diſcover a *perſonal Eſtate*, and the Defendant pleading the Juriſdiction of the *County Palatine*, it was referred by my Lord *Coventry* to Mr. *Page* to ſearch Precedents, and make

his Report to the Court, who certified, That the Juriſdiction of the *Counties Palatine* was allowed between Parties dwelling within the ſame, and for *Lands there*, and for all local Matters.

And in the Argument of the principal Caſe, the *4th Inſtitutes* was cited, Sir *John Egerton* ver? *Earl of Derby*; and *Hob.* 77. *Owen* ver? *Hall*; and after a long Debate, the Plea was over-ruled, but without Coſts.

Binion Mil. verſus *Stone*. Lord Chancellor, Lord Chief Baron *Hale*, and Mr. Juſtice *Wyndham*, 14 *Car.* 2.

14 *Car.* 2. SIR *George Binion* purchaſed a Houſe for 2000 *l.* in the Name of his Son, an Infant of five Years old, and the ſame was conveyed to his Son by a Deed enrolled.

All the Eſtate of Sir *George* being expoſed to Sale by the Parliament for his Delinquency, this Houſe was ſold as part of his Eſtate to one *Stone*, who, after Sir *George*'s Son came of Age, gave him and his Mother 500 *l.* to make a farther Conveyance of the Houſe to him; which they did, having both made Oath, That they were not Truſtees for Sir *George*.

Sir *George* afterwards exhibits his Bill to be relieved againſt *Stone*, and ſuggeſts a Truſt in his Wife and his Son for himſelf; and it was inſiſted, That it ſhould be preſumed as ſuch a Truſt, in reſpect of the *Infancy* of the Son when the Purchaſe was made by the Father; and that the Money was paid by him; and that the Sale of the Houſe was in his Right, and for his Delinquency; and ſo the Lord Chancellor enclined to decree it. But an Offer being made to repay *Stone* the 500 *l.* Time was given to the Parties to conſider of it; and if they did not agree, the Court declared they would adviſe with ſome Judges about it; for *Hale* and *Wyndham* held it to be a *Truſt* upon which Sir *George* might be relieved; and thereupon *Stone* accepting the 500 *l.* he was decreed to reconvey.

Thew verſus *Thircknell.*

THE Plaintiff was Leſſee of *ſeveral* Lands, out of which an *entire* Rent was reſerved.

Afterwards the Inhabitants of the Pariſh where *part* of the Lands lay claimed a *Right of Common* in that *Part*, and upon a Tryal at Law it was found that they had ſuch Right.

Now this being only a *Right of Common* which was recovered, it was no Eviction in Law of the Land it ſelf, and ſo no *Apportionment* of the Rent could be made at Law: Therefore a Bill was brought to have the Apportionment made in Equity. And Serjeant *Maynard* inſiſted, that ſuch Apportionment had been frequently decreed here. But in this Caſe it appearing, that tho' the Right of Common was recovered, the Lands were ſtill worth the Rent reſerved, and more: The Court would decree no Apportionment, but ordered the Bill to be diſmiſſed.

Smith verſus *Hanbury*, *Anno* 24 *Car.* 2.

24 *Car.* 2. THE Plaintiff bought the Equity of Redemption of a Mortgage in and upon an Accompt directed to be taken of the Profits under the Mortgage, it was decreed, That the Maſter ſhould examine whether the Wife of the Mortgagee recovered her Dower out of the Lands, it being a Mortgage in Fee, and her Husband died ſeiſed, and what Satisfaction was made for her Dower? And the Maſter certified, That the Wife had recovered her Dower, and that it was ſet out by the Sheriff; and the Queſtion was, Whether it ſhould go

go towards Satisfaction of the Mortgage? And it was ruled it ſhould not.

Sherman verſus *Cox*, *Anno* 24 *Car.* 2.

ONE *Robins* mortgaged his Eſtate in *Auguſt* 1650, to *Smith* for 99 Years; and in *November* following to *Partridge* for 40 Years; and four Years afterwards to the Plaintiff *Sherman*'s Husband for a Term of Years, to ſecure the Payment of 1500 *l.* and laſt of all to one *Browning*, who bought in the two firſt Mortgages. 24 *Car.* 2.

In the Year 1664, the Plaintiff *Sherman* exhibited his Bill againſt *Robins* the Mortgagor, and againſt *Browning*, to ſet forth and diſcover their Title, and that the Plaintiff might redeem. The Defendants put in their Anſwer, but there was no farther Proceedings in that Cauſe.

Two Years afterwards *Browning* exhibited his Bill againſt *Robins* alone, that he would pay the Money, or that he might be foreclоſed of the Equity of Redemption: Which was decreed accordingly, and an Accompt ſtated of what was due for Principal and Intereſt, and a Time ſet to pay the Money, or be foreclоſed. The Money was not paid at the Time.

After *Robins* was foreclosed, the Defendant *Cox* bought *Browning*'s Title; and two Years afterwards the Plaintiff *Sherman* brought a new Bill againſt *Cox* to redeem, who pleaded his Purchaſe, and the Equity of Redemption foreclosed.

And the Queſtion was, Whether *Browning* ſhould have made the now Plaintiff *Sherman* a Party to his Bill as well as *Robins*, (which he had not done) and therefore ſhould he now be let in to redeem?

The Lord Keeper *Finch* declared, the Caſe was to be judged by Circumſtances, and by comparing the Miſchiefs on both Sides, and ſo to chooſe the leaſt.

That it would be very miſchievous to the Mortgagee to make every one who had any Intereſt Parties to his Bill; for if ſo, then every Mortgagee would be in the Nature of a Bailiff, or a Steward, and his Buſineſs would never be done, for there might be ſeveral Mortgagees. 'Tis true, he would be helped at laſt, having his Principal, Intereſt, and Coſts, tho' he might be at ſome Trouble and Pains in getting it; but if the Plaintiff ſhould not be relieved, his Loſs would be irreparable: Therefore he thought Trouble and Pains

leſs

leſs than Ruin and total Loſs, and ſo over-ruled the Plea; but declared, that the Accompt ſtated by the Decree ſhould bind, unleſs ſome Colluſion was proved; and declared, he would conſider of ſome Method to make Men take care to redeem their Mortgages, by ordering that Intereſt upon Intereſt ſhould be allow'd; or by taking away the Rule, That Mortgagees ſhould anſwer for what they might receive without their wilful Default; or by ordering, that the Accompt of a Mortgagee upon Oath ſhould bind, unleſs diſproved by two Witneſſes.

Edwards verſus *Allen*, 24 *Car.* 2.

A Deviſe in Remainder to ſuch of the Children of *A. B. C. D.* as are or ſhall be living at the Death of the Teſtator; this is but an Eſtate for Life in the Children, and adjudged by the Lord Chancellor *Finch*, that in this Caſe the Word *Children* extends to Grand-Children. 24 *Car.* 2.

There was a Caſe cited 4 *Car.* 1. between *Taylor* and *Hodges*, where a Deviſe to four Sons was adjudged, that the three youngeſt had but an Eſtate for Life, and that the Inheritance was in the eldeſt, being Heir at Law.

Sir

Sir *Samuel Jones*, and *William Jones*, Executors of Sir *William Jones*, verſus *Bradſhaw*, *Anno* 1661.

Anno 1661. MAry *Cotton* bequeathed 500 *l.* to one *Dormer*, and made Sir *William Jones* her Executor, and died.

Sir *William* the Executor ſold Lands to Sir *Samuel Jones*, and left 500 *l.* of the Purchaſe-Money in his Hands, who gave Bond for it to Sir *William Jones* in his own Name.

Afterwards Sir *William Jones* made the Plaintiffs his Executors, and died. They inventoried this 500 *l.* as part of Sir *William*'s Eſtate; and Mr. *Dormer* the Legatee having exhibited a Bill againſt them, obtained a Decree for the 500 *l.* ſuggeſting that it was left in the Purchaſer's Hands, with an Intent, and upon Truſt, that he ſhould pay it to *Dormer*: And the Court declared it was not Aſſets of Sir *William Jones*'s Eſtate.

Then *Bradſhaw* the now Defendant brought an Action of Debt againſt the now Plaintiffs, as Executors of Sir *William Jones*, upon a Bond of their Teſtator; and they having not Aſſets after the Payment of the 500 *l.* to *Dormer*, and that Decree and Payment not being pleadable to the Action, or to be given in

in Evidence at Law, they exhibited their Bill againſt *Bradſhaw*, ſetting forth the Caſe as before mentioned; and the Queſtion was, Whether the Plaintiffs ſhould have Allowance for the Payment of the 500 *l.* againſt the now Defendant? And it was decreed they ſhould, and that the Matter ſhould go to an Accompt. And it was the Opinion of Sir *John Maynard*, That if a Man ſhould ſell his Lands, and leave part of the Purchaſe-Money in the Hands of the Vendee, and then gives or appoints Money to be paid to a Stranger; he ſhall have it, and it ſhall not be Aſſets. *Vid. Hob. Rep.* 265.

Heath verſus *Henley* & *Whitwick*, 21 *Maii*, 15 *Car.* 2.

THE Plaintiff was Son and Heir, and alſo Executor of the late Chief Juſtice *Heath*, who was made Chief Juſtice at *Oxford* during the Time of the Civil Wars, but never ſate as Chief Juſtice in *Weſtminſter-Hall*; and the Bill was to have an Accompt of Money received by the Defendants as Prothonotaries of the King's-Bench, and which, by Vertue of their Office, they ought to receive for the Uſe of the ſaid Chief Juſtice. 15 *Car.* 2.

The

The Defendants pleaded the Statute of Limitations, 21 *Jac. cap.* 6. and upon arguing this Plea it was inſiſted by the Plaintiff's Counſel, That this being an implied Truſt *Virtute Officii*, was not within the ſaid Statute, tho' a Guardian is, and he is a Truſtee; and therefore it was ordered that the Defendants ſhould anſwer.

Daire verſus *Beverſham. Mich.* 13 *Car.* 2.

13 *Car.* 2. HEnry *Daire* agreed for the Purchaſe of Copyhold Lands, which were ſurrender'd out of Court to his Uſe; but he died before Admittance, having other Copyhold Lands, and alſo having made his Will after the ſaid Agreement, and thereby deviſed to the Plaintiff and his Heirs all his Copyhold Lands, he being at that Time his Heir at Law: but his Wife being with Child, was afterwards delivered of a Daughter, now the Wife of the Defendant *Beverſham.*

The Plaintiff taking it for Law, That the Copyhold Land for which *Henry Daire* had contracted, and to which he never was admitted, did not paſs by his Will; he ſuffered the Daughter to be admitted, and ſhe held the ſame for 20 Years, and the Plaintiff paid Rent for

for that Time, and agreed ſo to do as long as he ſhould hold the Lands.

Afterwards Differences ariſing between him and her, the Plaintiff exhibited his Bill to have theſe Copyhold Lands decreed to him; and upon hearing the Cauſe, it was declared by the Court, That it was clear the Copyhold Lands for which the Teſtator had agreed, and which were ſurrendered to him out of Court, did paſs by his Will, tho' he died before Admittance, for that the Purchaſer had an Equity by the Contract to recover the ſame; and the Vendor ſtood entruſted for him till a legal Conveyance was executed; and cited the Lady *Foliamb*'s Caſe in 1651, wherein it was ruled, That if Articles are ſigned for a Purchaſe, and then the Purchaſer deviſeth the Lands, and dieth before any other Conveyance is executed, the Lands do paſs in Equity.

But in the principal Caſe no Decree was made, becauſe the Plaintiff had admitted the Title to be in the Defendant as Heir at Law, and paid his Rent for many Years; but declared, if he had come in time, it was proper for a Decree.

Clerke

Clerke verſus Lord *Angleſey.*

A Legacy was deviſed to a *Feme then under Coverture*, and the *Huſband alone* without his Wife exhibited a Bill to recover it; and becauſe ſhe was not a Party, the Defendant demured, and ruled good: For of Things meerly in Action belonging to a Wife, as a Bond, ſhe ought to be joined.

But 'tis otherwiſe in caſe of Rent accruing to the Husband in the Right of his Wife after Marriage.

Anonymus. *Trin.* 14 *Car.* 2.

14 *Car.* 2. THE Bill was only for the *Diſcovery of a Deed*; to which the Defendant demurred, becauſe the Plaintiff had not *made Oath*, according to the Courſe of the Court, that he had not the Deed.

But Serjeant *Glynn* inſiſted for the Plaintiff, That the Courſe of the Court did not require ſuch Oath in this Caſe, becauſe the Bill is barely for a *Diſcovery*, and not to be *reliev'd* as to the Deed. For where the Bill alledgeth the Want of a Deed, and ſeeketh Relief upon the Matter contained in the Deed, in ſuch Caſe 'tis neceſſary that the Plaintiff ſhould make

make Oath that he hath it not. But where the Plaintiff by his Bill ſeeketh only for a Diſcovery of a Deed, and no Decree upon the Matter therein contained, but that he may produce it at a Tryal, or the like; in ſuch Caſe he ought not to be put to his Oath, for 'tis not to be preſumed he would exhibit a Bill if he had the Deed to produce. And this Difference was now allowed, and the Demurrer over-ruled.

Anonymus. *Anno* 16 *Car.* 2.

THE Bill was to have a Decree for an *Encloſure*, upon an Agreement made by the Parties for that Purpoſe; but there being eighteen Shares, and but fifteen Parties to the Suit, it was objected, That all the Parties to the Agreement were not made Parties to the Suit; and alſo that other Perſons claimed a Right of Common in the Soil now to be encloſed, who were neither Parties to the Suit or Agreement, and therefore to decree that Agreement would be to do manifeſt Wrong, and occaſion many Suits and Quarrels. 16 *Car.* 2.

To which it was anſwered, That tho' there were eighteen Shares, and but fifteen Parties, yet ſome of thoſe Parties were to have two Shares, and that there

there was one had Common, but it was by reaſon of Vicinage.

Whereupon it was decreed, That the Agreement for the Encloſure ſhould be performed; and a Commiſſion was awarded to ſet out the Share of each Perſon. And the Court declared, That if there were any who were not Parties, and who had any Intereſt, they could not be bound by this Decree and ſo be at no Prejudice; but that it ſhould not be in the Power of two or three obſtinate Perſons to oppoſe and hinder a publick Good.

Stukeley verſus *Cooke.*

THE Plaintiff ſets forth, That the Defendant bought Cloth of him to the Value of 1100 *l.* and paid part of the Money, and gave Security for the reſt; and that the Defendant promiſed the Plaintiff's Wife, if ſhe could procure a Releaſe from her Husband, that he would give her 20 *l.* And that he did give a Releaſe, but the Defendant denied to pay the 20 *l.* and the Plaintiff had no Witneſs to prove the Promiſe.

The Defendant demurred for want of Conſideration to the Promiſe, becauſe by Payment of part, and ſecuring the reſt,

reſt, the Debt was releaſed by Law; but the actual Releaſe was no more than what by Law and Conſcience ought to be, and therefore it was *Nudum Pactum*, and without any Conſideration to make any ſuch Promiſe.

Cutts verſus *Pickering*, 4 *Maii*, 23 *Car.* 2.

THE Defendant claimed an Eſtate by a Will for 90 Years abſolutely, but after the Word *Years* there was a Raſure, ſuppoſed to be written [*if he ſo long live.*] The Queſtion was, How to find out this Fraud and Alteration of the Will? And for that Purpoſe the Plaintiff had exhibited interrogatories, to examine Mr. *Joſhua Baker*, the Defendant's Sollicitor, on Oath; and Mr. *Baker* demurred, for that he knew nothing but as he was Sollicitor for the Defendant, and as truſted by him, and demanded Judgment whether he ſhould be examined againſt his Client; but the Demurrer was over-ruled, and upon an Appeal to the Lord Keeper the Order was confirmed. 23 *Car.* 2.

Lady *Griffin* verſus *Boynton. Paſc.* 13 *Car.* 2.

13 *Car.* 2. THE Plaintiff having only a Copy of a Deed of Feoffment under which ſhe claimed the Land, the Original being loſt, and the Defendant having a Counter-part, the Plaintiff deſired by her Bill that the Copy might be compared with the Counter-part, and if it agreed, that the ſame might be allowed in Pleading as a good Deed, ſealed and delivered; which was accordingly granted, and it was referred to a Maſter to ſettle the ſame.

So where a Plaintiff claimed Lands by a Will, which was proved; but the Original was taken out of the *Prerogative-Office*, ſo that the Plaintiff could have no Remedy at Law, and therefore he prayed the Aid of this Court; and it was decreed, That the Copy of the Probate of the Will out of the Regiſter's Book in the *Prerogative-Office*, ſhould be admitted in Evidence at Law at any Tryal, which ſhould be had concerning the Title of the ſaid Lands, as the true Original Will. This was decreed in the ſame Year, (*viz.*) 13 *Car.* 2. inter Dom. *Gorges* verſus *Foſter.*

Hal-

Halford verſus *Bradſhaw.*

THE Bill was to be relieved againſt a Statute, and upon hearing the Cauſe an Account was directed, and after ſeveral Proceedings and interlocutory Orders, the Matter was referred to Mr. *Ambroſe Phillips* by Conſent of all Parties, and his Award to be concluſive. Mr. *Phillips* made an Award, which was confirmed *niſi Cauſa.* At the Day appointed ſeveral Reaſons were offered againſt confirming it, and amongſt the reſt for that Exceptions were taken to it: But the Court declared, That the Parties having bound themſelves by Conſent, they would not look back into the Award, and thereupon it was confirmed by the Lord Chancellor.

Jackſon verſus *Digry.*

UPon a Motion, the Queſtion was upon a *Bill of Review*, by which Money was decreed back from the Defendant to the Plaintiff, which he had gotten from him by a former Decree, Whether the Party ſhould pay *Damages* or not? Upon a former Motion in this Caſe, the Court directed to ſearch Pre-

cedents, and none were found where any Damages or Coſts were given on a *Bill of Review*. And this was compared to Caſes where Judgments have been reverſed upon a Writ of Error, (*viz.*) That the Party ſhall be reſtored to all that he had loſt *per Judicium pred'*, but no Damages or Coſts, and ſo it was decreed.

Godſcall verſus *Walker* & *Wall.*

THE Bill was to be relieved againſt ſeveral Judgments in Debt, obtained from Sir *John Godſcall* an Infant, by Practice between the Defendant *Walker* a Goldſmith, and *Wall* an Attorney, and the Guardian of the Infant, and it was referred to a Maſter to examine the real Conſideration either in Money or Goods, for which the ſaid Judgments were had, and to make his Report, that farther Order might be taken therein.

Vif-

Viſcounteſs *Cranborne* verſus *Delmahoy.*

A Bill of Review to reverſe a Decree made in *May* 1655, in which Cauſe the Dutcheſs of *Hamilton*, the Defendant's late Wife, when Sole, was Plaintiff, and the now Plaintiff the Lord *Cranborne* and his Lady were Defendants.

The Errors aſſigned were, 1. That the *Dutcheſs* was a *Feme Covert* at the time of the Decree made; for it appeared by *Delmahoy*'s Anſwer in this Court to another Bill, That after the Bill exhibited by the *Dutcheſs*, and before the hearing that Cauſe, ſhe and the Defendant intermarried, and ſo there was no Cauſe in Court for the Foundation of ſuch a Decree, it being *abated* by the Marriage.

The 2d Error: That the *Dutcheſs's* Father being ſeiſed in Fee of a Truſt Eſtate in the Priory of *Guilford*, and of other Lands in *England*, he conveyed the ſame to the *Dutcheſs* and her Heirs by Deed in nature of a *Feoffment*, which was not executed by *Livery and Seiſin*, and therefore was void at Law, and not to be ſupported in a Court of Equity to diſinherit the now Plaintiff, who

together with the *Dutcheſs* were Daughters and Coheirs of their ſaid Father.

To this Bill the Defendant demurred, and for Cauſe ſhewed, That it did not appear by the Bill but that the Decree was well grounded; for the firſt Error aſſigned was not Matter appearing in the Body of the Decree, but quite out of it, and *Dehors*; neither was it proper for any other Perſon than the Defendant to take Advantage of it; beſides it was only Matter in Abatement, and did not concern the Right; and after a Decree was made in point of Right, any Matter that might be pleaded in Abatement, was not ſuch an Error as to ground a Bill of Review: And the Court was of that Opinion.

As to the 2d Error aſſigned; Since the Father was ſeiſed of a Truſt, the Deed, tho' it was in nature of a *Feoffment*, might paſs that Truſt, tho' not executed by *Livery*; and it was ſufficient to declare the ſame, which, as the Law then ſtood, might be declared by Parole.

It was then inſiſted, that the Defendant might anſwer the Bill; and after a long Debate, the Court declared, That ſince the Cauſe was now as entirely before them as it could be upon an Anſwer,

ſwer, there being no other Matter poſſible to be diſcovered or ſet forth, it was not fit for the Defendant to anſwer; and ſo the Demurrer was allowed.

Parry verſus *Bowen.*

RESOLVED, That where a Perſon hath Power to leaſe for 10 Years only, and he maketh a Leaſe for 20 Years, that ſuch Leaſe ſhall be good in Equity for 10 Years; and ſo it hath been ſettled ſeveral times in this Court.

Borre verſus *Vande.*

A *Factor* had ſtolen the Cuſtoms of ſeveral Goods, and the Bill was, To have an Accompt, and to diſcover, whether he paid thoſe Cuſtoms or not.

The Defendant by his Anſwer inſiſted, That he was not bound to anſwer that part of the Bill, becauſe the Plaintiff who was the Merchant was not entitled to thoſe Cuſtoms, nor had any Advantage thereby, whether the ſame were paid or not.

And it being referred to the Maſter, whether this was a ſufficient Anſwer or not, he certified it was not: And Exceptions being taken to his Report,

the Cauſe was heard, and it was inſiſted, That it would be of very ill Conſequence, and an Encouragement to unjuſt Factors, if the Court ſhould give any Opinion for them in a Matter of Fraud as this was. But it was ſaid for the Defendant, That by the Law and Courſe of Merchants, the Factors were to have the Benefit of Cuſtoms ſtolen, becauſe they were liable to the Penalties if diſcovered, and not the Merchants.

But the Court declared, That could not be a Law or Cuſtom amongſt Merchants which was grounded on a Fraud, and ſo ordered the Defendant to anſwer.

Raynes verſus *Lewes.*

THE Bill was brought by a Feme Covert againſt her Husband, to be relieved concerning a ſeparate Maintenance agreed to be paid to her by her Husband. The Defendant demurred, for that ſhe ſued without her Husband; but for the Reaſon aforeſaid the Demurrer was over-ruled.

Churchill verſus *Grove* & al. *Anno* 15 *Car.* 2.

THE Mortgagor confeſſed a *Judgment* to the Plaintiff, and had likewiſe acknowledged a *Statute* to the Defendant, which was *precedent* either to the *Mortgage* or *Judgment*. 15 Car. 2.

Thereupon the Plaintiff, who was the Judgment Creditor, exhibited his Bill againſt the Mortgagor and the Cognizee of the Statute, to have a Diſcovery of what was due on the *Statute*, and that upon Payment of the Money it might be ſet aſide.

The *Cognizee* pleaded, That he had extended the Land; and there being 3000 *l.* really due to him, the *Cognizor*, in Conſideration of ſo much Money received, had made an abſolute Conveyance of part of the extended Lands to him, and that his Debt being ſatisfied by that Conveyance, he had aſſigned the reſt of the extended Lands to the *Cognizor*, and ſo he became a Purchaſer of the Lands for a valuable Conſideration, without any Notice of the Plaintiff's Title. He alſo pleaded, That the Cognizor was in Execution at the Plaintiff's Judgment, and therefore he could not extend his Lands, neither were they liable

liable to his Debt during the Life of the Cognizor.

And upon arguing this Plea, it was inſiſted on the Part of the Plaintiff as to the firſt Point, That it did not appear the Defendant was a *Purchaſer*, there being no Money paid upon executing the Conveyance, the Conſideration whereof was the Money due on the Statute, and that was no Purchaſe; and that it was common Equity for him who had any ſubſequent Judgment to be relieved againſt any precedent Statute upon Payment of what was juſtly due; and that therefore the Accompt made up between the Cognizor and Cognizee on the pretended Purchaſe ought not to affect the Plaintiff, ſo that the Defendant's Purchaſe being ſubſequent to the Plaintiff's Security, ought not to be aided by the Statute, and the Plaintiff's Judgment being on Record, the Defendant was bound to take Notice of it at his Peril, and therefore ought, upon Payment of the Statute, to yield the Poſſeſſion to the Plaintiff.

But on the other Side it was inſiſted, That the Defendant was a Purchaſer; and that tho' no Money was advanced on the Purchaſe, yet the Conſideration of his aſſigning ſome part of the extended

tended Lands to the Cognizor was as good and valuable as Money.

That it was the conſtant Juſtice of this Court, That if a Purchaſer *bonâ fide* bought in an elder Statute or Judgment, and there were intermediate Judgments between that and the Purchaſe, of which he had *no Notice*, that in ſuch Caſe the precedent Statute or Judgment ſhould protect the Purchaſer againſt all thoſe intermediate Judgments.

That tho' the Plaintiff's Judgment was on Record, and a Purchaſer bound to take *Notice* thereof, becauſe it charges the Land at *Law*; yet in *Equity*, where the Cognizee of a Statute or Judgment comes for the Aſſiſtance of this Court to extend his Judgment againſt a *Purchaſer*, he muſt prove that the Purchaſer had *expreſs Notice* of the Judgment, otherwiſe he ſhall not be relieved; and upon this Point the Plea was allowed to be good.

As to the other Point, That the Cognizor being in Execution on the Judgment at the Suit of the Plaintiff, and ſo the Lands not to be extended during his Life; it was argued, That was no good Exception in Equity, for that the Bill was to diſcover Incumbrances, and the Plaintiff could have no ſuch Diſcovery after the Cognizor's Death, and therefore

fore ought to have it now. And it hath been ruled here, That ſuch a Bill will lie, notwithſtanding the Debtor is in Execution at the Suit of the Plaintiff; but yet the Court inclined, that this Part of the Plea was likewiſe good.

Randall verſus *Richards.*

A Witneſs having committed a Miſtake in his Examination before Commiſſioners, applied himſelf to them to rectify it; who told him, That the Commiſſion was returned to *London*, and he coming there, made Oath of it, and that he was ſurpriſed by a haſty Examination: But the Commiſſion not being opened, it was returned back to the Commiſſioners, with a Special Commiſſion to open it, and permit the Witneſs to rectify his Miſtake. And afterwards the Special Commiſſion being executed and returned, a Motion was made to ſuppreſs the Depoſitions, becauſe unduly taken, and that no ſuch Special Commiſſion ought to have been. Whereupon it was referred to the Maſter of the *Rolls* to examine into it, who called to his Aſſiſtance the *Six Clerks*, and they were all of Opinion, That no ſuch Commiſſion had ever been, or ought to be now granted; ſo

ſo the Depoſitions and the Special Commiſſion were ſuppreſſed.

Scott verſus *Reyner.* *Anno* 16 *Car.* 2.

AN Action was brought at Law by an Adminiſtratrix to her late Huſband, upon a ſingle Bill, for the Payment of Money due to him. The Defendant in that Action exhibits his Bill, ſuggeſting that in truth the Husband was not dead, but concealed himſelf, and pending this Suit, the Adminiſtratrix got Judgment at Law. But the Court granted an Injunction, and directed an Iſſue at Law, to try whether the Husband was dead or not. 16 Car. 2

Freak verſus *Horſey.* Lord Chancellor, and Mr. Juſtice *Brown.*

THE *Heir* of the Mortgagee exhibited a Bill to have the Mortgagor pay the Money, or to be decreed to make a farther Aſſurance, and alſo to be foreclоſed of the Equity of Redemption.

The Defendant demurred to the Bill, becauſe the *Executor* of the Mortgagee was not made a Party; for probably he might have a Title to the Mortgage-Money,

ney, and the Demurrer was for that Reaſon allowed.

Kingſton & al. verſus *Manwaring.*

THE Plaintiffs were the Children of the Defendant's Siſter; and the ſaid Defendant being an Infant, his Mother took Care of his Eſtate during his Minority, and as Guardian to him; and upon a Bill exhibited by the Plaintiffs to diſcover a Deed, the Queſtion was, Whether the Defendant's Father had ſettled the Lands now in Demand on the Plaintiff's Mother? The Proof was, That about two Years before her Marriage he had put her in the Poſſeſſion of theſe Lands; and had *articled* upon her ſaid Marriage, That the ſame ſhould be ſettled on her and her Heirs: To which Articles, the *Defendant then an Infant was a Witneſs.* But there was not any other Proof of ſuch Deed of Settlement, yet the Court decreed for the Plaintiff; but it was conceived a hard Caſe for the Court to decree an Equity upon a Deed, which had no other Proof.

Betton verſus *Ann.* *Anno* 16 *Car.* 2.

A Leaſe was granted by the Crown to one who made an Under-Leaſe to another in the Time of the Uſurpation, rendering Rent, *&c.* Afterwards the Intereſt which the Crown had in the Lands was expoſed to Sale, and the Title by which the firſt Leſſee held it was defeated, and by Conſequence the Under-Leaſe was in Danger; therefore he who had that Intereſt applies himſelf to his Leſſor to be protected, which he refuſed. The Eſtate was afterwards ſold by the Uſurpers, and the Under-Leſſee paid the Rent to the *Purchaſer*, and afterwards purchaſed the Lands himſelf of that very *Purchaſer*. 16 *Car.* 2.

When the King was reſtored, the firſt Leſſee who held under the Crown brought an Action of Debt againſt this *Under-Leſſee*, for all the Arrears of Rent ever ſince he had diſcontinued the Payment thereof to him, and had Judgment by Default.

And now the Plaintiff, who was the *Under-Leſſee*, exhibited a Bill to be relieved againſt that Judgment, which (as he alledged) was obtained by Surprize: And tho' that did not appear, yet the Judgment was vacated, becauſe the Rent was

was diſcharged by the Act of Oblivion; of which the Chancellor ſaid, A Court of Equity was as proper a Judge as the Courts at Law.

Glover verſus *Partington. Anno* 16 *Car.* 2.

16 *Car.* 2. *John Glover*, the Plaintiff's Father, for ſecuring 50 *l. per Annum* to *Anne*, his Mother-in-Law, during her Life, in lieu of ſo much which was charged on other Lands for her Life, and which he was now about to ſell, did ſurrender certain Copyhold Lands of the Tenure of *Gavelkind* to *Thomas Rolt*, Brother of the ſaid *Anne*, and his Heirs, in Truſt for the ſaid *Anne*, and upon Condition, That if the ſaid *Glover*, his Heirs or Aſſigns, paid *Anne* 50 *l. per Annum* during her Life, then the Surrender to be void.

Thomas Rolt was admitted, and afterwards the ſaid *Glover* failing to pay the 50 *l. per Annum*, *Rolt* ſurrender'd the Premiſſes to the Uſe of *Anne* for Life, Remainder to himſelf and his Heirs, but in Truſt for her and her Heirs.

Rolt the Truſtee died; the Lands deſcended to his Heirs, (*viz.*) Children and Grandchildren, ſome of them Infants, and one of them a Lunatick.

Afterwards *Anne* deviſed, That the Arrears of the 50 *l. per Annum* ſhould be paid to her Executors; and having made the Defendant *Partington* her Executrix, and declared that the Children and Grandchildren of *Rolt* ſhould permit her ſaid Executrix to receive the Rents and Profits of the Lands towards the Payment of certain Legacies ſhe had bequeathed; and that if the Plaintiff, who was the Heir of the ſaid *Glover*, ſhould within three Years after her Deceaſe pay unto her ſaid Executrix all the Arrears of the ſaid 50 *l. per Annum*, then they ſhould ſurrender to him and his Heirs; and *remitted* 100 *l.* of the principal Debt, and the *Intereſt* of the whole, *in caſe* he paid the reſt within that Time; but if he failed, then the Premiſſes ſhould be ſurrender'd to her ſaid Executrix, and the Arrears being paid, then ſhe was to pay the Surplus to the Plaintiff, and to ſurrender to him; and ſoon afterwards died.

After whoſe Death, the Plaintiff exhibited a Bill againſt the Executrix, and againſt the Children and Grandchildren of *Rolt*, to have a Diſcovery of what was paid, and that upon Payment of the Arrears, (*excepting* 100 *l. and the Intereſt*) the Lands might be ſurrender'd to him.

But it was decreed, That if he would redeem, he ſhould pay *all the Arrears and Intereſt*, and that upon Payment thereof the Lands ſhould be ſurrender'd.

This Cauſe was afterwards reheard upon the Point of *Intereſt*; for as to the Payment of the 100 *l.* 'tis true the Bill came in ſix Months after the Death of *Anne*, and a long time within the three Years in which it was appointed to be paid: But by reaſon of the Infancy and Lunacy of the Defendants, and other Accidents, the Cauſe depended for many Years; and it was not ſafe to go to a Hearing to obtain a Surrender without their being made Parties, and for this Reaſon he ſuffered the three Years long ſince to lapſe.

But all this was not held a ſufficient Reaſon to retard the Payment of the 100 *l.* becauſe the Remittance of it being a *Voluntary and Conditional Gift* to the Plaintiff, he ought to have performed the *Condition* by the Payment of the reſt of the Money, if he would have any Benefit of the Gift; and if the Lands could not be ſurrender'd to him at the Time he paid the Money in Performance of the Condition, he ſhould have fought for a Surrender afterwards, when it might have been lawfully made.

Then

Then as to the Matter of *Intereſt*, the Counſel inſiſted, That was ſtrongeſt for the Plaintiff; for the Will appointed, That the Arrears being paid, the Lands ſhould be ſurrender'd to him. Now certainly ſome Benefit was intended for him by this Appointment; but it would be none if he ſhould pay all the Arrears and Intereſt; for in ſuch Caſe the Lands muſt be ſurrender'd, whether the Will had made any ſuch Appointment or not.

But notwithſtanding this Reaſon, the Decree was confirmed. Serjeant *Fountaine*, Mr. *Churchill*, Mr. *Keck*, and Mr. Solicitor *Finch*, for the Defendants.

Afterwards there was a *Bill of Review* brought by the Plaintiff to reverſe this Decree; to which *Partington* the Executrix demurred, and inſiſted there was no Error in it.

And the Demurrer being argued before the *Lord Chancellor*, aſſiſted by *Baron Rainsford*, it was inſiſted, That this was a *Bill of Review* of a very ſtrange Nature, becauſe the Plaintiff who had a Decree in his Favour, (*viz.*) that the Lands ſhould be ſurrender'd to him, complained that he had not enough decreed, when in Truth a *Bill of Review* lay properly for him *againſt whom* the Decree or Diſmiſſion was pronounced;

and after long Debate, the Demurrer was allowed.

Prowde verſus *Combes*, *Anno* 16 *Car.* 2.

16 *Car.* 2. THere was an Accompt ſtated between the Mortgagor and the Heir of the Mortgagee, and it was under Hand and Seal; and a Bill was now brought to be relieved, ſuggeſting, that upon the Sealing to the ſaid Accompt, it was agreed between the ſaid Parties, That if there was any Miſtake, it ſhould be rectified.

The Defendant denied the Agreement, and pleaded the Accompt ſtated, and ſet forth the ſeveral Meetings in order to it; and that it was peruſed by the Plaintiff and a Friend before it was ſealed, and by him approved, and he conſented to it: But it appearing to the Court upon the Hearing, that the Accompt was made up of *Intereſt upon Intereſt*, they ſet it aſide, and ordered the Parties to go to a new Accompt *ab Origine*.

Rand

Rand verſus *Cartwright.* *Anno* 16 *Car.* 2.

A Man made a *voluntary Grant* of his Lands, and afterwards he *mortgaged* the ſame Lands. Upon a Tryal at Law againſt the Mortgagee, the firſt Deed was found fraudulent; and afterwards he to whom that Deed was given exhibits his Bill, to redeem upon Payment of the Money to the Mortgagee; and it was decreed, That tho' the firſt Deed was fraudulent, becauſe, *quoad* the *Mortgage-Money*, *& pro tanto*, it was *voluntary*, yet it was good as to the Equity of Redemption, and would paſs it; for a *voluntary Deed* is good againſt the Party who made it, and againſt his Heir, tho' not againſt a Mortgagee. 16 Car 2.

Kinnerſley verſus *Parrett.* *Anno* 16 *Car.* 2.

THE Plaintiffs were *Legatees*, but their Legacies were not to be paid *until they attain their reſpective Ages of* 21 *Years*; and becauſe they had no *Maintenance* in the mean time, they exhibit their Bill by their Guardian, ſetting forth this Matter, and praying that the Executor might allow them *Maintenance.* 16 Car. 2.

The ſaid Executor demurred, for that the Plaintiffs were *under Age*, and their Legacies not *yet due*, and ſo had no Cauſe of Suit; but the Demurrer was over-ruled.

Woollett verſus *Roberts. Anno* 16 *Car.* 2.

16 *Car.* 2. AT the Hearing this Cauſe, the now Plaintiff offered to give in Evidence a Bill, formerly exhibited againſt him by the now Defendant. It was objected, That the Bill ought not to be given in Evidence, unleſs the Plaintiff could prove that it was exhibited by the Order, Direction, and Privity of the Defendant; for any Man may file a Bill in the Name of another: And the Court was of Opinion, That it ſhould not be read, unleſs it was ſo proved.

Drake verſus *The Mayor of Exon. Anno* 16 *Car.* 2.

16 *Car.* 2. THE Leſſor made a Leaſe for Years, and covenanted with the Leſſee and his Aſſigns, that he would renew the Leaſe. The Leſſee became a Bankrupt, and afterwards the Commiſſioners of Bankrupts aſſigned this Covenant to the Plaintiff, who brought his Bill againſt the Leſſor to have the Benefit

nefit thereof, and that he might be compelled to renew the Leaſe. The Caſe was referred to Juſtice *Wyndham* and Baron *Turner*, and they certified that the Plaintiff ought not to be relieved; and ſo he was diſmiſſed. But Serjeant *Newdigate* told Mr. *Keck*, who who was of Counſel for the Defendant, That it had been ruled in this Court, That *Commiſſioners of Bankrupts might aſſign an Equity of Redemption of a Mortgage:* But this may be a Queſtion, becauſe the Statutes of Bankrupcy do enable them to aſſign the Benefit of *Conditions which are to be performed*, but not *Conditions which are forfeited.*

Love verſus *Baker* & al. *Anno* 16 *Car.* 2.

BOTH the Defendants brought a joint Action at *Leghorne* againſt the Plaintiff, and had there arreſted his Goods; and the Defendant *Baker* being now here, and the other at *Leghorne*, and a Bill being filed againſt them, *Baker* put in his Anſwer, and it was ordered, That a *Subpœna* being left with him, ſhould be good Service on the other Defendant who was at *Leghorne*, and thereupon an Attachment for want of Anſwer, and ſo an Injunction to ſtay Proceedings at *Leghorne.* 16 *Car.* 2.

Now the Defendants moved to diſſolve that Injunction, and inſiſted that it was a new Caſe: And the Lord Chancellor being of Opinion that it might be a dangerous Caſe to ſtay Proceedings there; it was anſwered, That all Parties might have Juſtice, and be fully heard in this Court, but that the Plaintiff would be without Remedy if Diſtreſſes proceed at *Leghorne*, and the Defendants ſhould get the Poſſeſſion of all his Goods there.

Thereupon the Court declared, they would adviſe with the Judges; and afterwards declared, that they were of Opinion, that the Injunction ought to be diſſolved: But all the *Barons* were of another Opinion. And as to the Objection, That an *Injunction* did not lie to *Foreign Juriſdictions*, nor out of the King's Dominions; it was anſwered, That the Injunction was not to the Courts there, but to the Party who was the King's Subject.

Hayn

Hayn verſus *Hayn* & al. *Anno* 17 *Car.* 2.

PEnding the Suit, and after Replication, and before Iſſue joined, the Defendant got a *Releaſe* from the Plaintiff, and at the Hearing brought a Witneſs to prove it. 17 *Car.* 2.

It was inſiſted for the Plaintiff, That this *Releaſe* could not be produced in Evidence, becauſe the Reality of it could not be tried, for it might be fraudulent, or obtained by Surprize.

The Court offering a Tryal at Law upon any ſuch Iſſue, it was objected, That an Iſſue ought to be firſt joined in this Court upon a Point to be tried here, before the Court could direct a Tryal at Law.

After Conſideration upon this Point, both at the Bar and Bench, it was ordered that the principal Cauſe ſhould ſtay, and that a new Bill ſhould be exhibited againſt the *Releaſe*, ſo that the Truth of it might be examined, and both Cauſes to be heard together.

Ste-

Stephens verſus *Baily*. *Anno* 17 *Car.* 2.

17 *Car.* 2. L *Eſſee for another Man's Life* contracts with the Plaintiff for a Sum of Money to convey an Eſtate to him, but dies before the Conveyance was perfected.

The Defendant, being the Heir of the *Leſſee pur auter Vie*, enters, and holds the Land as *Special Occupant*; and a Bill being brought againſt him to perfect the Aſſurance, he demurred to it, and it was inſiſted for him, That he was in Poſſeſſion as an Occupant, and ſo was not *privy* to his Father who made the Contract.

Maynard on the other Side argued, That an *Occupant* is liable to an *Action of Waſte*, and that was the *Dean* of *Worceſter*'s Caſe; and that an Occupant was bound by this Agreement in Equity: That the Plaintiff, who was out of his Money, ought to have Relief: That where a Man contracts for the Purchaſe of Lands, and dies before the Aſſurance is executed, the Heir of the Vendor ſtands truſted for the Purchaſer, and is compellable in this Court to execute the Eſtate to him, and that Truſts here are of another Nature than Uſes are at Common Law: That a Covenant doth not

not bind an Occupant at Law, becauſe the Eſtate which he poſſeſſeth by the Occupancy is not Aſſets in Law; but here it is a Truſt: That if a *Copyholder* takes Money, and covenants to convey, his Heir is not bound at Law, yet this Court will compel him.

So in this Caſe, the Lands are bound by the Agreement in whoſe Hands ſoever they fall.

Mr. *Finch* for the Defendant inſiſted, That this was not like the Caſe of a *Copyholder*; for the Lord is bound to admit the Heir, and then he is in by Deſcent, and he may have an Ejectment before Admittance; 'tis more like the Caſe of one ſeiſed in Fee, who contracts to ſell, and dies before any Aſſurance, and without Heir, ſo that his Lands eſcheat to the Lord: This Court will not compel that Lord to convey to the Vendee. But *Maynard* ſaid, The Reaſon was, becauſe by ſuch Conveyance the Lord would loſe his ancient Services which were due before the Lands eſcheated.

To which it was replied, That this did not ſeem to be a tolerable Reaſon, becauſe the Lord might make ſuch a Conveyance reſerving the ancient Services. But it being referred to Juſtice *Tyrrill*, he certified, That having adviſed

ſed with the Judges, he was of Opinion that the Defendant ought to anſwer; and ſo it was ordered.

Hamden verſus *Brewer.* *Anno* 18 *Car.* 2.

18 *Car.* 2. *Richard Hamden* made the Plaintiff and his Widow *joint Executors* of his Will, but upon this Condition, That if his Widow married, her Executorſhip ſhould ceaſe, and then the Plaintiff ſhould be ſole Executor.

A Bill was exhibited by the Executors, and an Anſwer put in, and ſeveral interlocutory Orders made, and amongſt the reſt, an *Order by Conſent*, to refer the whole Matter in Difference to the Arbitration of another Perſon. Then the Widow died, and now the Queſtion was, Whether there could be any farther Proceedings on this Bill, or whether there muſt be a Bill of Revivor? And it being referred to the Chief Juſtice *Bridgman* upon this Point, he was of Opinion, That there muſt be a *Bill of Revivor.* Serjeant *Fountaine* oppoſed it; but notwithſtanding a *Bill of Revivor* was brought, and it was to revive all the former Proceedings, and particularly that *Order made by Conſent.*

To

To this Bill the Defendant demurred, for that it ſought to revive the *Order made by Conſent*, to which the *Woman was a Party*, and ſhe being *married* ſince her Executorſhip, her Conſent was determined; and upon Debate, the Demurrer was allowed.

Criſp & al. verſus *Spranger* & *Weſtwood*. *Anno* 19 *Car.* 2.

THE Plaintiffs being Infants, exhibited their Bill againſt the Defendants as Executors in Truſt for them, and it was to have an Accompt of the Profits of the Eſtate with which they were entruſted. The Caſe was thus: 19 *Car.* 2.

The Defendant *Weſtwood*, both at the Time of the Death of the Plaintiffs Teſtatrix, and long before, had employed a Farm, part of her Eſtate, for her Uſe and Benefit in fatting Cattle. After her Death, he uſed the Farm as before, and fatted Cattle, and ſent them to *Spranger*, the other Executor, to ſell; which he did, and laid out the Money in lean Cattle, which he ſent back to *Weſtwood*, who received them, and fatted them on the ſaid Farm, and afterwards ſold them at ſeveral Markets. *Weſt-*

Weſtwood became inſolvent, and it was now endeavoured to charge *Spranger* with the Money which he had actually received for the fat Cattle, and for which he had given *ſeveral Receipts*, upon this Rule, *That every Truſtee ought to be charged with his own Receipts*; and thereupon it was decreed, That each Executor ſhould be charged for what he had reſpectively received: This was by the Maſter of the *Rolls*.

Serjeant *Maynard* not ſatisfied with this Decree, ſaid, It was no *Devaſtavit* for *one Executor* to pay or deliver over the Teſtator's Eſtate to *another Executor*, becauſe each hath a Title to the whole; and here was nothing done by *Spranger* but what was for the Benefit of the Eſtate. That he ought not to be charged with the Money for the fat Stock, when he had returned it to the Eſtate in lean, but that the other Executor ought to be anſwerable for the whole.

Afterwards this Cauſe was re-heard before the *Lord Chancellor*, the Maſter of the *Rolls* being preſent; and Serjeant *Maynard* inſiſted, That *Spranger* being not liable at Law, ought not to be ſo in Equity: That if this Decree ſhould ſtand, no Truſtee could be ſafe: That the Farm was in *Weſtwood*'s Ma-

nagement when the Teſtatrix died, and after her Death continued ſtill in him who was a near Relation both to her and the Children. 'Tis true, *Spranger* acted as an Executor, but he is not to be charged, becauſe there is no Breach of Truſt; and an Executor is a Truſtee, as well to diſpoſe as to receive; and that he did not break his Truſt in ſelling fat Cattle, ſince he laid out the Money upon the lean Stock to be fatted on the ſame Land, which were actually delivered to *Weſtwood*, and taken into his Poſſeſſion.

Serjeant *Fountaine* on the other Side argued, That *Spranger* did ſuſpect *Weſtwood*'s Sufficiency, and therefore ought to have kept the Money, and not bought lean Cattle for him: That if two Truſtees give Receipts, they ſhall be both charged, tho' they did not actually receive the Money. See *Towly* ver *Chaloner*, *Cro.* 312. contra. As to the fat Cattle, the Value of them before they were ſold, and the Money afterwards, was Aſſets in *Spranger*'s Hands to charge him by any Creditors to whom he was liable, and this by receiving the Money for which they were ſold; and the Executors are not bound to manage the Farm as in the Life-time of the Teſtatrix, but upon the firſt Opportunity

portunity to turn the Stock into Money.

Lord Chancellor. Since the Farm was in *Weſtwood*'s Poſſeſſion when the Teſtatrix died, if the Cattle had afterwards died, or had not been ſold, *Spranger* had not been chargeable. It muſt certainly be good Husbandry for the Executors to ſell the fat Cattle, and to buy lean; and *Spranger* hath committed no Fault in what he did.

As to the Allegation, That where the Receipts can be diſtinguiſhed, each Truſtee is to be charged with ſo much as he received; it is very true: But *Spranger* ought not to be charged with his Receipts, becauſe he laid out the Money for Stock to be fatted on the ſame Farm, which was afterwards diſpoſed by *Weſtwood*; and did ſo order, and declare and explain the former Decree made in this Cauſe accordingly.

Miller & Ux. verſus *Kendrick* & *Vylett.* *Anno* 19 *Car.* 2.

WILLIAM *Kendrick*, ſeiſed of Lands in Fee worth 90 *l. per Annum*, ſettled the ſame to the Uſe of *Thomas*, his eldeſt Son, *for Life*, Remainder to Truſtees for 96 Years, *if Thomas ſhould ſo long live*, to preſerve contingent Remainders; Remainder to *Martha*, the Wife of *Thomas*, *for Life*, for her Jointure; Remainder of theſe and all other his Lands, of which *Thomas* was *Tenant for Life*, to the firſt Son of *Thomas* in Tail Male, with divers Remainders over: In which Settlement, there was a Power for *Thomas* at any Time during his Life, by any Writing, *&c.* to limit and *appoint* the ſaid Lands of 90 *l. per Annum* to any other Wife, that *Thomas* ſhould have, for Life, or to any of his younger Child or Children, or to any other Perſon for their Uſe, *ſo as ſuch Appointment be made to commence after the Death of Martha*, and for the Life or Lives only of ſuch Child or Children, and for their Maintenance. 19 Car. 2.

Thomas had Iſſue *Martha*, now the Wife of the Plaintiff *Miller*, and another Daughter, and one Son, the Defendant *Kendrick*; and having no other

Way to make Proviſion for his Daughters, he in *May* 1657, for the natural Love and Affection which he bore to them, and for their Education and Maintenance, grants, bargains and ſells theſe Lands to *Vylett*, to *Have and to hold* to him and his Aſſigns for the Lives of his ſaid Daughter *Martha* and her Siſter, *&c. to commence after the Death of* Thomas, *and* Martha *his Wife*; whereas the Power given to him was, That he might limit it to them, to *commence after the Life of* Martha *his Wife only.*

And now the Plaintiff ſuggeſts, that ſhe had no other Proviſion but what ſhe had under this Deed, and that her Father apprehended he had well purſued the *Power* which he had to make Proviſion for her, but that the Defendant taking Advantage that it was not *literally purſued:* Whereas it was in Subſtance purſued, and the Eſtate granted to *Vylett* was not more, but leſs, than *Thomas* had Power to grant, for he had Power to grant it to *commence after the Death of* Martha *his Wife*, and he had granted it to *commence after his own Life, and the Life of* Martha; and this Miſtake did happen, by reaſon that in the Settlement the Lands were limited to *Thomas* for Life, Remainder to Truſtees for a Jointure for *Martha*; and it was charged

in

in the Bill, That in Equity that Miſtake ought to be rectified, otherwiſe there would be no Proviſion for the younger Children.

The Defendant *Kendrick* demurred, for that the Deed of Settlement and Deed to *Vylett* were both *voluntary*; and it appearing by the Bill, that the Deed to *Vylett* was void in Law, being defective in the Execution of the Power, it ought not to be ſupplied in Equity; for if ſuch Defects ſhould be helped here, it would be in vain to employ Men of Skill to draw Conveyances and Settlements, for any Man might do it. 'Tis true, if the Deed had not been *voluntary*, but in Conſideration of Money really paid, it might have been otherwiſe: Beſides, this did not ſeem to be a Miſtake, but deſignedly done; for if the Eſtate had been made to commence upon the Death of *Martha*, then *Thomas* himſelf would have loſt his Eſtate for Life.

The Court was of Opinion, That the Law being againſt the Plaintiff, Equity would not help, but ordered to ſearch Precedents; and thereupon a Precedent was produced for the Plaintiff, *6 Julii*, 40 *Eliz. Price* and his *Wife* againſt *Green*, (*viz.*) The Father being ſeiſed in Fee, ſettled the Lands by a Cove-

nant to ſtand ſeiſed to the Uſe of himſelf, Remainder to his eldeſt Son in Tail, reſerving a *Power* to himſelf to make Leaſes of part of it for 40 Years; who accordingly made a Leaſe for the Benefit of a younger Child, which came by Aſſignment to the Plaintiff, and which the eldeſt Son would have avoided, becauſe the *Power* was not well raiſed by a *Covenant to ſtand ſeiſed.* But it appearing to the Court, that the eldeſt Son was greatly advanced by the Father, and that the Conveyance which was by *Covenant to ſtand ſeiſed*, was intended to be by *Livery*; and being adviſed, that it would be as well by *Covenant to ſtand ſeiſed*, the Court did decree, That the Plaintiff ſhould hold till the Defendant evicted him by Law; and did decree likewiſe, That the Defendant ſhould admit the Power to make the Leaſe good in Law, if he did not prove an Entail paramount that Settlement.

Baker

Baker verſus *Hellett.* *Anno* 19 *Car.* 2.

THE *Heir* of the Mortgagor exhibited his Bill againſt the Aſſignee of the Mortgage, ſetting forth, That he had bought in ſeveral Incumbrances for a very ſmall Conſideration, and would now ſubject the Lands for the Payment of more than he had really advanced: Therefore he prayed, That the Defendant, who was an Attorney, might ſet forth what he had juſtly paid to buy in thoſe Incumbrances, and that the Plaintiff might be relieved, *&c.* 19 *Car.* 2.

The Defendant for Anſwer ſets forth, That he did not deſire more than what was really due: But as to that part of the Bill which ſought a Diſcovery of what he had really paid, he demurred, and inſiſted, That he ought not to anſwer; for if he bought in the Incumbrances for leſs than was due, there was no Reaſon the Plaintiff ſhould have any Benefit of the Bargain; and upon Debate, the Demurrer was allowed.

Harding verſus *Nelthrope. Anno* 19 *Car.* 2.

19 *Car.* 2. THE Defendant purchaſed ſeveral Lands charged with a Rent of 40 *l. per Annum*, and ſold part thereof for a valuable Conſideration to the Plaintiff; and covenanted, That the ſame were free from all Incumbrances done or committed *by him.*

Afterwards the Grantee of the Rent diſtrained on theſe Lands for the Arrearages of the Rent. Now tho' this was not an Incumbrance within his Covenant, yet the Plaintiff exhibited his Bill to be relieved, for that the Vendor knowing the Incumbrance, and concealing it, he by Fraud brought the Plaintiff to purchaſe, and therefore he ought to indemnify him againſt this Incumbrance. The Lord Keeper inclined to relieve him, becauſe the Vendor did know the Lands were charged with the Rent, and it was a Fraud to ſell them without diſcovering that Incumbrance: Like the Caſe in *Croke*, where a Counterfeit Stone was ſold for a Jewel, knowing it to be counterfeit; it was held that an Action of Debt would lie. And now in the principal Caſe, a Tryal at Law was directed to try, whether

ther the Vendor did know that the Lands were charged with the Rent when he ſold them; ſo that if it was found that he did know it, the Court ſeemed to incline that he ought to be relieved, becauſe he was drawn in by a Fraud to make the Purchaſe.

Hawtry verſus *Trollop.* *Anno* 19 *Car.* 2.

19 *Car.* 2. THE Defendant pleaded to the Bill; which Plea, upon hearing the Cauſe, was over-ruled, and the Defendant was ordered to perfect her Anſwer upon Interrogatories: And afterwards upon a Motion it was ordered, That ſhe ſhould have a Copy of the Interrogatories, and anſwer by the Advice of Counſel. And tho' on the other Side it was inſiſted, That this was againſt the Courſe of the Court, for any Perſon who was to be examined on Interrogatories, to anſwer by Advice of Counſel; yet upon Debate the Matter was ſettled, That ſhe ſhould have a Copy of the Interrogatories, and anſwer by Advice of Counſel; and ſo it hath been practiſed in like Caſes ſince.

Darcy verſus *Darcy.* *Anno* 20 *Car.* 2.

20 *Car.* 2. THE Plaintiff was eldeſt Son by a ſecond Venter, and had a Rent-charge of 200 *l.* well ſettled on him; and the Defendant was the eldeſt Son by the firſt Venter. The Bill was to be relieved for this *Rent-charge of* 200 *l. per Annum*, for which there was half a Year then in Arrear; ſuggeſting, That the Defendant did not keep any Stock upon the Ground, but converted the ſame into Tillage, ſo that there was not ſufficient for the Plaintiff to diſtrain, and that he was without Remedy, but in Equity, and therefore prayed a Decree *againſt the Defendant* for the Arrears and growing Payments. To which the Defendant demurred, for that the *Lands* being only charged with the *Rent* at Law, there was no Equity to charge the *Perſon* of the Defendant. But becauſe it was further alledged in the Bill, That there was a legal Defect in the Aſſurance, which ought to be made good in Equity, it being made upon a good Conſideration; therefore the Demurrer was over-ruled.

Then the Defendant anſwered, and denied that he always converted the Lands to Tillage, or that the ſame were not

not open to a Diſtreſs; but ſaid, That there had been often a Stock worth 250 *l.* upon the ſame.

Upon hearing the Cauſe, the only Equity inſiſted on was, That the Defendant employed all the Lands to Tillage, and kept no Cattle on the ſame. The Court would be attended with Precedents.

ſſ. One Precedent, 20 *Jan.* 1666, between *Seymour*, *Boreman*, and *Yate*; (*viz.*) *Thomas Yate* the Father, *John Yate* the Son, and *Francis* the Grandſon. The Bill was grounded on an Agreement upon the Marriage of *John Yate*, with *Francis* his firſt Wife, by a Tripartite Indenture, 15 *Car.* 1. by which *Thomas* was made Tenant for Life, Remainder in Tail to *John*, who had Iſſue by that Marriage the Defendant, his eldeſt Son. The ſaid *John* did afterwards, upon the Marriage with *Elizabeth* his ſecond Wife, and Mother of *Francis* the then Plaintiff, covenant to levy a Fine, to the Intent that *Elizabeth* might, after the Death of *Thomas* and the ſaid *John*, have and receive 150 *l. per Annum* out of the Lands for her Life; and if he ſhould *have Heirs Males*, then thoſe *Heirs Males* ſhould have another 150 *l.* out of the Lands during

during the Life of *Elizabeth*; and after her Deceaſe, the *Heirs Males* of his Body and of *Elizabeth* ſhould have 300 *l. per Annum*, with a Clauſe of Diſtreſs and a Covenant to make further Aſſurance.

John died in the Life-time of *Thomas*, his Father; then *Elizabeth* ſold her Right to the 150 *l.* to the Plaintiff *Boreman*; then *Thomas* died, and the Lands deſcended to the Defendant as Heir to the Grandfather, being the eldeſt Son of *John* by the firſt Venter, and he had all the Deeds, and refuſed to pay the Rents, pretending the Lands were not ſufficient, and that the Limitation was defective in Law; and that the Lands lay intermixt with others, and the Boundaries confuſed, ſo that the Plaintiff could not diſtrain: Therefore prayed Relief, and to diſcover and ſet forth the Boundaries and the Rents arrear, and that the ſame might be decreed, *&c.*

The Defendant in his Anſwer ſet forth, That the proper Remedy was at Law, and that *Boreman* had not a good Title, becauſe the Grantee for Life did not attorn, and ſo the Conveyance of the Rent to him from *Elizabeth* was not good.

On

On the firſt Hearing, a Commiſſion was directed to ſettle the Boundaries; and the Commiſſioners certified, That it was done, and that the preſent Rent was but 70 *l. per Annum.* On the ſecond Hearing the Point was, That tho' the Limitation of 150 *l. per Annum* was defective in Law; for *Francis* being not named in the Limitation, that being to the *Heirs Males*, and he was not *Heir Male*, for *John* his Father had a Son by another Venter, the now Defendant; yet the Court was of Opinion, That by the true Meaning of the Marriage Agreement, the Plaintiff *Francis* is a Perſon well deſcribed to take the Rent, and yet to be relieved, and the Rent to be paid to the Plaintiff during the Life of *Elizabeth.*

The Difference between theſe Caſes was, (*viz.*) In the principal Caſe, the Rent was well limited to the Plaintiff *Darcy* in Point of Law, by the Name of the Son of the ſecond Venter, and he might diſtrain; but in *Boreman's* Caſe he had not any Remedy at Law for want of an *Attornment*, and by reaſon the the Lands lay intermixt: Nor had *Francis*, the other Plaintiff any Remedy at Law, becauſe he was not *Heir Male* to his Father, but the Defendant by another Venter was his *Heir Male*; yet they were relieved. Ano-

Another Precedent, 22 *Junii* 1644, *Terrers* ver *Noby*. ſſ. An Annuity was deviſed, and by the ſame Will the *Lands* were deviſed to another; this being a *Rent-Seck*, and without *Seiſin*, and no Power of Diſtreſs, and the Deviſee of the Lands having promiſed to pay the *Annuity*, the Court did decree him to give Seiſin of the Rent.

And now in the principal Caſe it was inſiſted for the Plaintiff, That here was a Defect of Diſtreſs, and that the Arrears of 200 *l. per Annum* were now 1000 *l.* and the Land but 200 *l. per Annum:* But the Court declared, That unleſs there was a Fraud to hinder the Plaintiff from diſtraining, they could not give Relief here; and that it ſhould be referred to a Tryal at Law, whether there was any Fraud or not; and a Tryal was thereupon directed.

Seabourn

Seabourn verſus *Chilſton.* *Anno* 20 *Car.* 2.

THE Plaintiff's Father and Mother in their own Right were ſeiſed in Fee of the Lands in Queſtion, in which one *Price* had an Eſtate for Life; and in the Year 1643, they covenanted to levy a Fine thereof to the Uſe of the Father and Mother for Life, and to the longeſt Liver of them, Remainder to their firſt Son (*viz.* the Plaintiff) in Tail-Male, with ſeveral Remainders over: The Father ſurvived, and then (as the Bill ſuggeſts) forged another Deed, declaring the Uſes of the Fine to be to the Father and Mother, and to the Survivor of them, and to *his or her Heirs*, under which Deed the Defendant purchaſed the Lands of the Father, who is ſince dead; and *Price*, the Tenant for Life, being ſtill living, the Plaintiff exhibited his Bill, to perpetuate the Teſtimony of his Witneſſes to prove the true, and to diſprove the forged Deed. 20 *Car.* 2.

The Defendant demurred to the Bill, for that he was a real Purchaſer under the pretended Deed, believing it was a true and real Deed; and therefore inaſmuch as it was to draw under Examination a Matter of Forgery againſt a dead

dead Perſon who could not anſwer for himſelf, and to get Aid to impeach a real Purchaſer; the Defendant did inſiſt upon it, that he ought not to anſwer, nor the Plaintiff be permitted to proceed any farther.

And upon Debate it appearing, that the Tenant for Life was ſtill living, ſo that the Plaintiff could not try his Title at Law; and that this Court is obliged in Juſtice to preſerve a Title at Law, which by ſuch Impediment could not at preſent be tried, the Demurrer was over-ruled.

Langton verſus *Aſhley*. *Anno* 20 *Car.* 2.

20 *Car.* 2. *Aſhley* became a Purchaſer from a Perſon who had conveyed the purchaſed Lands to one *Tracy*, in Truſt for the Payment of all his Debts, and had a Conveyance both from the Perſon himſelf, and from the Truſtee *Tracy*.

The Plaintiff being one of the Creditors, exhibits his Bill againſt *Aſhley*, as being a Purchaſer under that Truſt to pay Debts, *&c.*

It was inſiſted for *Aſhley*, That the Conveyance to *Tracy* being general,

(*viz.*) for Payment of *all his Debts*, who made the Conveyance, and none of his Creditors being Parties to it, that it was revocable at his Pleaſure, and meerly *voluntary*; and that it had been ſo adjudged by the Lord Keeper *Coventry*, that ſuch Conveyances are *ambulatory*; and that if a Man make a Conveyance to another in Truſt, to pay all his Debts *mentioned in a Schedule*, and all other his Debts, that as to all the Debts, beſides thoſe mentioned in the Schedule, ſuch Conveyance is fraudulent againſt a *Purchaſer*.

But for the Plaintiff it was inſiſted, That if the Deed to *Tracy* was revocable by the Party that made it, yet *Aſhley* purchaſing under that Conveyance, had now confirmed it.

Pitt verſus *Scarlett*. *Anno* 21 *Car.* 2.

THE Plaintiff brought a Bill againſt the Defendant, as Executor of the Obligor, to diſcover Aſſets, and to compel the Payment of the Debt. 21 *Car.* 2.

The Defendant demurred, for that the Plaintiff had brought an Action againſt him at Law; to which the Defendant had pleaded *Plene Adminiſtravit*.

vit. But the Demurrer was over-ruled, and the Defendant ordered to anſwer without Payment of Coſts.

Booth verſus *Sanctry.* *Anno* 21 *Car.* 2.

21 *Car.* 2. THE Plaintiff was indebted to the Defendant by Bond, and one *Brown* was indebted to the Plaintiff; *Brown* gave a Judgment to the Defendant for the Debt which was owing to him by the Plaintiff, and the former Bond was delivered up, and a new Bond given by the Plaintiff, That he would pay the Money, if *Brown* did not. Afterwards the Defendant promiſed the Plaintiff, That if at his own Charge he would extend *Brown*'s Lands, he would deliver up the new Bond; and it being proved that he did make ſuch a Promiſe, and that he did at his own Charge extend the Lands, the Bond was ordered to be delivered up, tho' the Extent would not ſatisfy the Debt; and *Brown* became inſolvent.

Glanvill verſus *Jennings.* *Anno* 21 *Car.* 2.

THE Bill was to be relieved againſt two Bonds, one given by the Plaintiff, and another by his Wife; the Defendant telling the Plaintiff, That his Wife (who was his Kinſwoman) was a good Fortune, and that he would help her to the Plaintiff for a Wife, for which he muſt give him ſomething for his Pains: Whereupon the Plaintiff gave him a Bond of 400 *l.* with a Condition to pay 200 *l.* on a certain Day; and afterwards the Defendant went to the Woman, and got another Bond from her of the ſame Penalty, and upon the ſame Terms; and the Equity was, That this was a Cheat, for neither Husband or Wife had any Fortune. 21 *Car.* 2.

But the Defendant proved, that the Plaintiff had 1200 *l.* with his Wife, and therefore inſiſted, that the Bond given by him was good; but the Woman being cheated, for that her Husband had no Eſtate, but was a broken Merchant, her Bond was ordered to be delivered up, and cancelled.

Attorney General verſus Sir *George Sands.*
In the *Exchequer*, *Anno* 21 *Car.* 2.

21 *Car.* 2. SIR *Ralph Freeman* purchaſed a Leaſe for Years of ſeveral Manors, and afterwards purchaſed the Inheritance in the Name of Sir *George Sands*, who was his Son-in-Law, in Truſt for Sir *Ralph* and his Heirs. Sir *Ralph* by Will appointed, That Mr. *Freeman*, whom he made his Executor, and Sir *George Sands*, ſhould join in a Conveyance of Part of the Eſtate to *Freeman Sands*, and other Part to *George Sands*, the two Sons of Sir *George Sands*, and to their Heirs, the Reſidue to all and every of the Sons of Sir *George* by his then Wife, and to their Heirs who ſhould be living at the Time of the Death of the Teſtator; at whoſe Death, Sir *George* had two Sons then living, *viz.* *Freeman* and *George Sands*, but afterwards he had another Son named *Freeman Sands.*

Mr. *Freeman* the Executor renounced, and afterwards Adminiſtration was granted to Sir *George Sands*, no Conveyance being made either of the Leaſe or the Inheritance to *George Sands* the Son, by his Father Sir *George*, who had both the Term and Inheritance in Truſt

Truſt for his ſaid Son by the Will of his Grandfather as aforeſaid.

Freeman Sands killed *George* his Brother, and was afterwards attainted, and executed for the ſaid Murder.

The Queſtion was, Whether either of theſe Truſts, either of the Leaſe or the Inheritance, were forfeited by this Attainder of Felony, to the King, of whom the Lands were held, who by his Attorney ſued Sir *George* in the *Exchequer* on the Equity-ſide to anſwer the Profits, ſuppoſing the Truſts to be forfeited by the Felony.

The Caſe was ſeveral Times argued at the Bar, and at the Bench by *Hale* Chief Baron, and by Baron *Turner*; *Rainsford* being removed into the *King's-Bench*, and *Atkyns* diſabled by Age; and both argued, that this Truſt was not forfeited. They both agreed, That *Ceſtui que Truſt* in Fee or in Tail forfeits the ſame by an Attainder in Treaſon, and that the Eſtate was executed in the King by the Statutes 27 *H.* 8. *cap.* 10. and 33 *H.* 8.

That an Alien who is *Ceſtui que Truſt* of any Eſtate, ſuch Truſt belongs to the King: And the *Chief Baron* ſaid, That it was the Opinion of the Judges in *Holland*'s Caſe, in which he was of Counſel *Anno* 23 *Car.* 1. that an Alien

hath no Capacity to purchaſe but for the King's Uſe.

As to the King's Debt, both by the Common Law, and by the Practice of this Court, which is part of that Law, *Ceſtui que Truſt*, being indebted to the King, he ſhall have Execution of this Truſt; for before the Statutes 4 *H.* 7. *c.* 17. and 19 *H.* 7. *c.* 5. there are many Precedents in the Reign of K. *Henry* the Sixth, that the Writ of *Extendi facias*, for levying the King's Debt, was not only on the Lands of the Debtor, but of any other Perſon whatſoever who was ſeiſed to his Uſe; and the Intereſt of the King's Debt did attach upon the Power which his Debtor had to revoke a Settlement which he had made of his Eſtate. *Paſc.* 4 *Jac.* *Ford*'s Caſe: A Security taken in Truſt for a Recuſant, is liable to the King's Debt of 20 *l. per* Month: So that where the King's Debtor hath the profitable Part of the Eſtate, the King ſhall not loſe his Debt by any Fiction of Law.

It was alſo agreed, That the Truſt of the Inheritance could not be forfeited for Felony: And this the Court held clear, and cited 3 *Rep.* Marquiſs of *Winchester*'s Caſe. 12 *Rep.* 12. 5 *Ed.* 4. 2. 2 *Cro.* 513.

That

That if an Inheritance is forfeited for Felony, it muſt eſcheat to the Lord for want of a Tenant. But here can be no ſuch Want, becauſe the *Ceſtui que Truſt* is Tenant; and therefore till the Statute 19 *H.* 7. *cap.* 15. the Lord could not ſeiſe the Lands of which the Villain was *Ceſtui que Uſe.*

Now if it ſhould be demanded, What will become of this Truſt if *Ceſtui que Truſt* die without Heir? 'Tis anſwered, That in ſuch Caſe the Lands will be diſcharged of the Truſt: As if Tenant in Fee of a Rent die without Heir, or is attainted of Felony, the Land is diſcharged of the Rent.

'Tis true, a Leaſe in groſs, the Truſt thereof ſhall be forfeited for Felony, or upon an Outlawry in a perſonal Action, but not a Leaſe to attend the Inheritance. Earl of *Somerſet*'s Caſe. *Hob. Dacomb*'s Caſe. 2 *Cro. Babington*'s Caſe. Sir *Walter Rawleigh*'s Caſe.

A Leaſe for Years, if 'tis of never ſo long Continuance, and aſſigned in Truſt for *J. S.* and his Heirs, yet it ſhall go to his Executors; for Truſts are ruled according to the Courſe of Courts of Equity.

A real Chattel veſted in the Wife ſurvives to her Husband, but not the Truſt of ſuch a real Chattel. *Co. Lit.* 69.

So if *Ceſui que Truſt* binds himſelf and his Heirs in a Bond, this Truſt is not Aſſets in his Heir, tho' this hath been queſtioned in my Lord *Hyde*'s Time; but clearly the Truſt of a Leaſe for Years is Aſſets to charge an Executor in Equity; but a Truſt of a Term to attend the Inheritance goes to the Heir, and not to the Executor, for 'tis only a Shadow kept on foot to anſwer ſome Purpoſes, and hath a great Reſemblance to the Caſe of Charters and Deeds which go with the Inheritance to the Heir; but if granted over, the Parchment and Wax ſhall go to the Grantee and his Executors. 4 *H.* 7. 10.

In the principal Caſe, the Truſt of the Leaſe is not forfeited to the King, becauſe the Leaſe it ſelf was never in *Freeman Sands*, who was attainted of the Felony, nor the Truſt in him as a Chattel; for in ſuch Caſe he muſt be either Executor or Adminiſtrator to *George* his Brother; and it was never the Intent of the Teſtator that the Leaſe and the Inheritance ſhould be confounded, but kept ſeparate.

Beſides, *Freeman* could not have the Truſt but as Heir to *George*, and as long as he had the Inheritance in him, and no longer. Judgment againſt the King's Attorney.

Porey

Porey verſus *Juxon.* *Anno* 21 *Car.* 2.

THE Bill was againſt the Defendant Sir *William Juxon*, as Executor of the late Archbiſhop of that Name; and ſets forth, That he had the next Preſentation to the *Maſterſhip* of St. *Croſſe*, and that in his Life-time he did direct Sir *William* to give it to Dr. *Porey*. 21 *Car.* 2.

Upon the Hearing, the Lord Keeper directed a Tryal at Law, Whether this was a Truſt in Sir *William Juxon* the Executor or not? And at the Tryal the Court declared, That a Truſt might ariſe by Parole, or that the Executor might be a Truſtee by the Will of the Teſtator, tho' it was not mentioned in the written Will: And a Verdict was found for Dr. *Porey*.

Seymour verſus *Noſworthy.* *Anno* 21 *Car.* 2.

THE Defendant pleaded, That he was a Purchaſer for a valuable Conſideration: But this was ruled to be no good Plea, becauſe he did not plead the Purchaſe made from one of the Plaintiff's Anceſtors; for a Purchaſe 21 *Car.* 2.

from a Stranger who might have no Title, was held no good Plea; and the Defendant was ordered to anſwer.

Dolben & al. verſus *Prittiman.* *Anno* 21 *Car.* 2.

21 Car. 2. LAnds being deviſed by Mr. *Houghton* for the Payment of his Debts, the Creditors exhibit their Bill againſt the Heir and Executor to have the Lands ſold, and had a Decree for that Purpoſe. And now the *Creditors by Book and by Simple Contract* moved to have *Intereſt* for their Debts, which had been proved before the Maſter, and to be ſtanding out above twelve Years, alledging that there was ſufficient to pay all. But it was denied by the Court, for that Shopkeepers ſold their Goods at a Price accordingly, when they were not paid in ready Money.

Day

Day verſus *Heſter.* *Anno* 22 *Car.* 2.

THE Bill was to have an Accompt of a Partnerſhip; to which the Defendant conſented, upon Condition the Plaintiff would ſeal the Indenture of Partnerſhip, and pay 330 *l.* 22 *Car.* 2.

The Matter was referred to Sir *Juſtinian Lawin*, to ſee the Plaintiff ſeal the Indenture, and to ſtate the Accompt.

Afterwards he made his Report, That the Parties had ſubmitted to refer the Matters in Difference to Arbitrators, and if they could not agree, then to an Umpire; who, inſtead of taking Care to ſettle the Indenture and the Accompt, did award, That the Partnerſhip ſhould be diſſolved, and that the Defendant ſhould pay back the 330 *l.* And the Maſter having grounded his Report upon this Award of the Umpire, the Defendant excepted to it, as grounded upon an Extrajudicial Award of Things not in Difference, and contrary to the Bill and Anſwer, and Order of the Court; for which Reaſon he excepted likewiſe againſt the Award, and the Exceptions were allowed.

Weſt-

Weſthall verſus *Carter.* *Anno* 22 *Car.* 2.

22 *Car.* 2. THis was a *Bill of Revivor*, where the principal Cauſe was heard, and an Iſſue directed to be tried, and afterwards one of the Plaintiffs died before the Tryal; yet it went on, and a Verdict againſt the Defendant.

Now the Plaintiff in the *Bill of Revivor* prayed to have all the Proceedings revived, and the Benefit of the Verdict.

The Defendant by his Anſwer ſets forth, That the Plaintiff's Witneſſes were examined in the firſt Cauſe twice to the ſame Thing, which was irregular; and that a Witneſs examined in the Cauſe in this Court, and at the Tryal, ſwore Matters varying from what he had ſworn in this Court, and ſo prayed he might have a new Tryal.

The Plaintiff replied, That ſhe was Executrix to her Husband, and was entitled to the *Bill of Revivor*, and did demur to ſo much of the Anſwer as did ſet forth the pretended Irregularity in the Examination of the Witneſſes in the Original Cauſe: And as to the Variation of the Evidence *Vivâ voce* at the Tryal, and what had been depoſed here, ſhe inſiſted, That it ought not to be

be ſet forth in an Anſwer to a *Bill of Revivor*; and upon hearing Counſel on both Sides, the Demurrer was allowed.

Holcomb verſus *Rivis*, *Anno* 22 *Car.* 2. 1. Ch. Ca. 127. S.

THE Defendant and one *Collins* were Factors for the Plaintiff in *Spain* before the Year 1654, and in that Year they ſent him an Accompt to *London*, in which they charged themſelves with ſeveral of the Plaintiff's Goods remaining there in *Specie*. Afterwards, (*viz.* in the Year 1656) there happen'd to be an *Embargo* on *Engliſh* Ships and Goods which were in *Spain*, and all thoſe Goods were ſeiſed, and the Defendants impriſoned. And now (*Collins* being dead) a Bill was exhibited againſt the Defendant, being the other ſurviving Factor, to have an Accompt of thoſe Goods; to which Bill, the Executrix of the dead Man was not made a Party. 22 Car. 2.

It was inſiſted for the Defendant, That by reaſon of the ſaid Seiſure and Impriſonment he could not accompt, having loſt his Books in the Seiſure, and never ſeen them ſince; and that he had been twice in *England* with the Exe-

Executrix of *Collins* ſince the *Embargo*, and that ſhe was made no Party; and that in this length of Time it would be hard to draw him into an Original Accompt.

The Court declared and reſolved for Law, That tho' amongſt Merchants *Jus accreſcendi* hath no Place, yet the ſurviving *Factor* is to accompt for what was made or received by himſelf or *Co-factor*; and yet it was agreed in this Caſe, that an Accompt lies againſt the *Executrix* of the dead Factor: And it was ordered, That ſince there was no Exception to the Accompt which was ſent hither, nor any till after the Seiſure, that therefore the Defendant ſhould only accompt for, and ſatisfy, what had been made by Sale of the Goods in the former Accompt before the Seiſure, and that he ſhould not be charged for more than what upon his own Oath he ſhould declare to have made.

Gladwin

Gladwin & al. verſus *Savill.* *Anno* 22 *Car.* 2.

THE Plaintiffs and the Defendant were all Creditors of one *Steer*, who was a Lead-Merchant, and who on 19 *Jan.* 18 *Car.* 2. was declared a *Bankrupt*; and the Commiſſioners aſſigned his Eſtate to the Plaintiff and others in the Month of *October*, *Anno* 19 *Car.* 2. 22 *Car.* 2.

The Defendant was then in Poſſeſſion of this Eſtate, and refuſing to deliver it to the Aſſignees, they brought their Ejectment.

Now tho' the Deed under which the Defendant held the Lands was dated in *February*, after *Steer* was declared a Bankrupt, yet the Plaintiffs were nonſuit. Then they brought a Bill, to diſcover whether the Defendant did not know at the Time of executing his Deed, that *Steer* had committed an Act of Bankrupcy, and ſo to ſet forth the Fraud of obtaining the Deed, and to have a new Tryal.

The Defendant pleaded his Deed, and that *Steer* was really indebted to him at the Time it was executed, and demanded Judgment, whether he ſhould diſ-

diſcover any Thing to weaken his Title? And upon long Debate the Plea was allowed.

Butler verſus *Coot.* *Anno* 22 *Car.* 2.

22 *Car.* 2. THE Plaintiffs being *Legatees*, exhibit their Bill againſt the Defendants, who were *Executors*, to have an Accompt of the Teſtator's Eſtate, and that their Legacies might be paid.

The Defendants ſubmit to the Judgment of the Court, whether they may not *retain their own Legacies* in the firſt Place; and if ſo, there will not be ſufficient Aſſets to pay the Plaintiffs Legacies. But it was decreed, That after Debts are diſcharged, all Legacies ſhall be paid in Proportion ſo far as the Eſtate will extend; and not like the Caſe at Common Law, where Executors may retain their own Legacies, or pay him who firſt gets Judgment.

Gaſcoigne verſus *Sturt.* *Anno* 22 *Car.* 2.

THE Bill was to have a Judgment vacated, by Vertue whereof a Leaſe was extended, and ſold by the Sheriff to one *Parker* in Truſt for the Defendant, who had obtained the Judgment, and that the ſame, together with the Bill of Sale made by the Sheriff, might be ſet aſide, and an Accompt of the Profits ſince the Sale, and likewiſe that the Poſſeſſion may be reſtored, it being alledged, that the Leaſe was of a far greater Value than what was really due on the Judgment. 22 *Car.* 2.

The Defendant demurred to the Bill, for that 'tis not conſiſtent with the Rules of Equity, after Judgment executed by Seiſure of a Chattel-Leaſe duly appraiſed, and ſold by the Sheriff, to diſpoſſeſs a Purchaſer for a valuable Conſideration, but upon a bare Pretence, That the Leaſe is of greater Value than what was due upon the Judgment, and than what it was appraiſed and ſold for by the Sheriff, who is an indifferent Party; neither did the Plaintiff offer by his Bill to reimburſe the Defendant what he really paid for the Purchaſe: And the

the Defendant denied by his Anſwer, that he uſed any indirect Means with the Sheriff to have the Leaſe ſold at an under Value.

But it was ordered, That the Plaintiff ſhould reply to the Anſwer notwithſtanding the Demurrer, and proceed to examine Witneſſes, and hear the Cauſe; ſo the Demurrer was over-ruled, but without Coſts: And upon the Hearing, the Defendant was decreed to accompt, and to reconvey.

John Hanbury, next Friend of *Anna-Maria Hanbury*, Plaintiff, verſ *Theophilum Walker*, Defendant. *Anno* 22 *Car.* 2.

22 Car. 2. THE Plaintiff as Grandfather, and next Friend of the Infant *Mary Hanbury*, exhibited his Bill to call the Defendant to an Accompt, as well for the perſonal Eſtate, as for the Rents and Profits of the real Eſtate of the ſaid Infant, ſuggeſting that the perſonal Eſtate was of the Value of 5000 *l.* and the real Eſtate 500 *l.* and that the Defendant, who claimed the Guardianſhip at Law as Great-Uncle by the Mother's Side, was a Batchelor, and that he failed in his Eſtate, and became a Journey-

man to another, and that he was a Perſon diſaffected to the Doctrine and Diſcipline of the eſtabliſhed Church, and did conceal the Infant from the Plaintiff and his Wife, and endeavoured to inſtruct her in a ſeparate Way from the Church, and therefore was not a fit Perſon to educate her, or to have the Care of her Eſtate.

The Defendant demurred, for that by the Law he hath a Right to the Guardianſhip of the Infant during her Minority, he being the next of Kin by the Mother's Side, who can have no Benefit by the Death of the ſaid Infant; and that the Plaintiff having no manner of Right to the Guardianſhip, or to the ſaid Infant's Eſtate, cannot give the Defendant a Diſcharge; and therefore he ought not to be compelled to give any Accompt to him of the ſaid Infant's Eſtate.

But it was ordered, That the Defendant ſhall anſwer to ſo much of the Plaintiff's Bill as demands an Accompt of the Infant's Eſtate, and where ſhe is, and how ſhe is educated, but without Coſts; and this is to be without Prejudice to the legal Right of the Defendant, both as to the Cuſtody of the Infant, and the Management of her Eſtate; but that he may proceed to take

Care of the ſaid Eſtate for her Benefit: And afterwards the Defendant having anſwered, the Court ordered him to accompt yearly, but ſaw no Cauſe to make him give Security, till there was a plain and apparent Fault in his Management of his Eſtate.

Higgins verſus *Town of Southampton.*
Anno 22 *Car.* 2.

22 *Car.* 2. THE Plaintiff was Heir at Law to *John Mills*, who in the Year 1636, deviſed 37 *l. per Annum* to Charitable Uſes, to be iſſuing out of his Manor of *Wolſton*; and a Decree was made for that Purpoſe, to which the Plaintiff excepted, for that the Manor was held *in Capite*, and ſo the Teſtator could charge only two Parts in three by his Will, which would not amount to 37 *l. per Annum.*

After a long Argument, and many Caſes cited, (*viz.*) *Montague*'s Caſe in the *Court of Wards*, and *Cro. Car. Aſcough*'s Caſe; the Court was of Opinion, That the whole was chargeable by the Will, and that by Vertue of the Stat. 43 *Eliz. Of Charitable Uſes*, which was an enabling Statute, and that the Teſtator had only miſtaken the Manner of

of the Conveyance, for if he had done it by *Grant*, it had been good for the whole; and being by *Will*, the Statute made it a good Appointment for the whole in like manner.

Lloyd Mil. verſus *Lord Powys*. *Anno* 22 *Car.* 2.

THE Plaintiff exhibited a Bill againſt the Father of the now Defendant, and revived it againſt the Defendant as his Son and Heir, which was afterwards diſmiſſed with Coſts: And the Queſtion was, Whether the Defendant ſhould have the Coſts expended by his Father in the Suit, before the Proceedings were revived? And it was ruled, That he could not, for they were dead with the Perſon. 22 Car. 2.

Wilſon verſus *Barton* & al. *Anno* 23 *Car.* 2.

23 Car. 2. THE Plaintiff being Impropriator of a Rectory, ſued the Defendants in the Spiritual Court for detaining his Tythes, and thereupon they obtained a Prohibition, and the Plaintiff declared; and the Cauſe being at Iſſue to be tried at *York* Aſſizes, the Parties agreed to refer it, and enter'd into Bonds of 200 *l.* Penalty to ſtand to an Award. Afterwards the Plaintiff countermanded the Reference, and thereupon the Bond was put in Suit againſt him; and now he exhibited his Bill, to be relieved againſt the ſaid Bond and Penalty.

It was inſiſted for the Defendant, That no Relief could be had in this Cauſe, becauſe it was a wilful Breach of the Plaintiff, and not like the Caſe of a Failure to pay Money on the Day, becauſe Payment of the Money at another Day, with Damages in the mean time, makes a Recompence for the Failure; but here the Plaintiff, by his wilful Revocation, hath ſubmitted to pay the Penalty which he had bound himſelf to pay.

But

But Sir *John Churchill* inſiſted for the Plaintiff, That this Court had relieved in the like Caſes. Whereupon the Maſter of the *Rolls* granted an Injunction againſt the Penalty, and directed a Tryal to try what the Defendants were damnified by the Countermand.

Strickland verſus *Laske.* *Anno* 24 *Car.* 2.

A Leaſe was made in the Year 1640, to ſeveral Perſons in Truſt, to raiſe Money for ſeveral Uſes, *&c.* and the Overplus to be to the Heir of the Leſſor. 24 *Car.* 2.

The Plaintiff, as *Nephew and Heir* of the Leſſor, exhibited his Bill by his Guardian in the Year 1663, to have an Accompt of the Profits, and died; and the now Plaintiff, being his Brother, revives the Suit by his Guardian; and the Accompt was ſettled, and there being 93 *l.* Surplus in the Hands of the Defendants, the ſame was decreed to be paid unto him, being then about the Age of 19 Years, which Money was paid accordingly.

Afterwards, when the now Plaintiff came of Age, he adminiſter'd to his

Brother, and exhibited an Original Bill againſt the Leſſor, without taking Notice of the former Suit.

The Defendants plead the Decree, and Payment of the 93 *l.* in Bar of this Bill; but it was over-ruled, by which it appears, That tho' the Plaintiff had an Accompt as *Heir*, yet he might have it again as *Adminiſtrator*.

Porter verſus *Hubert*. *Anno* 24 *Car.* 2.

24 *Car.* 2. THE Plaintiff's Father, in the Year 1636, mortgaged the Manor of *Alfarthing* to one *Dawes* for 5000 *l.* The Mortgagee enter'd in the Year 1641, no Intereſt being paid in thoſe *five Years*, and he enjoyed it till the Year 1649, and then died.

After whoſe Death, his Executors aſſigned the Mortgage to the Defendant's Father, who enjoyed the Lands till the Year 1663, and he having charged the ſame with 5600 *l.* died.

In the Year 1667, the Plaintiff brought a Bill to redeem; the Cauſe was heard two Years afterwards, and a Redemption decreed, and the Intereſt from 1642, to 1648, to be moderated at 4 *l. per Cent.* and the Defendant to accompt for the Profits.

From

From this Decree made by the Maſter of the *Rolls*, the Defendant appealed to the Lord Keeper *Bridgman*, who being aſſiſted by Juſtice *Moreton*, *Tyrrell*, and *Wild*, ordered the Intereſt to be ſet againſt the certain Profits, but the Defendant to accompt for the caſual Profits; and that the Intereſt of the 5000 *l.* from 1641, to 1649, ſhould be made Principal, at which Time the Aſſignment was made, and Intereſt to be computed for the whole from that Time.

The Plaintiff acquieſced under this Decree four Years, and then appealed to the Lord Chancellor *Shaftsbury*, who upon hearing the Cauſe declared, That no *Aſſignee of a Mortgagee* ſhould be in a better Condition than the *Mortgagee himſelf*, and ruled Intereſt to be paid only for the 5000 *l.* from the Time it was lent.

And as to the Abatement of the Intereſt, it was alledged, That there was an Ordinance made in the Year 1653, which gave Power to the Court to abate Intereſt in thoſe troubleſome Times, between the Years 1642, and 1648, as the Circumſtances of the Caſe ſhould require.

But Mr. *Keck* argued, That it ought to be at 6 *l. per Cent.* from 1636, the Time the Money was lent, for that

the Act made in the Year 1660, to ſettle Intereſt at 6 *l. per Cent.* look'd back to all Contracts made before that Time; and that it was the conſtant Practice in the *Exchequer* to allow that Intereſt, he being over-ruled in it himſelf, when he inſiſted on an Abatement, by the Lord Chief Baron *Hale*, who drew that Act.

But the Lord Chief Juſtice *Vaughan* argued for the total taking away all Intereſt between 1642 and 1648, becauſe moſt Men buried their Money in thoſe Days, and made no Intereſt of it; and the Reaſon was, becauſe they might command it as Occaſion ſerved, which if lent upon a Mortgage they could not do.

The Court directed an Accompt, both of Caſual and Accidental Profits, from the Year 1641.

Anno

Anno 1689.

Cooper verſus *Cooper*. *February* 1. at the *Rolls*.

Anno 1689, at the Rolls.

JOhn *Cooper*, the Grandfather of the Complainant, made a Mortgage of Lands in Fee to one *Hatfeild*; the Mortgagor *Cooper* had two Sons, *John* and *Edmond*, and he deviſed the Equity of Redemption to his youngeſt Son *Edmond*, and his Heirs, and ſoon after died. *Edmond* entered into the mortgaged Lands, and enjoyed the ſame two Years, and then he died, leaving a Son an Infant. After the Death of *Edmond*, his elder Brother *John* entered on theſe Lands, and having Occaſion for Money, he joined with the Mortgagee in an Aſſignment of the Mortgage to another Perſon, of whom he borrowed a farther Sum, and which the Aſſignee advanced, having no Notice of the Will of *John Cooper*. Afterwards the Heir of *Edmond* came of Age, and then he exhibited a Bill, to be let into the Equity of Redemption upon the Foot of the firſt Mortgage, and that the Aſ-

Aſſignee might diſcompt for the Profits upon that Foot.

Hutchins, of Counſel for the Complainant, inſiſted, That the Aſſignee could be in no better Condition than the Mortgagee; and that if there had been twenty Aſſignments for more Money, if the Mortgagor, or he who legally repreſents him, had not joined, he ſhall not be barred, but ought to be relieved.

Sir *Charles Porter*, for the Defendant, inſiſted, That he was a Purchaſer for a valuable Conſideration without Notice of this Incumbrance by the Will, and that he had a good Title, having taken an Aſſignment from the Mortgagee, wherein the viſible Heir of the Mortgagor was a Party; and therefore if the Complainant would redeem, he ought to pay the whole principal Sum, and Intereſt.

But the Court was of Opinion, That the Complainant's Title was not barred by this Aſſignment: However, it was referred to the Maſter to make a Caſe of it; and afterward it was argued chiefly upon the Points before mentioned, and decreed, That the Plaintiff ſhould be let into the Equity of Redemption upon the Foot of the firſt Mortgage.

Joyce's

Joyce's Caſe. *Anno* 1689, at the *Rolls.*

THE Father having a Son and a Daughter, made a Will, and deviſed in theſe Words following, (*viz.*) *Anno* 1689, *at the* Rolls.

And as for my worldly Eſtate with which God hath bleſſed me, I give my Daughter Ten Pounds, to be paid by my Executor; and I give her Ten Pounds a Year during her Life, to be paid by Quarterly Payments: And all the Reſt *of my real and perſonal Eſtate I give to my Son*, &c.

The Defendant had imbezil'd the perſonal Eſtate, and was gone into *White-Friers:* And now the Complainant exhibited a Bill, to charge the real Eſtate with the Payment of this Annuity of Ten Pounds a Year.

Philips for the Complainant argued, That the real Eſtate ought to be charged in Equity with the Payment thereof, becauſe the Teſtator having the Proſpect of his whole Eſtate before him, did out of it deviſe this Annuity to be paid to his Daughter by expreſs Words, and that by the Words following, (*viz.*) *All the* Reſt *of my real and perſonal Eſtate*

I give to my Son, &c. it muſt be reaſonably adjudged, that he intended his real Eſtate ſhould be charged with this Annuity, for the Words, *All the* Reſt *of my real Eſtate*, &c. muſt import *All the* Reſt after the Annuity ſatisfied, and can have no other Conſtruction.

The Court doubted of this Matter, but ſaid, It was reaſonable the Defendant ſhould give Security to perform the Will: Which the Complainant having not prayed in her Bill, neither did ſhe ſet forth, that the Defendant was in a privileged Place, or that there was not a ſufficient perſonal Eſtate for the Payment of this Annuity, ſhe pray'd ſhe might amend her Bill as to theſe Matters, and that ſhe might have a Decree for what was now due; which was ordered accordingly.

Hillary

Hillary Term, 1 *Willielmi.*

Wright verſus *Carew.* In Court.

THE Complainant was a Servant to the Defendant's Teſtator fourteen Years, and having received no Wages, he now exhibited a Bill againſt the Executor to diſcover Aſſets. *Hill.* Term, 1 *Will.*

The Defendant pleaded the Statute of *Limitations*; to which the Complainant replied, and the Defendant joined Iſſue; and upon hearing the Cauſe,

Sir *Fr. Winnington* for the Complainant inſiſted, That the Plea being foreign to the Bill, and the Complainant having replied, and the Defendant joined Iſſue upon an erroneous Plea, the Bill muſt be taken as true, and ſtand good.

Then the Counſel for the Defendant asked him, What Decree he would have upon ſuch a Bill, which was exhibited for 75 *l.* upon an Accompt ſtated, and yet no Accompt was proved in the Cauſe.

Curia. The Complainant alledged, That he was the Teſtator's Servant fourteen Years, for which he might bring a *Quantum meruit* againſt the Executor, and

and recover Damages at Law. And tho' it is uſual to prefer Bills to diſcover Aſſets before they begin at Law, that if any are diſcovered, the Plaintiff might produce the Anſwer in Evidence at the Tryal at Law; yet in this Caſe, he having proved no Sum certain due, nor any Demand, the Bill muſt be diſmiſſed with Coſts, and ſo it was order'd.

Berriſte verſus *Berriſte*. *Hillary* Term, 1 *Will.*

Hil Term, 1 *Will.*

William Berriſte being poſſeſſed of a great perſonal Eſtate, and being likewiſe ſeiſed of a real Eſtate, had two Children, *William* and *Miles Berriſte*; and the Father by his Will appointed, That his Executors ſhould ſee his Children educated, they being both Infants; and he gave them an Allowance not exceeding 15 *l.* a Year for the eldeſt, and 10 *l.* a Year for the youngeſt, until they came of Age, and ſoon after died.

Thomas Berriſte, the Brother of the Teſtator, afterwards agreed with the Executors to diet and educate the Children of his Brother *William* at a lower Rate; and thereupon they were placed with him, and continued there three Years, and then *Thomas* died.

After whoſe Death, *Mary Berriſte*, his Widow and Executrix, exhibited a Bill againſt the Executors of *William Berriſte*, wherein ſhe prays an Allowance of 75 *l.* for the three Years Diet and Schooling, *&c.* of the ſaid Infants.

The Defendants by their Anſwer confeſs the Allegations in the Bill; but farther ſay, That *Thomas Berriſte*, the Complainant's late Husband, and whoſe Executrix ſhe now is, was in his Life-time indebted to *William Berriſte*, his Brother, and whoſe Executors they are, in 50 *l.* upon ſimple Contract, which was not yet paid, and which they ſay ought now to be diſcompted by the ſaid Complainant *Mary*, his Executrix, and that they ought not to allow her ſo much as the Will appoints for the Education of the Children, becauſe her Teſtator had agreed to diet and bring them up at a lower Rate. All which being proved in the Cauſe,

The Court decreed, and ſaid, That the Executrix ſhould be allowed what the Father had allotted for the Maintenance of his Children, if there had not been an Agreement proved, that her Teſtator would educate them at a lower Rate, and then the Surplus ſhall go and be for the Benefit of the Infants; and that the Executrix ought to diſcompt the

the 50 *l.* altho' it was a Debt upon ſimple Contract owing by her late Huſband the Teſtator, and the Payment or Diſcompt thereof ſhall be no *Devaſtavit* in her, if there ſhould happen to be any Debts or Bonds owing by her Huſband which ſhould be afterwards put in Suit againſt her, becauſe the Diſcompt was made for the neceſſary Support of Infants, and that if it ſhould be otherwiſe conſtrued at Law, (*viz.*) that 'tis a *Devaſtavit*, this Court will protect her againſt Judgment recovered there upon ſuch Conſtruction.

Watkins verſus *Steevens*. *Hillary* Term, 1 *Will.*

Hill. Term, 1 *Will.*

John Gore being ſeiſed in Fee of the *White-Lyon* Inn in *Temple-Street* in *Briſtol*, had two Daughters, (*viz.*) *Hannah* married to the Complainant, and *Elizabeth* married to the Defendant *Steevens*. The ſaid *John Gore* after his Marriage, and after the Birth of his ſaid Daughters, made a voluntary Conveyance of the ſaid Houſe, by which he ſettled the ſame upon them equally. Some time afterwards he mortgaged the Houſe to *Steevens* the Father for a Term of Years to ſecure the Payment of 700 *l.* But having Notice of the ſaid volun-

tary Conveyance, the Mortgagee took collateral Security to indempnify him; and having made his Will, and his Son *Steevens*, the now Defendant, Executor thereof, he died. After whoſe Death, the ſaid *John Gore* the Mortgagor, upon the Marriage of his youngeſt Daughter *Elizabeth* with the Defendant *Steevens*, the Son of the Mortgagee, (and in whom the Term was now veſted as Executor to his Father) ſettles the Equity of Redemption thereof upon the Defendant *Steevens*, and the Iſſue by that Marriage. And now the Queſtion was, Whether this voluntary Conveyance *upon Notice* ſhall be good againſt the Defendant, who was a Purchaſer for a valuable Conſideration, as the Counſel on both Sides agreed *Marriage* to be?

Serjeant *Hutchins* for the Defendant inſiſted, That a voluntary Conveyance is a fraudulent Conveyance againſt a Purchaſer for a valuable Conſideration, and therefore *Notice* or *no Notice* is not material in ſuch Caſe: And the Court ſeemed to incline to that Opinion, but perſwaded the Parties to agree, being near Relations, and made no Decree.

Anonymus.

NOta: A Mortgage in Fee was forfeited, and afterwards the Mortgagee died; and now the Queſtion was, Whether the Money due on the Mortgage ſhall go to his Heir, or Executor? And it was decreed, That if there are not Aſſets ſufficient to pay the Teſtator's Debts and Legacies, it ſhall go to his Executor; but where there is a perſonal Eſtate ſufficient for the Purpoſes aforeſaid, it ſhall go to the Heir. And this is now the conſtant Practice, having been often ſo decreed ſince that Time.

Alford verſus *Earle.* Lords Commiſſioners, *Hillary* Term, 1689.

Hill. Term, *Anno* 1689. JOſeph *Jackſon* the elder being poſſeſſed of a Term for 99 Years, if *John Jackſon* ſhould ſo long live, to commence after the Death of *Philip Jackſon*, deviſed his Intereſt thereof to his Daughter *Sarah*, in theſe Words, *(viz.)*

And for my Intereſt in Barton Regis, *in which I have Liberty by my Leaſe to change my Brother* John Jackſon's *Life for Nothing at any Time theſe nine Months, I do give unto my Daughter* Sarah, *and do deſire*

deſire that her Life may be put in for my Brother John Jackſon's.

The Teſtator in the ſame Will directs, That the Surplus of his Eſtate, after Debts and Legacies paid, ſhould be divided amongſt ſeveral Perſons whom he made reſiduary Legatees, of which the Defendant *Earl* was one, who was alſo the ſurviving Executor.

About a Year after the making the ſaid Will, the aforeſaid *Joſeph Jackſon ſurrender'd the ſaid Term*, (having Liberty by his Leaſe ſo to do) and renewed it again in his own Name for 99 Years, if *Joſeph Jackſon* ſhould ſo long live; but did not revoke his Will, nor alter any of the Legacies, only he *added ſeveral Codicils* to it, and died.

The Queſtion now before the Court was, Whether the Deviſe of this Term to *Sarah*, who married the Plaintiff *Alford*, ſtands revoked at Law by the Surrender of the old Leaſe; and if ſo, then whether the annexing the Codicils to his Will doth amount to a new Publication thereof, and ſo ſhall be ſupported in Equity? And it was decreed, That tho' the Surrender of the Leaſe was a Revocation of the Deviſe of the Term granted by that Leaſe in Law, yet the annexing of the Codicils did amount

to a new Publication of that Will, and it was decreed for the Plaintiff *Sarah* accordingly. See *Beckford* and *Parncott's* Caſe. *Cro. Eliz.* 433. The ſame reported by Sir *Francis Moor*, *fol.* 404. *Roll. Tit. Deviſe*, 618.

Bladen verſus *Earl of Pembroke*. Lords Commiſſioners, *Michaelmas* Term, *Anno* 1690.

Mich. Term, *Anno* 1690.

THE late Earl of *Pembroke*, upon his Marriage, raiſed a Term of Years out of part of his Eſtate, which he ſettled upon Truſtees during his own Life; and afterwards, that his Lady ſhould receive the Rents and Profits thereof during her Life; and that after her Death, the ſame ſhould remain to the ſaid Truſtees under the yearly Rent of a Pepper-Corn, upon Truſt to attend the Inheritance, *&c.*

The ſaid Earl did likewiſe raiſe another Term of Years out of another Part of his Eſtate by *Demiſe* and *Re-demiſe*; and this was to ſecure 1300 *l.* and 1500 *l. per Annum*, to be paid according to certain Marriage-Articles, and afterwards died.

There were, at the Time of his Death, many Debts due and owing by him on Bonds,

Bonds, and more upon ſimple Contracts: And now, upon a Bill exhibited by the ſaid Creditors, the Queſtion was, Whether the Remainder of thoſe Terms ſhall be Aſſets in the Hands of his Executors to pay the ſaid Debts?

The Counſel for the Creditors inſiſted, That the Remainder of both the ſaid Terms ſhall be Aſſets, and ſubject in Equity to pay the Debts, and ſubject likewiſe at Law for the ſame Purpoſe; and that the legal Eſtate of both the Terms for Years was veſted in the Executors of the Earl, notwithſtanding one of them was affected with a Truſt to attend the Inheritance.

Thoſe who argued on the other Side ſaid, That even the Courts at Law take Notice of Truſts; and to that Purpoſe, there was a famous Caſe before the Lord Ch. J. *Hale*, between *Lawrence* and *Beverly*, which was thus:

ſſ. Upon a ſpecial Verdict, (*viz.*) one Mrs. *Care* had 1000 *l.* Portion, which was given to her by her Father, and which was then in her Brother's Hands, with whom Mr. *Beverly* treated, in order to marry his ſaid Siſter; and thereupon the Brother covenanted with Mr. *Beverly*, That in a ſhort time after the Marriage ſhould take Effect, he would pay unto the ſaid Mr. *Beverly*,

his Executors or Adminiſtrators, the ſaid 1000 *l.* to the Intent the ſame ſhould be laid out in a Purchaſe of Lands, *&c.* and ſettled upon his Siſter for Life, and afterward upon the Iſſue of that Marriage.

The Marriage took Effect; the 1000 *l.* was not laid out in a Purchaſe; Mr. *Beverly* owed ſeveral Debts; and having made a Purchaſe, and his Wife Executrix, he died without paying his Debts.

His Widow the Executrix afterwards received this 1000 *l.* and the Creditors of her late Husband *Beverly* brought Actions againſt her as Executrix to him: All which Matter being found ſpecially, the Queſtion was, Whether the Money was Aſſets in her Hands to ſatisfy her Husband's Debts? And upon arguing this ſpecial Verdict, it was adjudged not to be Aſſets; becauſe tho' ſhe received the Money, yet it was neither in her own Right, or as Executrix to her Huſband, but upon a Truſt, That it ſhould be laid out in a Purchaſe of Lands, and ſhe herſelf was to have the Property and Uſe of thoſe Lands when bought.

And as to the principal Caſe, the Reſidue of thoſe Terms is not veſted in the Executor, but ſhall go to the Heir,

qua-

quatenus Heir, after the Truſt is ſatiſfied.

If any Man who is ſeiſed in Fee make a Leaſe, rendring Rent; 'tis true, this Rent is a Chattel, but it being extracted out of the Freehold, it ſhall go to the Heir of the Leſſor after his Death, and not to the Executor.

So if a Copyholder in Fee makes a Leaſe for Years of his Copyhold with Licence from the Lord, the Term is not liable to an Execution by a *Fieri facias* for his Debts, becauſe the Copyhold Lands themſelves are in no ſort liable.

'Tis true, where a Leaſe was made for 99 Years, if three Perſons therein named ſhould ſo long live, and afterwards the Leſſee mortgaged this Leaſe, and then made a Will, and *deviſed it for the Payment of his Debts*, and died: In this Caſe his Creditors were let in, and the Reaſon was, becauſe by his Will he had ſubjected the Equity of Redemption to the Payment of his Debts.

And they made a great Difference, where the Equity of Redemption is upon a *Mortgage in Fee*, and where 'tis upon a Mortgage of a *Chattel-Leaſe or Term*; for in the firſt Caſe, (*viz.*) where the Equity of Redemption is upon a Mortgage in Fee, there a Bond-

Creditor ſhall never be let in, becauſe, after the Debt is paid, the Lands are veſted in the Heir: But 'tis otherwiſe where a Term is mortgaged; for the Equity of Redemption of *a Term for Years* comes to the Executor, and in ſuch Caſe a Bond-Creditor ſhall be let in, becauſe if the Term it ſelf ſhould be reconveyed, it would be Aſſets in his Hands.

It was argued likewiſe in this Caſe, That nothing ſhall be Aſſets but a Term in Groſs; and that a Term raiſed upon Truſts for any particular Purpoſes, as to make Proviſion for Daughters, or younger Children, or the like, after ſuch Truſts are ſatisfied; and ſuppoſing the Words, *to attend the Inheritance*, are omitted, yet it ſhall not continue or be ſtretched farther than the Parties intended it, whoſe Meaning muſt be, That after the Annuities are ſatisfied, or the Truſts performed, that the Term ſhould then ſink into the Inheritance, and not be kept on foot to be made liable to their Debts.

But whatſoever may be done with a Term, ſettled *in Truſtees* after the Truſt is ſatisfied, the Reaſon cannot be the ſame where a Term never was in Truſtees, as in this Caſe it was not; for by the Re-demiſe, the Term demiſed

was

was veſted in the Earl himſelf, ſubject to the Performance of the Agreements therein mentioned, and when thoſe are ſatisfied, it muſt of Courſe ſink into the Inheritance, and can never be Aſſets in the Executors, and made liable to Debts, and the Demiſe can never afterwards ſtand by it ſelf: For that and the Redemiſe are but one Conveyance in the Law, and ſuch a Conveyance is better than a Grant of a Rent-Charge, becauſe all ſubſequent Grants ſtand upon an equal Bottom with the firſt; and therefore if the laſt Grantee make the firſt Diſtreſs, he will be firſt ſatisfied: Therefore this Conveyance was found out for the Benefit of the Perſon who is to have the Rent-Charge.

The Court was of Opinion, That the Remainder of thoſe Terms were not Aſſets in the Hands of the Executors of the Earl, for the Reaſons inſiſted on by the Counſel before-mentioned, and ſo decreed accordingly.

Earl

Earl of *Salisbury* verſus *Bennet.* Lords Commiſſioners, *Mich.* Term, 1691.

Mich. Term, *Anno* 1691. *Simon Bennet*, by Will, deviſed 20000 *l.* to his Daughter, ſo as ſhe married after the Age of 16, and with the Conſent of the Truſtees named in the ſaid Will; but if ſhe married before ſhe was 16, or without the Conſent of the Truſtees, then he deviſed to her 10000 *l.* and no more, and that the other 10000 *l.* ſhould go into the Bulk of his perſonal Eſtate, and be laid out in the Purchaſe of Lands, and ſettled as he had directed.

The Earl of *Salisbury* married the Daughter before ſhe was 16 Years old, but with the Conſent of the Truſtees: And it was proved in this Cauſe, that Mr. *Bennet* the Teſtator had in his Life-time made ſome Overtures of marrying this Daughter to the ſaid Earl; and thereupon the Court decreed, That the Earl ſhould have the Portion, *(viz.)* 20000 *l.*

There was an Appeal brought from this Decree to the Houſe of Peers, and there it was confirmed.

Nota,

Nota, That in arguing this Caſe, this Difference was taken and allowed both at Bench and at the Bar, *(viz.)* That where there is a Deviſe of 1000 *l.* to a Daughter, if ſhe married with the Conſent of Truſtees named in the Will, and if ſhe did not marry with their Conſent, then ſhe ſhould have but 500 *l.* this is only *in Terrorem.* And tho' ſhe ſhould afterwards marry without ſuch Conſent, yet ſhe ſhall have the whole 1000 *l.*

But where the Deviſe is of 1000 *l.* if ſhe marry with Conſent as aforeſaid; and if ſhe doth not, then the 1000 *l.* is deviſed over to another Perſon; in ſuch Caſe, if ſhe marry without the Conſent, the Deviſe over is good, and ſhe can never be relieved: And this was *Fry* and *Porter*'s Caſe. *Nota* the Difference, for there was no Deviſe over of the 10000 *l.* to any particular Perſon in the principal Caſe, hut only that it ſhould ſink into the Bulk of his perſonal Eſtate.

Ano-

Anonymus.

ONE Mr. *Denton* by Will made his Wife Executrix and Reſiduary Legatee, and died: His Widow afterwards married Mr. *Battersby*, who in like manner made a Will, and made her Executrix thereof, and alſo Reſiduary Legatee, and then he died. After the Death of her ſecond Husband, ſhe being then a Widow, ſhe made her Will, and deviſed ſeveral Legacies to Truſtees for the Uſe of particular Perſons named in her ſaid Will, and made an Executrix, to which Will ſhe afterwards annexed a Codicil in theſe Words:

ff. Memorandum, *I do farther deviſe to my Executrix, and to* A. *and* B. (who were now Plaintiffs) *all my Houſhold-Goods, Bonds, Bills, Ships at Sea, Book-Debts and Accompts, not before deviſed, and which were mine as Executrix to Mr.* Denton, *my firſt Husband; all which ſhall be equally divided amongſt, and not to be taken by, my Truſtees in my Will.*

The Teſtatrix died, and her Executrix refuſed to adminiſter, for that the Queſtion was, To whom the Adminiſtration ſhould be granted?

And

And the Court decreed, That it ſhould be granted to the next of Kin to the Executrix, and not to thoſe who were next of Kin to Mr. *Denton*, her firſt Husband; and ſo it ſhould have been if his Widow had died before Probate of his Will, and that the Plaintiffs ſhould have whatever remained of the firſt Husband's Eſtate, for whoever takes an Adminiſtration to that, are but Truſtees for them.

Armſtrong's Caſe. *Michaelmas* Term, *Anno* 1691.

Mich. Term, *Anno* 1691.

GEorge *Armſtrong* being poſſeſſed of a Chattel-Leaſe, died Inteſtate, leaving a Widow and one Child; the Widow took out Adminiſtration in the Biſhop's Court at *Exeter*, which ſhe ought not to have done, becauſe the Inteſtate had *Bona notabilia*, and for that Reaſon ſhe ſhould have adminiſter'd in the *Prerogative* Court.

But by Vertue of this Adminiſtration ſhe entered upon the Lands ſo leaſed to the Inteſtate, and paid ſome of his Debts by the Perception of the Profits; and afterwards ſhe mortgaged the ſaid Term to raiſe Money to pay one of his Bond-Creditors, and then ſhe died Inteſtate.

The

The Queſtion was, Who ſhould redeem, either the Adminiſtrator of the Wife, or the Adminiſtrator *De Bonis non, &c.* of her Husband, the firſt Inteſtate? For ſuch an Adminiſtration was granted, becauſe tho' the Wife had a Right to adminiſter, yet ſhe took out a wrongful Adminiſtration.

And the Court decreed, That the Adminiſtrator *De Bonis non* ſhould redeem, but that he ſhould allow what the wrongful Adminiſtratrix had paid in Diſcharge of the juſt Debts of her Huſband the Inteſtate.

Sir *Thomas Clarges*'s Caſe. *Mich.* Term, *Anno* 1691.

Mich. Term, *Anno* 1691.

THE old Duke of *Albemarle* deviſed his Jewels and Plate to his Wife for her Life, and afterwards to his Son *Chriſtopher*. Now tho' this was a plain Deviſe of a Chattel Perſonal, with a *Remainder*, which cannot be by the Rules of Law; yet the Maſter of the *Rolls* held, this ſhould be intended a Deviſe of the *Uſe* of Jewels, in order to ſupport the Will and Intention of the Teſtator, and ſo decreed.

Webb verſus *Sutton. Mich.* Term, *Anno* 1691.

Mich. Term, *Anno* 1691.

Doctor *Sutton* being ſeiſed in Fee of an Advowſon in Groſs, did make a Mortgage thereof in Fee, for ſecuring the Repayment of 200 *l.* to the Mortgagee, which Mortgage afterwards became forfeited.

The Doctor having Children by ſeveral Venters, granted the next Avoidance to Truſtees for the Benefit of his Wife; and afterwards made a Will, and deviſed to his Daughter *Arabella* 500 *l.* to be paid within 12 Months after his Deceaſe, and Intereſt in the mean time: And then he deviſed the ſaid Advowſon to his Son *Theodoſius*, and his Heirs, upon Condition that he gave a Bond to his Siſter *Arabella*, to pay her this Legacy of 500 *l.* according to his Will.

Theodoſius died in the Life-time of his Father Dr. *Sutton*; then the Doctor died; and afterwards *Webb*, the now Plaintiff, married *Arabella*, and upon the next Avoidance he was preſented by the Mother. And now he exhibited a Bill againſt the Heir at Law, upon whom the Inheritance deſcended after the

the Death of Dr. *Sutton*, for this 500 *l.* which he had deviſed to his Daughter as aforeſaid. And it being made a Caſe for the Opinion of the Court,

Serjeant *Phillips* argued for the Defendant, That the Advowſon ought not to be charged in his Hands as Heir, becauſe it was Dr. *Sutton*'s Intention only to charge it; and *Theodoſius* dying in his Life-time, it muſt be then undiſpoſed, becauſe the Party was dead who had a Power either to leave it as a Charge upon the Advowſon, or to charge his own Perſon by a Bond for the Payment of it.

If Dr. *Sutton* the Father intended that the Advowſon ſhould be charged with the Payment of this 500 *l.* the Mother might likewiſe intend, that the Grant of the next Preſentation to the Huſband of the Legatee ſhould be a Diſcharge thereof.

But Mr. *Vernon*, who argued for the Plaintiff, ſaid, That could never be intended, becauſe the Legatee was to have the Money within twelve Months after Dr. *Sutton*'s Death, and Intereſt for it till paid. That the Doctor having no other Eſtate, he muſt neceſſarily intend this as a Charge on the Eſtate which he had; ſo that his Meaning muſt be, That the Advowſon ſhould be ſold, and that

his Daughter ſhall have the 500 *l.* out of the Money ariſing by ſuch Sale, without any Prejudice by the Preſentation of her Mother upon the next Avoidance; and if this was not his Intention, ſhe could never have it.

The Court was of Opinion, That this was a good equitable Charge ſubſiſting, notwithſtanding the Death of *Theodoſius*; for if he had been living, and had refuſed to give Bond for the Payment of the 500 *l.* as directed by the Will, the Advowſon ſhould be chargeable.

Then the Queſtion will be, Whether the Preſentation of the Mother, who preſented the Plaintiff, the Husband of the Legatee, ſhall not be intended as a Diſcharge of this Legacy? (which the Lord Commiſſioner *Hutchins* ſaid was no Simony.) But there being nothing of this in Proof, the Court delivered no Opinion as to that Matter, but ordered that the Cauſe ſhould come before them upon Proofs, it ſeeming unnatural that the Daughter ſhould run away with the whole Eſtate, and therefore they ordered that the Mother who preſented ſhould be examined, and ſaid, that ſhe was a good Witneſs in this Caſe; as, Where an Heir is ſued, an Executor ſhall be a good Witneſs to prove the Debt paid out of the perſonal Eſtate.

And as to Intentions to charge Land, the Lord Commiſſioner *Hutchins* cited theſe Caſes, (*viz.*) one *Pelham*'s Caſe of *Grey's-Inn*, which was thus:

ſſ. A Man ſeiſed in Fee, deviſed his Lands to *George Pelham*, and the Heirs of his Body, and in the ſame Will *deſired* the ſaid Mr. *Pelham* to pay all his (the ſaid Teſtator's) Debts. The Lord Chancellor *Jefferies* decreed the Lands ſhould ſtand charged with the Payment of the Debts, tho' it was but a kind of a Deviſe for that Purpoſe after an Eſtate Tail; and upon an Appeal, this Decree was affirmed in the Houſe of Peers.

Now tho' it was held equitable, That a deſire to pay juſt Debts ſhould extend to charge the Teſtator's Lands; yet a Deſire to pay a Money Legacy was not allowed to be a good Charge upon the Land for the Payment of the Legacy: And for that, he cited one *Clowſley*'s Caſe, which was a Deviſe to *A.* of 300 *l.* who was likewiſe Heir at Law to the Teſtator; and in the ſame Will, he deſired her to pay 200 *l.* to his other Daughters.

A. died in the Life-time of the Teſtator; then he died, and after his Death the Legatees exhibit a Bill againſt the Heir:

Heir: To which, Serjeant *Hutchins* being then of Counſel for the Defendant demurred, and he ſaid, When *Maynard*, *Keck*, and *Rawlinſon*, were Commiſſioners, they all held the Demurrer to be good, becauſe this was not any Charge upon the Land.

The Caſe of the Creditors of the Lady Cholmley. *Michaelmas* Term, *Anno* 1691.

THE Bill was, to have an Accompt of ſeveral Jewels which were valued at 1800 *l.* *Mich.* Term, *Anno* 1691.

The Defendant, in her Anſwer, ſet forth the Number and Quantity of the Jewels, but claimed them as her *Paraphanalia.*

Upon hearing the Cauſe at *Powys-Houſe*, before the Lords Commiſſioners *Rawlinſon* and *Hutchins*, it was alledged by the Counſel for the Creditors againſt the Lady, That her Husband being a Citizen of *London*, ſhe was now barred by the Cuſtom, of all manner of Right to any *Paraphanalia:* Whereupon it was directed to the Lord Mayor and Court of Aldermen to certify the Cuſtom, Whether ſhe was barred or not? Who certified, That the Cuſtom was, for a Citizen's Widow to retain ſome part of

her Jewels as *Paraphanalia*, but not the whole.

But Sir *William Williams*, who was of Counſel for the Lady, argued, That the *Paraphanalia* were ſo appropriated to her Perſon, that they could not be diſpoſed by the laſt Will and Teſtament of her Husband, as in this Caſe; but it muſt be by ſome Act executed, and which was to take Effect in his Life-time, and if there was no ſuch Diſpoſition, then they were a Gift in Law to the Wife; for if a Husband in his Life-time will permit his Wife to wear Jewels which are proper for her Perſon and Condition, 'tis an implicit Gift to her by Law, and they ſhall not afterwards be taken from her by any of his Creditors.

On the other Side it was inſiſted, That the Defendant, the Lady *Cholmley*, had a Jointure ſettled on her before Marriage, which ſhe accepted in full Satisfaction and Diſcharge of her Thirds at Common Law, which ſhe might at any Time claim out of the real or perſonal Eſtate of her Husband, or for or by reaſon of any Cuſtom, or otherwiſe howſoever, by which Agreement ſhe is now barred: For tho' the *Paraphanalia* are no part of her Thirds, yet they are incident to the Thirds; and if ſhe is barred

barred from the Principal, 'tis reaſonable ſhe ſhould be likewiſe barred from the Incidents.

The Court made no Decree, but took Time to conſider, Whether ſhe was totally barred? And recommended it to the Lady, to conſider in the mean time what Jewels ſhe had moſt Inclination to keep, and that ſhe ſhould not be unreaſonable in her Choice.

Underwood verſus *Mordant* Mil. *Mich.* Term, *Anno* 1691.

Mich. Term, *Anno* 1691.

RAlph *Suckling* of *Des Commones*, by Articles of Agreement before Marriage, contracted and ſold to the Plaintiff *Underwood* all his Houſhold-Goods, Plate, *&c.* which he then had in Truſt for his Wife, if ſhe ſhould happen to ſurvive him, with whom he had 1000 *l.* Portion; but there was no Schedule to thoſe Articles.

The ſaid *Suckling* became indebted to ſeveral Perſons, and particularly to Sir *John Mordant* by Judgment.

After the Death of *Suckling*, the Plaintiff *Underwood* aſſigned the Goods to his Widow, for her ſole and proper Uſe and Benefit: And ſoon afterwards, the Defendant, Sir *John Mordant*, took out

an Execution upon the ſaid Judgment, and the Sheriff being about to execute the ſame, the Plaintiff *Underwood* produced thoſe Articles made before Marriage, and gave him Security to indemnify him againſt the Creditors of *Suckling*; which being done, the ſaid Sheriff returned *Nulla Bona.*

Thereupon Sir *John Mordant* brought an Action againſt the Sheriff for a falſe Return, and obtained a Verdict againſt him, and 120 *l.* Damages, and upon a Writ of Error brought, the Judgment was affirmed.

And now the Plaintiff exhibited a Bill to be relieved againſt the ſame, alledging, That ſuch Verdict and Judgment ought not to be had or given againſt him, for that the Goods were protected by the Marriage-Articles, and bound in Equity, tho' there was no Schedule annexed to it.

And upon hearing the Cauſe, his Counſel argued, That a Deviſe of Goods, or of a Term for Years, with a Remainder over, is good in Equity, tho' 'tis not to be ſupported by Law; and that tho' theſe Articles were defective for want of a Schedule, yet this Court hath often ſupplied defective Agreements, and hath given Relief after Judgment obtained at Law: As in the Caſe

of

of *Burgh* and *Francis*, when my Lord *Nottingham* was Chancellor, which was thus:

ff. Burgh made a Feoffment in Fee, by way of Mortgage, of ſeveral Houſes in *London*, for ſecuring the Payment of 400 *l.* and Intereſt, and being likewiſe indebted to ſeveral other Perſons by Bonds, he died before the Money due on the Mortgage was paid. After his Death, the Bond-Creditors demand their reſpective Debts of his Heir, who had nothing to pay them but the Equity of Redemption of this Mortgage. One of the Creditors, Mr. *Berry*, undertook to ſatisfy the Mortgage, which he did, in order to let himſelf into the Eſtate, and hold it 'till his Bond-Debt was paid; but having diſcovered that there was no *Livery* and *Seiſin* endorſed on the Feoffment, he brought an Action of Debt againſt the Heir upon the Bond of his Anceſtor, and got Judgment: But before Execution, the Seal was opened on purpoſe for a *Subpœna*, which was taken out, and a Bill filed, to help this defective Conveyance, which was ſupplied accordingly, and the Mortgagee had his Money.

So if a Man article to ſell the Manor of *Dale*, and afterwards Judgment is obtained againſt him, and the Judgment-Creditor having Notice of the Articles for Sale, will yet execute his Judgment; this Court hath relieved againſt ſuch Execution, and this was in a *Suffolk* Cauſe.

Now in the principal Caſe, there was no Property of theſe Goods in *Suckling*, for that was gone by the Bargain and Sale, tho' it was defective; and afterwards there was only a Truſt of a Property in the Plaintiff *Underwood*, which might lawfully be aſſigned over, and which accordingly was aſſigned for the Benefit of the Widow: And if her Huſband had been living, and ſhe had applied to this Court before the Defendant had executed this Judgment, he would have been decreed to make a Bargain and Sale of theſe Goods, with a Schedule annexed, according to the Marriage-Articles, which would have protected them againſt this Judgment.

Mr. *Finch* for the Defendant argued, That there were no manner of Circumſtances in this Caſe, which varied it in Equity from what it was at Law, that Sir *John Mordant* had recovered a Judgment at Law; and afterwards Equity will

will not ſay, that a Deed which is void in its Limitation ſhall protect thoſe Goods againſt a lawful Judgment; and if theſe Articles ſhould be conſtrued in Equity to be a Truſt of the Property in the Plaintiff, yet 'tis void at Law againſt the Defendant, becauſe he is a Creditor for a juſt Debt, and, as ſuch, the Property muſt be in him: It cannot be in the Sheriff, either by the Return of the *Nulla Bona*, or the Recovery againſt him, for he can have no Property in the Goods, becauſe he ſays there were none, and they who gave Security to the Sheriff, can have no Colour of Property; it muſt be therefore in *Suckling* whilſt living, or in thoſe who repreſent him after his Death: And to ſhew that the Property was in him, ſuppoſe that the Judgment had been executed in his Life-time, and afterwards the Sheriff had delivered the Goods back again to him, could Sir *John Mordant* recover them again of him? He could not, for if he ſhould bring an Action againſt him for the Goods, the other might have an *Audita Querela*, and plead a former Recovery in Bar to that Action; and for theſe Reaſons, the Bill was diſmiſs'd with Coſts.

Sands

Sands verſus *Fleetwood.* *Mich.* Term, *Anno* 1691.

Mich. Term, *Anno* 1691.

THE Bill was, to compel the Defendant to perform an Agreement: The Caſe upon the Pleadings was thus;

Sir John Pettus, in the Year 1637, upon the Marriage with his Lady ſettles his Eſtate and Lands upon Truſtees and their Heirs, to the Uſe of his Mother for Life; and after her Deceaſe, then to the Uſe of himſelf for Life; and after his Deceaſe, then to the Uſe of his Wife for Life; and after her Deceaſe, then to the ſaid Truſtees and their Heirs; upon Truſt, That out of the Profits thereof, or by Sale or Mortgage, they raiſe the Sum of 2000 *l.* which ſhall be for the Benefit of ſuch younger Child or Children, to whom the ſaid Sir *John* by his laſt Will or Teſtament in Writing, or by any other Writing by him executed in his Life-time, ſhould deviſe, appoint, limit or declare; and for want of ſuch Deviſe or Appointment, then to his *younger Child*, if but one; and if more than one, then to be equally divided amongſt them. And that

that from and after the ſaid 2000 *l.* ſhould be raiſed, and in caſe Sir *John* ſhould have no *younger Child* or Children, that then the ſaid Truſt ſhould ceaſe, and that the Eſtate ſhould be and remain to the ſaid Sir *John Pettus*, his Heirs and Aſſigns, for ever.

Sir *John* had Iſſue by this Marriage, one Son and a Daughter; the Son died without Iſſue, and the Plaintiff Mr. *Sands* married the Daughter.

After the Death of Sir *John*, there was a Treaty between the ſaid Mr. *Sands* and one Mr. *Bird*, for the Sale of theſe Lands; and an Agreement was made, That Mr. *Bird* ſhould pay the ſaid Mr. *Sands* 1100 *l.* for his Intereſt and Title; which the Defendant *Fleetwood* underſtanding, he procured one Mr. *Bagnall* an Attorney, and an Agent between the ſaid Mr. *Sands* and Mr. *Bird*, to break off the Agreement, which not being reduced into Writing, was accordingly done; and the Defendant *Fleetwood* did thereupon agree to give Mr. *Bagnall* and Mr. *Bird* each of them 20 Guineas, and gave a Note under his Hand to pay unto the Plaintiff Mr. *Sands* 1200 *l.* for his Title, which he now refuſed, pretending that he had purchaſed the Eſtate by buying in two Extents, and other Incumbrances, which he ſet forth

forth in his Anſwer, and that the Plaintiff had no Title to convey.

Sir *William Whitlock* and Mr. *Finch*, who argued for the Plaintiff Mr. *Sands*, ſaid, That here was a Proviſion made for a *younger* Child, which the Father could not defeat by any ſubſequent Incumbrance he could make on the Eſtate. The Queſtion is, Whether the Plaintiff's Wife ſhall now come under that Denomination, and be accounted a *younger* Child? 'Tis true, ſhe is Heir at Law, but ſhe has no Inheritance deſcended on her, for there was not any Thing to deſcend, Sir *John* had ſo incumber'd the Eſtate.

It was admitted on all Sides, That if the Son had died and left Children, in ſuch Caſe the Plaintiff's Wife ſhould be accounted a *younger* Child, becauſe the Inheritance had then gone from her: If then the Daughter had a Title when *younger Child*, and when the Inheritance would have gone from her, why ſhould ſhe not have a Title when ſhe is eldeſt, and has no Inheritance?

Sir *Ambroſe Phillips* for the Defendant alledged, That when he gave the Note for the Payment of this 1200 *l.* he had no Notice of this Marriage-Settlement; but yet that it ſeemed plain that the Plaintiff had no Title by the Marriage of

of the Daughter, becauſe if there had been any Inheritance, or any Thing to deſcend, it would have deſcended on her; which ſhews that ſhe is the eldeſt, and not a *younger Child*; for an Inheritance by the Rules of Law can never deſcend on the youngeſt. If therefore ſhe cannot be comprehended under that Denomination, the Plaintiff can have no Title in her Right by his marrying her, and if he hath no Title, this Court will never compel the Defendant to pay this Money. 'Tis like the Caſe, where a Man articles with *B.* for the Purchaſe of the Manor of *Dale*, and upon looking into the Writings it appears, that *B.* hath no Title to that Manor; this Court will never decree the Payment of the Purchaſe-Money. He farther ſaid, That if Sir *John Pettus* had ſold this Eſtate after the Death of his Son, the Sale had been good.

The Court made no Decree, but directed them to go to Law, to ſee what could be recovered there; for if the Plaintiff had a good Title, (as they ſeemed to incline he had) it would be a prior Incumbrance, and he might recover there.

Chew

Chew and others againſt *Chew*. *Mich.* Term, *Anno* 1691.

Mich. Term, *Anno* 1691.

THE Bill was to have Execution of a Truſt of a Copyhold Eſtate. The Caſe was thus:

ſſ. A Copyholder of the Manor of *Painſwick*, in the County of *Glocester*, ſurrender'd the ſame to one *Harding* and his Heirs, and declared to him by Parol, that his Wife ſhould have this Copyhold, if ſhe happened to ſurvive him; and if they both ſhould die, that in ſuch Caſe it ſhould be ſold, and that the Money ariſing by ſuch Sale ſhould be equally divided amongſt the now Plaintiffs, Share and Share alike.

He afterwards made a Will, in which he took no Notice of this Copyhold; and both he and his Wife in a little time died of the Small-Pox.

The Defendant was Heir at Law; and the Court decreed, That where a Surrender is made to a Stranger and his Heirs, he is but a Truſtee for the Heir at Law.

Anonymus.

THE Caſe was; (*viz.*) A Man enter'd into a Bond for the Payment of a Sum of Money which he borrowed: He afterwards rented Land, but not upon Leaſe, and died, the Rent being behind, and unpaid: After his Death, an Action of Debt for Rent arrear was brought againſt the Adminiſtrator, who paid the Money. And now upon a Bill brought againſt him by the Bond-Creditor to diſcover Aſſets, and to be relieved upon his Bond; and upon the Defendant's Anſwer, all this Matter appearing, and that he had not Aſſets beyond the ſaid Sum paid for Rent, the Court decreed,

That Debt for Rent, tho' not upon Leaſe, was of as high a Nature as Debt upon Bond, becauſe it founded in the Reality; and it appearing that the Defendant had no Aſſets beyond what he had paid for Rent, the Bill was diſmiſſed.

Daſhwood

Daſhwood Vic. London, verſus *Manlove*. *Mich.* Term, *Anno* 1691.

Mich. Term, *Anno* 1691.

THE Defendant Mr. *Manlove* had obtained two Judgments againſt one *Seabright*, and took out a *Fieri facias*, which he gave to one *Cooper*, a Serjeant of the *Compter*, to execute, and directed him to the Place where the Goods were, and told him, That he would indemnify him for ſerving the Execution on thoſe Goods. Thereupon the Officer took the Goods in Execution, and the Sheriff made a Bill of Sale thereof to the now Defendant Mr. *Manlove*.

Afterwards Mrs. *Harvey*, who had the legal Propriety in theſe Goods, brought an Action againſt the Sheriff for taking them, and recovered a Verdict and 80 *l.* Damages. And now the Sheriff exhibited a Bill againſt Mr. *Manlove*, to make him liable in Equity, for that the Seiſure of the Goods was tortious, and by his Direction, who by that Means had got them into his Poſſeſſion, and ſo was become a Gainer by his wrongful Act.

Mr. *Finch* for the Defendant. If this ſhould be Equity, here is a Way found

out to deſtroy all Executions: The Property of the Goods are bound by the Sale, and the Sheriff has received his Poundage-Money, and cannot in Equity charge Mr. *Manlove*; 'tis true, Mrs. *Harvey* might have charged him in an Action of *Trover* for theſe Goods, and that had been the proper Way to have made him liable; but ſhe hath taken another Courſe, and it being long ſince, ſhe is now barred by the Statute of *Limitations*, ſo the Bill was diſmiſſed.

Taylor verſus *Wood.* Lords Commiſſioners, in *Hillary* Vacation, *Anno* 1691.

THE Caſe was; (*viz.*) *Nathaniel Taylor*, by his laſt Will and Teſtament deviſed his Lands to the Defendant *Wood*, upon Condition that he paid the ſeveral Legacies which he had bequeathed to ſeveral Perſons therein named; by which Will he gave one Legacy of 200 *l.* to *Phœbe Taylor*, when ſhe ſhall attain and come to the Age of 21 Years; provided, That if the ſaid *Wood* ſhould fail in the Payment of the ſaid Legacies, that then the Legatees ſhould have Power to enter, or ſuch of them *Hillary* Vacation, *Anno* 1691.

them whoſe Legacy was not paid, and detain the ſaid Lands till he or ſhe ſhould be ſatisfied.

Phœbe Taylor died before ſhe was 21 Years of Age: And now her *Adminiſtrator* exhibited a Bill againſt *Wood* the Defendant, in order to obtain this Legacy; and the Queſtion was, Whether this was a Deviſe of the 200 *l.* to *Phœbe Taylor in præſenti*, for if ſo, then her Adminiſtrator will have a Right to it; or whether nothing is due till ſhe ſhould be of the Age of 21 Years?

Somers, Sollicitor General, argued for the *Adminiſtrator*, That this was a Deviſe *in præſenti*; That the Words which gave the Legatees Power to enter, ſhould relate to the Time of Payment, and not to the Subſtance of the Deviſe: That if the Words had been, *I give to my Daughter* Phœbe Taylor 200 l. *to be paid at the Age of* 21 *Years*, that had been *Debitum in præſenti*, tho' it had not to have been *paid* till 21; and where 'tis *Debitum in præſenti*, if the Legatee had died before the Time of Payment, it ſhould have gone to her Adminiſtrator: That there was nothing varied this Caſe from that, but the Word *when*, which made no material Difference.

Curia.

Curia. This is not a preſent Deviſe, neither ſhall it take Place till after the Deviſee hath attained the Age of 21 Years; and as the Words ſtand together, the Meaning of the Teſtator muſt be thus, *(viz.) I give to my Daughter* Phœbe Taylor 200 l. when *ſhe ſhall attain the Age of* 21 *Years, with Power to enter on my Lands if the Legacy be not* then *paid.*

This Court hath ſeveral times made ſtrained Conſtructions of Wills to help *Infants*, but never to help an *Adminiſtrator.*

In the Caſe of *Clobery* and *Lawpeen*, which was heard three times in this Court, and a Decree made and affirmed in the Houſe of Lords, this Difference was taken, That where a Deviſe was of a Sum of Money, to be paid to a Daughter *at the Age of* 21 *Years*, with *Intereſt*, there the Word *Intereſt* made it *Debitum in præſenti*, becauſe after 21 ſhe ſhall have no Intereſt.

Nota: Upon a Motion to ſtay the Signing and Enrolling a Decree, that it might not be pleaded in Bar againſt the now Plaintiff, who had diſcovered new Matter, and had

thereupon preferred a new Bill; it was ordered, That the Signing and Enrolling ſhould ſtay till the Defendant had anſwered; but that no Cauſe ſhould be ſhewn againſt a decretal Order, without depoſiting 5 *l.* in Court.

The Plaintiff in this Caſe could not bring a Bill of *Review*, becauſe in ſuch Caſe no Proofs are to be admitted, but ſuch as were made in the Original Cauſe.

Dutcheſs of Albemarle verſus *Earl of Bath.*
Lords Commiſſioners, *May* 23, 24, in *Eaſter* Vacation, *Anno* 1692.

Eaſter Vacation, *Anno* 1692.

THE Caſe was, That in the Year 1675, Duke *Chriſtopher Monk* made his Will, and (amongſt other Legacies) deviſed the greateſt Part of his Eſtate to the Earl of *Bath*, who was his Couſin-German, and charged ſome Lands with Legacies, to be paid out of ſuch Lands; which he had no Power to do, becauſe they were entailed by Duke *George*, his Father.

Afterwards, in the Year 1681, Duke *Chriſtopher* executed a Deed, ſuppoſed to be drawn by Sir *William Jones*, in which the

the Will of 1675 was recited, and which he mentioned to be to confirm and corroborate that Will; by which Deed he alſo gave the greateſt Part of his Eſtate to the ſaid *Earl*; but he reſerved a Power of Revocation, ſo that he revoked it in the Preſence of ſix Witneſſes, whereof three of them were to be Peers.

Afterwards Duke *Chriſtopher*, in the Year 1687, made another Will, which he publiſh'd at Sir *Robert Clayton*'s Houſe, in the Preſence of three or four Witneſſes; which Will was drawn by the Direction of the late Chief Juſtice *Pollexfen*, and by that Will he deviſed the greateſt Part of his Eſtate to the Dutcheſs, and he deviſed his Plate and Houſhold-ſtuff to ſuch Perſon to whom the Inheritance of his Houſe, *Newhall*, ſhould be and appertain.

The Will of 1675, and the Deed of 1681, were both delivered to the Earl under the Duke's Seal; who afterwards ſent for the Will, and it was delivered to him, and ſhewed to the Chief Juſtice *Pollexfen*, who was then his Counſel when he made the laſt Will in 1687, but the Deed was not produced till after his Death.

When he was about making his laſt Will in 1687, he adviſed with his

Counſel, Whether that Will would be a Revocation, and whether it would deſtroy the Deed in 1681? And being adviſed that it would not, unleſs the Power of Revocation were purſued, he then publiſhed this ſecond and laſt Will in the Year 1687.

Afterwards Duke *Chriſtopher* died without any Revocation, according to the Power reſerv'd; and ſoon after, the Earl of *Bath* produc'd the Deed dated in 1681, and inſiſted upon his Title to the Lands therein mentioned: Whereupon the Dutcheſs exhibited a Bill in Equity to be relieved againſt that Deed, and to ſupply the Power of Revocation, in regard Duke *Chriſtopher* died in *Jamaica*, where he could not have three Peers to be preſent at the Time he would have revoked it, and inſiſted, That it was obtained by Surprize, *&c.*

Thereupon an Iſſue was directed at Law to try the Right, and a Tryal was accordingly had at the *King's-Bench* Bar, at which Tryal it was found to be a good Deed, and well executed; and the Cauſe coming back to this Court upon the Equity reſerved,

Mr. *Finch*, and others of Counſel for the Dutcheſs, argued, That the Deed of 1681 being a voluntary Conveyance, ſhall never be ſupported in Equity againſt

againſt another voluntary Conveyance, (for ſuch the Will in 1687 muſt be) eſpecially when there are ſo many plain and apparent Circumſtances to induce the Court to be of Opinion, That the Deed of 1681 was obtained by Surprize.

And as to that, there is no Proof of the *Manner* of obtaining this Deed; or that the Duke gave any Directions for drawing it; or that he was ſo much as privy to the Contents thereof; or of his Intention to give the Eſtate to the Earl; or of the Duke's concealing it; or any Reaſon ſhewn, why there was no Counterpart.

'Tis true, here is a Deed produced, which gives away the Eſtate contrary to the manifeſt Intention of the Duke, which appears in his Will in 1687, which he made and publiſhed with as great Advice and Deliberation as ever any Will was made. If therefore this Deed ſhould be conſtrued to have an Operation contrary to the apparent Intent of the Duke himſelf expreſſed in his Will in 1687, can any Man imagine, that it was not obtained by Surprize? Or can it be thought, that the Duke took ſo much Advice and ſuch Pains to make a Will, intending that it ſhould ſignify nothing, but rather

on purpoſe to leave his Family in a chargeable Controverſy.

It cannot be denied but the Deed in 1681 is a voluntary Conveyance; that it was obtained without any manner of Conſideration, and afterwards concealed from the Duke, and forgotten by him; for it muſt be preſumed that he never remember'd the making any ſuch Deed; for if he had, he would certainly have taken ſome Care to deſtroy it, becauſe it was ſo directly contrary to the Will he made in the Year 1687.

There are ſome Things in the Deed it ſelf, which plainly ſhew that the Duke was ſurpriſed in making it; for it recites the former Will made by him in 1675, and then declares, that the Deed was to confirm and corroborate that Will. Now tho' a Deed to confirm a Will is a very extraordinary Thing, and not uſual, becauſe the Eſtate paſſes by the Deed, and not by the Will; yet this Deed in 1681 is ſo far from confirming the Will in 1687, that it contradicts it; for the Deed recites, That he had deviſed the Manors of *Dally* and *Broughton* to the Dutcheſs, which he had not done: Then he recites his Intention for a Maintenance and Proviſion for ſome younger Children of a Relation, out of certain Lands which he

he had no Power to charge, becauſe thoſe very Lands were entailed by Duke *George*, his Father. All thoſe Things were Arguments, that he was ſurpriſed in making that Deed.

There were ſix Years between the Time of the making the Deed and Will, which was a ſufficient Time of Deliberation, in which Time there happened many Alterations in the Duke's Family; therefore it muſt be ſuppoſed, that he would never ſuffer the Deed to remain in Force, if he had not forgot it when he made his Will.

This Caſe depended a long time, and the Arguments on both Sides at the Bar, and afterwards at the Bench, are very long; but becauſe they are printed at large by themſelves, I ſhall repeat no more here, but refer the Reader to that printed Report.

Powell's

Powell's Caſe. *Paſc. Anno* 1692.

Paſc. Anno 1692.

A Mortgagee, who had nothing left but an Equity of Redemption of the mortgaged Lands, deviſed the ſaid Equity of Redemption for the Payment of his Debts, and ſome Legacies which he had bequeathed to ſeveral Perſons by his ſaid Will: The Queſtion was, Whether the Creditors ſhould be paid before the Legatees? And it was decreed, That if the ſaid Eſtate did not ſtand charged with the Debts before, but only by the Will, that in ſuch Caſe both Creditors and Legatees ſhall come *in pari paſſu.*

In the Argument of this Caſe it was held, That if a Man deviſe an Annuity to a Child, to be iſſuing out of certain Lands, and by the ſame Will he deviſeth the ſame Lands for the Payment of his Debts and Legacies, that the Deviſe of the Annuity is a ſubſiſting Charge on the Lands, and ſhall be good.

Strode

Strode verſus *Ellis*. *Somers*, Lord Chancellor, *Paſc. Anno* 1692.

THE Teſtator Mr. *Strode*, by his laſt Will and Teſtament, deviſed 3000 *l.* apiece to his Daughters at their reſpective Ages of 18 Years, and appointed Truſtees to ſell Lands in *Lincolnſhire* for raiſing the ſaid Portions; and if that fell ſhort, then he deviſed, That the Rents and Profits of certain other Lands in *Somerſetſhire* ſhould be applied towards the Payment thereof, and that each of his Daughters ſhould have 50 *l. per Annum* for their Maintenance, till their Portions reſpectively became due. *Paſc. Anno* 1692.

Then he deviſed ſeveral ſpecifick Legacies to his Wife and others, which he appointed to be paid out of his perſonal Eſtate; and deviſed all the *reſt* and *Reſidue* of his Goods and Chattels to his Wife, not diſpoſed by his Will, and which ſhall not be diſpoſed by any Codicil thereunto annexed, to the end ſhe ſhould pay all ſuch Debts and Legacies which he had appointed to be paid out of his ſaid *perſonal Eſtate*, and made his ſaid Wife ſole Executrix, and died.

The

The *Lincolnſhire* Eſtate was ſold for 1750 *l.* which Sum was placed out at Intereſt, and the Rents and Profits of the *Somerſetſhire* Eſtate fell ſhort of the Payment of the Portions, and, by reaſon of the Taxes, could but little more than pay the 50 *l.* a Year for the Maintenance of the Daughters; but the perſonal Eſtate was more than ſufficient to pay all the Debts and Legacies.

And upon a Bill exhibited, to ſubject the ſaid Perſonal Eſtate to pay what the Lands and Rents fell ſhort to make up the ſaid Portions, the Queſtion was, Whether it ſhould be liable in Equity, or whether the Executrix ſhould have it as reſiduary Legatee? And decreed, That it ſhould be liable to make up the Deficiency of the ſaid Portions, ſo much as the ſaid Lands fell ſhort to pay the ſame.

Thomas

Thomas Holtham, and *Katherine* his Wife, formerly the Widow of *Thomas Ryland*, ver *John Ryland*, Brother and Heir of the ſaid *Thomas Ryland*. *Paſc. Anno* 1692.

THE Bill ſets forth, That about the Month of *October*, 1693. there was a Treaty of Marriage to be had between the ſaid *Thomas Ryland*, and *Katherine*, one of the Daughters and Coheirs of *Allen Lock*, who had in her own Right, Lands in Fee of about the yearly Rent of 15 *l.* and ſome Money at Intereſt, upon Securities taken in her own Name, or in the Name of ſome Perſon in Truſt for her. *Paſc. Anno* 1692.

That thereupon the ſaid *Thomas Ryland*, in Conſideration of the ſaid intended Marriage, and of the ſaid Portion which he was to have with the ſaid *Katherine*, did agree to ſettle on her for her Jointure, in caſe the ſaid Marriage ſhould take Effect, and ſhe ſhould ſurvive him, *All* that capital Meſſuage in which he then lived, together with four Yards-Land thereunto belonging, lying diſperſed in the common Fields in *Wimpſton* in the County of

of *Worceſter*, in Truſt, and for the Uſe of himſelf during his Life; and after his Deceaſe, then to the ſaid *Katherine* for her Life for her Jointure, and in full Satisfaction of all Dower, *&c.* and after her Deceaſe, to the Heirs of the Bodies of the ſaid *Thomas* and *Katherine* lawfully to be begotten, with ſeveral Remainders over.

The Plaintiffs farther ſet forth, That the ſaid Agreement was reduced into Writing, and duly executed by the ſaid *Thomas Ryland*; and that, for the better Performance thereof, he ſigned and ſealed a Bond of the Penalty of 200 *l.* with a ſpecial Condition, reciting the ſaid Agreement to make her a Jointure, *&c.*

That afterwards the ſaid Marriage took Effect, and the ſaid *Thomas Ryland* held and enjoyed the ſaid Lands, in Right of the ſaid *Katherine*, all his Life-time, and the Securities for Money in her Name were taken up and delivered to him, and new Securities taken in his Name for the ſame.

That *Thomas Ryland* being by the ſaid Means as well intitled to the real Eſtate of the ſaid *Katherine*, as to her Money, and being likewiſe ſeiſed in Fee of the ſaid Meſſuage and four Yards-Land in *Wimpſton*, and alſo poſſeſſed of a perſonal

ſonal Eſtate of above 500 *l.* Value; did, about *January* 1695, die inteſtate without Iſſue, and without making any Settlement on the ſaid *Katherine* according to the ſaid Marriage-Agreement.

That ſhe, ſince her Husband's Death, hath applied herſelf to the Defendant, deſiring him to ſettle the ſaid Lands on her, which were now come to him as Brother and Heir of her late Husband; which he refuſed to do, pretending there was no ſuch Agreement; or if there was, that he is not obliged to perform the ſame, for that the Lands were entailed on him; tho' in Truth there was no ſuch Entail, but that his Brother was ſeiſed in Fee as aforeſaid; and that the ſame ought to be ſettled on the ſaid *Katherine.*

Upon hearing this Cauſe before the Lord Chancellor *Somers*, there was no other Agreement appeared but the Bond with the ſpecial Condition, as aforeſaid; and this was held to be a ſufficient Evidence of ſuch Agreement in Writing, and he decreed the Settlement to be made accordingly on the ſaid *Katherine* by the now Defendant *John Ryland*, and if he refuſed to do it within ſix Weeks, then he ſhould pay Coſts.

FINIS.

THE

TABLE.

A.

D.

Juriſ-